

Claimants
C Lloyd
First
11 October 2023

Claim No. BL-2020-001343

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

B E T W E E N:

- (1) LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION)
- (2) FINBARR O'CONNELL, ADAM STEPHENS, HENRY SHINNERS, COLIN HARDMAN AND GEOFFREY ROWLEY (JOINT ADMINISTRATORS OF LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION))
- (3) LONDON OIL & GAS LIMITED (IN ADMINISTRATION)
- (4) FINBARR O'CONNELL, ADAM STEPHENS, COLIN HARDMAN AND LANE BEDNASH (JOINT ADMINISTRATORS OF LONDON OIL & GAS LIMITED (IN ADMINISTRATION))

Claimants

and

- (1) MICHAEL ANDREW THOMSON
- (2) SIMON HUME-KENDALL
- (3) ELTEN BARKER
- (4) SPENCER GOLDING
- (5) PAUL CARELESS
- (6) SURGE FINANCIAL LIMITED
- (7) JOHN RUSSELL-MURPHY
- (8) ROBERT SEDGWICK
- (9) GROSVENOR PARK INTELLIGENT INVESTMENT LIMITED
- (10) HELEN HUME-KENDALL
- ~~(11) FRANCIS MICHAEL WILLIAM STARKIE~~
- ~~(12) MARTIN STEPHEN RUSCOE~~
- ~~(13) ERIC BOSSHARD~~
- ~~(14) ROGER STEPHEN FILTNESS (REPRESENTATIVE OF THE ESTATE OF ROBIN HUDSON)~~
- ~~(15) CHARLES HENDRY~~

Defendants

WITNESS STATEMENT OF CLARE LLOYD

I, **CLARE LLOYD**, of EVELYN PARTNERS LLP, 45 GRESHAM STREET, LONDON EC2V 7BG, **WILL STATE** as follows:

1. I am a Director at Evelyn Partners LLP (**Evelyn**). I work at Evelyn with, amongst others, Finbarr O'Connell, Colin Hardman, Adam Stephens and Henry Shinner who are Joint Administrators of London Capital & Finance plc (**LCF**). Mr O'Connell, Mr Hardman and Mr Stephens are also Joint Administrators of London Oil & Gas Limited (**LOG**).
2. I make this statement in support of the Claimants' claim against the Defendants. I am duly authorised to make this witness statement on behalf of the administrators of LCF and on behalf of LCF and LOG. The facts and matters set out in this statement are within my own knowledge and they are true to the best of my knowledge and belief.
3. This statement has been prepared following discussions with the solicitors appointed by the Claimants, Mishcon de Reya LLP (**Mishcon**), over four video calls. Unless specified otherwise below, I have a good recollection of the facts addressed in this witness statement as I led on the sale of the Lakeview Resort in Cornwall¹. I have always referred to the Lakeview Resort as "Waterside", and, whilst I understand that in the proceedings the property is defined as "Lakeview", I will refer to the property as "**Waterside**" in this statement.
4. When I refer to a document in this statement that has been disclosed, I refer to its electronic number by reference to the lists of disclosure exchanged between the parties. Where a document has not been disclosed in the proceedings, but I have referred to it to refresh my memory, I have exhibited these documents in Exhibit CLI. I have refreshed my memory by looking at the documents listed at Annex I and exhibited at CLI.I

My background

5. I have worked at Evelyn (formerly known as Smith & Williamson LLP) for fifteen years. I am a qualified accountant and a licenced insolvency practitioner. I have been

¹ The Lakeview Resort is located at Waterside Cornwall, Old Coach Road, Lanivet, Cornwall PL30 5JJ.

in the restructuring industry for over twenty years, during which time my main area of work has been corporate advisory work.

