



Neutral Citation Number: [2026] CIGC (Civ) 18

Cause No: G 2023-0076

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

BETWEEN:

R&A HEAVY EQUIPMENT SERVICES LLC

Plaintiff

-and-

SCOTT'S HEAVY EQUIPMENT LTD

Defendant

Appearances:

Mr Clayton Phuran of CP Attorneys for the Plaintiff

**Mr Nick Dunne and Ms Izabella Arnold of Walkers (Cayman) LLP for
the Defendant**

Before:

The Honourable Justice Jalil Asif

Heard:

2 March 2026

Ex tempore judgment delivered:

2 March 2026

Finalised judgment approved:

29 April 2026

Civil procedure—judgment on admissions—whether to enter judgment on counterclaim

Civil procedure—specific disclosure—failure to comply with GCR O.24, r.7(3)

JUDGMENT

A. Defendant's summons for judgment on admissions

1. I have a summons before me issued by the Defendant on 29 December 2025. The summons seeks the following relief:
 - 1.1 pursuant to GCR O.27, r.3, judgment to be entered in favour of the Defendant for the principal sum of CI \$717,453.43, pre-judgment interest calculated from 25 November 2022 and post-judgment interest; and
 - 1.2 an order that the Plaintiff's claim be dismissed for failing to give security for costs as ordered;
 - 1.3 further or alternative relief; and
 - 1.4 an order that the Plaintiff pay the Defendant's costs of the summons to be taxed forthwith on the indemnity basis if not agreed.

2. The brief background to this application is that the claim concerns a commercial dispute between the Plaintiff, which is a Florida incorporated limited liability corporation, and the Defendant, which is a Cayman Islands company. The dispute concerns an agreement between the two, by which the Plaintiff agreed to carry out excavation works at a quarry in the Cayman Islands owned by the Defendant and to produce stone and aggregate from that quarry. The commercial relationship broke down and both parties blame each other. Both parties claim against each other for various sums said to be due either under the terms of the contract between the parties or at common law.

3. The matter has had a slightly regrettable procedural history. The Plaintiff issued its writ and Statement of Claim on 25 April 2023, just short of three years ago. The Defendant filed and served its Defence and Counterclaim on 30 May 2023. The Plaintiff filed and served its Reply and Defence to Counterclaim on 12 June 2023. There then appears to have been little progress in the action until late 2024 when, on 16 October 2024, the Defendant prepared a summons seeking security for costs

from the Plaintiff. In response to that, on 30 October 2024, the Plaintiff filed a summons for directions. Both summonses came on for hearing before me on 12 December 2024, when I reserved judgment. Following some communications from the attorneys on each side regarding the terms of the draft judgment, the judgment was finalised and handed down on 17 February 2025. My decision set out in that judgment was that the Plaintiff should be ordered to give security for costs in the sum of US \$100,000. That sum was a little less than half of the amount that the Defendant had sought by way of security. The Order reflecting that decision was finalised on 10 March 2025. Given that my judgment had been circulated on 17 February 2025, the date by which the Plaintiff was ordered to give security was fixed as 17 March 2025.

4. On 8 April 2025, I gave directions on the continuation of the claims on the assumption that the Plaintiff would give the security for costs that had been ordered, although it had not done so by that time. Further conduct of the Plaintiff's claim was therefore stayed but conduct of the Defendant's counterclaim was not. During the summer of 2025, witness statements were served on both sides in respect of the counterclaim. Mr Nick Dunne of Walkers (Cayman) LLP, who appears for the Defendant today supported by Ms Izabella Arnold, has shown me some correspondence which was exchanged during the autumn of 2025, when the Defendant was seeking payment of the outstanding security for costs, which also made a number of requests for payment of CI \$717,453.43, liability for which the Defendant said had been admitted by the Plaintiff during the course of the proceedings as being due to the Defendant. It appears that there was no response to those requests from the Plaintiff.
5. On 29 December 2025 the Defendant issued its summons for the relief that I have set out. Following some difficulty with the availability of the Plaintiff's attorney, on 30 January 2026 the hearing of the summons was finally fixed for today, 2 March 2026.
6. Very shortly before the hearing of the summons, on 26 February 2026, just less than one year after the Order for security was made, the Plaintiff finally paid US \$100,000 into court by way of security for the Defendant's costs of defending the Plaintiff's claim. As a consequence of that, Mr Dunne for the Defendant accepts that the stay of the Plaintiff's claim has now automatically lifted under the

terms of the Order dated 10 March 2025. Mr Dunne also realistically accepts that he can no longer pursue paragraph 2 of the summons, namely that the Plaintiff's claim should be struck out for failure to provide the security for costs in question.

