



Neutral Citation Number: [2020] EWHC 756 (Ch)

Case No: CR-2018-007713

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES LIST (ChD)

7 Rolls Building
Fetter Lane
London EC4A 1NL

Date: 30 March 2020

IN THE MATTER OF LEGAL AND GENERAL ASSURANCE SOCIETY LIMITED

- and -

IN THE MATTER OF REASSURE LIMITED

- and -

IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

Before:

THE HONOURABLE MR JUSTICE ZACAROLI

Martin Moore QC (instructed by **Slaughter and May** for Legal and General Assurance Society Limited (the Transferor), and instructed by **Herbert Smith Freehills LLP** for ReAssure Limited (the Transferee))

Theodor Van Sante (instructed by the **Financial Conduct Authority**)

Tom Weitzman QC (instructed by the **Prudential Regulation Authority**)

The following policyholders appeared in person: Mr John Gorrod, Mrs Susan Mulholland, Dr Kerry Platman, Ms Tamara Schillinger, Mr Joseph Sebastian and Mr Eugene Nathan

Hearing dates: 10, 11, 12 March 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR. JUSTICE ZACAROLI

Mr Justice Zacaroli:

1. Over the course of 10 to 12 March 2020 I heard an application to sanction a scheme (the “Scheme”) under Part VII of the Financial Services and Markets Act 2000 (“FSMA”) for the transfer of insurance business from Legal and General Assurance Society Limited (“LGAS”) to ReAssure Limited (“ReAssure”).
2. Over the next ten days I received a number of further submissions from certain policyholders who had appeared at the hearing to object to the Scheme, and various submissions in response from Mr Moore QC who represents the applicant companies. I also sought further input from the independent expert instructed in this case, in order to deal with certain of the points raised.
3. This was against the background of the fast-developing health and economic crisis as a result of the global COVID-19 pandemic.
4. The applicant companies had originally indicated a need for a decision on the Scheme by Tuesday 24 March 2020 at the latest, in order to ensure that the transfer of business could be effected under the Scheme by early April 2020.
5. During the evening of Monday 23 March 2020 I received a request from Mr Moore that I defer handing down my decision until the independent expert had provided a supplemental report dealing further with the impact of COVID-19. Then, during the evening of 24 March 2020, I received a third supplemental skeleton argument from Mr Moore requesting an adjournment of the application in the light of the operational challenges that COVID-19 had presented and continued to present to the successful migration of the business to ReAssure.
6. The applicant companies had concluded that, in light of those operational challenges, it could not be said with a sufficient degree of certainty that the mechanics of the migration would proceed precisely as planned. Additionally, and more significantly, there was uncertainty about the extent and distribution of the impact of COVID-19 on the companies’ respective operations, and the applicants would need time to work out what these impacts are and how to mitigate them. In short, Mr Moore submitted that the level of risk of material detriment to policyholders was such that the companies did not consider they should proceed at this time.
7. Mr Moore also requested, if I agreed to an adjournment of the application, that I indicate in any judgment I gave that I was minded to sanction the Scheme save for the operational issues which have arisen in light of the COVID-19. In other words, I should deal with the objections so far made to the Scheme, so that on the adjourned hearing the court could focus on the operational issues and any other matters that had arisen in the meantime.
8. I acceded to the request for an adjournment on 25 March 2020, but indicated that I would reflect on the second request.

9. I subsequently received comments on the second request from Mr Weitzman QC, on behalf of the Prudential Regulation Authority (“PRA”), from Mr van Sante, on behalf of the Financial Conduct Authority (“FCA”) and from a Mr Nathan, a policyholder of ReAssure who had objected to the Scheme, both in writing and in person at the hearing of the sanction application.
10. The FCA did not object to the court giving judgment on the matters raised to date, but noted that any judgment could not fetter the discretion of the court at the adjourned hearing of the sanction application to determine the matter by reference to the circumstances as they exist, as a whole, at that time, especially insofar as they might have changed.
11. The PRA indicated that its preference would be for the court to adopt the normal course of not issuing a judgment at this stage, prior to the conclusion of the hearing on all matters. Mr Weitzman indicated that given the length of the proposed adjournment, the PRA would be likely to want to provide the court with a further report on the proposed Scheme.
12. Mr Nathan objected to the court giving judgment in effect pre-approving the Scheme, but deferring a decision on whether the transfer could be effected in the interests of policyholders.
13. Mr Moore’s response to the PRA’s position was that in these highly abnormal times, there was value in the court setting out what its conclusions would have been in the absence of operational issues caused by COVID-19. He submitted that to have the ‘base line’ set for the further hearing would enable the parties to decide whether to ramp up or stand down their contingency planning.
14. There is something to be said for producing a judgment on the objections raised to the Scheme to date, and such technical aspects (for example the scope of any ancillary orders) as are unlikely to be affected by any change in circumstances over the coming months, at this stage. In particular, the court has spent three full days of hearing time, together with many additional days in pre-reading, dealing with post-hearing submissions from various parties and in preparing a draft judgment, and it might save court and judicial time (to the benefit of other litigants) if that judgment were completed insofar as possible now.
15. I am not persuaded, however, that this would be the right course in this case. The ultimate question for the court on the application to sanction the Scheme is whether, in all the circumstances of the case, it is appropriate to sanction the Scheme (see s.111(3) of FSMA). The circumstances must be those existing at the date the court is asked to sanction the scheme, namely the date of the adjourned hearing of the sanction application.
16. While it may well be the case that the court’s response to very many of the issues raised by the Scheme and by policyholders’ objections will be the same at the adjourned hearing of the sanction application as they would have been in a judgment produced now, the ultimate question depends on weighing all relevant factors in the balance. A change in circumstances in one area, even if the bulk of the circumstances remains the same, could alter the balance when

exercising the discretion overall. Moreover, it is impossible to know precisely to what extent the economic fallout from COVID-19 will affect the businesses, respectively, of LGAS and ReAssure. The impact may go beyond purely operational matters.

17. Depending on the extent of the change in circumstances, it may be that a judgment produced now, on the basis of circumstances as they now exist, would end up creating more work by the need to draw comparisons between the circumstances now and then in order to distinguish particular conclusions reached in the judgment.
18. While I have sympathy with the applicant companies wishing to know where they stand, for the purposes of their contingency planning, I do not think that this factor outweighs the disadvantages I have outlined in producing a judgment at this interim stage.
19. The potential waste of court and judicial time can be mitigated to some extent in two ways. First, the matter will be reserved to me, if at all possible, so that the work undertaken in preparing a draft judgment will not have been altogether wasted. Second, in relation to matters which have been raised to date, where there is no change in circumstances, the court is likely to need no further submissions from any party. There is a complete transcript of the first hearing and there will be no need for the applicant companies or any of the objecting policyholders to repeat at any length the submissions relating to issues where there has been no change in circumstances. So far as the ancillary orders are concerned, given that the full impact of COVID-19 on the businesses of the applicant companies is not known, there is at least a possibility that their nature and scope might change. If they do not, then it is likely that the court would need no further submissions in relation to them.