Case No: CR-2024-002901

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

NCN: [2024] EWHC 1438 (Ch)

The Rolls Building
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Fetter Lane
London EC4A 1NL

Monday, 20 May 2024

BEFORE:

MR JUSTICE RICHARDS

IN THE MATTER OF CONSORT HEALTHCARE (TAMESIDE) PLC

AND IN THE MATTER OF THE COMPANIES ACT 2006

MR TOM SMITH KC and MR HENRY PHILLIPS (instructed by **Herbert Smith Freehills LLP)** appeared on behalf of Consort Healthcare (Tameside) PLC
MR DANIEL BAYFIELD KC and MR RYAN PERKINS (instructed by **Addleshaw Goddard LLP**) appeared on behalf of Tameside and Glossop Integrated Care NHS Foundation Trust

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JUDGMENT
(Approved)

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(Official Shorthand Writers to the Court)

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1. MR JUSTICE RICHARDS: This is an application by Consort Healthcare (Tameside) PLC (the "Plan Company") for an order under section 901C of the Companies Act 2006 ("CA 2006"), convening meetings of certain of its creditors to consider, and if thought fit, to approve a restructuring plan (the "Plan").

2. The Plan is proposed with just three creditors:

    a. Consort Healthcare (Tameside) Intermediate Limited ("IntermediateCo") is a member of the same group as the Plan Company and holds certain subordinated debt of the Plan Company. It has indicated that it supports the Plan.

    b. Ambac Assurance UK Limited ("Ambac") is a guarantor of certain senior debt issued by the Plan Company. It has also indicated that it supports the Plan.

    c. Tameside and Glossop Integrated Care NHS Foundation Trust (the "Trust") receives services from the Plan Company and is owed money by the Plan Company. It opposes the Plan.

3. It follows that both the Plan Company and all creditors opposed to the Plan appeared before me at the hearing. Neither the Plan Company nor the Trust invited me to do anything other than approve an order in reasonably standard form convening meetings of three separate classes of creditor to vote on the Plan. It seems almost certain that IntermediateCo and Ambac will vote in favour at their respective plan meetings and that the Trust will vote against. The real battleground will then be whether the court should sanction the Plan by means of a "cross-class cramdown" under s901G of CA2006.

4. In those circumstances, I can deal with the background briefly as it is well-known to the parties. The Plan Company is a special purpose vehicle. Its principal activity concerns the delivery of services to the Trust pursuant to a Project Agreement dated 18 September 2007 (the "Project Agreement"). The Project Agreement was entered into under the then government's "private finance initiative". Very broadly, the Trust was required to redevelop an existing hospital site and, having done so provide certain

ongoing services such as estate maintenance, security and the provision of a help desk. The Plan Company receives a monthly fee, known as the "Service Payment" or "UC" (standing for "unitary charge") from the Trust in return.

5. There has been an ongoing dispute between the Plan Company and the Trust about service levels. That dispute proceeded to a formal adjudication which resulted in a significant award being made against the Plan Company. The Plan Company's position is that this adjudication award, coupled with its implications for the level of service that it must provide going forward, makes its present business unviable. It proposes the Plan to compromise the financial claims against it and also to recalibrate its obligations under the Project Agreement so that, in the Plan Company's analysis, those obligations can realistically be complied with. Its position is that, without the Plan, it will have to enter into administration.

6. It is agreed that today there are just a few matters that I need to consider. The court's jurisdiction or otherwise to sanction the Plan will be considered at the sanction hearing, but the first question is whether there is a "roadblock" on jurisdiction such that I should not make a convening order at this stage. In that context, I make the following points:

    a. The Plan Company is an English company. On the face of it, there is no jurisdictional obstacle to sanctioning a plan under Part 26A of CA2006 in respect of the Plan Company.

    b. There are some jurisdictional questions that might surface at the sanction hearing. Possible questions are (i) whether the Plan can indeed make changes to the Project Agreement in the manner that is contemplated, (ii) whether the Plan can indeed require the Trust to dismiss its consultants ("P2G") and (iii) whether it is appropriate or legitimate for the Plan to provide that, unless the Trust accepts the Project Agreement as amended by the Plan within 30 days of the Plan's Effective Date it becomes binding in the face of the Trust's objection that this is a device to provide it with just 30 days to decide whether to exercise step-in or termination rights pursuant to the Project Agreement. The Trust does not argue that these are such obvious jurisdictional roadblocks that I should decline even to convene a meeting of creditors. I agree.

7. The next threshold question is whether conditions A and B in s901A of CA2006 are satisfied since, if they are not, I should not convene Plan meetings at all. I am quite satisfied that Condition A is met. It is clear from the witness evidence that the Plan Company has encountered financial difficulties that are affecting or may affect its ability to carry on business as a going concern. I am also sufficiently confident that Condition B is met to convene Plan meetings. A compromise or arrangement is proposed between the Plan Company and the three classes of creditor that I have set out in paragraph 2 above. That compromise or arrangement comes in two forms, the "Sustainability Option" and the "Settlement Option". However, I do not consider it is obviously objectionable for two potential compromises or arrangements to be put to Plan creditors with the Plan Company deciding in the light of the vote which, if any, of those to put forward for sanction.

8. As to class issues, the proposal is that the three creditors should all vote as separate classes. I am quite satisfied that this is an appropriate position to take on class issues, since the rights of those three persons against the Plan Company are very different, both before the Plan and under the Plan as proposed.

9. I discussed the position of Ambac with Mr Smith KC during the hearing. Ambac is a creditor, perhaps a contingent creditor, of the Plan Company by virtue of its guarantee of various bonds. Under the terms of an Intercreditor Deed, Ambac is termed the "controlling creditor" in the sense that it is entitled to exercise, or direct the exercise of, the rights of holders of the underlying bonds in certain circumstances. The Plan Company is proposing a compromise or arrangement involving Ambac specifically. It is not proposing a compromise or arrangement with holders of the underlying bonds and so the Plan meeting will be a meeting of Ambac and not a meeting of underlying bondholders. The Plan Company considers that if Ambac votes in favour of the Plan, and the Plan is sanctioned, the outcome of the Plan will become binding on underlying bondholders as well as Ambac. I do not need to express a conclusion on this issue at the convening hearing.

10. A "Practice Statement Letter" was sent 25 days in advance of today's hearing. There has been a lot of discussion between the Plan Company and the Trust already. IntermediateCo and Ambac are obviously not concerned that they have been given

inadequate notice, either of the convening hearing or the Plan meetings, since they have already indicated to the Plan Company that they are likely to vote in favour. The Trust has not argued that it has received insufficient notice either. I am satisfied at the level of notice given.

11. I have looked at the documents relating to the Plan, including the draft explanatory statement and the proposals for the meetings of creditors. I consider those to be sufficient. I do not consider there is any obvious problem such that I should decline to convene the meetings that are requested.

12. I will, therefore, make an order convening the Plan meetings and dealing with other case management matters. I note that the Trust and the Plan Company had agreed the form of that order between themselves and so the only additions to it are matters that I discussed with Mr Smith KC and Mr Bayfield KC that are designed to facilitate proceedings at any sanction hearing.

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This transcript has been approved by the Judge