IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
[2023] EWHC 2097 (Ch)

No. CR-2023-002065

7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Thursday, 22 June 2023

IN THE MATTER OF EVERYDAY LENDING LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

Before:

MR JUSTICE MICHAEL GREEN

IN THE MATTER OF:

EVERYDAY LENDING LIMITED

MR T SMITH KC and MR P BURGESS appeared on behalf of Everyday Lending Limited.

MISS E HUGHES appeared on behalf of the Customer Advocate.

J U D G M E N T

MR JUSTICE MICHAEL GREEN:

1 This is an application by Everyday Lending Limited (the "**Company**") for the sanction of a scheme of arrangement (the "**Scheme**") that it has promulgated under Part 26 of the Companies Act 2006 ("**CA 2006**"). At the convening hearing on 28 April 2023, Miles J convened a single meeting of Scheme creditors, and they met on 12 June 2023 and the Scheme was approved by the requisite majority.

2 The purpose of the Scheme is to create a £14 million fund (the "**Scheme Fund**") which will be paid into a trust account and then distributed to certain borrowers and guarantors of consumer credit loans advanced by the Company and its associated company within the group, George Banco.com Limited, through brands called Everyday Loans, George Banco and TrustTwo. The funds are being paid to these creditors in settlement of their redress claims that they may have against the Company, George Banco.com Limited, and certain other group companies involved in the provision of those loans. These claims have been referred to as the "**Redress Claims**".

3 The financial position of the Company and the scale of the Redress Claims means that, absent the Scheme, the Company would most likely enter into administration which would result in almost no cash return to Scheme creditors - estimated at 0.2 per cent of their claims. If the Scheme is successful, then the Scheme Fund will be distributed to Scheme creditors who will receive an estimated cash recovery of 24 to 31% of their claims.

4 As a result of the Redress Claims, the Financial Ombudsman Service became involved, and it is also a Scheme creditor because of the role it performed, but only to a limited amount. As well as the Scheme creditors who are direct creditors of the Company, the Scheme creditors include creditors of the Company under a deed poll dated 17 March 2023 (the "**Deed Poll**") which was executed for the purpose of enabling the Company to promulgate the Scheme.

5 Similar schemes have been successfully promulgated by other consumer credit businesses for the same purpose, namely, to distribute a compensation fund in full and final settlement of redressed claims. There have been a number of these, including: the *Re AI Scheme Ltd*; *Re Instant Cash Loans Ltd*; *Re Provident SPV Ltd*; *Re ALL Scheme Ltd*; and *Re Morses Club Scheme Ltd*. The present scheme follows in broad terms the same structure as those.

6 I have had the benefit of hearing from Mr Tom Smith KC leading Mr Peter Burgess on behalf of the Company and they filed a very helpful comprehensive skeleton argument which I largely draw on for the purposes of this judgment. I have also read the supporting evidence and the Scheme itself.

7 Also appearing before me is Miss Emma Hughes, representing the independent customer advocate, Mr Jonathan Yorke, a practising solicitor with many years' experience in respect of schemes of arrangement for financial services companies. Such a role has become commonplace for these sorts of schemes where the nature of the creditor body may have limited capacity to engage with the scheme process or have the resources to get their own advice or representation. Mr Yorke prepared reports for the convening hearing and this hearing, and I am grateful to him and Miss Hughes for assisting in this regard.

8 In summary, Mr Yorke does not have any concerns about the clarity and accessibility of the communications, the handling of the Scheme meeting, and therefore, the creditors' ability to understand the decision that they have been asked to make. He has only been asked to comment on the process not on the underlying merits of the Scheme.

9 I have also had the great advantage of reading Miles J's judgment at the convening hearing. He set out a complete factual background to the nature of the group, its financial position, the nature of the Redress Claims, the proposed restructuring of which the Scheme is a part, as well as the details of the Scheme itself. There is no point in me repeating this is in this judgment as that would be merely duplicative, and so I gratefully adopt what Miles J said about the factual background and the terms of the Scheme and this should be treated as incorporated in this judgment.

10 I will pick things up from where Miles J left off, namely after the making of the convening order. Since that date, the major shareholder in the parent company of the group – the parent is a company called Non-Standard Finance plc ("**NSF**") and the major shareholder is called Alchemy Special Opportunities (Guernsey) Limited, holding 29.95 per cent of NSF's shares – has informed NSF that it is no longer willing to participate in the public equity raise, which is a critical part of the Plan A restructuring proposal.

11 This was notified by email dated 17 May 2023, that in the current environment it was no longer willing to participate in the equity raise on the previously proposed terms, neither for the original amount of £60 million that it had been expected to invest, nor for the lower level of funding as suggested by the parent company's brokers, Cenkos Securities plc. This was announced publicly by way of an RNS on 18 May 2023, and on the same day the Company published an update to Scheme creditors on the current status of Plan A on the website. Additionally, customers were sent the update via email or post depending on the contact details that the Company held and whether the Company had elected to receive Scheme communications by post. For customers where the Company does not hold a valid email or postal address, the Company sent a link to the update by text.

12 Further efforts have been made by NSF to see whether Plan A could be progressed without the major shareholder. Meetings have been held with eight potential investors over the course of the subsequent approximately four weeks since the major shareholder changed its position, but, as explained in Mr Gillespie's first witness statement, Plan A was never fully committed and there was always a risk that it would not be possible to implement. That was why Plan B was developed as a fallback, and the size of the Scheme Fund is unaltered by the implementation of Plan B as opposed to Plan A. Assuming that the Scheme is sanctioned and there continues to be insufficient support for Plan A, it is envisaged that Plan B will be implemented very shortly after the Scheme is sanctioned, probably at the end of this month or the start of July 2023.

13 Consistently with the Financial Conduct Authority's ("**FCA**") guidance in relation to regulated companies that propose compromises, the group has been in discussions with the FCA in relation to the Scheme since August 2022 and has kept it updated with the proposals as they have developed. The FCA has provided feedback and the Company has taken this into account. In a letter dated 25 April 2023, setting out its then current view, the FCA stated that it:

> "… does not anticipate at this stage that it will oppose the scheme from being sanctioned or have further direct engagement with the court following the convening hearing."

In a further letter dated 20 June 2023, the FCA confirmed that it did not oppose the Scheme and would not be represented at this hearing. It explained its position in the letter, taking into account the likelihood that Plan A was unlikely to materialise.

14 Turning to the convening order, the following directions were given in the convening order:

(1) The Company was permitted to convene a single meeting of the Scheme creditors to be held on 12 June 2023 virtually and in such a manner that the Scheme creditors can hear each other, ask questions, and express opinions.

(2) After the convening order was made, that the Company would make certain documents available to read and download on the Scheme website, including:

(a) The Explanatory Statement.

(b) The Scheme.

(c) The convening order.

(3) The Company would send notice of the creditors' meeting by letter, email and/or SMS as follows:

(a) The Company would send the notice by email if the Company had an email address on file for the Scheme creditor unless the Scheme creditor had notified the Company that it wished to receive Scheme correspondence by an alternative method such as by letter.

(b) The Company would send a notice by letter if the Company had a postal address on file for the Scheme creditor and either (a) the Company did not have an email address on file for the Scheme creditor, or (b) the Scheme creditor had notified the Company that it wished to receive Scheme correspondence by letter.

(c) If the Company had neither a postal address nor an email address on file for a Scheme creditor, that Scheme creditor was sent an SMS containing a link to the website.

(4) The Company would also place advertisements in the Daily Mirror and the Daily Mail, giving notice of the creditors' meeting.

(5) Mr Jamie Drummond-Smith was to be appointed as the chairperson of the creditors' meeting.

(6) The calculation of Scheme creditors' claims for voting purposes would be in the manner set out in paras.8.13–8.18 of the Explanatory Statement.

15 The Company has complied with the terms of the convening order. This was addressed in Mr Gillespie's third witness statement and the chairperson's report.

(1) Following the convening order, the Company uploaded the Scheme documents to the website, including the Explanatory Statement, the Scheme, and the convening order.

(2) Over five working days following the convening order, notice of the creditors' meeting was sent to the Scheme creditors in the manner set out in the convening

order. The notice contained a link to the website and the Company sent communications to 343,821 people, which is approximately 99.8 per cent of past and present customers who had borrowed or guaranteed loans from the Company as follows:

- Firstly, 67,034 letters were sent, which is approximately 19.5 per cent of the past and present customers who borrowed or guaranteed loans from the Company, and there was no returned mail.

- Secondly, 276,539 emails were sent, which is approximately 80.3 per cent of the past and present customers. Of those emails, 137,712 were opened, 136,060 were delivered but not opened, and 2,767 were not delivered.

- Thirdly, 248 SMS messages were sent which is approximately 0.1 per cent of the past and present customers. Of those SMS messages, 150 were delivered, 10 were not delivered and 88 it is unknown.

(3) On 4 May 2023, notice of the creditors' meeting was advertised in the Daily Mirror and the Daily Mail.

(4) The voting portal was made available from 2 May 2023, which allowed Scheme creditors to submit their vote, appoint a proxy or register to attend the creditors' meeting. In accordance with the convening order, Scheme creditors could:

(a) submit their vote directly, which formally meant instructing the chairperson to vote as their proxy; or

(b) until 5.00 p.m. on 8 June 2023, appoint a third-party proxy to attend the creditors' meeting and vote on their behalf, or just attend the creditors' meeting on their behalf; or

(c) until 5.00 p.m. on 8 June 2023, pre-register to attend the creditors' meeting on the voting portal.

(5) The creditors' meeting was held virtually, and it was chaired by Mr Drummond-Smith, who describe the conduct of the creditors' meeting in his chairperson's report.

16. The outcome of the voting was set out in that chairperson's report. The Scheme was approved by a majority in number representing over 75 per cent in value of the Scheme creditors present and voting either in person or by proxy at the creditors' meeting. A total of 16,252 Scheme creditors were present in person or by proxy at the creditors' meeting and voted. Of those:

(a) 16,143 Scheme creditors, being 99.3 per cent by number and 99.4 per cent by value of those Scheme creditors present and voting at the creditors' meeting in person or by proxy, voted in favour of the Scheme.

(b) 109 Scheme creditors, being 0.7 per cent by number and 0.6 per cent by value of those Scheme creditors present and voting at the creditors' meeting in person or by proxy, voted against the Scheme.

Accordingly, the Scheme was approved by the Scheme creditors at the creditors' meeting.

16 The issues for the court at a sanction hearing are well known and have been set out on multiple occasions in many authorities. I do not need to do so again. I pay tribute the clear statement of principles by David Richards J, as he then was, in *Re Telewest Communications (No.2) Ltd* [2005] BCC 36 but do not repeat them here. The familiar four-stage analysis that the court engages in was succinctly stated by Snowden J, as he then was, in *Re KCA Deutag UK Finance plc* [2020] EWHC 2977 (Ch) at [16]:

> "The relevant questions for the court at the sanction hearing can therefore be summarised as follows:
>
> i) Has there been compliance with the statutory requirements?
>
> ii) Was the class fairly represented and did the majority act in a *bona fide* manner and for proper purposes when voting at the class meeting?
>
> iii) Is the scheme one that an intelligent and honest [person man, he said] acting in respect of his interests, might reasonably approve?
>
> iv) Is there some other 'blot' or defect in the scheme?"

I will consider each element in turn.

17 First of all, whether there has been compliance with the statutory requirements. As I have already set out, the convening order was complied with. At the meeting, the requisite statutory majorities both in number and value were obtained. All creditors were able to participate and vote at the meetings and there were no technical issues or reasons to think that any creditors were impeded from taking part, from asking questions or from voting.

18 As to class composition, this was considered and directed by Miles J at the convening hearing. No issue has arisen since to suggest that it was wrong to convene a single meeting of Scheme creditors, and the class of Scheme creditors was therefore, in my view, properly constituted.

19 Turning to the second question as to whether the class was fairly represented and did the majority act in a *bona fide* manner and for proper purposes when voting at the class meeting, as Mr Smith submitted, this question falls to be analysed in two parts. First of all, the majority plainly were acting in a *bona fide* manner. The only issue that might be raised relates to turnout. The turnout at the Scheme meeting was approximately 4.7 per cent of the entire population of potential Scheme creditors. As Zacaroli J stated in *Re Instant Cash Loans Ltd* [2019] EWHC 2795 (Ch) at [29]:

> "A low turnout is not in itself a reason to refuse to sanction a scheme".

For example, in *Re Osiris Insurance Ltd* [1991] 1 BCLC 182, the turnout was very low by number (35 out of 971) and relatively low in value (41 per cent). Neuberger J, as he then was, said at p.189:

> "It is true that the numbers of those who voted was pretty small compared to the number of those entitled to vote, but that is by no means unusual in the context of votes at meetings called pursuant to s.425. In any event, that does not call into question the fact that not a single scheme creditor thought it right to vote against the scheme. Furthermore, if one looks at the value of the scheme claims held by those who voted, they did represent a substantial proportion of those entitled to vote."

20 In *Re Cape plc* [2006] EWHC 1446 (Ch) at [24]-[26], David Richards J referred to the decision of Lewison J, as he then was, in *Re British Aviation Insurance Co Ltd* [2006] BCC 14 in the following terms:

> "In [British Aviation], the turn-out in number was about 15 % representing just over half in value of the total claims, judged in each case by reference to 'actual or pending' claims. Counsel for the company in that case pointed out that the relatively low number was not unusual by the standards of schemes of arrangement, a view which I would endorse, and Lewison J said that the turnout was not in itself a valid reason for refusing to endorse the majority view."

21 In the first Amigo sanction hearing, which is reported as *Re ALL Scheme Ltd* [2021] EWHC 1401 (Ch), Miles J said at [113]:

> "A fourth significant feature is the level of the turnout at the meeting. This bears on whether the meeting was fairly representative, which is fact-specific: *Re Cape plc (supra)* at [21]–[26], per David Richards J. The court should consider the absolute number of creditors attending and the proportion they bear to the whole class, the way that the meeting has been notified or advertised, and any explanations there may be for the level of actual participation."

22 In the second Amigo sanction hearing, reported as *Re ALL Scheme Ltd* [2022] EWHC 1318 (Ch), Trower J said at [50]:

> "Another aspect of this part of the test is that the class must have been fairly represented by those who attended the meeting. The answer to this question can, anyway in part, be tested by turnout which was just over 15% of all Customer Creditors. I agree with the submission that this is a relatively high turnout in the context of consumer schemes. *Re Instant Cash Loans Limited* [2019] EWHC 2795 (Ch) per Zacaroli J at [29]-[30] the turnout was 4%, in *Re Provident SPV Ltd* [2022] 1 B.C.L.C. 540 per Sir Anthony Mann at [60] the turnout was 10% and the turnout in the previous scheme, *In Re ALL Scheme Limited* [2021] EWHC 1401 (Ch) per Miles J at [66] and [115] to [117], was 8.7%. Although Miles J agreed that the turnout for the previous scheme meeting was comparatively low, he (like Zacaroli J in *Instant Cash Loans* and Sir Anthony Mann in *Provident*) did not consider that the turnout was a factor indicative of a non-representative vote. In my view the same can be said in the present case in relation to the turnout at both scheme meetings, not least because it was materially greater than the turnout achieved for the previous scheme meeting."

23 Having regard to these authorities, Mr Smith made the following points:

(a) That the turnout in the present case is in line with those other consumer redress schemes, and he compared the ones that I have just referred to in the quote from Trower J. In none of those cases did any of the judges consider that the turnout led to the conclusion that the vote was non-representative and should lead to the scheme not being sanctioned. The outcome of the vote is also fortified by the overwhelming support for the Scheme among those who did vote, which is something that was said by Zacaroli J in *Re Instant Cash Loans Limited*. So the absolute number that did attend – something a little over 16,000 – is quite high and it is not surprising, in my view, that among this sort of creditor community there is a high level of apathy among them.

(b) He made the point that participation rate rises to approximately 17.3 per cent as a proportion of the number of customers who are actually thought to have a valid claim in accordance with the claims assessment methodology, which is estimated to total 93,844.

(c) He said that the Explanatory Statement in this case did explain the effect of the compromise or arrangement as required by s.897 of the CA 2006, and that the Company had taken a number of further steps to ensure that the Scheme was explained in clear and accessible terms to Scheme creditors, including maintaining updated facts on the Scheme website and making available 12 explanatory videos for Scheme creditors. The Scheme communications were considered, albeit without being approved as to their content, by Miles J in the convening judgment. Moreover, they were also considered by the independent customer advocate, Mr Yorke, who I have already mentioned and who concluded in his report that:

> "It is my opinion that the level of information and guidance that Scheme Creditors have received is satisfactory and that ELL (the

> company) has both co-operated fully with me and has endeavoured to be clear and transparent. There have been no objections to the voting arrangements and from my interactions with Scheme Creditors I believe that they are capable of understanding the choices that they have been asked to make."

(d) A further point that was made is that the majorities that were achieved at the meetings were not at the margin, it was a very clear result from those that turned up at the meeting and therefore it is reasonable to assume that a bigger turnout would not have actually affected the result in the end.

24 I accept these points and am satisfied that the relatively low turnout – which would not be unexpected in the circumstances of a Scheme like this, and which is why, for example, the independent creditor advocate was appointed – does not mean that the class was not fairly represented. Nor does it mean that sanction should be withheld.

25 As to the second part of the question, there is no suggestion that the majority vote was in any way attributable to any collateral, special, or other interest which might detract from being representative of the class.

26 Turning to the third requirement which is: whether the Scheme was one that an intelligent and honest person acting in respect of their interest might reasonably approve. The classic formulation set out in ***Buckley*** is a test of rationality, and in *Re English, Scottish, and Australian Chartered Bank* [1893] 3 Ch 385, Lindley LJ said:

> "If the creditors are acting on sufficient information and with time to consider what they are about, and are acting honestly, they are, I apprehend, much better judges of what is to their commercial advantage than the Court can be. I do not say it is conclusive, because there might be some blot in a scheme which had passed that had been unobserved and which was pointed out later. While, therefore, I protest that we are not to register their decisions, but to see that they have been properly convened and have been properly consulted, and have considered the matter from a proper point of view, that is, with a view to the interests of the class to which they belong and are empowered to bind, the Court ought to be slow to differ from them. It should do so without hesitation if there is anything wrong; but it ought not to do so, in my judgment, unless something is brought to the attention of the Court to show that there has been some material oversight or miscarriage."

27 In *Re Telewest Communications plc (No.2)* [2005] BCC 36, David Richards J referred to ***Buckley*** and explained:

> "... in commercial matters members or creditors were much better judges of their own interests than the courts. Subject to the qualifications set out in the second paragraph [of Buckley], the court 'will be slow to differ from the meeting'."

28 As Trower J noted in *Re ALL Scheme Ltd* [2022] EWHC 1318 (Ch), at [52]:

> "The proper application of this test is dependent both on the majority vote being representative of the class it purports to represent and also on the applicant being able to demonstrate that the members of the class are able properly to appreciate the alternatives open to them (the issue on which the previous scheme ultimately failed: *In Re ALL Scheme Limited* [2021] EWHC 1401 (Ch) per Miles J at [142]). The representative nature of the vote is important because, if there are concerns that the vote is unrepresentative of the class, the court cannot treat it as an expression of the interests of the class as a whole and must instead scrutinise the scheme to a greater degree than merely applying a rationality test. For the reasons I have already given, I am satisfied that the vote was representative."

29 In the present case, the vote was representative. Moreover, as Mr Smith submitted, the Scheme is plainly one for which an honest, intelligent member of the class could vote.

(1) The formulation of the Scheme itself received significant input from: (a) the customer committee which informed the quantum of the Scheme Fund; and (b) the FCA, which is not opposing the Scheme. The Court is entitled to take the FCA's position into account, noting in particular its consumer protection mandate under the Financial Services and Markets Act 2000.

(2) In an insolvent administration, which is the relevant comparator, it is thought that Scheme creditors would receive a return of 0.2 per cent. That this is the relevant comparator has not been the subject of challenge by any party, including the FCA.

(3) Conversely, pursuant to the Scheme, Scheme creditors would receive an estimated return of 24 to 31 per cent. This represents a significantly preferable benefit to the expected returns in the relevant comparator and it explains why the Scheme enjoyed such a high level of support among Scheme creditors that voted.

Accordingly, I am satisfied that this is a Scheme that an intelligent and honest person acting in respect of their interests might reasonably approve.

30 Finally, the last requirement which is whether there is some blot or defect in the Scheme? In sanctioning a scheme of arrangement, the court will not act in vain. There is no issue as to the mechanics of the Scheme and whether it does not work on its own terms, but in relation to the conditionality of the Scheme, in particular as to the effecting of a restructuring plan, Mr Smith said that the conditions as to the effectiveness of the Scheme was drawn specifically to the attention of Scheme creditors in the Explanatory Statement. The key

conditions for the Scheme to go ahead are that all of the following occur on or before 31 December 2023.

(a) Condition A: The Scheme is approved by a majority in number, that is more than 50 per cent representing 75 per cent or more in value of the creditors who attend and vote at the creditors' meeting. That condition has obviously been satisfied.

(b) Condition B: That it is sanctioned by the court, and that condition will be satisfied if I make the sanction order.

(c) Condition C: Once the court has sanctioned the Scheme and the wider restructuring of the group completes, the Scheme Fund must be paid into a trust account for the benefit of the scheme creditors.

31 As to that condition C, the Explanatory Statement explained that the £14 million to be paid into the trust account to create the Scheme Fund would come from the new money; that is the extra investment that is to be invested as part of the wider restructuring of the group. As such, the Scheme is conditional on the restructuring successfully completing on or before 31 December 2023. If the Company were to enter into an insolvency process prior to the restructuring successfully completing, that condition would not occur, and the Scheme would not happen.

32 As to the raising of the necessary funding, the two options, Plan A and Plan B, were set out in the Explanatory Statement, with Plan B the fallback option in the event it is not possible to implement Plan A. As already explained, there is a very low probability that Plan A will be implemented, principally because it does not have the support of the major shareholder. Nevertheless, there appears to be sufficient certainty that Plan B will be implemented, and Mr Smith says that a decision will be made this evening by the Board on that, and that the Scheme will therefore be able to be effective.

33 The secured lenders entered into a lock-up agreement among themselves on 29 December 2022, to which NSF subsequently acceded. By that, the secured lenders committed themselves to support Plan B, and there is no reason to think that they will not abide by that commitment, and it is anticipated that this will happen soon, as the FCA appear to require in their recent letter.

34 So, in all the circumstances, I am satisfied that the Scheme meets the four elements of the sanction analysis, and I will sanction the Scheme in the terms of the draft sanction order that Mr Smith showed me.

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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Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital

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