Application by joint liquidators for certain relief in respect of three companies, to make payments to a Bank. The liquidators also sought an increase in the amount that had been estimated as involved in conducting that liquidation under the terms of Practice Direction No. 3 of 2015 and then the appointment of a Commissioner pursuant to section 417 of the 2008 Law.

[2023]GRC005

IN THE ROYAL COURT OF GUERNSEY

(ORDINARY DIVISION)

IN THE MATTER OF:

EAGLE HOLDINGS LIMITED (IN COMPULSORY LIQUIDATION)

GULL INVESTMENTS LIMITED (IN VOLUNTARY LIQUIDATION)

KESTREL INVESTMENTS LIMITED (IN VOLUNTARY LIQUIDATION)

WEST DERBY INVESTMENTS LIMITED (IN VOLUNTARY LIQUIDATION)

Dates of hearings: 7th and 26th January 2022

Decision handed down: 2nd March 2023

Before: Richard James McMahon, Esq., Bailiff

Applicants' representative: Advocate A C Lyne

Legislation referred to:

The Companies (Guernsey) Law, 2008
Practice Direction No. 3 of 2015
Huelin-Renouf Shipping Guernsey Limited (unreported, 4 September 2015)
Jubilee General 2 Limited (unreported, 18 August 2017)
Canargo Limited (unreported, 23 October 2020)
McPherson and Keay, *The Law of Company Liquidation* (5th ed.)
The Limited Partnerships (Guernsey) Law, 1995
The Partnerships (Guernsey) Law, 1995

Introduction

1. Eagle Holdings Limited was made subject of an administration order on 26 November 2013 and then placed into compulsory liquidation by order of this Court on 10 July 2015. Timothy Le Cornu and Edward Klempka, both of whom had been joint administrators, were appointed as the joint liquidators. By a further order made on 20 January 2017, Robert Maxwell was appointed as a replacement joint liquidator following Mr Klempka's resignation from that office.

2. Eagle Holdings Limited forms part of a wider group of entities associated with Glenn Maud and the Propinvest Group. As its name implies, it was a holding company for a number of other entities within its group. For the purposes of the present Application, those entities included Gull Investments Limited, Kestrel Investments Limited and West Derby Investments Limited. Each of these three companies was placed into voluntary liquidation on 9 January 2017 by written resolution. At that time, Mr Le Cornu and Mr Maxwell were appointed jointly with Andrea Harris, but the latter resigned her offices on 20 November 2020. Joint liquidators were also appointed to other subsidiaries of Eagle Holdings Limited in the same manner (Adriatic Holdings Limited, Headrow Property Holdings Limited, Rockhopper Property Holdings Limited and Villa Investments Limited).

3. By an Application dated 13 December 2021, Mr Le Cornu and Mr Maxwell applied for certain relief in respect of the three companies of which they are joint voluntary liquidators, and associated relief in respect of Eagle Holdings Limited. In respect of Gull Investments Limited, Kestrel Investments Limited and West Derby Investments Limited, directions were sought pursuant to section 426 of the Companies (Guernsey) Law, 2008, as amended. The simplest way to describe this relief is that it sought permission to make a payment from each company to Barclays Bank plc in circumstances I will describe in more detail in due course or, in the alternative, that the joint liquidators be appointed as joint liquidators of a limited partnership in each case. Further, the joint liquidators of Eagle Holdings Limited sought an increase in the amount that had been estimated as involved in conducting that liquidation under the terms of Practice Direction No. 3 of 2015 and then the appointment of a Commissioner pursuant to section 417 of the 2008 Law.

4. This Application first came before the Court on 7 January 2022. The Applicants were represented by Advocate Lyne, who took me through the material that was then available, being the Third Affidavit of Mr Le Cornu, which he had sworn on 17 December 2021. This contained a description of the way in which the liquidations had been conducted and the position that had reached. He also exhibited a number of documents. Advocate Lyne had also prepared a Skeleton Argument. I was not, however, satisfied that the evidence offered a full picture of what I acknowledged had been a complex liquidation (or, more accurately, the set of liquidations). After a short adjournment to enable Advocate Lyne to take instructions, the Application was adjourned to enable further materials to be lodged.

5. The Application returned to Court on 26 January 2022. By this time, there was also a Second Affidavit from Mr Maxwell setting out more information and Advocate Lyne had prepared some further written submissions. As a result of this further material and the discussion of the position with Advocate Lyne, I felt that it was necessary for the Applicants to liaise with those who had conducted the liquidations of the general partners of the three limited partnerships, since dissolved, to which distributions might otherwise have been made by the three subsidiaries of Eagle Holdings Limited in respect of which the Applicants were seeking directions.

