



Neutral Citation Number: [2025] CICA (Civ) 13

**IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS
ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

**CICA (CIVIL) APPEAL No. 21 of 2023
(FSD 52 OF 2022 (RPJ))**

BETWEEN:

**ABRAAJ GENERAL PARTNER VIII LIMITED, in its capacity
as the General Partner of NEOMA PRIVATE EQUITY FUND IV L.P.**

Proposed Appellant

AND

ABRAAJ ABOF IV SPV LIMITED

Proposed Respondent

**CICA (CIVIL) APPEAL No. 23 of 2023
(FSD 322 OF 2020 (RPJ))**

BETWEEN:

- (1) NEOMA MANAGER (MAURITUS) LIMITED, in its
capacity as the Manager of NEOMA PRIVATE EQUITY FUND IV L.P.**
**(2) ABRAAJ GENERAL PARTNER VIII LIMITED, in its capacity as the General Partner of
NEOMA PRIVATE EQUITY FUND IV L.P.**

Proposed Appellants

AND

(1) ABRAAJ ABOF IV SPV LIMITED

Proposed Respondent

Considered on the Papers

Before:

The Rt Hon Sir John Goldring (President)
The Hon John Martin KC, JA

CICA (Civil) Appeal 21 and 23 of 2023 – Costs Judgment

The Rt Hon Sir Michael Birt, JA

Representation: Susan Prevezer KC, Leading Counsel
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for the Respondent

Draft Judgment circulated: 26 August 2025

Judgment delivered 02 September 2025

COSTS JUDGMENT

MARTIN JA:

1. This judgment deals with questions of costs following a successful appeal by Neoma Manager (Mauritius) Limited and Abraaj General Partner VIII Limited against an order of Parker J dated 27 June 2023 giving summary judgment on an application by Abraaj ABOF IV SPV Limited for production of documents and information pursuant to section 22 of the Exempted Limited Partnership Act. The appeal was allowed for reasons stated in the judgment of Martin JA (with whom Goldring P and Birt JA agreed) dated 8 April 2025. This judgment assumes knowledge of the contents of that earlier judgment, and expressions defined in that judgment have the same meaning in this.
2. Paragraph 48 of the earlier judgment contained the following statement:

“My provisional view is that the appellants are entitled to the costs of the appeal and the first instance proceedings; but if the respondent wishes to propose a different order it may do so in succinct written submissions provided to us and the appellants within 10 days of circulation of this draft, with the appellant having an

opportunity to provide a succinct written response within 10 days thereafter and the respondent an opportunity to reply within a further five days. The court will then deal with the matter on the papers.”

3. On 28 March 2025 the respondent filed initial submissions on costs. The document stated that the respondent did not resist an order that the costs of the hearing of the summary judgment applications before Parker J and before this court should be paid by the respondent. It said, however, that the respondent would resist any order that it should pay the appellants’ costs of providing the information the subject of Parker J’s order, on two grounds: first, the documents the appellants were ordered to produce would in any event have been disclosable by them in the CAB proceedings; and secondly, the costs of compliance with section 22 of the ELPA would ordinarily be borne by the general partner.
4. The appellants responded in a document dated 16 April 2025. They identified seven heads of costs which they said constituted the costs of and incidental to the summary judgment applications. The first five of these were the costs of and incidental to (i) the summary judgment applications before Parker J, (ii) the application to Parker J for leave to appeal, (iii) the appellants’ summons for directions in the CAB proceedings heard by Parker J on 29 July 2024, (iv) the application to this court for leave to appeal, and (v) the appeal itself. The appellants sought an order that the respondent pay the costs incurred under each of these heads, and that those costs should be taxed forthwith if not agreed. The sixth category was the costs of the respondent’s interim costs application determined by Parker J on 20 January 2025, in relation to which the appellants contended that the costs should be dealt with by Parker J; and the seventh category was the costs of compliance with Parker J’s summary judgment order, which the appellants said should be costs in the cause in the CAB proceedings. Finally, the document sought an interim payment of \$614,511.74 on account of costs, being 50% of the appellants’ estimated recoverable costs.
5. The respondent replied by document dated 1 May 2025. It objected to the appellants’ applications for immediate taxation and for an interim payment on the ground that they were not within the scope of paragraph 48 of the earlier judgment. The respondent’s contention was that *“the clear terms of paragraph 48 of the Judgment invited discrete submissions related solely to the issue of whether the respondent considered that a different order on costs should be made than as proposed at paragraph 48 (and allowed for responsive submissions in that regard). It was not ... an invitation for the parties to make substantive costs applications”*. Subject to that, the respondent proposed

