



IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURT
OF ENGLAND & WALES
INTERIM APPLICATIONS LIST (ChD)
[2022] EWHC 1050 (Ch)

Claim No. BL-2022-000444

Rolls Building
7 Rolls Buildings
Fetter Lane
London, EC4A 1NL

Wednesday, 6 April 2022

Before:

MR JUSTICE FANCOURT

B E T W E E N:

BANCA GENERALI S.p.A Claimant/Applicant

- and -

(1) CFE (SUISSE) SA
(2) SOVEREIGN CREDIT OPPORTUNITIES SA Defendants/Respondents

Mr A. De Mestre QC and Mr A. Rose (instructed by Mayer Brown International LLP) appeared on behalf of the Claimant.

Mr J. Goldring QC and Mr H. Phillips (instructed by Macfarlanes LLP) appeared on behalf of the Defendants.

J U D G M E N T

(via Microsoft Teams)

MR JUSTICE FAN COURT:

- 1 This is now an application by the claimant, Banca Generali S.p.A, for an expedited hearing of the application. The application started as an application for the provision of a considerable quantity of information by the defendants about the underlying assets and receivables that are relevant to three securitised transactions, of which the second defendant was the issuer of secured Notes. The claimant, either in its own right or on behalf of its clients, was the purchaser of the Notes. The claimant is subject to a quarterly reporting obligation to the purchasers of the Notes, in accordance with EU and Italian law.
- 2 The difficulty that the claimant says that it faces is that it does not have the necessary information on the basis of which it can report in compliance with its obligations on the fair market value of the Notes, which depends on the fair market value of the Receivables. The claimant also says that in view of inconsistent information that has been provided by the defendants, it can have no confidence in the accuracy of that information for the purposes of reporting unless it is given access to the underlying documents themselves relating to the receivables.
- 3 Since the date of issue of the application, the defendants have - they say voluntarily; the claimant would say as they should have done - provided a certain amount of information. The claimant says some is still outstanding, but the real nub of the remaining dispute between the parties is whether the claimant has a right to inspect the underlying documents. The claimant says, without being able to do that in the circumstances which have arisen, it cannot report accurately and fairly in accordance with its obligations.
- 4 The quarterly reporting obligations start with provision by the defendants of information by the end of the months of February, May, August and November. There is then a process of evaluation and valuation, which enables the claimant to report to their clients by the end of April, July, October and January in each year. In order to be able to report on the fair market value at the end of April this year, the claimant accepts they would need all the information they seek by 10 April. That is not going to happen on any view, even with an order for an expedited hearing. The consequence will be that, for two quarters running, the claimant will have defaulted on their obligation to report on the fair market value of the Notes.
- 5 The risk if expedition is not ordered is that the same position will obtain for a yet further quarter because in order to be able to report by the end of July 2022, the necessary information and analysis will need to have been conducted by, at the latest, 10 July. Without an order for expedition, this application will not be listed before July 2022.
- 6 In those circumstances, I accept that against the background of two previous quarters in which the claimant has not been able to report at all on the fair market value but has only been able to provide the par value of the Notes, a third successive quarter might make matters more serious in terms of the implications for the claimant from both its clients and the Italian regulator.
- 7 Added to that, there are two sets of Notes that mature in the next three months or so: TF II on 10 April and TF III in July 2022. The claimant has no confidence that TF II will be able to be repaid on 10 April. There may therefore, although I make no finding about this for obvious reasons, be further problems that arise for the claimant with its clients, and reputationally, as a result of a default on the TF II Notes.

- 8 In those circumstances, applying the test identified by the Court of Appeal in *WL Gore & Associates GmbH v Geox S.p.A* [2008] EWCA Civ. 622, I am satisfied that the applicants have shown a good reason for expedition. There is no suggestion by the defendants that expedition would cause any prejudice to them.
- 9 As to interference with the good administration of justice, the lists are extremely busy at present and are expected to remain busy for April, May and June at least. There are not many opportunities to provide for expedited hearings, indeed my expectation is that the week of 23 May is the earliest week when this hearing is likely to be able to be accommodated, subject to the parties' convenience.
- 10 Nevertheless, in the circumstances given the dates that I have referred to, there does seem to me to be a significant difference between a hearing towards the end of May and a hearing in July so far as the claimant's position is concerned. Given that the hearing will only be for one day with half a day's pre-reading by the judge, I consider that any impact that has on the possibility of hearing other cases urgently is likely to be relatively small. I do not consider that there are any other special factors in this case.
- 11 For the reasons that I have given, I therefore accede to the application, as it is effectively before me today, that the one-day hearing should be expedited.
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CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.