6. Under cover of a letter dated 22 July 2022, further information was provided. The suggestion made was that the assets in question may well be regarded as bona vacantia. As a result, I directed the Applicants to provide the materials that had been placed before the Court to Her Majesty's Receiver-General (as that office was named at the time). By way of a further update, under cover of a letter dated 20 October 2022, Advocate Lyne explained that His Majesty's Receiver-General was not minded to make any representations on behalf of the Crown in right of Guernsey. Accordingly, I indicated that I expected there would need to be a further hearing but that, in light of the comments of His Majesty's Receiver-General, Advocate Lyne might wish to liaise with the Treasury Solicitor first. Under cover of a letter dated 14 February 2023, Advocate Lyne has now produced the correspondence she has had with the Treasury Solicitor and the Solicitor for the Affairs of the Duchy of Lancaster and has asked that the Application

now be determined on the papers in order to minimise the costs being incurred. The effect of which would be to reduce the amounts available to distribute. In the circumstances, I am satisfied that I now have as much material as is ever likely to be available and so will accede to that request.

Background

7. Eagle Holdings Limited was incorporated in Guernsey on 12 March 2005. It was involved in buying, selling and renting property and other real estate activities. The Propinvest operation was very considerable but, as other proceedings before the Court have shown, it suffered from the financial crash in the late 2000s and the brainchild of Mr Maud and others ended up being insolvent when the entities within the group were in breach of covenants on the borrowings they had. The group of which Eagle Holdings Limited was the holding company owned three significant portfolios of properties, which have been described as "Blade", "Gemini" and "Celsius".

8. The parent company, re-named Propinvest Group Limited, was placed into administration by this Court in November 2011. A worldwide freezing order was obtained in August 2012. Among those affected by that order was Eagle Holdings Limited. At around that time, administrators were appointed to four general partners within the structure that had been used for this venture. Two of those general partners were Thistle Investments Limited and Palace Investments Limited.

9. Thistle Investments Limited and Palace Investments Limited were involved as the two general partners with four particular limited partnerships: Propinvest Fitness LP, Propinvest Northfield LP, Thistle Grange LP and Propinvest Sutherland LP, all of which were within the "Gemini" portfolio. These limited partnerships borrowed under various facility arrangements in respect of property holdings in major cities throughout Europe. In particular, there was an agreement, as re-stated under a written agreement dated 1 September 2006, in relation to a junior credit agreement made between 31 limited partnerships named in Part B of Schedule 1 to this document, acting through their general partners, which included three of the four limited partnerships to which I have just referred, and Barclays Bank plc, with another entity, Barclays Capital Mortgage Servicing Limited, acting as facility agent and security trustee. Thistle Grange Limited Partnership is mentioned as one of the limited partners of a different limited partnership. The limited partners of Propinvest Fitness LP, Propinvest Northfield LP and Propinvest Sutherland LP are Mr Maud in each case plus Gull Investments Limited, Kestrel Investments Limited and West Derby Investments Limited respectively.

10. Another of the subsidiaries of Eagle Holdings Limited was Callendar Property Holdings Limited. That company also had a wholly owned subsidiary, Callendar Square Limited. The subsidiary had been reinstated in Scotland so that it could benefit from the receipt of a substantial redress payment from Clydesdale Bank. Those monies were then passed upwards to Callendar Property Holdings Limited, which was in the process of being liquidated and so made a payment to Eagle Holdings Limited. This happened in March 2020. £340,654.73 was received, along with a payment of £26,823.09 in respect of the costs of reinstating Callendar Property Holdings Limited and then winding it up. It is because Eagle Holdings Limited has received these monies that the Applicants, as joint liquidators, have to work out how to pay them away, hence the Application. Mr Le Cornu's evidence refers to a complex web of inter-company positions that need to be resolved as well.

11. Mr Le Cornu's evidence also provides an update in relation to what might or might not be realised from two further properties in Bremerhaven and Leipzig. The Applicants concluded that they would be unlikely to generate any further liquidity.

12. The Applicants decided that the Eagle Group's only external creditor is Barclays Bank plc. As a result, they are seeking approval to distribute the monies they will receive from Eagle Holdings Limited as the joint liquidators of Gull Investments Limited, Kestrel Investments Limited and West Derby Investments Limited directly to Barclays Bank plc. This is because the three limited partnerships to which the monies held by Eagle Holdings Limited would be passed have all been dissolved. The alternative was to treat the monies as being bona vacantia.

The proposal

13. Although much more detail could be provided to expand upon this background, it is sufficient to place into context the analysis undertaken by the Applicants.

14. The Applicants have noted that, when the various properties within the "Gemini" portfolio were realised by the administrators appointed to the general partners, which in this instance means Thistle Investments Limited and Palace Investments Limited, there was a substantial shortfall and this resulted in no payment being made to Barclays Bank plc under the debt owed by those limited partnerships. After contacting Barclays Bank plc on a number of occasions, someone who had sufficient knowledge of the position was able to assist the Applicants and, through e-mail correspondence, confirmed that the debt was still owed.

15. Although Mr Le Cornu sets out four options that were considered by the Applicants, their preference was to apply for directions under section 426 of the 2008 Law in the hope that they could be directed to make direct distributions from Gull Investments Limited, Kestrel Investments Limited and West Derby Investments Limited directly to Barclays Bank plc on the basis that this would be more cost-effective than any of the other options articulated. On the basis that those other options have been set out but are not being pursued, I will make no further comment in relation to them.

16. The position is summarised in a document referred to as a "Distribution Model". The starting point is that the Applicants, as joint liquidators of Eagle Holdings Limited, now hold a surplus of funds. The amount of that surplus depends on what can properly be taken by the Applicants as the costs charges and expenses, including their remuneration, from the assets of Eagle Holdings Limited pursuant to section 418 of the 2008 Law. However, for the purposes of considering the Distribution Model, I will assume that what they have proposed is reasonable.

17. Section 419 of the 2008 Law provides that, where a company being wound up has assets, they are generally first applied to satisfy that company's debts and liabilities *pari passu*. Thereafter, if assets remain, they are distributed among the members of the company. In accordance with the first round of distributions of the monies in the hands of the Applicants as joint liquidators of Eagle Holdings Limited, the creditors will receive a share of those assets proportionate to the debts owed.

18. Mr Maxwell's Second Affidavit goes into further detail as to how the proofs of debt in respect of Gull Investments Limited, Kestrel Investments Limited and West Derby Investments Limited have arisen. He explains that these debts arose not because each of these entities is a limited partner in a limited partnership, but rather as a result of the inter-entity loans that were prevalent across the group. A similar picture emerges in relation to other entities which would benefit from their shares of the first cascade of payments from the assets of Eagle Holdings Limited.

19. Although the amount available for distribution was originally higher than the latest amount in the materials provided this month, I will use the most up-to-date figures submitted by the Applicants, which states that £461,953.76 is available to settle the debts and liabilities of Eagle Holdings Limited. There are eleven creditors of Eagle Holdings Limited mentioned at this stage. However, two of them are dissolved unit trusts, so they would receive nothing.

20. The Applicants state that the liabilities of Eagle Holdings to the nine corporate creditors total £116,702,678. This amount is unchanged from the first iteration of the Distribution Model. These companies, with the amount of the liability, are: Adriatic Holdings Limited (£4,232,108), Gull Investments Limited (£3,640,110), Headrow Property Holdings Limited (£76,465,944), Kestrel Investments Limited (£14,997,819), Rockhopper Property Holdings Limited (£3,711,226), Villa Investments Limited (£4,423,108), West Derby Investments Limited (£5,928,998), Zenithstore Limited (£3,100,322) and Mersey Holdings Limited (£203,042). The share of the amount available to pay to these creditors is respectively £16,752.30, £14,408.94, £302,681.41, £59,367.09, £14,690.45, £17,508.35, £23,469.24, £12,272.26 and £803.72.

21. In relation to Rockhopper Property Holdings Limited and Mersey Holdings Limited, the amount notionally received from Eagle Holdings Limited would be added to what was already those entities' cash in hand balances of £64,704.50 and £2,803.43 respectively. The Distribution Model further shows that, for Zenithstore Limited and Mersey Holdings Limited, the assets of each company are fully taken up by the expenses of the liquidations. However, in respect of the other seven companies, all of which are being liquidated by the Applicants, the first amount returned to Eagle Holdings Limited represents what had effectively been loaned to those liquidations to keep these companies in good standing. In each of these seven cases, this was £2,672.64.

22. Having received this first round of monies from Eagle Holdings Limited, all of the remaining monies, after that first return to Eagle Holdings Limited, in respect of Adriatic Holdings Limited, Gull Investments Limited, Villa Investments Limited and West Derby Investments Limited has been subsumed in settling the costs incurred in liquidating those entities. However, in respect of Headrow Property Holdings Limited, Kestrel Investments Limited and Rockhopper Holdings Limited, at this stage there would be a positive balance. In the case of Kestrel Investments Limited, this is £27,717.01. In the cases of Headrow Property Holdings Limited and Rockhopper Property Holdings Limited, the amount is £270,971.83 and £54,833.81 respectively. The creditor of Headrow Property Holdings Limited is a unit trust that has been terminated, so all of the notional monies in its hands falls to be distributed to the shareholder of that entity, which is Eagle Holdings Limited. Similarly, in the absence of any creditor of Rockhopper Property Holdings Limited, there would be a similar return to Eagle Holdings Limited. Adding the monies repaid (£2,672.64 each time), Eagle Holdings Limited would have £344,514.12 available for the second cascade of payments.

