



Neutral Citation Number: [2025] CIGC (FSD) 44

Cause No: FSD 2024-0298 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF RASMALA TRADE FINANCE FUND

BETWEEN:

ALLFUNDS BANK SA

Petitioner

-and-

RASMALA TRADE FINANCE FUND

Respondent

Appearances:

Mr Tony Beswetherick KC of counsel and Mr Barnaby Gowrie and Mr Sam Hall of Walkers (Cayman) LLP for the Petitioner

Mr David Mumford KC of counsel and Mr Paul Smith and Ms Moesha Ritch of Forbes Hare for the Respondent

Before:

The Honourable Justice Jalil Asif KC

Heard:

8 May 2025

Ex tempore judgment delivered:

8 May 2025

Finalised judgment approved:

3 June 2025

*Practice and procedure—whether to order party to amend petition to include unpleaded allegations made in affidavit*

[2025] CIGC (FSD) 44 - Re Rasmala Trade Finance Fund (2)

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## JUDGMENT

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1. This is an application by the Respondent to the petition in this matter, Rasmala Trade Finance Fund (“the Fund”). The petition is to wind up the Fund on the just and equitable basis. The Fund’s summons was filed on 23 April 2025 seeking the adjournment of the trial of the petition, which is currently listed to commence on 21 May 2025. It has come before me today on 8 May 2025, so only two weeks before the trial is due to be heard.
2. The Fund's complaint is that in the Petitioner’s evidence in reply, in the 4th affidavit of a Mr Trikha, the Petitioner seeks to raise a large number of new criticisms and complaints about the management of the Fund, and the probity of those in charge of the Fund. In certain respects, it is said by the Fund, the Petitioner seeks to raise arguments, essentially, of dishonesty on the part of those involved in operating and managing the Fund. The Fund complains that none of these allegations are currently pleaded within the amended winding up petition and for that reason it seeks an order on the summons that the trial is vacated and orders regarding re-listing of the petition and other directions providing for the Petitioner to re-amend its petition to plead the matters raised in Mr Trikha’s evidence.
3. Looking at the Fund’s draft order in a little bit more detail, what the draft order provides for is for the trial to be vacated and relisted on the first available date after 15 September 2025. There is a proposal that by 12.00 pm on 14 May 2025 the Petitioner should provide: (a) a draft re-amended petition containing full and proper particulars of any of allegations identified in a schedule, which is set out in the draft order, which the Petitioner intends to advance in the proceedings; and (b) any other allegation of negligence, misrepresentation, fraud or wilful default. The draft order then provides an outline procedural scheme to prepare for trial including re-amendment of the petition, service of an amended defence and service of further evidence on both sides, in order to address the new matters that it says ought to be properly pleaded. There is no actual timetable set out in the draft order, so it is unclear to me now when the matter would eventually come on for a trial.
4. The essential basis, as I indicated a moment ago, for the Fund’s complaint is Mr Trikha's affidavit. The Fund says that this contains a whole raft of new allegations, none of which were foreshadowed

in the amended petition or in previous evidence that has been filed on behalf of the Petitioner. The Fund says that, as a matter of fairness, it should have an opportunity to respond to those allegations in order to put forward its case in answer. The Fund relies upon the need to do so in support of its application for an adjournment of the trial.

5. The first question, or the first issue that is raised between the parties, is whether the court actually has jurisdiction to make an order of the kind that the Fund is seeking. Mr David Mumford KC, who appears before me this afternoon on behalf of the Fund, has sought to rely, first of all, on GCR O.18, r.12(1) which provides that:

*“Every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words —  
a) particulars of any misrepresentation, fraud, breach of trust, wilful default, or undue influence in which the party pleading relies ...”*

6. I should also read GCR O.18, r.12(2):

*“...or may order a party to serve on any other party particulars, any claim, defence, or other matters stated in that party's pleading, or in any affidavit of that party ordered to stand as a pleading or a statement of the nature of the case on which the party relies, and the order may be made on such terms as the court thinks just.”*

