



Neutral Citation Number: [2025] CIGC (FSD) 123

Cause No: FSD 2025-0028 (JAJ)

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
**FINANCIAL SERVICES DIVISION**

**BETWEEN:**

**(1) IGCf GENERAL PARTNER LIMITED**  
**(2) THE INFRASTRUCTURE AND GROWTH CAPITAL FUND L.P.**

**Plaintiffs**

**-and-**

**WHITE CRYSTALS LTD**

**Defendant**

**Appearances:** **Mr Conal Keane, Mr Niall Dodd and Mr Alan Quigley of Dillon Eustace for the Plaintiffs**  
**Mr Jonathan Stroud and Ms Vered Mazin of Bedell Cristin Cayman Partnership for the Defendant**

**Before:** **The Honourable Justice Jalil Asif KC**

**Heard:** **On the papers**

**Judgment:** **17 December 2025**

*Costs—stay of proceedings in favour of arbitration—appropriate basis for taxation*

*Costs—affidavit evidence—whether to disallow costs of preparing affidavit filed in breach of GCR O.41, r.5(3)*

*Costs—stay of proceedings in favour of arbitration—whether to order taxation of costs forthwith*

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## JUDGMENT

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1. This is my judgment on certain costs issues that arise on two summonses in this matter following my substantive judgment dated 14 October 2025, neutral citation [2025] CIGC (FSD) 98, in which I ordered a stay of these proceedings in favour of arbitration, as sought by the Defendant, and dismissed the Plaintiffs' application for an interim injunction to restrain the Defendant from proceeding with the arbitration. The parties each provided me with written submissions, authorities and a selection of correspondence on which they relied in support of their respective positions. As previously canvassed with the parties, I have dealt with these costs issues on the papers, so far as the material before me has allowed me to do so.

**A. Basis of taxation**

2. The Plaintiffs sensibly concede that they should pay the Defendant's costs of the summonses in principle. The first issue is the basis of taxation. The Plaintiffs contend that they should pay the Defendant's costs on the standard basis whilst the Defendant seeks its costs on the indemnity basis.
3. In my judgment, the Plaintiffs should pay the Defendant's costs of both summonses on the indemnity basis. I am guided towards that conclusion by the English cases of *Kyrgyz Mobil Tel Ltd v Fellowes International Holdings Ltd* [2005] EWHC 1329 (QB) and *A v B* [2007] EWHC 54 (Comm), which have been applied in the Cayman Islands in *Re BDO Cayman Ltd* [2018] 1 CILR 187.
4. In *Kyrgyz Mobil Tel Ltd v Fellowes International Holdings Ltd*, Cooke J said:

*"42. [...] the correct approach where there has been a breach of a jurisdiction clause by a party initiating proceedings in a non-chosen jurisdiction is that the costs should be awarded on an indemnity basis. The reason for that is plain. If a party has breached his agreement, then the damages which flow from the breach of that agreement are all costs incurred by the party who successfully relies upon the choice of jurisdiction clause. In my experience, the Commercial Court in particular but courts in general adopt such an approach."*

5. In *A v B*, Colman J quoted [42] and [43] of Cooke J's judgment in *Kyrgyz Mobil Tel Ltd* and then continued:

*"10. [...] There can be no question but that the procedural consequence of conduct by a party to an arbitration or jurisdiction agreement which amounts to a breach of it and causes the opposite party reasonably to incur legal costs ought to be that the innocent party recovers by a costs order and/or by an award of damages the whole, and not merely part, of its reasonable legal costs. [...]"*

*11. In my judgment, provided that it can be established by a successful application for a stay or an anti-suit injunction as a remedy for breach of an arbitration or jurisdiction clause that the breach has caused the innocent party reasonably to incur legal costs, those costs should normally be recoverable on an indemnity basis.*

*[...]*

*15. The conduct of a party who deliberately ignores an arbitration or a jurisdiction clause so as to derive from its own breach of contract an unjustifiable procedural advantage is in substance acting in a manner which not only constitutes a breach of contract but which misuses the judicial facilities offered by the English courts or a foreign court. In the ordinary way it can therefore normally be characterised as so serious a departure from 'the norm' as to require judicial discouragement by more stringent means than an order for costs on the standard basis. However, although an order for indemnity costs will usually be appropriate in such cases, there may be exceptional cases where such an order should not be made. [...]"*

6. Parker J in *Re BDO Cayman Ltd*, said at [9], [12] and [13] that:

*"9. [...] The English courts have held that the general costs order in relation to a party which commenced proceedings in a non-chosen jurisdiction in breach of an arbitration or exclusive jurisdiction clause is one which indemnifies the party compelled to enforce the contractual bargain in both the foreign proceedings and anti-suit injunction proceedings (as a form of damages)— see *Kyrgyz Mobil Tel Ltd. v. Fellowes Intl. Holdings Ltd. and A v. B* ([2007] EWHC 54 (Comm), at paras. 8–15).*

