IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

Neutral Citation Number: [2025] CIGC (FSD) 38

CAUSE NO. FSD 273 OF 2024 (IKJ)

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF INTERNATIONAL AIRFINANCE CORPORATION

IN CHAMBERS

Appearances:	Mourant Ozannes (Cayman) LLP for the Petitioner
	Ogier for the First Respondent
Before:	The Hon. Justice Kawaley
Heard:	On the papers
Date of decision:	9 April 2025
Draft Reasons circulated:	17 April 2025
Reasons delivered:	15 May 2025

Just and equitable winding-up petition-listing of petition-case management powers of Court where parties fail to assist the Court to achieve the Overriding Objective-Cayman Islands Constitution Order, section 7(1) Grand Court Rules (2023 Revision), Preamble, Order 25 rule 3 (a)

REASONS FOR LISTING OF THE PETITION

Background

1. The present proceedings have broken all previous records in my experience in terms of the parties' inability to agree the most routine of interlocutory issues required to progress the matter to trial. However, the Petitioner can fairly proclaim that he is "*more sinned against than sinning*". In late March 2025, the parties provided dates to avoid for the substantive hearing of the Petition which indicated availability for the last week of July 2025. Thereafter, perhaps unsurprisingly, another skirmish broke out which had the potential to derail what ought to have been a straightforward listing process.

2. On 9 April 2025 I gave the following seemingly innocuous case management directions via email:

> "*…the Petition should be listed for hearing on 29, 30 and 31 July 2025 and that the Petitioner's Summons for leave to amend the Petition should be considered within that procedural framework.*
>
> *The Amendment Summons should be heard on an urgent basis in April (notwithstanding the Vacation) and the Judge has good availability for a 2 hour hearing for the rest of the month including next week before the Vacation commences and on 30 April 2025 after the commencement of the next Term.*
>
> *He encourages counsel to agree on mutually convenient dates by close of business on Friday 11 April but will, if needed, thereafter list the Summons for hearing without reference to counsel's availability.*"

3. The only obvious flaw with the listing direction was that 5 days had been requested and so two extra days ought to have been included. That slip can easily be rectified. However, by letter dated 11 April 2025, Ogier on behalf the proposed what I considered to be an unnecessarily

elongated timetable for dealing with the Petitioner's Amendment Summons and made the following request:

> "*Given the above, we would respectfully request that his Lordship (i) reconsider the directions given in the email from the Court of 9 April 2025 on the basis that they are unworkable and (ii) give directions in the terms proposed above. In the event that his Lordship determines not to accede to the First Respondent's request, we have instructions to seek permission to appeal his Lordship's directions and seek a stay in relation to them pending the determination of that appeal*.
>
> *Accordingly, in the event that his Lordship does not accede to the First Respondent's request, it is respectfully requested that his Lordship prepare a written ruling setting out the reasons for his decision so that there will be no undue delay in preparing our client's application for leave to appeal and stay*." [Emphasis added]

4. On 15 April 2025, the following supplemental directions were communicated to the parties:

> "*The Judge declines Ogier's request to give directions relating to the Amendment Application which have the result the Petition cannot be tried in late July. Unless the Respondent's dates to avoid in April are provided by close of business on 14 April 2025, the Amendment Application will be listed by reference to Mourant's dates to avoid.*"

5. On 16 April 2025 The 1st Respondent's attorneys responded to my refusal to modify my 9 April 2025 directions as follows:

> "*We have made enquiries with our client's Leading Counsel and can confirm that he is unavailable for the rest of this month due to existing commitments in other matters. The Ogier team is also unavailable this month, in particular as the Partner with carriage of this matter, and who would be tasked with the advocacy in the event that the Court required the matter to proceed despite the lack of availability of our client's Leading Counsel, will be out of the jurisdiction attending to a family matter which has been arranged for many months.*
>
> *We have also canvassed our client's Leading Counsel's availability in May and he is similarly unavailable but has availability in the weeks commencing 16*

and 23 June 2025. Again, in the event that his Lordship requires the matter to proceed without our client being able to instruct his Leading Counsel, Ogier also has limited availability in May, from 19 to 22 May 2025.

Please note that these dates are provided without prejudice to our client's intention to appeal his Lordship's order directing an urgent listing of the Amendment Application and the listing of the substantive hearing of the Petition (as provided in your email of 15 April) and to seek a stay of that order pending the hearing of such an appeal. In that connection, we respectfully repeat our request that his Lordship prepare reasons for his decision so that any application for leave, and any appeal if leave is granted by either his Lordship or the Court of Appeal, can be prosecuted with any undue delay."

6. These are the reasons for my decision to list the Petition for substantive hearing in the last week of July 2025 and to list the Petitioner's Amendment Summons on an urgent basis to facilitate a substantive hearing on dates both sides had previously indicated were convenient for such purpose.

Case management principles

7. The Preamble to the Grand Court Rules (2023 Revision) ("GCR") provides in salient part as follows:

> "***1. The Overriding objective***
>
> *1.1 The overriding objective of these Rules is to enable the Court to deal with every cause or matter in a just, expeditious and economical way.*
>
> *1.2 Dealing with a cause or matter justly includes, as far as is practicable —*
>
> *(a) ensuring that the substantive law is rendered effective and that it is carried out;*
> *(b) ensuring that the normal advancement of the proceeding is facilitated rather than delayed;*
> *(c) saving expense;*

(d) dealing with the cause or matter in ways which are proportionate

(i) to the amount of money involved;

(ii) to the importance of the case; and (iii) to the complexity of the issues;

(e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other proceedings.

2. Application by the Court of the overriding objective

2.1 The Court must seek to give effect to the overriding objective when it

(a) applies, or exercises any discretion given to it by these Rules; or

(b) interprets the meaning of any Rule.

2.2 These Rules shall be liberally construed to give effect to the overriding objective and, in particular, to secure the just, most expeditious and least expensive determination of every cause or matter on its merits.

3. Duty of the parties

3.1 The parties are obliged to help the Court to further the overriding objective. In applying the Rules to give effect to the overriding objective the Court may take into account a party's failure to help in this respect…

4. Court's duty to manage proceedings

4.1 The Court must further the overriding objective by actively managing proceedings.

4.2 This may include —

…

(f) fixing timetables or otherwise controlling the progress of the proceeding…

> *4.3* *Whenever a proceeding comes before the Court, whether on a summons for directions or otherwise, the Court will consider making orders on its own motion for the purpose of giving effect to the overriding objectives of the rules.*"

8. The listing of a civil matter for trial is one of the most important matters which falls for consideration on the hearing of the Summons for Directions, although in many cases the fixing of a specific date is not addressed until after the main Directions Order is made. GCR Order 25 provides:

> "*3. On the hearing of the summons for directions, or when giving directions of its own motion, the Court shall in particular consider (if necessary of its own motion) whether any order should be made or direction given in respect of any of the following matters —*
>
> (a) *fixing a trial date and/or a timetable for future steps in the action…*"

9. In the present case, my decision to list the substantive hearing of the Petition for late July 2025 and the Plaintiff's Amendment Summons on an expedited basis with that trial date in mind engaged the following case management principles set out in the GCR Preamble:

(a) the overriding objective that the Court should deal with the case in a "*just, expeditious and economical manner*" generally and when applying the Rules (paragraphs 1.1, 2.1 (a));

(b) the duty of the parties to assist the Court to achieve the Overriding Objective and the Court's ability to take into account a party's failure to comply with this obligation (paragraph 3.1); and

(c) the duty of the Court to consider making orders of its own motion whenever any matter arises for determination (paragraph 4.3).

10. One higher level legal principle was (as ever) also at the forefront of my mind. The Preamble is the procedural delivery mechanism designed to give effect to every civil litigant's fundamental constitutional right to "*a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial court within a reasonable time*": Constitution, section 7 (1).

11. In addition, in terms of overarching legal policy, I also had very much in mind that the mission of the FSD is to support Cayman Islands' primary economic pillar, the Financial Services sector. Judicial notice could be taken of the fact that the ability of commercial courts to adjudicate commercial disputes in an expeditious and economical manner is an important part of the national infrastructure of all international financial centres. The FSD Users' Guide was (as explained in its Foreword) inspired by London's Commercial Court Guide.

12. I appreciate that it might be said that, taking a high level view, there was no need for expedition in listing a cause which was only commenced in 2024. However what is unreasonable delay and what amounts to a wasting of costs should, in my judgment, always be determined having regard to the particularities of each case.

