

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



CR-2019-BHM-000443

**IN THE MATTER OF LENDY LTD (IN ADMINISTRATION)**  
**IN THE MATTER OF SAVING STREAM SECURITY HOLDING LIMITED (IN**  
**ADMINISTRATION)**  
**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

**BEFORE: HIS HONOUR JUDGE RAWLINGS (SITTING AS A HIGH COURT**  
**JUDGE)**  
**DATED: 21 DECEMBER 2020**

**B E T W E E N :**

**(1) Damian Webb, Phillip Rodney Sykes and Mark John Wilson**  
**(as joint administrators of Lendy Ltd (in administration))**  
**(2) Damian Webb, Phillip Rodney Sykes and Mark John Wilson**  
**(as joint administrators of Saving Stream Security Holding Limited**  
**(in administration))**  
**Applicants in the Directions Applications**  
**-and-**

**(1) Lisa Taylor**  
**(as a representative respondent on behalf of the Model 2 Investors and**  
**Model 2 Transferees)**  
**(2) Christine Mary Laverty, Helen Julia Dale and Patrick O'Sullivan**  
**(as joint conflict administrators of Saving Stream Security Holding**  
**Limited (in administration))**  
**Respondents in the Directions Applications**

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**Lendy Group Limited (dissolved)**  
**Applicant in the Joinder Application**

**-and-**  
**(1) Damian Webb**  
**(2) Phillip Rodney Sykes**  
**(3) Mark John Wilson**  
**(the first to third respondents in their capacity as joint administrators**  
**of Lendy Ltd (in administration) and Saving Stream Security Holding**  
**Limited (in administration))**  
**(4) Christine Mary Laverty**  
**(5) Helen Julia Dale**  
**(6) Patrick O'Sullivan**  
**(the fourth to sixth respondents as joint conflict administrators of**  
**Saving Stream Security Holding Limited (in administration))**  
**(7) Lisa Taylor**

**(as a representative respondent on behalf of the Model 2 Investors and Model 2 Transferees)**  
**Respondents in the Joinder Application**

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**MINUTE OF ORDER**

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**UPON THE ORDER** of HHJ Simon Barker QC (sitting as a High Court Judge) dated 23 September 2020 (the “**Barker Order**”)

**AND UPON THE ORDER** of HHJ Rawlings (sitting as a High Court Judge) dated 23 October 2020 (the “**Rawlings Order**”)

**AND UPON THE COURT ADOPTING** the defined terms set out in the Rawlings Order

**AND UPON THE APPLICATION** issued on 11 December 2020 by Isadore Goldman to be removed from the court record as the legal representative for Lendy Group Limited (dissolved) (“**LGL**”) (the “**IG Application**”)

**AND UPON READING** the evidence and other materials contained in Supplementary Bundle B together with (i) the letter from Isadore Goldman to the Court dated 10 December 2020; (ii) the email from Tim Gordon on behalf of Oakwood Investment Management to the Administrators dated 16 December 2020; and (iii) the letter from Shoosmiths to Oakwood Investment Management dated 17 December 2020

**AND UPON HEARING** Ryan Perkins of Counsel for the Administrators, James Fagan of Counsel for Isadore Goldman (solely in relation to the IG Application) and Carmine Conte of Counsel for the First Respondent in the Directions Applications (“**Ms Taylor**”)

**AND UPON READING** the letter from the Financial Conduct Authority (the “**FCA**”) dated 23 November 2020, in which the FCA stated that it

does not wish at this stage to be joined as a party to the Directions Applications or otherwise formally participate in the proceedings (but reserved its right to do so in the future)

**IT IS ORDERED AND DIRECTED THAT:**

**The IG Application**

1. Isadore Goldman is removed from the court record pursuant to CPR 42.3 as the legal representative for LGL.

**The Joinder Application**

2. The Joinder Application is dismissed.
3. The costs of the Joinder Application are reserved (with liberty to apply to restore).

**List of Issues**

4. The List of Issues set out in the Schedule hereof shall form the subject matter of the Directions Applications, and paragraph 7 of the Barker Order is varied accordingly.
5. Ms Taylor shall argue that the answer to Issue 3 is “yes”.
6. By 4pm on 8 January 2021, Ms Taylor shall provide to the Administrators a preliminary list of clauses which she intends to challenge for the purposes of Issues 6 and 7 of the List of Issues.

**Timetable**

7. The deadlines in paragraphs 13, 14 and 17 of the Barker Order are varied as follows:
  - a. the deadline under paragraph 13 shall be 4pm on 25 January 2021;
  - b. the deadline under paragraph 14 shall be 4pm on 26 February 2021; and
  - c. the deadline under paragraph 17 shall be 4pm on 7 April 2021.

## **General**

8. The Administrators' costs of preparing for and attending the hearing on 21 December 2020 shall be paid as an expense of the administration of Lendy Ltd.
9. The Administrators shall serve a copy of this order on each of the other parties.

## **SCHEDULE - LIST OF ISSUES**

### **DEFINED TERMS**

**Administrators** means the joint administrators of Lendy

**Administration Date** means 24 May 2019

**Ex Parte James Rule** means the rule laid down in *Re Condon, ex p James* (1873-74) LR 9 Ch App 609

**Lendy** means Lendy Ltd (CRN: 08244913)

**Model 1 Investors** means investors in Model 1 Loans

**Model 1 Loans** means loans facilitated by the Lendy platform between:

(i) Lendy (as principal); and (ii) the borrowers

**Model 1 Terms** means the terms and conditions as published on the Lendy platform from time to time between Lendy and Model 1 Investors which created a loan agreement whereby Model 1 Investors lent money to Lendy (as principal)

**Model 2 Debenture** means a debenture granted by borrowers to SSSHL (as security trustee) as security for the monies that the Model 2 Investors advanced to borrowers of Model 2 Loans

**Model 2 Investors** means investors in Model 2 Loans

**Model 2 Loans** means loans facilitated by the Lendy platform between: (i) Lendy (as agent for the Model 2 Investors); and (ii) the borrowers

**Model 2 Transferees** means investors in Model 2 Loans who have taken an assignment of part of any Model 2 Loan

**Model 2 Terms** means the terms and conditions as published on Lendy's platform from time to time between Lendy and Model 2 Investors relating to a Model 2 Loan

**Secured Liabilities** means the "Secured Liabilities" defined in clause 1.1 of the Model 2 Debenture and referred to in clause 21.1.2 of the Model 2 Debenture

**Service Charge** means the fee that Lendy may charge to SSSHL after the Administration Date for providing services to SSSHL regarding the enforcement of any security held by SSSHL (as security trustee) in relation to Model 2 Loans

**SSSHL** means Saving Stream Security Holding Limited (CRN: 09736866)

**Unfair Harm Provision** means paragraph 74 of Schedule B1 of the Insolvency Act 1986.

## **LIST OF ISSUES**

### **Model 1 Loans and Model 1 Terms**

1. Do the Model 1 Investors (in their capacity as such) have any claim other than an unsecured provable claim against Lendy?
2. Do the proceeds of security of a Model 1 Loan form part of Lendy's general estate?
3. As regards its contractual liability to Model 1 Investors pursuant to the Model 1 Terms, is Lendy liable to each Model 1 Investor only to the extent that Lendy is repaid by a borrower under, or makes recoveries in respect of, the relevant Model 1 Loan which that Model 1 Investor has funded?
4. If the answer to the question in issue 3 is 'yes', should the Model 1 Investors' contractual claims be valued in an amount equal to the gross proceeds received by Lendy for the relevant Model 1 Loan or the net proceeds of that Model 1 Loan (taking into account the costs of realisation)?

### **Model 2 Loans and Model 2 Terms**

#### *Interpretation, Incorporation and Consumer Rights*

5. On a proper construction of clause 6.3 of the Model 2 Loans, is the borrower required to pay the default interest to (i) the relevant Model 2 Investors and/or Model 2 Transferees, (ii) to Lendy (as principal) or (iii) in any other manner?

6. Were any of the relevant clauses in the Model 2 Terms not properly incorporated into the contract between Lendy and Model 2 Investors (on the basis that they were onerous or unusual or otherwise?)
7. Do any of the relevant clauses in the Model 2 Terms constitute 'unfair terms' under Part 2 of the Consumer Rights Act 2015?

*Fiduciary Duties, Proprietary Rights and Fairness Rules*

8. Has Lendy breached any of its fiduciary duties regarding its charging fees, interest and/or the Service Charge for its own account in connection with the Model 2 Loans? If so:
  - (a) what is the appropriate form of relief for Model 2 Investors and/or the Model 2 Transferees;
  - (b) is Lendy entitled to an equitable allowance to cover its costs as agent; and
  - (c) if the answer to the question in issue 8(b) is 'yes', how should that allowance be calculated in principle?
9. Based upon the answers to the questions in issues 5 to 8, do the Model 2 Investors and/or the Model 2 Transferees have a legal or equitable proprietary interest in any of the following:
  - (a) any default interest payable by a borrower to Lendy under a Model 2 Loan;
  - (b) all standard interest payable by a borrower to Lendy under a Model 2 Loan;
  - (c) any of the fees payable by a borrower to Lendy pursuant to a Model 2 Loan; and
  - (d) the Service Charge?

10. Do the Model 2 Investors and/or Model 2 Transferees hold proprietary rights to the proceeds of any claims by Lendy against third parties relating to Model 2 Loans, such that those proceeds do not form part of Lendy's general estate?
11. If the Model 2 Investors and/or the Model 2 Transferees do not hold a proprietary right to a particular asset listed in issue 9 or 10, should the Administrators refrain from taking advantage of Lendy's strict legal rights regarding those assets for the benefit of the Model 2 Investors and/or Model 2 Transferees pursuant to: (i) the Ex Parte James Rule; or (ii) the Unfair Harm Provision?

*Distribution of Security Proceeds*

12. Which liabilities of the borrower properly constitute Secured Liabilities?
13. Based upon the answer to the question in issue 12, should the Secured Liabilities be discharged *pro rata* between Lendy on the one hand, and Model 2 Investors and/or Model 2 Transferees on the other hand, or in some other manner?
14. Are the Administrators constrained from taking advantage of Lendy's strict legal rights to recover amounts for its own account pursuant to clause 21.1 of the Model 2 Debenture pursuant to: (i) the Ex Parte James Rule; or (ii) the Unfair Harm Provision?

*Unsecured Claims*

15. Do the Model 2 Investors and/or the Model 2 Transferees (in their capacity as such) have any unsecured provable claims against Lendy?



*Administrators' Proper Costs and Expenses*

16. How should the Administrators' proper costs and expenses in relation to administering, enforcing and recovering Model 2 Loans be met if:
- (a) the Model 2 Investors and/or the Model 2 Transferees hold proprietary rights to any or all of the particular assets listed in issues 9 or 10, or both;
  - (b) the Administrators are not entitled to an equitable allowance;  
and
  - (c) the Administrators' proper costs and expenses in dealing with and distributing the Model 2 Investors' and/or the Model 2 Transferees' property cannot be met from Lendy's general estate?