23. By this stage, the liquidations of Headrow Property Holdings Limited and Rockhopper Property Holdings Limited are treated as having concluded with the distributions to their common member. Accordingly, the balance available to distribute this time is split seven ways proportionately. In relation to Zenithstore Limited and Mersey Holdings Limited, their receipts of £29,242.71 and £1,915.12 respectively are treated as being fully taken up by the expenses of their liquidations. For Adriatic Holdings Limited, from the payment made of £39,917.88, £10,468.08 is the remaining balance payable in respect of its liquidation. This leaves a balance of £29,449.80 and, again in the absence of any creditor of that company making any claim, this amount gets returned to Eagle Holdings Limited as its member. For Villa Investments Limited, from the payment made of £41,719.42, £9,275.24 is the remaining balance payable in respect of its liquidation. This leaves a balance of £32,444.18 and, because its creditors have all been dissolved, no claims have been received, so this amount also gets returned to its member, Eagle

Holdings Limited. These two amounts total £61,893.98 again available for payment out by the joint liquidators of Eagle Holdings Limited to settle its debts and liabilities.

24. Turning to Gull Investments Limited, its share of this second cascade of payments is £34,334.07, from which £12,576.14 is spent as the balance of the costs of its liquidation. This leaves £21,757.93. In relation to West Derby Investments Limited, it receives £55,923.21 and uses £3,228.85 to meet the balance of its liquidation costs. This results in a balance in the joint liquidators' hands of £52,694.36. Finally, Kestrel Investments Limited receives payment of £141,461.71 to add to what it held from the first cascade, making a total in hand of £169,178.72.

25. By the time of the third cascade of distributions of the amount of £61,893.98 returned to Eagle Holdings Limited, the split is now five ways. Zenithstore Limited receives £6,885.16 and Mersey Holdings Limited £450.91, which again stays with those companies and is treated as for each company to use to settle its liquidation costs. Gull Investments Limited receives a further £8,083.91, making a total of £29,841.84 in the hands of the joint liquidators. Kestrel Investments Limited receives a further £33,306.96, making a total of £202,485.68 in the hands of the joint liquidators. Finally, West Derby Investments Limited receives a further £13,167.04, making a total of £65,861.40 in the hands of the joint liquidators. These three amounts aggregate to £298,188.92, which the joint liquidators of the three companies wish to distribute directly to Barclays Bank plc.

The law

26. As has been stated previously, section 426 of the 2008 Law confers wide powers upon this Court to assist liquidators in the performance of their functions. Section 426 provides:

> "*The liquidator of a company may seek the Court's directions in relation to any matter arising in relation to the winding up of the company and upon such application the Court may make such order as it thinks fit.*"

The breadth of the areas on which assistance can be sought is apparent from previous decisions including *Huelin-Renouf Shipping Guernsey Limited* (unreported, 4 September 2015), *Jubilee General 2 Limited* (unreported, 18 August 2017) and *Canargo Limited* (unreported, 23 October 2020). I have also previously referred to the position summarised in what is now the work by McPherson and Keay, *The Law of Company Liquidation* (5th ed., especially para. 9-044), which I again consider to be helpful.

27. I am satisfied that this is not a case where the Court is being invited to make the joint liquidators' commercial decisions for them. The strict application of the provisions in the 2008 Law would result in the Applicants not being able to take what they consider to be the fair and pragmatic course without incurring greater expense. In doing so, any amount ultimately available to distribute in the manner they suggest would be reduced. Indeed, it is even possible that all of the monies would be spent in achieving that end.

28. This results from the complexity of the structure that was put in place by Mr Maud and others. In particular, the significant number of limited partnerships involved, to which the terms of the Limited Partnerships (Guernsey) Law, 1995 apply, adds a level of complication that would not have been present otherwise. Section 30 of the 1995 Law provides that, upon the dissolution of a limited partnership, its affairs shall generally be wound up by the general partners. The general partners of Propinvest Fitness LP, Propinvest Northfield LP and Propinvest Sutherland LP were Thistle Investments Limited and Palace Investments Limited. Both general partners have been wound up and are now dissolved. The three limited partnerships have been dissolved under the terms of the 1995 Law. The three corporate limited partners alongside Mr Maud of those three limited partnerships are Gull Investments Limited, Kestrel Investments Limited and West Derby Investments Limited, all of which are being wound up voluntarily by the

Applicants. It would be a cumbersome and expensive process if one of the general partners needed to be restored under the terms of the 2008 Law in order to be able to play its part in the ongoing dissolution of those three limited partnerships. Even if one of the alternative courses were adopted, with the Applicants seeking appointment as liquidators of those limited partnerships, which is permitted by section 30(3) of the 1995 Law, which would avoid the need to restore one of the general partners, it would still potentially result in extra monies having to be expended in relation to each limited partnership. This is why the Applicants have sought directions to enable them to achieve what the end would be if these other steps needed to be taken. I am persuaded that it is open to the Court to give such directions if that is the proper course of action to permit the Applicants to take.

