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Re Amicus Finance plc (in administration)

[2021] EWHC 3036 (Ch), [2021] All ER (D) 59 (Nov)

The Chancery Division approved a scheme of arrangement concerning Amicus Finance plc, which was in liquidation. The core business of Amicus was the provision of short-term property finance. It also offered other secured corporate and development finance and, through its subsidiaries, also operated in specialist fields, including asset finance. The court held that the criteria for sanctioning the scheme had been met, and that it was appropriate for it to use its discretion to sanction the scheme.

Catchwords
Company – Scheme of Arrangement – Approval of Scheme

Background

The proceedings concerned a company (Amicus), whose core business was the provision of short-term property finance. It also offered other secured corporate and development finance and, through its subsidiaries, also operated in specialist fields. One such specialist field was asset finance provided to small businesses by way of hire purchase and leasing; that business was conducted through Amicus Asset Finance Group Ltd (AAF), funded in part by an inter-company loan provided by Amicus. Amicus was a borrowing member of a peer-to-peer lending platform operated by Crowdstacker Ltd (Crowdstacker). The Crowdstacker platform facilitated lending by individual investors to Amicus; but a Crowdstacker associated company (CCSL) acted as security trustee under a debenture granted by Amicus to secure the loans of the individual Crowdstacker investors. A similar debenture had been granted to HGTL Securitisation Company Ltd (HGTL Securitisation) in respect of loans to Amicus provided or originated by Hartford Growth Trading Limited (HGTL) as issuer of a funding note.

The funding for the main business of Amicus was provided in two ways. First, individual funders (or consortia of funders) underwrote particular loans made by Amicus to its borrowers, and whilst the legal title to the loan belonged to Amicus, the benefit of the loan was held under a commercial trust structure by Amicus Mortgage Trustee Ltd for the individual funder or consortium. One such consortium was Omni Partners LLP (Omni), which also held a 7.5% interest in Amicus. Omni was the investment manager of Hartford Growth Fund Ltd (HGFL). The second means of funding the main business of Amicus was through direct borrowing by Amicus.

In 2018, Amicus suffered financial stress and looked for investment from a new strategic partner. The proposed investment into the main business envisaged a hive-down of AAF by way of a sale to a new holding company for a nominal consideration. Such a hive-down required (amongst other things) Crowdstacker to release the security it held over the AAF shares by virtue of its debenture. Crowdstacker did so by a deed of release of November 2018. The deed of release recited the intended sale of the AAF shares as part of a corporate re-organisation and also recited the intention of AAF to repay the intercompany loan it had received from Amicus.

The proposed investment could not be brought to a successful conclusion. In December 2018, the directors of Amicus acknowledged that that made the insolvency of Amicus inevitable. Amicus entered administration. In April 2021, the joint administrators decided to pursue a scheme of arrangement under Pt 26A of the Companies Act 2006 (CA 2006) and to amend the purpose of the administration to that identified in para 3(1)(a) of Sch B1 to the Insolvency Act 1986 (IA 1986); namely, rescuing the company as a going concern. By April 2021, the amount of Crowdstacker's secured debt was £4.7m and that of HGTL Securitisation was £21.2m: that was the principal debt that needed to be restructured.

Among the classes of creditors were creditors whose claims would be treated as an expense of the administration under IA 986 para 99 of Sch B1 and/or r 3.51(2) of the Insolvency Rules 2016. There were 34 such creditors with claims totalling £1.146m: and, in addition, there was HGTL with a claim of £1.647m in respect of its administration funding. The restructuring plan proposed the payment of the former in full out of injected funds: but the latter would receive payment (anticipated to be in full) only under a 'waterfall' arrangement. Crowdstacker opposed the scheme of arrangement. The Chancery Division considered whether the scheme should be sanctioned.

Issues and decisions

(1) Whether the criteria for the sanctioning of the scheme had been met.