7. At about the same time, on 25 February 2026, Mr Clayton Phuran of CP Attorneys, who acts for the Plaintiff, filed a summons for specific discovery against the Defendant. That summons is currently listed before me today and I have not yet heard argument upon it, but it is important to mention it as part of the procedural chronology of preparation for the hearing before me today. That summons was supported by two affidavits sworn by Mr Richard Robinson, who is employed as an assistant within CP Attorneys. There is a complaint from Mr Dunne about the content of the supplemental affidavit, which is said to contain without prejudice material. For that reason, save to the extent that my attention has been specifically drawn to passages within it during the course of argument today, I have not read Mr Robinson's supplemental affidavit.
8. The matters that are outstanding on the Defendant's summons are therefore first of all, whether or not to give judgment on admissions, and secondly the question of costs as regards the application to dismiss the Plaintiff's claim for failure to give security.
9. Dealing with the first aspect of that application to begin with, the relevant provisions in the GCR are in O.27, rr. 1-3. Order 27, r.1 provides that:

"Without prejudice to O.18, r.13, a party to a cause or matter may give notice, by that party's pleading or otherwise in writing, that the party admits the truth of the whole or any part of the case of any other party."

10. Order 27, r.2 deals with notices to admit and then O.27, r.3 provides as follows. It is headed "judgment on admissions":

"Where admissions of fact are made by a party to a cause or matter either by the party's pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions the other party may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order on the application as it thinks just.

An application for an order under this rule may be made by motion or summons."

11. Mr Dunne relies in particular on the terms of the Plaintiff's Defence to Counterclaim, which is a document settled by CP Attorneys on the Plaintiff's behalf. Paragraph 20(e) of the Defence to Counterclaim pleads as follows:

“(e) Save and except amounts purported owed in respect to a Cummins Engine and two torque converters, namely CI \$120,950.00, the Plaintiff do not contest the reimbursement set out in statement provided by the Respondent. The Plaintiff accepts that CI \$717,453.43 is to be set off against the amount owed to the Plaintiff.”

I stress that this acceptance of liability in the sum of CI \$717,453.43 that the Plaintiff says should be set off, is in a separate sentence and not subjection to any condition or qualification.

12. Paragraph 20(f) is in very similar terms. It says:

“Sub-paragraph (e) above is repeated. The Plaintiff do not contest the amount of CI \$717,453.43 is to be set off against the amount owed to the Plaintiff by the Respondent. That amount according to the statement of account includes payment for 2006 Chevrolet C7500 truck.”

13. Paragraph 20(g) is also in similar terms:

“Sub-paragraph (e) above is repeated. The Plaintiff do not contest the amount of CI \$717,453.43 is to be set off against the amount owed to the Plaintiff by the Respondent. That amount according to the statement of account includes payment for loan for the loan of USD \$175,000.”

14. Mr Gopala Kistamma, who is the individual who stands behind the Plaintiff company, made similar statements in his witness statement dated 17 June 2025. In paragraph 44, he says:

“I take no issue with the reimbursement amount of CI \$717,453.43, which reflects the amount owed to Scott's for the work permit and other associated fees. This figure is accepted without dispute.”

That witness statement, as one would expect, is signed by him and is dated 17 June 2025.

15. Mr Phuran has sought to rely on various authorities to suggest that in circumstances where the Plaintiff has an outstanding claim against the Defendant, which in due course may be set off against the liability owed to the Defendant, it would be inappropriate for the court to enter judgment on the admissions made in the Defence to Counterclaim and made by Mr Kistamma in his witness statement.

16. I do not accept those arguments. It seems to me that both the Defence to Counterclaim and Mr Kistamma's witness statements are very clear and are unambiguous admissions that a figure of CI \$717,453.43 is owed by the Plaintiff to the Defendant.
17. It does not seem to me that there is any proper basis on which I should refuse to grant the Defendant the relief that it seeks, namely that judgment should be entered against the Plaintiff in that sum and in addition that the Defendant should be entitled to pre-judgment interest from 25 November 2022 and to post-judgment interest.
18. In saying that, I refer to the express concession made by Mr Dunne in the course of argument that the Defendant accepts that it should not and cannot seek to enforce that judgment pending the determination of the Plaintiff's claim against the Defendant. It seems to me that that must be right given that there is a substantial claim that is made against the Defendant by the Plaintiff and bearing in mind what Mr Phuran says about any enforcement at this stage having the real potential of entirely stifling the Plaintiff's claim against the Defendant. But having recorded that position as regards enforcement, it seems to me that there is no good reason why I should refuse to give judgment in favour of the Defendant on the Plaintiff's admissions and that there are many good reasons why I should give judgment on the admissions. Amongst other things, it makes clear that there is no longer any need to prosecute the counterclaim because it has been decided. That in itself is likely to save time and costs on the part of the Defendant at any trial that takes place in the future. Given that it is well known that, even on an indemnity basis taxation, a litigant never recovers the full amount of the costs that it has incurred and that there is always a shortfall, it seems to me that entering judgment for the Defendant on the counterclaim has the practical benefit for the Defendant of minimising any shortfall on future costs that it would otherwise have to incur in continuing to prosecute the counterclaim.
19. So, for those reasons, I give judgment for the Defendant on its counterclaim in the sum of CI \$717,453.43 plus pre-judgment interest calculated 25 November 2022 at 2.375% per annum and post-judgment interest accruing also at 2.375% per annum until payment.

20. Before leaving the substance of that application, I should record that Mr Phuran suggested that if I were to enter judgment on the Defendant's counterclaim then I should also do the same in respect of certain claims that are made by the Plaintiff against the Defendant, which he says are admitted by the Defendant. The difficulty with that is that there is no summons filed by the Plaintiff seeking such relief. In those circumstances, it would be unfair on Mr Dunne to be bounced into having to respond to an application of that kind that was not foreshadowed in any way before the hearing before me this afternoon. If the Plaintiff wishes to make such an application, it can do so. But such an application should be made in the proper way.
21. I have heard both Mr Dunne and Mr Phuran on the question of costs. I have not been addressed on the question of the costs of the Defendant's application for judgment on admissions but Mr Dunne has addressed me on the costs of paragraph 2 of the Defendant's summons seeking the dismissal of the Plaintiff's claim as a result of its failure to give security for costs, which became otiose as a result of the Plaintiff giving security last Thursday, 26 February 2026. I will assume that Mr Dunne wishes to rely on the same submissions in relation to entering judgment on admissions.
22. There are three issues that arise. First of all, whether I should make any order for costs now or whether, as Mr Phuran suggests, the order should be costs in the cause. Secondly, the basis on which I should order any costs to be paid. Thirdly, if I do make an order for costs at this stage, whether I should order those costs to be taxed forthwith.
23. In my judgment, it is right that the Plaintiff should pay the costs of the Defendant's summons. The Defendant has been the successful party in relation to both aspects of the relief sought. First of all, I have ordered that judgment should be entered as the Defendant has requested; and secondly, the Plaintiff has provided the security for costs that it was ordered to pay nearly a year ago and, whilst I am sure that the Defendant would have preferred to have the claim dismissed for failure to give that security, the Plaintiff now having done so, the Defendant at least has the comfort of having that sum in court against which it can enforce its costs in due course. So, it seems to me on both aspects of the summons, the Plaintiff should pay the Defendant's costs.

24. As far as the basis of costs are concerned, GCR O.62, r.4(11), with which I am sure everyone in court is very familiar, provides that indemnity costs should be ordered only where the court is satisfied that the paying party has conducted the proceedings, or that part of the proceedings to which the order relates, improperly, unreasonably or negligently.
25. I will deal with the two different aspects of the Defendant's summons separately as regards the question of the basis of costs. In relation to the application for judgment on admissions, the Plaintiff's arguments have not found favour with me and it seems to me that the Plaintiff's position as regards entering judgment on the basis of admissions was always a weak one. I have thought carefully whether the Plaintiff's resistance to judgment on admissions can properly be described as improper, unreasonable or negligent. It does not seem to me that it is improper. It does not seem to me that it was negligent. And, having considered the issue carefully, I am not persuaded that it was so unreasonable that it should merit an award of indemnity costs.
26. As regards the second aspect of the summons, in determining whether or not the Plaintiff's conduct in relation to the application that the claim should be dismissed for failure to give security for costs should result in an award of indemnity costs, it seems to me that it is important that I limit my consideration to those aspects of the Plaintiff's conduct since the Defendant's summons was issued that are relevant to the application made to dismiss the claim for failure to give security. Whilst Mr Dunne sought to rely on the Plaintiff's long delay in providing the security, which I agree with him is to be criticised, it seems to me that that long delay is not an aspect of the Plaintiff's response to the application to dismiss the claim for failure to give to security, and that it would be inappropriate for me to take it into account on the question of the basis of taxation.
27. What is more appropriate to take into account is the Plaintiff's failure to communicate at any stage to the Defendant that the Plaintiff would imminently make payment of the security and, in particular, that it would be paid in the week or so leading up to the hearing of the Defendant's summons. It seems to me, however, highly questionable that if such information had been provided by the Plaintiff that it would have prevented the hearing going ahead today, as Mr Dunne suggested. I reach that conclusion in particular because it seems to me that the Defendant would always have wished

