

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

Case No. CR-2024-002308

Neutral Citation No. [2024] EWHC 2080 (Ch)

Courtroom No. 4

Rolls Building
Fetter Lane
London
WC2A 2LL

Tuesday, 4th June 2024

Before:
THE HONOURABLE MR JUSTICE RICHARDS

B E T W E E N:

IN THE MATTER OF PROJECT VERONA LIMITED

MR M WEAVER KC and MS K LONGSTAFF (instructed by Shoosmiths LLP) appeared on behalf of the Claimant

JUDGMENT
(Approved)

This Transcript is Crown Copyright. It may not be reproduced in whole or in part, other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

MR JUSTICE RICHARDS:

Introduction

1. This is my judgment on the application by Project Verona Limited (the “Company”) for the court to sanction a plan under Part 26A of the Companies Act 2006 (“CA 2006”). The background is set out in my judgment reported at [2024] EWHC 1261 (Ch) (the “Convening Judgment”), which set out my reasons for convening Plan Meetings of seven different classes of Plan Creditor. I use the same defined terms as are used in the Convening Judgment and, more generally, this judgment should be read together with the Convening Judgment.
2. I was helpfully handed a table that summarised the outcome of voting among the various classes. I will not read it out, but the central point emerging from that table is that the Plan was approved by the Secured Creditor. It was also approved in meetings of the Category B Landlords and the Category C Landlords by more than 75% of those present (whether in person or by proxy) and voting at those meetings.
3. No-one from the relevant classes of creditors attended the meeting of Category C Rating Authority Creditors or the meeting of the Non-Critical Creditors. Accordingly, the Plan was not approved at those class meetings.
4. Only one creditor (out of 31 eligible) attended the meeting of Category A Rating Authority Creditors and one creditor (out of 16 eligible) attended the meeting of the Category B Rating Authority Creditors. Accordingly, there was no approval of the Plan at “meetings” of those classes of creditors because, following the judgment of David Richards J (as he then was) in *Re Altitude Scaffolding* [2006] BCC 904 at 18, attendance by a single creditor does not constitute a “meeting”. One person attended the meeting of the Secured Creditor class, but that does not engage the same principle because there was only one person in that class anyway.
5. Therefore, following the voting at the Plan meetings, there are four dissenting classes: the Category A, B and C Rating Authority Creditors and the Non-Critical Creditors. Sanction of the Plan is, therefore, sought on the basis that the court will exercise the power to “cram down” those classes of creditor pursuant to s901G of CA 2006.
6. The other point emerging from the table is the relatively low turnout even in the assenting classes. Obviously, there was a 100% turnout at the Secured Creditor meeting. However, only three creditors (out of a possible seven) attended the meeting of the Category C Landlords with those attending representing 50% of total claims. Six out of 16 eligible creditors attended the meeting of Category B Landlords, with those attending representing around 43% of eligible claims.
7. There is no one here to object to the Plan on behalf of any creditor whether in an assenting class or in a dissenting class. Mr Plant’s second witness statement confirms the high degree of engagement with landlords and local authorities that has taken place both before and after the Plan being proposed. It also confirms that only three Plan Creditors have indicated any concerns to the Group about the Plan. One Plan Creditor (a Mr Barnett) sent an email to FRP Advisory, an adviser to the Plan Company, suggesting that the Plan had been deliberately designed to make it difficult for people to object to it. I have read Mr Barnett’s email, but he has not attended court to advance the arguments made in it. One Category A Landlord sought a surrender of a particular Category A Site, but the Plan is not proposed with Category A Landlords so this can be treated as a matter relevant to the particular landlord rather than the Plan as a whole. One landlord, who actually voted for the Plan, expressed disappointment with how his claim had been calculated for voting purposes. The

chairperson's report of the meetings confirmed that:

no Plan Creditor had prior to or during the Plan Meetings raised any objections to or concerns with Restructuring Plan, the number or constitution of classes of Plan Creditors or the Plan Meetings convened to vote or requested any amendments to the Restructuring Plan.

