

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS

Sir Geoffrey Vos CHC
[2019] EWHC 778 (Ch)

B E T W E E N :

BARINGS (UK) LIMITED

Second Defendant/Appellant

-and-

(1) DEUTSCHE TRUSTEE COMPANY LIMITED

Claimant/Respondent

-and-

(2) DUCHESS VI CLO BV

First Defendant/Respondent

(3) NAPIER PARK EUROPEAN CREDIT OPPORTUNITIES FUND LIMITED

Third Defendant/Respondent

ORDER

UPON the Appeal of the Second Defendant/Appellant

AND UPON HEARING David Railton QC of Counsel for the Second Defendant/Appellant and David Wolfson QC of Counsel for the Third Defendant/Respondent

AND UPON READING the papers recorded in the Court file as having been read

IT IS ORDERED THAT:

1. The Appeal is dismissed.
2. Subject to (a) the provisions in relation to costs in paragraphs 6 and 7 below and (b) the Second Declaration made in the order of Sir Geoffrey Vos CHC dated 28 March 2019, the monies which are being held to the order of the Claimant to abide the outcome of the

proceedings (as referred to in paragraphs 11 and 12 of the Witness Statement of Mr Oye dated 25 July 2018), shall be paid to the Class F Secured Income Noteholders.

3. The Second Defendant/Appellant shall pay the costs of and occasioned by the Appeal of each of the Claimant/Respondent and the Third Defendant/Respondent, such costs to be assessed in detail on the standard basis if not agreed. The Second Defendant/Appellant shall not be entitled (if it otherwise would be) to recover any such payments (or any of its own costs of the Appeal) from the Trustee, Security Trustee or Issuer as a matter of contract.
4. The Second Defendant/Appellant shall make payments on account of the costs referred to in paragraph 3 above in the following amounts by 4pm on 23 April 2020:
 - 4.1. £20,000 to the Claimant/Respondent; and
 - 4.2. £130,000 to the Third Defendant/Respondent.
5. There shall be no order as to the costs of the First Defendant/Respondent.
6. Paragraphs 3, 4 and 5 above are without prejudice to the entitlement of the Claimant/Respondent and/or the First Defendant/Respondent to recover their costs as a matter of contract as set out in the Second Declaration made in the order of Sir Geoffrey Vos CHC dated 28 March 2019.
7. The Third Defendant/Respondent shall be entitled to recover such of its costs as are not paid by the Second Defendant pursuant to paragraph 3 above from the monies referred to in the Second Declaration set out in the order of Sir Geoffrey Vos CHC dated 28 March 2019.
8. This Order shall be served by the Claimant/Respondent.

Dated 22 April 2020

Service of this Order

The Court provided a sealed copy of this Order to the serving party, c/o: Allen & Overy LLP, One Bishops Square, London E1 6AD

(Ref: Nicholas Gomes)