*[...]*

*12. These decisions, although not binding upon this court, are to my mind, especially in the absence of Cayman authority, persuasive in their reasoning and make for good policy. [...]"*

*13. It seems to me that this court should also follow this line of authority. Where a party has been compelled to apply for an anti-suit injunction to restrain the continuation of foreign proceedings brought against it in breach of the parties' contractual bargain, it is fair and reasonable that it is compensated as a party which has been forced to deal with the consequences of a breach of contract."*

7. Thus, the justification for an order for indemnity costs where party A has brought proceedings in breach of a contractual agreement as to jurisdiction or dispute resolution is based primarily on the concept of compensating party B for that breach of contract rather than on the approach to indemnity costs in other situations, although there may be overlap between them.

8. The Plaintiffs suggest in their written submissions that Doyle J in *Ren Ci v Nebula (Cayman) Ltd* (unreported 16/02/23) at [85] was inclined to order costs on the standard basis. They argue that the Grand Court thus does not necessarily follow the English approach. However, Doyle J did in fact order costs in the indemnity basis, consistently with the English authorities: see *Ren Ci v Nebula (Cayman) Ltd* (unreported 01/08/23). *Ren Ci v Nebula (Cayman) Ltd* is therefore not a valid indicator that the Grand Court will take a different approach to costs where there is a breach of a jurisdiction or arbitration clause from that taken in England and adopted in Parker J's judgment in *Re BDO Cayman Ltd*.
9. I also bear in mind that the Defendant indicated its intention to seek an order for indemnity costs from the outset in its letter dated 21 February 2025 responding to the commencement of the proceedings by the Plaintiffs. The letter set out the Defendant's detailed reasons why the claim should be stayed in favour of arbitration, which were the same reasons advanced before me at the hearing of the Defendant's summons to stay the proceedings and which I accepted. The Plaintiffs rejected the Defendant's position in a letter dated 24 February 2025, thereby generating the interlocutory battle between the parties. This provides a further reason to support making an order for costs to be payable on the indemnity basis.

**B. Date from which costs to be payable on Plaintiffs' summons for interim injunction**

10. The Plaintiffs argue that the Defendant should only recover its costs in respect of the Plaintiffs' summons for an interim injunction from 1 May 2025, which is the date that the Plaintiffs contend that the summons became an *inter partes* application.
11. I do not accept this argument. It is entirely possible that the Defendant might legitimately have incurred costs in relation to the Plaintiffs' injunction summons before that date. I consider this is best addressed within a taxation rather than applying a gate to the Defendant's ability to seek costs.

**C. Recovery of foreign lawyers' fees**

12. The Plaintiffs dispute that the Defendant should recover any costs for attendance or involvement of the Defendant's London-based solicitors. They complain both at the large number of fee earners

apparently involved in the Grand Court proceedings and also that the partner with oversight of the matter attended the hearings in the Cayman Islands in person, instead of joining remotely, if his attendance was necessary at all.

13. The Defendant has not applied for any of the provisions of GCR O.62, r.18(1) to be disapplied. Unless and until it does so, it cannot seek to recover non-admitted foreign lawyers' fees: see *BDO Cayman Ltd v Ardent Harmony Fund Inc* (unreported, 27/04/21) and *The Armand Hammer Foundation, Inc v Hammer International Foundation* (unreported 06/11/24).
14. The Defendant has not addressed this question in its written submissions on costs. I do not know whether this was intentional or an oversight. I will need to be persuaded that any of the Defendant's non-admitted foreign lawyers' fees should properly be recoverable. On the material that I have seen so far, my current view is that they should not be recoverable on taxation at all or, if recoverable, should be substantially limited as regards the number of fee earners whose time is potentially recoverable and their level of seniority, and that costs for travel and accommodation in the Cayman Islands should not be allowed.
15. In the circumstances, the parties may make further written submissions on this point, if so advised, limited to 10 pages each. I consider that these will be most useful if prepared sequentially, with the Defendant serving its submissions first. Allowing for the imminent Court vacation, the Defendant's submissions should be filed by 7 January 2026 and the Plaintiffs' submissions in response should be filed by 14 January 2026.

