

Neutral Citation Number: [2024] EWHC 1111 (Ch)

Case No: CR-2023-005672

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND & WALES
CHANCERY DIVISION (ChD)

**IN THE MATTER OF BLANKSTONE SINGTON LIMITED (IN SPECIAL
ADMINISTRATION)**

**AND IN THE MATTER OF THE INVESTMENT BANK SPECIAL ADMINISTRATION
REGULATIONS 2011**

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 7 May 2024

Before :

The Honourable Mr Justice Rajah

Adam Al-Attar KC (instructed by Ashurst LLP) for the Applicant

Hearing date: 7th May 2024

APPROVED JUDGMENT

Mr Justice Rajah
(14:59 pm)

Tuesday, 7 May 2024

1. Blankstone Sington Limited ("**BSL**") is an investment bank which provided investment management and stock broking services to retail clients. It entered special administration under the Investment Bank Special Administration Regulations 2011 ("**the IBSA Regulations**") on October 2023.
2. This application is made by the administrators of BSL ("**the Administrators**") and BSL itself. The Administrators apply for court approval of a distribution plan in respect of BSL's client assets of approximately £271,644,156, which is held for approximately 1200 clients.
3. BSL is the trustee of a statutory trust of client monies pursuant to chapter 7 of the FCA's Client Asset Sourcebook ("**CASS 7**"). The trust of client money comprises approximately £11,590,925 sterling, US\$415,207 and 1,310,751 Euros. The Administrators apply for directions as to the manner in which they propose to discharge the responsibilities of BSL in relation to this trust of client monies.

Client assets - the IBSA regime

4. The background to the IBSA Regulations and the IBSA rules was explained by Mr Justice David Richards in *MF Global UK Limited* [2012] EWHC 3789 (Ch) and by Mr Justice Miles in *Re SVS Securities PLC (in special administration)* [2020] EWHC 1501 (Ch). As they explain, the IBSA Regulations modify the usual administration regime to address specific issues arising in investment bank insolvencies. The administration of Lehman Brothers shone a spotlight on a number of deficiencies in the usual administration regime and the IBSA Regulations seek to address them.
5. Under the IBSA Regulations, the court appoints one or Administrators to pursue the special administration objectives in accordance with a statement of proposals that is approved by a

meeting of creditors and clients, and in certain circumstances, the Financial Conduct Authority (“FCA”) or Prudential Regulation Authority (“PRA”). In other respects, the ordinary rules of an administration under Schedule B1 of the Insolvency Act 1986 apply.

6. Regulation 10 provides that a special Administrator has three special administration objectives. Objective 1 is to ensure the return of client assets as soon as possible; Regulation 10(1)(a) gives the meaning of return a broad sense. ‘Return’ in that context has a broad meaning under Regulation 10(5): *‘the investment bank relinquishes full control over the assets for the benefit of the client to the extent of ... the client’s beneficial entitlement to those assets (where the assets in question have been held on trust by the investment bank)...’* . That is sufficient to constitute a return of the assets.
7. Objective 2 is to ensure timely engagement with market infrastructure bodies and the Bank of England, HM Treasury and the FCA and the PRA. Objective 3 is to either rescue BSL as a going concern or wind it up in the best interests of its creditors.
8. This application is primarily concerned with Objective 1. The IBSA regime for Objective 1 has the following main features.
 - (a) The Administrators are entitled to deal with and return client assets in whatever order they think best achieves this objective: Regulation 10(2).
 - (b) If the Administrators think it is necessary in order to expedite the return of client assets, Regulation 11(1) entitles them to set a bar date for the submission of: (i) claims to the beneficial ownership, or other form of ownership, of client assets; or (ii) claims of persons in relation to a security interest asserted over, or other entitlement to, those assets. This is known as a "soft bar date". The purpose of a soft bar date is to allow the Administrators to establish the universe of claimants interested in the distribution of the client assets. The Administrators set an initial soft bar date of 13 December 2023.

