



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 213 OF 2021 (DDJ)

**IN THE MATTER OF a settlement made by deed dated 27 December 2017 (the "MF Trust")
AND IN THE MATTER OF the Trusts Act (2021 Revision) and/or GCR O.85, r.2
BETWEEN**

MAPLESFS LIMITED

Plaintiff

AND

- 1. B&B PROTECTOR SERVICES LIMITED**
- 2. PJSC NATIONAL BANK TRUST**
- 3. PJSC BANK OTKRITIE FINANCIAL CORPORATION**

Defendants

Appearances: John Machell QC and Adam Huckle of Maples and Calder
(Cayman) LLP for the Plaintiff

Alex Potts QC and Tonicia Williams of Conyers Dill &
Pearman LLP for the Second Defendant

Before: The Hon. Justice David Doyle

Heard: 10 March 2022

**Ex tempore
Judgment delivered:** 10 March 2022

**Draft transcript of ex tempore
Judgment circulated:** 10 March 2022

**Transcript of ex tempore
Judgment approved:** 15 March 2022



HEADNOTE

Dismissal of adjournment application based on sanctions imposed following Russia's invasion of Ukraine – the desirability of dealing with all the issues raised in a summons at one hearing – the need for concise and well-focused skeleton arguments and oral submissions – the duty of the parties and attorneys as officers of the court to assist the court in furthering the overriding objective of dealing with matters in a just, expeditious and economical way

Judgment

Introduction

1. There is before the court for directions the summons of the Second and Third Defendants dated 25 January 2022 (the “Summons”). Conyers Dill & Pearman LLP are the attorneys on the court record for the Second and Third Defendants. The time estimate given by Conyers was 3 hours. Frankly having read into this matter I viewed that time estimate as excessive. Half a day of valuable court time for a directions hearing in respect of the Summons would not have been a good use of scarce court time. As it transpires not all of that 3 hours had to be utilised today.
2. Alex Potts QC and Tonicia Williams of Conyers Dill & Pearman LLP appear today for the Second Defendant only and not for the Third Defendant because they say, if I understand their position correctly, it is not possible to do so because the Third Defendant, of an address stated to be in Moscow within the Russian Federation, is within the sanctions imposed following what is described by Mr Potts as “the invasion of Ukraine” (footnote 11 on page 6 of his 21 page skeleton argument dated 7 March 2022). Mr Potts at paragraph 18 of his skeleton argument states that the Second Defendant is not presently on the “sanctions lists”.



3. No one has today appeared for the First Defendant. The First Defendant (who is stated to act as Enforcer of the MF Trust) is stated to be a Cayman Islands trust and corporate services provider wholly owned by Cayman Islands law firm Bodden & Bodden, and appears to be taking a neutral stance in respect of these proceedings.
4. Mr John Machell QC and Adam Huckle of Maples and Calder (Cayman) LLP appear for the Plaintiff.
5. This hearing was originally set for 10 a.m. yesterday 9 March 2022, but was put off until today pursuant to an email request dated 15 February 2022 11:40 a.m. from Conyers as Mr Potts had commitments in the Court of Appeal of Bermuda. By email dated 15 February 2022 3:19pm Conyers confirmed that “10 March 2022 remains convenient for the Second and Third Defendant.”

Documentation and submissions considered

6. I have considered the main hearing bundles and also the Plaintiff’s admirably concise 9 page skeleton argument dated 7 March 2022 and one page appendix being the Plaintiff’s proposed directions and the accompanying authorities bundle, the Second Defendant’s skeleton argument dated 7 March 2022 and the accompanying authorities bundle.
7. I have also considered the oral submissions put before the court this morning. I do not set them all out in detail in this relatively short judgment. They form part of the court record and I have regard to all of them.

Background

8. By originating summons dated 21 July 2021 the Plaintiff applied for a declaration that it was the trustee of the MF Trust, a trust which is stated to be governed by a deed dated 27 September 2017 as amended and restated by a deed dated 13 December 2018 (the “Trust Deed”) and Cayman Islands law, and that it holds various assets stated to be listed in the schedule to the originating summons (which appears to list the names of some 18



companies) for the beneficiaries and on the terms set out in the Trust Deed and not on bare trust for Boris Mints.

9. The Trust Deed contains a Cayman Islands' governing law and jurisdiction clause.
10. I have also considered the position in respect of the proceedings in England and Wales. Mr Potts says that the Plaintiff's jurisdictional challenge has been scheduled to take place in England in September 2022.

The Order made on 22 November 2021

11. On 22 November 2021 this court made an order (the "November 2021 Order") that the Plaintiff be permitted to serve any documents in these proceedings on the Second and Third Defendants (the "Russian Banks") by sending such documents:

- (1) by courier and email to their English solicitors Steptoe & Johnson UK LLP; and
- (2) by courier and post to the Russian Banks' respective addresses in Moscow, Russia,

(paragraph 1 of the November 2021 Order).

The Summons dated 25 January 2022

12. By the Summons, the Russian Banks apply for the following orders:
 - (1) an order that paragraph 1 of the November 2021 Order be "discharged and/or set aside" on various grounds;
 - (2) further or alternatively an order that the Plaintiff's various attempts to serve the Russian Banks be "set aside and/or declared to be invalid";



- (3) further or alternatively a declaration that the Originating Summons has not been duly served on the Russian Banks (described in the Summons as “the Substituted Service challenge applications”);
- (4) further or alternatively an order staying these proceedings on the grounds of “forum non conveniens” and/or “lis alibi pendens” on the grounds that the High Court of England and Wales is both an available and the appropriate forum, and the Russian Banks’ claims against the Plaintiff are already the subject of proceedings in the High Court of England and Wales CL-2019-000412 and CL-2020-000432 (the “English proceedings”; described in the Summons as “the Jurisdictional challenge application”);
- (5) further or alternatively an order staying these proceedings on case management grounds pending the final determination of the English proceedings and the Plaintiff’s application to set aside the Order of Knowles J made on 28 July 2021 (scheduled to be heard in September 2022; described in the Summons as “the Stay application”);
- (6) further or alternatively, such case management directions or orders as may be appropriate for the determination of the Substituted Service challenge applications, the Jurisdictional challenge and the Stay application including an order that the Substituted Service challenge applications be heard and determined first as a preliminary issue.

Determination

13. The Second Defendant seeks an adjournment of this directions hearing in respect of the Summons to the first available date after 21 April 2022 (i.e. after the passage of 6 weeks).
14. Conyers appear concerned over what they describe as the “UK’s Sanctions legislation (as extended to the Cayman Islands)” and have sought a licence from the Governor to permit, insofar as I understand the position, Conyers to obtain money from the Third Defendant in respect of their fees or even to provide legal services upon credit. That application was lodged on 3 March 2022 and may, Conyers suggest, take at least 4 to 6 weeks to process and determine.



15. Mr Potts refers to a document entitled “Office of Financial Sanctions Implementation HM Treasury UK Financial Sanctions General guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018” dated December 2020. Paragraph 6.6.1 is headed “Legal advice” and provides:

“Generally, you won’t be prohibited from providing legal advice under an asset freeze. However, the payment for legal services and the provision of legal services on credit do require an OFSI licence.”

16. I note that Mr Potts in his skeleton argument at paragraph 20.2.2 omits the first sentence of paragraph 6.6.1 as set out above. In fairness, however, I accept that in the second box of bullet points under paragraph 6.5 the following words appear:

“You are strongly encouraged to apply for a licence in advance of providing substantive legal services in order for you to have certainty as to the fees that will be recoverable whilst the designated person remains listed.”

17. Conyers appear to be of the understanding that although they “might *theoretically*, still be in a position to provide Cayman Islands legal services even to a sanctioned entity such as the Third Defendant, Conyers cannot *in fact* do so at this point in time, both as a matter of risk management, and as a matter of commercial reality... unless and until Conyers first receives a Licence from the Governor of the Cayman Islands. This is because Conyers cannot lawfully receive any payment for legal services from or on behalf of a sanctioned entity, or even provide legal services on credit to a sanctioned entity... in the absence of a Licence from the Governor” (paragraph 20.2 of the Second Defendant’s skeleton argument).

18. The Plaintiff says it is unclear precisely what Conyers are prohibited from doing. The Plaintiff submits that “the Banks, as Russian state-owned entities, are using the imposition of sanctions in response to the invasion of Ukraine opportunistically and cynically to delay the proceeding. The Banks wish to delay this proceeding in the hope that they can persuade



the English Court to deal with claims in the English litigation. That that is their aim has been obvious since it was first suggested that the Service/Jurisdiction Summons should be heard in stages: Conyers's letter of 30 December 2021.”

19. I see no good reason to adjourn the directions hearing for six weeks or more. In furtherance of the overriding objective and balancing the interests of the Plaintiff and the Second and Third Defendants I have concluded that it is in the interests of justice to provide, today, directions towards the hearing of the Summons. These directions will not ignore the difficulties Conyers are presently dealing with. As responsible officers of the court I am sure that those on the court record as acting for the Second and Third Defendants can properly progress matters even if that means acting on a pro bono basis for a time. I note that Mr Potts rightly recognised in his email of 3 March 2022 to Mr Huckle that Conyers considered themselves “professionally obliged” to their clients and the court to continue to prepare for this hearing. No doubt as officers of this court they can continue to assist their clients in complying with the directions this court shall be giving in respect of their Summons.
20. Based on the information and arguments presently put before the court, I do not agree that this court should, either on comity or case management grounds, adjourn the Summons until after the English High Court's judgment on what Mr Potts describes at paragraph 39.3 of his skeleton as “the scope of its own jurisdiction under English law.”
21. Moreover, I am not persuaded that we should deal with the relief requested in the Summons in a piecemeal fashion as suggested by Mr Potts. All the issues raised by the Summons should be dealt with at one hearing. Split or separate hearings or preliminary issues are not appropriate in the circumstances of this case. The hearing of all issues at one hearing will further the overriding objective and make best use of limited court time.
22. Mr Machell helpfully refers to an authority in the bundle of authorities filed by Mr Potts namely the *IMS SA and others v Capital Oil and Gas Industries Limited* [2016] EWHC 1956 (Comm) where Popplewell J at paragraph 36 stated:



“Secondly, my conclusion accords with the overriding objective of dealing with cases expeditiously and allotting them their fair share of the court’s resources. It is not uncommon for a defendant to wish to advance as alternative grounds a challenge to the existence of jurisdiction and a challenge to the exercise of the jurisdiction. It is sometimes the case that there is considerable overlap in the evidence and arguments applicable to each alternative ground. But even where that is not so, it is in the interests of speed, efficiency and finality that such grounds should be brought forward at the first opportunity at which they may be presented, and that they should be disposed of on that occasion. Unnecessary delay in determining where a case should be tried involves undesirable delay in deciding the case on its merits.”

23. I appreciate that the overriding objective in England and Wales contains different wording to the overriding objective in the Cayman Islands, but the messages are in essence very similar.
24. In the Cayman Islands the parties and their attorneys have a duty to further the overriding objective of dealing with matters in a just, expeditious and economical way, and the court must further the overriding objective by actively managing proceedings. This may include deciding the order in which issues are to be resolved and dealing with as many aspects of the proceedings as is practicable on the same occasion. I intend to give directions which will enable all issues raised in the Summons to be determined as justly and as quickly and efficiently as is possible. In this way I hope to further the overriding objective.
25. In the Second Defendant’s skeleton argument a request is made at paragraph 45.3 on page 20 that the court “strike out or rule inadmissible some, or all, of the hearsay opinion evidence of the Plaintiff’s own Russian attorney, Anna Grischenkova, in the form of her unsworn written report dated 2 November 2021”. The grounds of such application were not stated in any great detail but there is reference to the position at paragraphs 41 and 42 of the skeleton argument of Mr Potts. I have heard no detailed argument in support of such relief today. I do not make such an order as I have not been persuaded that it would be



appropriate to do so. I am content at the hearing of the Summons to hear submissions as to the relevance and admissibility of and the weight to be attached to such evidence.

26. At paragraph 45.4 on page 21 of the Second Defendant's skeleton argument a request is made that permission be given to rely on the legal opinion on Russian law of Professor Elena Kudryavtseva dated 1 March 2022 in support of the Substituted Service challenge application and I am content to grant that relief to enable the Second and Third Defendants to rely on such.

27. I make the following directions:

(1) the parties have permission to rely on Russian law expert evidence in relation to service;

(2) the Plaintiff do file and serve Russian law expert evidence in answer by 3pm on 2 May 2022;

(3) the Second and Third Defendants do file and serve factual evidence in reply to the factual evidence already served by the Plaintiff by 3pm on 27 May 2022;

(4) the Second and Third Defendants do file and serve Russian law expert evidence in reply by 3pm on 27 May 2022;

(5) the Summons and the Protective Summons (if necessary) be heard at 10am on 14 June 2022 (a maximum of two days allocated but if the skeleton arguments and oral submissions are duly focused matters should be disposed of in a day);

(6) concise and well-focused skeleton arguments and authorities cross referenced to duly paginated hearing bundles which are all to be filed before 3pm on 8 June 2022 (the skeletons should deal with the Summons and the Protective Summons);

(7) there should be no further filings outwith this Order and the Financial Services Division Guide and no extensions of time agreed without the approval of the court;

(8) costs in the cause.

THE HONOURABLE JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT