



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

FSD CAUSE NO: 140 of 2022 (RPJ)

IN THE MATTER OF THE COMPANIES ACT (2022 REVISION)

AND IN THE MATTER OF YUBI CAPITAL (CAYMAN) GP

Appearances:

Mr. Graham Chapman KC of Counsel and Mr. Nicholas Fox
and Ms. Laura Stone of Mourant Ozannes (Cayman) LLP for the
Petitioner

Mr. James Eldridge and Mr. Malachi Sweetman and Ms.
Christiana McMurdo of Maples and Calder (Cayman) LLP for
the Company

Before: The Hon. Justice Raj Parker

Heard: On the papers

Date of Decision: 20 June 2023

Draft Judgment Circulated: 8 June 2023

Judgment Delivered: 20 June 2023

HEADNOTE

Costs-GCR Order 62 r4-CMC-strike out, stay and preliminary issue application-discretion.

Introduction

1. At the CMC on 13 December 2022 the Court ruled that the strike out, stay and preliminary issue applications should be heard together over a day and a half on the 20 and 21 February 2023 and reserved the costs of the CMC.
2. On 4 April 2023 the Court dismissed all three applications. This was recorded in an Order dated 10 May 2023.
3. At paragraph 90 of its judgment the Court stated that:

"The Court is inclined to Order that costs will follow the event to be taxed on the standard basis. If either party wishes to argue for a different costs outcome the Court will determine the matter on written submission (no more than 5 pages in length)"
4. The parties have provided written submissions in relation to costs. The Company argues that it should have its costs of the CMC held on 13 December 2022 to be taxed on the standard basis if not agreed, and there be no order as to the costs of the other applications.
5. The Petitioner submits that the most appropriate costs order would be one awarding her 80% of her total costs of all three applications.
6. The Court has carefully considered the parties' written submissions.
7. The Court reached the conclusion that this was not a plain and obvious case which would justify an order striking out the Petition. The New York proceedings would not provide the specific remedy that the Petitioner is seeking¹.
8. As to the application for a case management stay, having concluded that the Petition was not an abuse of process and should proceed, the court was not persuaded that it would be in the interests of justice to order a case management stay².
9. As to the application for a preliminary issue, having considered whether ordering a preliminary issue in relation to the standing question would be likely to reduce delay and costs, the Court came to the view that it would not. It also came to the view that the preliminary issue could not be determined on established facts and a further examination of evidence would be required so that

¹ See §73 of the Judgment FSD 140 of 2022

² See §74

there was a material risk that a trial of a preliminary issue would increase costs and delay matters to no safe, determinative purpose³.

Determination

10. The Court has reached the view that there should be no order as to the costs of the CMC. The Court decided that the applications should be heard together and not that the strike out and stay be heard in isolation first. The Petitioner was successful in that respect. However, the Petitioner had only filed her summons and evidence on 16 November 2022 and suggested a date of 19 December 2022 for the hearing of that application even although that did not leave sufficient time for it to be properly prepared and heard. In the event the Court set aside sufficient time for both parties to prepare and argue all three applications in February 2023. The fairest outcome is no order as to the costs of the CMC.
11. As to the strike out and stay applications, it is clear that the Petitioner prevailed. Similarly, the Company prevailed on the preliminary issue application. The Court is of the view that the most pragmatic and efficient costs order would be that each party bears their own costs in relation to the substantive applications made. Taxation would have to split out and then set off the time spent arguing the respective applications where the evidence overlapped and the cases were heard together. That would be wasteful.
12. Consistent with the overriding objective and proportionality in relation to a relatively short hearing, the Court has reached the view that the fairest outcome would be no order in relation to the costs of the strike out, stay and preliminary issue applications.
13. It is not necessary for the Court to give permission now to the Petitioner to seek the remainder of the costs in relation to her application for directions (which she claims on an indemnity basis if the correct respondent to the Petition is the company). The Court will consider that matter when the directions are determined and the respondent's identity is resolved.
14. The parties are invited to draw up an agreed order for the Court's approval.



THE HON. MR JUSTICE RAJ PARKER
JUDGE OF THE GRAND COURT

³ See§87