[2024] EWHC 1200 (Ch)

Case No: BL-2019-002373

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (CHANCERY DIVISION)

7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Tuesday, 16 April 2024

BEFORE:

CHIEF MASTER SHUMAN

BETWEEN:

THE FINANCIAL CONDUCT AUTHORITY

Claimant

- and -

(1) BRIGHT MANAGEMENT SOLUTION LIMITED
(2) SOCCER LEAGUE INTERNATIONAL LIMITED
(3) SOCCER LEAGUE UK LIMITED
(4) MR MOHAMMED ZAKIR HUSSAIN
(5) MR MOHAMMED KABIR
(6) MR MOHAMMED ABDUL KAHHAR
(7) MR KAYES MIAH

Defendants

MR SIMON JONES appeared on behalf of the Claimant
The Defendants did not attend and were not represented

Hearing 16 April 2024

JUDGMENT

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(Official Shorthand Writers to the Court)

CHIEF MASTER SHUMAN:

1. This is the Claimant's application dated 28 February 2024 for an order under section 382(3) of the Financial Services and Markets Act 2000 (FISMA) seeking approval of a proposed scheme of distribution to investors in an unauthorised investment scheme operated by the First Defendant, Bright Management Solution Limited ("Bright"). The sums have been paid to the Claimant ("the FCA") under section 382(2) of FISMA. The FCA are seeking to distribute sums to those who have suffered a loss, and can demonstrate that they have done so, as a result of the unauthorised investment scheme operated by Bright.

2. The application is supported by the fourth witness statement of Nicholas Charles Clark dated 28 February 2024. Mr Clark is an investigator in the Unauthorised Business Department of the FCA's Enforcement and Market Oversight Division. He has had primary day-to-day conduct of the FCA's investigation into the activities of the Defendants since his appointment on 8 October 2019. I have also been provided with historic affidavits, also made by Mr Clark, dated 27 December 2019 and 17 January 2020.

3. The application has been served on Bright and the Fourth to Seventh Defendants. They have not engaged with the proceedings. The Second and Third Defendants are dissolved companies.

The Claim

4. The claim was issued on 20 December 2019 seeking relief under sections 380 and 382 of FISMA. I take the outline of the claim and the background from Mr Clark's fourth witness statement. In that, he records that in early October 2019, the FCA received a relevant disclosure in relation to a bank account held in the name of Bright. The bank had concerns about deposits and had frozen the funds pending consideration by the National Crime Agency. That led to a moratorium period in relation to the bank

account, and then further extensions were granted by the Crown Court under section 336A(1) of the Proceeds of Crime Act 2002.

5. As I have indicated, on 8 October 2019 Mr Clark along with others were appointed as investigators under section 168(3) of FISMA to investigate Bright (at that stage Bright Management Global Solution Limited), Mr Kahhar, who is the Sixth Defendant, and Mr Hussain, who is the Fourth Defendant. The investigation was looking at whether they had engaged in unauthorised activity of deposit taking and/or the communication of invitations or inducements to engage in investment activity. As the inquiries progressed further individuals and entities were uncovered. Those included Mr Miah, who is the Seventh Defendant, Mr Kabir, the Fifth Defendant (Mr Kabir is Mr Kahhar's brother), and also the Second and Third Defendants.

6. The FCA investigations indicated that the Defendants had operated and/or been knowingly concerned in an unauthorised investment scheme. Bright appeared to have accepted deposits and the other parties were knowingly concerned in Bright's activities. None of the Defendants were authorised by the FCA to carry out regulated activities, and so it was the FCA's case that those entities had acted in contravention of sections 19 and 21 of FISMA.

7. The claim was issued on 20 December 2019, and the particulars of claim amended on 7 September 2021. Although all the Defendants initially defended the claim on 26 June 2020 Bright, the Second Defendant, the Fourth Defendant and the Sixth to Seventh Defendants admitted the claim and the FCA obtained judgment. In addition the FCA obtained judgment against the Third Defendant and the Fifth Defendant in respect of the allegation that the business model contravened section 19 of FSMA. The FCA obtained summary judgment against the Fifth Defendant on the issue of Bright promoting its business by making misleading statements. These judgments were reflected in a very detailed order made by Bacon J on 28 January 2021, and in that order she identified the remaining parts of the claim.

8. Some parts of the claim were disputed specifically by the Third and Fifth Defendants. On 3 March 2022 the FCA made an application for summary judgment against the Fifth Defendant, and then subsequently a consent order was entered into on 27 June

2023. The terms of the consent order being that the Fifth Defendant accepted that he was knowingly concerned in Bright's contravention of section 19 of FISMA and that he had contravened sections 89 and 90 of the Financial Services Act 2012 and/or was knowingly concerned in Bright's contravention of the same. He agreed to pay the sum of £100,000 to the FCA, and that sum was secured on property.

