Neutral Citation Number: - [2024] EWHC 1261 (Ch)
Case No: CR-2024-002308

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

The Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Friday, 10 May 2024

BEFORE:

MR JUSTICE RICHARDS

BETWEEN:

IN THE MATTER OF PROJECT VERONA LIMITED

Claimant

MR M WEAVER KC appeared on behalf of the Claimant.

JUDGMENT
(Approved)

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Lower Ground, 46 Chancery Lane, London WC2A 1JE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

1. MR JUSTICE RICHARDS: Project Verona Limited ("the Company"), seeks directions summoning a meeting of certain of its creditors (“Plan Creditors” in respect of “Plan Liabilities”) for the purposes of considering and, if thought fit approving, a restructuring plan under Part 26A of the Companies Act, 2006 (the “Plan”).

Introduction

2. The Company is a wholly owned subsidiary of a wider group ("the Group") headed by Tasty Plc, which is listed on the Alternative Investment Market (“AIM”). The Group also includes a company called Took Us a Long Time Ltd. The Company has entered into a deed poll dated 9 April 2024 (the “Deed Poll”), under which it assumed liability for certain liabilities owed by the Group with liabilities so assumed being Plan Liabilities to be dealt with pursuant to the Plan. Thus, following execution of the Deed Poll, Plan Creditors have rights against both the Company ("Deed Poll Liabilities") as well as rights pursuant to the liability owed by the relevant Group member (the “Underlying Liability”). All Underlying Liabilities are owed by companies incorporated in the United Kingdom.

3. The Group operates a restaurant business that has been affected by the Covid-19 pandemic and subsequent challenges caused by high energy costs, increasing food costs and additional labour costs, exacerbated by a reduction in consumer spending at their restaurants. The Group occupies its premises under leases granted by landlords who are, with a few exceptions, unrelated third parties.

4. Tasty Plc has obtained a secured loan (the “Secured Loan”) from Mr William Roseff (the “Secured Creditor”), which has enabled the Group to avoid an insolvency process thus far. The Secured Loan is convertible into equity in Tasty Plc, with complicated mechanics designed to ensure that conversion takes place in the context of Tasty Plc’s AIM listed status. The maximum amount of equity that can be issued on conversion of a secured loan is 25.99% of Tasty Plc’s total ordinary share capital.

5. The Group considers that further action is needed to exit restaurants that it perceives to be unviable (referred to as “Category B Sites” and “Category C Sites” held under

leases with “Category B Landlords” and “Category C Landlords”), and focus its business on viable “Category A Sites”.

6. The difference between Category B Sites and Category C Sites is that the Group proposes to remain in occupation of Category C Sites for a short period, at a reduced or zero rent under particular arrangements agreed with the landlord concerned. That offers some benefit to Category C Landlords since, even though they will not be receiving a full rent, while the Group is in occupation, local authorities will look to the Group, rather than the Category C Landlord for payment of business rates. By contrast, the Group has already ceased to occupy Category B Sites with the result that Category B Landlords themselves are liable for business rates.

Overview of the Plan

7. The Plan is not proposed to have any effect on Category A Landlords who are not Plan Creditors with whom the Company proposes any compromise or arrangement. The rationale for the Deed Poll is that, if the Company proposes the plan rather than other members of the Group, the Group believes that it can avoid triggering an event of default under Category A Leases, which might otherwise have entitled landlords to terminate Category A Leases.

8. The Plan also excludes other categories of creditors, such as HMRC, employees and critical trade creditors.

9. Under the Plan:

    a. The interest rate on the Secured Loan is to be reduced from 15% to 10%.

    b. Category B Landlords are to receive an estimated 4.17 pence in the pound in full and final settlement of all past and future liabilities of the Group, including obligations and liabilities relating to dilapidations. They also obtain a share in the Restructuring Surplus Fund described below.

    c. Category C Landlords obtain a similar deal pursuant to the Plan, but, as already noted, they may be entitled to receive rent for a period of time after the

Plan takes effect and are also insulated from direct liability for business rates for a period.

d. Rating authorities owed liabilities such as business rates in respect of restaurants ("Category A Rating Authority Creditors", "Category B Rating Authority Creditors" and "Category C Rating Authority Creditors" respectively) will receive an estimated 4.17p in the pound in respect of historic liabilities owed by the Company and the Group, and a share in the Restructuring Surplus Fund. The Plan does not seek to deal with future obligations owed to Rating Authority Creditors in any category. However, these creditors are in a slightly different position going forward. Since Category A Sites are considered viable, Category A Rating Authority Creditors have some prospect of obtaining future business rates following successful trading. That is less true of Category B and Category C Sites.

e. Two "Non-Critical Creditors", the Royal Bank of Scotland Plc and North Yorkshire Council, are also to receive an estimated 4.17p in the pound in full and final settlement of their claims against the Company and the Group, together with a share in the Restructuring Surplus Fund.

10. The Plan makes arrangements to ensure that Category B and Category C Landlords can take possession of the relevant sites. Those arrangements vary as between Category B and Category C Sites recognising that the Group has a right to remain in occupation of Category C Sites for a limited period after the Plan becomes effective.

11. Therefore, the Plan releases rights in return for payments, with the rights being released being both Deed Poll Liabilities (owed by the Company) and Underlying Liabilities owed by other members of the Group.

12. The Restructuring Surplus Fund that I have mentioned represents (i) 10% of any increase in EBITDA of the Group from the effective date of the Plan to 31 December 2024, plus (ii) 10% of any net proceeds of any successful Covid business interruption claim that is made.

13. The Company's position is that the "relevant alternative" to the Plan being proposed, would be for relevant members of the Group to be placed into administration with Category A Sites being sold out of that administration in a "pre-pack" transaction. The Company's analysis is that following such a transaction, the Secured Creditor would be repaid in full, but all other Plan Creditors would obtain nothing in respect of historic liabilities. The Company considers that all categories of Plan Creditor would be no worse off than under its formulation of the "relevant alternative".

The matters I must address at today's convening hearing

14. The only appearance today is by Mr Weaver KC on behalf of the Company. The Company sent all Plan Creditors a "Practice Statement Letter" on 10 April 2024 and a Supplemental Practice Statement Letter on 19 April 2024. None of the Plan Creditors, or anyone else with an interest in the outcome of the Plan, has appeared before me today. No Plan Creditor has indicated any intention to oppose an order sanctioning the Plan. The Company explained that it had received an email from Mr Alex Barnett complaining about what he perceived as the unduly short timescale for consideration of the Plan. It was not clear whether that complaint was about the length of notice given of today's hearing or of the length of notice to be given of meetings of Plan Creditors if convened. Whatever the precise nature of his complaint, Mr Barnett's email did not set out a considered objection of the Plan or an intention to object to sanction at any future sanction hearing.

15. In those circumstances, I do not see any need to make directions of a "case management" nature regulating the manner in which objection to the Plan is to be made, or ensuring that anyone objecting to the Plan obtains necessary disclosure of information to enable that objection to be advanced. Rather, as Mr Weaver KC submits I should, I confine myself to a consideration of issues arising out of the Practice Statement of 26 June 2020 and therefore consider:

    a. the adequacy of notice, both for the proposed Plan meetings and today's hearing;

    b. jurisdictional requirements;

c. whether the threshold conditions set out in conditions A and B in section 901A of the Companies Act are satisfied so that I can properly convene meetings of Plan Creditors;

d. class composition;

e. other issues not going to the merits or fairness of the Plan, which might cause the court to refuse to sanction the Plan; and

f. practical issues relating to the proposed Plan meetings and sanction hearing, such as the adequacy of notice, the adequacy of the documentation and the proposals for those meetings generally.

Adequacy of notice

16. The Practice Statement letter was posted on 10 April 2024, it was also sent by email, and a link to a website containing documents relevant to the Plan was given with addressees being given a login to enable them to access that website. A supplemental Practice Statement letter was sent on 19 April, and that was posted on the website and made available for download.

17. The original Practice Statement letter said that the convening hearing would take place on 29 April 2024, which was understood to be the correct date at the time. The supplemental Practice Statement letter updated that information to confirm that the convening hearing was expected to take place today, on 10 May 2024. The supplemental Practice Statement letter did not specify a precise time or venue for the convening hearing, and stated that specific details of the convening hearing would be confirmed to all Plan Creditors in a "notice of convening hearing" that would be sent to all Plan Creditors before the convening hearing and uploaded to the website.

18. In the event, no separate notice of convening hearing was sent to Plan Creditors. A notice of convening hearing was uploaded to the website yesterday, on 9 May 2024. Therefore, until yesterday, Plan Creditors would only have known that the convening hearing was due to take place on 10 May 2024, at some unspecified time and place. If

they thought to check the website yesterday, they would have been able to find the precise time and venue of the hearing.

19. Mr Weaver KC has persuaded me that nevertheless adequate notice has been given of today's hearing. Anyone interested in attending today's hearing would have known that it was on 10 May 2024, and could have made enquiries of the court as to the precise place and time if they wished to attend. Perhaps more fundamentally, I was told by Mr Weaver KC on instructions, that neither the Group nor its advisers has received contact from anyone wanting to know details of today's hearing. The single email from Mr Barnett to which I have referred represents, in my judgment, a particular individual's concern about timetable rather than evidence of a wider pattern of Plan Creditors being unaware of today's hearing, despite a wish to attend it.

20. I deal with the adequacy of the proposed notice of Plan meetings later in this judgment.

Jurisdictional issues

21. The Company is incorporated in England and Wales. The Group companies whose Underlying Liabilities are to be released are similarly incorporated in England and Wales. I see no difficulty with jurisdiction in this case.

22. I have considered whether the Plan goes too far in releasing not just rights owed to persons in their capacity as creditors, but also affecting proprietary rights. However, having reviewed the proposed Explanatory Statement and the terms of the Plan itself, I do not consider there is any obvious roadblock that should cause me to decline to make a convening order.

Conditions A and B in s901A

23. Mr Plant's witness statement satisfies me that Condition A is met. I am quite satisfied that the Company has encountered or is likely to encounter financial difficulties that are affecting or will/may affect its ability to carry on business as a going concern.

24. Condition B is that there is a compromise or arrangement proposed between the Company and its creditors, its members, or any class of them, the purpose of which is

to eliminate, reduce, prevent or mitigate the effect of any of the financial difficulties I have just mentioned.

25. I am satisfied there is a compromise for arrangement proposed with each class of Plan Creditor. I am satisfied each such compromise or arrangement is for the purpose set out in section 901A(3)(b).

26. I note that the Plan proposes not just to compromise Deed Poll Liabilities (of the Company), but also the Underlying Liabilities of other companies in the Group. It is a matter for the judge at the sanction hearing, but I consider this can, in principle, be done without causing the proposed Plan to cease to be a compromise or arrangement falling within s901A(3)(b) - see the judgment of Zacaroli J in *Re Gategroup Guarantee Limited* [2021] EWHC 304 (Ch).

Class Composition

27. The test for class composition is well-known. I gratefully adopt the summary of the applicable principles set out by Zacaroli J at [181] to [185] of his judgment in *Re Gategroup Guarantee Limited*. In essence, a class must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest (see *Sovereign Life Assurance v Dodd* [1892] 2 QB 753 per Bowen LJ at 583).

28. It is proposed that Plan Creditors vote as 7 distinct classes: the Secured Creditor, Category B and Category C Landlords, Category A, B and C Rating Authority Creditors and the Non-Critical Creditors.

29. I had a discussion with Mr Weaver KC about these classes, and whether all had rights so significantly different from each other as to clearly constitute each as a separate class.

30. It is quite clear that the Secured Creditor is in a separate class, since his rights benefit from security which does not benefit other classes of creditor.

31. Arguments could be made as to whether all six other classes are necessary or whether some or all of the classes could have been combined. However, I do not see any need to go into that debate at the sanction hearing today. I am quite satisfied that there has been no attempt to manipulate the rules by producing a single class that can be assumed to vote in favour of the Plan, so as to act as a trigger for a cross-class cramdown. Rather, I consider that the multiplicity of classes represents the Company's genuine and reasonable attempt to work out how classes should properly be constituted. I therefore see no need to gainsay the Company's determination of the classes, and I will not do so.

Practical issues

32. I start with some points that I explored with Mr Weaver concerning the Explanatory Statement. Following the Court of Appeal's judgment in *Re AGPS Bondco Plc* [2024] EWCA Civ 24, if a cross-class cramdown is to be invoked, it is likely to be necessary for the Court to consider whether the Plan involves a fair distribution of the benefits of the restructuring. It is, therefore, appropriate for creditors to have information on what the total benefits are of the restructuring, and who is to obtain those benefits, so that each class of creditor can consider whether it is obtaining its own fair share of the total benefits of the restructuring.

33. I had some initial concerns about paragraph 9.4 of the Explanatory Statement. That set out for each category of Plan Creditor a summary of what they could expect to receive under the Plan and under the Company's formulation of the relevant alternative. I queried whether this risked being misleading, not because of the information it contained, but because of the information it did not. For example:

    a. The table does not mention the position of shareholders in Tasty Plc (since shareholders are not Plan Creditors). However, the position of shareholders is potentially relevant to whether the Plan achieves a fair distribution of the benefits of the restructuring. Under the Plan, such shareholders retain their equity in Tasty Plc which would have reduced liabilities going forward, to the benefit of the value of that equity. By contrast, under the Company's

formulation of the relevant alternative, it would appear that the equity in Tasty Plc would be valueless.

b. The table suggests that the Plan operates to the disbenefit of the Secured Creditor (since it reduces the interest rate on the Secured Loan from 15% to 10%). However, it does not mention a potentially countervailing benefit to the Secured Creditor: his rights of conversion into equity potentially benefit from the same advantage that benefits shareholders described in paragraph a. above.

c. The table does not mention that Category A Landlords can expect to obtain rent to be paid going forward, whereas Category B and C Landlords cannot.

34. However, Mr Weaver KC took me through other passages in the documentation that will be sent to Plan Creditors. I am satisfied that this information makes it clear that some categories of stakeholder will be doing better than others. Category B Landlords, for example, will be aware that they are unlikely to receive much more than 4.17p in the pound plus whatever they get from the Restructuring Surplus Fund. They will be aware, from the very fact that the Plan does not affect Category A Landlords, that they are expected to be paid in full going forward (see paragraph 12.3 of the Explanatory Statement).

35. Paragraph 9.4 of the Explanatory Statement expressly directs Plan Creditors to read the "Estimated Outcome Report" prepared by FRP Advisory. Mr Weaver KC said, on instructions, that FRP Advisory are not being remunerated on a "success fee" basis.

36. That Estimated Outcome Report indicates the benefits in terms of the Group's EBITDA that are expected to come from the Plan. The report explains that those benefits arise specifically from the group exiting what it perceives to be less desirable sites. Therefore, for example, a Category B or Category C Landlord reading the Estimated Outcome Report, will realise that (i) the compromise of liabilities relating to Category B and Category C Sites is thought to lead to an EBITDA benefit for the Group; (ii) the Category B and Category C Landlords' only share in that EBITDA benefit will consist of any payment into the Restructuring Surplus Fund and (iii) the existing shareholders in the Group and the Secured Creditor between them can be

expected to benefit from holding shares, or rights over shares, in Tasty plc since the Group's liabilities are reduced precisely because of an exit from Category B and Category C Sites.

37. Therefore, my initial reservations as to whether these matters were properly disclosed in the face of the Explanatory Statement and its attachments were addressed in my dialogue with Mr Weaver KC. The Explanatory Statement equips Plan Creditors to turn their mind to the question whether the benefits of the restructuring are being shared fairly. In saying this, I should not, of course, be taken as expressing any view on whether the Plan does fairly share the benefits of the restructuring among all the relevant stakeholders. That will be a matter for the judge at a sanction hearing.

38. The Company proposes to send notice of the Plan meetings to Plan Creditors today (10 May 2024). The Plan Meetings are proposed to take place on 29 May 2024. I note the concerns of Mr Barnett about timing in the email mentioned in paragraph 14. above. However, Plan Creditors were sent the Practice Statement Letter on 10 April 2024. Apart from Mr Barnett's email, no communications have been drawn to my attention suggesting either opposition to the Plan or concerns about timetable. I am satisfied that the timetable for the Plan Meeting is sufficient.

39. If there were evidence of opposition to the Plan, it might have been appropriate to have a longer interval between the Plan Meeting (on 29 May) and the sanction hearing (listed for 4 June) to allow those objecting to serve evidence. However, since I have not been notified of any objection to the Plan, I see no need for a longer interval.

Roadblocks

40. In my analysis above, I have considered the potential issues identified in Mr Weaver KC's skeleton arguments and some points that occurred to me from my review of the documentation. I see no roadblock that should cause me to decline to make a convening order.

41. I will make an order convening meetings of Plan Creditors.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 46 Chancery Lane, London WC2A 1JE
Email: civil@epiqglobal.co.uk

(This judgment has been approved by the judge)