7. Mr Mumford says that this provides the foundation for the court making an order along the lines that the Fund seeks. He also seeks to rely on GCR O.20, r.8, which is in the following terms:

*“For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any proceedings, the Court may at any stage of the proceedings and either of its own motion or on the application of any party to the proceedings order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.”*

8. In response to Mr Mumford's reliance on those two Rules, Mr Tony Beswetherick KC, who appears for the Petitioner, says that GCR O.18, r.12(2) is not available to the Fund because that Rule is available only to obtain an order for particulars of a pleading or an affidavit which has been ordered to stand as a pleading. Mr Beswetherick says that so far as Trikha 4 is concerned, that is not the case. It is not pleading, and it is not an affidavit which has been ordered to stand as a pleading. He submits that GCR O.18, r.12(1) simply does not avail the Fund.

9. As far as GCR O.20, r.8 is concerned, he accepts that the wording of that Rule has the result that it is potentially available to the Fund, but suggests that there must be very limited circumstances in which

the Court would proactively make an order of that kind, bearing in mind what has been said in two authorities that he drew to my attention to the effect that it is the role of the parties to be in the driving seat in terms of the issues that the court must determine. The judge's role is to decide the issues identified by the parties and put before court, not to force a party to advance a case that they may not wish to plead.

10. I consider that there is merit in Mr Beswetherick's argument in terms of the jurisdiction of the Court. I am not aware of any circumstances where the court would proactively order a party to amend their pleading, other than in a situation where a party have sought to advance a new case, for example, in a skeleton argument during the course of trial, in which case the judge may say that an amendment must be made, so that the pleadings reflect the case as actually argued. Apart from that example, I am not aware of any case where the court would positively order a party to amend to advance a new allegation, rather than to provide particulars of an allegation that has already been made.
11. I raised with Mr Mumford in the course of argument whether the appropriate route for the kind of certainty as to what is in play that the Fund is seeking would be to make an application under GCR O.41, r.6, which gives the court power to strike out of any affidavit that which is, amongst other things, irrelevant. In the current situation, I consider it strongly arguable that anything in Trikha 4 that is not squarely within the terms of the amended petition is properly characterized as irrelevant and therefore is susceptible to being struck out. In addition, large parts of Trikha 4 seem to me to be matters of argument and comment rather than factual evidence, which would provide another basis for striking out that part of the text. However, whether or not to seek to strike out those passages is a matter for the Fund. It is not for me to decide in circumstances where no application to strike out Trikha 4, or any part of it, has been made.
12. I have a lot of sympathy for the Fund's position in that it wants certainty as to what issues it needs to deal with at the forthcoming trial. But it does not seem to me that the order that the Fund seeks is the appropriate way forward.
13. At the trial of the petition, the petitioner is, and will be, limited to the matters which are pleaded in the amended petition. To the extent that the petitioner seeks to raise new unpleaded matters, it will simply not be permitted to do so. Quite where that leaves the status of Trikha 4 is uncertain to me, without a detailed analysis of what is evidence rather than comment, and what is properly within the

scope of the amended petition and what is not. Unfortunately, that is an analysis that the parties will have to carry out before the trial commences. It would not be right for me to try to do that on the hoof this afternoon.

14. Ultimately, I consider that there is no good reason for me to adjourn the trial from the date currently fixed of 21 May 2025. The trial should go ahead, but it should go ahead strictly on the basis of what is pleaded in the amended petition, and not on any other extraneous matters, whether they are contained in Trikha 4 or elsewhere.
15. In terms of timing, I consider that large parts of Trikha 4 are not going to be in play. It may be that we are going to be comfortable with the current 3 days to complete the trial, or possibly 3 days for evidence, plus one day later for closing submissions.
16. The Fund will pay the Petitioner's costs of the summons, to be taxed on the standard basis if not agreed.

**Dated 3 June 2025**



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