



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

**Neutral Citation Number: [2025] CIGC (FSD) 43
CAUSE NO. FSD 162 OF 2019 (RPJ)**

BETWEEN:

RAIFFEISEN INTERNATIONAL BANK AG

(a company incorporated in Austria)

RESPONDENT/PLAINTIFF

AND:

(1) SCULLY ROYALTY LTD

(a company incorporated in the Cayman Islands)

FIRST DEFENDANT

(2) LTC PHARMA (INT) LTD.

(a company incorporated in the Marshall Islands)

SECOND DEFENDANT

(3) MERKANTI HOLDING P.L.C.

(formerly MFC Holding Ltd, a company incorporated in Malta)

THIRD DEFENDANT

(4) 1178936 B.C. LTD.

(a company incorporated in British Columbia, Canada)

FOURTH DEFENDANT

(5) GARDAWORLD, CN. LTD.

(a company incorporated in the Marshall Islands)

FIFTH DEFENDANT

(6) 1128349 B.C. LTD.

(a company incorporated in British Columbia, Canada)

SIXTH DEFENDANT

(7) IEM SERVICES CO. LTD.

(a company incorporated in the Marshall Islands)

SEVENTH DEFENDANT

(8) LTCM ASSETS PRIVATE LIMITED

(a company incorporated in Liberia)

EIGHTH DEFENDANT

(9) MICHAEL JOHN SMITH

APPLICANT/NINTH DEFENDANT

Before: The Hon. Justice Raj Parker

Heard: On the papers

Draft Judgment circulated: 15 May 2025

Judgment delivered: 29 May 2025

Decision on the written submissions of both parties

Costs-GCR Order 62-discretion-costs to follow event-interim payment-quantum-payment forthwith or at conclusion of proceedings

Introduction

1. RBI applies for various costs orders pursuant to a Judgment dated 20 March 2025 (the "Judgment") dismissing D9's jurisdiction and joinder challenge. D9 resists all of the Orders applied for.

Costs in the cause or to follow the event?

2. On this issue, the Court unhesitatingly concludes that RBI was the successful party and should have its costs accordingly, to be taxed on the standard basis if not agreed¹.

¹ Pursuant to GCR O.62, r.4(2) and (5).

3. GCR Order 62, r. 4(2) provides:

“... The overriding objective of this Order is that a successful party to any proceeding should recover from the opposing party the reasonable costs incurred by [the successful party] in conducting that proceeding in an economical, expeditious and proper manner unless otherwise ordered by the Court”.

4. The general rule is that costs follow the event². That general rule should apply. There is no good reason that it should not.
5. The Court rejects D9’s submission that the appropriate order is costs in the cause.

Interim payment and costs forthwith

6. RBI also seeks:
- a) an interim payment of \$224,795.77 (50 % of the total costs incurred) to be paid within 28 days; and
 - b) taxation of its costs forthwith if not agreed³.
7. D9 resists these orders and submits that (in the alternative to his submission that costs be in the cause), costs should be taxed on the standard basis at the conclusion of the proceedings or at the end of D9’s involvement in such proceedings.
8. RBI submits that D9 has behaved unreasonably throughout in relation to procedural matters and brought a jurisdiction and joinder challenge taking every point. On ‘*serious issue to be tried*’ the arguments covered foreign law evidence, both gateways, forum and a substantive case on discretion.
9. The wholesale challenge to jurisdiction and joinder required RBI to meet D9’s case on each and every front and ultimately to defeat it. RBI submits that many of those arguments were without merit and gave as an example the serious issue to be tried question, where D9 also changed tack a number of times with no positive case having been set out.

² Pursuant to GCR Order 62, r. 4(5).

³ RBI does not ask for the same orders in respect of its costs of the recusal application and leave to appeal application brought by D9.

10. The Judgment shows the nature and detail of the points taken and the Court's decision in respect of each of them. It is not necessary to rehearse the detail again. Suffice to say that the Court accepts RBI was put to much expense and effort in establishing its case on all fronts.

Interim Payment

11. By Order 62, r.4 (7) (h) the court has complete discretion as to whether or not to order an interim payment. However, the starting assumption is that such an order should be made and the court will normally so order unless there is good reason not to do so⁴.
12. The reason for this starting assumption is that a successful party is entitled to the money and ought to get it as soon as possible and before taxation.
13. RBI says there is no suggestion that D9 will seek leave to appeal the Judgment or that such an order would stifle any such appeal. He has instructed attorneys in Hong Kong and the Cayman Islands as well as Leading Counsel to prepare and argue three applications all of which were fully contested and which took three days to hear. Even if there were a successful appeal there is no suggestion that RBI would be unable to repay any sums ordered. The Court takes these matters into account.
14. The Court is not persuaded that there is any good reason to depart from the starting assumption that an interim payment should be made, in principle.

Quantum

15. RBI relies on the evidence of its incurred costs set out in the second affidavit of Victoria King dated 4 April 2025.
16. D9 submits that this provides only scant information in support of an application for a very substantial interim payment and that a Taxing Officer would be far better placed to carry out a

⁴ *Al Sadik* [2019 (2) CILR 585] at [25] [25.d-e] and *Maso Capital* (CICA Appeal No.9/2021, 4 August 2023) at [36].

reasonableness and proportionality assessment at the end of the proceedings. The Court does not agree.

17. RBI's evidence provides a sufficient breakdown and explanation of the work done for a summary assessment of the recoverable costs incurred by RBI in relation to D9's application which was determined against him.
18. The Court is able to determine an appropriate amount for an interim payment on account, taking account of D9's objections as to reasonableness, without delving into the detail required by a taxation process⁵. Ms King has provided a sufficient narrative of the work done and a list of the relevant lawyers' hourly rates for the Court to make a rough and ready assessment which is sufficiently conservative.
19. The Court often awards 50% of the total costs on the basis that this is a conservative approach which should not lead to an overpayment⁶. The Court is of the view that such an Order should be made and that 28 days is a reasonable time for D9 to make the payment.

Taxation forthwith

20. In addition RBI seeks that its costs in relation to D9's application be taxed forthwith, if not agreed, pursuant to the Court's discretion at GCR O.62, r.9(2) to depart from the general rule at GCR O.62, r.9(1).
21. The general rule is that the costs of any proceeding should not be taxed until the conclusion of the cause or matter. Rule 9(2) allows the court to depart from this rule and order that all or any part of the costs ought to be taxed at an earlier stage if deemed suitable by the court⁷.
22. RBI again relies on D9's unreasonable conduct which it says significantly increased the cost burden of the application on RBI. It says that D9 will continue to take every point unless his conduct has some consequence for him.
23. The Court does not agree that D9's conduct in advancing his joinder and jurisdiction challenge requires an exceptional order. He was not, in the Court's view, simply seeking to frustrate and

⁵ *Al Sadik at §25i*.

⁶ *Maso CICA at § 42*.

⁷ *Scully Royalty Limited and MFC 2017 II Limited v Raiffeisen Bank International A.G.* [2022 (1) CILR 572].

delay the efficient progress of the case contrary to the Overriding Objective⁸. Some of his points were clearly arguable.

24. The Court does not consider that this is a suitable case for departing from the general rule and to order a taxation forthwith. That part of the application is dismissed.



The Hon. Justice Raj Parker
Judge of the Grand Court

⁸ See *In the Matter of Kuwait Ports Authority and The Public Institution for Social Security v. Port Link GP Ltd* FSD 236 of 2020.