First, the court had already undertaken a detailed examination of the jurisdiction under CA 2006 s 901A and of the way in which the threshold conditions had been satisfied in the instant case. Nothing had occurred subsequently which required a review of those conclusions, which would be adopted (see [23] of the judgment).

Second, there had been compliance with the statutory conditions and the terms of the convening order (see [24] of the judgment).

Third, regarding the constitution of the scheme meetings, while it had been suggested that Crowdstacker should be put into a category of its own, it was not clear how prominent that point had been at the convening hearing. Amicus had offered in advance of the plan meetings to discuss with CCSL 'carving out' any misrepresentation claim from the releases under the plan; but CCSL had chosen not to engage with that proposal at all. That failure to engage was not to be deployed as a weapon to attack the scheme meetings. Further, Crowdstacker had successfully established its position as a dissentient creditor by the exercise of its vote in the class of secured creditors and, as such, raised an obstacle to the sanction of the plan (see [32] of the judgment).

Fourth, at a meeting of the unsecured creditors, those representing 99% by value of those attending had approved the plan and one unsecured creditor (constituting 1% by value of those voting) had voted against. Therefore, the statutory majorities had been obtained in all classes save the senior secured creditors (see [33] of the judgment).

Fifth, the class meetings had been fairly representative of the relevant class, but there was one caveat, in that a degree of doubt existed as to whether the views of those with the real economic interest in the Amicus loans made via the Crowdstacker platform had been able to be expressed. There had been a very substantial level of engagement (see [34] of the judgment).

Sixth, the court could safely rely on the outcome of the meetings. The explanatory statement had been adequate for its purpose, and that the scheme creditors had been sufficiently informed as to enable them to reach properly grounded decisions. Accordingly, in that respect, the court could safely rely on the outcome of the meetings. As to the arrangements for ascertaining the views of scheme creditors, the scheme meetings had held online and no difficulties had been encountered. The was no evidence of oppression or of scheme creditors demonstrating bad faith by exercising their votes otherwise than by reference to their interests as class members (see [38]-[40] of the judgment).

Seventh, the scheme was one that might reasonably be entered into by an intelligent and honest class member addressing the issues for decision from the standpoint of his or her ordinary class interests. While some of the participants in the scheme were connected, that did not warrant the conclusion that any class of creditor had supported the scheme because of that acknowledged 'connectedness' rather than because of the merits of the scheme. Crowdstacker had enabled investors using its platform to risk commercial advances to Amicus for reward, advances of which Crowdstacker was the sole beneficial owner. The context was an entirely straightforward commercial one, in which it was established that it was not the role of the Court to consider whether the scheme submitted for sanction was the best scheme or the only fair scheme or could be improved in some respect, but rather to assure itself that it was one approved by the requisite majority of properly informed and consulted creditors acting in accordance with their ordinary class interests and not oppressively in pursuit of some special interest (see [41], [44] of the judgment).

Eighth, it was appropriate for the court to exercise its jurisdiction to override the views of the dissenting class. First, the burden lay upon the administrators to satisfy the court, in the face of all challenges by Crowdstacker, that, on the balance of probabilities, Crowdstacker would not be any worse off under the scheme than it would be in the event of an immediate liquidation. That assessment fell to be made by reference to the comparative positions overall. Second, the scheme had to have been approved by 75% of those voting in any class that would receive a payment in the event of an immediate liquidation or otherwise had a genuine economic interest in the company. That had been satisfied. Further, having reviewed each of the challenges raised by Crowdstacker, the administrators had established that Crowdstacker was no worse off under the scheme than it would have been in an immediate liquidation (see [57], [58], [77] of the judgment).

Judgment date
15 November 2021

Judge
Sir Alastair Norris

Representation
Marcus Hayward (instructed by Pinsent Masons LLP) for Amicus.
William Willson (instructed by Brown Rudnick LLP) for HGTL Securitisation Ltd and the Hartford Entities.
Andrew Mace (instructed by Shakespeare Martineau LLP) for Crowdstacker.