**D. Costs of affidavit filed on behalf of the Defendant**

16. Both in their skeleton argument for the substantive hearing and at the hearing itself, the Plaintiffs complained that the affidavit filed on behalf of the Defendant was inadmissible because it was sworn by the Defendant's solicitor in London, who could not sensibly have personal knowledge of the matters addressed. The affidavit was therefore said to be in breach of GCR O.41, r.5(3). The Plaintiffs urged me not to admit it for that reason. I addressed this briefly in my substantive judgment and concluded that I would admit it because it mainly exhibited relevant documents. I did not rely on the substance of the affidavit itself in reaching my conclusions.

17. However, the apparent breach of GCR O.41, r.5(3) should not go unmarked, and neither should the fact that the majority of the text of the affidavit in question comprised commentary on the documents and argument, rather than admissible evidence.
18. I am therefore minded to disallow the costs of preparing the affidavit in question. However, as this has not been explicitly raised or responded to by the parties in their current round of submissions, I will allow both parties to make further written submissions on this point, if so advised, limited to 5 pages each, before reaching a final decision. I suggest that these should again be sequential, with the Plaintiffs to go first and to be filed by 7 and 14 January 2026 respectively.

**E. Timing of taxation of the Defendant's costs**

19. GCR O.62, r.9 addresses the question of when a successful party's costs may be taxed. So far as relevant, it provides:

*“(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.*

*(3) [...]*

*(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.”*

20. The Defendant seeks an order that its costs should be taxed now. The Plaintiffs rely on the decision of Doyle J in Ren Ci v Nebula (Cayman) Ltd (unreported 16/02/23) at [85] to support their argument against costs being taxable forthwith. However, the defendant in that case did not seek an order for its costs to be taxed and paid forthwith: see Ren Ci v Nebula (Cayman) Ltd (unreported 01/08/23). That case therefore does not provide any guidance on the approach to be adopted.
21. I consider that GCR O.62, r.9(2) gives the Court a broad discretion to order costs to be taxed forthwith where it is just to do so, which must necessarily include orders in relation to interlocutory steps. This is different from, and broader than, the power to order a taxation of interlocutory costs forthwith under GCR O.62, r.9(4).

22. I broadly accept and adopt the Plaintiffs' submissions as to the approach of the Court, which are well established based on the Rules and the case law, particularly the judgment of Kawaley J in *Fortunate Drift Ltd v Canterbury Securities Ltd* (unreported 10/06/20) where he considered the applicable principles in detail. In this regard, the full judgment is of far more utility than the brief note at [2020] 2 CILR Note 5.
23. The general rule is that costs should be taxed at the end of the case. A cause or matter is not treated as having concluded merely because an interlocutory matter has been determined. At least part of the purpose for this general rule is to avoid injustice where interlocutory costs orders may be set off against one another throughout the progress of the case and to avoid the costs and time that will result from having two (or more) taxations instead of one taxation at the end of the case. There must therefore be exceptional circumstances for an order to be made under GCR O.62, r.9(2) for a taxation forthwith.
24. The Court considers the following factors when determining whether there are exceptional circumstances:
- 24.1 whether the relevant interlocutory costs were incurred in relation to a discrete issue within the wider proceedings viewed as a whole;
- 24.2 whether the paying party has acted unreasonably in any relevant way in relation to the application to which the interlocutory costs order relates;
- 24.3 whether the proceedings as a whole have a long time to run; and
- 24.4 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 O.62.
25. In this case, the stay that I have ordered is a *pro tanto* stay only. There is a real prospect that the matter will come back to the Grand Court for the stay to be lifted, once the LCIA arbitration has concluded, for the Grand Court to make necessary consequential orders. The proceedings are therefore not at an end and should not be treated as effectively being at an end as a result of the stay.
26. The applications for the stay and injunction can properly be described as a discrete issue. Further, in light of the order for indemnity costs, the Plaintiffs can properly be said to have acted unreasonably

– the authorities I have referred to earlier in this judgment unsurprisingly consider that acting in breach of a contractual jurisdiction or dispute resolution clause is unreasonable. Assuming that the Grand Court proceedings will be revived once the LCIA arbitration concludes, the proceedings are likely to have a long time to run, and not such a short time that it would be unjust to order costs to be paid forthwith. On the other hand, if it is assumed that the LCIA arbitration will dispose of all matters, then there is no reason at all to delay taxation.

27. In addition, it appears unlikely that there will be substantial costs orders in favour of the Plaintiffs during the course of the Grand Court proceedings that might be set off against the Defendant's costs, having regard to the fact that the dispute between them has now moved to the LCIA tribunal, which will make its own orders for costs within the arbitration and without reference to the Grand Court.
28. Finally, stepping back and considering generally whether it would be unjust to order the Defendant's costs to be taxed now, I do not consider that it would be unjust to do so.
29. I therefore conclude that the Defendant should be permitted to proceed with a taxation of its costs forthwith.

**Dated 17 December 2025**



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