

KLEYR GRASSO ASSOCIÉS

AVOCATS À LA COUR (Lawyers with right of audience before the Court)

PS/303125/NK

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SUMMONS TO APPEAR BEFORE THE TRIBUNAL D'ARRONDISSEMENT  
(DISTRICT COURT), LUXEMBOURG, SITTING AS A CIVIL COURT

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The twenty-second of July in the year two thousand and eleven

at the request of the company incorporated under Icelandic law KAUPTHING BANK hf (at present subject to *Winding Up Proceedings* pursuant to a decision of the District Court, Reykjavik, of 22 November 2010), established and having its registered office at Borgartúni 26, IS-105, Reykjavik, Iceland, entered in the Icelandic Register (*Register of Enterprises*) under No 560882-0419, represented by its Resolution Committee at present in office, or else by its Winding Up Committee at present in office, or else by the legal organs thereof at present in office,

PA. having as its lawyer Maître Marc KLEYR, lawyer with right of audience before the Court, of 122, rue Adolphe Fischer, L-1521 Luxembourg, who is appointed and will act for it herein and in consequential matters, whose chambers are his client's elected address for service,

**I, the undersigned, Véronique REYTER, deputy *Huissier de Justice* (drafter and server of process), replacing Jean-Claude Steffen, *Huissier de Justice*, of 50, boulevard J. F. Kennedy, L-4170 Esch-sur-Alzette, registered with the Tribunal d'Arrondissement, Luxembourg,**

served a summons upon:

Mr Kevin Gerald STANFORD, status unknown, residing at The Dower House, Roydon Hall Lane, East Peckham, near Tonbridge, TN12 5NF, Kent, United Kingdom,

*to appear before the Tribunal d'Arrondissement, Luxembourg, sitting as a civil court, Cité Judiciaire, Plateau du St Esprit, L-1475 Luxembourg,*

*Stating that, within a period of fifteen days as from the date of the present instrument, in addition to extensions of time on account of distance provided for in Article 167 of the New Code of Civil Procedure, if appropriate, he is required to appoint a lawyer with right of audience before the Court in order to be represented before this Court, in accordance with Articles 193 and 195 of the New Code of Civil Procedure,*

*failing which, and if the present summons is served or notified personally, the judgment to be delivered shall be deemed to have been given inter partes and shall not be subject to appeal, in accordance with Articles 79 and 80 of the New Code of Civil Procedure,*

*that the documents on which the claim is based are indicated in the present instrument.*

#### SUBJECT MATTER OF THE CLAIM:

##### 1. FACTS AND BACKGROUND TO THE CASE

The present application to the Court seeks, for the reasons set out below, an order against the defendant Kevin Gerald STANFORD requiring him to pay certain amounts as particularised in the operative part of the present summons.

###### 1.

CA  
On 27 September 2006, without prejudice to the exact date, the public limited company incorporated under the Luxembourg law KAUPTHING BANK LUXEMBOURG S.A. concluded with the party summoned a contract entitled Secured Investment Line Agreement<sup>1</sup> (hereinafter 'SILA') under which the claimant agreed to make available to the party summoned a line of credit up to GBP 295 000 000.

An addendum<sup>2</sup> was added to the SILA on 12 March 2008.

###### 2.

On 3 October 2008, without prejudice to the exact date, KAUPTHING BANK LUXEMBOURG S.A., pursuant to clause 15.2 of the SILA, transferred its rights and obligations under the SILA to the claimant, including the loans granted until that date to the party summoned in pursuance of the SILA<sup>3</sup>. Specifically, the transfers of loans made on 3 October 2008 related to the following opened positions of the party summoned<sup>4</sup>:

- the sum of GBP 193 073 210.69 entered in account No 100977;
- the sum of GBP 25 372 578.24 entered in account number 101989;
- the sum of GBP 32 033 381.45 entered in account number 200069.

###### 3.

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<sup>1</sup> Maître Kleyr Document No 1.

<sup>2</sup> Maître Kleyr Document No 2.

<sup>3</sup> Maître Kleyr Document No 3.

<sup>4</sup> Maître Kleyr Document No 4.

The party summoned was informed of those transfers by registered letters of 23 October 2008<sup>5</sup> and 19 February 2009<sup>6</sup>.

Furthermore, pursuant to an agreement entitled *Deed of Undertaking* dated 13 March 2009<sup>7</sup>, the defendant expressly accepted all the transfers which were made by KAUPTHING BANK LUXEMBOURG S.A. to the claimant on 3 October 2008.

4.

By the same registered letter of 23 October 2008, the claimant formally called on the party summoned to provide, by 29 October 2008 at the latest, additional guarantees totalling GBP 73 200 663 in order to cover the positions opened under the SILA.<sup>8</sup>

CA  
In fact, at that time, the credits granted to the party STANFORD in implementation of the SILA amounted to a total sum of GBP 251 586 940, whereas the value of the guarantees intended to cover the loans amounted only to GBP 178 386 277. However, under the stipulations of the SILA, the value of the portfolio of guarantees intended to cover the loans was required, at all times, to exceed 100% of the amount of the loans granted to the party STANFORD ('At any time during the duration of this Agreement the Cover Ratio shall exceed 100%').

5.

The payment demand of 23 October 2008 nevertheless remained a dead letter, the party summoned not having provided the requisite additional guarantees to cover the loans which had been granted to him. In so far as this non-performance by the party STANFORD of his contractual obligations constituted, pursuant to Articles 9.3 and 12 of the SILA, an *Event of Default* rendering payable the totality of the debt, the claimant thereafter realised a number of pledges made available to it under Clause 9 of the SILA in order to obtain payment of its claim of a principal amount of GBP 262 068 237.69 (as at 31 October 2008).

6.

The realisation of the pledges was nevertheless not sufficient to pay off the claimant. In that context, it is appropriate to make it clear that the realisation, on 31 March 2009, without prejudice to the exact date, of the pledge which had been granted by the party summoned on

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<sup>5</sup> Maître Kleyr Document No 5.

<sup>6</sup> Maître Kleyr Document No 6.

<sup>7</sup> Maître Kleyr Document No 7.

<sup>8</sup> Maître Kleyr Document No 8.

the basis of Clause 9 of the SILA in respect of the 10 540 shares held by it in the company incorporated under English law All Saints Retail Limited gave rise to costs amounting to GBP 298 007.71 which the party summoned must reimburse to the claimant on the basis of Clause 10 of the SILA.

7.

The party summoned is to date, without rhyme or reason, resisting the claimant's payment demand, with regard both to the principal claim of GBP 252 068 237.69 and to the costs incurred by the claimant in respect of the various pledges, including the sum of GBP 298 007.71 incurred in relation to the pledges of the shares in the company All Saints Retail Limited.

The party summoned is therefore manifestly seeking knowingly to evade his commitments and in particular his obligation to repay the sums lent pursuant to the SILA.

## 2. LAW

### (a) The territorial jurisdiction of the Luxembourg Courts

*CA.* The territorial jurisdiction of the Luxembourg Courts derives from Clause 16.2 of the SILA which provides that the Courts of the City of Luxembourg have jurisdiction for all judicial proceedings relating to the SILA ('The parties to this Agreement agree that any legal action or proceedings arising out of or in connection with this Agreement shall be submitted to the jurisdiction of the Court of Luxembourg, Grand Duchy of Luxembourg.')

### (b) The legal bases

The present claim is based principally on Articles 1134 and 1134-1 of the Civil Code, or else in the alternative on any other applicable legal basis.

Pursuant to Article 1134 of the Civil Code, agreements legally established serve as law for those who have made them and must be executed in good faith. In the terms of Article 1134-1 of the Civil Code, an agreement giving rise to reciprocal obligations requires, subject to any contrary intention or practice, that each party execute his obligation in such a way that it coincides with the correlative obligation of the other party.

The parties are bound by a loan agreement in implementation of which funds have been made available to the party summoned STANFORD.

In so far as the party summoned refuses, to date, to honour his obligation to repay the loans

granted to him in implementation of the SILA and the costs incurred in realisation of the pledge on the 10 540 shares in the company incorporated under English law All Saints Retail Limited, it is appropriate to resort to judicial constraint to obtain payment of the debt payable to the claimant, the particulars of which are as follows:

- the principal sum of GBP 252 068 237.69, to which amount should be added contractual interest at the rate of 12.84125% as from 31 October 2008, the date on which the totality of the debt became payable;
- the sum of GBP 298 007.71 in respect of the costs incurred by the claimant in realising the pledge granted to it by the party summoned on the basis of Clause 9 of the SILA in respect of the 10 540 shares in the company All Saints Retail Limited.

### 3. PROVISIONAL ENFORCEMENT

Pursuant to Article 244 of the New Code of Civil Procedure, the Court is asked to order provisional enforcement of the judgment to be delivered, without security.

### 4. ARTICLE 240 OF THE NEW CODE OF CIVIL PROCEDURE

PA. Finally, with regard to the expenses incurred by the claimant and not covered by the costs, the Court is asked to order the party summoned to pay to it the sum of EUR 5000 on the basis of Article 240 of the New Code of Civil Procedure.

### 5. DETAILS OF DOCUMENTS

The documents on which the claim is based, subject to an express reservation regarding any other documents to be produced as appropriate, are as follows:

- *Secured Investment Line Agreement* of 27 September 2006
- *Addendum (to the Secured Investment Line Agreement)* of 12 March 2008
- *Transfer Certificates* of 3 October 2008
- Letter from KAUPTHING BANK LUXEMBOURG S.A. of 21 November 2008
- Registered letter from KAUPTHING BANK hf of 23 October 2008
- Registered letter from KAUPTHING BANK hf of 19 February 2009
- *Deed of Undertaking* of 13 March 2009
- *Power of Attorney* of 13 March 2009

ON THOSE GROUNDS:

The Court is asked to:

admit the present application to the Court as regards its form and, as regards its substance, declare the same well founded and justified,

order the party summoned Kevin Gerald STANFORD, named and described above, to pay to the claimant, on the grounds set out above, the principal sum of GBP 252 068 237.69, such sum to have interest added to it at the contractual rate of 12.84125% per annum as from 31 October 2008 until full payment, or else interest at the legally prescribed rate (reference rate of the European Central Bank plus 7 points in accordance with the Law of 18 April 2004 relating to time limits for payment and default interest) from 31 October 2008 until full payment, or else as from the present application to the Court until full payment,

CA. further order the party summoned Kevin Gerald STANFORD, named and described above, to pay to the claimant on the basis of Clause 10 of the SILA the sum of GBP 298 007.71 in respect of the costs incurred by the claimant in realising the pledge which had been granted to it by the party summoned on the basis of Clause 9 of the SILA in respect of the 10 540 shares in the company All Saints Retail Limited, to which sum should be added interest at the contractual rate of 12.84125% per annum as from 31 March 2009 until full payment, or else interest at the legally prescribed rate (reference rate of the European Central Bank plus 7 points in accordance with the Law of 18 April 2004 relating to time limits for payment and default interest) from 31 March 2009 until full payment, or else as from the present application to the Court until full payment,

place on record for the claimant that it acknowledges having received a payment in the sum of GBP 22 254 347.61 on 3 March 2009, a payment of GBP 632 400 on 13 March 2009, several payments totalling GBP 2 408 826.37 on 4 September 2009, a payment of GBP 2 794 027 on 8 September 2009, several payments totalling GBP 336 932.82 on 9 September 2009, two payments totalling GBP 56 347.79 on 30 September 2009, a payment of GBP 20 000 on 11 November 2009 and, finally, two payments totalling GBP 99 901.35 on 24 December 2009,

hold that the payments must be appropriated as a matter of priority to the costs and contractual interest, or else legally prescribed interest, as accrued at the respective payment dates,

for the purposes of the jurisdiction of the Court, the claimant evaluates its claim (principal amount and costs incurred in realising the pledge on the 10 540 shares in the company All Saints Retail Limited) as EUR 289 622 571.15 (= GBP 252 366 245.40 + GBP 298 007.71 at

the rate of exchange ruling on 18 July 2011),

order provisional enforcement of the judgment to be delivered, without security,

order the party summoned to pay to the claimant the sum of EUR 5000 on the basis of Article 240 of the New Code of Civil Procedure by way of procedural indemnity,

order the party summoned to pay all costs and disbursements of the proceedings and order deduction in favour of the undersigned lawyer, who states that they have been incurred in advance,

reserve to the claimant all other entitlements, dues, rights of action and pleas to be relied on as and where appropriate and fitting.

Whereof an act, subject to all reservations in general and whatsoever, and since the said party summoned resides in the United Kingdom, for that party I left a copy of my process, all translated into English, in duplicate, as a registered letter with a return receipt, to **THE SENIOR MASTER, For the Attention of the Foreign Process Department (Room E 10), Royal Courts of Justice, Strand, LONDON WC2A 2LL, UNITED KINGDOM**, for the purposes of service or notification of the document on the said party summoned, pursuant to the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters or any supplements thereto or the Convention of 1 March 1954 on civil procedure, that addressee also having jurisdiction pursuant to Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000.

<u>Cost:</u>	
Duty:	60.00
Copies:	75.00
Research:	6.00
Travel:	4.00
VAT:	12.75
Stamps:	28.00
Registration:	12.00
Postage:	9.00
<u>Total:</u>	<u>146.75</u>



CERTIFIED TRUE TRANSLATION  
 CLAUDINE ADAMS  
 SWORN TRANSLATOR ACCORDING TO  
 MINISTERIAL DECREE OF 15 DECEMBER 1991  
 LUXEMBOURG. 21. 7. 2011

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