8. Accordingly, this is not a case where I am being asked to sanction the Plan against a groundswell of opposition to it, certainly not against a groundswell of any opposition to it that has been articulated or communicated.

The Relevant Alternative

9. I start by making factual findings on the threshold question of what the "relevant alternative" is. That is important because, by s901G(3) of CA 2006, I have no power to sanction the Plan unless "Condition A" in that subsection is satisfied, namely that none of the members of a dissenting class would, if the Plan is sanctioned, be any worse off than they would be in the event of the "relevant alternative".
10. The concept of the "relevant alternative" is defined in s901G(4) of CA 2006 as what the court considers would be "most likely to occur" if the Plan were not sanctioned. I accept Mr Weaver KC's submission that, in reaching a conclusion on that point, the court does not need to be satisfied that a particular alternative would definitely occur. Nor does it need to be satisfied that it is more likely than not that the relevant alternative will occur. Those conclusions follow from the judgment of Snowden J (as he then was) in *Re Virgin Active Holdings Ltd (Sanction)* [2021] EWHC 1246 (Ch).
11. I have two witness statements from Mr Plant who is the chief executive officer of Tasty Plc and also of Took Us A Long Time Limited ("TUALT"). His evidence is that if the Plan is not approved, he has been advised that the most likely alternative is that Tasty plc and TUALT will be placed into administration.
12. The advice in question has been given by FRP Advisory. FRP Advisory have looked at, but have not themselves verified, the Group's cashflow forecast, its viable funding options and its key assets and liabilities. It has considered other transactions and comparators in order to formulate its view of the relevant alternative. Following that process FRP Advisory has concluded that the relevant alternative is a pre-pack administration of the Group with the Group's best sites, that is the Category A Sites, being sold out of that administration. FRP Advisory has considered, and rejected as less likely, some other possible alternatives such as (i) a creditors' voluntary arrangement (which was considered unlikely to be approved), (ii) consensual negotiations with creditors (which were considered impracticable) and (iii) a liquidation (which was considered unduly destructive of value).
13. On FRP Advisory's formulation of the relevant alternative, the Secured Creditor would be paid out in full and the value break would be somewhere in liabilities owed to HMRC as preferential creditor.
14. Therefore, on the Plan Company's evidence, if the Plan is not approved, the relevant alternative would involve a destruction of all shareholder value since shareholders would receive nothing in the administration of the Group that FRP Advisory identify. Yet, if the Plan is approved FRP Advisory see a return to profitability and a viable business going forward to the benefit of shareholders and other stakeholders. They forecast that the Group's EBITDA would increase precisely because, if the Plan is sanctioned, its unsecured liabilities would be reduced. That, therefore, begs a question whether the Plan Company truly would accept an administration, if this particular Plan is not approved, or whether to avoid a value-destroying administration, it might instead offer a "better Plan" (i.e. a Plan that offers a more generous return to Plan Creditors and so is more likely to attract support of the dissenting classes) to preserve some prospect of shareholder value being retained.

15. In a sense the Group already has taken some steps towards a “better Plan”. After the convening hearing but before the Plan was voted on, the Plan Company modified the Plan by adding an additional benefit to all classes other than the Secured Creditor, namely a payment equal to 50% of any EBITDA increase over forecast between the effective date of the Plan and 31 December 2024. Nevertheless, it is appropriate for me to consider whether “a still better Plan” might be the relevant alternative rather than the administration that Mr Plant and FRP Advisory have identified.
16. When assessing that question, I bear in mind that the point that Trower J made in *Re E D & F Man Holdings Limited* [2022] EWHC 687 (Ch) at [39] and [45]. The starting point is that the directors of the Plan Company, with the assistance of their expert advisers, are best placed to identify what is likely to happen if the Plan fails and what is likely to occur in the future if the Plan is sanctioned. That is not to say that the directors’ evidence is to be accepted uncritically. However, I respectfully agree with Trower J that the court would require some sufficient reason for doubting the directors’ evidence on such issues. No-one has attended today’s hearing either to articulate doubts as to the Plan Company’s formulation of the relevant alternative or to challenge, or make submissions on, the Plan Company’s evidence.
17. Critically, in my judgment, the ability to offer a “better Plan” is constrained by the Group’s available cash position. The Group is treading a dividing line between preserving its ability to trade going forward and making a realistic proposal to the six categories of unsecured creditor. In the absence of any challenge to Mr Plant’s evidence, I see no reason to doubt his conclusion that there is unlikely to be much more cash available to fund a higher payment to unsecured creditors. Later in this judgment I explain why I cannot be satisfied that there is any practical possibility of a “better Plan” that allocates more equity value to unsecured creditors. I therefore accept Mr Plant’s unchallenged evidence that the relevant alternative in this case is an administration of the Group with the Group’s Category A Sites being sold out of that administration in a pre-packaged transaction.

Matters to be considered at this sanction hearing

18. Having made that threshold finding of fact, I now turn to the various matters I must consider at today’s sanction hearing. I will follow the approach set out in paragraph [196] of my judgment in *Re Project Lietzenburger Strasse Holdco S.A.R.L.* [2024] EWHC 468 (Ch), except that I will fold into my analysis of whether the provisions of the statute have been complied with (see paragraph [196(i)] of that judgment) my analysis on questions of the court’s jurisdiction to sanction the Plan.

Compliance with the provisions of the statute and jurisdiction

19. I am satisfied that the provisions of my convening order have been complied with. That is demonstrated by the witness statement of Mr Reynolds, a licenced insolvency practitioner at FRP Advisory. I note that there has been a low turnout in the class meetings of the Category A and B Rating Authority Creditors and the total absence of turnout in the meetings of Category C Rating Authority Creditors and Non-Critical Creditors. However, I am satisfied that that is not because of any failure by the Plan Company to comply with my convening order by giving the requisite notice to creditors.
20. I consider that creditors were provided with an adequate explanatory statement, and I am content with the view on class composition that was formed following my order at the convening stage. I do note that one of the Category B Landlords who voted at the relevant

Plan Meeting is said to be a “related party” of the Group because of a shareholding interest held by that landlord’s shareholders in the Group itself. I do not consider that this makes this particular creditor a creditor in a different class. That creditor had no different rights against the Plan Company and was not proposed to obtain any different deal under the Plan. At most the creditor in question had different interests or reasons to take into account when deciding whether to vote in favour or against the Plan.

21. In any event, to describe that creditor as a “related party” is, in my judgment, somewhat to overstate the magnitude of the connection. The Category B Landlord in question is controlled by two individuals who between them hold only a minority stake in the Group.
22. The votes of the assenting classes were passed by the requisite statutory majority. That follows from the chairperson’s report of voting.
23. I see no jurisdictional issue arising from a proposed cross-class cram down in circumstances there has been no vote of the Category C Rating Authority Creditors and the Non-Critical Creditors because no one attended the relevant class meetings and in circumstances where only a single Category A and Category B Rating Authority Creditor voted so that there was no “meeting” of those classes of creditor at all. I respectfully agree with the conclusion of Adam Johnson J to similar effect at [32] to [40] of *Re Listrac Midco Ltd & Ors (Sanction)* [2023] EWHC 460 (Ch).
24. I see no problem as a matter of jurisdiction with the fact that the Plan envisages that it is not just Deed Poll Liabilities that are to be released under the Plan, but Underlying Liabilities as well. I addressed that point in the Convening Judgment.
25. I also note that the moratorium in the Plan does not exclude the right of landlords to take proceedings for forfeiture and so there is no sense in which the Plan interferes with proprietary rights as distinct from rights held by persons in their capacity to creditor. Therefore, I see no jurisdictional problem in this regard.
26. Finally, as regards the threshold conditions for a cross-class cram down set out in section 901G of CA 2006, I am satisfied that Condition A is met. I see no reason to doubt the conclusion of FRP Advisory that all dissenting classes are no worse off than in the relevant alternative. That really is a matter of simple arithmetic, given their conclusion that in the relevant alternative of an administration the six classes of unsecured creditors would all receive nothing, whereas the Plan offers them at least around 4.17p in the pound.
27. I am satisfied that the requirement of Condition B is met because the Secured Creditor, who would have received a payment in the relevant alternative, has voted in favour.
28. I therefore conclude that the statutory requirements for sanction have been met. I also conclude that the court has jurisdiction to sanction the Plan.

