

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 227 OF 2018 (IKJ)

BETWEEN:

FORTUNATE DRIFT LIMITED

Plaintiff

AND

CANTERBURY SECURITIES, LTD.

Defendant

IN CHAMBERS

Appearances: Mr Simon Dickson and Mr Harry Rasmussen, Mourant
Ozannes, for the Plaintiff
Mr Jalil Asif QC and Ms Tonicia Williams, Kobre & Kim
(Cayman), on behalf of the Defendants

Before: The Hon. Justice Kawaley

Heard: 19 June 2019

**Draft Judgment
Circulated:** 9 July 2019

Judgment Delivered: 12 July 2019

HEADNOTE

Application by Defendant to stay action pending determination of related proceedings in Nevada-case management stay-governing legal principles-extent to which sufficient overlap exists between issues in both proceedings to justify stay as opposed to alternative 'lighter-touch' case management measures-Grand Court Rules, Preamble



RULING ON DEFENDANT'S STAY APPLICATION

Background

1. The Plaintiff ("FDL") is incorporated in the British Virgin Islands and the Defendant ("Canterbury") is incorporated in the Cayman Islands and licensed under the Securities and Investment law (2015 Revision). In or about May 2018 the parties entered into a Brokerage Contract evidenced to an extent which is controversial by the Corporate Account Application form which FDL completed.
2. It is common ground that in August 2018 FDL transferred 6 million shares in Yangtze River Port and Logistics Ltd (formerly Yangtze River Development Corp) ("YRIV" and the "Shares") to Canterbury to be held in the Brokerage Account. Later that same month, FDL entered into a Stock Purchase Agreement ("SPA") with PFS Management Ltd ("PFS"), a company with some common ownership to Canterbury which Canterbury introduced to FDL. When FDL learned of the connection between PFS and Canterbury is disputed.
3. Under the SPA, PFS agreed to purchase 1,144,584 of the Shares (the "SPA Shares") for US \$10 million. The Statement of Claim avers Clause 3.11 of the SPA contained a Put Option which permitted PFS as purchaser to require (within a period beginning three months and ending six months after the SPA was entered into on August 16, 2018- the "Put Period") FDL as seller to buy back the SPA Shares at a price of \$11.26 per share. FDL avers that this clause also required all of the SPA Shares to be held by PFS at Canterbury otherwise its rights under the Put Option would be waived. FDL's Statement of Claim proceeds to aver that in September 2018 it learned that some of the SPA Shares had been moved out of Canterbury and that when PFS refused to return them it waived its rights under the Put Option.
4. The dispute between the parties arose, FDL alleges, in the following way. Following PFS's refusal to return the moved SPA Shares, FDL requested Canterbury to transfer the remaining Shares to VStock. Canterbury refused. PFS commenced proceedings against FDL in Nevada concerning the Put Option (the "Nevada Proceedings") and obtained a Temporary Restraining Order ("TRO") restraining FDL from seeking to move the Shares from the account at Canterbury. FDL complied with the TRO and rescinded its instructions to Canterbury. The triggering event for the commencement of the present proceedings was that on December 6, 2018, Canterbury notified FDL of a claim for in excess of \$20 million and indicated that it proposed to immediately liquidate the Shares in satisfaction of this claim. Amongst other claims, FDL contends that Canterbury acted in breach of its fiduciary and/or contractual duties by, *inter alia*:



- failing to comply with its instructions to transfer the Shares;
 - putting itself in a conflict of interest position as regards FDL and PFS;
 - liquidating FDL's Shares.
5. On December 7, 2018, following an ex parte application without notice to the Defendant, I granted the Plaintiff an interim injunction ("Interim Injunction") in the following terms:

"1. The Defendant be restrained from taking any steps to transfer, liquidate or otherwise deal with the shares of common stock of Yangtze River Port & Logistics Ltd. (the Shares) owned by the Plaintiff which are held for and on behalf of the Defendant."

6. On December 13, 2018, for reasons delivered on February 8, 2019, I declined to discharge the Interim Injunction altogether. Instead, I discharged it on the basis of the following undertakings offered by the parties when I indicated that I had decided that the Interim Injunction should be continued but that the Plaintiff should be required to give the additional undertakings sought by the Defendant:

"UPON the Defendant giving the following undertakings:

- i. *that it will hold any of shares transferred out of the Plaintiff's account with the Defendant into the Defendant's account (the "Transferred Shares") that have not been sold pending further order of the Court or the Plaintiff's agreement;*
- ii. *that it will hold the proceeds of sale of those Transferred Shares which have been sold, insofar as those proceeds remain in the Defendant's control (the "Proceeds"), pending further order of the Court or the Plaintiff's agreement. For the avoidance of doubt, the Proceeds amount to US\$14,959,352.20; and*



- iii. *that, save as otherwise allowed by any later order, or by agreement with the Plaintiff, the Defendant will not transfer or sell any further shares held by it for the Plaintiff (the "Shares") in satisfaction of the Plaintiff's alleged obligations to the Defendant.*

AND UPON the Plaintiff giving the following undertakings:

- iv. *that, if the Court later finds that this order, or the Order dated 7 December 2018 in these proceedings (the "Order"), has caused loss to the Defendant or any third parties, and decides that the Defendant and/or such third parties should be compensated for that loss, the Plaintiff will comply with any order the Court may make;*
- v. *that it will make no attempt to, withdraw or transfer from the Defendant any shares in Yangtze River Port and Logistics Ltd held for it by the Defendant pending further order of the Court or agreement by the Defendant; and*
- vi. *that insofar as any third party is, or has been, provided with the Order or this order, by or on behalf of the Plaintiff, such third parties will be told expressly by or on behalf of the Plaintiff that the Order and/or this order do not freeze the assets of the Defendant or otherwise interfere with its business dealings, including its bank accounts, custody accounts or brokerage accounts. The Order relates only to the Transferred Shares, the Shares and the Proceeds as set out above.*

IT IS ORDERED THAT:

1. *Paragraph 1 of the Order is discharged;*
 2. *Costs reserved; and*
 3. *The parties shall have liberty to apply."*
7. By an Amended Defence and Counterclaim filed on March 4, 2019, the Defendant set out its stall. Firstly, it was averred that the Brokerage Contract incorporated the United



States Regulation T margin rules which conferred broad powers on Canterbury to liquidate assets to protect against losses. Similar terms and conditions in the relevant underlying brokers' contracts were said to be incorporated into the Brokerage Contract. These and other matters were relied upon to justify the liquidation of FDL's Shares which occurred without FDL's consent, along with the volatility of the YRIV stock which has undeniably plummeted in value since December 2018. The existence of any fiduciary duties owed to FDL was denied, as was the assertion that any conflict of interest existed of which FDL was unaware.

8. For present purposes perhaps the most important plea was the assertion that the SPA was governed by Nevada law so that the Put Option's construction fell to be determined by Nevada law. It was denied that PFS had waived its rights under the Put Option, an issue which was being litigated before the Nevada Court. However, Canterbury also asserted a Counterclaim (based on the indemnity clause in the Brokerage Contract) for fees, legal costs and disbursements (approximately \$450,000), "*Internal costs and losses*" (just under \$300,000) and "*Partial losses to Canterbury*" ("*at least US\$20 million*"). The latter head of loss was based on the alleged loss of the opportunity to participate in other substantial projects and the extensive deployment of professional time to the FDL dispute. FDL filed an Amended Reply and Defence to Counterclaim dated February 18, 2019, and Canterbury filed a Reply to the Defence to Counterclaim on March 4, 2019.
9. After a changing of Canterbury's legal guard, on May 22, 2019 the Defendant filed the Summons now under consideration seeking the following principal relief, namely an Order that:

"1. These proceedings be stayed pending final determination of the litigation between PFS Management Ltd. and Fortunate Drift Limited in Nevada under case no A-18-78391-C on the grounds set out in the affidavit of Holly Morrison sworn 21 May 2019 and filed herein."

10. In essence the grounds for the stay were that the outcome of the Nevada Proceedings would impact significantly on the commercial value of the present litigation which might well be capable of settlement if placed on hold until the conclusion of the foreign action. FDL essentially opposed the application on the grounds that substantial parts of the present proceedings are unconnected with the issues being tried in the Nevada Court and that its rights of access to this Court would be unjustifiably impaired by a stay. By the end of the hearing, my provisional view was that the overlap between the two proceedings was insufficient to justify a complete stay but that some case management measures were warranted to take into account the fact that costs could be saved if an important aspect of the present application was determined by the Nevada Court.