My role assisting the Joint Administrators of LCF

6. At the time LCF went into administration in January 2019, I was a Senior Manager providing support to the Partners and Directors on their cases, whether it be administrations or liquidations. In July 2020, I was promoted to Associate Director and started taking appointments in my own name.
7. As a Senior Manager supporting the Joint Administrators of LCF and LOG, my role was to lead on certain areas of the case that had been assigned to me by the Joint Administrators. During the course of 2019, I became heavily involved in quite a few aspects of the LCF administration.
8. At the outset of LCF's administration, the Joint Administrators of LCF were provided with loan schedules for the borrowers by Chloe Ongley (loans administrator at LCF). Those schedules revealed that the following six companies within the "Prime group" owed LCF approximately £70 million – namely, Waterside Villages Limited, Waterside Support Limited, Costa Support Limited, Costa Property Holdings Limited, Colina Support Limited and Colina Property Holdings Limited. It also came to our attention, whilst reviewing the books and records of LCF, that although there was a significant amount of lending across very few borrowers (including to the six companies noted above), there were limited realisable assets of material value behind those loans. However, amongst those limited assets was a holiday resort – Waterside.
9. Following further investigation, the Joint Administrators identified various security instruments, such as debentures, that had been granted in favour of LCF. These security instruments referenced the loan agreements that recorded the borrowing between LCF and entities within the "Prime group", including but not limited to those mentioned above and Prime Resorts Development Limited (**Prime**).

Discussions with Prime Directors

10. I shall refer to the statutory directors of Prime as the "**Prime Directors**".

11. Early in the administrations of LCF and LOG, I attended weekly strategy meetings between the Joint Administrators, and their key advisors to discuss the restructuring of LCF and LOG.
12. At these strategy meetings, the Joint Administrators would report on the discussions and protracted correspondence between the Joint Administrators and the Prime Directors. My recollection is that these discussions, which started in the summer of 2019, were led principally on behalf of LCF by David Hudson (a consultant whose role was to carry out cash and asset tracing for the LCF invested funds), Finbarr O'Connell, Martin Orrell (engaged by the Joint Administrators as a restructuring consultant) and Mike Stubbs of Mishcon.
13. I understand from being present at the strategy meetings that the Joint Administrators were trying to better understand the lending between LCF and the various subsidiaries of Prime and the prospects of LCF recovering the approximately £70 million that it had loaned, according to the books and records of LCF.
14. The Prime Directors' position at the time was that they were exploring refinancing options which would allow them to repay the £70 million loan in its entirety. As explained above, LCF held various floating charges (in the form of debentures) within the "Prime group" and the Prime Directors were therefore keen for us not to enforce our position as charge-holders.
15. The duty of an administrator is to realise assets for the benefit of creditors and so, where there was a prospect of recovering the whole loan via a refinancing, that would be preferable to, for instance, taking enforcement steps. Some latitude was therefore given to the Prime Directors and their advisors to allow them to demonstrate that there was a real prospect of refinancing the loan. We were also concerned about taking any action that would potentially disrupt a trading holiday resort with customers present onsite.
16. As it turned out, over the course of 2019, the discussions with the Prime Directors, their advisors and the proposed refinancing eventually came to nothing. The Prime Directors were not engaging with us in a constructive manner. It felt like they were stalling in their response to our requests for, as an example, financial documents and access to a data room. Had there been serious proposals for refinancing, we would have expected to see a fully populated data room with the relevant financial information demonstrating discussions with a funder, or other prospective buy-out

proposals. I understand from the strategy meetings that, once the Joint Administrators gained access to the data room from the Prime Directors, none of that information was available or forthcoming. There was very little, if any, useful information to support any prospects of a successful refinancing.

17. By around January or February 2020, it was evident that refinancing was unlikely and there were no proposals from the Prime Directors regarding repayment of the £70 million debt to LCF. We therefore decided to apply to court to enforce our debenture and be appointed as administrators over Prime, primarily to access the books and records, which we felt were required to properly investigate the lending between LCF and Prime and to establish whether any additional enforcement action was needed to preserve the value of Waterside.

The appointment of the joint administrators of the Waterside Companies and Prime

18. On 3 February 2020, Prime went into administration and Finbarr O'Connell, Adam Stephens, Colin Hardman, Lane Bednash and Mark Ford were appointed as joint administrators of Prime.

19. I understand from what was discussed at the LCF strategy meetings that the information and records obtained from the Prime appointment prompted the decision to enforce over the following companies six weeks later:

- (i) Waterside Cornwall Operations Limited (**WCOL**);
- (ii) Waterside Villages Limited (**WVL**);
- (iii) Waterside Cornwall Group Limited (**WCGL**); and
- (iv) International Resorts Management Limited (**IRML**),

together, the **Waterside Companies**. Prime was the holding company of the Waterside Companies.

20. On 17 March 2020 Finbarr O'Connell, Colin Hardman and Lane Bednash were appointed as joint administrators of the Waterside Companies.

21. It was also around this time, in early 2020, I was asked to lead on investigating and managing LCF's interests in the Waterside Companies. I explained above that Martin

Orrell was originally engaged by the Joint Administrators of LCF as a consultant to provide a supervisory role, which subsequently extended to dealing with operations at the Waterside resort. From the first quarter of 2020 until around August 2020 (when I took on a more active role), he was 'on the ground' at Waterside, overseeing its trading and reporting to the Joint Administrators of LCF. Martin had experience in company restructuring and insolvency through his long career at Royal Bank of Scotland. Martin had assisted the Joint Administrators of LCF in other respects. For instance, he was appointed as a non-executive director of LOG, prior to its administration. Once the Joint Administrators were appointed over LOG, Martin's role as non-executive director ceased, following which he became involved in the strategy pending the appointment of administrators over the Waterside Companies and provided a witness statement in support of that application. In addition, because of the trend of directors and management having abandoned LCF-connected companies, leaving some LCF-connected companies with no directors at all, the Joint Administrators of LCF took the decision to appoint somebody as a "caretaker director" of the Waterside Companies to oversee its interests, which role was assigned to Martin.

22. Prior to gaining control of Prime and the Waterside Companies, we broadly understood the position to be as follows:
 - (i) Prime was a non-trading holding company for various subsidiary companies, including the Waterside Companies.
 - (ii) WCOL was the operating company, which employed the staff and dealt with suppliers, customers and the general trading of the resort.
- (b) WVWL, WCGL and IRML held various land titles and lodges at Waterside.
23. As explained in more detail below, once we had control of the Waterside Companies, we discovered countless issues which we had to deal with, arising from the haphazard way in which the trading of the site had been set up. WCOL dealt with most of the customers, however, we established that WCGL had, on occasion, contracted with at least some of the suppliers. Prior to our involvement, it appeared that no-one had any real oversight over which company dealt with what.
24. Another issue was that the site itself was owned by multiple stakeholders, not just the Waterside Companies. We discovered that within the boundary of the

Waterside site there were some parcels of land (on which lodges had been built) that were privately owned by individuals and some other parcels of land (again, on which lodges and the central facilities had been built) that were owned by other parties (i.e. – companies other than WV, WCGL and IRML). We had to reinstate London Power Management Limited, previously dissolved by its directors, which held 24 leaseholds. When trying to sell something in its entirety which is owned piecemeal, bringing together all stakeholders and trying to establish who owned what was quite a complicated process. It was only once we were appointed as administrators of all the Waterside Companies that we could really get under the skin of who might own what. By way of example, when we were appointed, we reviewed the books and records (which were virtually non-existent) and undertook further investigations in order to identify who owned which parcels of land). I explain in more detail below how we came to know about the hundreds of bondholders with interests in Waterside and the delay this caused to marketing Waterside for sale.

25. With insufficient funds available in WCOL to pay the staff, who had not been paid since (I believe) Christmas 2019, it was unclear whether Waterside would be able to continue to trade.

Effects of Covid-19

26. In terms of the timescale – we were appointed over Waterside on 17 March 2020 and I think we were told by the Prime Minister that same week that we should all work from home where possible. I recall this because the next weekend was Mother's Day and everything shut down after that.
27. At that time, because WCOL had no money with which to continue to trade and pay the staff, we were looking to make the staff redundant. However, the job furlough scheme was introduced shortly thereafter, which meant that we could put all of the staff on furlough, pay them the salaries they were owed under the government's retention scheme and mothball the site (because at that time no one was able to utilise it for any other purpose due to lockdown). This gave us a window where we were able to decide what we could do with the site and establish what would be the optimum strategy.
28. The effects of Covid-19 meant that the staff could be paid and we could close down the site, which gave us some breathing space to assess its condition – i.e whether we

could trade Waterside once the government restrictions were lifted, or whether it would have to be sold as a shutdown scenario.

29. At around this time, a formal valuation was carried out almost as soon as we took over as administrators because we needed to ascertain Waterside's value before we decided whether to sell immediately or whether it would be possible to continue trading (with a view to enhancing the outcome to creditors). I recall that the Joint Administrators' initial assessment of Waterside's value, as a best case outcome, was around £3 million.