Past failures to assist the Court to achieve the Overriding Objective

13. This is a case where, from the outset, it has seemed obvious that the Company has operated as a quasi-partnership, that because of a falling out between the two partners the relationship of mutual trust and confidence has broken down and the only serious issue to be tried is whether the Company should be wound-up or whether the Petitioner or the 1st Respondent should buy the other's shares. At the beginning of my Ruling on the Summons for Directions dated 10 October 2024 (at paragraphs 3-6), I emphasised the importance of judicial case management in light of the apparently fractious nature of the commercial dispute. I noted: "*This type of dispute, a falling out between business partners, typically reflects a tension between commercial logic and the emotional impulses of the human protagonists involved*" (paragraph 3).

14. I then concluded:

> "*22. ...I am inclined to encourage the Petitioner to narrow the issues at the initial directions stage by applying for leave to amend the Petition by adding a plea along the following lines:*
>
> > *'12A. Further and/or alternatively, the failure of the Petitioner and Mr Alaoui to resolve their differences concerning the management of the Company has resulted in a deadlock and/or an irretrievable breakdown of trust and confidence between them.* "

> *23. I consider it would be overly active case management for me to amend the Petition of the Court's own motion under GCR Order 20 rule 8 at this stage, without having foreshadowed this point in any way with counsel. However, my provisional view is that such a plea would be sustainable and would potentially support a finding that the Company was liable to be wound-up without any formal adjudication of the merits of the presently pleaded management deficiency allegations made by the Petitioner against the Respondent. Attention would focus on whether or not, in all the circumstances, an irretrievable break down in trust and confidence has occurred.*"

15. I refused the 1st Respondent's opposed application for a stay to enable the parties to pursue a settlement because it seemed obvious no settlement could realistically be achieved and that the request was a delaying tactic. For similar reasons I rejected the notion of a split trial. I provisionally found that the case for a winding-up could be determined summarily but gave liberty to apply if any party wished to contend that the issue of whether the Company was prima facie liable to be wound-up needed to be tried. The Order on the Summons for Directions gave directions for the filing of evidence and also provided:

> "*15. The hearing of the Petition is to be listed for the first available date after exchange of any witness evidence in response.*"

16. The 1st Respondent applied for the issue of the case for a winding-up to be tried. I acceded to this application on 12 November 2024. On 4 December 2024 the Petitioner applied for a trial date to be fixed. The 1st Respondent filed a Summons that same date seeking, *inter alia*, the following relief:

> "*1. The current procedural timetable, as set out in the Directions Order approved on 15 November 2024 (and dated 10 October 2024) (the Directions Order) be stayed pending the determination of the matters set out in paragraphs 2 to 10 below…*"

17. In a Case Management Ruling dated 9 December 2024 in relation to that Summons, I held:

> "10. *This Summons is breath-taking for how blatantly it seeks to ride a coach and horses through the letter and spirit of the case management principles set out in the 10 October 2024 Ruling under the guise of responding to the direction*

> *as to whether or not grounds for winding-up ought not to be summarily decided in favour of the Petitioner. It is aggravated by the fact this is the second occasion on which an attempt has been made by the Respondent to invite the Court to reconsider a matter it has just decided against him. Paragraphs 34-55 of the 10 October 2024 Ruling gives reasons for rejecting the Respondent's application for a direction that the Petition should not be placed on the public file. I was required to decide summarily a further informal confidentiality application seeking to prevent that Ruling from being publicised…*
>
> *12. Against this background, and now accepting fairness requires the Respondent be given a chance to show that the breakdown of trust and confidence which has obviously now occurred is not 'down to him', the plea for a 9 day trial on this narrow issue alone deserves a place in the Guiness Book of World Records in a new category of abusive litigating…*" [Emphasis added]

18. Fulsome recitation of the Overriding Objective in that Ruling did not have the idyllic effect of ushering into the present proceedings a new golden age of reasonable litigation conduct. The Petitioner, his request for trial date still outstanding, next applied by Summons dated 22 January 2025 for relief in relation to the exchange of expert reports which had been scheduled by the Order made on the Summons for Directions. The original deadline was extended by mutual consent but the Petitioner complained that the 1st Respondent had failed to meet the new deadline. The 22 January Summons was disposed of through a Case Management Ruling dated 11 March 2025 (circulated in draft on 21 February 2025) which opened with the following words: "*It ought not to have been necessary for the Petitioner to issue his Summons dated 22 January 2025.*" It concluded with the relief sought being granted and indemnity costs payable forthwith being ordered to be paid by the 1st Respondent because of the abusive way in which the Summons had been opposed. I held (at paragraph 11 (e)):

