

14 November 2024

PRESS SUMMARY

London Capital & Finance Plc (in administration) and others v Michael Andrew Thomson and others [2024] EWHC 2894 (Ch)

Judge: Mr Justice Miles

BACKGROUND

Between 2013 and December 2018, LCF raised a total of £237 million from around 11,600 retail investors by issuing mini-bonds. In doing so, it presented itself to investors as a commercial lender to borrowers in the UK SME (small and medium enterprise) sector. The FCA intervened in the business in December 2018 and LCF went into administration on 30 January 2019. The deficit regarding creditors is now over £379 million.

Mr Thomson, the First Defendant, was a director of LCF. His business associates included Mr Hume-Kendall, Mr Golding and Mr Barker. They were all involved in owning or running a group of companies known as the London Group. Mr Sedgwick was a solicitor who acted for the London Group. Surge Financial (“Surge”) was employed by LCF as a sales and marketing agent and was paid 25% of the gross amounts raised from bondholders. Mr Careless was a director and owner of Surge. Mr Russell-Murphy was a salesman who initially worked for LCF and then for Surge.

The Claimants claimed, first, that LCF made false representations to prospective bondholders about its business, including how the monies raised from them would be lent to third party borrowers after careful due diligence and against proper security. In fact, much of the amounts raised by LCF was lent to companies in the London Group, which was closely connected with Mr Thomson, Mr Hume-Kendall, Mr Golding and Mr Barker. That connection was never disclosed to bondholders. Nor were the 25% sales commissions paid to Surge.

The Claimants claimed, second, that the Defendants received sums, directly or indirectly, from LCF (totalling more than £136 million). Of this, more than £75 million was received by Mr Thomson, the Hume-Kendalls, Mr Barker and Mr Golding. More than £60 million was received by Surge as a sales commission. Mr Russell-Murphy and his company received more than £2 million and Mr Sedgwick more than £500,000. The Claimants claimed that the sums received by Mr Thomson, the Hume-Kendalls, Mr Barker and Mr Golding were routed through the creation of dishonest transactions which had no commercial rationale but were implemented to disguise the misappropriation of bondholder money.

The Claimants claimed, third, that LCF was operated as a Ponzi scheme, with payments of interest and principal to existing bondholders being funded by the proceeds of new bonds, rather than from income or other resources generated by the borrowing companies themselves.

The Claimants claimed that the business of LCF was therefore carried on with the intent to defraud bondholders through false pretences and/or for the fraudulent purpose of misappropriating bondholder monies and/or was operated as a Ponzi scheme, and the relevant Defendants were knowingly parties to that fraudulent trading and should therefore make contributions to the Claimants’ assets. The Claimants also brought claims for compensation and the recovery of property from the Defendants.

The claims against Mr and Mrs Hume-Kendall were settled early in the trial, and the claims against Mr Barker were settled before the trial. The case continued against Mr Thomson, Mr Golding, Surge, Mr Careless, Mr Russell-Murphy and his company, and Mr Sedgwick. Mr

Golding was debarred from defending the case because of a failure to give disclosure. Mr Russell-Murphy and his company took no part in the trial.

JUDGMENT

The Court concluded, first, that LCF had engaged in the fraudulent conduct of business and that Mr Thomson, Mr Golding, Surge, Mr Careless, Mr Russell-Murphy and Mr Sedgwick all knowingly participated in the fraudulent conduct.

The Court concluded that LCF had misrepresented itself to the public in a widespread, fundamental and systematic way, and had deliberately created a false impression about the company.

A substantial part of the money advanced to borrowers was misappropriated and used to make payments to some of the Defendants. Many of these payments were made under purported sale and purchase agreements. These were not genuine commercial arm's length transactions, but artificial devices used to justify and conceal payments from funds deriving from LCF to the Defendants so that they could use these sums as they wished.

The Court also concluded that LCF was operated as a Ponzi scheme. It very frequently paid funds from new bondholders to borrowers which subsequently (and indeed, almost immediately) returned these amounts to LCF to enable it to make interest or redemption payments to existing bondholders. LCF depended almost entirely on new bondholder investments to make interest and redemption payments to existing bondholders, as there was no independent source of income from LCF's borrowers from which to make the payments.

The Court concluded, second, that Mr Thomson and Mr Golding were liable for breaches of duties owed to LCF as directors. Mr Thomson was a director and Mr Golding was a shadow director. They had breached their duties by conducting the fraud described above. Mr Careless, Mr Russell-Murphy and Mr Sedgwick dishonestly assisted these breaches of duty by Mr Thomson and Mr Golding.

The Court concluded, third, that LCF was entitled to claim certain property and assets received by the relevant Defendants ultimately deriving from LCF's property.

There will be a further hearing at which the Court will decide the amount of the compensation payable by the Defendants and the process for identifying which assets the Defendants hold on trust for the Claimants.

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <https://www.judiciary.uk/judgments/>