Defects discovered onsite

30. Once lockdown restrictions started to lift in July 2020, the Joint Administrators decided that we needed to be more involved to ensure that we were protecting LCF's investment in Waterside. It is around this time when more work was done to investigate Waterside's health and safety compliance.
31. Given my experience in managing trading administrations, my involvement in Waterside increased some weeks after it had reopened in July 2020. I discussed with the Joint Administrators of LCF and the administrators of WCOL that we needed a proper licenced agent on site, dealing with the trading on a day-to-day basis and a more 'hands on' approach. We therefore decided to replace Valley Resorts (who were slow to respond to our requests and did not inspire confidence that they were paying the necessary attention to health and safety and maintenance issues on site) with Licensed Solutions, a firm we had worked with previously and whom we could trust. Licensed Solutions maintained an onsite presence and managed the day-to-day trading. They reported to me and I spoke to them on (usually) a daily basis and received weekly trading reports, which I would then feed back to the joint administrators of the Waterside Companies.
32. As soon as administrators are appointed over a company which has assets requiring insurance, we have automatic 'open cover' insurance which is active from day 1 of their appointment. We are then required to complete a questionnaire within 14 to 28 days, which sets out the specifics of that particular insurance coverage requirement. I was not involved with that initial questionnaire, which was completed by Martin Orrell and submitted by our case team. Ordinarily, in a trading scenario, our insurers would attend on site in the early stages of our appointment to finesse the insurance requirements. However, due to the lockdown, our insurers were

largely restricted to a desktop assessment of the insurance requirements. As restrictions lifted and as I subsequently became more involved, I wanted to be satisfied that the joint administrators of the Waterside Companies had sufficient insurance coverage, particularly as we had reopened the site to the public. Therefore, we needed to ensure that we did everything required to ensure the public's safety, and we had to be conscious of the personal liability risk as officeholders.

33. I subsequently commissioned our insurance brokers, Marsh, to undertake a comprehensive assessment of the Waterside site, which commenced in September 2020. The easing of lockdown restrictions at this time meant that people could attend the site to carry out inspections. Marsh selected three independent assessors to undertake an on-site inspection and investigate the following: (i) the fire-risk assessment; (ii) the water assessment; and (iii) general site security.
34. Marsh reported that the site was defective in a number of areas and there were certain aspects of the site identified as 'red flags' that needed urgent attention if Marsh were to continue to provide insurance cover. In particular:
 - (i) The lodges required immediate remedial action as they did not meet fire safety standards – the type of doors which had been installed were not compliant with a building which was made from wood. We therefore had to undertake remedial works in respect of all the lodges, to make them fit for purpose and compliant with the relevant safety standards. Effectively, the site could have been shut down at any point if there had been an inspection by the local council or, in the worst case, an accident that required some kind of investigation by the fire service.
 - (ii) There were also issues concerning the hot tubs on site. Marsh reported that there was inadequate maintenance of the hot tubs – most critically, the independent assessor was not satisfied that regular water testing had been carried out to rule out the risk of Legionnaires' disease, so we had to take

steps to correct that, including water testing, providing instructions for use and replacing valves for water flow.

- (iii) In addition, the necessary permit issued by the local council in respect of the water drainage systems had expired, so Licensed Solutions engaged with the council to renew the permit.
 - (iv) Other safety issues were identified – by way of example – a manhole had not been covered up, which was clearly a hazard for the guests. We therefore had to remedy this defect and cover up the manhole.
35. The central facilities (comprising the restaurant, bar, swimming pool and gym) had been closed since our appointment. Prior to our appointment, the restaurant had been loss-making. Ahead of reopening the site in July 2020, it was discovered that the swimming pool required such significant repairs that it was not commercially viable to meet the costs of the repairs, therefore the swimming pool remained closed throughout our occupation. For reasons set out above, the restaurant also remained closed. Also, due to social distancing requirements, it was decided that the gym would not reopen to the public.

Investment in Waterside

36. We realised that, with the help of our agents, if we could profitably trade the site and make it safe for customers – with international travel impacted by Covid-19 and the 'boom' of staycations – we could potentially increase the value of the site and sell it as viable trading business compared to a shutdown 'firesale' scenario.
37. When factoring in the cost of repair in an administration scenario where the company is insolvent and does not have the funds to pay for this, administrators have to make a judgment call on whether it is worth the investment – i.e. are we likely to make more or less money if we decide not to invest in the repairs? For example, the costs of repairing the swimming pool would have been considerable, and there was also the cost of employing a lifeguard. As a consequence of the ban on foreign travel, staycations were in such demand that the resort was largely fully booked throughout the peak seasons (spring and summer), regardless of whether the swimming pool or the gym were open for use.

38. The resort also hosted events such as weddings and corporate events and, at the time of our appointment, there were a small number of deposits which had been paid for upcoming weddings. However, these events were not happening at the time and weddings were restricted to small numbers because of the social distancing restrictions brought about by Covid.
39. Our view was therefore, whilst it would potentially enhance the customers' experience to have offered these additional amenities, their closure did not fundamentally affect the profitability of the resort at that time (because Waterside continued to be in high demand).
40. It was the opinion of our property agents, Miller Commercial, that being able to sell Waterside as a compliant trading, operational business would generate an uplift of about 25% in Waterside's value, versus if it had to be sold in a shutdown scenario. Although the remedial works would not have been required if we ceased trading, a purchaser would have likely used the costs of the essential repairs to try and negotiate a lower price. In addition to having traded profitably for the two years prior to sale, if the site was in good shape after due diligence had been carried out, that would limit the scope for any price-chipping. Any additional work that a purchaser might wish to undertake would be seen as "improvements" to the site, which is their choice. The Joint Administrators therefore decided that LCF should loan WCOL sufficient funds which were required beyond the funds received from accommodation sales, to enable it to carry out the remedial works and necessary operating expenses to make the site safe for trading and compliant with the health and safety standards.
41. From a review of the trading receipts and the payments account (which record all of the expenditure that was required on Waterside to bring it up to spec to allow us to trade) we traded at a profit during the time that we owned Waterside and following the sale of the resort, the LCF funding was repaid.
42. Overall, we walked into a scenario where the staff were unpaid, the site was underinvested and there were a number of serious health and safety and maintenance defects. By taking the steps we did, the Joint Administrators enabled Waterside to continue to trade and ultimately enhanced the value of Waterside prior to its sale, which I expand on below.

Bondholders of Waterside Village Bonds Limited and Lakeview UK Investment Limited

43. In addition, there was another issue – in that there were two broad groups of bondholders, with interests in Waterside. I refer to these as the "WVB bondholders" and the "LUKI bondholders."

(i) WVB bondholders

44. We identified that members of the public (the WVB bondholders) had purchased bonds from a company called Waterside Villages Bonds Limited (**WVB**). Following our review of the books and records of the Waterside Companies, we identified that the WVB bondholders had been promised regular coupon payments, that their investment would be protected by way of security over assets, and that a security trustee (TMF Trustees Limited (**TMF**)) would hold that security on behalf of the WVB bondholders. We also identified that TMF held security over part of a land title located within the perimeter of the Waterside site and that land title was owned by WVL (one of the four Waterside Companies that went into administration in March 2020).

45. After further investigations, we identified that the WVB bondholders had invested approximately £3 million into WVB. We also identified that the WVB bondholders ran to many hundreds, though it was difficult for us to confirm the position definitively as explained below.

46. Some of the WVB bondholders weren't even aware that their funds had been invested in Waterside. This is because the bonds were purchased on their behalf by financial advisors as part of their SIPP (self-invested personal pension). As far as we could tell, very limited if any of those funds were used to improve the lodges or otherwise enhance the Waterside resort. The coupon payments stopped being paid to the WVB bondholders in around late 2018 (at around the same time that bondholders of LCF stopped receiving coupon payments). The added difficulty was that most of the WVB bondholders had invested via an investor platform called Novia. However, Novia would not disclose the details of their underlying clients (the investors) to the joint administrators of WVL.

47. This gave rise to a scenario where hundreds of individuals (the WVB bondholders) had the benefit of security (via their security trustee, TMF) over part of the Waterside

resort. We engaged in a dialogue with TMF and obtained its consent to communicate with the WVB bondholders. The dialogue with TMF and its legal advisors was protracted and continued for over a year.

48. We had to try and draw in the hundreds of WVB bondholders to agree that we could sell the land in which they had an interest via the security held on their behalf by TMF. The process of establishing who owned the title to what and then securing agreement to sell the Waterside resort was extremely complicated and took a number of months. It was not until March 2021, when we were confident on the ownership/security position that the administrators of WV L were in a position to write to the WVB bondholders and seek their permission to sell the land title owned by WV L (in which the WVB bondholders held a security interest). The WVB bondholders were then required to decide whether to release their security interest over part of a land title owned by WV L. Following a voting process, the WVB bondholders granted TMF permission to release their security interest in the land title owned by WV L.
49. Of course, we could not go to market until we knew what we were able to sell. It would have been unattractive to a buyer to own only part of the Waterside site. We wanted to be in a position where we could ensure that the site could be sold as a whole in order to maximise the value.
50. The matters described above took approximately 18 months to resolve.