> "…*this is not the first, or even second occasion on which the 1st Respondent has sought to undermine an Order of the Court. The approach adopted here may be more passive than aggressive, but it clearly demonstrates a clear indifference to the need to conform to accepted standards of litigation conduct*…" [Emphasis added]

19. It was against this background, three judicially recorded attempts by the 1st Respondent to undermine this Court's Orders in the present proceedings, that I approached the issue of finally responding to a listing request made by the Petitioner in December 2024 in early April 2025.

The 9 April 2025 listing decision

20. By email dated 13 March 2025, Mourant requested a five-day hearing of the Petition before the end of July 2025 when the Trinity Term ends and set out their dates to avoid. By an email dated 20 March 2025, Mourant requested the Court to proceed with listing, indicating that Ogier were still seeking instructions from their client. Mourant also foreshadowed an application to strike-out the 1st Respondent's Defence. On 21 March 2025 Ogier responded that they were still taking instructions on trial dates but considered that the threatened strike-out application of which no notice had been given was unsatisfactory. In addition complaint was made that if the additionally foreshadowed application to amend the Petition succeeded, it would affect listing because of the potential need for additional discovery.

21. On 24 March 2025 I indicated that any strike-out Summons by the Petitioner at this juncture would be liable to be summarily struck-out and declined to unilaterally list the Petition without regard to the 1st Respondent's convenient dates. Ogier thereafter on 28 March 2025 provided their dates to avoid and the last week of July was convenient to both parties.

22. The Petitioner's Amendment Summons was dated 31 March 2025. It proposed various amendments. One ought not to be controversial, because it was proposed by me in the 10 October 2024 Ruling:

> "*12A. Further and/or alternatively, the failure of the Petitioner and Mr Alaoui to resolve their differences concerning the management of the Company has resulted in an irretrievable breakdown of trust and confidence between them*."

23. Other proposed amendments include adding additional relief under paragraph 14:

> "(a) an order requiring Mr Alaoui to purchase the Petitioner's 50% shareholding in the Company; or alternatively,
>
> (b) an order requiring the Company to purchase the Petitioner's shares in the Company at a price to be determined by the Court, and for a reduction of the Company's share capital accordingly; and/or
>
> (c) an order regulating the conduct of the Company's affairs pending and/or subsequent to the completion of any purchase of the Petitioner's shares ordered

by the Court, or alternatively, if necessary, to facilitate the sale of the Petitioner's shares to third parties."

24. This seemed potentially controversial because the Directions Order provided:

> "*2. The proceedings shall be treated as inter partes proceedings between the Company's two members, being Mohammed Idriss Ghodbane (the Petitioner) and Moulay Omar El Alaoui El Abdallaoui (the Respondent).*"

24. Did the Company need to be instructed to respond to a new plea for relief against it? Other proposed amendments sought to rely on post-Petition events and to potentially give rise to the need for further discovery. Accordingly, there was an obvious tension between the granting of the Amendment Summons in full and the viability of the trial before the end of July which the Petitioner contended for.

25. In these circumstances, I considered the most sensible case management approach was to:

(a) list the trial for the earliest possible date convenient to the parties;

(b) list the Amendment Summons on an urgent basis so that, if possible, a trial in late July would be effective; and

(c) implicitly reserving the ability to revisit the trial date if the disposition of the Amendment Summons meant it was no longer viable. (In effect the Petitioner would potentially be forced to either (1) keep the late July trial date and abandon any amendments incompatible with that date or (2) pursue all of his amendments and accept that an Autumn trial was inevitable.

26. This is why I directed on 9 April 2025 that the trial should take place in the last week of July 2025 and that the "*the Petitioner's Summons for leave to amend the Petition should be considered within that procedural framework*".

27. I declined to accommodate the 1st Respondent's request for an elongated timetable for dealing with the Amendment Summons because this could only be construed as a collateral attack on my listing decision in relation to the Petition.

Conclusion

28. For the above reasons on 9 April 2025 I listed the Petition for hearing in the last week of July 2025 and directed that the Petitioner's Amendment Summons be listed on an expedited basis without regard to the convenience of counsel.

THE HONOURABLE JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT