



Neutral Citation Number: [2025] CIGC (FSD) 97

Cause No: FSD 2025-0229 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

BETWEEN:

DONGHAI INVESTMENT HOLDING LIMITED

Plaintiff

-and-

CRYSTAL FOUNT INVESTMENTS LIMITED

Defendant

Appearances: Mr Jeremy Durston of Campbells for the Plaintiff

Before: The Honourable Justice Jalil Asif KC

Heard: 19 September 2025

Ex tempore judgment delivered: 19 September 2025

Finalised judgment approved: 6 October 2025

Civil procedure—service out of the jurisdiction—forum non conveniens—presumption that parties have already considered forum issues of they have agreed a jurisdiction clause in relevant contract

JUDGMENT

1. This is my judgment on an application by summons filed on 19 August 2025 by the Plaintiff seeking an order that it be given leave to serve the writ in this matter upon the Defendant out of the jurisdiction, namely in the British Virgin Islands. The gateways relied upon for service out are GCR O.11, r.1(1)(d)(iii) and (iv).
2. The summons also indicated that the Plaintiff was intending to rely on GCR O.11, r.1(1)(d)(i), but Mr Jeremy Durston, who has appeared for the Plaintiff this morning, has not pressed reliance on that sub-rule and has instead focused on sub-rules (iii) and (iv).
3. The materials before me include an affirmation of Han Ye and exhibit HY-1, affirmed on 18 August 2025, which I have read and considered before reaching my conclusion on the summons.
4. Very briefly, the dispute between the Plaintiff and the Defendant concerns a guarantee agreement related to and in support of an investment transaction. Mr Durston has drawn to my attention that notwithstanding that the relevant documents appear to have been executed by the same parties on the same or on very similar dates, the signatures of Crystal Tang on the documents in question are notably different. Ms Tang Ying (Crystal) was a director of the Defendant company at the relevant time.
5. During late 2024, the Plaintiff sought to enforce the guarantee by serving a statutory demand upon the Defendant in the British Virginia Islands. The Plaintiff was met with the response from the Defendant that there is a *bona fide* dispute as to the validity of the debt on the ground that Ms Tang's signature on the guarantee agreement is a forgery.
6. In those circumstances, I am satisfied that there is a serious issue to be tried between the Plaintiff and the Defendant as to whether the guarantee agreement is a valid document and is binding upon the Defendant or not.

7. I am also satisfied that there is a good arguable case that the Plaintiff's claim falls within gateways GCR O.11, r.1(1)(d)(iii) and (iv), which, by way of recap, allow service out of the jurisdiction where:

“(d) the claim is brought to enforce ... a contract, or to recover damages or obtain other relief in respect of the breach of a contract, ... which —

...

(iii) is by its terms, or by implication, governed by the law of the Islands; or

(iv) contains a term to the effect that the Court shall have jurisdiction to hear and determine any action in respect of the contract;”

8. The guarantee agreement in this case includes a governing law provision in clause 14, which reads:

“14. This guarantee shall be governed by and construed in accordance with, the laws of the Cayman Islands.”

Secondly, it includes a non-exclusive jurisdiction provision, also in clause 14, providing that:

“The courts of the Cayman Islands are to have non-exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Guarantee and accordingly any legal action or proceedings arising out of or in connection with this Guarantee ... may be brought in such courts.”

Reading on, as this is relevant to the question forum of non-conveniens:

“The Beneficiary, [i.e. the Plaintiff] and the Guarantor, [i.e. the Defendant] irrevocably submit to the jurisdiction of such courts and waives any objection to Proceedings in such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum.”

9. I remind myself that there is a dispute as to whether the guarantee agreement is a valid and binding agreement so far as the Defendant is concerned. Applying, as I must, the test whether there is a good arguable case that the gateways in GCR O.11, r.1(1)(d)(iii) and (iv) have been met, on the basis of clause 14 of the guarantee agreement I am satisfied that they have both been met.

10. The third aspect that I need to be satisfied about is that the Cayman Islands is clearly or distinctly the most appropriate forum for the matter to be tried. In this context, it is useful to bear in mind the explanation of the proper approach to this point where there is a choice of jurisdiction clause in *Antec International Limited v Biosafety USA Inc* [2006] EWHC 47 (Comm). In paragraph 7 of the judgment in that case, Gloster J (as she then was) said:

“7. In coming to my conclusion, I applied the following legal principles that can be derived from the authorities:

- i) The fact that the parties have freely negotiated a contract providing for the non-exclusive jurisdiction of the English courts and English law, creates a strong prima facie case that*

the English jurisdiction is the correct one. In such circumstances it is appropriate to approach the matter as though the claimant has founded jurisdiction here as of right, even though the clause is non-exclusive; see e.g. per Hobhouse J in S & W Berisford Plc v New Hampshire Insurance Co. [1990] 1 Lloyd's Rep. 454 , at 463; per Waller J in British Aerospace Plc v Dee Howard Co [1993] 1 Lloyd's Rep. 368 ; per Moore-Bick J in Mercury Communications Ltd v Communication Telesystems International [1999] 2 AER 33 at page 41.

- ii) *Although, in the exercise of its discretion, the court is entitled to have regard to all the circumstances of the case, the general rule is that the parties will be held to their contractual choice of English jurisdiction unless there are overwhelming, or at least very strong, reasons for departing from this rule; see e.g. British Aerospace Plc supra Mercury Communications supra at page 41; per Aikens J in Marubeni Hong Kong & South China Ltd v Mongolian Government [2002] 2 AER (Comm) 873 at 891(b)–(f); per Lawrence Collins J in Bas Capital Funding Corporation and others v Medfinco Ltd and Others [2004] 1 Lloyd's Rep. 652 , at paragraphs 192–195; per Gross J in Import Export Metro Ltd v Compania Sud Americana de Vapores SA [2003] 1 Lloyd's Rep. 405 .*
- iii) *Such overwhelming or very strong reasons do not include factors of convenience that were foreseeable at the time that the contract was entered into (save in exceptional circumstances involving the interests of justice); and it is not appropriate to embark upon a standard Spiliada balancing exercise. The defendant has to point to some factor which it could not have foreseen at the time the contract was concluded. Even if there is an unforeseeable factor or a party can point to some other reason which, in the interests of justice, points to another forum, this does not automatically lead to the conclusion that the court should exercise its discretion to release a party from its contractual bargain; see cases cited supra. In particular, the fact that the defendant has, or is about, to institute proceedings in another jurisdiction, not contemplated by the non-exclusive jurisdiction clause, is not a strong or compelling reason to relieve a party from his bargain, notwithstanding the undesirability of parallel proceedings. Otherwise a party to a non-exclusive jurisdiction clause could avoid its agreement at will by commencing proceedings in another jurisdiction ...”*

11. Gloster J's statements in Antec were cited and approved by David Doyle J in the recent case of Seahawk China Dynamic Fund v Gold Dragon Worldwide Asset Management Limited and another (unreported, 2 February 2024). I, for my part, also have no doubt that what Gloster J said in Antec is an accurate reflection of Cayman Islands law.

12. It is important to understand that what Gloster J was pointing out is that where the parties have agreed a jurisdiction clause, whether it is exclusive or non-exclusive jurisdiction, they must be taken to have considered, at the time that they entered into that agreement, all of the factors regarding the convenience of that jurisdiction for resolution of any dispute that might develop in the future that would normally be considered when applying the Spiliada balancing exercise. In other words, they have considered already, or they are to be taken to have considered already, those factors and to have reached the conclusion that the jurisdiction chosen is an appropriate jurisdiction. It is for that reason that Gloster J explains that convenience factors that were foreseeable at the time the contract was

entered into should not, therefore, be taken into account again at the time when the forum for resolution of a dispute is being considered in a forum non conveniens context.

13. That obviously makes good commercial and logical sense and I have no hesitation in applying that approach in the context of this case.
14. As I have indicated, the parties agreed a non-exclusive jurisdiction clause in favour of the Cayman Islands or are to be taken to have done so for present purposes. On that footing, it is inappropriate for me now to look at questions of location of witnesses, location of documents, language to be adopted in the course of resolution of the dispute for example, because those are all easily foreseeable factors that the parties must be taken to have considered at the time they concluded the guarantee agreement.
15. There is nothing exceptional or unforeseen about the nature of the dispute or the circumstances in which it arises that appears to point towards a location other than the Cayman Islands as being the appropriate dispute resolution jurisdiction. I also accept Mr Durston's submission that the choice of Cayman law as the law of the guarantee agreement is a strong factor towards the dispute being resolved in the Cayman Islands, rather than in some other jurisdiction.
16. So, for those reasons, I will make the order that is sought, giving the Plaintiff leave to serve the writ upon the Defendant out of the jurisdiction, in the British Virgin Islands.

Dated 19 September 2025



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