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Case No. 2023-0364-NAC



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CRAIG R. JALBERT, solely in his
capacity as LIQUIDATION TRUSTEE
OF THE GREENSILL CAPITAL U.S.
LIQUIDATION TRUST,

Plaintiff,

v.

BANK OF AMERICA CORPORATION,
a Delaware corporation, and BANC OF
AMERICA STRATEGIC
INVESTMENTS CORPORATION, a
Delaware corporation,

Defendants.

C.A. No. 2023-0364-NAC

PUBLIC VERSION
FILED MARCH 29, 2023

VERIFIED COMPLAINT

Plaintiff Craig R. Jalbert, (the “Liquidation Trustee” or “Plaintiff”), in his capacity as the Liquidation Trustee of the Greensill Capital U.S. Liquidation Trust (the “Liquidation Trust”), by and through his below signed counsel, brings this complaint against Defendants Bank of America Corporation and Banc of America Strategic Investments Corp. (collectively, the “Defendants”), for the avoidance and recovery of fraudulent transfers pursuant to 6 *Del. C.* §§ 1304, 1305 and for unjust enrichment.

NATURE OF THE ACTION

1. This suit involves the recovery of assets belonging to the bankrupt estate of Greensill Capital Inc. (the “Debtor”). During the Debtor’s existence, it acquired Finacity Corporation at an inflated and unjustified valuation of \$82 million. Finacity’s fair value at the time of the transaction was no more than \$15 million (and likely far less). The Debtor did not obtain an investment banker and relied on flawed assumptions and implausible projections, which led to above-market and non-market terms. Defendants benefitted from this deal by receiving payments of more than \$4 million premised on the inflated valuation of Finacity. The Debtor was insolvent at the time of and immediately after each of the payments to the Defendants, or at a minimum, left with an unreasonably small capital. The Debtor and its affiliates collapsed in 2021, and the Debtor commenced bankruptcy proceedings. Plaintiff in this action is vested with the power to prosecute claims under applicable state law. Plaintiff filed this suit as the liquidation trustee and the assignee of Greensill Capital (UK) Limited claims, a creditor of the Debtor, for the fraudulent and unjust transfers made to Defendants.

JURISDICTION AND VENUE

2. This action arises under equity and Delaware Code, title 6, and jurisdiction and venue are therefore proper before this Court under 10 *Del. C.* § 341.

3. The Court has personal jurisdiction over each Defendant because, as further explained below, each Defendant is organized or incorporated under the laws of the State of Delaware and the exercise of jurisdiction is reasonable such that it would not offend traditional notions of fair play and substantial justice.

PARTIES

4. Plaintiff is the duly authorized Liquidation Trustee of the Liquidation Trust. The Liquidation Trust was formed pursuant to the *Amended Findings of Fact, Conclusions of Law, and Order Approving the Disclosure Statement and Confirming the Modified Second Amended Chapter 11 Plan of Liquidation for Greensill Capital Inc.* (the “Confirmation Order”) [ECF No. 311] entered by the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). A true and correct copy of the Confirmation Order is attached hereto as **Exhibit 1**. The Confirmation Order vested the Liquidation Trustee with the power to prosecute and settle any Claims of the Estate against the Defendants pursuant to applicable state law as well as sections 544, 548, and 550 of title 11 of the United States Code (the “Bankruptcy Code”). See Confirmation Order, ¶ 60; *Modified Second Amended Chapter 11 Plan of Liquidation for Greensill Capital Inc.* (the “Plan”) [ECF No. 311-1], §§ 5.7; 1.118; 1.10.

5. In addition, pursuant to the Plan, the Liquidation Trust is the assignee of all claims and causes of action of Greensill Capital (UK) Limited (“GCUK”) “(i)

against the shareholders who sold stock of Finacity Corporation to the Debtor and terminated options pursuant to the 2019 Acquisition, including, without limitation, Avoidance Actions in relation to the 2019 Acquisition and/or any transactions consummated pursuant to, or transfer of value resulting from, the 2019 Acquisition and (ii) that constitute Avoidance Actions that seek the avoidance or recovery of any transfers made by or on behalf of the Debtor of proceeds where such transfers were treated by GCUK as advances under the GCUK Intercompany Loan.” Plan, § 1.2. A true and correct copy of the Plan is attached as Exhibit A to the Confirmation Order.

6. Defendant Bank of America Corporation (“BofA”) was previously a shareholder of Finacity. Upon information and belief, BofA is a Delaware corporation headquartered in North Carolina with an address of 100 N. Tryon Street, Suite 170, Charlotte, NC 28225.

