Case No: CR-2023-005565

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

Rolls Building
Fetter Lane,
London, EC4A 1NL

Date: 26 February 2024

Before :

MR JUSTICE RICHARDS

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IN THE MATTER OF LINK FUND SOLUTIONS LIMITED

- and -

IN THE MATTER OF THE COMPANIES ACT 2006

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Judgment on Permission to Appeal

This judgment was handed down remotely at 10.00am on 26 February 2024 by circulation to the parties or their representatives by e-mail.

MR JUSTICE RICHARDS:

1. On 9 February 2024, I handed down a judgment (the "Judgment") in which I decided that I would sanction a scheme of arrangement (the "Scheme") involving Link Fund Solutions Limited ("LFSL"). Words and phrases defined in the Judgment bear the same meanings in this judgment.

2. On 23 February 2024, the TTF applied for permission to appeal against my decision to sanction the Scheme. This judgment contains my reasons for refusing permission to appeal. It also deals with the deadline by which any appellant's notice must be filed in the Court of Appeal.

3. My decision on both these matters will be reflected in the sealed order (the "Order") that sanctions the Scheme. I had originally indicated to the parties that I would not seal the Order until 29 February 2024. That was largely so that I would have time to consider any application to me for permission to appeal. Fortunately, I have been able to consider the application earlier than I had thought would be possible. It also seems to me that delaying the sealing of the Order might make the process for filing an appellant's notice in the Court of Appeal more difficult than it needs to be. Anyone seeking to appeal to the Court of Appeal will presumably need a sealed order and so the effect of delaying the provision of a sealed order will shorten the period after receipt of that order within which an application to the Court of Appeal must be made.

4. Therefore, unless any party wishes to indicate a different course by 4 pm 26 February, I will arrange for my clerk to seal the draft Order that accompanies this judgment during the course of 27 February. The Scheme itself contains provisions that will prevent the Scheme from becoming operative in any substantial sense until the deadline for an appellant's notice at the Court of Appeal has passed. Moreover, if the Court of Appeal grants permission to appeal on receipt of an in-time appellant's notice, the Scheme provides that it will not take substantial effect until that the Court of Appeal determines the appeal.

Reasons for refusing permission to appeal

5. TTF is not itself a Scheme Creditor. However, at the sanction hearing, I permitted it to address the court through counsel on the basis that it speaks for a number of Scheme Creditors who object to sanction of the Scheme. Bacon J had followed a similar approach at the convening stage, allowing Mr Agathangelou of the TTF to address the court. I will consider the TTF's application for permission to appeal on a similar basis and will order my discussion by reference to the grounds of appeal set out in the TTF's application.

6. I apply the test for a first appeal in CPR 52.6 and therefore consider first whether any of the grounds have a real prospect of success. Having concluded that they do not, I then consider whether there is nevertheless some other compelling reason for an appeal to be heard.

7. The arguments that formed the basis of Ground 1 were considered in the Judgment. I see no real prospect of it being successfully established that rights against the FOS and the FSCS had the nature of "inviolability" such as to preclude sanction of the Scheme. As explained in the Judgment, the Scheme did not release statutory rights. Rather, the Scheme Creditors' loss of any ability to make claims against the FSCS, or to notify complaints to the FOS, was a consequence of the release of their Scheme Claims. There is no reasonable prospect of establishing that *Payward, Inc & Ors v Chechetkin* [2023]

EWHC 1780 (Comm) compels a different conclusion. That authority dealt with a completely different situation and has no bearing on the court's jurisdiction to sanction schemes under Part 26 of the Companies Act 2006.

8. As to Ground 2, there is no reasonable prospect of establishing that a Scheme Creditor could make a claim against the FSCS in relation to a claim that has been compromised.

9. Ground 3 overlaps with Ground 1 and has no reasonable prospect of success for the reasons given in paragraph 7 above.

10. The arguments that formed the basis of Grounds 4 and 5 were considered in paragraphs 36 to 40 of the Judgment. I do not consider that there is a reasonable prospect of establishing on appeal that the reasoning in those paragraphs was incorrect.

11. Ground 6 has no reasonable prospect of success. Paragraphs 44 and 45 of the Judgment explain why the averred "comparable" money awards of the FOS on which the TTF relied (which were made against investment advisers rather than against LFSL) actually shed no light on what investors could expect to obtain in relation to complaints against LFSL notified to the FOS.

12. Ground 7 represents a disagreement with the court's evaluation on a factual matter.

13. I acknowledge that the Judgment was on a matter of some general importance as it affected many thousands of Scheme Creditors. However, I do not regard that as a "compelling reason" why an appeal should be heard. Nor do I consider that the fact that five academics signed the Open Letter weighs in the balance. That letter was dealt with in paragraphs 25(v), 50 and 51 of the Judgment. It was neither expert commentary, nor submissions on behalf of Scheme Creditors. Rather, it simply represented the views of its authors on how the court ought to determine the application to sanction the Scheme. At paragraph 51 of the Judgment, I concluded that the views expressed in the Open Letter were "significantly overstated".

The time limit for serving an appellant's notice in the Court of Appeal

14. The Judgment embodied a conclusion that the Scheme would be sanctioned. As such, I tend to agree with LFSL's view that the deadline for filing an appellant's notice in the Court of Appeal is 21 days from the date of the Judgment (i.e. 1 March 2024). The TTF has not dissented from that view. It is, however, important that there be absolute certainty as to the applicable deadline since that feeds into the definition of "Effective Time" that forms part of the Scheme itself and determines when various provisions of the Scheme to take effect.

15. I will exercise my power under CPR 52.12(2) to order that any appellant's notice in the Court of Appeal must be filed no later than **4 pm on 4 March 2024**. That will give any person seeking permission to appeal from the Court of Appeal some three extra days in which to file an appellant's notice. I consider that proportionate in the circumstances. If I had left the deadline unchanged, having learned that I have refused permission to appeal, the TTF might have to rush to get an appellant's notice to the Court of Appeal in time. Moreover, setting a fixed deadline has the advantage of certainty.