Discussion

29. Much turns on what might be termed "looking through" the legal positions to identify where the monies that will fall into the liquidations of Gull Investments Limited, Kestrel Investments Limited and West Derby Investments Limited should go. The Applicants have attempted to identify any creditor outside the group of which Eagle Holdings Limited is a part. It is apparent that Barclays Bank plc has not had much joy in obtaining any return on the borrowing afforded to the 31 limited partnerships under the Amendment and Restatement Agreement dated 1 September 2006. That agreement is governed by English law.

30. Mr Maxwell's Second Affidavit exhibits an opinion on English law from Tyr (which is the trading name of a limited liability partnership that is authorised and regulated by the Solicitors Regulation Authority). On the basis that instructions were given to Tyr by the joint liquidators of Eagle Holdings Limited, this may well not be independent expert evidence, but I have taken it into account anyway. Tyr refers to the end of clause 4 of the credit agreement ("*The Borrowers must repay the outstanding amount of the Loan, together with all other amounts outstanding under the Finance Documents, in full to the relevant Finance Parties on the Final Maturity Date.*") before concluding that it would be the Borrowers, and so the general partners, who are jointly and severally liable for the repayment of any debt thereunder. Tyr also refers to clause 18.3 of the credit agreement extending the liability of an Obligor where there is an "*insolvency or any similar event*" so that it continues "*as if the payment, discharge, avoidance or reduction had not occurred*". In their opinion, any debts owed by the Borrowers continue to subsist.

31. One aspect that is not covered in this opinion from Tyr is that the definition of "Obligor" in the credit agreement extends to mean "*a Borrower, a General Partner or a Limited Partner together with any other person providing security*". Accordingly, although the Limited Partners are not directly involved, even as a Guarantor (which is defined only as "*a Borrower or a General Partner*"), those Limited Partners are identified and so the borrowings made by the three limited partnerships, under which the limited partnerships, acting by their General Partners, all of which is consistent with the 1995 Law, have joint and several liability to Barclays Bank plc, have a connection to the three corporate Limited Partners. Perhaps slightly oddly, the limited partnerships elected not to have legal personality when they were registered on 31 July 2006.

32. Under the terms of each limited partnership agreement, no limited partner had any personal obligation for the debts, liabilities or obligations of the Partnership beyond the level of the Capital Contribution to be made. Each was structured in such a way that the corporate limited partner had 99.5% of the total interests of the partners. At clause 8.4, provision was made for the Capital Contributions of each Partner to be increased from time to time "*as the Partners shall agree*".

33. Section 33 of the 1995 Law provides that "*The rules of law applicable to partnerships shall apply to limited partnerships unless inconsistent with the provisions of this Law.*" The

Partnerships (Guernsey) Law, 1995, as amended, provides in section 9(1) that "*Every partner in a firm is liable jointly and severally with the other partners for all debts of the firm incurred while he is a partner*." However, this is not applicable because of the terms of the 1995 Law, which makes it clear in section 2(1) that the general partners are "*jointly and severally liable for all debts of the partnership without limitation*" whereas any limited partner is not liable for any debts of the partnership beyond the amount contributed or to be contributed. This is subject to the provisions of sections 5(3), 12(3) and 21(2). Section 5(3) relates to circumstances where a person extends credit to the partnership without actual knowledge that the limited partner is not a general partner, but that is inapplicable in relation to the loan from Barclays Bank plc. Section 12(3) relates to the situation where a limited partner acts in contravention of the requirement found in section 12(1) that limited partners do not participate in the conduct or management of the business of the limited partnership and shall not transact the business of, sign or execute documents for or otherwise bind the limited partnership. In respect of debts, such contravention results in the limited partner being liable as if a general partner for so long as that situation continues. There is no suggestion that this has happened in the present case. Section 21 relates to a limited partner receiving a return of any part of his contribution, and so is also not engaged here. In summary, therefore, there is no basis in the 1995 Law for departing from the terms of the limited partnership agreements that provide that these limited partners are not liable for the debts of the limited partnerships. However, aside from the terms of the 1995 Law about what happens when a limited partnership is dissolved, section 43(1) of the Partnership (Guernsey) Law, 1995 permits this Court to give directions, which can extend to "*the payment of the firm's debts and the realisation and distribution of its assets*" (para. (c)).

34. It was a consequence of the difference between the strict position and what the Applicants have been suggesting, that led me to wonder whether what needed to happen was for the Applicants to consult with those who had undertaken the insolvency processes in respect of Thistle Investments Limited and Palace Investments Limited. Hence the reason for making that suggestion at the end of the hearing on 26 January 2022.

35. The position of the joint liquidators of Thistle Investments Limited and Palace Investments Limited was set out in a letter dated 28 April 2022. They explained that the limited partnerships had entered into both a senior credit agreement (in the amount of £918,862,500) as well as the Junior Credit Agreement on 4 August 2006. Alongside both agreements, the limited partnerships, as Borrowers, entered into interest rate swap agreements. Further, there was an intercreditor agreement also dated 4 August 2006, as a result of which an order of priority of repayment was established, with amounts due under the swap agreements taking priority over amounts due under the senior credit agreement and lastly amounts due pursuant to the Junior Credit Agreement. There was also a Commercial Mortgage Backed Securitisation transaction under which Barclays Bank plc sold the senior loan to Gemini (Eclipse 2006-3) plc. This entity sold various classes of notes to investors under terms set out in a prospectus. Through the administration process, which operated in both Guernsey and the United Kingdom, properties were released and assets used to pay amounts due under the swaps and some of that due under the senior credit agreement. Thistle Investments Limited and Palace Investments Limited were then put into liquidation in June 2017 and dissolved in April 2018. Liquidators were appointed to Gemini (Eclipse 2006-3) plc in December 2017 and that entity was dissolved in May 2019, at which time around £589 million was still owed to the holders of the notes that had been issued. As a result, the view of the joint liquidators of the two general partner entities was that any surplus that would have come into the three limited partnerships in the hands of the limited partners, should be used to pay monies still owed under the senior credit agreement, which meant it should be passed to Gemini (Eclipse 2006-3) plc, which has now been dissolved.

36. This letter then continued (at para. 12):

> "*Although not a matter for us as liquidators of Thistle and Palace, we think that in practice it would be very difficult, if not impossible, to restore Gemini to the register and reconstruct the CMBS transaction in order for the monies to be paid to the holders of the CMBS Notes. In this regard, we note that when Gemini was in existence it was reliant on a number of financial service providers who acted as corporate service provider, note trustee and cash manager (amongst others) pursuant to various detailed contracts that have since terminated on the liquidation and dissolution of Gemini. In addition, the interests of the holders of the CMBS Notes were held through the clearing systems and account holders (i.e. financial intermediaries). The clearing systems and account holders are now unlikely to hold records of the ultimate beneficial holders of the CMBS Notes, or if such records are held (for example in an archive) it would be difficult and time consuming to access them. Further, we expect that even if it was possible to reconstruct the CMBS transaction, it would be costly to do so, as the financial service providers would need to be paid for their services and significant legal fees would be incurred.*"

Whilst recognising that it would be a matter for the Applicants, or this Court, the view of the joint liquidators of Thistle Investments Limited and Palace Investments Limited was that, with Gemini (Eclipse 2006-3) plc dissolved, the funds would be bona vacantia in favour of the Crown.

37. Whilst reference was made in this correspondence to the position if monies were to be paid away by the three limited partners of the three limited partnerships to meet the obligations under the loan agreements with Barclays Bank plc, the first issue as far as I was concerned was whether there was any person to which Gull Investments Limited, Kestrel Investments Limited and West Derby Investments Limited had any obligation at all. If there was not, then being in funds, as a result of the three cascades made from Eagle Holdings Limited, those funds would either have to be returned to the one member, which is Eagle Holdings Limited, or rest with those three companies. Either way, the liquidation would be complete and these monies would, at least in principle, be bona vacantia under the 2008 Law. The alternative would involve notionally providing the monies to Gemini (Eclipse 2006-3) plc but, because it was dissolved, it would be bona vacantia under English law.

38. On behalf of His Majesty's Receiver-General, a response was made to Advocate Lyne, who then forwarded it to the Court, in October 2022. No reference was made to the possibility that the monies in question would pass to the Crown directly from one or more of the Guernsey-registered companies being wound up. Instead, reference was made to the position of Gemini (Eclipse 2006-3) plc, noting that it is registered in England. His Majesty's Receiver-General had decided that she was not minded to make any representations on behalf of the Crown in right of Guernsey.

39. Although I was invited at that point to determine the Application, I felt that a further hearing might be needed but first Advocate Lyne might wish to liaise with the Treasury Solicitor because of the indication given that the monies which would otherwise be paid away to Gemini (Eclipse 2006-3) plc might be bona vacantia under English law. This led first to a response on behalf of the Treasury Solicitor in late November 2022 which included that, "*in so far as the Crown has any interest in the assets of the above company as bona vacantia [referring to Eagle Holdings Limited], the Treasury Solicitor as nominee for the Crown has no objection to Begbies Traynor advancing the position that Barclays Bank is the appropriate recipient of the funds, provided that no costs or other financial penalty is sought against the Crown or the Treasury Solicitor in such proceedings.*" The Treasury Solicitor had no representations to make at the hearing but noted that the last registered office of Gemini (Eclipse 2006-3) plc was within the Duchy of Lancaster and provided details of how to contact the Solicitor for the Affairs for the

Duchy of Lancaster. On behalf of the Applicants, Mr Maxwell confirmed straightaway that they had no intention of seeking costs or any financial penalty.

