

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN

CHANCERY DIVISION

IN THE MATTER of THE COMPANIES ACT 1931

IN THE MATTER of KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED

IN THE MATTER of THE HUMBLE JOINT PETITION of KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED and the FINANCIAL SUPERVISION COMMISSION (the Joint Petitioners") dated 9th October 2008

IN THE MATTER of THE COURT ORDERS OF 9th October 24th October and 20th and 27th November 2008 AS AMENDED BY THE CONSENT ORDER OF 23rd JANUARY 2009

Third AFFIDAVIT OF JOHN WRIGHT sworn on behalf of ZYGMUNT SIECZKO SARAH E CHANTREY and TRACEY SHEILA SPUYMAN

I JOHN WRIGHT of 16 Willowbrook Gardens Douglas Advocate being Sworn make Oath and say as follows

1. I am the Advocate for the KSFiom Depositors Action Group ("DAG"). The first three named parties whom I represent are the Committee of DAG. DAG has 2,000 members who are creditors of KSFiom and the approximate value of their claims in liquidation will be about £100m
2. I have read and copied to my clients and discussed with them directly as a committee and with the wider membership by postings on the DAG web site the 1st, 2nd and 3rd affidavits of Alan Bell and the 1st, 2nd, 3rd and 4th affidavits of David C Lovett, the 1st, 2nd and 3rd affidavits of Michael Simpson, a liquidator provisionally the 1st and 2nd affidavits of Michael Patrick Weldon, Head of

Supervision at the FSC and the affidavit of Gabriel moss QC. In addition I have had the benefit of instructions and information passed on to my clients by the liquidator provisionally in regular calls and of a meeting with him and attendance at a road show about the proposed scheme run by Alix & Partners

3. My clients are naturally disappointed at the late service of evidence from the Treasury on me some 24 hours after the Court order. Notwithstanding the additional time the evidence provides little further evidence of substance and does not respond adequately to many of our previous information requests. The Treasury has had quite long enough to put together a comprehensive plan. The proposals remain sketchy and incomplete. I suggest that the Court should primarily take into account the creditors' views, which are set out below, in relation to the next step.
4. The creditors I represent believe that those proposing the Scheme of Arrangement have not made out a case that the proposals are of significant advantage to creditors and indeed they are of potential disadvantage to them because the Scheme will compromise their rights and has to be engineered through the complexities of a Scheme and some form of provisional liquidation. This is in stark contrast to the relatively simple construction of a liquidation where the creditors have control over the identity of the liquidator and a dialogue through a creditors committee.
5. A fundamental problem seems to me to be that the Treasury's proposals will induce substantial delay in any final decision as to the winding up of this Company. It is now more than 4 months since the bank closed its doors and the Company was declared insolvent. The Treasury now suggest that there should be a

further long adjournment followed by a hearing to approve documents, call meetings and determine classes and the notice and holding of the meetings before a report back. This realistically puts a scheme as not achievable before late August 2009. 130 days have already passed and in that time Alix Partners and Treasury have produced a plan which is still incomplete plan. This might just be another 60 days before liquidation.

6. Whilst the action of IOM Government in increasing the interim payment to £10,000 is appreciated it is not the real answer. For instance it leaves depositors with set off in the air. It does not assist bondholders. Our understanding is that the liquidator provisional has sufficient funds to make a dividend payment to creditors.
7. The proposals do not have the support of the Company in Liquidation Provisional. Our understanding is that the Liquidator Provisional takes a neutral stance at the moment. Yet the whole Scheme of Arrangement is intended as a compromise not between the proposer and the creditors but between the Company and its creditors.
8. Further the Company gives no detail as to the assets of the Company including claims against third parties against which the creditors can measure the respective returns under the proposal from the Applicant as against liquidation.
9. There are other matters of concern to my clients, many depositors are extremely concerned about the implications of an adjournment. The levels of stress and anxiety expressed by depositors on the DAG forum site is increasing daily as this matter drags on. Some depositors are very vulnerable due to age and/or the intolerable position this matter has put them in.

10. On any analysis of the draft scheme of arrangement exhibited to Lovett 4 shows no financial benefit of the scheme of arrangement as proposed over a straightforward liquidation and the depositor's compensation scheme. Worse, whilst it is accepted that it does show potential time tabling and certainty over when payments up to 60% may be made, it appears to deprive the Company and in particular creditors and a liquidator of certain powers and rights. The loss of these rights may give rise to serious disadvantages.

11. These disadvantages are as follows:-

- Lack of liquidator with power to conduct s 207 examinations and report to Court. The Court nor the scheme can confer such power upon the scheme manager or the liquidator provisionally
- As between themselves and the company the creditors bound by a scheme are no longer creditors and the Company no longer insolvent in law because of the compromise. This may affect the rights of creditors or the company to sue third parties and cannot be remedied by the Court. It is possible that a carefully drafted scheme preserved specifically those rights but it would be open to third party challenge. No such drafting is included and the risk has not been assessed
- The scheme manager cannot have the same powers as a liquidator conferred upon him by Court or Creditors. Many of the liquidator's powers are statutory. So whilst the Company could sue under the control of the scheme manager it could be stopped by its contributors seizing control. To this end it is worth pointing out that the only way to bind contributories is to enter into the scheme after liquidation. So as shareholders the contributories could upset the

scheme by passing a resolution to appoint a liquidator. If they wished.

- There is no saving in administration, or if there is it is infinitesimally small. The complexity of a Scheme and the Liquidation Provisional may well increase costs.
- There is no basis for a committee of inspection which is a creature of statute and should be appointed to oversee the liquidation in circumstances such as these. It is accepted that the scheme manager will be subject to court control, but that is different and more formal. Again with careful drafting it may be possible to construct a committee of creditors to oversee the scheme manager, but this is not in the draft to date.
- Absent any more realistic information about likely yield and payment schedules for realizations it is possible that the repay government at 60p may delay final payment way beyond any date they would, have been payable under a liquidation simple
- There appears to be a misplaced concern amongst the treasury team that liquidation cannot be allowed to happen because if it does it will automatically trigger the DCS and that will prevent a scheme of arrangement. There is nothing in the DCS Regulations to suggest that a liquidation automatically triggers the DCS. It is at the discretion of the DCS manager and in our view an SoA under the control of a Liquidator might be a win win for us all if all our other concerns are adequately dealt with. This begs the question what are the Treasury concerns about a liquidation, even one followed by a scheme so that the liquidator becomes scheme manager and none of the liquidators powers are lost
- The DCS provides *3. (1) A participant is to be regarded as in default where the Scheme Manager*

determines that it should be so regarded, on the basis that —

(a) by virtue of one or more of the following paragraphs, the participant may be so determined; and

(b) the participant is unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred in connection with deposit taking business carried on by it.

(2) Where a participant is a body corporate incorporated in the Island, it may be determined to be in default -

(a) on the making of a winding up order against it; or

(b) on the passing of a resolution for a voluntary winding-up in a case in which no statutory declaration has been made under section 218 of the Companies Act 1931; or

(c) on the holding of a creditors' meeting summoned under section 226 of that Act; or

(d) on the appointment of a receiver (whether or not by the court); or

(e) on the making of any voluntary arrangements with its creditors,

and a body corporate incorporated elsewhere may be determined to be in default on the

occurrence of an event which appears to the Scheme Manager to correspond as nearly as may

be to any of those mentioned above.

(3) A participant may also be determined to be in default where it cannot be traced, does not have sufficient resources available to it in the Island, or is a corporation which has been wound up. So it is at the discretion of the scheme manager, not automatic, and whereas in normal circumstances a refusal to activate may be subject to challenge if a decision is taken to liquidate and to adopt a scheme of arrangement rather than rely on the DCS, then nothing can arise

12. It cannot even be certain that the SoA proposals will result in the payments being earlier or in greater amount up to 60p than in a liquidation with the DCS

13. In these circumstances my clients believe that the Company should be placed in liquidation immediately so that there is early resolution of the manner in which they will recover their monies.

Taken and Sworn at Douglas
This day of February 2009
Before me:

Commissioner for Oaths

With Notice to:

1. Kaupthing Singer & Friedlander (Isle of Man) Limited, per its Advocates Cains
2. The Financial Supervision Commission, per its Advocates Quinn Kneale
3. The Treasury of the Isle of Man , per HM Attorney General, Government Advocate and Gough & Co
4. CMI Insurance Company Limited, Norwich Union International Limited, AXA Isle of Man Limited, Prudential International Life Limited and Royal Skandia Life Assurance Limited, per their Advocates Dickinson Cruickshank
5. Kaupthing Bank hf per its Advocates Mann & Partners
6. Gavin Brake and Katie Jarman, per their Advocates Moroneys
7. Martin Moule .
8. Martyn Dawes
9. Medallion Capital Corporation
10. Norman and Mary Roper

Serial Number: CP 2008194

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Third AFFIDAVIT OF JOHN WRIGHT

JOHN WRIGHT
LEGAL CONSULTANT
16 WILLOWBROOK GARDENS
DOUGLAS IM2 2QQ