



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO: FSD 105 OF 2014 (DDJ)

BETWEEN:

- (1) ARNAGE HOLDINGS LIMITED**
- (2) BROOKLANDS HOLDINGS LIMITED**
- (3) EAST FARTHING HOLDINGS LIMITED**
- (4) MS KATIA RABELLO**
- (5) MR FERNANDO TOLEDO**

Plaintiffs

AND

WALKERS (A FIRM)

Defendant

Heard: On the papers

Draft Judgment circulated: 24 July 2023

Judgment delivered: 27 July 2023

HEADNOTE

Costs of dismissed recusal applications; standard rather than indemnity basis; interim payment; joint and several basis and set off

230727 Arnage et al v Walkers – Judgment (Costs) – FSD 105 of 2014 (DDJ)

JUDGMENT

1. By judgment delivered on 16 June 2023 I dismissed recusal applications filed by the Plaintiffs and indicated that I intended to deal with ancillary applications (such as costs) on the papers without the need for a further oral hearing.
2. The Defendant applies for an order that the Plaintiffs be jointly and severally liable to pay the Defendant's costs of and occasioned by the recusal applications and for such costs to be taxed on the indemnity basis if not agreed. The Defendant also seeks an interim payment on account of costs against the Plaintiffs on a joint and several basis in the amount of US\$415,000.00 to be paid within 14 days. In addition, the Defendant seeks an order that it is entitled to set off the interim payment against any costs that the Fifth Plaintiff may be and/or has been ordered to pay to it (a) the sum of which it has agreed to pay the Fifth Plaintiff under the "settlement agreement" and (b) any costs it has agreed to pay and/or which it has been or may be ordered to pay to the Fifth Plaintiff. The Defendant also seeks an order that the Plaintiffs be joint and severally liable to pay the Defendant's costs of the costs application dated 4 July 2023 to be taxed on the standard basis if not agreed.
3. I have considered:
 - (1) the fourth affidavit of Matthew Richard Goucke sworn on 30 June 2023;
 - (2) a document entitled "Note on behalf of the Defendant for matters consequential upon the Plaintiffs' Recusal Application" dated 5 July 2023 and the contents of the Appleby letter dated 30 June 2023 to Diamond Law Attorneys; and
 - (3) the Plaintiffs' written submissions on costs dated 19 July 2023.
4. The Plaintiffs sensibly recognise that they were unsuccessful in their recusal applications and that costs should follow the event. However, they oppose the Defendant's application for indemnity costs as well as the application for the interim payment.

5. I have considered the relevant law on indemnity costs, interim payments and set-off. Some of that law is covered in my judgment on the other consequential issues raised during the hearing on 11 and 12 July 2023 and I do not repeat it again here.
6. I am not satisfied that the Plaintiffs' conduct in pursuing the recusal applications was to a high degree improper or unreasonable. Moreover, it was not outside the norm. I do not award costs on the indemnity basis.
7. I make an order that the Plaintiffs shall be jointly and severally liable to pay the Defendant's costs of and occasioned by the recusal applications such costs to be taxed on the standard basis if not agreed.
8. I also make an order that the Plaintiffs be liable, on a joint and several basis, to make an interim payment on account of costs of the Defendant in respect of the recusal applications from 1 April 2023 up to and including 21 June 2023 in the amount of U\$200,000 and such sum should be paid within 42 days.
9. I also make the orders requested in respect of set off.
10. In respect of the costs of the costs application I make no order as to costs.
11. Counsel should within 7 days from the delivery of this judgment file draft Orders reflecting the determinations contained in this judgment.

David Doyle

HIS HONOUR JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT