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Former F1 boss claims HSBC mis-sold 'low-risk' bond linked to high-risk property markets

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Former F1 team principal Eddie Jordan, through his investment vehicle Pendragon Investment Holdings Limited, issued proceedings in the High Court last month against the private banking arm of HSBC. Pendragon is seeking to recover over £5 million in losses resulting from the bank's purported misrepresentation as to the nature of his investment and its failure to act with reasonable care and skill.

Background

The Particulars of Claim state that in May 2019 HSBC presented Mr Jordan's company with an opportunity to invest in the HSBC GIF Global Credit Floating Rate Fixed Term Bond Fund 2023-1, a sub-fund of HSBC Global Investment Funds. It is alleged by Mr Jordan's company that, at this time, a number of misrepresentations were made by HSBC in relation to its £46.9 million investment in the sub-fund's four-year fixed term bond (the "Bond").

The proceedings claim that the risk of the sub-fund's Bond defaulting was presented as being *"extremely low"*, with hedging products set in place to *"help remove the uncertainty and the impact of rising interest rates"*. The primary objective of the sub-fund was said to be capital preservation and it is alleged that Mr Jordan was assured that he would not incur capital losses of more than 1%.

However, the proceedings suggest that the Bond may never have been destined for a podium finish. From the start, Pendragon's investment was significantly exposed to high-risk markets, including corporate debt in the Chinese property sector. The sub-fund's portfolio is also said to have contained a larger than anticipated proportion of non-investment grade bonds with poor credit ratings as well as other high yield bonds. Further, hypothetical losses presented to Mr Jordan by HSBC allegedly related only to higher rated BB grade bonds in the sub-fund's portfolio and those calculations did not seem to account for the risker BBB, C and below graded bonds.

Following Mr Jordan's investment in the Bond in June 2019, the proceedings claim that its net asset value progressively deteriorated. Mr Jordan's claim states he was advised by HSBC to meet a number of margin calls on the failing Bond totalling at least £508,000, which exacerbated losses further. He also claims that HSBC continuously advised and assured him not to close out his position, which Mr Jordan argues was negligent advice. Following HSBC crystalising certain losses on the Bond, apparently without any reference or communication with Mr Jordan, his claim asserts that his capital losses were significantly greater than 1%.

Analysis

This case highlights the risks that high net worth individuals and their investment vehicles can be exposed to when investing in complex financial products. It can be particularly risky when debt securities are inextricably intertwined with the property sector. This has more commonly been seen with Residential and Commercial Mortgaged-Backed Securities, but in the case of Mr Jordan's Bond this was via bonds held by the sub-fund during the period of 2019 to 2022 which were issued by Chinese property investment and development companies.

Volatile market conditions can place stress on the loan-to-value ratios (which measures the amount of financing used to buy an asset relative to the value of that asset) of the underlying property assets linked to these bonds. This can cause borrowers to be in default of the terms of their lending facilities, or possibly contribute towards certain events of default occurring which are defined under the terms of the bonds. With more complex Mortgage-Backed Securities, defaults on mortgage or interest payments can cause considerable cashflow problems within the structure of the securitisation. In both cases, without refinancing measures or further equity injections (the brunt of which is often taken on by lower ranking 'junior' bondholders such as Mr Jordan's BBB, C and below graded bonds), the holders of these securities may take on losses. This is further compounded by high interest rate environments.

For mis-selling claims, an action for negligent misstatement will rely on (i) establishing a relationship of trust and confidence with the banking institution, (ii) proving that in providing advice voluntarily, that institution assumes a responsibility equivalent to a contract, and (iii) demonstrating that the Claimant reasonably relied on that advice. The evidential burden is on the Claimant to prove that the banking institution misrepresented the nature of the investment.

With regards to the claim for failure to act with reasonable care and skill, whilst banks will not ordinarily owe duties to advise on the nature and effect of proposed transactions to its customers, in exceptional cases such duties may arise. This will depend heavily on the factual circumstances and the relationship between the parties, or whether there is a special arrangement in place between the bank and that customer. In addition, breaches of regulatory obligations from relevant regimes (whether the FCA's Conduct of Business Rules, the Securities and Investments Board principles or the Investment Management Regulatory Organisation rules) will not amount to an actionable breach of a statutory or common law duty of care. However, they have been acknowledged in *Green v Royal Bank of Scotland [2013] EWCA Civ 1197* to be of assistance when informing what standard of reasonable care was due or whether a specific investment was suitable to that customer.

In the meantime, we will be watching with interest from the pit wall to see how these proceedings develop and whether the claim will reach the chequered flag.