9. Mr Clark's evidence goes on to explain Bright's business model. Bright offered an investment scheme to members of the public, and it was suggested that by investing with them, there would be significant returns achieved by those consumers. The money was actually invested by Bright in forex trading and some crypto-assets, and it was those assets that were used to generate some of the returns that were repaid to the consumers. By doing this Bright was engaged in the regulated activity of accepting deposits. Bright also promoted its business by making misleading statements and giving misleading impressions about the nature of the investment that consumers were making. They were misleading in two significant respects. Firstly, Bright suggested that the consumers would become shareholders in Bright. There was a PowerPoint presentation which stated that 20,000 shares had been made available for consumers to invest in, but the reality was very different in that Bright had only three shares. The Fourth, Sixth and Seventh Defendants each held one share, and it was only after the FCA commenced its inquiries into the activities of Bright that the Defendants issued additional shares. Secondly, Bright stated or implied it held a diverse asset portfolio, whereas in fact its investments were predominantly in forex trading with smaller investments in crypto-assets. This appears from the investigations carried out by FCA to be a classic Ponzi scheme, which works until the money runs out and then it is uncovered. Bright's activities have resulted in deposits of approximately £1.3 million being taken from consumers. Not all of that money was paid directly to Bright, and certainly the Second Defendant appears to have received money on behalf of Bright.

10. In relation to the Third Defendant, the FCA considers that monies paid by investors to the Third Defendant were loans to the Fifth Defendant, and those are recorded in affidavits which were provided by the originators of those funds and upon which the Fifth Defendant sought to rely, prior to the settlement of the claim against him. The individuals have been informed that those monies have not been included in the calculation of their net investment in Bright.

11. So the current position is that the FCA has realised assets from the Defendants with a total value of £533,992.66 plus interest. As at 31 January 2024, the interest amounted to the sum of £73,059.24. In addition there is the settlement with the Fifth Defendant, and he has agreed to pay the sum of £100,000 which has been secured against property. That is payable three years after the discharge of the freezing asset order, which was discharged on 7 November 2023.

The issues before the Court

12. The first issue I have to consider in this case is the position of the Second and the Third Defendants. The Second Defendant was struck off on 19 December 2022 and dissolved on 27 December 2022. The Third Defendant was struck off on 5 January 2021 and dissolved on 12 January 2021. The other Defendants have been served with the application that is before me today. Save for the Fifth Defendant, who has not responded, the Defendants have indicated that they do not intend attend this hearing and indeed have made no representations before the court, whether in writing or otherwise. The Second and Third Defendants have not been served because they are dissolved companies.

13. Mr Jones, counsel for the FCA, invites me to dispense with service in respect of the Second and the Third Defendants. The court has power to dispense with service under CPR 6.28. As this is service of 'any document' as opposed to a claim form, the court has a wide discretion. It does not need to find that there are exceptional circumstances, and I accept Mr Jones's argument that the court needs to be shown a good reason to dispense with service. Underpinning that must be the governing overriding objective that the court is to deal with cases justly and at proportionate cost.

14. This is an application under section 382(3) to distribute sums to qualifying persons, sums that have already been paid or will be paid to or recovered by the FCA. In order to serve the Second and the Third Defendants, an application would need to be made to restore those companies to the register. That would inevitably involve cost and delay. How the money is distributed is not a matter for the Second and the Third Defendants. No part of the monies will be redistributed to these Defendants, and they have no interest in this application. They are simply parties to the application because they are

Defendants to the claim. I am satisfied that the two points in terms of cost and delay in restoring these companies and the fact they have no interest in this application constitute good reasons to dispense with service of the application against the Second and the Third Defendants, and I make the order sought.

15. I then turn to the substantive issue before me, which is whether I should approve the proposed distribution of both the sum held by the FCA currently and the sum it will receive from the Fifth Defendant under the terms of the settlement agreement. The relevant statutory provision is section 382 of FISMA. Section 382(1) provides that,

> *"(1) The court may, on the application of the [appropriate regulator] or the Secretary of State, make an order under subsection*
> *(2) if it is satisfied that a person has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and–*
> *(a) that profits have accrued to him as a result of the contravention; or*
> *(b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.*
> *(2) The court may order the person concerned to pay to the [regulator concerned] such sum as appears to the court to be just having regard–*
> *(a) in a case within paragraph (a) of subsection (1), to the profits appearing to the court to have accrued;*
> *(b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect;*
> *(c) in a case within both of those paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.*
> *(3) Any amount paid to the [regulator concerned] in pursuance of an order under subsection (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct."*

The court may on the application of the appropriate regulator, which is here the FCA, make an order under subsection (2) if it is satisfied that a person has contravened a relevant requirement or been knowingly concerned in the contravention of such a requirement and (a) that profits have accrued to him as a result of the contravention or (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention. Subparagraph (2) provides that the court may order the person concerned to pay to the regulator concerned such sum as appears to the court to be just. Subparagraph (3) provides any amount paid to the regulator concerned in pursuance of an order under subsection (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct, and that is the key part for the purposes of the court today. Subparagraph 382(8) provides that a

"qualifying person" means a person appearing to the court to be someone (a) to whom the profits mentioned in subsection (1)(a) are attributable or (b) who has suffered the loss or adverse effect mentioned in subsection (1)(b).

Mr Jones informs me that there are very few reported cases in this area. He has specifically referred to *Financial Services Authority v Upton* [2010] EWHC 2345, *Financial Conduct Authority v Anderson and others* [2014] EWHC 3630 (Ch), *Financial Conduct Authority v Paradigm Consultancy SA and another* [2019] EWHC 3648 (Ch) and *Financial Conduct Authority v Golding &* [2021] EWHC 372 (Ch). In addition I have been referred at some length to the decision of *Financial Conduct Authority v Exall* [2023] EWHC 1130 (Ch), which was a decision of Master McQuail. In relation to those authorities, I am particularly helped by *Anderson*, *Paradigm* and *Exall*.

16. From the authorities, Mr Jones has distilled seven principles which I accept provide a helpful summary of the matter that the court is to apply when considering an application for distribution under section 382(3). The principles that I have to consider are the following:

(1) The Court should have regard to the purpose of the order for disgorging profits or compensating loss, but its purpose is to compensate those adversely affected by contraventions of the regulatory regime in a manner that is consistent with the FCA's regulatory objective of consumer protection. So one can see from that the principle is one of compensation, not punishment.

(2) Where there is a shortfall in recovery, which unfortunately there will be in this case, and where the facts have not been fully established, the court has to do its best and that will generally be on a rough-and-ready basis. That can be found in both *Anderson*, paragraphs 4 to 5, and *Paradigm* at paragraphs 30(b) to (c).

(3) The distribution method should be as simple as possible and consistent with being fair to consumers and also to consider the expense of the available options.

(4) The court should be satisfied (1) that the FCA has taken all reasonable steps to identify the qualifying persons, (2) to identify their losses and (3) the proposed method of distribution is fair.

(5) Applications under this section will be fact-sensitive.

(6) The focus should be on those who have suffered out-of-pocket losses, and they

should be given priority over those who have suffered expectation losses. Whilst the cases are fact-sensitive, it seems to me in relation to the background and the facts of this case that that is an appropriate principle for this case to consider, and that is specifically referred to in *Paradigm*, paragraph 30(d) and at 31.

(7) Mr Jones submits there needs to be finality in the process, and although the Court may include a permission to apply provision so that any late application for distribution can still be considered, that will not be exercised lightly.

17. So the proposed distribution in this case, in summary, is that the FCA proposes to distribute to qualifying investments investors who have suffered a loss as a result of the Defendants' contravention of the regulatory regime and to do so on a pro rata basis. In order to calculate the payments that should be made to the qualifying investors, the FCA has considered both the amount that the investor paid to the Defendants and also will take account of monies paid from Bright back to the investor, so that this is very much a loss-focused proposal, and it is not proposed that there should be any distribution based on investors' anticipated profits.

18. Mr Jones puts forward four specific reasons to support the proposed distribution. Firstly, he submits it gives priority to those who have suffered loss over those who have not received expected or anticipated profit. That approach accords with the approach taken in *Paradigm*. Secondly, he submits it is fair to all investors who have lost money but will still be out of pocket. This approach, which takes into account money from the distribution and the expected money from the Fifth Defendant, will pay consumers around 0.5993 for every pound lost through investment in Bright, so it provides the investors with the same proportion of their losses as recovery, and it is the fairest approach. Thirdly, Mr Jones submits that pro rata distribution is a comparatively simple approach. It allows for a ready and fair calculation of who is owed money and how that can be dispassionately or objectively applied. Fourthly, he also submits this is consistent with the approaches that have been taken in previous cases, and whilst I note that all cases are fact-sensitive, I can see some force in there being a consistency of approach, and that should be encouraged.

19. Part of the consideration that the court has to undertake is it needs to be satisfied that the FCA has taken all reasonable steps to identify the qualifying persons, identify the

losses and the proposed method of distribution is fair. Mr Clark has set out in some detail in his witness statements the steps taken by the FCA to identify the qualifying investors, and I will set that out in some detail.

20. I note that there has been painstaking investigation by Mr Clark and the FCA in relation to this matter. At the very outset of the investigation, a number of bank accounts held by Bright, the Second and Third Defendants were identified. Statements for the accounts were obtained and analysed. Where sums appeared to come from third-party individuals, further inquiries were made, identifying a number of banks who were contacted to obtain customer details. In addition the FCA issued press releases which encouraged consumers who had invested in Bright to make contact with the FCA. The Defendants themselves provided various investor lists to the FCA, and I am satisfied that the FCA has had to carry out quite extensive investigations in this case

21. After reviewing all the available information, the FCA was able to identify 250 potential investors, 50 of those were discounted on the basis that no payments to or from them could be identified in the banking material, and on 19 February 2021 the FCA wrote 200 potential investors. They attached a questionnaire in relation to their dealings with Bright and requested them to provide evidence of their investments. Those responses were collated, the evidence was assessed, and the investors were given opportunities to respond. Mr Clark describes significant efforts being made to contact those who did not respond by email and telephone, I am satisfied that that took place.

22. Following the settlement and further investigation, the FCA removed 59 investors who had not responded to its February 2021 questionnaire. Of those 59 investors, 18 appeared to have either received the full amount of their investment or more funds than they had paid to Bright, or their banking records showed no monies being paid to Bright by them. A further five investors, who had responded to the questionnaire, were removed on the same basis. So this then resulted in a list of 136 investors. The FCA wrote to all 136 investors on 6 November 2023 setting out the proposed scheme of distribution and their net investment amounts. Of those investors, 119 confirmed their agreement to the FCA's proposed scheme of distribution and the calculation of their net investment. Three investors responded asserting that they had invested a larger sum than that which the FCA had calculated. One of the three investors asserted they had

made a net investment of £7,000 greater than the FCA had calculated. The investor was given an opportunity to provide evidence to support their contention, but they failed to provide any further information. Of the other investors, that is, two of the three, they asserted that they had made net investments of £10,000 greater than the FCA had calculated. Following correspondence, the FCA concluded that the monies they were referring to were in fact monies paid as loans to the Third Defendant UK Ltd rather than investments to Bright.

23. As a result of further inquiries and the further evidence and the conclusions made by the FCA, the net investment figure for all four of the investors were revised down and the revised amount was agreed by the investors. Four individuals who had previously been discounted as potential investors contacted the FCA following receipt of the FCA's letter, asserting that they were in fact investors. Three of those provided credible evidence, and they have been included in the schedule of qualifying investors. The fourth was given an opportunity to provide evidence but failed to do so. 13 investors did not respond to the FCA's letter dated 6 November 2023, and following further attempts to contact them, they have now been excluded as qualifying persons. On 15 January 2024 the FCA wrote to 46 investors who appeared to have received either the full amount or more than what they had paid to Bright or where it was felt there may have been a lack of any investment. They were asked to respond by 26 January 2024.

24. The purpose of making further inquiries and demonstrating the diligent approach taken by the FCA was that in relation to a small number of investors, the banking records obtained by the FCA indicated that those falling within this category had received repayment of the sum from Bright in excess of what they had originally paid but the records obtained from Bright indicated the opposite, a net loss. So the FCA was trying to reconcile any discrepancies. Of the 46 investors, five investors responded, four of whom have now been included in the schedule of qualifying investors.

25. Some of the qualifying persons have died. Where they have died, the FCA proposes, quite properly, to make payment to the estate of the deceased. There is also provision within the FCA's approach that, if any further investors who would meet the definition of a qualifying person contacted the FCA and asked to be included in the distribution

between today and the actual distribution, then the FCA has provided that it may seek the court's permission to amend the schedule of qualifying persons to include such additional investors.

26. I am satisfied having regard to the principles that the court should take into account, and having seen the extensive evidence from Mr Clark, that the approach put forward by the FCA is a fair one. I am satisfied that the FCA has taken painstaking efforts to identify the qualifying persons and that those qualifying persons have been identified, but that there is provision prior to distribution for others to come forward, assuming that they produce credible evidence that they fall within the qualifying person category. I am satisfied that it is appropriate to approve the proposed distribution as is set out in schedule 1 to the draft order, and this is the distribution both in respect of the sum currently held by the FCA and in relation to the sum that is due to be received from the Fifth Defendant in the future. I am also satisfied that schedule 1 attached to the draft order puts in place a mechanism for determining the amount to be paid to the qualifying person and deals with most eventualities. However, the order should also provide for permission to apply if necessary.

27. During the course of the extremely helpful submissions from Mr Jones, I queried the lack of any temporal provisions within schedule 1, which is attached to the order. I am satisfied that that can be dealt with by revising the draft order as I proposed rather than materially altering schedule 1, which is the distribution mechanism.

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