40. Contact was then made with the Solicitor for the Affairs of the Duchy of Lancaster. In early January 2023, a response was received by the Applicants commenting that the matter appears "*obviously complicated*" but, "*in so far as the Duchy has an interest following the dissolution of Gemini (Eclipse 2006-3) plc, we will make no submissions on behalf of the Duchy of Lancaster and will be bound by the decision of the Court provided no order for costs is made against the Duchy".*

41. These responses were, as requested, relayed to His Majesty's Receiver-General. After having reviewed them, on her behalf, she adopted a similar position of not making any submissions on behalf of the Crown to the Court and being bound by its decision, provided no order for costs is made against the Crown or His Majesty's Receiver-General.

42. It is on this basis that I am now invited to determine the Application without the need for any further hearing and, in light of the position adopted by all the representatives of the Crown, I feel able to give the Applicants the primary direction they seek under section 426 of the Law.

43. At the outset, I take the view that it is important to remember that what the Applicants are seeking to do is a departure from the terms of the 2008 Law. The approach to the three cascades of distributions from the assets held by Eagle Holdings Limited results in monies sitting in the Applicants' hands as the joint liquidators of Gull Investments Limited, Kestrel Investments Limited and West Derby Investments Limited. As explained, there are no creditors of those entities who have made any claims against them which fall to be settled in the normal way under section 419. It would be circular to return the assets to the member of each, because it would just come back, albeit possibly in slightly revised amounts, to those entities as creditors of Eagle Holdings Limited. Put simply, there are insufficient assets in the hands of the Applicants as the joint liquidators of Eagle Holdings Limited to satisfy in full that company's indebtedness within its group. That is why I am satisfied that the better outcome is to stop after the third cascade and work out what to do with the monies that have been received by the subsidiaries. It is also the reason why the primary relief being sought under section 426 is by the joint liquidators of those three entities.

44. The terms of the limited partnerships mean that the indebtedness to others is not a liability of any of these limited partners. That is why this is not an ordinary case of seeking confirmation that there is creditor X to whom the monies must pass. Instead, the Applicants seek to be fair to an entity that, across the Propinvest collapse, has not received what it might have been expecting to receive. It is tantamount to conflating the role that could otherwise have been taken by restoring one of the general partners to discuss with each limited partner an increase in contributions by which the limited partnership, acting through that general partner, would be in a position to pay away limited partnership assets as a small part of its indebtedness to Barclays Bank plc. This would have been more straightforward if it had not been for the response made by the joint liquidators of Thistle Investments Limited and Palace Investments Limited.

45. The more appropriate way for the Applicants to proceed would be for the monies held not to be passed to Barclays Bank plc but rather to Gemini (Eclipse 2006-3) plc. However, that entity has now been dissolved and the Thistle/Palace joint liquidators are, in my view, realistic to suggest that restoring Gemini (Eclipse 2006-3) plc would mean monies would be spent without any guarantee that any investor would see a penny piece back. The implication from that pragmatic stance pointed towards trying to fashion, as the Applicants had always intended, a practical solution.

46. Doing so has, I think, been helped by the recent responses on behalf of the Crown in England. Although it has been a much more drawn out process than I had envisaged it might be, the upshot is that the Treasury Solicitor has indicated that the Applicants are free to advance the position from which they started, namely that the monies held should be paid away to Barclays Bank plc, and the Duchy of Lancaster, along with His Majesty's Receiver-General, makes no claim to any of these assets on behalf of the Crown. In the absence of any claim being asserted, although it may be that Barclays Bank plc gets a small windfall (and it is really a very small return for the monies loaned through the re-financing in 2006), I firmly believe that these liquidations have run their courses and should now be concluded as soon as practicable with minimal further expense. Although the investors in Gemini (Eclipse 2006-3) plc, to whom this money would otherwise have been passed, will miss out, I accept that it would be impracticable to try to identify these persons for the reasons explained by the Thistle/Palace joint liquidators and the positions adopted on behalf of the Crown in England. On the basis that a liquidation is principally for the benefit of creditors and Barclays Bank plc was a creditor of the limited partnerships and is the only creditor now being put forward as being in a position to take the assets of Gull Investments Limited, Kestrel Investments Limited and West Derby Investments Limited, I agree that the joint liquidators should be directed to make the distributions identified in paragraphs 2.1, 3.1 and 4.1 of the Application, albeit now in the reduced amounts resulting from the additional expense to which the respective joint liquidators have been put. The total amount to be paid to Barclays Bank plc will be £298,188.92.