The votes in the assenting classes

29. As I have noted, turnout in the meetings of assenting classes was 100% at the Secured Creditor Meeting but otherwise was relatively low. I have considered why that would be the case, whether it calls in question the positive vote in the assenting classes and whether it suggests that there was not fair representation at the meetings of the Category B and Category C Landlords.
30. I accept the evidence of Mr Reynolds touching on reasons for the low turnout. He says in his witness statement that there has been little engagement from Plan Creditors other than queries such as how claims are to be calculated and how to complete forms. He confirmed that there has been no contact either with FRP Advisory or the Plan Company from Plan Creditors suggesting that they are unhappy with the terms of the Plan.
31. In my judgment, the reason for the relatively low turnout is apathy. The Category B and C

Landlords do not appear to have any strong feelings about the Plan. There is no reason to think that the views of those creditors voting in favour at meetings of assenting classes are unrepresentative. There has been engagement with creditors. However, as Mr Plant's witness statements make clear creditors have simply chosen in large part not to attend the meeting.

32. I have followed a similar approach to that followed by Zacaroli J in *Re All Scheme Limited* [2021] EWHC 1401 (Ch) at paragraph 113. I have considered the absolute numbers attending meetings of the assenting classes, the proportion that they bear to the total claims and the way the meeting has been notified. Mr Reynolds' evidence satisfied me that everyone has been given notice directly and people have not been relying, for example, on notification by way of advertisement. I respectfully agree with Zacaroli J that there is a qualitative difference between creditors not attending because they do not wish to, or cannot be bothered to, and creditors not attending because they are unable to. Mr Weaver KC put it neatly when he suggested that the reason why there has been low turnout is that, with creditors being offered a choice between getting nothing and around 4.17p in the pound, there is not perhaps a great incentive to attend. Therefore, overall I have noted the low turnout by the Category B and C Landlords, but it does not cause me to doubt the vote of assenting classes.
33. I note that the chairperson of the meeting exercised discretion to accept three late proxies. Two such late proxies, from a Category B Landlord and a Category C Landlord were submitted at 5.44pm on 28 May 2024. That was the day before the Plan Meetings but the proxies were nevertheless 44 minutes late. I have no reason to doubt the proper exercise of the discretion to admit those proxies late.
34. There was also a proxy form submitted during the meeting of the Category B Landlords on 29 May 2024 while that meeting was in progress but before voting had started. The chairperson exercised discretion to admit that proxy late. I see no reason to doubt that exercise of discretion. A good reason was put forward. The Plan Creditor in question had already notified the Group by email on 22 May 2024, indicating an intention to vote in favour. The Plan Creditor was suffering from ill health impacting on availability to attend the meeting and on the Plan Creditor's ability to complete documentation by the applicable deadline. In those circumstances, I consider it was a reasonable exercise of discretion to admit the proxy form late.
35. Therefore, I see no reason to doubt the positive votes in the assenting classes. It is nevertheless still appropriate to perform a "rationality check" on the vote of the assenting classes. In performing that assessment, I should not impose my own view of the commercial merits of the Plan, but rather should consider whether an intelligent and honest member of the classes concerned could reasonably approve the Plan.
36. I place weight on the affirmative vote of the Category B and Category C Landlords. As I have noted they were being asked to vote on a Plan that gave them just 4.17p in the pound. The fact that the statutory majority at those Plan Meetings was prepared to vote in favour gives considerable comfort that an intelligent person might reasonably approve the Plan. Moreover, a vote in favour is ostensibly rational. 4.17p in the pound is not that much but it is still more than the nil return that would be available under the relevant alternative. Moreover, there is also a prospect of Category B and C Landlords obtaining something from the Restructuring Surplus Fund. Mr Reynolds' evidence explains why the COVID business interruption claim might be easier to make if an administration of the Group is avoided, which provides a further rational reason for Category B and C Landlords to vote in favour of the Plan. Therefore, I am satisfied that the "rationality check" of the vote of the assenting classes should be concluded positively.

Fair distribution of the benefits of the restructuring; horizontal and vertical comparisons

37. The Plan Company accepts that the court should ask itself two questions:
- a. Are the benefits being shared fairly among those who have proposed to be bound by the Plan? That involves a horizontal and vertical comparison of the kind discussed in *Re AGPS Bondco plc* [2024] EWCA Civ 24 at [148] to [162]. The “horizontal” comparison compares the position of each class with the position of other classes if the Plan is sanctioned. The vertical comparison compares the position of each relevant class with the position of that same class in the relevant alternative.
 - b. However, that is not the only question that needs to be considered. It is also relevant to consider the benefits that will, if the Plan goes ahead, be obtained by those who are not subject to the Plan, such as employees, shareholders, Category A Landlords, critical trade creditors and HMRC.
38. As Snowden LJ put it at [160] of *Re AGPS Bondco*:
- “This exercise cannot, however, properly be carried out merely by asking whether any dissenting creditor will be any worse off as a result of the restructuring plan than in the relevant alternative. That would simply be to restate Condition A in section 901G. As a matter of principle, when the court exercises its discretion to impose a plan upon a dissenting class, it subjects that class to an enforced compromise or arrangement of their rights in order to achieve a result which the assenting classes of creditors consider to be to their commercial advantage. In my judgment, that exercise of a judicial discretion to alter the rights of a dissenting class for the perceived benefit of the assenting classes necessarily requires the court to inquire how the value sought to be preserved or generated by the restructuring plan, over and above the relevant alternative, is to be allocated between those different creditor groups”.*
39. The logical first step is to identify the “benefits of the restructuring” by considering the benefits of the Plan as compared with the relevant alternative. Of course, only the future will tell whether the Plan does produce any actual benefits. However, if there are such benefits then in my judgment they will stem from the Group being released from liabilities associated with less desirable sites leaving it free to continue to trade with a focus on its Category A Sites. Some of these benefits go to shareholders as I have mentioned in the form of a hoped-for increased EBITDA.
40. Some of those benefits go to employees, critical suppliers and Category A Landlords. If the Plan is sanctioned, they have a prospect of being paid in full whereas on an application of the *pari passu* principle in the relevant alternative of an administration, they would have to share with other unsecured creditors and therefore would face the prospect of obtaining nothing given where the value breaks on FRP Advisory’s calculations.
41. Some of the benefits of the restructuring go to HMRC in their capacity as preferential creditor who have at least some prospect of a better return following sanction of the Plan than they would obtain in an administration even taking into account their status as preferential creditor.
42. The benefits of the restructuring are shared to an extent with all six classes of unsecured creditor in the form of (i) a payment of 4.17p in the pound (as compared with nil in the relevant alternative), (ii) the Restructuring Surplus Fund and (iii) the payment of 50% of any EBITDA increase as described in paragraph 15 above .
43. The Secured Creditor obtains some of the restructuring benefits. In the relevant alternative

he could expect repayment in full of the £750,000 he advanced plus accrued interest because his conversion rights fall away in administration. Under the Plan he is expected to get up to 25% of the equity in Group, whatever that is worth, since either of the Secured Creditor or Tasty plc can require a conversion of the Secured Loan into equity. Securing that conversion into equity requires an affirmative vote of shareholders but those shareholders are given an incentive to vote in favour since if the loan is not converted, it is repayable at £2.6 million which represents a significant premium. Therefore, the benefit of the restructuring to the Secured Creditor comes if (and only if) the shares in Tasty plc to which he is entitled on conversion are worth more than £750,000 plus accrued interest on the Secured Loan. Perhaps a cap applies to the Secured Creditor's benefit because there may come a point at which the shares in Tasty plc are so valuable that the shareholders in Tasty plc would prefer the Secured Loan to be redeemed for £2.6m rather than to be converted into equity so that they decline to pass the necessary resolutions. However, given the Group's current financial state, it is unlikely that "cap" will become operative. Therefore, the key point for present purposes is that (i) if the Plan is sanctioned, the Secured Creditor is likely to have the Secured Loan converted into equity so that (ii) the Secured Creditor's share of the benefits of the restructuring are likely to come from his future rights as shareholder.

44. I first consider whether shareholders and creditors who are not subject to the Plan are obtaining an "unfair" share of the benefits of the restructuring.
45. If sanctioned, the Plan will involve some departure from the *pari passu* principle in relation to Category A Landlords as compared with the relevant alternative. That is because Category A Landlords have some prospect of being paid in full if the Plan is implemented whereas, in the relevant alternative, they would likely not be paid arrears of rent due. However, in my judgment, that difference in treatment is not suggestive of an unfair sharing because there is a justifiable reason why they enjoy a better outcome than they would on application of the *pari passu* principle. The Category A Sites are thought to be critical to the future operation of the Group's business. It is not, therefore, obviously "unfair" for Category A Landlords to take a good share of the benefits of the restructuring. The same analysis applies to employees and critical suppliers, creditors who are also essential to the future of the business.
46. HMRC's benefit from the Plan is less obvious. It has the prospect of making a better recovery from future trading of the Group. However, against that, its status as preferential creditor means that it will obtain some recovery from the Group even on the relevant alternative. Therefore, if future trading of the Group is worse than hoped, HMRC might obtain a lower recovery if the Plan is implemented than under the relevant alternative. I see no departure from the *pari passu* principle as regards HMRC. They will probably do better under the Plan than unsecured creditors, but there is nothing obviously wrong with that since they are preferred creditors in the relevant alternative. Overall, I see no unfairness arising out of HMRC's position.
47. Therefore, when considering benefits received by stakeholders not subject to the Plan the real focus, in my judgment, should be on the treatment of shareholders. Under the relevant alternative of an administration, shareholders could expect their equity to become valueless. However, under the Plan they retain shares in Tasty plc which might increase in value because liabilities owed to unsecured creditors (who might ordinarily expect to rank behind the shareholders) are reduced pursuant to the Plan. The fact that shareholders get this benefit does not represent a fatal violation of the *pari passu* principle that compels me to withhold sanction of the Plan as Snowden LJ explained in *Re AGPS Bondco* when rejecting an argument summarised at [244] to [246] of that judgment. Nevertheless, the existence of this

- benefit to shareholders is relevant and I will consider whether it can be regarded as rendering the Plan “unfair” such that I should withhold sanction of it.
48. To an extent that point is bound up in an analysis of the “relevant alternative”. The benefits to shareholders following implementation of the Plan (including for these purposes the Secured Creditor who will become a shareholder) can only be “unfair” if there is some “fairer” means of allocating some of the equity benefits that shareholders and the Secured Creditor receive to unsecured creditors. Conceivably that might involve some kind of forcible expropriation of shares of the kind that formed the basis of counsel’s submissions at [244] of *Re AGPS Bondco*. Conceptually, it might also be achieved by the allocation of warrants over Tasty plc shares to unsecured creditors. Yet all of these would involve some kind of a “better Plan” which is at odds with the proposition that the relevant alternative is an administration of the Group.
 49. Without in any way deciding the point, I acknowledge the theoretical possibility that a dissenting group of creditors might have been able to advance an argument that the “relevant alternative” is some kind of “better Plan” that allocates a higher share of the equity benefits that currently flow to shareholders to unsecured creditors. However, not a single creditor has advanced any position to the effect that the Plan unfairly shares the benefits of the restructuring. Still less has it been shown that a different way of allocating benefits away from shareholders is either (i) practicable given the Secured Creditor’s likely objection to any dilution of his equity benefits or (ii) legally viable. I do not consider that I should withhold sanction on the basis of arguments that simply are not being advanced.
 50. I am left, therefore, with a general question as to whether, even taking the relevant alternative as an administration, shareholders (including the Secured Creditor) following sanction of the Plan are still getting “too much”. Mr Weaver KC says that this should not trouble the court greatly since the unsecured creditors would be out of the money in the relevant alternative and, therefore, their views on sharing the restructuring surplus do not count for much. He refers to the judgments of the High Court in *Re Virgin Active* [2021] EWHC 1246 (Ch) at [247] to [249] and [211] to [214] of *Re Project Lietzenburger Strasse Holdco S.A.R.L* [2024] EWHC 468 (Ch). There is force to those points.
 51. I do not, however, need to make a decision in this case as to whether there is daylight between the views of out of the money creditors counting for little and not counting at all. The simple point is that there is today before me no articulated basis as to why, if at all, the shareholders (and Unsecured Creditor) can be said to be obtaining “too much” of a benefit if the Plan is sanctioned or what a “more reasonable” return for those shareholders would be. Despite the court’s role being to sanction or withhold sanction from a plan under Part 26A of CA 2006, these remain adversarial proceedings. There is no indication that there is any groundswell of opinion opposed to the Plan that is enough to cause even a single creditor to appear at court to object to sanction. In *Re Smile Telecoms Holdings Ltd* [2022] Bus. L.R. 591 Snowden LJ explained that parties who wished to make objections must involve themselves in the process properly. He employed the eye-catching image of it not being enough to “shout from the spectators’ seats”. Instead, he said that anyone objecting to a Part 26A plan by reference to an asserted different outcome in the “relevant alternative” (which must include a disagreement as to what the “relevant alternative” is) must “step up to the plate”.
 52. No one has “stepped up to the plate” in this case to challenge the fair distribution of the restructuring surplus. It might be said a small number of creditors have registered some disapproval outside the ground by voting against the Plan or staying away from Plan Meetings. However, despite knowing that the Plan Company seeks sanction of the Plan on the basis of a cross-class cramdown, no-one has come to court to articulate an objection to

the Plan Company's case to that effect. In the absence of any articulated basis for considering that the shareholders' return is "too much" or unreasonable, I do not consider there is an unfair sharing of the restructuring surplus in that regard.

53. That just leaves the question of whether the restructuring surplus is being fairly shared among those participating in the Plan. As between the Plan Creditors, I do not consider that the "horizontal" and vertical comparison produce any unfairness:
- a. The possibility of a more favourable outcome for the Secured Creditor as compared with the six unsecured classes involves no breach of the *pari passu* principle because the Secured Creditor benefits from security whereas the unsecured creditors do not.
 - b. Moreover, the Secured Creditor's benefit from the Plan comes largely from the value of his rights of conversion into equity. Therefore, the analysis above as to why I do not regard shareholders' benefits to be unfair applies to the Secured Creditor as well.
 - c. The six unsecured classes all obtain similar benefits under the Plan and so the "horizontal" comparison does not produce unfairness. No member of a dissenting class has come forward to explain why other classes of Plan Creditor who rank *pari passu* with them are nevertheless doing unfairly better than them under the Plan.
 - d. All classes of Plan Creditor are better off than they would be under the relevant alternative given my earlier findings as to that alternative. I do not therefore see any problem with the outcome of the vertical comparison.

Other matters and overall conclusion

54. I see no blot or other defect in the Plan. In particular, I do not accept Mr Barnett's criticisms of the Plan which I have summarised in paragraph 7. Mr Barnett is, of course, entitled to his opinion as to whether the Plan is reasonable or not. However, the allegation that it was "deliberately designed" to stifle objection is wide of the mark, particularly in circumstances where there is a clear process, explained in the Explanatory Statement, for Plan Creditors to vote against it, or attend court to register an objection.
55. For the reasons set out above, I will sanction the Plan.

End of Judgment.

Transcript of a recording by Acolad UK Ltd
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com

Acolad UK Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof

This transcript has been approved by the judge.