



Neutral Citation Number: [2025] CIGC (FSD) 33

Cause No: FSD 2024-0266 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

BETWEEN:

(1) TWVC GOLDLINK PARTNERS LIMITED
(2) TWVC PANGLIN GROUP INVESTMENT LIMITED

Plaintiffs

-and-

APOLLOMICS INC

Defendant

Appearances: Mr Paul Smith and Mr Louis Mooney of Forbes Hare for the Plaintiffs
Mr Jonathan Milne of Conyers Dill & Pearman LLP for the Defendant

Before: The Honourable Justice Jalil Asif KC

Heard: On the papers

Judgment: 16 April 2025

Addendum judgment on costs: 24 April 2025

Practice and procedure—whether to vary trial window due to unavailability of chosen counsel

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JUDGMENT

1. This is my judgment on the Defendant's summons filed on 9 April 2025 seeking to defer the trial window in this case from 5 May to 27 June 2025, to September 2025. In order to put the Defendant's application into context, it is necessary to set out the relevant procedural history.
2. The parties submitted a draft consent order on 27 December 2024 intended to lead to a trial of the Plaintiffs' claim on the first available date after 2 May 2025.
3. The Court circulated a revised draft consent order on 30 December 2024 for consideration by the parties which, in line with the submitted draft, provided for a trial window from 5 May. The end of the trial window was identified as 27 June 2025. Once counsel's comments on the revised draft were received, the Court finalised the Consent Order for directions on 9 January 2025.
4. On 5 February 2025, Forbes Hare requested an extension of 1 week for discovery. Conyers agreed on the basis that time for witness statements would similarly be extended. The parties updated the Court on 6 February 2025. Forbes Hare stated:

"The parties do not regard this as prejudicial to any party and it does not affect either the date of the pre-trial review or the window for trial."

In the normal way, Conyers were copied into the Forbes Hare's email to the Court.
5. Despite the Defendant stating to Forbes Hare that it wished to reserve its position regarding the procedural timetable, there was no objection to the Court from Conyers that Forbes Hare's statement to the Court that the extension would have no effect on the trial window was or might be incorrect.
6. On 24 March 2025, Forbes Hare requested a 2 week extension for witness statements and argued that this would not affect the trial window. On 25 March 2025, Conyers responded making various complaints but ultimately agreeing to the requested extension and again stating that the Defendant reserved its position regarding the procedural timetable. On 27 March 2025, the Court approved the

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requested extension, stating that this was because *“it does not impact on the timing of the PTR or trial window”*. There was no objection from Conyers that the Court’s understanding was incorrect.

7. The Consent Order for directions required the parties to submit their agreed availability for trial by 27 March 2025. On 21 March 2025, Forbes Hare requested details of the Defendant’s availability for trial. Conyers did not respond. On 27 March 2025, Forbes Hare wrote to Conyers indicating their availability and chased Conyers for the Defendant’s availability.
8. On 28 March 2025, Forbes Hare updated the Court regarding the Plaintiffs’ availability for trial and complained that they had received no response from Conyers to their requests for the Defendant’s availability for trial.
9. Very shortly thereafter, Conyers wrote complaining that Forbes Hare had written to the Court. Conyers appear to have ignored that the parties had been ordered to do so by 27 March 2025. Conyers did not dispute the factual account provided by Forbes Hare. Further, Conyers did not provide details of the Defendant’s availability within the trial window and have never done so.
10. On 29 March 2025, Conyers complained to Forbes Hare about the effect of the extensions that had been agreed on trial preparation. They said they were not available on the dates identified by Forbes Hare and proposed 21-25/07 2025 for the trial.
11. Forbes Hare wrote to the Court on 2 April 2025 to convey the Defendant’s proposed trial dates in July 2025. The Court responded the same day that the trial window had been set by consent; the extensions to the directions timetable had been approved on the basis that they would not affect the trial window; and said that the Court was not available on the dates in July 2025 that were proposed due to the trial of another matter. The Court indicated that the parties should identify suitable dates within the trial window, including considering using alternative leading counsel if necessary, or make a properly formulated application to vary the trial window.
12. On 3 April 2025, Forbes Hare wrote to Conyers arguing that the Defendant should instruct new leading counsel if the Defendant’s current leading counsel was not available within the trial window. Forbes Hare stated that the Plaintiffs do not agree to vary the trial window.

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13. On 4 April 2025, Conyers complained to Forbes Hare about the Plaintiffs' "limited" availability within the trial window and asserted that there would not be any prejudice to the Plaintiffs if the trial were delayed. Conyers still did not provide any details of the Defendant's availability within the trial window.
14. There were then some further exchanges of correspondence between counsel for the parties arguing their respective positions, including an indication by Forbes Hare that the Plaintiffs intended to seek their costs of this issue in any event and that, without prejudice to the Plaintiffs' position that the trial window should be maintained, the Plaintiffs' leading counsel would be available for a trial in September 2025.
15. On 9 April 2025, the Defendant filed the summons to vary the trial window to 16-26 September 2025.
16. On 10 April 2025, Forbes Hare indicated that the Plaintiffs were content for the Court to deal with the summons on the papers based on the Plaintiffs' position as set out in the correspondence. Conyers sought confirmation whether the Plaintiffs were actively opposing the summons or were merely not consenting. Conyers stated that if the Plaintiffs were opposing the summons, then the Defendant wished there to be an oral hearing. On 11 April 2025, Forbes Hare confirmed that the Plaintiffs were not actively opposing the Defendant's summons.
17. I have dealt with the Defendant's summons on the second working day after Forbes Hare's confirmation, having had matters listed in court throughout the day on 14 April 2025.
18. I have determined that I should refuse the Defendant's application. My reasons are as follows.
19. The trial window was fixed by consent. This itself is a very important factor. Without further consent or evidence of a change in circumstances, a party is generally not allowed to resile from a consent order.
20. The draft consent order submitted by the parties on 27 December 2024 proposed a trial for the first available date after Friday 2 May 2025. The Consent Order dated 9 January 2025 provided for a trial window starting on Monday 5 May 2025 through to the end of June. The parties therefore should at

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all times from 9 January 2025, and probably from 27 December 2024, have been working towards identifying suitable trial dates within the agreed trial window, which was a period they themselves had selected, and reserving time in their respective leading counsel's diary accordingly.

21. The extensions of time for the procedural steps leading to the trial are irrelevant. If the Defendant considered that the extensions imperilled the trial window, it should not have agreed to them and should have raised this with the Court. It was not sufficient for Conyers to say to Forbes Hare that the Defendant's position was "reserved" without making that clear to the Court so that the Court could grasp the nettle. I particularly note that Conyers failed to raise with the Court when each extension was approved that the trial window was in danger from the extension, if that was the Defendant's position. Instead, the Defendant allowed the Court on both occasions to understand that the trial window would not be affected.
22. As previously indicated, both parties should have been identifying possible dates for trial and reserving time in their leading counsel's diary from 9 January 2025 onwards. It is wholly inadequate to leave it until days before the date when the parties' agreed availability was ordered by consent to be provided. This is reinforced by the fact that, as Conyers stated in their letter dated 4 April 2025, "*Our respective clients have elected to instruct well-respected, very busy and in-demand King's Counsel.*" The parties should therefore have been well aware that they needed to reserve leading counsel's time as soon as possible in order to ensure that their selected leader was available and the trial could proceed within the agreed trial window.
23. Conyers' complaints that the Plaintiffs have offered "limited" availability within the agreed trial window do not stand up to analysis. The agreed trial window is 5 May to 26 June. The Plaintiffs have offered availability for the following periods: 12-23 May, 9-13 June and 16-20 June, i.e. a little more than 4 weeks within the 7 week period.
24. Conyers have never provided any indication that the Defendant's preferred leading counsel is available at any time within the trial window; they have simply offered 4 days for the trial, nearly one month after the end of the trial window, and on dates when the Court is already occupied with another trial.

25. The Defendant relies on the overriding objective and suggests that dealing with the case justly and economically points towards varying the trial window. In this, the Defendant overlooks or ignores the obligations in the overriding objective to deal with cases expeditiously and to ensure that the normal advancement of the proceeding is facilitated rather than delayed. The Court currently has some availability in May and June 2025 when the trial could be listed. As previously indicated, the Court is not available for the alternative trial dates in July 2025 proposed by the Defendant. In addition, due to the time taken by the Defendant to prepare and file its summons, the Court is no longer available for the proposed dates in September 2025 either, as another trial has now been fixed for 8 days over the period when this matter could have been listed. If the trial window were to be varied, the trial could not currently be heard until October 2025, instead of May or June 2025. This is a significant delay.
26. Forbes Hare drew my attention to Section B4.3 of the FSD Guide which clearly states that trial dates will not be unduly delayed to suit the availability of overseas lawyers. It follows from this that parties may have to instruct alternative leading counsel if they do not have sufficient availability. Conyers should be well aware of this provision and its consequences, and should have advised the Defendant of it when considering engaging leading counsel from overseas. It is important and will be applied.
27. So far as prejudice is concerned, the Defendant has not identified any apart from the additional expense that it will incur if it has to engage alternative leading counsel. For example, the Defendant has not suggested that it cannot be ready for a trial in May or June 2025. On the other hand, the Plaintiffs point to recent substantial falls in the Defendant's value and its possible impending insolvency, which the Plaintiffs contend risks making any judgment that it obtains against the Defendant in due course difficult to enforce. This seems to me to demonstrate that there is a serious risk of real prejudice to the Plaintiffs by delaying the trial.
28. Neither party has acknowledged the requirement in the overriding objective to consider the allocation of the Court's finite resources, allotting an appropriate share to this case whilst taking into account the need to allot resources to other cases before the Court.
29. In this case, there has been a significant impact upon the Court, which has now had to spend many hours dealing with this listing dispute and preparing this judgment on the Defendant's summons. This

could have been avoided if the parties had addressed the question of leading counsel's available dates for trial at an earlier stage, as they should have done. The court's resources are not limitless. The time unnecessarily taken up in dealing with the listing issue in this case is time that should have been available to the Court for work on other litigants' cases and which impacts the delivery of justice to others.

30. In all the circumstances, my conclusion is that dealing with this case justly points strongly against varying the trial window.
31. The parties are directed to identify agreed suitable dates for trial within the existing trial window and to provide those dates to the Court by 4.00 pm on 23 April 2025, so that the Court can consider whether it is also available on the proposed dates and can fix a date for the trial.
32. By 12.00 pm on 25 April 2025, the parties shall confirm whether the PTR should remain listed on 2 May 2025 or should be listed on an earlier or later date and, if so, should identify the date contended for and why.
33. Finally, my provisional view is that the Defendant should pay all of the costs of dealing with the issue of the trial window for this matter incurred since 21 March 2025, to be taxed on the standard basis if not agreed. However, the parties have liberty to make written representations, of no longer than 5 pages, if any of them wishes to seek to persuade me to make a different costs order. Such written representations shall be filed by 4.00 pm on 23 April 2025.

