

Claim No.

CHP 09/0037

**IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN
CIVIL DIVISION**

To be noticed that this Application do come on to be heard at a court to be held at the IoM Courts of Justice on 11th August 2018 at 9:45am. All proper parties and persons to have due notice.
Date: 10/7/18
IoM Courts
Civil Division

CHANCERY

PROCEDURE

Parties

MICHAEL SIMPSON as Liquidator of Kaupthing Singer & Friedlander (Isle of Man) Limited (In Liquidation)

Claimant(s)

(1) THE FINANCIAL SERVICES AUTHORITY OF THE ISLE OF MAN GOVERNMENT as Scheme Manager of the Depositors Compensation Scheme

Defendant(s)

(2) ISLE OF MAN TREASURY

Full name of applicant (identifying if you are the claimant or defendant)

Michael Simpson as Liquidator of Kaupthing Singer & Friedlander (Isle of Man) Limited (In Liquidation)

Claimant

Applicant is

- the/ one of claimant(s)
- defendant(s)
- other (specify) insert other
- seeking a hearing of more than 2 days (additional fee required)

Description of order applied for

(use numbered paragraphs)

1. That pursuant to Section 185(3) of the Companies Act 1931 this Honourable Court shall give the following directions to Michael Simpson as Liquidator of Kaupthing Singer & Friedlander (Isle of Man) Limited (In Liquidation) ("the Liquidator" and "KSFiom") -

1.1 that in relation to the payment of statutory interest to creditors who were depositors in KSFIOM ("Depositors") pursuant to section 23(4) of the Bankruptcy Code 1892 (as applied by section 248 of the Companies Act 1931) ("Statutory Interest") the Liquidator shall -

1.1.1 pay Statutory Interest upon the admitted proofs of debt of Depositors who did not claim in the Depositors Compensation Scheme ("DCS") or the Early Payment Scheme and/or the Early Payment (No. 2) Scheme (collectively "the EPS") to such Depositors;

1.1.2 by virtue of the provisions of the Compensation of Depositors Regulations 2008 (SD No. 826/08), as amended by the Compensation of Depositors (Amendment) Regulations 2009 (SD No. 232/09) ("the 2008 DCS Regulations"), pay to the DCS all Statutory Interest due to Depositors who claimed in the DCS and/or the EPS, irrespective of whether -

1.1.2.1 such Depositors filed proofs of debt in the liquidation of KSFIOM, which were admitted, before they claimed in the DCS and assigned to the DCS their rights to prove in the liquidation of KSFIOM;

1.1.2.2 such Depositors filed proofs of debt in the liquidation of KSFIOM, which were admitted, before they claimed in the EPS and assigned a limited part of their right to prove in the liquidation of KSFIOM to the Treasury, which was further assigned to the DCS by the operation of Regulation 16(3A) of the 2008 DCS Regulations, and such Depositors also claimed in the DCS;

1.1.2.3 such Depositors filed proofs of debt in the liquidation of KSFIOM, which were admitted, before they claimed in the EPS and assigned a limited part of their right to prove in the liquidation of KSFIOM to the Treasury, which right was further assigned to the DCS by the operation of Regulation 16(3A) of the 2008 DCS Regulations, but such Depositors did not claim in the DCS;

1.1.1.4 such Depositors did not file a proof of debt in the liquidation of KSFIOM, but simply assigned to the DCS and/or the EPS their rights to prove in the liquidation of KSFIOM, (although the Liquidator cannot pay Statutory Interest to a creditor who has not filed a proof of debt which has been admitted in any event, and this direction is sought only for the avoidance of doubt).

2. That in respect of proofs of debt admitted by the Liquidator before any final date fixed by the Court, by which creditors must prove their debts or claims, or be excluded from the benefit of any distributions in the liquidation of KSFIOM, the Liquidator shall pay simple interest at the rate of 4% per annum pursuant to section 23(4) of the Bankruptcy Code 1892 from 9 October 2008 until the date of the final distribution, such interest to be calculated upon a diminishing balance basis.

3. That notice of this application shall be given by the Liquidator to the unsecured creditors of KSFIOM by placing upon KSFIOM's website -

3.1 a copy of this Application and supporting documents; and

3.2 a statement that any unsecured creditor of KSFIOM may, should they wish to do so, apply to be made a party to this Application and submit an answer and/or witness statement and/or skeleton argument in relation to the directions sought at paragraph 1 above.

State briefly why the order is applied for

(use numbered paragraphs)

1. The creditors of KSFIOM, including the unsecured creditors, have been paid 100 pence in the pound in relation to the amounts admitted pursuant to the proofs of debt filed by the creditors, or by the DCS pursuant to assignments granted to it, or to the EPS, by creditors.
2. Limited surplus assets remain in the liquidation of KSFIOM, from which Statutory Interest can be paid to its unsecured creditors. A direction that section 23(4) of the Bankruptcy Code 1892 applies to the payment of Statutory Interest to unsecured creditors in the liquidation of KSFIOM was issued by this Honourable Court on 16 June 2017.
3. A number of the unsecured creditors of KSFIOM (in their capacity as depositors in KSFIOM) claimed in the DCS and/or the EPS, and in return for payments from the DCS and/or EPS such creditors assigned to the DCS and/or the EPS some or all of their rights to prove in the liquidation of KSFIOM, in respect of KSFIOM's liability to them as depositors ("Depositors").
4. The provisions relating to the assignment of such Depositors' rights to prove in the liquidation of KSFIOM, which are contained in the 2008 DCS Regulations in relation to the DCS, and in Government Circulars No. GC1/09 and GC4/09 relating to the EPS, are complex, and for the avoidance of doubt the Liquidator therefore seeks the directions set out above.
5. It is the understanding of the Liquidator that assignments made by Depositors to the Treasury pursuant to the EPS were automatically assigned to the Scheme Manager of the DCS pursuant to the provisions of Regulation 16(3A) of the DCS 2008 Regulations, and that pursuant to Regulation 16(2) all of each such Depositor's existing rights in respect of the liability of KSFIOM to that Depositor vested in the Scheme Manager of the DCS.

6. It is the Liquidator's further understanding that under Regulation 16(4) the Scheme Manager of the DCS shall account to each Depositor for any sum received by the DCS from the Liquidator of KSFIOM in excess of the amount of the compensation sum paid to the Depositor, pursuant to Regulation 11, together with any other amount to which the Scheme Manager is entitled under Regulation 16(5)(b). Accordingly, it is the intention of the Liquidator to pay Statutory Interest upon the admitted proofs of debt which were filed by the DCS in relation to the right to prove in the liquidation of KSFIOM that were assigned to the DCS, (either by Depositors, or by the Treasury). The DCS will then account to the Depositors concerned for that interest.

State how the applicant wishes the application to be dealt with:

- At a hearing Without a hearing
 At a telephone hearing

How long is the hearing expected to last?

1 days hours insert minutes

Is this time estimate agreed by all the parties? Yes No

Give details of any fixed trial date or period insert date or period

The information relied on in support of this application is in	the attached witness statement	<input checked="" type="checkbox"/>
All evidence must be typed	the statement of case/particulars of claim <input type="checkbox"/> / defence <input type="checkbox"/> *	<input type="checkbox"/>
	the evidence set out below	<input type="checkbox"/>

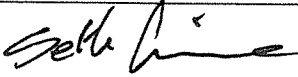
*indicate as appropriate

Evidence in support

(use numbered paragraphs)

1. Witness Statement of Michael Simpson as Liquidator of Kaupthing Singer & Friedlander (Isle of Man) Limited (in Liquidation) dated 3 July 2018.

If you need to continue on a separate sheet please use the prescribed form – 'HCC CONTINUATION SHEET'

<p>Statement of truth</p> <p>[I believe <input (and="" <input="" [the=""]]="" any="" applicant="" appropriate<="" are="" as="" believes="" checked="" continuation="" facts="" in="" indicate="" p="" section="" sheets)="" stated="" that="" the="" this="" true.="" type="checkbox"/> </p>	
<p>Signed </p> <p>(type or print full name here) SETH FARGHER CAINE</p> <p>[Applicant <input <input="" [litigation=""]=""]]=""]]'s="" advocate="" appropriate<="" as="" friend="" indicate="" p="" type="checkbox"/> </p>	
<p>Name of applicant's advocate's firm</p> <p>Cains Advocates Limited</p>	
<p>Position or office held (if signed on behalf of a company or other corporation):</p> <p>Advocate for the Applicant</p>	
<p>Date 3 July 2018</p>	
<p>Applicant or applicant's advocate's address in the Isle of Man (including postcode) to which documents should be sent:</p> <p>Cains Advocates Limited</p> <p>Fort Anne</p> <p>Douglas</p> <p>Isle of Man</p> <p>IM1 5PD</p>	<p>Telephone no. 01624 638356</p>
	<p>Fax no. (if appropriate) 01624 638333</p>
	<p>E-mail (if appropriate) seth.caine@cains.com</p>
	<p>Reference (if any) 22077.0016</p>

Notes for guidance

Court staff cannot give legal advice. If you need information or advice on a legal problem you should contact an advocate.

Court fee

A court fee may be payable, depending on the type of application you are making. Court staff can give you information about fees.

Completing the form

Heading

Enter the claim number, procedure and parties as on the claim form.

Description of order

Set out what order you are applying for e.g. to set aside a judgment entered against me on (date).

A typed draft of the order must be attached to the application.

Reasons for order

Set out the reasons why you are applying for the order.

Hearing

Most applications will require a hearing and you will be expected to attend. The court will allocate a hearing date and time for the application. Please indicate in a covering letter any dates that you are unavailable, with reasons, within the next 8 weeks.

The court will only deal with the application without a hearing in the following circumstances.

- where all the parties agree to the terms of the order being asked for;
- where all the parties agree that the court should deal with the application without a hearing, or
- where the court does not consider that a hearing would be appropriate.

If your application includes a request that the application or part application be dealt with by a telephone hearing the court may grant or refuse such request.

Duration of hearing

If you do not know how long the hearing will take, do not guess but leave these boxes blank.

For a hearing of more than 2 days an additional fee is required. Court Office staff can tell you how much you have to pay. Alternatively, you can view the current Fees Order at www.courts.im.

Information relied on

In this section set out the information you want the court to take account in support of the application you are making.

- If you wish to rely on a witness statement, tick the appropriate box and attach the typed statement to the application notice. A witness statement form is available on request from the Courts Office.
- If you wish to rely on a statement of case or if you intend to rely on your particulars of claim or defence in support of your application, tick the appropriate box.

- If you wish to rely on written evidence on this form, tick the third box and enter details in the space provided. You must also complete the statement of truth. Proceedings for contempt of court may be brought against a person who signs a statement of truth without an honest belief in its truth.

Signature

The application must be signed and include your current address and contact details. If you agree that the court and the other parties may communicate with you by telephone, fax or email, complete the details before taking or sending the form to the Courts Office, Isle of Man Courts of Justice, Deemsters Walk, Bucks Road, Douglas Isle of Man IM1 3AR.

Address

Insert in this box the address at which you wish to receive documents. The address must be in the Isle of Man. If you are willing to receive documents by fax or e-mail, add details.

Service of application notice

You must take or send a copy of the application notice, with a copy of the draft order and of any witness statement, to every other party.

If a respondent resides outside of the Isle of Man service must be effected pursuant to any relevant order after application is made to the court. Use form HC8C Application Notice (permission to serve outside the jurisdiction) to make your application.

What happens next

If you have asked for the application to be dealt with without a hearing, the Courts Office will refer it to a judge, who will decide whether it is suitable for consideration without a hearing, and may give directions as to the filing of evidence.

If you have asked for a hearing, or the judge decides that the application is not suitable for consideration without a hearing, the Courts Office will notify you of the time and place of the hearing.

You must then notify the other parties of the time and place of the hearing. If the judge directs that any other person should be served with the application, you must also notify them of the time and place of the hearing, and take or send a copy of the application notice, with a copy of the draft order and of any witness statement, to them.