(c) Once the Administrators have set a soft bar date, no client assets may be returned except in accordance with a distribution plan approved by the Court. A distribution plan sets out the terms of the distribution of the assets, including how the costs of the exercise are to be met. The objective is to promote, and have approved, a plan that returns assets to clients by an efficient and fair means. The return of assets may take place by the transfer of assets to another institution. Regulation 10B overrides any requirement for client consent to such a transfer which takes effect as a deemed novation of the agreement between the client and the bank in administration; see Regulation 10(5). Regulation 10C to G contain restrictions in the case of a partial property transfer (such as here), including the requirement for provision to be made for a client to demand a reversal of the transfer as it concerns that client.

(d) Claims made after the return of assets pursuant to such a court approved distribution (“late claims”) will not disturb the prior return of client assets. Such a return gives good title (although there are exceptions for bad faith).

The Court’s approach

9. The approach of the court in applications for approval of a distribution plan was summarised by Mr Justice Miles in *Re SVS*, at paragraphs 32 to 34. Having referred to *Re MF Global UK Limited*, *Re Hume Capital Securities* [2015] EWHC B25 (Ch) and *Re Beaufort Asset Clearing Services* [2018] EWHC 2287 (Ch), he said:

“32. ...*The cases establish the following points. First, account must be taken of the purpose of the distribution plan under the Rules, which is to assist in the achievement of Objective 1 of returning client assets as early as possible. The court must be satisfied that the plan provides a*

fair and reasonable means of effecting the distribution of the client assets to which the plan relates.

33 Secondly, the context in which the application is brought before the court is itself material. The distribution plan can only be approved if the creditors' committee has approved it or has had an opportunity to explain why it has not approved it and its role in relation to the distribution plan will be a particularly material factor in the court's decision. Individual clients will have been notified both of the plan before the hearing and are able to make representations against it so that their input, or the lack of it, will again be material. The FCA has to be notified of a hearing and its objections, or lack of them will be relevant. Finally, the making of the application will itself indicate the exercise of professional judgment on the part of the Administrators as officers of the court and weight is to be given to their judgment. While none of those factors can be conclusive, and the court must exercise its own judgment, they are to be given particular weight.

34 Third, if the court is satisfied that all relevant persons have been given a proper opportunity to make representations and have either specifically agreed to them or at least not objected to them, the court is very likely to be slow to withhold approval or substitute its own assessment of what is fair and reasonable as a means of effecting the distribution of client assets for the purposes of Objective 1."

Client Money – CASS 7

10. Pursuant to CASS 7A.2.2R(1), all client monies held by BSL upon entry into special administration are to be treated by the liquidators as pooled (" **the client money pool**" or "**CMP**"). The client money pool has to be distributed. The trustees are required to distribute

these monies as soon as reasonably practicable so that clients receive a rateable entitlement to their money. In other words, individual entitlement to a specific amount is replaced with a right to share rateably in the CMP.

11. The CMP is subject to a separate regime from client assets. IBSA regulation 12A permits the Administrator to set a soft bar date in respect of claims. The bar date mechanisms available, however, provide no protection in respect of claims which are submitted in time, but in respect of client money entitlements (“CME”) which are disputed. A trustee that distributes the CMP, only later to be held to have distributed incorrectly because of the later resolution of a dispute adverse to the distribution, is personally liable for a breach of trust. This risk may extend to the directors, or here, the Administrators acting for the corporate trustee BSL.
12. There is nothing in the Financial Services and Markets Act 2000 or CASS 7 or CASS 7A which provides a mechanism for resolving disputed CMEs. There is now a well established practice of deploying the inherent jurisdiction to assist office holders in situations like this. It was so deployed in *Re MF Global*, *Re Beaufort Asset Clearing* and *Re SVS*. In *Re MF Global*, Mr Justice David Richards said:

