Neutral Citation Number: [2025] CIGC (Civ) 37

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

G 2022-0085

BETWEEN:

(1) CHRISTOPHER CARROLL
(2) MALLORY CARROLL

PLAINTIFFS

AND

(1) RODERICK HARBECK
~~(2) CAYMAN ISLANDS SOTHEBY'S INTERNATIONAL REALTY~~

DEFENDANTS

AND BETWEEN:

RODERICK HARBECK

PLAINTIFF TO COUNTERCLAIM

AND

(1) CHRISTOPHER CARROLL
(2) MALLORY CARROLL

DEFENDANTS TO COUNTERCLAIM

CORAM: **Walters J. (Acting)**

Appearances: **Mr Carroll in person via Zoom[1]**
Ms Kate McClymont of Nelsons Legal for the First Defendant

[1] Mrs Carroll was not present via Zoom at this hearing or the last hearing on 8 July 2025 but the skeleton argument filed by Mr Carroll for this hearing had her signature on it and Mr Carroll confirmed that she had approved it. It appears from what Mr Carroll has said during both hearings that he and Mrs Carroll are estranged. As a reminder, I drew Mr Carroll's attention to the rule of civil procedure that co-plaintiffs must act together see e.g. RSC 17B-18 and *Wedderburn v Wedderburn* [(1853)] 17 Beav 158, 159].

Heard: **22 October 2025**[2]

Draft judgment circulated: **20 November 2025**

Judgment Delivered: **01 December 2025**

Plaintiffs outside the jurisdiction, factors to consider when ordering security for costs pursuant to GCR O. 23, r.1 (a), real risk of non-enforcement in a foreign jurisdiction ("substantial obstacles") as opposed to a real risk of non-recovery because of insufficient assets. Consideration of the nature of the Plaintiffs.

JUDGMENT

Background

1. These proceedings relate to a claim by the Plaintiffs (husband and wife) (Mr and Mrs Carroll or the First Plaintiff and Second Plaintiff respectively) arising from their occupation of an apartment in the Cayman Islands (the "Property") that they rented from the First Defendant (a retired architect and building contractor) between 29 April 2019 and 26 January 2022. As I will explain below, the claim against the Second Defendant has now been struck out.

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[2] Immediately prior to the hearing commencing the parties were sent an email saying the following:

> ***"As a reminder to all,***
>
> *Rule 8.01 (2) of the code of conduct for Cayman Islands attorneys reminds counsel that:*
>
> *"The attorney must at all times be courteous to the court or the tribunal."*
>
> *Litigants in person have a right of access to the courts. They also have a right to free speech and are entitled to criticize courts and their decisions if reasonable argument is offered against any judicial act as contrary to the law or the public good.*
>
> *However, anything said or act done or writing published, calculated to bring the court, its staff or a judge of the court into contempt or to lessen their authority, is a contempt of court. This will include offensive and abusive conduct and overt disrespect of the Court and its process.*
>
> *If such conduct occurs, then the court will have to address matters. This may include having parties escorted from a hearing, placing them on mute if joining remotely, adjourning proceedings or staying the application of the party at fault until the situation is remediated."*

This was intended specifically to address the conduct and behavior of Mr Carroll who although having been admitted as a solicitor of the Supreme Court of England and Wales and as an attorney at law in the Cayman Islands has conducted himself before this Court in what I regard as a thoroughly disrespectful and discourteous way. Indeed, in the opinions of those concerned, in correspondence, he has also acted in the same way towards the administrative staff of the Court.

2. In essence, the claim relates/related to alleged fraudulent misrepresentations made by and deceit of the First Defendant and the Second Defendant as the employer of the leasing agent in relation to the nature, functionality and maintenance of the air conditioning system ("AC System") in the Property which, in turn, it is alleged induced the Plaintiffs to enter into a series of leases of the Property.

3. The Plaintiffs say that when they found out about the state of the AC System during the term of the third lease they immediately moved out. They claim rescission of all the leases and damages.

4. The First Defendant served a Defence and Counterclaim dated 10 May 2022. He denies the allegation of fraud and deceit and specifically avers that under the terms of the leases, it was the Plaintiffs' responsibility to maintain the AC System by keeping all filters free and clean from dirt and replace them on a monthly basis. He relies on the fact that the Plaintiffs entered into the second and third leases without being induced to do so. He counterclaimed for:

4.1 the rent due under the third lease[3];

4.2 for the cost of repairs to damage to the AC System that he alleges are the result of the failure by the Plaintiffs to maintain it;

4.3 cleaning, painting, repair or replacement of fixtures and fittings; and

4.4 damages for libel resulting from the Plaintiffs publishing videos on YouTube alleging that the First Defendant has threatened legal action against one of his contactors because they had not covered up the problems with the AC System. This was subsequently withdrawn.