7. Upon information and belief, Banc of America Strategic Investments Corporation is a Delaware corporation, is a subsidiary of Bank of America Corporation, and is headquartered at One Bryant Park, New York, NY, 10036.

FACTUAL ALLEGATIONS

A. Background of the Debtor

8. The Debtor was incorporated under the laws of the State of Delaware.

The Debtor maintained a principal place of business in New York.

9. The Debtor was the United States-based operation of affiliated companies founded by Alexander (“Lex”) Greensill. The Debtor’s direct parent company was Greensill Capital Management (UK) Limited (“GCMC”), based in the United Kingdom; and its ultimate parent company was Greensill Capital Pty Ltd (“Greensill Parent”), based in Australia. Greensill Parent, the Debtor, GCMC, and GCUK (as defined below), are collectively referenced as the “Greensill Group.”

10. The Greensill Group engaged in a form of supply chain finance, primarily through GCMC’s sister company Greensill Capital (UK) Limited (“GCUK”). Supply chain finance generally consists of paying a supplier’s invoice early at a discount and then collecting full payment directly from the purchaser on the due date. The Greensill Group took this a step further by financing future receivables (*i.e.*, making payments on invoices that did not yet exist).

11. The Debtor’s employees facilitated supply-chain finance deals for the benefit of GCUK pursuant to an intercompany services agreement with GCUK dated June 10, 2013 (the “Services Agreement”), which entitled the Debtor to certain expense reimbursements and discretionary commissions from GCUK.

12. The Debtor did not have other sources of revenue. The Debtor was responsible for all of its rents, salaries, and other expenses. Under the Services Agreement, GCUK was obligated to compensate the Debtor \$24,000 per month. At no point prior to 2019 did a loan or loan agreement exist between the Debtor and GCUK exist. In addition, at no point prior to 2019 did the Debtor and GCUK take any efforts to collect or enforce any purported debts between the two entities.

13. On January 1, 2019, the Debtor and GCUK entered into a Call Account Loan Agreement for the Making of Advances up to a Balance of Forty Million US Dollars (the “GCUK Revolver”). The GCUK Revolver contained the hallmarks of a loan agreement, including default provisions and the incurrence of interest. The Debtor was permitted to (and did) draw down on the GCUK Revolver for “general corporate purposes.”

B. The Finacity Acquisition

14. In 2019, the Debtor pursued the acquisition of Finacity, a Delaware corporation based in Connecticut. Finacity was engaged in consulting and facilitating working capital solutions, including securitizing accounts receivables and consumer receivables, factoring, and asset-based loans.

15. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. Notwithstanding Finacity’s financial condition, Finacity’s founder and CEO, Adrian Katz (“Katz”), [REDACTED].

17. [REDACTED]. The Debtor did not negotiate meaningful reductions to the purchase price in response to these concerns.

18. On April 3, 2019, Lex sent [REDACTED].

19. Lex proposed [REDACTED]

[REDACTED]

20. Finacity was not worth [REDACTED]. Indeed, [REDACTED]

[REDACTED] The Debtor's internal diligence was that Finacity's standalone value ranged between [REDACTED] based on a discounted cash flow analysis.

21. There was no factual basis to attribute any material value to cross-selling synergies in determining Finacity's value to the Debtor. No member of the Greensill Group spoke to any of Finacity's clients. [REDACTED]

[REDACTED].

22. Upon information and belief, [REDACTED]

[REDACTED]

23. Upon information and belief, [REDACTED]

[REDACTED].

24. Upon information and belief, the Debtor's acquisition of Finacity was unlikely to result in a material net revenue uplift for Finacity or the Debtor.

25. In addition, [REDACTED]
[REDACTED]
[REDACTED].

26. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

27. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

28. [REDACTED]
[REDACTED]
[REDACTED].

29. No independent third party provided a valuation opinion or analysis regarding the proposed transaction with Finacity.

30. The Finacity acquisition closed on June 10, 2019, and the Debtor entered into a Stock Purchase Agreement to acquire 100% of the shares of Finacity for consideration of approximately \$82,156,000 (without considering millions of dollars in other closing payments made by or on behalf of the Debtor) (the “Finacity Acquisition”). The consideration consisted of (i) \$55,636,000 to be paid to Finacity’s non-founding shareholders in two installments—one at closing, and one on anniversary of the closing; and (ii) \$26,520,000 to be paid to Katz and related parties in five annual installments.

31. The Finacity Acquisition was a Delaware transaction that occurred under Delaware law. The Stock Purchase Agreement contained a “Governing Law” provision stating that “all claims or causes of action that are based on, arise out of, or relate to this Agreement, will be governed by and construed in accordance with the Laws of the State of Delaware without regard to its conflicts of law rules and any other Law that would cause the application of the Laws (including the statute of limitations) of any jurisdiction other than the State of Delaware.”

32. Upon information and belief, the fair market value of Finacity was no more than \$15,000,000 (and likely far less) at the time of the transaction.

33. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

34. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

35. [REDACTED]

[REDACTED] in fact, the

discount should have no more than 5% (and likely less).

36. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

37. [REDACTED]

38. Upon information and belief, taking into account the aforementioned factors and adjustments, Finacity's fair value upon the Debtor's acquisition was no more than \$15,000,000 and likely substantially less.

C. The Avoidable Transfers

39. In June 2019, the Debtor borrowed approximately \$27,034,911 under the GCUK Revolver and used those funds to make the first round of payments required to close the Finacity Acquisition. The Debtor caused approximately \$26.5 million of its borrowed funds to be paid and transferred to Finacity's non-founder shareholders, and another \$6 million to be paid to other parties.

40. In June 2020, the Debtor borrowed approximately \$32,790,105 under the GCUK Revolver and used those funds to make the second round of payments required under the Stock Purchase Agreement. The Debtor caused approximately \$27.8 million of its borrowed funds to be paid and transferred to Finacity's non-founder shareholders and approximately \$4.9 million to Katz.

41. The Debtor caused (i) \$2,107,165.03 to be paid to Defendants on or about June 10, 2019 (the "2019 Transfer"), and (ii) \$2,157,113.13 to be paid to Defendants on or about June 10, 2020 (the "2020 Transfer") and together with the 2019 Transfer, the "Avoidable Transfers"), for a total of \$4,264,278.16. The details

of each of the Avoidable Transfers are set forth in **Exhibit 2**. The funds paid to Defendants were property of the Debtor. The Debtor did not receive reasonably equivalent value in return for its transfers to Defendants. Rather, the Debtor received shares in a company at a valuation that was inflated and overstated by more than 500%.

D. Debtor's Insolvency

42. At all relevant times, the Debtor was insolvent.

43. Following the Finacity Acquisition, the Debtor carried Finacity on its balance sheet at a book value of approximately \$80,000,000. When the value of Finacity is adjusted to its corrected value of \$15,000,000 or less, the Debtor was insolvent as of June 2019 and at all points thereafter.

44. The Debtor was already insolvent prior to the Finacity Acquisition as a result of draws on the GCUK Revolver and other liabilities. The Debtor had no material assets and no reliable revenue stream other than limited payments from GCUK under the Services Agreement.

45. As of December 31, 2018, the fair value of the Debtor's assets was no more than \$1,355,421, and the Debtor's liabilities were approximately \$6,017,339. Accordingly, as of December 31, 2018, the Debtor was insolvent by approximately \$4,661,918.

46. As of June 10, 2019, when the Defendants received the 2019 Transfers, the Debtor's financial condition and insolvency had worsened because of, among other things, the Debtor's draws on the GCUK Revolver to fund operations. The Debtor drew \$27,034,911 on the GCUK Revolver to fund the 2019 Transfers (as well as payments to other shareholders), but received stock in Finacity with a value of less than \$15,000,000. Immediately following the transaction, Finacity was the Debtor's only material asset, whereas the Debtor owed more than \$30 million to GCUK, more than \$30 million to Finacity's former shareholders, and other liabilities, which in their totality, far exceeded the value of the Debtor's assets. The Debtor was insolvent at the time of and immediately after the 2019 Transfers.

47. As of December 31, 2019, the fair value of the Debtor's assets was no more than \$20,024,983, and the Debtor's liabilities were approximately \$77,687,600. Accordingly, as of December 31, 2019, the Debtor was insolvent by more than \$57,000,000.

48. As of June 10, 2020, when the Defendants received the 2020 Transfers, the Debtor was insolvent. The Debtor drew \$32,790,105 on the GCUK Revolver to fund the 2020 Transfers (as well as payments to other shareholders), but received no further value in return. Immediately following the payments, Finacity remained the Debtor's only material asset, whereas the Debtor owed more than \$35 million to

GCUK, more than \$20 million in future earnouts to Katz, and other liabilities, which in their totality, far exceeded the value of the Debtor's assets.

49. As of December 31, 2020, the fair value of the Debtor's assets was no more than \$21,511,882, and the Debtor's liabilities were approximately \$70,639,516. Accordingly, as of December 31, 2020, the Debtor was insolvent by more than \$49,000,000.

50. The Avoidable Transfers also left the Debtor with unreasonably small capital to operate its business and pay for the transactions being entered. The Debtor's acquisition of Finacity and the Avoidable Transfers made in connection therewith left the Debtor overleveraged with no ability to delever. Finacity was the Debtor's only material asset, but its fair market value was insufficient to cover the debt incurred to acquire it (and, moreover, the terms of the acquisition put Katz in a blocking position with respect to a sale). The Debtor had also no reliable source of revenue other than the limited payments under the Services Agreement, which were insufficient to pay all of the Debtor's operating expenses, the outstanding amounts under the GCUK Revolver, and the outstanding payments in connection with the Finacity acquisition. For all of these reasons, the Avoidable Transfers left the Debtor with insufficient and unreasonably small capital.

E. The Chapter 11 Case

51. The Debtor filed a petition under chapter 11 of the Bankruptcy Code on March 25, 2021 (the “Petition Date”) in the Bankruptcy Court.

52. During the bankruptcy case, GCUK enforced its claims as a creditor of the Debtor under the GCUK Revolver and drawn letter of credit.

53. The Debtor retained an investment banker, GLC Advisors & Co., to market the Debtor’s interest in Finacity. GLC contacted over 200 parties regarding the potential acquisition of Finacity from the Debtor free and clear of all liens and encumbrances pursuant to section 363 of the Bankruptcy Code.

54. At the conclusion of the sale process, the Bankruptcy Court approved the sale of the Debtor’s interest in Finacity to White Oak Global Advisors, LLC for cash consideration of \$7 million (and other terms, including the resolution of Katz’s claims and compensation) by Order dated August 18, 2021 [ECF No. 236]. The sale closed on September 21, 2021 [ECF No. 273].

55. The Debtor filed its Plan on October 26, 2021 [ECF No. 307], which was confirmed as modified by the Confirmation Order [ECF No. 311-1].

56. Pursuant to the Plan and Confirmation Order, GCUK’s (a) unsecured claim for amounts owed under the GCUK Revolver was allowed in the amount of \$52,840,506.80 and (b) claim for amounts owed in relation to the letter of credit was allowed in the amount of \$526,000. In addition, GCUK’s rights as a creditor of the

Debtor to bring causes of action against Finacity's former shareholders were transferred and assigned to the Liquidation Trust as of the Effective Date of the Plan.

57. Further, pursuant to the Plan and Confirmation Order, the Liquidation Trust is the successor in interest to the Debtor as provided for therein, including with respect to the right to bring, prosecute, and settle applicable state law causes of action for avoidance of fraudulent transfers, unjust enrichment, and other claims.

COUNT I
Avoidance and Recovery of Fraudulent Transfers as Assignee of GCUK
Pursuant to 6 *Del. C.* §§ 1304, 1305
(Against Defendants)

58. Plaintiff repeats and realleges all of the allegations of this Verified Complaint as if set forth herein.

59. Plaintiff is the assignee of GCUK's rights against the Defendants in connection the Finacity Acquisition.

60. GCUK holds claims against the Debtor, as that term is defined under 6 *Del. C.* § 1301(3), because it had and continues to have a claim, in the amounts of \$52,840,506.80 and \$526,000, as determined by the Bankruptcy Court in the Confirmation Order.

61. GCUK was a creditor, as that term is defined under 6 *Del. C.* § 1301(4), of the Debtor at the time of Avoidable Transfers to Defendants.

62. The Defendants remain liable on the Avoidable Transfers as set forth in the Confirmation Order.

63. The Debtor did not receive reasonably equivalent value in return for the Avoidable Transfers to Defendants, in violation of 6 *Del. C.* § 1305. Rather, the Debtor received shares in a company at a valuation that was inflated and overstated by more than 500%.

64. The Debtor was insolvent, as that term is defined under 6 *Del. C.* § 1302, because the sum of the Debtor's debts were greater than its assets, immediately before, at the time of, and immediately after the Avoidable Transfers.

65. At the time of and immediately after the Avoidable Transfers, the Debtor was left with insufficient and unreasonably small capital for the business and transactions in which it was engaged or about to be engaged.

66. At the time of and immediately after the Avoidable Transfers, the Debtor had debts or intended to incur debts that it reasonably should have believed were beyond its ability to pay, including but not limited to the balance of the GCUK Revolver and previously described liabilities incurred in connection with the Finacity Acquisition. The Avoidable Transfers prevented Debtor's creditors from reaching assets that could have otherwise used to satisfy debts.

67. As recipients of the assets of a fraudulent transfer, Defendants are subject to the full range of remedies that this Court may enter against a party who accepts a fraudulent transfer.

68. In order to provide full justice to Plaintiff (as assignee of GCUK, a creditor defrauded by the Avoidable Transfers), Plaintiff is entitled to avoid the Avoidable Transfers, to the imposition of a constructive trust in the amount of \$4,264,278.16 (the amount that Defendants received as a result of the Avoidable

Transfers) and to recover from Defendants the amount of such transfers in excess of the value of the Finacity shares transferred to the Debtor, as well as any other remedies available under 6 *Del. C.* § 1307 and the common law.

COUNT II
Unjust Enrichment
(Against BofA)

69. Plaintiff repeats and realleges all of the allegations of this Verified Complaint as if set forth herein.

70. BofA was enriched by the amount of \$2,107,165.03 in connection with the 2019 Transfer on or around June 10, 2019.

71. BofA was enriched by the amount of \$2,157,113.13 in connection with the 2020 Transfer on or around June 10, 2020.

72. The Debtor was impoverished in the amount of \$2,107,165.03 in connection with the 2019 Transfer on or around June 10, 2019.

73. The Debtor was impoverished in the amount of \$2,157,113.13 in connection with the 2020 Transfer on or around June 10, 2020.

74. Defendants' enrichment in connection with the 2019 and 2020 Transfers was directly related to Debtor's impoverishment in connection with the 2019 and 2020 Transfers, as Defendants received these amounts from the Debtor in exchange for BofA's shares in Finacity.

75. Upon information and belief, Defendants knew or should have known that the value BofA's shares in Finacity did not justify the price the Debtor paid in the Avoidable Transfers; additionally or alternatively, Defendants knew or should have known that the Debtor was not receiving reasonably equivalent value for the amounts that Defendants received in the Avoidable Transfer.

76. Defendants' enrichment at the expense of the Debtor was unjustifiable because, among other things, the Debtor was left insolvent and holding stock of insignificant value in relation to the price paid.

77. For the same reasons, Defendants' continued retention of the amounts it received in the Avoidable Transfers remains unjustifiable.

78. Defendants lack a rational justification for retaining the excessive amounts paid to them by the Debtor in connection with the 2019 and 2020 Transfers, which amounts were overvalued by more than 500% the consideration received by the Debtor in return.

79. Plaintiff is the successor-in-interest to the Debtor under the Plan and Confirmation Order.

80. To the extent any amount of the 2019 and 2020 Transfers are not recoverable as fraudulent transfers, Plaintiff lacks an adequate remedy at law for recovery of such amounts.

81. As a result of Defendants' unjust enrichment through the Avoidable Transfers, Plaintiff is to the imposition of a constructive trust in the amount of \$4,264,278.16 (the amount that Defendants received as a result of the Avoidable Transfers) and to damages from Defendants the amount of the amount of such transfers in excess of the value of the Finacity shares transferred to the Debtor.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter an order,

A. Granting judgment in favor of Plaintiff and against Defendants on Count I of this Verified Complaint; or alternatively, granting judgment in favor of Plaintiff and against Defendants on Count II of this Verified Complaint;

B. Avoiding the Avoidable Transfers with Defendants;

C. Imposing a constructive trust on the amounts received by Defendants in the Avoidable Transfers;

D. Ordering Defendants to return to Plaintiff the amount of the Avoidable Transfers (less the value of the Finacity shares transferred to the Debtor);

E. Awarding Plaintiff damages, including pre- and post-judgment interest, the amount of the Avoidable Transfers (less the value of the Finacity shares transferred to the Debtor);

F. Awarding Plaintiff its costs and expenses relating to this action, including Plaintiff's reasonable attorneys' fees and court costs; and

G. Granting such other and further relief as the Court may deem just and proper.

MORRIS JAMES LLP

OF COUNSEL:

ARENTFOX SCHIFF LLP
George P. Angelich
1301 Avenue of the
Americas, 42nd Floor
New York, NY 10019
212.484.3900

Justin A. Kesselman
James E. Britton
800 Boylston Street
32nd Floor
Boston, MA 02199
617.973.61092

Dated: March 24, 2023

/s/ R. Eric Hacker

R. Eric Hacker (#6122)
Tara C. Pakrouh (#6192)
500 Delaware Avenue, Suite 1500
P. O. Box 2306
Wilmington, DE 19801-1494
302.888.6800
ehacker@morrisjames.com
tpakrouh@morrisjames.com

*Attorneys for Plaintiff Craig R. Jalbert,
Solely in His Capacity as Liquidation
Trustee of the Greensill Capital U.S.
Liquidation Trust*