IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

Neutral Citation Number: [2026] CIGC (FSD) 12

CAUSE NO: FSD 8 OF 2022 (DDJ)

IN THE MATTER OF THE COMPANIES ACT (AS REVISED)

AND IN THE MATTER OF MV CAYMAN LTD. (IN OFFICIAL LIQUIDATION)

Before: The Hon. Justice David Doyle

Heard: On the papers

Draft Judgment circulated: 16 February 2026

Judgment delivered: 20 February 2026

Determination of issues in respect of costs

JUDGMENT

Introduction

1. By Summons dated 22 December 2025 (the "Summons") Jonathan Murphy ("Mr Murphy") applied, stated to be in his capacity as a creditor of MV Cayman Ltd (in official liquidation) (the "Company"), for an order that Russell Homer and Karen Scott, in their capacities as Joint Official Liquidators ("JOLs") of the Company, take no further steps in respect of:

(1) the proceedings commenced on 13 June 2025 in cause number FSD 163 of 2025 (DDJ) against Mr Murphy and

(2) the proceedings (no cause number identified in the Summons) commenced on 12 November 2025 against Mr Murphy for a declaration under section 147 of the Companies Act (2025 Revision) that Mr Murphy is liable to make contributions to the assets of the Company in such amount as the court thinks fit

(the "Claims") unless and until such time as the JOLs have been granted sanction to (1) bring the Claims and (2) enter into a suitable funding arrangement which makes adequate provision for protection against adverse costs. Mr Murphy also asked for the costs of the Summons to be paid in full forthwith (pursuant to Article 37 of the Articles of Association of the Company) from the liquidation estate as an expense of the official liquidation.

2. A hearing for the Summons was slotted into a busy court calendar to commence at 10am on 29 January 2026 with a maximum of 1.5 hours allotted.

3. By email dated 22 January 2026 at 3:00pm Campbells LLP (the attorneys acting for Mr Murphy) indicated that "the parties have agreed to vacate the hearing, with costs to be dealt with, per the attached Consent Order." Under the draft Consent Order it was provided that the JOLs not take further steps in cause FSD No 163 of 2025 (DDJ) and FSD No 8 of 2022 (DDJ) unless and until such time as (1) the JOLs have been granted sanction to (a) bring the Claims and (b) to enter into funding arrangements suitable for that purpose and (2) the court makes a determination on an application by the JOLs to consolidate the Claims. The draft Consent Order provided for the Claims to be stayed on the same basis and for the 29 January 2026 hearing to be vacated. It also contained provision for the parties to lodge before 4pm on 6 February 2026 written submissions (limited to 10 pages in length) in relation to costs of the Summons as well as an agreed bundle and joint authorities bundle for the court to determine the issue of costs on the papers. An order was made on that basis on 22 January 2026.

The joint bundle and the written submissions

4. In addition to considering the joint bundle on the issue of costs I have also considered:

(1) the skeleton argument of Mr Murphy on costs dated 6 February 2026 and the attached skeleton argument of Mr Murphy dated 24 December 2025;

(2) the written submissions on costs of the JOLs dated 9 February 2026.

The correspondence

5. In order to properly determine the position in respect of costs I have had to plough through some of the protracted correspondence which included the following.

6. A letter from Campbells dated 13 October 2025 to Broadhurst LLC (the attorneys acting for the JOLs) indicated that they acted for Mr Murphy and all correspondence should be directed to them "going forward".

7. By letter dated 15 October 2025 Broadhurst wrote to Campbells attaching various documents including a summons dated 10 October 2025 and requiring Mr Murphy's "Acknowledgement of Service within fourteen days after service of the Writ of Summons, being by 24 October 2025."

8. By letter dated 29 October 2025 Broadhurst refer to the acknowledgement of service filed on 22 October and refer to a possible joinder application in respect of FSD Cause No 163 of 2025 and FSD 8 of 2022 adding:

> "To afford all parties procedural fairness, our clients propose the filing of Mr Murphy's defence be deferred until the Plaintiffs' Joinder Application is heard by the Court. If the Joinder Application is granted, it will allow for both matters to be dealt with at the same time, preventing additional costs and a duplication of the defence.
>
> We propose that the extension to file a defence remain in place until there is a determination of the Joinder Application or alternatively, upon fourteen (14) days notice from one party to the other.
>
> We look forward to receiving your client's position forthcoming."

9. In its letter of 6 November 2025 Campbells to Broadhurst it is stated: "Our client consents to an extension of his time for the filing of his Defence until the date that is fourteen days (14) days after the determination of the Joinder Application and the provision of Statement of Claim filed in FSD 8 of 2022, whichever is later." It can readily be seen that Mr Murphy did not agree to the fourteen day notice from one party to the other express stipulation in the letter dated 29 October 2025 from Broadhurst.

10. In the Campbells' letter dated 6 November 2025 a request is made for, amongst many other things, the provision of "a copy of all material filed in respect of any sanction application made to the Court in the two liquidations, in connection with the Writ [in FSD 163 of 2025], as well as the orders made".

11. By letter dated 14 November 2025 Campbells chase Broadhurst in respect of the production of various documents referred to in the Statement of Claim and answers to requests for further and better particulars. Issues as to how the litigation was being funded were also referred to.

12. Broadhurst responded by letter dated 14 November 2025 serving various documents. No response was provided in respect of whether the JOLs had obtained court sanction to commence the legal proceedings.

13. By letter dated 24 November 2025 Campbells refer to the outstanding requests.

14. In its letter dated 28 November 2025 Broadhurst does not respond to the "sanction application" request.

15. By email dated 3 December 2025 at 7:20pm Campbells ask Broadhurst a simple question "Do you have sanction orders from the liquidation judge …?"

16. By letter dated 4 December 2025 Campbells send another chaser stating: "We infer from your repeated refusal to respond that the JOLs have failed to seek or obtain sanction in the two liquidations, prior to commencing these claims."

17. By email dated 4 December 2025 at 6:14pm Broadhurst responds "It is correct that sanction has not yet been obtained …" and indicated they were taking instruction. Campbells chased again on 10 December 2025.

18. By letter dated 11 December 2025 Broadhurst respond stating "The initial focus of the JOLs was correctly upon ensuring the Proceedings were issued and served within the necessary time period. The process took longer than anticipated, however service has now been effected upon all Defendants. The JOLs will next address sanction and consolidation. Those applications will be issued in the coming days with the anticipation that they will be heard early in the New Year".

The affidavit evidence

19. In addition to the correspondence, I have also considered the affidavit evidence contained in the joint bundle in particular the first affidavit of Mr Murphy sworn on 21 December 2025 and the third affidavit of Russell Homer ("Mr Homer") sworn on 15 January 2026.

20. Mr Homer at paragraph 9 of his third affidavit says that "The JOLs do not intend on taking steps to advance the Claim pending the advancement of a sanction application and the Court's determination of the same". I note Section B of the affidavit "Status of Sanction and Funding". Mr Homer does not say when the sanction applications will be filed. Mr Homer simply says at paragraph 32 that the JOLs have instructed Broadhurst "to advance the drafting and filing of a sanction application to seek retrospective sanction for the JOLs to commence and pursue the Claims and for funding of those claims."

The need for sanction

21. In case it is lost in the detail of the correspondence and the skeleton arguments on costs I should refer to the legal position in respect of the necessity to obtain sanction. Section 110 (2) (a) of the Companies Act (2026 Revision) provides that an official liquidator may with the sanction of the Court, exercise any of the powers specified in Part I of Schedule 3. The first paragraph of Part I of Schedule 3 "Powers exercisable with sanction" provides "Power to bring or defend any action or other legal proceedings in the name and on behalf of the company."

22. The JOLs appear to accept that they needed sanction to bring the legal proceedings and failed to obtain such sanction before bringing the legal proceedings and indeed still have not applied for sanction.

Determination

23. Mr Murphy and the JOLs in their skeleton arguments refer to Order 24 rule 9 of the Companies Winding Up Rules (2023 Consolidation) ("CWR") and I have considered the relevant provisions and the position as to costs generally.

24. The JOLs in substance submit that Mr Murphy should pay the costs of the Summons as it was unnecessary. They say it was unnecessary as it related to relief which the JOLs had already proposed and "was agreed between the parties" (paragraph 27 of the written submissions of the JOLs). A reading of the letter dated 29 October from Broadhurst (who act for the JOLs) and a response by way of letter dated 6 November 2025 from Campbells (who act for Mr Murphy) reveals that there was no such agreement. The parties were not *ad idem* (of the same mind).

25. The Broadhurst letter dated 29 October 2025 in the penultimate paragraph proposed "the extension to file a defence to remain in place until the determination of the Joinder Application or alternatively, upon fourteen (14) days notice from one party to the other". The JOLs were in effect reserving the right to take further action on 14 days' notice.

26. A plain reading of Campbells' response of 6 November 2025 reveals that such was not agreed. All that Mr Murphy agreed to was "an extension of time for the filing of his Defence until the date that is fourteen (14) days after the determination of the Joinder Application and the provision of statement of claim filed in FSD 8 of 2022, whichever is later."

27. Mr Murphy was within his rights to apply for relief. The failure of the JOLs to make a sanction application no doubt excited his concerns.

28. Campbells at paragraph 12 of Mr Murphy's written submissions say that the JOLs have still not filed any sanction application. Broadhurst in its letter dated 11 December 2025 stated:

> "The JOLs will next address sanction and consolidation. Those applications will be issued in the coming days with the anticipation that they will be heard in the New Year" adding
>
> "They will of course apply for sanction for the continuation of the proceedings."

That letter contained no explanation as to why sanction was not applied for prior to bringing proceedings, although there is a generalised reference to the initial focus of the JOLs being upon "ensuring the Proceedings were issued and served within the necessary time period."

29. In those circumstances it is not difficult to see why Mr Murphy felt compelled to file the Summons on 22 December 2025, in the absence of the JOLs filing any sanction applications. I do not accept the submission of the JOLs that the filing of the Summons was unnecessary or otherwise inappropriate. The JOLs provided Mr Murphy insufficient comfort by way of correspondence.

30. The JOLs submit that the outcome of the Summons should not be "considered as successful" for Mr Murphy (paragraph 31 of their written submissions) and they add at paragraph 34 that "Even if Mr Murphy could be considered to be successful on his Summons, which the JOLs do not accept, then exceptional circumstances or special reasons exist which ought to disentitle Mr Murphy from an order for costs." They add at paragraph 36 that the Summons improperly sought, through the backdoor, to obtain relief akin to security for costs and for indemnification of his costs. They add that security for costs and a determination of the indemnity provision under Article 37 was not properly before the Court in the Summons. They point out that "the substance of the Consent Orders make no order for the issues of security for costs or indemnity under MVC's articles."

31. The JOLs' position on costs of the Summons is outlined as follows (paragraph 9 of the JOLs' written submissions):

(1) Mr Murphy should not be entitled to his costs on the Summons;

(2) the JOLs should be entitled to an order that their costs occasioned by the Summons be payable by Mr Murphy to be taxed on a standard basis;

(3) in the alternative, if the court is not inclined to order that Mr Murphy pay the JOLs' costs at this time, the JOLs invite the court to order costs in the cause in respect of the Claims;

(4) in any event, the JOLs should be entitled to have their costs (remuneration and expenses) indemnified by the estate of the Company.

32. The JOLs say that an order as to costs in favour of the JOLs under CWR O.24 r9 (5) should be made (paragraph 38 of the JOLs' written submissions). The JOLs say that Mr Murphy should not

be entitled to any costs and should be required to pay the JOLs' costs. They add that the court is able to exercise its discretion pursuant to CWR O.24, 1.9(5) (or alternatively under GCR O.62) in the exceptional circumstances of the current case to make an order against Mr Murphy (paragraph 47 of the JOLs' written submissions).

33. The JOLs say that "there are exceptional circumstances and special reasons for the Court to depart from the general rule for costs on sanction applications" (paragraph 54 of the JOLs' written submissions).

34. The JOLs appear to accept that the Summons was in effect a sanction application by a creditor. Order 11 rule 1 (1) (b) of the CWR provides that "any application to the court made by a creditor for an order directing the official liquidator to exercise or refrain from exercising any of the official liquidator's powers in a particular way "is referred to in these Rules as a "sanction application"." The JOLs say that the general rule is that the "creditor's or contributory's costs of successfully making or opposing the application should be paid out of the assets of the company, such costs to be taxed on an indemnity basis if not agreed with the official liquidator" (CWR O.24 r.9(4)(a) (paragraph 20 of the JOLs' written submissions).

35. The JOLs also refer to CWR O.24 r.9(4)(b) which provides that the general rule is that "no order for costs should be made against a creditor or contributory whose application or opposition is unsuccessful, unless the Court is satisfied that that creditor's or contributory's position was wholly unreasonable or that creditor or contributory is guilty of having misled the Court or otherwise acting improperly in connection with the application" (paragraph 21 of the JOLs' written submissions).

36. The JOLs refer to CWR O.24 r.9(5) which provides that "The Court shall make orders for costs in accordance with the general rules unless it is satisfied that there are exceptional circumstances and special reasons which justify making some other order or not order for costs" (paragraph 22 of the JOLs' written submissions).

37. Mr Murphy says that he is entitled to his costs on the indemnity basis. He adds, with compelling simplicity, that the JOLs agreed on 22 January 2026 the substantive relief he sought in the Summons and he is therefore the successful party.

38. If the JOLs had genuinely felt that the relief claimed in the Summons was somehow unnecessary then they should have opposed it on that basis. They did not do that. Instead they belatedly agreed

to an order being granted providing the substantive relief sought by Mr Murphy in the Summons. They now, somewhat incredibly I have to say, seek to claim that Mr Murphy, although he obtained with their consent the substantive relief requested in the Summons, should somehow be regarded as the unsuccessful party and penalised in costs. Most of these costs could have been prevented if the JOLs had promptly applied for sanction. They did not. They said on 11 December 2025 that the sanction "application will be issued in the coming days". We are now well into the second half of February 2026. They have still not applied for sanction.

39. It is very difficult to see how Mr Murphy cannot properly be described as the substantially successful party in respect of the Summons. The substantive relief he sought in the Summons was granted by way of a consent order made on 22 January 2026. He was the substantially successful party. Moreover even if he could properly be regarded, by an immense stretch to breaking point of the imagination, as the unsuccessful party I am not of the view that his position was wholly unreasonable or that he has misled the court or otherwise acted improperly in respect of the Summons. There are no exceptional circumstances or special reasons or other circumstances which would justify making any order other than an order for costs in favour of Mr Murphy on an indemnity basis, in default of agreement.

Order

40. I make an order that Mr Murphy's costs of and incidental to the Summons (including the costs of these arguments on costs) be paid out of the assets of the Company and such costs should be taxed on the indemnity basis if not agreed with the JOLs.

41. I am concerned over the failure of the JOLs to issue a sanction application on a timely basis but my present focus is on the costs of the Summons. I note that on 22 January 2026 a consent order was filed and the JOLs consented to certain relief specified in the Summons being granted. In those circumstances I also make an order that the JOLs should have their costs of and incidental to the Summons out of the assets of the Company in the usual way.

42. Counsel should email to my PA within the next 7 days a draft order (agreed as to form and content) reflecting the determination of the costs of the Summons as specified above.

David Doyle

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THE HON. JUSTICE DAVID DOYLE

JUDGE OF THE GRAND COURT