5. In its Defence dated 31 October 2022, the Second Defendant denied that, via the leasing agent, any representations were made to the Plaintiffs about the AC System.

6. As I mention below, I delivered a judgment in this matter on 17 July 2023 which sets out the details of the parties' pleadings and cases along with the relevant facts. I do not therefore propose to repeat any of that material here in any more detail.

7. At a hearing on 29 and 30 June 2023, various summonses were listed for hearing. In summary, the Plaintiffs sought orders dismissing the First Defendant's counterclaim and summary judgment in

[3] Although during the course of the hearing, by email dated 29 May 2023, his attorney accepted that the third lease was impliedly surrendered as a result of him retaking possession and occupation of the Property on 19 February 2022, thus reducing the quantum of this part of his counterclaim.

their favour. The Second Defendant sought orders striking out the Plaintiff's Statement of Claim and/or striking out the Statement of Claim pursuant to GCR O. 14 and/or 14A. The First Defendant sought orders similar to those sought by the Second Defendant. It was agreed that the Second Defendant's summons would be heard and the remainder adjourned pending the court's decision on that.

8. On 17 July 2023 I delivered my judgment finding in favour of the Second Defendant. In the final paragraph of my judgment I said as follows:

> *"Taking into account the above, I do not believe that the Plaintiffs' claim however pleaded demonstrates any reliable evidence to support their contention that any untrue representation was made by [the leasing agent] on 29 April 2019 in relation to the AC System; any representation which may have been made by [the leasing agent]was made by her knowing that it was false or recklessly or with blind-eye knowledge; [the leasing agent]intended the Plaintiffs to rely on any such representation or that they in fact did rely on anything that was said on 29 April 2019 as an inducement to enter into the Lease. Having read their evidence and heard their submissions at the hearing I am left with the impression that the Plaintiffs' claim against the Second Defendant is contrived. As such, I am of the view that the Plaintiffs' claim against the Second Defendant has no reasonable prospects of success and should also be dismissed on that ground.*

9. Although a Notice of Appeal was filed, it does not appear that the Plaintiffs pursued any appeal against that decision. The Second Defendant's costs were taxed and a costs certificate issued on 28 August 2025 in the amount of CI$116,323.23 (US$141,857.59 @ US$1:CI$0.82). Mr Carroll confirmed during the course of this hearing that those costs have not been paid by the Plaintiffs.

This Application

10. The First Defendant now seeks by way of summons dated 20 June 2025 an order that the Plaintiffs provide security for costs pursuant to GCR O. 23, r. 1(a) in such sum as assessed by the Court. Mr Carroll initially sought an adjournment of the hearing on the grounds that Ms McClymont's skeleton argument was not served until the day of the hearing, contrary to the previous order for directions. Despite this, however, Mr Carroll had prepared and filed a skeleton argument dealing with the application for security for costs. The hearing was adjourned briefly at Mr Carroll's request and re-commenced at 11.00 am.

Relevant facts

11. The First Defendant relies on two affidavits sworn by Lourens Erasmus of Nelsons Legal, counsel for the First Defendant. Mr Carroll also included a chronology as part of his skeleton argument.

12. Mr. and Mrs. Carroll moved to the Cayman Islands in April 2019. They resided here until Mrs. Carroll left in June 2023 and Mr. Carroll left in June 2024. Mr. Carroll currently resides in England. It is unclear where Mrs. Carroll resides. Indeed, during the hearing on 8 July 2025 which largely focused on service of documents on the Plaintiffs, Mr Carroll said that he could not assist with getting such material to Mrs Carroll and could not provide an address for service on her. He confirmed that he did not know where Mrs Carroll was living (address or country) and he also seemed to suggest that he did not know the whereabouts of his children either.

13. As Mr Erasmus explains in his first affidavit dated 20 June 2025, the backdrop to the 8 July 2025 hearing originates with communications earlier this year between Nelsons Legal and Mr Carroll in relation to the listing of the First Defendant's summons to strike out the Plaintiffs' claim. Two email addresses appear to have been used for Mr Carroll. One was that from his employment whilst in the Cayman Islands, the other was a Hotmail address. On 17 March 2025 Nelsons Legal were informed by Mr Carroll's former employer that he had left their employment. On 18 March 2025 Nelsons Legal received an automatic reply from Mr Carroll's Hotmail account saying that the message could not be delivered as the address was possibly incorrect and that the mailbox was unavailable. Correspondence sent to an email account for Mrs Carroll appears to have been delivered but no responses were received. At this hearing Mr Carroll said that his Hotmail account had been shut down because of a data breach. He said that he still has access to the emails in the account but cannot send messages.

14. Enquiry agents in England instructed by the Nelsons Legal confirmed on 16 May 2025 that they had traced Mr Carroll to an address in Weymouth, the property at which appears to be owned by Mr Carroll's mother. Both Plaintiffs appeared to be connected with a flat in London which it appears had previously been owned by Mr. Carroll. Mr Erasmus states in his first affidavit that the information obtained by Nelsons Legal indicates that this property was sold in September 2024[4].

[4] This is also confirmed in a report exhibited to the second affidavit of Mr Erasmus dealt with below.

15. As confirmed in an affidavit of service dated 1 July 2025, for the purposes of the hearing listed for 8 July 2025, Nelsons Legal arranged for personal service of the relevant documents on Mr Carroll at the address in Weymouth. In a separate affidavit of service of the same date, the process server states that he has also served Mrs Carroll with the same documents at the address in Weymouth. In both cases the process server says that the Plaintiffs identified themselves to him. At the hearing on 8 July 2025, Mr Carroll denied vehemently that Mrs Carroll had been served and as indicated above, he was quite adamant that he had no idea of her whereabouts.[5]

16. At the hearing on 8 July 2025 it was ordered, amongst other things, that unless within 7 days Mr Carroll registered a separate email address, with the domain name @outlook.com, with the Court registry along with notice of consent to electronic service pursuant to paragraph 12.3 (a) of Practice Direction 11 of 2020, then the Plaintiffs' claim would be struck out. An order was also made for substituted service on Mrs Carroll via her email address.

17. Mr Erasmus swore a second affidavit dated 22 September 2025. This exhibits a further report from enquiry agents in England dated 16 July 2025 which states that based on information obtained, it was believed that Mrs Carroll was residing at the same address as Mr Carroll in Weymouth. The report also indicated that a house in London owned by Mr Carroll's late father had been identified which has an approximate value of GBP2million. Mr. Carroll did not produce evidence addressing whether this was his father's property or the extent to which Mr Carroll might have an interest in the estate of his late father.

18. Mr Erasmus continues in his second affidavit to set out the First Defendant's costs. To date, he says that the First Defendant has incurred legal cost of US$169,060.49. The additional costs that will be incurred if this matter has to go to trial are estimated to be US$105,800. The total of past and anticipated future costs is US$274,860.50. The First Defendant seeks security in that amount.

19. No evidence in relation to the question of security for costs was filed by the Plaintiffs.

[5] In the Plaintiff's skeleton argument, the chronology includes the following: "**June 2025:** According to [the First Defendant's] own case, both Plaintiffs were easily found in the UK – apparently a process server was apparently able to serve them both in person with a **Summons for Security of Costs** dated 22 May 2025. Service in person is not disputed by the Plaintifs." On its face this seems inconsistent with the position of Mr Carroll.

Relevant law

20. Applications against natural persons, as is the case here, are governed by O.23, r. 1 of the Grand Court Rules, which reads:

> *"(1) Where on the application of a defendant to an action or other proceedings it appears to the Court*
>
> *(a) That the plaintiff is ordinarily resident out of the jurisdiction; or*
> *(b) Then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceedings as it thinks just.*
> *…"*

Position of the First Defendant

21. There was not much disagreement between the parties as to the relevant law. Ms McClymont says that the law on security for costs differs in respect to applications against natural persons on the one hand and applications against companies, most commonly companies in liquidation, on the other. However, she says that there is cross over in the principles applicable to applications against both types of entities. In any event, it is argued that the court has a broad discretion when considering security for costs and that each case turns on its own facts.

22. In relation to the requirements of GCR O. 23, r 1, Ms McClymont draws the Court's attention to the fact that:

22.1 The First Plaintiff has confirmed to the court that he resides in the United Kingdom and is, therefore, ordinarily resident outside the jurisdiction;

22.2 The First Plaintiff does not apparently know where the Second Plaintiff is residing or, in which country, but confirmed she has left the Cayman Islands;

22.3 The Second Plaintiff did not appear at the hearing on 8th July 2025 (or this hearing) and has not responded to any communication in respect to this proceeding. This is despite the affidavits of service filed by the First Defendant indicating that the Second Plaintiff was served with documents in Weymouth and that both Plaintiffs are residing at that address. Either way, the Second Plaintiff has not challenged the evidence that she is residing outside

the jurisdiction and confirmed to the Court his understanding that she has left the jurisdiction.

23. Ms McClymont goes on to argue that if it is accepted that the Plaintiffs (or one of them) are ordinarily resident out of the jurisdiction, then the requirement in GCR O. 23, r 1, which is a gateway provision, is satisfied. The Court must then go on to consider whether having regards to all the circumstances of the case, it is just to order the Plaintiffs (or one of them) to give security for the First Defendant's costs.

24. In *Curry v Szucks*[6], Carter J. applied the decision in *Elliot v Cayman Island Health Services Authority* in which the Court reaffirmed the principles and authorities in respect to applications for security for costs against natural persons, stating that:

> *"Justice depends on the application of the law to the particular facts of the case, while balancing the interests of and prejudice to the parties."*

25. Ms McClymont argues that in this case, neither of the Plaintiffs have adduced any evidence at all in opposition to the application for security for costs, despite having plenty of opportunity to do so. Indeed, Ms McClymont says that the onus is on the Plaintiffs to serve such evidence. It is argued that in circumstances where there is no sworn evidence suggesting the Plaintiffs would suffer prejudice if the application were to be granted and significant evidence that the First Defendant is very likely to suffer prejudice specifically, the inability to recover its costs of the proceedings in the event a costs order is made in his favour, the balance must fall in the First Defendant's favour.

26. Ms McClymont says that in *Curry v. Szucks*, the plaintiff successfully resisted the defendant's application for security for costs on the basis that she was impecunious and that an order requiring her to pay security for costs would stifle her claim against the defendant. Carter J held as follows at para 35:

> *"I am satisfied that the Plaintiff has provided evidence sufficient to satisfy this court of her impecuniosity. However, I bear in mind that the possibility or probability that the Plaintiff will be deterred from pursuing her claim by an order for security is not without more a sufficient reason for not ordering security. I must be satisfied that the Plaintiff does not have the ability to pay security and that it is therefore probable that the claim will be stifled. The onus is on the Plaintiff to satisfy the court in this regard*."

[6] G148 of 2015, 26 April 2018, page 15, para 31.

27. Ms McClymont makes the point that the Court in *Curry v Szucks* makes it clear that the onus is on the Plaintiffs to satisfy the Court of their financial position and any alleged prejudice. She goes on to argue that while the First Defendant has not been able to identify assets belonging to the Plaintiffs, this does not mean that there are no assets, or that the Plaintiffs' claim would be stifled by an order to pay security for costs. Without sworn evidence from the Plaintiffs, it is contended that it is not possible for the Court to be satisfied that the Plaintiffs (or one of them) do not have the ability to pay security and that it is probable the claim will be stifled if payment of security is ordered.

28. Ms McClymont says that it was held in *Caribbean Islands Development Bank (In Official Liquidation) v First Caribbean International Bank (Cayman) Limited*[7] and referred to in *Curry v Szucks (para 17), that:*

> "*There is a presumption in favor of making an order for security for costs when a Plaintiff is insolvent, and the fact of impecuniosity was not in and of itself a ground for refusing a Defendant an order for security for costs which would otherwise be justified in all the circumstances of the case. Barring circumstances where an insolvent company has an overwhelmingly clear case, an order for security should be made."*

29. It is argued that the Plaintiffs do not have an overwhelmingly clear case, such that the Court might refuse to make an order for the payment of security for costs in order to ensure that the Plaintiffs' case can be heard (despite the risk that a costs order in favour of the First Defendant will not be fulfilled). Ms McClymont refers to the final paragraph of my judgment dismissing the Plaintiffs' claim against the Second Defendant and in particular my comment that I felt that the Plaintiffs' case seemed contrived. She argues that there is simply no evidence to support the allegations that the Plaintiffs are making against the First Defendant and that the claim against him will ultimately be dismissed in similar circumstances.

30. Ms McClymont argues that it is not just the strength of the Plaintiffs' case against the First Defendant that should be taken into account. She argues that the Court should also take into account the nature of these Plaintiffs. In particular, the Court should take into account the behaviour of Mr Carroll before the Court, the fact, she says, that none of the allegations of fraud against the

[7] Unreported Grand Court of the Cayman Islands, Smellie CJ, 7 March 2014.

Defendants have been made out and the willingness of the Plaintiffs to continue to assert such claims regardless of that lack of evidence.

31. It is also argued on behalf of the First Defendant that the nature of the Plaintiffs is also relevant to the question of the ability of the First Defendant to enforce any order for costs made against the Plaintiffs. This is a point that I will come back to when dealing with the Plaintiffs' position.

32. Ms McClymont argues that the Court must take into account what she describes as the "*cancellation*" of Mr Carroll's Hotmail account and the failure of the Second Plaintiff to respond to any correspondence or attend recent Court hearings. It is further argued that in the absence of any evidence from the Plaintiffs to suggest that their claim would be stifled by an order for security for costs then the Court should presume that it would not be. It is also argued that in the absence of any evidence to the contrary, the Court should presume that there are assets against which an order for costs could be enforced. Reference was made to the report of the enquiry agents at exhibit "LE2" to the second affidavit of Mr Erasmus which notes that they were unable to identify any assets belonging to the Plaintiffs. Ms McClymont points out that there has been no account from the Plaintiffs in relation to the proceeds of the sale of the flat in London. It is suggested that in the absence of any evidence from the Plaintiffs, the Court should presume that there are assets but that they have not yet been identified.

33. Ms. McClymont, then referred to the case of *Cowan & others v Equis Special L.P. & Others*[8] which is the main authority relied on by Mr Carroll in his skeleton argument. In his judgment Parker J said as follows:

> *"128. In considering whether or not it is just to make an order for security, it is established law that Order 23 must not be applied in such a way as to discriminate against foreign personal plaintiffs.*
>
> *129. As a result, the discretion cannot be exercised in such a way as to protect defendants:*
> *"…..against risks to which they would equally be subject, and in relation to which they would have no protection, if the claim or appeal were being brought by a resident within the jurisdiction, merely because the claimant was outside of the jurisdiction'.*
>
> *130. What must be shown by an applicant is:*
> *"… 'on objectively justified grounds relating to obstacles to or the burden of enforcement' there is a real risk that it will not be in a*

[8] FSD0022/2018, 22 May 2024, (RPJ).

> *position to enforce an order for costs against the claimant/appellant and that, in all the circumstances, it is just to make an order for security. Obviously there must be 'a proper basis for considering that such obstacles may exist or that enforcement may be encumbered by some extra burden' but whether the evidence is sufficient in any particular case to satisfy the judge that there is a real risk of serious obstacles to enforcement, will depend on the circumstances of the case. […]"*
>
> .
>
> *131. This is based upon what Mance LJ had originally said in Nasser:*
>
> > *"61…if the discretion to order security is to be exercised it should therefore be on objectively justified grounds relating to obstacles to or the burden of enforcement in the context of the particular foreign claimant or country concerned.*
>
> ….
>
> > *67. The risk against which the present defendants are entitled to protection is thus not that the claimant will not have the assets to pay the costs, and not that the law of her state of residence will not recognise and enforce any judgment against her for costs. It is that the steps taken to enforce any such judgment in the United States will involve an extra burden in terms of costs and delay, compared with any equivalent steps that could be taken here or in any other Brussels/Lugano state. Any order for security for costs in this case should be tailored in amount to reflect the nature and size of the risk against which it is designed to protect."*

34. Ms. McClymont says that in this case there are obstacles to enforcement due to the nature and behaviour of the Plaintiffs, the failure of the Plaintiffs to identify any assets and the difficulty that the First Defendant's enquiry agents have had identifying any. It was emphasised on behalf of the First Defendant that at the hearing on 8 July 2025, Mr Carroll said that he had no contact with Mrs Carroll or his children. Ms McClymont questioned whether is in fact true as the Plaintiffs' submissions for this hearing, apparently signed by Mrs Carroll, were served on Nelsons Legal 4 hours after Nelsons Legal served their own skeleton argument. Ms McClymont suggested that Mr Carroll's position that the enquiry agent's affidavit of service in relation to Mrs Carroll was fabricated was also open to question, as is his position in relation to his Hotmail account.

35. In *Cowan v Equis*, the judge set out further analysis of the principes relating to the granting of security for costs:

> *"132. A summary of the principles to be applied can also be found in the judgment of Hamblen LJ in Danilina:*
>
> > *"(1) For jurisdiction under CPR r 25.13(2)(a) to be established it is necessary to satisfy two conditions, namely that the claimant is resident (i) out of the jurisdiction and (ii) in a non-Convention state.*

(2) Once these jurisdictional conditions are satisfied the court has a discretion to make an order for security for costs under CPR r 25.13(1) if "it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order".
(3) In order for the court to be so satisfied the court has to ensure that its discretion is being exercised in a non-discriminatory manner for the purposes of articles 6 and 14 of the Convention: see the Bestfort case [2017] CP Rep 9, paras 50–51.
(4) This requires "objectively justified grounds relating to obstacles to or the burden of enforcement in the context of the particular foreign claimant or country concerned": see Nasser's case [2002] 1 WLR 1868, para 61 and the Bestfort case at para 51.
(5) Such grounds exist where there is a real risk of "substantial obstacles to enforcement" or of an additional burden in terms of cost or delay: see the Bestfort case at para 77.
(6) The order for security should generally be tailored to cater for the relevant risk: see Nasser's case at para 64.
(7) Where the risk is of non-enforcement, security should usually be ordered by reference to the costs of the proceedings: see, for example, the orders in De Beer's case [2003] 1 WLR 38 and the Bestfort case.
(8) Where the risk is limited to additional costs or delay, security should usually be ordered by reference to that extra burden of enforcement: see, for example, the order in Nasser's case." _

133. *In the Cayman Islands Court of Appeal Rix JA in Arnage having reviewed Danilina said: "...the jurisdiction to order security for costs is not founded on the risk of impecuniosity but (inter alia) on a plaintiff being ordinarily resident out of the jurisdiction. Therefore, a plaintiff resident within the jurisdiction cannot in general be made to provide security for costs simply because of the risk of its inability to pay such costs: this can only be done against a corporate plaintiff under the Companies Act. In these circumstances, jurisprudence has established that it is necessary to apply O.23 in away which does not discriminate against foreign personal plaintiffs."*

……

61. *"Bestfort Developments has been considered and applied in two subsequent court of appeal decisions in England. In De Beer v. Kanaar & Co [2001] EWCA Civ 1318, [2003] 1 WLR 38, the court took into account the ease with which assets in Switzerland could be moved and that enforcement in the United States might be difficult or even impossible. It therefore concluded that there was a real risk that the defendant might be unable to enforce an order for costs "whether in part or at all, due either to lack of available assets against which such an order could be enforced, or to the enforceability of such an order in Florida, or both" (at para [90]), and therefore ordered security for the prospective costs of the action up to the end of trial. In the Danilina case, a similar order was made. In the judgment of Hamblen LJ in that case the court made clear that an order for security should be tailored to cater for the particular foreign claimant and country concerned, as well as for the relevant risk. So far as the latter was concerned, a distinction was to be made between merely additional costs and*

> *delay, and the risk of non-enforcement, such as in the form of "substantial obstacles". In the former case, security would be ordered by reference to the extra burden of enforcement in the latter case, security would be ordered by reference to the costs of the proceedings (as occurred in both De Beer and Danilina)".*_
>
> *134. It is therefore possible to take into account the real risk of non-enforcement in a foreign jurisdiction, such as in the form of 'substantial obstacles', in addition to difficulties with enforcement in the particular jurisdiction. In such a case it may be not simply the additional costs of enforcement which are taken into account, but in an appropriate case security can be ordered by reference to the costs of the proceedings.*
>
> *135. However, what must be shown is a real risk of non-enforcement. That is distinct from a real risk of non-recovery because of insufficient assets, as has been made clear in the relevant jurisprudence."*

36. Ms McClymont says that it is accepted that enforcement of judgments in England should not present an obstacle. However, she goes on to say that the lack of any evidence in relation to assets against which an order could be enforced is a factor that the court must take into consideration. This is compounded Ms McClymont says by the behavior of the Plaintiffs in trying to avoid the jurisdiction of this Court.

37. It is argued that the Court should only look at the merits of a case if one side or another has a clear prospect of success. Here the First Defendant says that the findings made in my judgment in relation to the claim against the Second Defendant apply equally to the claim against the First Defendant and that the claim against the First Defendant is as contrived as that against the Second Defendant. Taking that into account the First Defendant argues that the Court has to do what is just. In *Ong v Pricewaterhousecoopers & others*[9] it was put this way:

> *"Ultimately, the court has to carry out a balancing exercise. On the one hand, it has to weigh the injustice to the plaintiff if the plaintiff is prevented from pursuing a proper claim by an order for security. Against that, the court has to weigh the injustice to the defendant if no security was ordered and the plaintiff's claim fails at trial. The defendant may find itself unable to recover from the claimant the costs that it had incurred in its defence of the claim."*

38. Ms McClymont argues the First Defendant is elderly and should not have bear the burden of defending what she describes a as frivolous claim with no prospect of success.

[9] [2009] SGHC 29 at paragraph 31.

Position of the Plaintiffs

39. Mr Carroll relies heavily on *Cowan v Equis* in support of his position that security should not be ordered. In his skeleton argument he refers to paragraphs 126-136 of *Cowan v Equis* (with his emphasis):

> *"In considering whether or not it is just to make an order for security, it is established law that Order 23 must not be applied in such a way as to discriminate against foreign personal plaintiffs." [128] "…the discretion cannot be exercised in such a way as to protect defendants: '.....against risks to which they would equally be subject, and in relation to which they would have no protection, if the claim or appeal were being brought by a resident within the jurisdiction, merely because the claimant was outside of the jurisdiction'" [129] "[The Court must be] satisfied, having* ***regard to all the circumstances of the case****, that it is just to make such an order" [132] "…****what must be shown is a real risk of non-enforcement. That is distinct from a real risk of non-recovery****…" [135] "****Impecuniosity is not a permissible basis*** *on which to order security for costs to trial against a foreign-resident plaintiff …" [136]*

40. He argues that impecuniosity (meaning lack of assets) is irrelevant. He says that what needs to be shown is a risk of non-enforcement (as distinct from risk of non-recovery). The burden of proof he says is on the First Defendant as the applicant, not the Carrolls as respondents. He says that there is no evidence at all before the Court relating to non-enforcement risk, only evidence confirming impecuniosity. He contends that in fact the First Defendant has produced evidence showing a *lack* of enforcement risk. He says that this is because the First Defendant has recently been able to locate and serve in person both Plaintiffs in the easiest jurisdiction possible to enforce a judgment from a British territory: Britain. Therefore, no enforcement risk can be shown, even if enforcement means bankruptcy and non-recovery. He argues that the First Defendant is estopped from arguing otherwise by his own evidence. He describes the position of the First Defendant as "*a spectacular own goal caused by dishonesty and not understanding the law*".

41. Mr Carroll argues that the First Defendant himself is residing outside the jurisdiction so it would obviously be unjust ordering security for costs in such circumstances, especially as the Plaintiffs left the Cayman Islands long before the application. He goes on it argue that having regard to "*all the circumstances*", security for a clearly dishonest perjurious person in a very obviously tactical application made belatedly, without any evidence of non-enforcement risk, would be unlawful and manifestly unjust and turning a blind-eye (once again) to dishonesty and fraud on the Court.

42. He says that the respondents (the Plaintiffs) to this application do not need to produce evidence: there is no burden of proof on them and any facts they might have wanted to prove have been proven for them anyway by the applicant, who fundamentally misunderstood what it was that needed to be evidenced, and so failed to produce any relevant evidence to enforcement risk. Mr Carroll said that the nature of a plaintiff might be relevant to the question of enforcement but not a lack of assets. He used a shell company as an example.

43. Mr Carroll sought to emphasize that in his view he could not prove that he had no assets because to do so would be trying to prove a negative. He said that he is not currently working and that Mrs Carroll has been a stay at home mother for 10 years. Mr Carroll said that if the First Defendant can locate him then he can enforce against him. If necessary, bankruptcy proceedings could be commenced and an insolvency practitioner appointed who could then investigate whether the Plaintiffs have any assets.

44. In relation to Mrs Carroll, he says that:

> *"This skeleton has been reviewed, agreed and signed by Mallory Carroll, who will not appear before Walters J due to his apparent bullying, bias and refusal to let her speak at the hearings in May 2023, causing her personal trauma linked to his conduct specifically. She is monitoring emails and is still engaged in the process."*

45. I believe that the issues to which Mr Carroll is referring are as follows:

45.1 As I have mentioned above, at the hearing in May 2023 it was agreed that the Second Defendant would proceed with its summons and the remainder of the summonses before the court would be adjourned. That left Mr Broadhurst on behalf of the Second Plaintiff to make his application with limited time. At that point Mrs Carroll asked if she could make some opening remarks. I indicated that Mr Broadhurst should proceed as we were dealing with his summons.

45.2 It seems to be also suggested that I declined to hear Mrs Carroll after Mr Carroll had made lengthy submissions. As I recall, the time set aside for the hearing had been used up and there was no remaining time for additional submissions. Furthermore, Mr Carroll had spent considerable time taking me in detail through the Plaintiffs' arguments and evidence and there was no need in my view for Mrs Carroll to repeat what he had said.

46. As noted in my judgment following the hearing in May 2023, Mrs Carroll advised the First Defendant by email in 2022 as follows:

> *"In terms of any legal battle you threaten, we are unmoved by this. We are both lawyers of high pedigree and extremely confident in our situation."*

The proceedings that the Plaintiffs have commenced are relatively complex and until recently been pursued vigorously.

47. In light of that I have to say that I question the explanation given by Mr Carroll for Mrs Carroll's absence from the last two hearings and lack of communication with the Court or with the First Defendant's attorneys.

Analysis and decision

48. As indicated above, the question of whether the Court should order security for costs pursuant to GCR O. 23, r.1 involves the exercise of discretion taking into account all relevant issues. Each case will turn on its own facts.

49. There is no disagreement between the parties about the applicable legal tests to apply.

50. Starting with the most basic threshold question, it is clear and accepted by the Plaintiffs that they are no longer within the jurisdiction of the Court. That satisfies GCR O. 23, r. 1(a).

51. We are then faced with what I regard a somewhat unusual situation in that the Plaintiffs have deliberately not filed any evidence in relation to their assets. I am also conscious that, if made against them, an order for costs would be a joint and several liability. There are good reasons why a plaintiff should file an affidavit in relation to their assets. As in *Curry v Szucks* impecuniosity might provide a good argument that an order for security would unjustly stile a claim and should not be made. But the arguments might also include ones relating to the amount and type of security that should be ordered if an order is to be made. If the Plaintiffs have no assets, then it would have been a very simple exercise for them to have sworn affidavits to that effect. The fact that they have not done so does not necessarily mean that the Court should draw an inference that assets exist but based on the evidence of Mr Erasmus and the reports of the enquiry agents, it is possible that they do.

52. As set out in *Equis v Cowan* the approach that should be taken is to address the question of whether there is a real risk of non-enforcement as opposed from a real risk of non-recovery because of insufficient assets. In relation to that question, I believe that the following matters are relevant:

52.1 The fact that the First Defendant has had to retain enquiry agents to locate the Plaintiffs when, in my view, as Plaintiffs, the onus is on them to maintain communication with the Court and the other parties to these proceedings.

52.2 The failure of the Plaintiffs to file any evidence about their assets or lack of them strikes me as being unusual as I have mentioned above, but it is an example of the approach that the Plaintiffs are taking to this litigation.

52.3 That approach has also been highlighted by the manner in which Mr Carroll has conducted himself before this Court and in particular contradictions in some of the representations and submissions that he has made. The most significant is that relating to service of documents on Mrs Carroll. As I have said earlier, at the hearing on 8 July 2025, Mr Carroll claimed that the process server who swore an affidavit of service in relation to Mrs Carroll was lying. He stated repeatedly that he had no idea of the whereabouts of Mrs Carroll and had no contact with her. In his written submissions for this hearing he now expressly accepts on two occasions that the Plaintiffs were personally served with documents for the hearing on 8 July 2025. It is also difficult to overlook the fact that, despite Mr Carroll's assertions about the whereabouts and his lack of contact with Mrs Carroll he did finalize a skeleton argument for this hearing within what Ms McClymont said was a period of 4 hours, allegedly with the agreement, approval and signature of Mrs Carroll.

52.4 As mentioned above, I also question the excuse given for Mrs Carroll's nonattendance at these hearings and engagement with the court process, especially as she may have a joint liability for any order for costs that might be made.

53. These matters leave me questioning the veracity of Mr Carroll's factual submissions and position. In my view, he has deliberately resorted to obfuscation in relation to the location of the Plaintiffs and any assets that they may have. That in my view is directly relevant to the question of there being a real risk of non-enforcement of any costs order against the Plaintiffs.

54. Having considered the submissions of the parties and the evidence filed, I am of the view that in this case it is just that an order for security for costs be made against the Plaintiffs in the sum of US$274,860.50. In my view the First Defendant should not have to continue to bear the real risk of non-enforcement of a costs order in this case.

55. In the circumstances I further order that the security be provided within a period of 28 days. In the meantime, the Plaintiffs' claim is stayed.

56. Having decided as I have, I see no reason not to order the First Defendant his costs of this application, to be taxed on the standard basis if not agreed.

Walters J. (Acting)
Judge of the Grand Court