



KPMG LLP
15 Canada Square
London E14 5GL
United Kingdom

Memorandum

Date 13 November 2017

Harlequin Property (SVG) Limited – Creditor Briefing

Location KPMG LLP, 15 Canada Square, Canary Wharf, E14 5GL
Time 10:30 a.m.
Duration 1 hour
Subject **Investor Update Meeting**

In Attendance:

Presenters

David Standish, KPMG ("DS")

James Bennett, KPMG ("JB")

David Collins, KPMG ("DC")

Barnaby Stueck, Jones Day ("BS")

Audience

Creditors of Harlequin Property (SVG) Limited (KPMG has a full record of attendees)

A Overview

1. This note provides an overview of the update presentation given to creditors of Harlequin Property (SVG) Limited ("**HPSVG**") on 13 November 2017.
2. The following areas were addressed, in order:
 - 2.1 JB introduced the speakers and outlined the items to be addressed at the meeting;

- 2.2 DS discussed the purpose of the meeting and provided an overview of the matter;
- 2.3 JB provided a historic account of HPSVG's entry into insolvency, including the previous proposal process and interim receivership and subsequent bankruptcy;
- 2.4 BS provided an example insolvency scenario and described what creditors might ordinarily expect following an insolvency. He also addressed some of the frequently asked questions;
- 2.5 DS provided a summary of events following the bankruptcy, including steps taken by Brian Glasgow as the Bankruptcy Trustee of HPSVG (the "BT");
- 2.6 BS provided a summary of various litigation/proceedings involving or relating to HPSVG;
- 2.7 JB provided an outline of steps taken towards the realisation of assets of HPSVG;
- 2.8 DC summarised the section 70 claims process;
- 2.9 DS outlined other potential assets being pursued by the BT; and
- 2.10 DS provided an outline of the future strategy.

Introduction & Purpose of Meeting

- 3. JB introduced the speakers and requested confirmation that everyone present was either a creditor or representing a creditor of HPSVG.
- 4. DS set out the agenda for the meeting, as described above.
- 5. DS advised that there would be another meeting in St Vincent and the Grenadines ("SVG") which would repeat the content of this meeting. There would be a room available at KPMG for those wishing to attend in person between 2 – 4pm on 23 November 2017 and forms were available for voting by post.
- 6. DS confirmed that no questions would be taken during the presentation, but that the meeting would break out into a Q&A session with the BT's team after the main presentation. DS outlined that there are ongoing criminal proceedings commenced by the Serious Fraud Office (the "SFO") against Mr Ames with a trial set for January 2019. DS also noted that Mr Ames has pleaded not guilty to all charges. DS stated that KPMG had attended Southwark Crown Court on 10

November 2017 due to the concerns of the court about communications to investors, including, in particular, potential trial witnesses. DS stated that Mr Ames has a right to a fair trial and the presumption of innocence and that KPMG has agreed to consult the SFO, where appropriate, ahead of communicating with investors, as KPMG has done in respect of the contents of this presentation.

7. DS confirmed that there have been a number of questions received by the BT in advance of the meeting, to which KPMG will respond in writing. There will be a further session in March/April to update the investors on sales strategy and investigations.
8. DS stated that the BT was at an important juncture in the bankruptcy process given that: (i) UK litigation has largely been resolved, (ii) the BT has recently put the Merricks resort ("**Merricks**") on the market for sale; and (iii) the strategy for dealing with Buccament Bay ("**BB**") is becoming clearer.
9. DS outlined the key elements of the bankruptcy of HPSVG, including that: (i) when HPSVG entered into bankruptcy, there was no money in the estate and KPMG had to take steps to secure, maintain and insure the resorts; (ii) there is a web of companies which are all owned/controlled by Mr Ames; (iii) HPSVG's main assets comprise BB and Merricks; (iv) the BT has been protecting assets and communicating with 3,650 creditors, including 2,578 cash investors and 1,072 SIPP investors, of which 502 have received compensation from the FSCS, which has seen the BT receive 10,000 emails from creditors claiming in aggregate in excess of £270m with an average claim amount of £109k. DS highlighted that KPMG teams had been working together in the UK, Barbados and Saint Vincent and the Grenadines ("**SVG**").
10. DS reminded the audience that no photographs or recordings were allowed during the presentation – the BT needs to be mindful of Mr Ames's criminal trial and a report summarising the presentation would be made available after the meeting.

