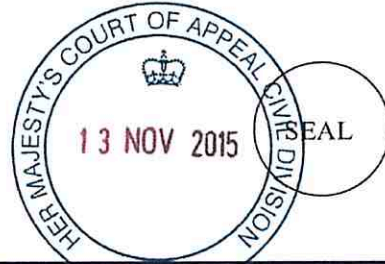


Appellant's notice

(All appeals except small claims track appeals)

For Court use only	
Appeal Court Ref. No.	2015 / 3763
Date filed	13 Nov 2015

Notes for guidance are available which will help you complete this form. Please read them carefully before you complete each section.



Section 1 Details of the claim or case you are appealing against

Claim or Case no.

7942 of 2008

Fee Account no.

Name(s) of the

Claimant(s) Applicant(s) Petitioner(s)

(1) Anthony Victor Lomas; (2) Steven Anthony Pearson; (3) Paul David Copley; (4) Russel Downs; (5) Julian Guy Parr (The Joint Administrators of Lehman Brothers International (Europe) (In Administration))

Name(s) of the

Defendant(s) Respondent(s)

(1) Burlington Loan Management Limited; (2) CVI GVF (LUX) Master S.À R.L.; (3) Hutchinson Investors, LLC; (4) Wentworth Sons Sub-Debt S.À R.L.; (5) York Global Finance BDH, LLC

Details of the party appealing ('The Appellant')

Name

Wentworth Sons Sub-Debt S.À R.L.

Address (including postcode)

c/o Kirkland & Ellis International LLP
30 St. Mary Axe
London
EC3A 8AF
Ref: Kon Asimacopoulos/ Partha Kar/ Jifree Cader

Tel No.

02074692000

Fax

442074692001

E-mail

kasimacopoulos@kirkland.com; PKar@kirkland.com; jifree.cader@kirkland.com

Details of the Respondent to the appeal

Name

(1) Anthony Victor Lomas; (2) Steven Anthony Pearson; (3) Paul David Copley; (4) Russel Downs; (5) Julian Guy Parr (The Joint Administrators of Lehman Brothers International (Europe) (In Administration))

Address (including postcode)

c/o Linklaters LLP
One Silk Street, London, EC2Y 8HQ
Ref: Tony Bugg/ Euan Clarke

Tel No.

02074562000

Fax

02074562222

E-mail

tony.bugg@linklaters.com

Details of additional parties (if any) are attached

Yes

No

Section 2 Details of the appeal

From which court is the appeal being brought?

- The County Court at
 The Family Court at
 High Court
- Queen's Bench Division
 - Chancery Division
 - Family Division
- Other (please specify)

What is the name of the Judge whose decision you want to appeal?

Mr Justice David Richards

What is the status of the Judge whose decision you want to appeal?

- District Judge or Deputy Circuit Judge or Recorder Tribunal Judge
- Master or Deputy High Court Judge or Deputy Justice(s) of the Peace

What is the date of the decision you wish to appeal against?

2 October
~~31 July 2015~~

To which track, if any, was the claim or case allocated?

- Fast track
- Multi-track
- Not allocated to a track

Nature of the decision you wish to appeal

- Case management decision Grant or refusal of interim relief
- Final decision A previous appeal decision

Section 3 Legal representation

Are you legally represented?

Yes No
If 'Yes', please give details of your solicitor below

Name of the firm of solicitors representing you

Kirkland & Ellis International LLP

The address (including postcode) of the firm of solicitors representing you

Kirkland & Ellis International LLP
30 St. Mary Axe
London
EC3A 8AF

Tel No.	02074692000
Fax	442074692001
E-mail	kasimacopoulos@kirkland.com; PKar@kirkland.com; jifree.cader@kirkland.com
DX	
Ref.	Kon Asimacopoulos/ Partha Kar/ Jifree Cader

Are you, the Appellant, in receipt of a Legal Aid Certificate or a Community Legal Service Fund (CLS F) certificate?

Yes No

Is the respondent legally represented?

Yes No

If 'Yes', please give details of the respondent's solicitor below

Name and address (including postcode) of the firm of solicitors representing the respondent

c/o Linklaters LLP
One Silk Street, London, EC2Y 8HQ
Ref: Tony Bugg/ Euan Clarke

Tel No.	02074562000
Fax	
E-mail	tony.bugg@linklaters.com
DX	02074562222
Ref.	Tony Bugg/ Elsie Blackshaw

Section 4 Permission to appeal

Do you need permission to appeal?

Yes No

Has permission to appeal been granted?

Yes (Complete Box A)

No (Complete Box B)

Box A

Date of order granting permission

9 October 2015

Name of Judge granting permission

Mr Justice David Richards

Box B

I, _____
the Appellant('s solicitor) seek permission to appeal.

If permission to appeal has been granted **in part** by the lower court, do you seek permission to appeal in respect of the grounds refused by the lower court?

Yes No

Section 5 Other information required for the appeal

Please set out the order (or part of the order) you wish to appeal against

Declarations (vi), (xiv) and (xvii) of the Order of Mr Justice David Richards dated 9 October 2015:

(vi) If and to the extent that a creditor has a non-provable claim (including but not limited to a Currency Conversion Claim) in respect of a sum on which interest is payable apart from the administration at any time during the period after the Date of Administration (as defined in the Application Notice), the creditor has a non-provable claim in respect of such interest (if any) as may have accrued on that non-provable claim in that period.

(xiv) Statutory Interest is payable in respect of an admitted provable debt which was a contingent debt as at the Date of Administration from the Date of Administration.

(xvii) The calculation of a non-provable claim (excluding any non-provable claims to interest (as to which no declaration is made) but including, although not limited to, a Currency Conversion Claim) should not take into account (nor, therefore, be reduced by) the Statutory Interest paid to a relevant creditor.

Have you lodged this notice with the court in time?
(There are different types of appeal -
see Guidance Notes N161A)

Yes No

If 'No' you must complete
Part B of Section 9

Section 6 Grounds of appeal

Please state, in numbered paragraphs, **on a separate sheet** attached to this notice and entitled 'Grounds of Appeal' (also in the top right hand corner add your claim or case number and full name), why you are saying that the Judge who made the order you are appealing was wrong.

I confirm that the grounds of appeal are attached to this notice.

Section 7 Arguments in support of grounds for appeal

I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' are set out **on a separate sheet** and attached to this notice.

OR (in the case of appeals other than to the Court of Appeal)

I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' will follow within 14 days of filing this Appellant's Notice

Section 8 What are you asking the Appeal Court to do?

I am asking the appeal court to:-
(please tick the appropriate box)

- set aside the order which I am appealing
- vary the order which I am appealing and substitute the following order. Set out in the following space the order you are asking for:-

- (1) Set aside Declarations (vi), (xiv) and (xvii)
- (2) Grant a declaration that if and to the extent that a creditor has a non-provable Currency Conversion Claim in respect of a sum on which interest is payable apart from the administration at any time during the period after the Date of Administration (as defined in the Application Notice), the creditor does not have a non-provable claim in respect of such interest (if any) as may have accrued on that non-provable claim in that period. Alternatively, if a non-provable claim to such interest does exist, interest accrues only as from the date of payment of the final dividend on the creditor's proved debt.
- (3) Grant a declaration that Statutory Interest is payable in respect of an admitted provable debt which was a contingent debt as at the date on which the contingent debt ceased to be a contingent (including in circumstances where the contract was "closed-out" after LBIE entered administration).
- (4) Grant a declaration that the calculation of a non-provable claim should take into account (and, therefore, be reduced by) the Statutory Interest paid to a relevant creditor.

- order a new trial

Section 9 Other applications

Complete this section **only** if you are making any additional applications.

Part A

- I apply for a stay of execution. (You must set out in Section 10 your reasons for seeking a stay of execution and evidence in support of your application.)

Part B

- I apply for an extension of time for filing my appeal notice. (You must set out in Section 10 the reasons for the delay and what steps you have taken since the decision you are appealing.)

Part C

- I apply for an order that:

Time for filing a skeleton argument be extended until 24 December 2015

(You must set out in Section 10 your reasons and your evidence in support of your application.)

Section 10 Evidence in support

In support of my application(s) in Section 9, I wish to rely upon the following reasons and evidence:

The Judgment under appeal was handed down on 31 July 2015, at the end of the legal term. Due to confidentiality restrictions, Wentworth's legal advisors had no prior opportunity to discuss the terms of the judgment with their clients. The hearing of consequential matters was then delayed until 9 October 2015, at which time the terms of the declarations were formulated and permission to appeal was granted.

The Judgment under appeal relates to the first part (Part A) of a three-part application (termed the Waterfall Application), in which a large number of questions are posed by the Joint Administrators of LBIE, so as to enable the Joint Administrators to distribute the substantial surplus of assets in the LBIE Administration estate, following the payment of all proved debts in full. The Waterfall Application is being heard in three separate stages during 2015. The trial of Part A took place in February 2015 and judgment in respect of it was handed down at the same time as the Judgment in Part B. The hearing of consequential matters relating to the Judgment in Part B also took place on 9 October 2015. As at that date, and in the weeks following, the legal advisors to both Wentworth and the Senior Creditor Group (who, between them, represent the main parties in interest in the application) were, and continue to be, heavily engaged in the preparation for the hearing of Part C, which raises issues of English law, New York law and German law.

At the hearing of the consequential matters arising from the Judgments in Part A and Part B, it was recognized by all parties and the learned Judge, that the preparation of skeleton arguments in respect of the appeal would be a time-consuming task, for which it would be appropriate to extend time given the timing of the hearing of Part C. The learned Judge did not have jurisdiction himself to extend time for the filing of skeleton arguments, but only had jurisdiction to extend time for filing of Appellants' notices. Counsel for the Joint Administrators indicated to the learned Judge that the Joint Administrators were concerned at a lengthy extension of time for filing Appellants' Notices, because that would lead to a delay in the listing of the appeal. In light of that, the course which the learned Judge adopted was to extend time for the filing of Appellants' notices, expressly to give the parties time to prepare the grounds of appeal, on the basis that an application for extension of time in relation to skeleton arguments could be made to the Court of Appeal. In so doing he said this: "I will say that I think that there are very significant pressures on the parties involved in the appeal and that unless the Court of Appeal was going to expedite the hearing of the appeal to a very early date there would be much to be said for allowing a longer time than the rules permit for the lodging of skeleton arguments by the parties." This point is to be recorded as a recital to the Judge's order.

Wentworth and the Senior Creditor Group are in agreement that the time for filing of their respective skeleton arguments should be extended.

Statement of Truth – This must be completed in support of the evidence in Section 10

The appellant believes that the facts stated in this section are true.

Full name

Name of appellant's solicitor's firm

signed position or office held

Appellant's solicitor

(if signing on behalf of firm or company)

Section 11 Supporting documents

To support your appeal you should file with this notice all relevant documents listed below. To show which documents you are filing, please tick the appropriate boxes.

If you do not have a document that you intend to use to support your appeal complete the box over the page.

In the county court or High Court:

- three copies of the appellant's notice for the appeal court and three copies of the grounds of appeal;
- one additional copy of the appellant's notice and grounds of appeal for each of the respondents;
- one copy of the sealed (stamped by the court) order being appealed;
- a copy of any order giving or refusing permission to appeal; together with a copy of the judge's reasons for allowing or refusing permission to appeal; and
- a copy of the legal aid or CLSF certificate (if legally represented).


In the Court of Appeal:

- three copies of the appellant's notice and three copies of the grounds of appeal;
- one additional copy of the appellant's notice and one copy of the grounds of appeal for each of the respondent;
- one copy of the grounds of appeal on a separate sheet attached to each of the appellant's notices filed;
- one copy of the sealed (stamped by the court) order or tribunal determination being appealed;
- a copy of any order giving or refusing permission to appeal together with a copy of the judge's reasons for allowing or refusing permission to appeal;
- one copy of any witness statement or affidavit in support of any application included in the appellant's notice;
- where the decision of the lower court was itself made on appeal, a copy of the first order, the reasons given by the judge who made it and the appellant's notice of appeal against that order;
- in a claim for judicial review or a statutory appeal a copy of the original decision which was the subject of the application to the lower court;
- a copy of the order allocating the case to a track (if any)
- one copy of the skeleton arguments in support of the appeal or application for permission to appeal;
- a copy of the approved transcript of judgment; and
- a copy of the legal aid or CLSF certificate (if legally represented)

Reasons why you have not supplied a document and date when you expect it to be available:-

Title of document and reason not supplied	Date when it will be supplied
<u>One copy of the sealed (stamped by the court) order or tribunal determination being appealed</u> The Order of Mr Justice David Richards dated 9 October 2015 has not yet been sealed.	Once sealed
<u>A copy of any order giving or refusing permission to appeal together with a copy of the judge's reasons for allowing or refusing permission to appeal</u> The Order of Mr Justice David Richards dated 9 October 2015 has not yet been sealed.	Once sealed

Section 12 The notice of appeal must be signed here

Signed  Appellant('s Solicitor)

1 Sections 1 and 3- Details of additional parties

Details of Second, Third and Fourth Respondents
Name

(2) Burlington Loan Management Limited; (3) CVI GVF (LUX) Master S.A R.L; (4) Hutchinson Investors, LLC

Address (including postcode)

c/o Freshfields Bruckhaus Deringer LLP
65 Fleet Street
London EC4Y 1HS
Ref: Christopher Robinson/ Ken Baird

Tel No.	44 20 7936 4000
Fax	44 20 7832 7001
E-mail	christopher.robinson@freshfields.com

Name and address (including postcode) of the firm of solicitors representing the respondent

c/o Freshfields Bruckhaus Deringer LLP
65 Fleet Street
London EC4Y 1HS
Ref: Christopher Robinson/ Ken Baird

Tel No.	44 20 7936 4000
Fax	44 20 7832 7001
E-mail	christopher.robinson@freshfields.com
DX	
Ref.	Christopher Robinson/ Ken Baird

Details of Fifth Respondent
Name

(5) York Global Finance BDH, LLC

Address (including postcode)

c/o Michelmores LLP
48 Chancery Lane
London, WC2A 1JF
Ref: Charles Maunder/ Peter Sigler/ Jack Isaacs

Tel No.	44 (0)20 7659 7660
Fax	
E-mail	charles.maunder@michelmores.com

Name and address (including postcode) of the firm of solicitors representing the respondent

c/o Michelmores LLP
48 Chancery Lane
London, WC2A 1JF
Ref: Charles Maunder/ Peter Sigler/ Jack Isaacs

Tel No.	44 20 7936 4000
Fax	
E-mail	charles.maunder@michelmores.com
DX	
Ref.	Charles Maunder/ Peter Sigler/ Jack Isaacs

PART A: APPELLANTS' NOTICE

GROUND OF APPEAL

PART A

Wentworth appeals against Declarations (vi) (interest on non-provable Currency Conversion Claim); (xiv) (statutory interest on contingent debts); and (xvii) (offset between currency conversion claims and interest).

Declaration (vi)

If and to the extent that a creditor has a non-provable claim (including but not limited to a Currency Conversion Claim) in respect of a sum on which interest is payable apart from the administration at any time during the period after the Date of Administration (as defined in the Application Notice), the creditor has a non-provable claim in respect of such interest (if any) as may have accrued on that non-provable claim in that period.

1. The Judge erred in law in making Declaration (vi). Insofar as the declaration relates to interest on Currency Conversion Claims, it is inconsistent with the Judge's holding (at [228] of the Judgment) that Rule 2.88 is a complete code, which replaces all pre-administration rights to interest, including contractual rights to interest, such that the only right of a creditor to interest after the Date of Administration, whether its original debt was in sterling or a foreign currency, is to receive interest under Rule 2.88. It is unprincipled that a foreign currency creditor should have a contractual entitlement to interest when a sterling creditor does not. Rule 2.86 does not require this conclusion which is contrary to Rule 2.88.
2. Insofar as the declaration relates to interest on other non-provable claims, in circumstances where there is no defined or closed category of non-provable claims, the Judge erred in concluding that there would inevitably be a non-provable claim to interest in respect of all such claims. In particular, although Wentworth accepts that the declaration is appropriate in relation to a non-provable claim which is wholly

independent from, and does not arise out of, a provable claim, the declaration would be wrong, for example, in relation to a non-provable claim which shared the characteristic of a Currency Conversion Claim, that it arose out of a provable claim. Moreover, in circumstances where no other non-provable claim was identified as existing in the context of the LBIE administration, it was unnecessary for the Judge to extend Declaration (vi) to other non-provable claims.

3. Alternatively, if any such claim to interest on a Currency Conversion Claim exists, the Judge erred in law in concluding that interest ran from the date of administration. In particular, the Judge ought to have concluded that, since a Currency Conversion Claim being, in essence, the shortfall between the amount of the claim in its original foreign currency and the foreign currency equivalent of the sterling dividends paid from the LBIE administration estate from time to time, could not be known to exist until the final dividend was paid from the LBIE administration, interest should run only from the date of payment of the final dividend from the LBIE administration estate.

Declaration (xiv)

Statutory Interest is payable in respect of an admitted provable debt which was a contingent debt as at the Date of Administration from the Date of Administration.

4. The Judge erred in law in making Declaration (xiv). The Judge should have concluded that:
 - (1) the purpose of an award of interest is to compensate a creditor for being kept out of its money and that, since a creditor with a debt subject to a contingency is not entitled to payment at all unless and until the date the contingency occurs, it is not being kept out of its money until that date, and thus interest should run only from that date; and
 - (2) given the Judge's conclusion (at [218] of the Judgment) that the value of a matured contingent debt is not discounted back to the Date of Administration, there would be unjustified 'double-counting' if Statutory Interest is payable on that debt from the Date of Administration.

Declaration (xvii)

The calculation of a non-provable claim (excluding any non-provable claims to interest (as to which no declaration is made) but including, although not limited to, a Currency Conversion Claim) should not take into account (nor, therefore, be reduced by) the Statutory Interest paid to a relevant creditor.

5. The Judge erred in law in making Declaration (xvii). The Judge ought to have concluded that the correct approach to the calculation of a Currency Conversion Claim is to assess the difference between (a) the value of the creditor's original foreign currency entitlement outside of the statutory scheme for insolvency and (b) the foreign currency equivalent of the sum of all payments received from that statutory scheme.