



29 October 2009

## PRESS SUMMARY

### **In re Sigma Finance Corporation (in administrative receivership) and In re the Insolvency Act 1986 (Conjoined Appeals) [2009] UKSC 2**

*On appeal from the Court of Appeal Civil Division [2008] EWCA Civ 1303*

**JUSTICES:** Lord Hope (Deputy President), Lord Scott, Lord Walker, Lord Mance and Lord Collins

### **BACKGROUND TO THE APPEAL**

Sigma Finance Corporation is a structured investment vehicle (SIV) established to invest in certain types of asset-backed securities and other financial instruments. Sigma aimed to profit from the difference between the cost of funding its activities and the returns made on its investment portfolio. However, the impact on the financial markets stemming from the sub-prime mortgage market in the United States has meant that Sigma's available assets now fall very far short of the amount needed to pay even the secured creditors of the SIV. All of Sigma's assets are secured under a security trust deed (STD) in favour of those of its creditors investing in and through Sigma. The dispute in this case is between various classes of creditors as to the correct application of the STD where Sigma has insufficient funds to satisfy all its creditors and had failed to meet a margin call. The STD provided that in that event there should be a 60 day realisation period during which the trustees should use Sigma's assets to create, so far as possible, two pools of funds relating to its short and long term liabilities.

But clause 7.6 of the STD also provided that: "During the Realisation Period the Security Trustee shall so far as possible discharge on the due dates therefor any Short Term Liabilities falling due for payment during such period, using cash or other realisable or maturing Assets of the Issuer."

The Court of Appeal, by a majority, construed clause 7.6 as meaning that the remaining assets fall to be distributed preferentially to the creditors whose debts fall due during the realisation period, with distribution to be made according to the dates when payment became due.

### **JUDGMENT**

*The Supreme Court by a majority of four to one allowed the appeal by other creditors whose debts fell due after the realisation period. The principal judgment was delivered by Lord Mance, with whom Lords Hope, Scott and Collins agreed. Lord Walker dissented for the reasons outlined below).*

### **REASONS FOR THE JUDGMENT**

- The principles of contractual construction to be applied were well-established and required consideration of the basic scheme of the STD. Clause 7.6 appeared in the STD in the context of an assumption that Sigma would retain sufficient assets to cover its secured creditors. It was not intended to deal with a situation requiring the application of priorities between creditors. It

was improbable that clause 7.6 could be read as extracting from the short term pool debts which fell due during the 60 day realisation period so as to give priority over other creditors. (Paras [9]-[10], [12], [13]-[17])

- It was also improbable that the parties would have contemplated priorities being conferred by the fortuitous timing of debts falling due during the realisation period. Clause 7.6 was an ancillary provision which did not override the trustee's absolute discretion as to the manner in which assets were to be realised. No provision would have been made for the fees of the trustee if the Court of Appeal were correct. The reasonable person's understanding of clause 7.6 was aided by a clear basic scheme that debts arising during the realisation period were to be part of the short term pool of creditors with the assets to be distributed equitably amongst all the creditors at the discretion of the trustee. (Paras [21]-[22], [25], [32]-[33]) Lord Collins added that textual analysis of the type used to interpret tax legislation was not appropriate to a commercial contract. Detailed semantic analysis must give way to common sense. (Paras [35]-[38])
- Lord Walker dissented. He found that on closer examination the case involved no issue of general public importance. The legal principles were not disputed and the Court should avoid making new contracts for experienced commercial parties. (Paras [42]-[46])

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.**

**Judgments are public documents and are available at: [www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)**