"The inherent jurisdiction of the court does not enable the court to vary beneficial interests in trust property but, as part of the jurisdiction to supervise and administer trusts, it permits the court to give directions to trustees to distribute trust property on particular bases when the court is satisfied it is just and expedient to do so. A well established example of the exercise of the jurisdiction in this respect is the making of In re Benjamin orders: In re Benjamin [1902] 1 Ch 723. In those cases where the trustees are faced with a practical difficulty in establishing the existence of possible beneficiaries or other claimants, the court will give a direction to the trustees enabling them to distribute the trust property on an assumption of fact that there is no such beneficiary or claimant. As Nourse J explained in In re Green's Will Trust [1985] 3 All ER

455, 462, an In re Benjamin order does not vary or destroy beneficial interests but merely enables trust property to be distributed according to the practical probabilities. It protects trustees but it equally preserves the right of any person who establishes a beneficial interest to pursue such remedies as may be available to them.'

13. CASS 7AS.2.4R (4) permits the Administrators to transfer all or part of the CMP to another firm for safekeeping on behalf of the clients. Ordinarily, in cases such as are faced here, the regulations require consent from the client to such a transfer. However, the FCA has granted a waiver of this requirement in respect of BSL for a limited period. In *Re SVS*, Miles J concluded that the effect of a similar FCA waiver was that the trustee has the power to make the waiver without consent. I agree. The effect of that waiver is to modify the statutory trusts on which the CMP are held so that it is no longer a condition or limitation on the power of the trustee to transfer that the trustee first had the client's consent. The statutory regime gives the FCA power to so modify the statutory trusts in whole or in part.
14. The CMP does not include client monies received by BSL after the date of entering administration (for example on maturity of an investment or receipt of a dividend) and the Administrators propose to deal with such client monies in accordance with the Distribution Plan for client assets. This is the practical approach which has been adopted by the court in the past, for example in *Re SVS*, and I will do the same.

The Distribution Plan

15. All client assets in respect of claims that are "Accepted Client Assets Claims" are to be returned to clients. An Accepted Client Assets Claim means: (a) any claim which has been made by a client within the meaning of Regulation 11 (1) and which has been accepted by the Administrators; or (b) any claim of a client which has been accepted by the Administrators

without that client submitting a claim to the Administrators. This is intended to cater for potential claimants where the Administrators have accepted a position based on BSL's books and records despite the potential claimant not having submitted a claim.

16. There are three principal means by which client assets will be returned to clients under the Distribution Plan :

- a. a transfer under clause 4 to the Nominated Broker
- b. a transfer under clause 5 to one or more alternative transferees selected by the Administrators or,
- c. a return of client assets to or to the order or to the order of the client.

17. There is a procedure stipulated by which the client is provided with relevant information and permitted to make elections, including as to the manner of distribution.

18. Detailed provision is made for the resolution of disputed claims to assets. Significantly, if a claim is formally rejected by the Administrators, it triggers a 21-day "Disputes Clearance Period" in which the client must apply to court for resolution of the dispute. The 21-day period can be extended by the Administrators or the court. There was initially some further words suggesting that that extension could not be supplied retrospectively, but after discussion with Mr Al-Attar he has proposed that those words be removed. I was concerned that this was an unnecessary limitation on the court's power to extend time. To save time and further argument, Mr Al-Attar has said that he will remove those words. He has made clear that there are at present no disputed claims.

19. So far as late claimants who submit a claim after a transfer are concerned; they will only be interested in the client assets which remain in the Administrators' hands and available for return, and if insufficient then late claimants will become unsecured creditors.

20. Specific provision is made by the scheme for certain classes of assets which could be affected by sanctions or restraint orders or money laundering issues or with new assets acquired by corporate actions. As I understand Mr Al-Attar, there are none.

The Nominated Broker

21. The Nominated Broker is an FCA-regulated firm providing comprehensive dealing in brokerage services. It has been identified through a competitive tender process. It will acquire BSL's nominee company, Oakwood Nominees, which holds the vast majority of client assets.

Approval – client assets

22. The Distribution Plan seems to me to be a fair and reasonable plan for the return of assets to clients.

23. Significantly, there is no opposition to this Distribution Plan by any of the parties or persons who have an interest in its terms. The Creditors Committee, comprising representatives of clients and creditors, has approved the Distribution Plan. The procedural rules for giving notice to clients have been complied with. No client has attended to object or to make representations against what is proposed. The FCA has reviewed and provided comments on the Distribution Plan and does not object to it.

24. The FSCS has also been consulted in relation to the distribution plan and does not object to it. This is significant because the Administrators estimate that 99% of clients subject to the Distribution Plan are entitled to FSCS compensation up to the statutory limit of £85,000. The plan has been structured in such a way to ensure that maximum FSCS compensation will be available to meet the costs of the distribution plan. Costs are going to borne equally by the clients, subject to a cap at the value of the assets which BSL holds for them. I have been taken

through the mechanism by which the costs are to be apportioned. I am satisfied that that is a fair system, particularly in circumstances where it will ensure that the maximum FSCS compensation is available. That, in my judgment, will be in the interests of the vast majority of the clients of this bank.

25. The Administrators have fixed a cost reserve of some 17 million pounds on a worst case scenario. I am in no position to interrogate that figure, but of course, the FSCS is a suitable body to police the costs incurred by the Administrators and it has a clear financial interest in doing so.
26. I am satisfied that the Distribution Plan in respect of client assets and client monies not falling within the CMP, is one that is appropriate for approval and I will give that approval.

Approval - client monies

27. The Administrators' proposals in respect of client monies follow the same formula as the distribution plan for client assets, but it is sought as relief by way of directions to the Administrators under the inherent jurisdiction. It is proposed that the court;
- a. authorises the Administrators to transfer the CMP to the Nominated Broker on the terms of the sale and purchase agreement;
 - b. approves the Administrators' proposals for treating claims received before and after the soft bar date as under the Distribution Plan; and
 - c. approves a dispute resolution procedure which is set out in the order and is intended broadly to follow the procedure in the Distribution Plan.
28. This is, in my judgment, all largely unobjectionable. There was one concern which I had which is that in one aspect, the proposed dispute resolution procedure went too far in requiring a client whose claim had been rejected to issue an application to the court under the ISBA Regulations within 21 days.

29. I will just explain very briefly why that goes too far. A Benjamin order is a court order which authorises the trustee to act on the basis of a particular set of assumed facts. If those facts prove to be incorrect, the trustee is not liable for having acted as it did because it did so with the court's authority. The beneficiaries' rights are otherwise unaltered and the affected beneficiary is free to pursue such other remedies as are available, including disturbing the title of other beneficiaries who have received distributions from the CMP.
30. A mechanism for identifying a disputed claim and providing a period for the beneficiary -- if I may put it colloquially -- to "put up or shut up", is within this jurisdiction. It works by the court authorising the trustee to distribute as if there is no valid claim if the beneficiary does not "put up" by commencing a claim. What the court does not have jurisdiction to do is to devise or impose a method of resolution of the beneficiary's dispute. That is provided for by the CPR part 64. There is no established inherent trust jurisdiction to impose some other court process on a beneficiary. It certainly forms no part of the *Re Benjamin* jurisdiction which has been deployed so successfully in this arena.
31. I am told that similar provisions have been approved in previous cases like *Re SVS*, but as I read those cases, this point was not mentioned and if I may say so, the judges in those earlier cases were concerned with much bigger jurisdictional issues in the development of the court's approach to cases like this and I would suggest can be forgiven for not noticing this relatively small jurisdictional point, particularly if it wasn't specifically drawn to their attention.
32. Mr Al-Attar has said that he will amend the proposals in the draft order so as to remove the reference to a procedure under the IBSA Regulations in relation to client monies and I will review that amendment when it comes in.
33. Subject to the amendments which have been discussed, I will approve the Distribution Plan in relation to client assets and the proposed order as it relates to client monies.