(ii) LUKI bondholders

51. Whilst reviewing the books and records of the Waterside Companies and Prime, we also identified that members of the public had purchased bonds from a company called Lakeview UK Investment Limited (**LUKI**). The position was similar as in relation to WVB above. Following our review of the books and records of the Waterside Companies and Prime, we identified that the bondholders of LUKI had been promised regular coupon payments, that their investment would be protected by way of security over assets, and that a security trustee (Bay Consultancy Limited) would hold that security on behalf of the LUKI bondholders. We identified that Bay Consultancy Limited held security over a part of a land title located within the perimeter of the Waterside resort owned by WCOL (one of the four Waterside Companies that went into administration in March 2020).

52. Following further investigations into LUKI, we identified that the LUKI bondholders had invested approximately £5 million into LUKI. We also identified that there were several hundred LUKI bondholders. However, as far as we could tell, very limited if any of those funds were used to improve the lodges or otherwise enhance the Waterside site.
53. In summary, there were several hundred LUKI bondholders with bonds raised to the value of £5 million, but it was very difficult to identify the LUKI bondholders as the bond register held limited information and the security trustee who held their interests, called Bay Consultancy Limited, had been dissolved.
54. The process of identifying the interest of the various LUKI bondholders took several months. The consent of the LUKI bondholders to sell their interest in the Waterside resort was eventually obtained in September 2021.

My visit to Waterside

55. I visited the Waterside site on several occasions and stayed at the resort for probably just under a week. I was able to see it from two different viewpoints – from a management perspective, selling it as a viable operating prospect, and also from a customer perspective. Whilst an attractive site on first appearance, on closer inspection, it was clearly in need of investment to properly maintain the accommodations and central facilities. From site visits with our agents, it became apparent that the site had been poorly maintained and had not benefitted from remedial works for some time. Clearly it had been run on a shoestring for months. We know that LCF did not fund it beyond the end of 2018, because that was when LCF ceased to trade. I understand that, other than income from the customers of Waterside, LCF was the only source of money – which ties in with the end of 2018, which is when the last bond coupon payments were made to the WVB bondholders. I am not certain how Waterside was able to trade from early 2019 to early 2020. My assumption is that accommodation sales were just about sufficient to pay the staff up until the end of 2019 and keep it going in the short term.
56. That said, it was a site that definitely had potential, but clearly needed investment – especially the central facilities. The location is fairly remote – there are no attractions or local conveniences within walking distance and it's at least 15 minutes' drive to Newquay. It is perfectly pleasant, but once you're there that's pretty much where you are, unless you have a car.

Sale of Waterside

57. In September 2021, we were able to publicly market the sale of Waterside – which was advertised nationally and beyond as an open sale.
58. Potential buyers were encouraged to visit the site prior to submitting an offer. Our agents were Miller Commercial based in Cornwall, engaged as a sub-agent by Fraser Real Estate. Miller Commercial provided market and sector-specific support in relation to Waterside. They also interacted with potentially interested parties and showed them around the site. Miller provided a guide-price for the sale of Waterside of £6.5 million.
59. The sale was structured as a sale of Waterside's entire business as a going concern, not just the assets held by Waterside Companies. The sale had to also include the land titles held by the WVB bondholders, the LUKI bondholders and the individual lodge owners. At the end of the transaction, the Joint Administrators were left with the Waterside Companies and the proceeds paid to each of those entities from the sale, but no other assets.
60. As is customary with this type of sales process, interested parties would sign an NDA and be granted access to a data room set up and administered by Miller where they were able to assess, amongst other things, the financials. A deadline was set for first offers, which were then assessed.
61. We had the initial round of offers in November 2021. In this type of situation, administrators are often running a sale process under time pressure, and because every pound we were spending would be a pound less back to the creditors, we could not carry on *ad infinitum*. It's an administrator's responsibility to act in the interests of creditors and, in this case, that required the realisation of Waterside.

Assessment of bids

62. Fraser Real Estate presented us with the first round of bids and would add their own commentary. There were then telephone conversations with Fraser Real Estate to discuss the bids.
63. From the outset, the highest bidder (who I am not identifying because of the restrictions in the NDA) did not necessarily approach the sale in the way we would expect an interested party to have done so, as I explain further below.

64. We needed to establish (1) who the buyers were (i.e. could they satisfy KYC checks); and (2) that they had the funds or finances available to proceed. Usually, the buyer would have a letter from their bank or funder confirming that they were in funds and that they were able to complete, supported by confirmations about their legal advisers acting for them who would assist with the necessary contracts and so on. For the site inspection, the buyers would tell us who was visiting on their behalf and whether they had the necessary authorisations.
65. The highest bidder was not able to satisfy any of these conditions, which was an immediate red flag to us, and we were unable to verify precisely who the ultimate purchaser was that sat behind the corporate entity. However, in accordance with an administrators' duty to act in the interests of creditors and with a view to maximising realisations, a high offer would never be rejected out of hand without first exploring it. We therefore engaged with all parties on the same terms and all were given the same opportunities, requests and deadlines with which to comply.
66. Some buyers will take on UK holiday resorts and, to make it a success, a buyer will, generally speaking, have the same type of experience in terms of owning and running a resort. However, the highest bidder in question did not offer any credentials in that area or specify why particularly they had an interest.
67. When it comes down to measuring the offer, of course price is a factor, but an administrator also needs to consider the terms for their offer. For example, deferred consideration (which is sometimes dependent on a number of conditions and the time frame for receiving it) can be unattractive. It could take a year, which does not necessarily fit with trying to limit the cost of the administration and make a return to creditors.
68. There was also a point about timing to be balanced. Staycations were going to wane at some point because of the lifting of Covid restrictions. There was going to be a point in the fairly near future when Waterside wasn't going to be as attractive a prospect. We had wanted to sell the site sooner, but we were delayed in being able to put it to market because of the complications around who owned what. The site was widely marketed over a period of months. However, in order to maximise realisations, our agents (Miller Commercial) advised that the optimum timeframe within which to sell the resort was in the off-peak season.

69. All of the factors needed to be weighed up and we did not want to run the risk of discounting serious buyers, who had offered a lower price, by chasing the highest bidder in circumstances where they did not have the documents to support that they were a bona fide purchaser. In a distressed scenario, there is a risk of losing a bona fide bidder (albeit with a lower offer) by doing this.
70. Upon Fraser Real Estate's recommendation in mid-December 2021, we accepted a final offer from Park Holidays for £10.2 million and heads of terms were agreed around Christmas Eve. The actual sale consideration was £10.1 million, as some adjustment was made for customer deposits and bookings that fell into a different time period, when the joint administrators for WCOL were still trading Waterside. Proportionately, this was a very small deduction in the scheme of things and the normal price chipping that occurs when you sell anything, indeed this really is just an adjustment to reflect how deposits for bookings were held. If we achieved the guide price, that would have been acceptable and a good outcome, but the consideration was substantially higher than the guide price of £6.5 million.

SUMMARY

71. The sale completed on 29 April 2022 and included the trading business, all land titles, lodges and property pertaining to the Waterside resort.
72. In my opinion, the sale of Waterside was a successful outcome for creditors. We took over an asset that required investment, that was not fit for purpose, and where establishing the ownership position was extremely complicated. Not only did we trade a profit during that period, but we were also able to sell it for £10.1 million, substantially more than the guide price of £6.5 million. That is, on any view, a success.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:

A large black rectangular redaction box covering the signature area.

Clare Lloyd
Name:

11 October 2023
Date:

WITNESS CONFIRMATION OF COMPLIANCE

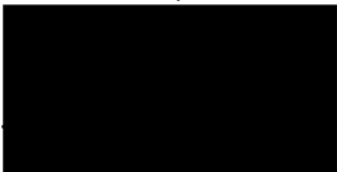
I understand that the purpose of this witness statement is to set out matters of fact of which I have personal knowledge.

I understand that it is not my function to argue the case, either generally or on particular points, or to take the court through the documents in the case.

This witness statement sets out only my personal knowledge and recollection, in my own words.

On points that I understand to be important in the case, I have stated honestly (a) how well I recall matters and (b) whether my memory has been refreshed by considering documents, if so how and when.

I have not been asked or encouraged by anyone to include in this statement anything that is not my own account, to the best of my ability and recollection, of events I witnessed or matters of which I have personal knowledge.

Signed: ...  ...

Clare Lloyd
Name:

11 October 2023
Date:

LEGAL REPRESENTATIVE CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. I am the relevant legal representative within the meaning of Practice Direction 57AC.
2. I am satisfied that the purpose and proper content of trial witness statements, and proper practice in relation to their preparation, including the witness confirmation

required by paragraph 4.1 of Practice Direction 57AC, have been discussed with and explained to Henry Shinnars.

3. I believe this trial witness statement complies with Practice Direction 57AC and paragraphs 18.1 and 18.2 of Practice Direction 32, and that it has been prepared in accordance with the Statement of Best Practice contained in the Appendix to Practice Direction 57AC.

Signed:

Barry Coffey
Name:
Partner
Position:
11 October 2023
Date:

Annex I – List of documents further to PD57AC, paragraph 3.2

- MDR_POST_00001963
- MDR_POST_00001962
- MDR_POST_00001955
- MDR_POST_00001983
- MDR_POST_00001984
- MDR_POST_00002015
- MDR_POST_00000392
- MDR_POST_00000485
- MDR_POST_00002571
- MDR_POST_00002573
- MDR_POST_00002574
- MDR_POST_00002576
- MDR_POST_00002577
- MDR_POST_00002590
- MDR_POST_00002589
- Claimant's bundle for the LUKI v Bay Consultancy Limited hearing dated 22 March 2022
- Transcript of the LUKI v Bay Consultancy Limited hearing dated 22 March 2022
- Order of Chief Master Shuman dated 24 March 2022
- Witness Statement of Michael Stubbs dated 25 March 2022
- Exhibit MASI
- Notice of Appointment as Administrators for Prime dated 3 February 2020
- Witness Statements of Martin Orrell dated 11 March 2020 (IRML)
- Witness Statements of Martin Orrell dated 11 March 2020 (WCGL)
- Witness Statements of Martin Orrell dated 11 March 2020 (WVL)

- Witness Statements of Martin Orrell dated 11 March 2020 (WCOL)
- Witness Statement of Lane Bednash dated 11 March 2020 (WCOL, WV, WCGL, IRML)
- Administration Order dated 17 March 2020 (IRML)
- Administration Order dated 17 March 2020 (WCGL)
- Administration Order dated 17 March 2020 (WV)
- Administration Order dated 17 March 2020 (WCOL)

Claimants
C Lloyd
First
11 October 2023

Claim No. BL-2020-001343

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

B E T W E E N:

**(1) LONDON CAPITAL & FINANCE PLC (IN
ADMINISTRATION)**

**(2) FINBARR O'CONNELL, ADAM
STEPHENS, HENRY SHINNERS, COLIN
HARDMAN AND GEOFFREY ROWLEY
(JOINT ADMINISTRATORS OF LONDON
CAPITAL & FINANCE PLC (IN
ADMINISTRATION))**

**(3) LONDON OIL & GAS LIMITED (IN
ADMINISTRATION)**

**(4) FINBARR O'CONNELL, ADAM
STEPHENS, COLIN HARDMAN AND LANE
BEDNASH (JOINT ADMINISTRATORS OF
LONDON OIL & GAS LIMITED (IN
ADMINISTRATION))**

Claimants

and

(1) MICHAEL ANDREW THOMSON

(2) SIMON HUME-KENDALL

(3) ELTEN BARKER

(4) SPENCER GOLDING

(5) PAUL CARELESS

(6) SURGE FINANCIAL LIMITED

(7) JOHN RUSSELL-MURPHY

(8) ROBERT SEDGWICK

**(9) GROSVENOR PARK INTELLIGENT
INVESTMENT LIMITED**

(10) HELEN HUME-KENDALL

(11) FRANCIS MICHAEL WILLIAM STARKIE

(12) MARTIN STEPHEN RUSCOE

(13) ERIC BOSSHARD

(14) ROGER STEPHEN FILTNESS

(REPRESENTATIVE OF THE ESTATE OF

~~ROBIN HUDSON)~~
~~(15) CHARLES HENDRY~~

Defendants

WITNESS STATEMENT OF CLARE LLOYD

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Ref: DD/BC/EG/61334.1
DX 37954 Kingsway

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