that the costs of compliance with the summary judgment order should be reserved to the judge determining the CAB proceedings (rather than being, as the appellants had proposed, costs in the cause); that the costs should not include the costs of and incidental to the summons for directions (the third of the appellants' heads of costs), because that summons related only to the conduct of the CAB proceedings and the order made on it had not been appealed; that the relevant criteria for making an order for immediate taxation had not been met; and that the application for a payment on account was premature and objectionable in principle and amount.

6. The appellants replied on 7 May 2025. They said that the costs of the summons for directions should be their costs (or alternatively simply costs) in the CAB proceedings, and that to hold otherwise would result in the respondent receiving its costs (as Parker J had ordered) for opposing directions on the grounds of the existence of a stay which this court had now overturned. They addressed the criteria for immediate taxation and for interim payment of costs, and responded to criticisms made by the respondent of the quantum of costs claimed by the appellants. In relation to each of these issues, they maintained their previously stated position.
7. It is not in dispute that the appellants are entitled to recover from the respondent their costs of and incidental to the appeal and the summary judgment applications below, and that those costs include the applications to Parker J and this court for leave to appeal. There also appears to be no dispute that the costs of the interim costs application made by the respondent and determined by Parker J on 20 January 2025 should be left to be determined by Parker J.
8. However, the following issues arise:
 - (1) Are the appellants precluded by the terms of paragraph 48 of the earlier judgment from claiming immediate taxation and a payment on account?
 - (2) What if any order should this court make in relation to the costs of the summons for directions?
 - (3) What if any order should this court make in relation to the costs incurred by the appellants in complying with the summary judgment orders?
 - (4) Should an order be made for immediate taxation of the undisputed costs?
 - (5) Should an order be made for an interim payment on account of those costs?
 - (6) If so, what amount should be ordered by way of interim payment?

Issue (1): effect of paragraph 48 of the earlier judgment.

9. Paragraph 48 did not constitute a determination of any aspect of the question of costs. It expressed, as it said, a provisional view, stated in circumstances where the court had received no submissions on costs. The view expressed was as to the principle of the entitlement to costs, and the respondent was given an opportunity to dispute that principle. Nothing in paragraph 48 addressed ancillary questions such as the basis on which the costs should be taxed or the mechanisms for the assessment and recovery of the costs, and nothing in that paragraph prevented either party from dealing with those questions. The appellants are in my view entitled to maintain their applications.

Issue (2): costs of the summons for directions.

10. The order made by Parker J for summary judgment included an order staying the CAB proceedings for a period of three months following the provision by the appellants of the information they were ordered to produce. The summons for directions, which was issued by the appellants on 13 February 2024, included as the first head of relief sought a direction that the stay had expired. The respondent resisted that direction, and subsequent directions relating to the conduct of the CAB proceedings, on the basis that the appellants had not provided the required information and the stay had therefore not expired. Although we have not seen the judge's reasons for dismissing the application, the strong inference arising from his order of 27 November 2024 (by which he dismissed the summons for directions, awarded the respondent its costs, and made provision for the respondent to apply for indemnity costs and an interim payment) is that he accepted the respondent's argument. The appellants have not sought to appeal the November 2024 order.
11. In those circumstances, I do not think that we should interfere with the judge's order as to the costs of the summons for directions. Those costs are not formally part of the appeal before us; and it appears that the basis on which the appellants sought to advance the CAB proceedings was not that the summary judgment order should not have been made but that it had been complied with. The appellants clearly lost on that issue; and it is not a necessary consequence of our earlier judgment – which proceeds on the basis that before granting summary judgment the judge should have considered whether or not the appellants had complied with their disclosure obligations, but does not express any view as to the adequacy of the disclosure provided – that the appellants will be vindicated if and when the issue is ultimately determined in the CAB proceedings. Although the stay was granted in support of an order which has now been discharged, the appellants chose not to wait for determination of the appeal but to deal with the stay on its own terms. The costs of the summons for directions are not, therefore, to be treated as part of the costs of and incidental to the appeal.

Issue (3): costs of compliance.

12. The contest here is between the appellants' suggestion that the costs of compliance with the summary judgment orders should be costs in the cause in the CAB proceedings, and the respondent's proposal that those costs should be reserved to the judge hearing the CAB proceedings. In my view, the appellants' suggestion is to be preferred. It is clear that many of the documents that were ordered to be produced by way of summary judgment would anyway have had to be produced on discovery in the CAB proceedings; indeed, that point was a major part of the appellants' resistance to the summary judgment applications. Although the judge did say, as part of his reasoning for dealing with the summary judgment applications before disclosure in the CAB proceedings, that the section 22 obligation was "*an obligation that goes wider than the discovery obligation as in the CAB proceedings*", the real dispute between the parties, and the true relevance of the information sought by the respondent, was as to the proper amount of the respondent's CAB. Questions of the extent of the disclosure necessary to deal with that issue are matters to be dealt with in the CAB proceedings and the respondent's counterclaim within them; and for that reason, and because there is on the face of it now no reason for separate determination of the question whether by the time of the summary judgment applications the appellants had complied with its section 22 obligations (a question that would inevitably have to be answered if costs were reserved), the appropriate course is in my view to leave the costs of compliance to be determined by reference to the outcome of the CAB proceedings as a whole and any costs orders made relating to those proceedings. These costs will therefore be costs in the cause in the CAB proceedings.

Issue (4): immediate taxation?

13. The general rule (set out in Order 62, rule 9 of the Grand Court Rules (2023 Revision)) is that costs are not to be taxed until the conclusion of the relevant proceedings, but that the court has a discretion to order taxation at an earlier stage. The parties are in agreement that the relevant principles are set out in the judgment of Parker J in *Jian Ying Ourgame High Growth Investment Fund v Hui* (unreported, 27 January 2023) as follows:

"The discretion is exceptional, but factors which may be relevant to the Court's decision include:

- (a) whether the relevant interlocutory costs were incurred in relation to a discrete issue within the wider proceedings viewed as a whole;*

(b) whether the paying party has acted unreasonably in any relevant way in relation to the application to which the interlocutory costs order relates;

(c) whether the proceedings as a whole have a long time to run; and

(d) whether being required to pay the interlocutory costs forthwith before the end of the litigation would be for any reason unfair, having regard to the overriding objective of GCR Order 62”.

14. The appellants’ position on these factors is that the question of summary judgment was a discrete issue which will not be relitigated; that the respondent acted unreasonably in seeking summary judgment in circumstances where the same information was sought by counterclaim in the CAB proceedings; that the CAB proceedings have been delayed by some three years as a result of the summary judgment applications, and still have a substantial time to run; and that the respondent will not suffer any unfairness. The appellants also point to the fact that the respondent itself sought an interim costs award pending the outcome of the appeals.

15. The respondent accepts that the costs may be said to relate to a discrete issue in so far as they relate to summary determination of the counterclaim, but point out that the counterclaim itself remains to be determined. In relation to unreasonableness, the respondent suggests that there is confusion in the appellants’ submissions arising from their apparent focus only on the separate proceedings by the respondent against the GP (FSD 52 of 2022), but in any event contends that its conduct was not unreasonable on the state of the authorities as they were before this court’s decision. The respondent relies also on the authority of *Fortunate Drift Limited v Canterbury Securities Limited* (unreported, 10 June 2020), in which Kawaley J said that “*it is ultimately a matter of subjective judgment for the judge whether or not a particular course of litigation misconduct is viewed as sufficiently serious to warrant not simply an award of costs to be taxed on the indemnity basis, but also to be payable forthwith. Having said that, the basis for such a finding must be objectively verifiable and must probably involve deliberate as opposed to accidental misconduct*”. *Jian Ying* itself was a case in which indemnity costs had been awarded; and the respondent asserts that on the basis of those two cases it appears that orders for immediate taxation are most commonly made in the context of conduct justifying an indemnity costs order – which it was not suggested was the present case. The respondent said that its conduct did not amount to misconduct, and could not be categorised as unreasonable. As to the time remaining until the CAB proceedings could be concluded, there was now no reason why they could not proceed and, given that the appellants claimed to have disclosed a substantial proportion at least of the documents discoverable in the CAB proceedings, it was

likely to be possible to agree a truncated procedural timetable. Moreover, in relation to FSD 52 of 2022, the entirety of those separate proceedings was likely to be concluded in the very near future. Finally, as to unfairness, the respondent's principal point is that the section 22 counterclaim remain to be determined and it is likely, or at least possible, that they will be determined in favour of the respondent. In those circumstances, *"it would be unfair for the Respondent's costs in this regard to be taxed and payable forthwith before considering the merits of the S.22 Counterclaims and any costs that may be awarded in the Respondent's favour that would need to be set off against these present costs"*.

16. In reply, the appellants contended that the fact that the substantive issues arising on the counterclaim remained to be determined did not prevent the summary judgment applications from being a discrete matter. As to unreasonableness, this court had described the respondent as having pursued an *"inappropriate procedure"*; the respondent's pursuit of the summary judgment applications had caused substantial delay to the CAB proceedings, delay which the appellants' proposal for section 22 requests to be addressed in parallel with the pursuit of the CAB proceedings would have avoided or mitigated had it not been rejected by the respondent. There was no rule that orders for immediate taxation would be made only where an order for indemnity costs was justified: the court had an unfettered discretion. The CAB proceedings were likely to require a long time to conclude, and would necessarily involve detailed factual evidence and probably also expert evidence, the scope of the latter being likely to be contentious. Finally, as to unfairness, the appellants acknowledged that the section 22 counterclaim remains to be determined, but said that this court's decision had narrowed the scope of that exercise from what it had been understood to be at the time of the summary judgment applications. There was no unfairness to the respondent in proceeding to taxation now.
17. In my judgment, it would be appropriate to make an order for immediate taxation. Each of the considerations in *Jian Ying* points to that conclusion.
18. Whilst it is true that the section 22 counterclaim has not been – and may yet need to be - determined, the summary judgment applications raised the issue of whether the respondent could establish to the requisite standard not merely that there was an obligation under section 22 but that the appellants had no defence to the assertion that they had not complied with that obligation. The issue of the availability of a triable defence was critical to the summary judgment applications; but it

does not arise in the CAB proceedings themselves, which are designed to bring matters to a trial at which the merits of the defence can be determined. It is properly to be regarded as a discrete issue.

19. As to unreasonableness, the real contest between the parties was as to the true CAB, and objectively viewed the respondent's interest in obtaining information was to ensure that it had the material necessary for it to establish the figure it was contending for and dispute the figure put forward by the appellants. In ordinary course, that information would have been provided by proper disclosure in the CAB proceedings. The respondent nevertheless attempted to force the issue by asserting a general right to information which went wider than what was necessary for the purposes of the CAB proceedings, and claiming immediate enforcement of that right outside the context of the CAB proceedings. I remain of the view that it was inappropriate for the respondent to adopt that procedure. In saying that, I do not overlook the fact that the judge decided that the matter was suitable for summary determination and should not wait for discovery in the CAB proceedings, and that there is no appeal against that conclusion. Nor do I overlook the fact that on the first instance authorities a wide view of section 22 was apparently justified. What went wrong, however, was that there was insufficient focus on what would be necessary to establish an entitlement to summary judgment rather than, in the abstract, an entitlement to information under section 22, and the respondent must take responsibility for that. It was in my view unreasonable to attempt to subvert the ordinary course of litigation by seeking summary judgment in effect for everything the appellants had, regardless of its relevance to the true dispute between the parties which was being litigated in the CAB proceedings. I do not accept that it is necessary to find that there has been misconduct sufficient to justify an award of indemnity costs before an order for immediate taxation can be made: the task for the court is simply to decide whether in all the circumstances such an order is appropriate, bearing in mind that it is an exception to the general rule.
20. The respondent's chosen procedure led to considerable delay, during which the CAB proceedings have not progressed, and it is obvious that some considerable time remains before they can be concluded.
21. I can see no unfairness to the respondent in making the costs of what I regard as a largely unnecessary excursion the subject of immediate taxation. The respondent's complaint that it would be unfair to deprive it of an ability to set off the costs of its assumed success on the section 22 counterclaim overlooks the separate nature of the considerations material to the summary judgment applications. And, although it is a small point, there is likely to be an early taxation of the costs of

the separate proceedings against the GP in FSD 52 of 2022, whose only purpose was to support the application for summary judgment; and it seems to me undesirable to have questions of apportionment of costs determined in that taxation but deferred in relation to the CAB proceedings themselves.

Issue (5): interim payment.

22. The parties are again agreed on the relevant legal principles. GCR O62, r4(7)(h) permits the court, when ordering a party to pay costs subject to taxation, to order payment of a reasonable sum on account of costs, such sum to be assessed summarily. The considerations relevant to exercise of the court's discretion were discussed by Kawaley J in *Al Sadik v Investcorp Bank B.S.C.* [2019 (2) CILR 585] at paragraph 25. It is sufficient to quote the following:

“(c) ... the principle that a successful party should be paid some of his costs immediately and before taxation is not simply “an important consideration,” it is the governing and predominant principle articulated by the interim payment on account of costs rule;

(d) the purpose of the rule is to enable the court to avoid the injustice of delayed payment of all costs until the total amount is determined upon taxation through a summary partial assessment. This is because the need to carry out a detailed assessment through taxation is “not a good reason” for not ordering some costs to be paid immediately. Whether or not the discretion should be exercised is not shaped by the need to do justice in an abstract sense, entirely untethered from the core purpose of the rule. Whether or not an interim payment on account of costs should be ordered will almost invariably require an assessment to be made of whether or not there is a good reason not to order an interim payment and/or a good reason for requiring the receiving party to be deprived of any costs until the taxation process is complete”.

23. The appellants' case on this aspect is that the starting position is that they are entitled to an interim payment and there is no good reason to depart from that position. The appellants have succeeded in their appeal, and costs have been awarded in their favour. An interim payment should be ordered.
24. The respondent resists the making of an interim award. It repeats its contention that resolution of the section 22 counterclaim is likely to result in an award of costs to the respondent, and the

respondent would be prejudiced if it were now to be ordered to pay costs without being able to take the benefit of any setting off exercise, particularly if the costs awarded against the appellants ultimately exceeded the amount of any interim payment. The respondent also asserts that withholding an interim payment would cause no prejudice to the appellants, since their costs are being paid from the assets of the ELP.

25. In my judgment, the appellants are entitled to an interim award of costs. Even though the appellants will be able to proceed to immediate taxation, they will still be deprived of costs to which they are entitled while that taxation proceeds. The fact that the section 22 counterclaim has not been determined is no more of a defence to the application for an interim payment than it is to the application for immediate taxation. As before, the costs in question relate to a discrete issue. The respondent does not suggest that the appellants would be unable to repay any costs paid on an interim basis if that were necessary as part of an overall balancing exercise; and the appellants are entitled to protect the interests of the other limited partners in the assets of the ELP. I can see no good reason not to order an interim payment and no good reason for requiring the appellants to be deprived of any costs until conclusion of the taxation.

Issue (6): quantum.

26. On that basis, how much should the interim payment be? The appellants have made an assessment of their recoverable costs, supported by affidavit evidence, and seek an order amounting to 50% of that total.
27. Two points arise: first, is the base figure advanced by the appellants a proper starting point? Secondly, what is the appropriate percentage reduction to be applied to the base figure?
28. As to the first of those points, the appellants' estimate is compiled by identifying the hours spent by identified fee earners, and the disbursements. Although it is clear that the claimed figure excludes costs of compliance with the summary judgment order, it does not appear that the costs of the summons for directions have been excluded – indeed, since the supporting affidavit says that it is made in support of the appellants' application "*made by [their] written submissions dated 16 April 2025*", and those submissions claim the costs of the summons for directions, it seems probable that the assessment does include the costs of the summons for directions. There is no means of telling what figure has been attributed to those costs. The respondent has also made criticisms of the level of partner involvement.

29. As to the percentage deduction, the appellants referred to authority, including this court's decision in *Scully Royalty Limited v Raiffeisen Bank International AG* [2022 1 CILR 572], in which it was said (at paragraph 58) that “*Courts often award 50% of the total costs on the basis that this is a conservative approach which should not lead to an overpayment*”. I note also the conclusion of Asif J in *The Armand Foundation Inc v Hammer International Foundation* (unreported, 24 April 2024) that the appropriate total discount must be determined on a case-by-case basis, but a discount of 45-55% to the total costs claimed is likely to be appropriate.
30. Taking these matters into consideration, it seems to me that the appropriate amount to be awarded by way of interim payment is a sum equivalent to 45% of the total estimated recoverable costs. The reduction from the 50% claimed by the appellants is to take account of the likelihood that the claimed figure includes costs relating to the summons for directions, which the appellants are not entitled to recover. It does not, however, include any additional deduction to take account of the respondent's complaint about overuse of partners' time: if there is anything in that complaint, it can be dealt with on taxation, but for present purposes I am content to accept the appellants' justification for it.
31. On that basis, the interim payment of \$614,511.74 claimed by the appellants, which is 50% of a total estimated amount of \$1,179,965.00 for the appellants' recoverable costs after deduction of the costs of compliance, is to be reduced to \$530,984.25.
32. In the result, I consider that the following orders should be made:
- (1) The respondent shall pay to the appellants the appellants' costs of and incidental to the appeal and the summary judgment applications at first instance in both the CAB proceedings and in FSD 52 of 2022;
 - (2) The costs referred to in subparagraph (1) above shall include the costs of the applications to Parker J and this court for leave to appeal, but shall not include (a) the appellants' costs of complying with the summary judgment orders made by Parker J on 27 June 2023 (which costs shall be costs in the CAB proceedings); (b) the appellants' costs of the summons for directions disposed of by Parker J's order of 27 November 2024 (those costs being dealt with as directed in that order); or (c) the costs of the interim costs application made by the respondent and determined by Parker J on 20 January 2025 (those costs being reserved to Parker J);

- (3) The costs referred to in subparagraph (1) above shall be taxed forthwith on the standard basis if not agreed;
- (4) The respondent shall on or before 19 September 2025 pay to the appellants \$530,984.25 on account of the costs referred to in subparagraph (1) above.

BIRT JA:

I agree.

GOLDRING P:

I also agree.