The Evidence

11. The Fourth Affidavit of Holly Morrison primarily supported Canterbury's Summons. The deponent outlined the status of the Nevada Proceedings averring that on March 27, 2019 the TRO had been converted into a preliminary injunction which would preserve the status quo until trial. She understood that *"a trial scheduling order is due imminently and the trial of the Nevada proceedings is likely to be heard in the first quarter of 2020"* (paragraph 11). The main reasons for a stay were articulated as follows:

"12. Canterbury believes that a stay is in the best interests of both parties because the outcome of the Nevada Proceedings has a material impact on any recoveries, which FDL may receive if successful and so, depending on the outcome of the Nevada Proceedings, Canterbury believe these proceedings will either fall away or settle.

13. If PFS is successful in the Nevada proceedings, Canterbury understands that PFS will be entitled to claim that it should receive the sum of US\$12,888,016 plus post-judgment interest as damages against FDL (being the amount payable by FDL to PFS in the event that the put provision in section 3.11 of the SPA is valid and has not been waived, as alleged by FDL). That sum would very likely have to be paid by Canterbury to PFS out of the cash and shares it is currently holding as collateral for the put provision, as both FDL and PFS agreed Canterbury would be the holder of the collateral...Further, I understand that it is unlikely that the Nevada court would discharge the injunction over the cash and YRIV shares held by Canterbury without directing that the cash and any YRIV shares (to the extent the cash is insufficient), be paid and transferred to PFS in settlement of its claim.

14. Canterbury received a total of US\$18,661,204.05 for the YRIV Shares it sold on 6 December 2018 (1,710, 484 YRIV Shares) and 7 December 2018 (175,777 YRIV Shares). After deduction of the sum of US\$14,959,352.20, this leaves a balance of US\$3,701,851.85, which Canterbury believes is likely to be the maximum amount FDL will recover (not taking account of Canterbury's counterclaim), assuming its is successful in these proceedings."

12. Aaron Shipley of McDonald Carano LLP represents FDL in the Nevada Proceedings. He suggests that the view that the first instance decision of the Nevada Court would come as early as the first quarter of 2020 is optimistic. The second or third quarter is



more likely. He also points out that having reviewed the Statement of Claim in the present proceedings, it is apparent that only one of several issues will be decided by the Nevada Court. Moreover, the Nevada Court is unlikely to award PFS any right to payment out of the specific funds held by a non-party (Canterbury) outside of that Court's jurisdiction.

13. The Fifth Affidavit of Holly Morrison (sworn on June 12, 2019) responds to the First Shipley Affidavit by pointing out that even if only one of several issues in the current action is also being dealt with by the Nevada Court, it is important to avoid the risk of inconsistent decisions. Although Canterbury is not a party to the Nevada Proceedings, it has confirmed to FDL that it will be bound by all findings of fact in those proceedings. It is pointed out that the alleged collateral is being held with a broker in Canada where enforcement of judgments is straightforward. She reiterates her belief that because of the potential size of PFS' claim against FDL *"the outcome of PFS's motion is likely to be very significant indeed for the Cayman proceedings, and will be likely to have an important effect on the parties' and the Court's approach to progressing the case"* (paragraph 16).
14. An additional reason posited for a stay is the NASDAQ delisting notification in relation to the YRIV shares based on a FINRA investigation into, *inter alia*, false and misleading statements and market manipulation by YRIV and its shareholders. An appeal against the delisting by YRIV is pending and regulatory and possible criminal investigations are pending which could impact on FDL's claim in ways which Canterbury itself is still investigating. YRIV and FDL, represented by common lawyers, have sued Hindenberg and others in relation to the Hindenberg Report which alleged fraud against YRIV. If this claim is dismissed, it is said by Canterbury (without at this stage any elaboration) this could have significant implications for the present proceedings. It is very properly conceded in the Defendant's Skeleton Argument that it *"is unclear...at this stage whether or not FDL is implicated"* in what is merely at this stage suspected fraud in connection with YRIV and its shares.
15. Bart K Larsen of Kolesar & Leatham acts for PFS in the Nevada Proceedings. He confirms his belief that the Nevada Proceedings would likely conclude in the first quarter of 2020 and asserts that the Nevada Court may well grant proprietary relief to PFS in relation to the alleged collateral said to be held by Canterbury.
16. The Second Affidavit of Dominic Sin, a director of FDL, was belatedly sworn on June 13, 2019 in response to the Fourth Morrison Affidavit. He deposes, *inter alia*, that FDL has a proprietary claim to the remaining Shares which Canterbury still holds (apart from the SPA Shares) and to the proceeds of sale of Shares which were liquidated before the Ex Parte Injunction was granted by this Court. Any delay would be inherently prejudicial and, he further deposes, even if Canterbury is right and FDL's claim is



reduced to around \$4 million by an adverse result in Nevada that is still a claim that FDL would wish to pursue.