Other matters

47. The Applicants, through the evidence of Mr Le Cornu, had set out to explain how the liquidation of Eagle Holdings Limited could be concluded, but that the estimate of the expenses involved had risen since the Court last approved a revised estimate in 2017. None of the Jurats who sat on that application are available today to sit to deal with the revised estimate. In those circumstances, I am satisfied that I can consider this matter sitting alone. In doing so, I take into account the matters set out in that previous decision as guidance for determining such an application.

48. The amount involved is explained by Mr Le Cornu as covering the period from 2017 onwards first by reference to what was actually incurred by the end of 2017, which was lower than the estimate that had been given and accepted in 2017 by very nearly £50,000. Thereafter, from 1 January 2018 until 31 July 2021, actual expenditure of £88,445. At the time he swore his Affidavit, Mr Le Cornu estimated that the costs to bring the liquidation to a conclusion would be £28,000. In addition, there have been out of pocket expenses totalling £6,121.02. Given the estimate previously acknowledged as likely to be reasonable, para. 1 of the Application refers to the total for these periods being £139,715.02.

49. In relation to the liquidation of Eagle Holdings Limited, the extra work since the Application was brought has, in my view, been for the benefit of the directions sought by the Applicants as joint liquidators of Gull Investments Limited, Kestrel Investments Limited and West Derby Investments Limited. That is why the application under the terms of Practice Direction No. 3 of 2015 in respect of what was put to the Court as an estimate of the likely expenses of the liquidation of Eagle Holdings Limited should be unchanged, whereas the amounts in the liquidation estates of the three subsidiaries, and so the amount available to pass to Barclays Bank plc, has reduced.

50. The work that has been undertaken between 2018 and the middle of 2021 was in part to deal with the properties in Germany, when no further return is expected, but also Callendar Property Holdings Limited, which resulted in there being some assets in Eagle Holdings Limited calling for the Applicants to work out what to do about those monies. It does not surprise me that the estimate of what would be needed (and where most of it has been spent) has risen. Having considered what has taken place in some detail in order to determine this Application, I am

satisfied that the revised estimate is one that is capable of being accepted as likely to show the reasonableness of the costs incurred.

51. Paragraph 5 of the Application seeks the appointment of a Commissioner for the purpose of examining the accounts of the Applicants relating to Eagle Holdings Limited in accordance with section 417 of the 2008 Law. In the circumstances, although it is unusual to do so, I think it will be a pragmatic solution if I appoint myself as the Commissioner for these purposes. I have had to consider these matters in some detail to determine the Application for directions and so it would not, in my view, be particularly cost-effective if the usual course of appointing a Jurat as Commissioner were to be followed.

52. Although Advocate Lyne's recent letter invites me to dispense with the formal requirement to hold a creditors' meeting, I do not think that the terms of section 417 permit me to do so. Subsection (2) is, in my opinion, mandatory: "*The Commissioner shall … arrange a creditors' meeting for the purpose of examining and verifying the financial statements*" (emphasis added), etc. Accordingly, I suggest that Advocate Lyne liaise with the Greffe to identify a suitable time for which to advertise in *La Gazette Officielle* so as to ensure the times set out in section 417 are satisfied. The hearing itself should be short and straightforward unless, of course, something unexpected were to arise. I imagine that the costs of holding that Commissioner meeting have already been factored into the estimated expenses of bringing this liquidation to a conclusion.

Conclusion

53. For the reasons I have given, I have decided that the principal directions sought by the joint liquidators of Gull Investments Limited, Kestrel Investments Limited and West Derby Investments Limited should be granted. As a result, those three entities, in voluntary liquidation, are permitted to pay out the monies in their hands after the expenses of their liquidations have been met directly to Barclays Bank plc. I have also accepted the revised fee estimate offered in respect of concluding the liquidation of Eagle Holdings Limited and will deal with the Commissioner hearing myself.

54. Paragraph 6 of the Application seeks an order that the costs of and incidental to the relief and directions sought should be treated as an expense in the liquidation of Eagle Holdings Limited. As I have sought to explain, I do not consider that the directions sought under section 426 of the 2008 Law were sought by the joint liquidators of that compulsory winding up, but rather in the context of the voluntary liquidations of the three subsidiaries. I doubt that it will make much difference, on the basis that there is a finite amount of assets across all three companies, so whether the costs are taken out of the liquidation estate of Eagle Holdings Limited before monies are passed to its subsidiaries or taken in some manner rom those subsidiaries, the total available to be distributed to Barclays Bank plc will be the same. In those circumstances, rather than insist on the costs coming from each of the four companies in appropriate amounts, I will adopt the pragmatic position of granting para. 6 as well so that they come out of the estate of Eagle Holdings Limited in accordance with the revised estimate.