



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

**CAUSE NO: FSD 383 OF 2021 (RPJ)**

**Neutral Citation Number: [2025] CIGC (FSD) 36**

**B E T W E E N:**

**(1) THE PORT FUND L.P.**

**(2) GENERAL RETIREMENT AND SOCIAL INSURANCE AUTHORITY**

**Plaintiffs**

**-and-**

**WALKERS (DUBAI) LIMITED LIABILITY PARTNERSHIP**

**Defendant**

**Before:** The Honourable Justice Parker

**Appearances:** Ben Hubble KC, Sebastian Said, Susan Fallan and Daniel Coelho of Appleby (Cayman) Ltd on behalf of the Defendant  
Thomas Grant KC, Anna Peccarino and Ian Huskisson of Travers Thorp Alberga on behalf of the Plaintiffs

**Heard:** 2 April 2025

**Draft Judgment circulated:** 29 April 2025

**Judgment delivered:** 9 May 2025

*250509 In the matter of The Port Fund L.P – FSD 383 of 2021 (RPJ) - Judgment*

*Case management powers-variation of interim order to align with other orders made in related litigation-jurisdiction -discretion-material change of circumstances-Overriding Objective.*

## JUDGMENT

### Introduction

1. The Defendant, Walkers Dubai, applies by summons filed on 7 February 2025 to vary an order made in this action dated 31 August 2022 which stayed these proceedings (FSD 383) on certain terms.
2. The Court has been concerned to case manage four related proceedings with significantly overlapping parties and causes of action over the last few years which relate to the Port Fund L.P.
3. The Port Fund L.P is a Cayman Islands exempted limited partnership within the meaning of section 2 of the Exempted Limited Partnership Act (2021 Revision). It was set up in 2007 for investments in port-related assets around the world. Port Link GP Ltd (“Port Link”) is, and was at all material times, the General Partner of the Port Fund. Mark Williams is the sole ultimate beneficial owner of Port Link. There were 11 limited partners in the Port Fund.
4. The Plaintiffs in these actions include various Limited Partners of the Port Fund L.P. The Kuwait Ports Authority (KPA), The Public Institution for Social Security (PIFSS), the General Retirement and Social Insurance Authority (GRSIA) and Gulf Investment Corporation (GIC) have, between them, commenced four separate actions in the Grand Court in respect of the same underlying subject matter.
5. The issues in FSD 236 of 2020 (“FSD 236”) materially overlap with FSD 41 of 2022 (“FSD 41”) and the issues in FSD 97 of 2021 (“FSD 97”) materially overlap with these proceedings, FSD 383 of 2021 (“FSD 383”).
6. FSD 236 and FSD 97, which can be said to be the ‘lead actions’, are to be tried together, the trial to commence in February 2026 (estimate 12 weeks).

*FSD 236*

7. In FSD 236 the Plaintiffs are (1) the Kuwait Ports Authority (“KPA”), (2) The Public Institution for Social Security (“PIFSS”) and (3) The Port Fund L.P. (the “Fund”).
8. The Defendants in FSD 236 are (1) Port Link GP Ltd, (2) Mark Eric Williams, (3) Wellspring Capital Group, Inc, (4) KGL Investment Company Asia, (5) Golden Shahin General Trading & Contracting Company, (6) Apache Asia Limited, (7) Ronald Henry Ayliffe, (8) KGL Investment Company KSCC, and (9) Apache Asia Limited.

*FSD 41*

9. In FSD 41 the Plaintiffs are (1) Gulf Investment Corporation (“GIC”) and (2) the General Retirement and Social Insurance Authority (“GRSIA”).
10. The Defendants in those proceedings are (1) Port Link GP Ltd, (2) Mark Eric Williams, (3) Wellspring Capital Group, Inc, (4) KGL Investment Company Asia, (5) Apache Asia Limited, (6) Apache Asia Limited, (7) Ronald Henry Ayliffe, and (8) Elite First Investment Limited.

*FSD 97*

11. In FSD 97 the Plaintiffs are (1) KPA, (2) PIFSS and (3) The Port Fund L.P.
12. The Defendants are (1) Walkers (a Firm) (“Walkers Cayman”) and (2) Walkers (Dubai) Limited Liability Partnership (“Walkers Dubai”).

*FSD 383*

13. In FSD 383 the Plaintiffs are (1) The Port Fund L.P. and (2) GRSIA, and the Defendant is Walkers Dubai.
14. It is to be noted that GRSIA is a common Plaintiff to both FSD 383 and FSD 41, and Walkers Dubai is a common Defendant to both FSD 383 and FSD 97.
15. FSD 41 is, in effect, a shadow action to FSD 236. FSD 383 is, in effect, a shadow action to FSD 97 both of which involve Walkers. The similarity between the latter two actions needs a more detailed explanation for the purposes of this application.

*FSD 97 and FSD 383*

16. FSD 97 and FSD 383 advance substantially the same claims, based on substantially the same facts. They claim the same losses, on behalf of (with one limited exception-see below) the same party, namely the Port Fund (the Fund).
17. As regards FSD 97, the Plaintiffs (the Fund and the Limited Partners KPA and PIFFS) advance derivative claims on the Fund's behalf in negligence and /or breach of contract and in breach of fiduciary duty against Walkers acting for both the Fund and its Manager in a way which is alleged to have been an actual conflict of interest.
18. In summary the main issues in FSD 97 are:
  - a) Whether Walkers wrongfully advised (in breach of contract and/or negligence) that the Manager had a basis for the payment of certain fees that should have been claimed in the Dubai International Finance Centre (DIFC) proceedings and failed to advise the Fund (i) as to certain clawback provisions under the Investment Management Agreement; (ii) to challenge jurisdiction; and (iii) with regard to the need to investigate defences and counterclaims said to be available to the Fund. It is also alleged that Walkers negligently failed to advise the General Partner to notify the Limited Partners of the position and to advise the General Partner to provide instructions through someone without the alleged conflict of interest.
  - b) Whether Walkers acted in a position of 'actual obvious and non waivable' conflict of interest (in breach of fiduciary duty) and preferred the interests of one client, namely the Manager, over the interests of the other, the Fund. It is further alleged that Walkers should have advised the General Partner to disclose the conflicts to the Limited Partners and that instructions needed to be given by someone without the conflict of interest under which it is said Mr. Williams was acting.
  - c) Whether the DIFC proceedings were contrived by the Defendants to cause loss to the Limited Partners and/or the Fund and to benefit the Manager and/or Mr. Williams. It is further alleged that the purpose of the DIFC proceedings was to obtain a judgment and use it as a pretext for dishonestly misappropriating the Wellspring payment (approx.US\$59m paid on 7 February 2019) from the Fund.

- d) Whether Walkers believed the General Partner to be acting honestly and reasonably in relation to the DIFC proceedings, or whether, as the Plaintiffs allege, it was inherently implausible that Walkers held any such belief as the DIFC proceedings and judgment obtained were not in the interests of the Fund and the General Partner was obviously not acting honestly or reasonably in relation to the DIFC proceedings and the underlying claim.
19. In both FSD 383 and FSD 97 the Plaintiffs include the Fund, but in FSD 383 another Limited Partner, GRSIA<sup>1</sup>, makes substantially similar claims to KPA and PIFSS in FSD 97.
20. The claims in FSD 383 are also brought in negligence, breach of contract and breach of fiduciary duties against Walkers Dubai<sup>2</sup> on behalf of the Fund (derivatively). However, unlike FSD 97, in FSD 383 there is additionally a dishonest assistance claim which GRSIA claims on its own behalf as a Limited Partner with a relatively small interest (as well as advancing it on behalf of the Fund).
21. In respect of this dishonest assistance claim (asserted derivatively on behalf of the Fund as a whole, and directly by GRSIA for its 5.86% interest) it is said that Walkers dishonestly gave more than minimal assistance to the General Partner's breaches of trust, fiduciary duty and authority owed to both the Fund, and GRSIA.

*The Stay of FSD 383 obtained in 2022*

22. On 31 August 2022, the proceedings brought by GRSIA in FSD 383 were stayed on certain terms on the application of Walkers Dubai after a contested hearing. The Court ordered an interim case management stay pending the determination of FSD 97, which the other Limited Partners had previously commenced.

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<sup>1</sup> GRSIA is an enterprise owned by the state of Qatar and is responsible for administering the Qatari social security system. GRSIA is, and was at all material times, a limited partner of the Port Fund. It invested a total of USD 9,852,000 in the Port Fund in 2007.

<sup>2</sup> Walkers Dubai is a DIFC Limited Liability Partnership which is (and has been since 6 December 2005) registered in the public register of the Dubai Financial Services Authority. It is a full-service law firm providing legal services in a number of core practice areas.

23. The Court's reasons for imposing a case management stay can be found in its Judgment of 27 June 2022 (Stay Judgment)<sup>3</sup>. The main reason related to the substantial overlap in FSD 97 and FSD 383 and the prejudice to Walkers Dubai of having to deal with and respond to two such similar cases.
24. The Court refused to strike out the claim. FSD 383 remains stayed.
25. In material part the terms of the Stay were:

“.....

