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IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

NEUTRAL CITATION NUMBER: [2025] CIGC (FSD) 78

CAUSE NO: FSD 0214 OF 2025 (DDJ)

IN THE MATTER OF KIWI GP CAYCO LTD

BETWEEN:

FALCON NEWCO LIMITED

PLAINTIFF

v

1. KIWI GP CAYCO LTD

2. MICHAEL PEARSON

DEFENDANTS

Before:	The Hon. Justice David Doyle
Appearances:	Andrew Ayres KC, Shelley White and Jonathan Turner of Walkers (Cayman) LLP
Heard:	5 August 2025
***Ex tempore* judgment delivered:**	5 August 2025
Draft transcript circulated:	7 August 2025
Transcript approved:	7 August 2025

250805 In the matter of Falcon Newco Limited – FSD 214 of 2025 (DDJ) – Judgment

Determination of application for the court to proceed ex parte on short notice, to sit in private, to grant interlocutory injunctive relief and to make an order sealing certain documents on the court file

JUDGMENT

Introduction

1. I shall now deliver a short judgment in FSD 214 of 2025 (DDJ). The court is sitting in private.

2. This matter arises in the first week of the recently re-introduced long vacation, which runs from 1 August to 15 September 2025, as a matter of urgency and on short notice to the Defendants.

3. I confirm that I have read all the documentation in the bundles and I have considered the Plaintiff's written submissions and the oral submissions put before the court so eloquently by Andrew Ayres KC, who appears on behalf of the Plaintiff.

4. No appearances have been entered by or on behalf of the Defendants.

5. I record that I carefully considered all the communications from Carey Olsen, the Cayman attorneys acting for the Second Defendant, including their letters dated 25, 27, 29, 31 July, 1, 4 and 5 August 2025.

6. Earlier today I granted orders in terms of paragraphs 1 (court sitting in private), 2 (injunctive relief) and 3 (sealing of certain documents on the court file) of the draft Order that had helpfully been provided to the court prior to today's hearing. I now give brief reasons for granting such orders.

Summary

7. Based on the material presented to the court on behalf of the Plaintiff (a company incorporated under the laws of the Cayman Islands) I shall endeavour to briefly summarise the position. Stripped of its complexity and detail and put very simply it appears that there is a dispute about a meeting which took place on 24 July 2025. The legitimacy of that meeting is challenged by the Plaintiff on the basis that it was inquorate and not in compliance with the First Defendant's Articles of Association as adopted on 6 November 2024. The Plaintiff seeks declarations to that effect by way of an Originating Summons dated 29 July 2025.

8. On 24 July 2025 it appears (although this of course is hotly disputed by the Plaintiff) that steps were taken at the meeting held on that day to enable the First Defendant to take legal proceedings in New Zealand against various legal entities and to enable the Second Defendant to make decisions and take steps on behalf of the First Defendant. The New Zealand legal proceedings appear to have been commenced on 25 July 2025. A directions hearing is due to be held in New Zealand on 22 September 2025.

9. In an *ex parte* Summons dated 29 July 2025 the Plaintiff in effect seeks an injunction restraining the Defendants from taking any further action pursuant to the resolutions purportedly passed on 24 July 2025 until the Originating Summons has been determined. The *ex parte* Summons also sought wide ranging disclosure against the Defendants and an order that certain documents on the court file be sealed and kept confidential and any hearing be held in private.

Privacy and sealing

10. I turn first of all to the application for the *ex parte* Summons to be heard in private. I noted all that was written and said on behalf of the Plaintiff and all that had been set out in the letters sent by Carey Olsen on behalf of the Second Defendant.

11. I also considered the relevant law and the authorities referred to by the Plaintiff including *Project Panther* 2018 (2) CILR 543, *Sasken Communication Technologies* 2016 (1) CILR 1, Section 7 of the Bill of Rights and the two authorities which I brought to the attention of counsel, *Silicon Valley Bank* (FSD unreported judgment, 29 June 2023) and *51job Inc* [2025] CIGC (FSD) 37.

12. In my judgment it is in the interests of justice for the court to sit in private and for certain documents specified at paragraph 3 of the draft Order to be sealed subject to further order.

13. This is one of those rare, exceptional cases where I have been persuaded that a privacy order and a sealing order are appropriate.

14. If the Plaintiff is successful in respect of the relief claimed in the Originating Summons none of the highly confidential and sensitive material contained in the *ex parte* Summons and the evidence in support would have been made available and the First Plaintiff in the New Zealand proceedings should not have commenced the proceedings in New Zealand and filed the Claim. It is important that the position be preserved pending determination of the Originating Summons.

15. Those are my brief reasons on the privacy and sealing issues.

Proceeding *ex parte* on short notice

16. In the particular circumstances of this case I was content to proceed *ex parte* on short notice. The relief was requested on an urgent basis and I noted that there had been correspondence between the attorneys in advance of today's hearing. I noted the position of Carey Olsen but I was of the view that the matter had to be dealt with urgently and proceeded accordingly.

Interlocutory injunctive relief

17. In respect of the interlocutory injunctive relief, again I considered all the evidence and all that had been said and written on behalf of the Plaintiff. I also noted all the relevant points raised in the correspondence by Carey Olsen on behalf of the Second Defendant and the limited undertakings offered.

18. Lord Hoffmann in *National Commercial Bank Jamaica Limited v Olint Corp Limited* [2004] UKPC 19 at paragraph 16 referred to *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 and stated that at the interlocutory stage, the court must assess whether the granting or withholding an injunction is more likely to produce a just result. If damages will be an adequate remedy for the plaintiff there are no grounds for interference by way of the granting of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restricted then an injunction should ordinarily be granted.

19. At paragraph 17 Lord Hoffmann stated that it was in practice often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the court has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other.

20. Each case must, of course, be dealt with on its own facts and circumstances.

21. In the case presently before this court in the Cayman Islands there is also the additional consideration of comity. This court does not want to unnecessarily or inappropriately step on the toes of the internationally well-respected court in New Zealand which is presently seized of the substantive proceedings which the Plaintiff claims were commenced improperly. But I also take into account that the First Defendant in these proceedings is a Cayman company and the Second Defendant appears to be resident in the Cayman Islands and have strong connections with the Cayman Islands. It will, of course, be entirely a matter for the court in New Zealand as to what orders it makes in respect of the legal proceedings in New Zealand.

22. There is plainly a serious issue to be tried raised by the Originating Summons in this case. On balance I have concluded that the interests of justice require this court to grant an injunction pending the determination of the Originating Summons. I have considered the prejudice likely to be suffered by the Plaintiff and by the Defendants if I do or if I do not grant an injunction. In my judgment the granting of an injunction is more likely to produce a just result than refusing to grant one.

23. The court in New Zealand is presently seized of the substantive proceedings (although I fully appreciate the Plaintiff's position that they were improperly instigated). I was initially minded, principally on comity grounds, to dismiss the application for an injunction, proceed to hear the Originating Summons on an expedited basis and simply leave it to the court in New Zealand to consider and determine any applications for a stay before that court. I have however been persuaded to grant an injunction.

24. Accordingly, I granted an order in terms of paragraph 2 of the draft Order.

25. I record that Mr Ayres KC during submissions indicated that the Plaintiff would have no objection to Meredith Connell, the law firm in New Zealand, contacting the New Zealand court (copying in the other parties to the New Zealand proceedings) and enclosing any Order made by the Cayman court and outlining their position to the New Zealand court. Nothing in the Order should be taken to prevent that.

Costs reserved

26. In respect of paragraph 4 of the Order I am minded to reserve costs.

Orders granted and the undertaking

27. I have granted the relief sought in paragraphs 1, 2, 3 of the draft Order and have reserved costs in paragraph 4 of the draft Order.

28. The undertaking offered by the Plaintiff will be recorded in Schedule 1:

> "If the court later finds that this Order has caused loss to any defendant, and decides that such Defendant should be compensated for that loss, the Plaintiff will comply with any Order the Court may make".

29. I would be grateful if the attorneys could before 2pm tomorrow email my PA with the updated draft Order reflecting the determinations contained in this short judgment.

Disclosure application

30. The Plaintiff wisely indicated that it did not want its disclosure application dealt with today. If the Plaintiff wishes to proceed with such application on an *inter partes* basis then it should liaise with the Defendants as to proposed directions and a hearing date. It may be however that the parties' resources and efforts are best directed at progressing the Originating Summons on an expedited basis.

Expedited hearing of Originating Summons

31. Although my docket for the remainder of the year and early next year is already packed with hearings and other judicial commitments, I think it will help the parties and the New Zealand court if I endeavour to deal with the Originating Summons on an expedited basis.

32. The Plaintiff suggests two days be set aside after 26 September 2025 with one day for reading and one day for the hearing. I have a 3-week hearing in October and other judicial commitments in November but I could presently set aside two days, one for reading on 18 November 2025 and one for an expedited hearing on 19 November 2025 of the Originating Summons.

33. If we are to hit that target, the paginated bundle (including the evidence and skeleton arguments) needs to be filed in hard and soft copy at the latest by 3pm on 14 November 2025 to allow me the luxury of some undisturbed additional weekend reading time.

34. I am minded to direct the attorneys to keep their skeleton arguments to at or below 25 pages. I received 50 pages of written submissions the day before today's hearing in respect of an interlocutory matter. I appreciate that time has been at a premium and the Plaintiff and its attorneys have acted with speed. Sometimes it takes longer to produce a shorter document. I would also benefit from a concise list of issues to be determined at the expedited hearing. In case it helps, I share with the attorneys one of Kemy Bokhary's top advocacy tips:

> "Always let the court see you removing complication and not adding to it." (*Some Reflections on Advocacy* Hong Kong Lawyer July 2025)

The Order

35. The following Order was granted:

1. The hearing of the Application be held in private and, subject to further Order, any further hearings of the Application be held in private;

2. An injunction is granted restraining the Defendants from taking any further actions pursuant to the resolutions set out in the Minutes of a Meeting of the Board of Directors of Kiwi GP Cayco Ltd (the "Purported Board Minutes") and purportedly passed at the board meeting of the First Defendant purportedly convened by the Second Defendant ("Mr Pearson") on 24 July 2025 at 12 noon (UK time), and adjourned to 24 July 2025 at 12:35pm (UK time) (the "Purported Board Meeting"), until the Originating Summons dated 29 July 2025 by which this proceeding was commenced (the "Originating Summons") is determined, including taking any further steps in the conduct of proceedings entitled, *Kiwi CayLP, LP (acting by its general partner, Kiwi GP Cayco Ltd) & Summit Partners Kiwi SCSp v FNZ Group Limited & Ors* (CIV-2025-485-) issued by the First Defendant in the High Court of New Zealand, Wellington Registry on 25 July 2025 (the "New Zealand

Proceedings"), including, for the avoidance of doubt, convening any meeting of, or undertaking any business through, the committee purported to have been established at the Purported Board Meeting to make all decisions and take all steps, for and on behalf of Kiwi GP Cayco Ltd and Kiwi CayLP L.P. in connection with the New Zealand Proceedings (including but not limited to the business set out at paragraphs 6.1.1 to 6.1.7 of the Purported Board Minutes);

3. The Application, and all of the evidence filed in support of or relied on at any hearing of the Application, including the Correspondence Affidavit, be sealed and kept confidential on the Court file pending determination of the Originating Summons or further order of the Court;

4. Costs reserved.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT

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