to progress its application for judgment on admissions and, as a result of that, the vast majority, if not pretty much all of the time that has been taken up today, would have been incurred in any event. As I have said a moment ago, it does seem to me that the Plaintiff's conduct is susceptible to criticism for its delay in providing security and for failing to communicate to the Defendant that security was imminently to be paid in court, but I am not satisfied that the Plaintiff's conduct in that regard falls within the rubric in GCR O.62, r.11(4). For that reason, I will order that the Plaintiff pay the Defendant's costs of both aspects of the summons on the standard basis.

28. Finally, Mr Dunne asks that I order that taxation of those costs should take place forthwith. This is governed by GCR O.62, r.9. I will refer first to sub-rules (1), (2) and (4):

“(1) Subject to paragraph (2), the costs of any proceedings shall not be taxed until the conclusion of the cause or matter in which the proceedings arise.

(2) If it appears to the Court when making an order for costs that all or any part of the costs ought to be taxed at an earlier stage it may order accordingly.

[...]

(4) Where it appears to the Court on application that there is no likelihood of any further order being made in a cause or matter, it may forthwith order the costs of any interlocutory proceedings which have taken place to be taxed.”

29. I do not think that anyone is suggesting that GCR O.62, r.9(4) is applicable in this case. My focus is therefore on rules 9(1) and 9(2). I am conscious that there is considerable authority on this topic and, in particular, I have in mind a judgment of Kawaley J, the name of which I cannot immediately remember. But he also gave a judgment in a case called *Fortunate Drift Limited v Canterbury Securities, Ltd.* (Unreported, 30 October 2020), where I was an attorney for one of the parties, where the question of taxation of costs on a forthwith basis was discussed. Those authorities are not before me this afternoon.

30. First of all, it seems to me it is clear from r.9(1) and r.9(2) that there is a presumption that any costs should be taxed at the end of the proceedings, but the court has discretion to order that taxation should take place at an earlier stage in an appropriate case. Going back to the two cases that I have just referenced which are not in front of me, my recollection is that the guidance includes that where the proceedings are ongoing and that there is a real possibility of cost orders being made in either direction in the future, that that is a strong factor against making a forthwith order for costs because

it risks there having to be multiple taxations of costs which is not generally in the interests of the parties or the court.

31. It seems to me that it is clear that these proceedings are going to continue and there is every possibility that there will be costs orders made between the parties within the proceedings as a whole, with the result that there may be a set-off as between the parties of the cost orders that I have made today in favour of the Defendant. I am therefore not satisfied that this is an appropriate case to exercise my discretion to make a forthwith order for costs this afternoon.

B. Plaintiff's summons for specific discovery

32. I will now give my ruling in respect of the Plaintiff's summons for specific discovery. On 25 February 2026, the Plaintiff filed a summons seeking an order for specific discovery of five categories of documents. Mr Dunne has taken me through the correspondence relating to the question of discovery with a view to demonstrating that there is no real merit in the application and that the summons was issued very late. The relevance of that is that when the summons was filed on 25 February 2026, the Plaintiff asked that it be listed this afternoon, 2 March 2026, along with the summons issued by the Defendant on 29 December 2025. If the summons were to be listed today that would necessarily have involved a very significant reduction in the normal timetable for preparation for the hearing of the summons. On 26 February 2026, Walkers, on behalf of the Defendant, questioned whether it was appropriate for the summons to go ahead in those circumstances and invited the court to express a view on that question. I declined that invitation and said it was a matter for the Defendant to elect whether it preferred the summons to be listed this afternoon and for it to make its objections to the summons on its merits today or whether to insist on the normal timetable applying, in which case the summons would not go ahead today, and the Defendant would have the normal time periods to prepare any evidence in response on which it would rely. In light of that indication, the Defendant elected on 27 February 2026 that the summons should be listed this afternoon and it would make its submissions on the basis of the material already before the court.

33. This afternoon, slightly surprisingly, Mr Phuran has now asked for the summons to be adjourned in order to give the Plaintiff the opportunity, he says, to have some further discussions with the Defendant regarding the various documents that have been sought by the Plaintiff.
34. The relevant procedural history behind the Plaintiff's summons is that, on 4 July 2025, the Plaintiff first made a request for further discovery. On 11 September 2025, Walkers responded on behalf of the Defendant providing some of the documents which were sought and indicating that the other documents sought did not exist. The Plaintiff made a further request for documents on 19 September 2025, which appears to have been, at least in part, duplicative of the original request made in July 2025. On 7 October 2025, Walkers responded repeating some of its answers to the previous requests and rejecting the request for further discovery on substantial grounds which were set out in that letter. The Plaintiff did not pursue the question of further discovery until there was discussion about the listing of the Defendant's summons which I have heard today. On 12 January 2026, the Plaintiff's attorneys indicated in connection with the listing of the Defendant's summonses that the Plaintiff intended to issue a summons for discovery which it would wish to have listed at the same time as the Defendant's summons, and that the court should take that into account in determining the appropriate date for listing.
35. On 30 January 2026, the hearing date for the Defendant's summons was fixed for this afternoon, 2 March 2026. It was only on 26 February 2026 that the Plaintiff issued its summons, almost on the last working day before the hearing.
36. In opposition to the Plaintiff's oral application for an adjournment of its own summons, Mr Dunne says that the summons is fatally flawed on its face in it does not comply with the Rules, so that the best thing for all parties is for the court to refuse Mr Phuran's application for an adjournment and to dismiss the summons on the basis that it has no merit. Mr Dunne says that, amongst other things, the summons does not comply with mandatory requirements of the Rules.
37. In response to Mr Phuran's indication that he wishes to have further discussions with the Defendant regarding the further documents that may be disclosed, Mr Dunne says that realistically there is no

further discussion to have as regards the categories of documents that are currently sought in the summons, either because they have already been provided, because they do not exist, or because the Plaintiff is asking the Defendant to create documents that do not exist, which is not the purpose of a request for specific discovery.

38. It seems to me that in deciding whether or not I should accept the Plaintiff's request for an adjournment of its summons I need to be satisfied that there is some real benefit in doing so, and that it will not simply be a waste of further time and costs. On what I have heard so far, I am not satisfied that that is the case, so I will refuse the application to adjourn the summons.

39. Mr Dunne complains that GCR O.24, r.7(3) includes a requirement that:

“(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in the deponent's possession custody or power the document, or class of documents specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.”

40. Mr Robinson's affidavit in support of the summons does not include any of the statements that are required by GCR O.24, r.7(3). There is no statement that he believes that the Defendant has or at some time has had in the Defendant's possession, custody or power any of the five categories of documents set out in the summons, which I note incidentally do not necessarily correlate with the three categories of documents that Mr Robinson sets out in paragraph 20 of his affidavit. In response, Mr Phuran has, very frankly and, it seems to me, sensibly accepted given the clear failure to comply with GCR O.24, r.7(3) that there really is no choice but for the summons to be dismissed. No doubt, if the Plaintiff thinks that there is a proper application for specific discovery that it needs to make, then that can be pursued in due course by a fresh summons.

41. As regards the costs of the Plaintiff's summons, first of all, the summons has entirely failed. The Defendant is the successful party and the Plaintiff should pay the Defendant's costs of the summons. Secondly, it seems to me that this is a case where the summons has been pursued improperly, unreasonably or negligently, and the Plaintiff should pay the Defendant's costs of the Plaintiff's summons on the indemnity basis. It seems to me that, in circumstances where the summons and

the affidavit in support wholly fail to comply with the applicable rules, it is really difficult to come to any other conclusion than that the Plaintiff's conduct of the summons has been improper, unreasonable or negligent. So, I will make order for indemnity costs in relation to the Plaintiff's summons.

Dated 29 April 2026



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