2. *The Defendant shall promptly provide the Plaintiffs with copies of (a) any Court documents exchanged and/or filed in Cause No. 97 (including without limitation copies of any pleadings (including amended pleadings), summonses, discovery, witness and/or any other statements (including affidavits) together with their exhibits, expert reports, skeleton arguments and any hearing bundles including the trial bundle) and (b) any transcript of any hearing or trial in Cause No. 97, subject only to the Plaintiffs paying the Defendant's reasonable photocopying costs.*
3. *The Defendant shall not agree to any settlement or compromise in Cause No. 97 without giving the Plaintiffs 21 days' prior notice in writing of a proposed settlement or compromise and its proposed terms.*
4. *The Plaintiffs do have permission to be heard as to the form of relief (if any) to be granted at the conclusion of Cause No. 97 if the Defendant and/or Walkers Cayman is found to be liable at the trial of Cause No. 97.*
5. *There be liberty to apply.”*

*The FSD 41 Stay Order*

26. Meanwhile the three other pieces of related litigation, including what may be called FSD 383's lead action, FSD 97, continued.

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<sup>3</sup> See in particular §§47-65,72-73 74-79.

27. Following a combined CMC in FSD 236, FSD 97 and FSD 41 heard on 26-27 February 2024, on 28 March 2024 the Court handed down judgment (CMC Judgment) dealing *inter alia* with
- (i) whether the parties to FSD 41 (the shadow action to FSD 236) (which include GRSIA as a Plaintiff) should be bound by the findings of fact and law made in both FSD 236 and FSD 97, with FSD 41 stayed pending the determination of FSD 236 and FSD 97; and
  - (ii) what rights, if any, should the FSD 41 Plaintiffs have to discovery exchanged in FSD 236 during the proposed stay.<sup>4</sup>
28. The Court noted the substantial overlap between FSD 236 and FSD 41 and its concern to ensure that there were not two trials against the same defendants (who were in essence common to both those claims): see §§ 63-66 of the CMC Judgment.
29. The Court also noted a submission by some of the defendants that the FSD 41 Plaintiffs should be subject to an order binding them to the outcome of the findings in the FSD 236/97 trial: see §§67-69 of the CMC Judgment.
30. It rejected that submission at §84. The FSD 41 Plaintiffs had proposed a stay until the conclusion of FSD 236 without any order binding them to the outcome (but on the pragmatic basis that there would probably be no need for a second trial): see §§78-81 of the CMC Judgment. The Court decided that if there was to be a stay it would be conditional: see §86.
31. In the event, at §87 of the CMC Judgment, the Court put the FSD 41 Plaintiffs to an election as follows:
- “Therefore, the Court puts the Plaintiffs in FSD 41 to an election. They can decide whether to ‘sit on the sidelines’ (by way of a stay) and agree to be bound, or they can participate in the FSD 236 and FSD 97 proceedings and all three matters will be case managed together.”*
32. GIC and GRSIA (the Plaintiffs in FSD 41) subsequently consented to the stay and to be bound by the findings of fact and law in FSD 236 and FSD 97.

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<sup>4</sup> §62ff

33. The Court also decided that although certain Court related documents were to be provided to the Plaintiffs in FSD 41 from FSD 236, they were not entitled to discovery.

*Outcome*

34. The result is that GRSIA agreed in FSD 41 to be bound by findings of fact and law in FSD 236 and FSD 97 and will not obtain discovery, whereas as a result of the FSD 383 stay order made on 31 August 2022, GRSIA is not so bound and is entitled to discovery from FSD 97.

*The application*

35. This application by Walkers Dubai seeks to vary the terms of the FSD 383 stay order to align the position of itself and GRSIA in the two orders made.
36. It asks for the following relief:

*“Paragraphs 1 to 5 of the Order dated 31 August 2022 shall be substituted as follows:*

- 1. The Plaintiffs’ claims shall remain stayed pending the determination of FSD 97 of 2021 (FSD 97) or further order.*
- 2. Nothing in this Order shall prejudice the Plaintiffs’ rights to pursue their claims in FSD 383 of 2021 (FSD 383) or to apply for interim relief against the Defendant in FSD 383 following (a) the lifting of the stay (for any reason) in FSD 383; or (b) determination of FSD 97, save that no party to FSD 383 will be permitted to re-try or re-litigate issues of fact or law which have already been determined in FSD 97 and/or FSD 236 of 2020 (FSD 236).*
- 3. The Defendant shall upon request promptly provide the Plaintiffs with copies of (a) any Court documents filed in FSD 97 (including without limitation copies of any pleadings (including amended pleadings), summonses, witness and/or any other statements (including affidavits) together with their exhibits, expert reports, skeleton arguments and any hearing bundles including the trial bundle) and (b) any transcript of any hearing or trial in FSD 97, subject only*

*to (i) any court order to the contrary and (ii) the Plaintiffs paying the Defendant's reasonable photocopying and any other production costs in advance. For the avoidance of doubt, the Plaintiffs' costs of requesting and reviewing such documents shall be borne solely by the Plaintiffs, and such costs shall not be claimed or recoverable from the Defendant in any event.*

4. *The Plaintiffs shall not use any document that is provided to them pursuant to paragraph 3 of this Order for any purpose other than in FSD 97 without first having obtained the consent of (a) the affected parties to FSD 97 or (b) the court on notice to the parties to FSD 97, save that the Plaintiffs may use such document for the purpose of applying to lift the stay in FSD 383 and (if so lifted) prosecuting the claim in FSD 383.*
5. *The Plaintiffs do have permission to attend all hearings in and the trial of FSD 97 on a watching brief and on the basis that (a) the Plaintiffs' attendance shall be at their own expense and (b) none of the parties to FSD 97 shall be entitled to claim costs from the Plaintiffs because or as a result of such attendance, except to the extent that the Plaintiffs make written or oral submissions in FSD 97 in accordance with the terms of this Order, in which case the normal rules as to costs shall apply. Save as provided in paragraph 7 below, the Plaintiffs will not be permitted to present written or oral submissions in the course of FSD 97, including by writing letters to the Court.*
6. *The Defendant shall not agree to any settlement or compromise in FSD 97 without giving the Plaintiffs 30 working days' prior notice in writing of a proposed settlement or compromise and its proposed terms, unless otherwise agreed in writing between the parties.*
7. *The Plaintiffs do have permission to be heard as to the form of relief (if any) to be granted at the conclusion of FSD 97 if the Defendant and/or Walkers (a firm) is found to be liable at the trial of FSD 97.*
8. *There be liberty to apply."*

37. Mr Ben Hubble KC appeared for Walkers Dubai. Mr Thomas Grant KC appeared for GRSIA.

38. The Court has reviewed the First Affidavit of Daniel Coelho dated 7 February 2025, the First Affidavit of Ian Huskisson dated 7 March 2025, the Second Affidavit of Daniel Coelho dated 21 March 2025, and the helpful written arguments of Leading Counsel.
39. GRSIA vigorously resists the application on a number of grounds:
- a) It argues that the Court has no jurisdiction to impose the substantive variations sought to the FSD 383 Stay Order. That Order was made over 2 years ago and there was no appeal of that Order.
  - b) Even if the Court did have jurisdiction to vary the Order, it would be wrong to exercise its discretion in favour of Walkers Dubai as proposed as there has been no material change in circumstance or good reason to vary. GRSIA says Walkers Dubai could have argued for these points before the Stay Order was made and it failed to do so. The Order made ensured fairness to GRSIA where the Court was imposing a stay against its wishes to continue to litigate its claim. It was too late and unfair for Walkers Dubai to seek substantive variations to be made now to disadvantage GRSIA and advantage Walkers Dubai.
  - c) Unlike the case brought by Walkers Dubai against GRSIA in FSD 383, the outcome in FSD 41 did not involve any party seeking to impose a stay on it. GRSIA in FSD 41 made its own separate election to be bound in different circumstances. No such case was made or considered before the FSD 383 Stay Order. The two contexts were quite different.
  - d) As to the absence of discovery in the FSD 41 Order, the Court decided the matter on the basis that there was no reciprocal obligation if the Plaintiffs in FSD 41 chose to ‘sit on the sidelines’. The FSD 41 Plaintiffs were to be given enough other material and opportunity to protect their interests<sup>5</sup>. In FSD 383 there was no such consideration of the matter and the Court Ordered full information including discovery to protect GRSIA’s interests. That should not be disturbed. To do so would materially prejudice GRSIA.

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<sup>5</sup> §§93-95

## Decision

### *Jurisdiction*

#### *General principles*

40. The general position can be shortly stated. The Court has jurisdiction to revisit an earlier interlocutory order if there is a material change of circumstance<sup>6</sup>. It should not lightly do so because there is a clear benefit in the finality<sup>7</sup> of orders made and parties should not be allowed to advance points after the event in order to change the outcome. The normal course if a party is dissatisfied with an order made is to appeal. Similarly, an application to rescind or vary an interlocutory order ought ordinarily to be made promptly and the circumstances in which an order will be varied are likely to be rare given the importance of finality<sup>8</sup>.
41. In *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537; [2014] 1 WLR 795 at §44 in a passage approved by the Supreme Court in *Thevarajah* (supra) Lord Dyson MR put the principles to be applied in this way:

*“If a party wishes to contend that it was not appropriate to make the order, that should be by way of appeal or, exceptionally, by asking the court which imposed the order to vary or revoke it under CPR 3.1(7). The circumstances in which the latter discretion can be exercised were considered by this court in Tibbles v SIG Plc (trading as Asphaltic Roofing Supplies) [2012] EWCA Civ 518, [2012] 1 WLR 2591. The court held that considerations of finality, the undesirability of allowing litigants to have two bites at the cherry and the need to avoid undermining the concept of appeal all required a principled curtailment of an otherwise apparently open discretion. The discretion might be appropriately exercised normally only (i) where there had been a material change of circumstances since the order was made; (ii) where the facts on which the*

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<sup>6</sup> *Lloyds Investment (Scandinavia) Ltd v Ager-Hanssen* [2003] EWHC 1740 (Ch) at [7], and *ArcelorMittal North America Holdings LLC v Essar Global Fund Limited* [2021] (2) CILR 673] §§42-47 Kawaley J

<sup>7</sup> *Chanel v Woolworth* [1981] 1 WLR 485, at pp. 492-493 (a case concerning a consent order).

<sup>8</sup> *Thevarajah v Riordan* [2016] 1 WLR 76 §§ 15-16 and 18 and *Terry v BCS Corporate Acceptances Ltd & Ors* [2018] EWCA Civ 2422, at §§68-75.

*original decision was made had been misstated; or (iii) where there had been a manifest mistake on the part of the judge in formulating the order. Moreover, as the court emphasised, the application must be made promptly”*

42. However, the emphasis to be placed on the importance of finality will depend upon the type of interlocutory order made and its place in the litigation as a whole.

43. Here the Order made was a case management stay in one action, to which other actions before the Court are intimately related and are being case managed, and which by its nature is a temporary order which is open to an application for variation if circumstances change<sup>9</sup>. It was not a final order.

44. The reasoning of the Court can be seen in the following paragraphs of the 2022 Judgment:

“72. *Looking at the matter in this way and in general terms, I am of the view that the two sets of proceedings against Walkers are substantially the same and in my judgment it is in both the public interest, and upon balancing the private interests of the parties, that there should only be one action for Walkers to defend.*

74. *I accept the evidence of Mr Wood that to allow this claim to continue in parallel with Cause 97 could well expose Walkers' witnesses to two separate cross examinations on the same issues successively at one trial (even if they are conjoined in some way) which would in principle be oppressive and unfair to the witnesses involved. I bear in mind that Walkers' witnesses are likely to include people who will be defending their careers and professional reputations against very serious allegations. They should not have to do so twice, however well the trial Judge manages the process to ensure fairness.*

75. *In addition, litigation proceeding against Walkers on two fronts over many years is also likely to impose a substantial burden upon it with consequent increases in management and witness time commitment as well as legal costs.*

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<sup>9</sup> *Re Nanfong International Investments Ltd* [2018 (2) CILR 321] §43

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76. *The Plaintiffs in the two claims against Walkers, unsurprisingly as separate entities, have separate legal teams. Walkers has one legal team. Apart from its own costs burden which arises from defending itself on two fronts in respect of essentially the same claim, Walkers also faces the risk of two sets of adverse costs.*
77. *I also consider it an important factor in weighing up my decision that substantially more Court resources and available Court time will be used up by two sets of proceedings to the detriment of other Court users.*
78. *... I agree that the approach to case management stays needs to be adapted to current times where there is a greater emphasis on the importance of active judicial case management, which leads to efficiency in disposing of litigation. The principle seems to me to apply even more so to the Court controlling procedure in its own jurisdiction in the present circumstances.*
79. *I have concluded that there are good reasons relating to the administration of justice and the unfairness and prejudice this claim causes to Walkers for the Court to step in and regulate matters. In addition, it is in the public interest that the Court should be astute to secure outcomes for litigants which are just, expeditious, and which cause the least expense reasonably possible in determining cases ...*
- .....
91. *It seems to me that the Limited Partners should also co-operate between themselves in respect of Cause 97 so as to ensure, consistent with the Overriding Objective and the public interest in the efficient conduct of litigation, that there is no need for two concurrent claims, when one will suffice.” (emphasis added)*

45. The Court was clearly applying case management principles to the application.

46. Here the order was for an interim stay pending the determination of FSD 97 and the Court is faced with an application on the basis that circumstances have materially changed.

*Liberty to apply*

47. A ‘liberty to apply’ provision is usually invoked when it is necessary to engage the Court again to carry what was ordered into effect or to clarify what the effect should be. It is not to be used to justify a wholesale alteration when a party has second thoughts. There needs to be a material change of circumstances<sup>10</sup>.
48. For example, in *Kirkconnell*, Smellie J held that the Court could vary an interlocutory order expressly or impliedly having “liberty to apply” if a substantial change of circumstances had occurred since the order had been made.<sup>11</sup>
49. In *ArcelorMittal*, Kawaley J observed that “*it is instructive*” that Rix LJ noted in *Tibbles* that:
- “The revisiting of orders is commonplace where the judge includes a ‘Liberty to apply’ in his order. That is no doubt an express recognition of the possible need to revisit an order in an ongoing situation: but the question may be raised whether it is indispensable”.*
50. Kawaley J went on to say that the Court’s jurisdiction to vary interlocutory orders in response to material changes of circumstances applied particularly in the context of case management orders which are made expressly subject to “liberty to apply”<sup>12</sup>.
51. In this case the Court principally had in mind protections for GRSIA in the 2022 Order, but there was liberty to apply granted to both parties.

*Material change in circumstances*

52. The Court considers that the most important factor which goes to jurisdiction and its exercise of discretion is whether there has been a material change in circumstances since the stay order in FSD 383 and what the effect of any change has been.

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<sup>10</sup> *Cristel v Cristel* [1951] 2 KB 725

<sup>11</sup> *Kirkconnell v Cook-Bodden* [1996 CILR 326]

<sup>12</sup> §65

53. The Court is persuaded that there has been such a change by virtue of the CMC on the 26th and 27th of February 2024, in FSD 236, FSD 97, FSD 41.
54. The Court lifted the stay that was then in place in FSD 97, ordered that there should be common case management of FSD 236 and FSD 97, and listed FSD 236, (but at that stage not FSD 97 which was later added) for a 10 to 12 week trial commencing in early 2026. As a result there is to be a joint trial of the two lead actions. That is a material change to the position in August 2022.
55. The Court also heard Leading Counsel on behalf of parties to FSD 236 and FSD 41 on the terms for a proposed stay of FSD 41. GRSIA through Mr Stanley KC argued that its claims in FSD 41 were direct claims, not derivative claims, so it was said that they could not be privies and so bound to findings in FSD 236.
56. The Court was concerned, having deliberated upon Mr Stanley KC's submissions, that there may not be a sure way of preventing the FSD 41 Plaintiffs from bringing further applications or claims depending on the issues adjudicated upon at trial. However the Court was not prepared to accept Mr Stanley KC's submission that the door should be left open in the way that he proposed, which would not have been an efficient or fair case management outcome. The Court was keen to ensure that the risk of further litigation should not be left hanging over the other parties once the trial had concluded, if at all possible.
57. The Court therefore declined to impose a declaratory order against the Plaintiffs in FSD 41 against their wishes and arguments as to the legal consequences of any issue estoppel/res judicata (not being privies), but indicated that if there was to be a stay, a condition of any stay would be that no party would be permitted to re try or relitigate issues which had already been determined. The FSD 41 Plaintiffs (including GRSIA) were put to an election accordingly.
58. The Court does not accept Mr Grant KC's contention that the decisions made in FSD 41 are immaterial because they relate to a different case in a different context (to FSD 383), when GRSIA were in a different position having made an election to be bound and were denied discovery as a result of that election.
59. In the Court's view, the outcome in FSD 41 where GRSIA had elected to agree to a stay of the proceedings and be bound by issues of fact and law decided at the joint trial, , is material to

GRSIA's involuntary position in FSD 383 where a stay was imposed at an earlier stage of the overall litigation without any discussion of being bound and full information was ordered, including discovery.

60. The Court considers that the outcome of the applications on the case management of the litigation as a whole with such overlapping and inter-related claims is more important than the particular case or context in which they arose.
61. Despite Mr Grant KC's able submissions, it does not seem to the Court that because a stay was imposed on GRSIA in FSD 383 against its wishes without any discussion of it being bound by matters of fact and law in FSD 97, that the Court cannot have regard to the position subsequently reached in FSD 41 when considering what the fairest and most appropriate case management outcome should be for the litigation as a whole and the affected parties.
62. As the Court said in respect of the February CMC when commenting on the FSD 383 Order (which was not under consideration at that hearing):

*“A balance was struck [in FSD 383] following short written submissions on an information sharing mechanism to allow close monitoring in light of the Court's judgment (§88) which said that if the Plaintiffs were dissatisfied with the outcome of the case advanced in FSD 97 they could at an appropriate time apply to lift the stay and pursue claims, or ask the Court for directions. If any party to FSD 383 wishes to revisit that position having reviewed this decision, they may do so.”*

63. The Court is of the view that there has been a material change in circumstances to justify the variation of the terms of the stay in FSD 383 as advanced by Walkers Dubai - , the common defendant to FSD 97 and 383 - , because the decision GRSIA took in FSD 41 has impacted the wider case management of the litigation.
64. GRSIA agreed to be bound by findings of fact and law made not just in FSD 236 (the lead action to FSD 41), but also in relation to FSD 97 (the lead action to FSD 383). There is a good reason for it to be likewise bound in FSD 383.

*Discretion*

65. The Court has approached the case management of the four sets of proceedings that have been referred to in this Judgment as overlapping and related cases. Through the decisions of the various Limited Partners these actions have been brought not with regard to efficiency as the main objective. It has been left to the Court to try to achieve this fairly, as far as practicable.
66. Standing back and considering this litigation as a whole, which the Court must do pursuant to the Overriding Objective, there are essentially two related cases against various alleged wrongdoers principally brought by the Limited Partners on behalf of the Fund (FSD 236 and 41) and two related cases against Walkers (FSD 97 and 383).
67. The two linked lead cases against the alleged wrongdoers and against Walkers are to be tried together at a 12-week trial commencing in February 2026.
68. It clearly makes sense for the findings of fact and law arising out of the trial of FSD 236 and FSD 97 to be binding on the parties to the shadow actions FSD 41 and FSD 383 so that there is limited scope for duplication, relitigation, and arguments about apportionment of liability (if any) after so much time, energy and resource has been spent on a large trial.
69. That position was achieved in FSD 41 in the circumstances described, but was not achieved in FSD 383 in the earlier stay in 2022.
70. The Court is of the view that the Overriding Objective would not be served by leaving any obvious doors open for any further cases to be brought after a 12-week trial covering all causes of action raised in FSD 236 and FSD 97.
71. As the Court said in relation to the February CMC:

*“63. As to the first issue, the Court agrees that it is clearly important to avoid, if possible, relitigation on the same issues of law and fact after FSD 236 (and FSD 97) have been determined.*

*64. The FSD 236 Plaintiffs and FSD 41 Plaintiffs are all limited partners in the Fund, and all of their claims relate to the Fund. The FSD 236 Plaintiffs bring*

*their claims for the benefit of all of the Fund's limited partners (including the FSD 41 Plaintiffs) on a derivative basis, and seek relief for the benefit of all limited partners.*

65. *There is substantial overlap between the Defendants in FSD 41 and FSD 236. Seven of the eight Defendants in FSD 41 are Defendants in FSD 236 and default judgment has been obtained against the single non-overlapping Defendant (Elite First Investment Limited). On analysis the claims asserted in FSD 41 are very similar to those asserted in FSD 236.*

66. *It would in the Court's view be unfair and contrary to the Overriding Objective to require the Defendants who are common to FSD 236 and FSD 41 to defend effectively the same claims twice. The Court needs to try to ensure that there is minimal risk of two substantial trials of substantially the same claims, involving substantially the same parties."*

72. This is against the backdrop of complexity, expense and delay caused, in part, by the decisions taken by the Limited Partners (including GRSIA) to prosecute their claims in separate actions.

73. In the Court's view it would not be fair or sensible from a case management point of view that GRSIA is not bound by the Court's findings of fact and law made in FSD 97 in relation to FSD 383, where it has agreed so to be bound in FSD 41.

74. Consistency and apportionment of liability (if any) as between the parties need to be efficiently managed at the joint trial of FSD 236 and FSD 97, which will decide the substantive disputes between the parties. It would be highly undesirable in the Court's view to leave scope for further litigation.

75. The Court would prefer (just as it did in FSD 41 when it put GRSIA to an election) for this door to be as closed as possible. It may as a practical matter be unlikely that GRSIA would choose to relitigate any issues decided in FSD 97 and so any actual prejudice to it is likely to be limited.

76. As against that the Court has considered the prejudice to GRSIA in having the decision made in 2022 changed against its vigorous objections. In the Court's view the change to the outcome arrived at in 2022 should not be surprising and is not unfair to GRSIA.
77. The Fund is a Plaintiff in FSD 97, FSD 236 and (with GRSIA) in FSD 383. Findings of fact and law in the joint trial will be binding on GRSIA in any case as a Limited Partner in the Fund.
78. As to Walkers, the Court also said in the Stay Judgment, in FSD 97<sup>13</sup> "*...the Court will have considered and ruled on most of the relevant underlying matters relating to Walkers' knowledge and belief.*"
79. GRSIA pursues only direct claims in FSD 41 but pursues derivative claims in FSD 383 (and one direct claim which overlaps). GRSIA's residual direct dishonest assistance claim for a relatively small percentage in FSD 383 should not make any practical difference. Findings of fact and law made in FSD 97 will be binding on GRSIA's derivative claim in FSD 383 for dishonest assistance because the Fund is a Plaintiff in both respects. GRSIA's direct claim in dishonest assistance is for practical purposes a small percentage subset of the derivative claim.
80. As the Court indicated in the Stay judgment<sup>14</sup> if Walkers is liable for breach of fiduciary duty, the dishonest assistance claim is practically irrelevant. If the derivative claims succeed in FSD 97, Walkers will have to compensate the Fund which would include GRSIA's loss so it is not clear what difference the dishonest assistance claim would make<sup>15</sup>.
81. Likewise, if Walkers Dubai is neither liable in negligence nor breach of fiduciary duty it is hard to see how it could be liable in dishonest assistance.
82. GRSIA has decided in FSD 41 to be bound by findings of fact and law in FSD 97 and FSD 236, so should it be so bound in FSD 97's shadow action FSD 383, even though it is not a party to FSD 97.

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<sup>13</sup> §58

<sup>14</sup> §§53-57

<sup>15</sup> §§59-64

83. The Court acknowledges that Walkers Dubai did not argue for this outcome in May 2022 but that is not fatal to the application. There has been a material change of circumstances as explained.
84. The Court does not accept Mr Grant KC's forceful submissions that it has no power through its case management jurisdiction and discretion to impose an order on GRSIA that it is to be bound by the findings of fact and law in the joint trial in advance. The position in FSD 41 was different.
85. The Court was reluctant to impose such a position on GRSIA in relation to the FSD 41 stay because that action only has direct claims by GRSIA, so that Mr Stanley KC could cogently argue the Limited Partners in that action were not privies. As the Court said in § 84 of the CMC Judgment:

*“The Court will not impose a declaratory order on the FSD 41 Plaintiffs against their wishes. The Court agrees with Mr Stanley KC that as a matter of case management it would not be right to impose an order upon the Plaintiffs to FSD 41 (declaring for example that they are privies and bound) as it may well be the case that the legal consequences of any issue estoppel, which would only apply to essential elements of the claim in question, will need to be judged with certainty at the conclusion of any trial, and cannot be certain now.”*

86. GRSIA agreed as a condition of the stay to be bound not just by findings of fact and law in FSD 236 but also importantly in FSD 97, which is the lead action to FSD 383. It seems to the Court that as the substance of the three derivative claims brought in FSD 383 (with the small subset of the dishonest assistance claim) will be litigated out at the joint trial (of FSD 236 and FSD 97) on behalf of the Fund. There is no good reason why GRSIA should not be bound by the findings made at that trial.
87. In conclusion neither GRSIA nor Walkers Dubai should be permitted to re-try or re-litigate issues of fact or law which have already been determined in FSD 236 and/or 97.
88. It seems to the Court that any delay (since April or August 2024) on the part of Walkers should not materially affect the exercise of discretion. Walkers raised this application through their attorneys in October 2024 and issued their summons in February 2025.

89. Promptness is important when there has been a hearing and parties wish to raise additional points arising from matters previously considered by the court. That is not the situation here.
90. The important material change since the stay order in 2022 is the decision of GRSIA to agree as a plaintiff in FSD 41 to be bound by the findings of facts and law in both FSD 236 and FSD 97 when FSD 97 is a lead action to FSD 383 and there is to be a joint trial of FSD 236 and FSD 97 which is intended to resolve outstanding matters.

*Disclosure/information*

91. Having reached that conclusion, there is also in the Court's view merit in providing one information sharing regime to GRSIA so that it may monitor the litigation. The trial is less than a year away and the Court does not see the utility in providing GRSIA with discovery from FSD 97, which would create an inconsistency with the related litigation especially when trial bundles are likely to be available in the autumn of this year.
92. The provision of discovery by Walkers Dubai to the Plaintiffs in FSD 97 will no doubt be undertaken electronically so there would be unlikely to be any further great expense burden.
93. However, the Court does not see a necessity for Walkers Dubai to provide discovery to GRSIA in FSD 383 in circumstances where they will receive sufficient information which they agreed to following the CMC. They will be provided with relevant court documents as well as trial bundles in FSD 97, daily transcripts from the joint trial and they may attend on a watching brief in the same way that they agreed to do in FSD 41.

*Conclusion*

94. The Order dated 31 August 2022 is to be substituted as applied for by Walkers Dubai.
95. If costs cannot be agreed the Court will deal with costs on the basis of short written submissions of no more than 5 pages.



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**The Hon. Justice Raj Parker**  
**Judge of the Grand Court**