17. A preliminary view of the evidence may be stated as follows:

- (a) it is common ground that the Nevada Proceedings will decide one of several issues which arise for determination in the present action, whether the Put Option in the SPA was waived by PFS. This is an issue which the Nevada Court is best suited to determine as it is the main issue before the Nevada Court and falls to be determined by Nevada law;
- (b) there would be a risk of inconsistent decisions on the waiver issue and although Canterbury is not a party to the Nevada Proceedings, it has agreed to be bound by any findings made by the Nevada Court in this regard;
- (c) the SPA Shares which are most directly affected by the Put Option issue represent less than 25% (approximately 1.1 million SPA Shares as against the 4.9 million remaining Shares which are the focus of the present action);
- (d) it is common ground that the first instance decision is likely to be rendered in Nevada at some point next year;
- (e) it is disputed but nonetheless clearly possible that proprietary relief will be granted by the Nevada Court in favour of PFS which could reduce the size of the recoveries FDL can make out of assets held by Canterbury;
- (f) it is remotely possible, but not yet even alleged, that regulatory investigations into market manipulation by YRIV could ensnare FDL and impact its claim in some as yet unidentified manner. The only aspect of FDL's claim which appears to be likely to engage issues of credibility is the conflict of interest claim. If FDL were to be implicated in any YRIV-linked fraud, this could potentially impact its entitlement to relief in the present action;
- (g) there is no consensus that a stay until the Nevada Proceedings are concluded would help to promote settlement of the present action. One party's unilateral view of settlement prospects generally has limited persuasive value. The only way in which a PFS 'win' in Nevada would



make the FDL claim worth abandoning would be if Canterbury succeeded on the most implausible ‘big ticket’ limb of its Counterclaim;

- (h) the need for a complete stay of this action pending the determination of one issue in Nevada and/or pending developments in overseas regulatory proceedings and/or Canterbury’s investigations of suspected fraud is not clearly made out at this stage.

Governing legal principles

- 18. Mr Asif QC lucidly outlined the governing legal principles. The inherent jurisdiction to grant a stay enjoyed by the English High Court is imported into Cayman Islands law by section 11 of the Grand Court Law. He accepted that recent cases applying the English decision of *Reichhold Norway-v-Goldman Sachs* [1999] 1 All ER (Comm) 40 (at 48a) suggested that a high threshold had to be met by the stay applicant. Mr Dickson enthusiastically commended this restrictive approach to the Court, relying upon the observations of Chadwick P in *AHAB-v-Saad Investments* [2010] (2) CILR 289, who described the critical question as being:

“whether the benefits which were likely to result from imposing a temporary stay so clearly outweighed any disadvantage to the plaintiff that this was one of those cases in which ‘rare and compelling circumstances’ provided the ‘very strong reasons’ that justified doing so.”

- 19. Mr Asif QC further relied upon the Overriding Objective. He made the nuanced point that there was a tension between the requirement in paragraph 1.1 of the Preamble to the GCR to deal with cases in an “*economical and expeditious way*”. That tension is often obscured by the fact that in most cases economic efficiency and expedition enjoy a symbiotic relationship. The stay scenario is probably an exception to the general rule. Unless the stay application is patently misconceived, this context gives rise to the need to consider whether or not it will be more economic to delay the date of the trial while overlapping issues are determined by a foreign court. I accept that an important consideration when assessing whether delay operates against granting a stay or is a more neutral consideration is the length of the delay: *Amlin Corporate Member Ltd.-v-Oriental Assurance Corp (Princess of the Stars)* [2012] EWCA Civ 134 (at paragraph 27).
- 20. I found the most instructive judicial guidance to be a passage in the latter case to which Mr Asif QC referred in reply. Longmore LJ opined as follows explaining how he approached the overarching legal test for granting a case management stay:



“22...For myself, however, I doubt if it is useful to talk of degrees of rarity and compellability. It is better just to decide if the circumstances of any particular case are rare and compelling enough...”

21. The importance of grappling with (and being guided by) the practical considerations which inform the question of whether a stay will be just in a particular case is most authoritatively and recently demonstrated by *Oriental Knowledge Tank Ltd.-v-Business Intelligence Investment Ltd*, CICA 16 of 2018, Judgment dated September 14, 2018 (unreported). That was a case where the same central issue governed by Samoan law fell to be decided in this Court and the Samoan Court and I declined to grant a stay. The Cayman Islands Court of Appeal decision makes it clear that it is not sufficient merely to mechanistically recite the correct legal test. Moses JA, in explaining why my refusal to grant a stay should be set aside on appeal, critically opined as follows:

“35...In my view, the judge left out of account the factors which were crucial to determining whether a stay should be granted...”

22. Carrying out the relevant assessment of factors in the present case requires regard to be had to this Court’s general case management powers and the principles governing their exercise, which Mr Asif QC’s submissions helpfully highlighted. The following principles are particularly pertinent in the context of an application for a stay:

- **GCR Preamble paragraph 1.2:** dealing with a case justly requires, *inter alia*, (b) “ensuring that the normal advancement of the proceeding is facilitated rather than delayed” as well as (c) “saving expense”;
- **GCR Preamble paragraph 4.2:** defines active case management as including, *inter alia*, (e) “deciding the order in which issues are to be resolved”, (f) “fixing timetables or otherwise controlling the progress of the proceeding” and (g) “considering whether the likely benefits of taking a particular step will justify the cost of taking it”.

23. Ensuring “that the normal advancement of the proceeding is facilitated rather than delayed” speaks not just to procedural case management efficiency and expedition concerns. It is important to remember that case management is not an end in itself. It is



a tool to be deployed in aid of facilitating the enjoyment of the fundamental right to “*a fair and public hearing... within a reasonable time*” (Bill of Rights, section 7(1)).

Findings: factors relevant to granting the stay sought by the Defendant

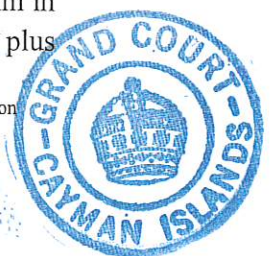
24. The main factors relied upon by Canterbury as grounds for a stay are set out in its Skeleton argument at paragraphs 36-44. They may conveniently be distilled into the following points:
- (a) knowing the realistic value of FDL’s claim is essential for the Court to deal with the present action “*in a just, expeditious and economical way*” (GCR Preamble, paragraph 1.1);
 - (b) the realistic value of FDL’s claim will not be known until the determination of the Put Option waiver issue in the Nevada Proceedings;
 - (c) there is a substantial overlap of issues in these proceedings and those before the Nevada Court;
 - (d) it is desirable for the Put Option waiver issue to be determined between the parties to the SPA in Nevada as matter of principle and practicality;
 - (e) FDL will suffer no prejudice if a stay is granted which cannot be compensated for in damages.
25. FDL’s response, persuasively advanced by Mr Dickson in oral argument, may helpfully be distilled from the submissions set out in the Plaintiff’s Skeleton Argument at paragraphs 13-36:
- (a) the threshold of demonstrating a compelling reason for a stay has not been met;
 - (b) if PFS succeeds in Nevada, it does not automatically follow that FDL’s claims against Canterbury would be diminished. The Nevada Court may not order that its judgment be paid out of the assets held by Canterbury;
 - (c) there is no basis for assuming that FDL will not prevail in the Nevada Proceedings;



- (d) the Nevada Proceedings will not resolve any of the substantive issues in the present proceedings and the relief sought by FDL herein is “*unconnected to and/or not reflective of the relief at issue in the Nevada Proceedings*” (paragraph 23);
- (e) if PFS prevails in Nevada, US\$7, 469,583 will still be in issue in these proceedings;
- (f) local case law suggests that stays would only be granted where either a central issue is likely to be decided in parallel proceedings within a very short time (*Oriental Knowledge*-two months), or where significant issues are likely to be decided abroad and the foreign court has expressed the hope that the Cayman Court will grant a stay (*CIGNA Worldwide Insurance Company-v-ACE Limited* [2012 (1) CILR 55] ;
- (g) by way of contrast, stays have been refused where there have been common factual issues in parallel proceedings but the causes of action differed (*Israel Oil & Gas Corp-v- Israel Petroleum Company Limited & Another*, FSD 79 of 2011 (AJJ), Judgment dated October 3, 2011 (unreported));
- (h) FDL will suffer prejudice as it seeks the return of its property and to withdraw from the relationship with Canterbury which it terminated;
- (i) The disputed monies could be held in escrow pending the outcome of the Nevada Proceedings in the event that they are still pending when the present action concludes.

26. Having considered the various factors relied upon in argument and in evidence I am bound to conclude that Canterbury has failed to make out a compelling case for a stay applying the agreed legal test and having regard to the cases illustrating that test’s application in practice. My findings are as follows:

- (a) I reject the suggestion that the issues to be determined in the Nevada Proceedings will have so great an impact on the quantum of FDL’s claims in this action as to make sensible case management impossible. On balance, it seems clear that FDL has a substantial claim which it would like to pursue before this Court even assuming it has to pay a substantial sum to PFS out of monies held by Canterbury and that Canterbury succeeds on the most plausible limbs of its Counterclaim in an amount of less than \$1 million. At this stage the \$20 million plus



head of loss seems optimistic, and not cogent enough to justify the view that it would likely generate a 'drop-hands' settlement. This is necessarily a somewhat intuitive view at an early stage, and could very well prove to be unfounded at trial;

- (b) FDL's claims unaffected by the Nevada Proceedings include proprietary claims which cannot easily be compensated for in damages. I accordingly accept its submission that granting a stay would be inherently prejudicial;
- (c) the likely disposition of the Nevada Proceedings on the merits is impossible for me to realistically assess. It is also far from clear precisely when the trial will take place there; on Canterbury's case that will be at the earliest in six-nine months' time;
- (d) the issue to be adjudicated in Nevada is one of several significant issues which fall for determination in this action in any event. There is no significant overlap between the two proceedings. The overlap of issues in the two sets of proceedings lacks the degree of substance required to rationally justify a stay. More importantly still, the valid concerns raised by Canterbury about the risk of inconsistent decisions on the Put Option waiver issue can be adequately addressed by deploying 'lighter touch' case management powers instead of the blunt instrument of a complete stay;
- (e) it is desirable for the Nevada Court to decide the construction of the Put Option clause. FDL will be bound by such findings and Canterbury has agreed to be bound. It makes far more sense for this Court to simply defer entering any finding on the relevant issue until the Nevada Court has determined it rather than staying these proceedings altogether. This will allow this action to proceed in the usual manner and reduce (if not eliminate altogether) any delay awaiting a decision on a narrow issue from the foreign Court;



- (f) the monies held by Canterbury could be held in escrow as FDL suggests if the present action concludes before the Nevada Proceedings;
- (g) it seems plausible that the two trials could take place within broadly the same time-frame in any event. To the extent that the Put Option waiver issue appears primarily to impact on quantum, my provisional view is that the issue of liability should be tried first;
- (h) there is a clear conflict between the Plaintiff's right to progress its action in the usual way and the Defendant's desire await the outcome of the Nevada Proceedings which it hopes will facilitate the settlement of the present proceedings. I am unable to attach much weight to Canterbury's unilateral views as to the prospects of settlement being enhanced if PFS (which is under common ownership) succeeds on the Put Option waiver issue;
- (i) in my judgment the Plaintiff's right to a fair hearing and an opportunity to obtain substantive justice trumps the Defendant's case for staying the present proceedings. The case for a stay is based on the objective of obtaining case management benefits which are not implausible, but which appear based on the presently available evidence to be essentially ephemeral;
- (j) should the tectonic plates shift dramatically because of developments which cannot presently be clearly foreseen (e.g. flowing from the pending investigations into market manipulation in relation to YRIV's shares and/or Canterbury's own investigations), appropriate adjustments can always be made to the pre-trial timetable in due course;
- (k) Canterbury's Summons should accordingly be dismissed.

Conclusion

27. The Defendant's application to stay the present action pending the determination in parallel proceedings in Nevada of one of the several issues which arise for determination in the present proceedings is dismissed. Unless either party applies by letter to the Court within 21 days of date of the delivery of this Judgment to be heard



as to costs, the costs of the present application shall be awarded to the Plaintiff to be taxed if not agreed.



THE HONOURABLE MR JUSTICE IAN RC KEWLEY
JUDGE OF THE GRAND COURT

