

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (ChD)

Claim No: ~~BL-2023-MAN-000078~~

09 Nov 2023



B E T W E E N:

BL-2023-MAN-000078

JC STARR HOLDINGS LIMITED (a company registered in the BVI)

Claimant

-and-

FUNDINGSECURE LTD (in administration)

Defendant

DEFENCE

1. Unless otherwise stated, references to paragraphs below are references to paragraphs of the particulars of claim.

(A) THE DEFENDANT'S POSITION

2. The Defendant is a company incorporated on England and Wales on 26 June 2012 with company number 08120200. The Defendant provided peer to peer lending facilities on its online platform. Investors/lenders ("**the Investors**") made payments to the Defendant, which were then used to advance money by way of loan to specified borrowers.
3. The Defendant entered administration on 23 October 2019 when Edward Avery-Gee, Daniel Mark Richardson and Jonathan Elman Avery Gee were appointed as administrators ("**the Administrators**"). The Administrators have since managed the Defendant's affairs in accordance with the statutory scheme and with a view to realising assets for the benefit of the Defendant's creditors. The Administrators continue in office (and the Defendant continues to be in administration) by virtue of orders of the court dated 18 September 2020 and 15 September 2023 which extended the period of the administration until 22 October 2024.



4. The Defendant acts by the Administrators in these proceedings. The Defendant does not claim to be beneficially entitled to the money previously standing to the credit of the Defendant in account 53807290 (“**the Account**”) and will take a neutral position on the claim advanced by the Claimant.
5. The Administrators are aware that certain Investors claim to be beneficially entitled to some or all of the money previously standing to the credit of the Defendant in the Account.
6. In the circumstances, the Administrators believe that, subject to the court’s approval, the Defendant’s role in these proceedings should be limited to the following:
 - 6.1. Filing a defence requiring the Claimant to prove its case (i.e. this document).
 - 6.2. Providing information to the court and the parties about the use of the Account in order to assist the court in determining beneficial ownership.
 - 6.3. Alerting Investors to the existence of these proceedings to ensure that any other person with a claim to some or all of the money previously held in the Account is able to engage with these proceedings if so advised.
7. In light of paragraph 6.1 above, the Defendant does not admit or deny the Claimant’s claim as set out in the particulars of claim; and requires the Claimant to prove the same.
8. The Defendant will engage with these proceedings in a proportionate and cost-effective manner and will seek its costs of doing so under, or by analogy to, CPR 86.5(1) and/or the Berkeley Applegate jurisdiction and/or CPR Part 44 and/or the court’s inherent jurisdiction.



(B) OVERVIEW OF THE ACCOUNT

9. The Account was intended to be used (though was not in fact always used) exclusively as the “e-wallet” for investor transactions. In other words: (i) payments by the Investors for specific loans were made into the Account; (ii) payments were made out of the Account to borrowers; (iii) repayments by borrowers were made into the Account; and (iv) repayments were made out of the Account to the Investors in repayment of sums previously advanced.
10. Prior to the receipt of funds from the Claimant on 12 April 2019, the credit balance of the Account was £6,225,725.77. The Defendant does not claim any beneficial interest in that money for the reasons set out below.
11. On 12 April 2019, the Claimant paid the sum of £499,985 into the Account. Following the payment by the Claimant, the credit balance of the Account was £6,725,710.77.
12. Between 12 April 2019 (following receipt of the Claimant’s payment) and the close of business on 22 October 2019 (the day prior to the Company entering administration), the Account was used as follows:
 - 12.1. A total of 1,853 payments were made into the account in the total sum of £20,494,881.09. These payments represented: (i) payments by the Investors for specific loans; and (ii) repayments by borrowers.
 - 12.2. A total of 1,186 payments were made out of the account in the total sum of £25,243,430.94. These payments represented: (i) payments to borrowers in respect of new loans; (ii) repayments to the Investors; and (iii) transfers to the Company’s administration account to pay Company expenses.
13. Accordingly, as at close of business on 22 October 2019 (the day prior to the Company entering administration), the credit balance of the Account was £1,977,160.92.



(C) THE ADMINISTRATION

14. As set out above, the Defendant entered administration on 23 October 2019.
15. At a meeting of the Defendant's Creditors' Committee ("**the Committee**") on 6 February 2020, the Committee unanimously and irrevocably authorised the Administrators, and the Administrators agreed, to distribute the total value of funds held in the Account (and held in other accounts), and the proceeds of all future redemptions received from time to time, on the basis that the Investors held valid trusts over such proceeds.
16. Between 23 October 2019 (the day the Company entered administration) and 25 May 2023, the Account was used as follows:
 - 16.1. A total of 165 payments were made into the account in the total sum of £21,520,900.86. These payments largely represented repayments by borrowers.
 - 16.2. A total of 834 (excluding the transfer out of the payment referred to in paragraph 18 below) payments were made out of the account in the total sum of £22,701,200.02). These payments largely represented repayments to the Investors in accordance with the authorisation/agreement described above.
17. (In fact, due to the fact that the Account was frozen by the Administrators in May 2021, there were only a limited number of transactions on the Account between 12 May 2021 and 25 May 2023. A total of £1,947.60 was paid in and £127.63 was paid out of the Account.)
18. Accordingly, as at 25 May 2023, the credit balance of the Account was £796,862.56. On 25 May 2023, the Administrators caused the balance of £796,862.56 to be transferred into an administration account, where it is still held.



19. As can be seen from the above summary of pre- and post-administration transactions, the number of transactions on the Account means that a tracing exercise is extremely complex and costly – to the point of being practically impossible.
20. Accordingly, the Defendant admits paragraph 28.2 of the particulars of claim and admits that, assuming the Claimant has a valid proprietary claim, the Claimant's fund were mixed with other funds held under trust for the benefit of innocent Investors and there are evidential uncertainties as to the application of the various monies in the mixed fund.
21. The Defendant invites the court to make such order as it thinks just and fair in light of the competing claims to the remaining funds.

JON COLCLOUGH
9 November 2023

Statement of Truth

I believe that the facts stated in this defence are true. I am duly authorised by the Defendant to make this statement. 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.'



Edward Avery-Gee as joint administrator and on behalf of FundingSecure Ltd (in Administration) the Defendant

Dated: 9 November 2023