Company Proposal

11. JB then gave a brief overview of the history of HPSVG's entry into insolvency.
12. In the face of winding up petitions, HPSVG entered into a proposal process which provided for a moratorium on claims. It was KPMG's role to review the proposal and report to the court, in which KPMG incurred £331,000 of costs. The first Creditor Resolution to be considered at a meeting later in November is for this period and the costs are based on time properly incurred. If there is no Creditor Resolution to pay the fees, the BT will need to apply to the SVG court for their approval, thereby increasing costs borne by the estate. During the initial period, there were 8 court appearances, 6 updates to the court, IR application on closure

of the resort and looting issues, foreign recognition and recovery of £500k from the WK judgment sum to maintain the resort.

13. HPSVG's proposal to creditors failed because: (i) management failed to identify a suitable operator; (ii) there were insufficient funds available for the proposal – the Company had intended to use the WK judgment proceeds but, in fact, none would have been available; (iii) the Court took into account the findings of Mr. Justice Coulson; (iv) there were insufficient financial records and the company had no bank account; and (v) HSPVG was unable to meet the statutory required thresholds of assets versus liabilities. This all resulted in the bankruptcy of the company.

Frequently Asked Questions

14. BS introduced Jones Day's role and highlighted that the meeting aimed to answer frequently asked questions raised to date by investors. BS highlighted that the BT to trying to limit costs given that the BT's team has received over 1,000 calls and over 10,000 emails with questions many of which are similar. The aim is to talk through issues now to reduce costs of individual enquiries, although creditors can of course still call the KPMG hotline if needed.
15. BS provided an explanation of some of the most frequently asked questions by reference to a typical bankruptcy scenario, including: (i) "What is insolvency?" and (ii) "Who is the BT and what is his role?" He explained that the remaining questions ((iii) "How long will this process take and will I get my money back?" and (iv) "What has happened to my property?") would be answered in the second half of the presentation.

Events Following Bankruptcy

16. DS stated that the BT was requesting that the creditors consider the fees incurred for the period from 3 March 2017 to 30 September 2017. In that time, the BT has: (i) had hearings in four jurisdictions; (ii) confirmed the bankruptcy at the Court of Appeal and obtained foreign recognition of the insolvency proceedings in the English court; (iii) protected HPSVG's assets, (iv) achieved a substantial recovery from the UK litigation; and (v) conducted initial investigations. DS provided a breakdown of KPMG's fees in relation to each workstream.
17. DS explained that, whilst there are total claims against HPSVG exceeding £270 million, even if a number of these claims are rejected when adjudicated there still appears to be a considerable deficit of £220 million and it could be as high as £1¼ billion. This is a very live issue and one that DS hopes to explain and break down further in March/April.

18. DS explained the process for approving the BT's fees and recommended that the Inspectors Committee is best placed to monitor and approve the BT's fees going forward, including because KPMG meets with them regularly and provides detailed summaries of their actions; KPMG can talk to the Inspectors more openly as they have signed NDAs and such communications will not be shared with witnesses or potential witnesses in Mr Ames' criminal trial. It also means KPMG can share with them commercially sensitive information gained about the terms offered by prospective operators/purchasers. The Inspectors have negotiated a 15% reduction to the BT's fees.

Litigation

19. BS noted that the Company had spent a lot of money on litigation both before and after the bankruptcy and there have been various sets of "proceedings". BS provided a brief overview and update of current and historic proceedings, including: (i) the proceedings brought around 2010 by HPSVG against Padraig O'Halloran of the ICE group and his father, Donal O'Halloran (the "**Irish Proceedings**"); (ii) the proceedings commenced in 2014 by HPSVG against Wilkins Kennedy (the "**Wilkins Kennedy Proceedings**"); (iii) HPSVG's bankruptcy proceedings commenced in October 2016; (iv) the criminal proceedings commenced by the SFO against Mr Ames (the "**Criminal Proceedings**"); (v) the dispute over the Wilkins Kennedy judgment sum (the "**WK Judgment Sum**"); and (vi) future civil claims.
20. BS stated that the Irish Proceedings related to the diversion of £13.5m away from HPSVG/the construction of BB. The company was successful in getting an award for £2,038,000 but that has never been received. The BT will try to enforce it, but there may be significant hurdles.
21. BS explained that the Wilkins Kennedy Proceedings related to negligent advice provided to HPSVG. HPSVG was successful in obtaining an award of £7.4m in damages plus interest and costs (which took the total amount awarded to £10.5m). BS noted that the judgment was a matter of public record and many had probably read at least the beginning of it given how much publicity it had received, but said he would provide a quick summary because the judge's findings were helpful in understanding the scale and complexity of the issues facing the BT, why there was a large deficit in the estate, and why the Proposal could not realistically have succeeded. First, BS explained that the original amount claimed was a much larger sum, but a number of claims were not successful and Harlequin's damages were reduced by half because the judge made a number of findings against Harlequin. BS summarised some of the key facts referenced by Mr Justice Coulson in his judgment by summarising paragraphs 6 and 7 of the judgment. JB noted that the BT was only aware of 166 properties having been built (not the 199 referenced by the Judge) and that only 27 purchases have been fully completed. BS noted that Coulson J appeared to

have formed the view that insolvency practitioners would ultimately be appointed over the Company.

22. BS stated that the Bankruptcy proceedings are technically court proceedings in SVG and that the bankruptcy was subject to the supervision of the SVG Court, but had been recognised in the UK, so that the BT could seek directions, guidance and assistance from both the English and SVG courts. BS said the proceedings issued relating to the WK Judgment proceedings were an example of such applications for directions. BS highlighted that, as part of this process, it is within the BT's power to make applications to court requiring any relevant persons to deliver up information and documentation, and that an application is likely to be made against Mr Ames shortly for delivery up of HPSVG's electronic records, which the BT regards as essential to enable him to move forward in this process. BS explained that Mr Ames vehemently disputes any suggestion that he has not cooperated fully with the BT in respect of the provision of books and records but there is a disagreement between the BT and Mr Ames in relation to the extent of the electronic records to which the BT is entitled, so the BT is likely to make an application to court to determine this issue.
23. BS explained that the Criminal Proceedings have been brought by the SFO and not the BT. BS also stated that Mr Ames had plead not guilty, is currently on bail (his trial is due to commence on 7 January 2019 at Southwark Crown Court), and that although Mr Ames is charged with criminal offences, nothing has been proved against him and he is entitled to the presumption of innocence. BS invited the investors to keep information they receive relating to Harlequin confidential and urged them not to publish material that might prejudice Mr Ames' criminal trial.
24. In relation to the WK Judgment Sum, BS commented that, during the proposal process, Harlequin had suggested that the BT would adopt an aggressive strategy that would leave investors with nothing. BS said that he hoped to demonstrate that that was not the case; that before issuing any proceedings, the BT first carries out a careful analysis of the legal merits of any claims, then conducts a cost/benefit analysis, and seeks approval from the inspectors. In respect of the WK Judgment Sum, there were 17 claimants seeking £11m from the fund in court. The amount available from the WK Judgment Sum was £10.5m. Therefore there was a net deficit of £0.5m. After settlement of some of the claims, £2.03m has been recovered for the estate. A further £3.03m is expected following judgment on the insurers' claims. BS highlighted that the litigation was very complicated and expensive but resolved quickly with an expected substantial net return to the estate.
25. As for potential claims, BS reiterated that they would only be brought after a cost/benefit analysis and with the approval of the inspectors. Unlike the litigation over the WK Judgment Sum, claims can take between 12 – 36 months to obtain

judgment. The 4 month duration of the proceedings relating to the WK Judgment Sum was unusually short.

Realisation of Assets

26. JB updated the creditors on the HPSVG owned resorts and progress with respect to realising value for them:

26.1 Merricks: there were c.1,000 investors who invested approximately £48m in aggregate. Unfortunately, the plot is not in the main resort area and, while it does have planning permission, construction halted 4 years ago and what has been built is incomplete and falling down. The plot has limited beach access and it is not a good area for swimming. The BT has employed an agent (Terra Caribbean) to conduct a 6 month open-ended marketing campaign in respect of the plot. The campaign will be evaluated at the end of the marketing period and a decision taken on whether to continue with the open-ended approach, or to move to a structured process designed to drive towards a closing date. Current advice is that it has taken 24-36 months to achieve a sale of similar resorts.

26.2 BB: there were c.2500 investors investing £94m. 116 cabanas and 60 hotel rooms built. However, some land is government owned, there are stamp duty issues and section 70 claims to some properties. The BT has secured the resort and maintained the grounds. The BT expects a valuation report at the end of the month which will remain secret. The BT is discussing opening the resort with the government and interested third parties. The issue of whether to operate the resort or sell it will be determined once the valuation and operation terms have been received. At this time the BT does not feel it appropriate to make a public statement as to when the resort might open.

Section 70 Claims

27. DC outlined that section 70 claims are a live issue for the BT, who is in the process of applying to the SVG court for directions. DC gave an overview of the issues that had arisen in relation to the section 70 claims that had been made by creditors (being those listed on the slide) and noted that there were 39 instances in which there was more than one claim to the same Cabana. In total, there have been 401 claims of which 95% have been reviewed.

28. DC outlined the process and timeline for making the section 70 claims. Some claims will be successful whereas others will not be (for reasons such as a lack of contract, no plan or legal ability to transfer). DC highlighted that even with a successful claim, those creditors will need to consider the fact that they will be responsible for costs associated with those properties and will be required to

agree a property management contract with any future operator. The extent of these obligations has yet to be determined and KPMG will revert to investors on these matters in a letter. Creditors can retract their claims at that point if they wish.

Potential Assets and Future Strategy

29. DS set out the timetable to the next meeting in March or April 2018, including investigating potential assets e.g. the intercompany debts, other resorts, any possible claims against former management and shareholders, the recoverability of the Irish Judgment and any possible claims against professional advisors.
30. DS explained that the intercompany debt position is complicated by the number of companies involved and the lack of transparency. It appears that the group operated on a cash pooled basis and that £21m is owing from Harlequin Hotels and Resorts Limited. Like all other potential claims, the recovery of intercompany debts will be assessed by reference to a cost/benefit analysis to ensure that less is expended than is expected to be recovered.
31. DS stated that, as of today, there is a quarter of a billion deficit which cannot be presently be explained by the BT and which DS needs to be able to explain. DS highlighted that bankruptcy generally takes a considerable period of time. The Criminal Proceedings are scheduled for 2019, which will affect the pace of the bankruptcy (DS repeated that Mr Ames is entitled to the presumption of innocence). DS stated that, overall, this matter will be measured in years rather than months.
32. DS concluded the meeting and invited the creditors to attend the Q&A session following the presentation.

Note:

Please note the above presentation was also presented to creditors at Grenadine House, Kingstown, Saint Vincent and the Grenadines on 30 November 2017 at 10am.

The presenters in Saint Vincent and the Grenadines were:

- Brian Glasgow;
- Craig Waterman; and
- David Collins.