15 October 2025

PRESS SUMMARY

Credit Suisse Virtuoso SICAV-SAF v SoftBank Group Corp and others [2025] EWHC 2631 (Ch)

Judge: Lord Justice Miles

BACKGROUND

These Financial List proceedings concern a programme of securitised notes originated by companies in the Greensill Group, which carried on the business of supply chain financing. The parent company was the Australian-incorporated Greensill Capital Pty Limited ("GCPL"). The founder and principal director of the Greensill Group was Mr Alexander (Lex) Greensill. It went into insolvent administration in March 2021.

The first claimant ("CSV") invested through its Credit Suisse (Lux) Supply Chain Finance Fund ("the SCF Subfund") in notes that were originated and administered in England by Greensill Capital (UK) Limited ("GCUK") under a programme known as the Fairymead Multi-Obligor Programme ("the Fairymead Note Programme").

The intended security for the Fairymead Note Programme consisted of certain rights (known as "Participations") granted under a Participation Agreement dated 19 December 2019 ("the Participation Agreement") by a special purpose vehicle, Greensill Limited ("GL"), to GCUK, its immediate parent company. These participation rights were assigned by GCUK to Hoffman and then to Citibank N.A., London Branch ("Citibank") as note trustee for the Fairymead Note Programme ("the Note Trustee"). The Participations related to receivables sold, or purportedly sold, to GL pursuant to a Receivables Purchase Agreement dated 9 December 2019 ("the RPA") by companies in the Katerra Group, a group of construction companies.

The SCF Subfund held the beneficial interests in outstanding notes purchased under the Fairymead Note Programme with an aggregate principal face value of c. $440 million ("the Fairymead Notes". All of the notes defaulted when they matured and/or otherwise fell due for payment in March 2021.

The claim was made pursuant to section 423 of the Insolvency Act 1986 by the first claimant or, in the alternative, the second claimant, GLAS Trust Corporation Limited ("GLAS"), the current Note Trustee, on the basis that they are "victims" of certain transactions ("the Impugned Transactions") entered into by GL in connection with an out-of-court restructuring of the Katerra Group which completed on 30 December 2020. The Impugned Transactions comprise a Contribution and Exchange Agreement ("the CEA") and a Share Transfer Agreement ("the TA"), each dated 30 December 2020.

The claimants' case was as follows. As a result of the Impugned Transactions of 30 December 2020, GL was left with effectively no assets. It went into liquidation in July 2021. The effect of the Impugned Transactions was to render valueless the intended security for the Fairymead Notes. The claimants contended that the First to Sixth Defendants ("the SoftBank Defendants" or "SBDs"), entities within the SoftBank Group, benefited from the Impugned Transactions and were culpably involved in bringing them about. Specifically they contended that two SoftBank sponsored funds, known as the Vision Funds ("SVF1" and "SVF2") obtained benefits from the Impugned Transactions. The SoftBank Group was a significant indirect investor in and lender both to the Katerra Group and to the Greensill Group. The claimants sought relief

against the SoftBank Defendants in order to restore the position to what it would have been if the Impugned Transactions had not been entered into and to protect the claimants' interests.

The SoftBank Defendants denied that the claimants had any entitlement to relief against them under section 423 of the 1986 Act. They contended that the Impugned Transactions were part of a linked set of transactions that were intended to put the Greensill Group in funds to enable the repurchase or repayment of the Fairymead Notes. Pursuant to an arrangement agreed between certain of the SoftBank Defendants and the Greensill Group, in November 2020 the SoftBank Group provided $440 million to the Greensill Group on the understanding that the Greensill Group would use those funds to repay or repurchase the Fairymead Notes. The Greensill Group did not in fact use the funds for the agreed purpose but this was without the SoftBank Defendants' knowledge. The SoftBank Defendants said that they only discovered this some time after 30 December 2020. They contended that the relevant "transaction" for the purposes of section 423 comprises the whole network of linked transactions; that GL did not have the relevant purpose of prejudicing creditors; that there was no undervalue and that, in any case, they did not materially benefit from the transactions. They also contended that the benefit they derived from the Impugned Transactions is limited to certain limited shareholdings in the Katerra Group and that these became valueless in June 2021 when the Katerra Group entered bankruptcy; and that this should be reflected in any relief the court might have considered ordering.

JUDGMENT

The Court concluded, first, that the relevant transactions for the purposes of the claims under section 423 were the CEA and the TA and not the wider set of transactions alleged by the SBDs (see para 676 of the judgment).

The Court concluded, second, that these two transactions were at an undervalue because GL released its rights under the RPA (which were worth about $86 million) and did not obtain anything nearly as valuable in return (see para 710).

The Court concluded, third, that GL entered into the CEA and TA with the purpose of removing assets from GL's creditors or otherwise prejudicing their interests, by removing the only source of assets from which they were to be repaid and that this was done without the consent of the creditors. The CEA had only one function, which was to release the RPA. That brought down the securitisation structure, and wrote off GL's only asset. It thereby prejudiced the interests of the claimants, which were left with an unsecured claim against the Greensill companies. Mr Greensill, who authorised the transactions, knew at that date that the Greensill companies lacked resources to meet the claimants' claims. Mr Greensill knew that the whole purpose of the CEA was to release the RPA. He knew that the release of that debt was necessary as part of the refinancing and recapitalisation of Katerra. He therefore caused GL to enter the transactions on 30 December 2020 with the purpose of releasing the only asset of GL (see para 757).

The Court concluded, fourth, that although there was a transaction at an undervalue, and that if Katerra had remained solvent, it would have been appropriate to make an order against Katerra reversing the Impugned Transactions, no relief should be granted against the SoftBank Defendants. This was for several reasons.

First, the Court concluded that the SBDs did not know or suspect that the CEA and TA were being entered into by GL for the purpose of prejudicing the claimants. The SBDs believed in good faith that the $440 million liquidity they had injected in November 2020 would be used to pay the Fairymead Noteholders and internalise the debt to Greensill. They thought that Mr Greensill must have arranged this before the CEA and the TA were completed. They did not

share in the improper purpose of GL, nor did they know of it. The SBDs did not orchestrate the transactions. Rather they were parties to commercially negotiated agreements (see para 810)

Second, the Court concluded that SVF2 received no more than the Katerra Shares, worth $11.3 million, under the TA. That was a benefit arising from or by reason of the Impugned Transactions. That was the full extent of the benefit obtained by the SBDs (para 811).

Third, SVF1 received a block of shares under another, connected, agreement also dated 30 December 2020, known as the PSPA. SVF1 received no benefit in relation to its pre-transaction investment in Katerra, which was diluted down to nothing. The Court concluded that it would not be appropriate to make an order against SVF1 in respect of its pre-existing investment in Katerra as this was written off as part of the recapitalisation. Under the PSPA SVF1 received new equity in Katerra worth $200 million in return for a cash payment of $200 million. As to the new equity received by SVF1 under the PSPA, the Court concluded that no order should be made in respect of any value received on 30 December 2020, since SVF1 had paid in full for those shares as part of the transaction under which it obtained them. For these reasons, SVF1 received no relevant economic benefits from or by reason of the Impugned Transactions (see para 812).

Fourth, in any event, Katerra entered bankruptcy in June 2021 and the shares of Katerra were cancelled. The Court concluded that it would not be appropriate in these circumstances to order the SBDs to make a payment in respect of value the Katerra shares may have had at an earlier date. The Court concluded that, since the Vision Funds had simply held the Katerra shares until they lost their value, it would not be appropriate to require them to make any payment based on a value they may have had earlier. That would have been to require them to become guarantors against market fluctuations, which was not justified in law (para 814).

Though the point did not arise for decision, the Court concluded that CSV had not been negligent by agreeing to a cancellation of a Secondary Trade they entered into on 31 December 2020 with the Greensill Group (para 822).

The Court dismissed the claim (para 825).

NOTE