Dated 16 April 2025



**THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT**

ADDENDUM JUDGMENT ON COSTS

34. Pursuant to my permission to the parties to make submissions on costs, the Plaintiffs seek an order that the Defendant should pay their costs on the indemnity basis. The Plaintiffs submit that:
- 34.1 the Defendants were in unreasonable breach of the consent order for directions in certain respects;
 - 34.2 the Defendants made misrepresentations to the Court regarding the circumstances leading to the request to vary the trial date;
 - 34.3 the effect of the Defendants' conduct was to impose improper pressure on the Plaintiffs; and
 - 34.4 there is a history of dilatory behaviour by the Defendant generally within the proceedings. All of these arguments are disputed by the Defendant.
35. The Defendant contends that neither side was the successful party for the purpose of costs so that the appropriate order is that each party should bear their own costs; alternatively that any costs payable by the Defendants should run from the date of the Defendant's summons only, namely 9 April 2025. The Defendant submits that:
- 35.1 both parties were to blame for the listing difficulties;
 - 35.2 the Defendants have already been penalised by having to engage alternative leading counsel and having to incur the cost of their limited admission and should not be further penalised by an adverse order for costs;
 - 35.3 the Plaintiffs did not oppose the Defendant's summons once it was filed or file any evidence or submissions and had previously indicated that they would consent to the trial being heard in July 2025, although in the event, the Court was not available at that time; and
 - 35.4 the Defendant has previously been co-operative in granting extensions of time requested by the Plaintiffs.

36. I consider that the Plaintiffs are, overall, the successful party. Their preference was to maintain the trial window, which is the outcome that the Court ordered. As a matter of common sense and in real terms, the result was the outcome the Plaintiffs wished to achieve. The fact that they did not actively oppose the Defendant's application will no doubt be reflected in the work included in their costs bill and in the taxation of costs in due course. Similarly, the fact that the Defendant's summons was determined on the papers is a matter for taxation.
37. Whilst it is correct that I criticised both sides for failing to address the question of the availability of their leading counsel at an early stage, the material before me indicates that it was the Plaintiffs who were being proactive in seeking to identify potential hearing dates, with no response by the Defendant within the period for a date to be agreed, and a response after the date for notifying the Court had already passed that suggested a hearing date outside the trial window. I also bear in mind that the Plaintiffs' leading counsel was in fact available for nearly 50% of the trial window, whilst the Defendant's was not available for any of it. The relevant blame is therefore significantly weighted against the Defendant.
38. The fact that the Defendant has had to incur additional costs in engaging a new leading counsel is irrelevant to the allocation of the costs of dealing with the dispute regarding the trial window. Similarly, the fact that the Defendant has previously agreed extensions to the directions timetable is irrelevant.
39. I consider it is appropriate for the Defendant to bear the Plaintiffs' costs of the issue regarding the trial window from 21 March 2025. The dispute regarding the trial window grew out of the failure of the parties before that date, and the failure of the Defendant after that date, to deal with availability for a trial within the agreed trial window. The dispute developed, and involved the Court, from 28 March 2025 onwards. On 2 April 2025 the Court indicated that the parties should agree a date within the trial window or should make a properly formulated application to vary the trial window. In those circumstances, it would be artificial to limit costs to the period after the Defendant issued its summons on 9 April 2025, since that was simply the procedural mechanism formally to bring the matter before the Court for resolution.

40. I do not consider this is an appropriate case for costs to be awarded against the Defendant on the indemnity basis.
41. There is substantial merit in the Plaintiffs' criticisms of the Defendant in respect of the breach of the consent order and the alleged misrepresentations to the Court of the position regarding attempts to agree a trial date. However, I am not satisfied that the Defendant's conduct was so far outside the norm as to justify an award of indemnity costs.
42. I am not persuaded that I should infer that the Defendant's intention was to exert improper pressure on the Plaintiffs such as to justify or support an award of costs on the indemnity basis. And in the absence of such an inference, I do not consider the allegation of improper pressure is made out.
43. I cannot make any decision regarding the alleged background of dilatory behaviour by the Defendant in the action more generally. Neither party has put material before me regarding the necessity for the discovery protocol, which was a key factor relied upon by the /s. I therefore ignore it for the purpose of determining the basis of costs payable.
44. I therefore conclude that my provisional view on the allocation of costs should be confirmed, namely that the Defendant should pay all of the costs of dealing with the issue of the trial window for this matter incurred since 21 March 2025, to be taxed on the standard basis if not agreed.

Dated 24 April 2025



**THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT**