Neutral Citation Number: [2026

CAUSE NO: FSD 2
CAUSE NO: FSD 2021-0269 (JAJ)
CAUSE NO: FSD 2021-0270 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)
AND IN THE MATTER OF PRINCIPAL INVESTING FUND I LIMITED
AND IN THE MATTER OF LONG VIEW II LIMITED
AND IN THE MATTER OF GLOBAL FIXED INCOME FUND I LIMITED

BETWEEN:

CREDIT SUISSE LONDON NOMINEES LIMITED

Petitioner

-and-

PRINCIPAL INVESTING FUND I LIMITED (In Official Liquidation) and Others

Respondents

Appearances:	**Mr James Collins KC of counsel instructed by Mr David Lee and Mr Zuhair Farouki of Appleby (Cayman) Ltd for the Petitioner** **The First and Second Respondents were not represented and did not appear** **Mr Bhavesh Patel of Travers Thorp Alberga for the intended additional Respondents**
Before:	**The Honourable Justice Jalil Asif KC**
Heard:	**19 November 2025**
Ex tempore judgment delivered:	**19 November 2025**
Finalised judgment approved:	**4 March 2026**

Civil procedure—costs—application for non-party costs order—whether to join non-parties for costs purposes

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JUDGMENT

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1. I have before me three summonses filed on 14 July 2025 in these three matters, Cause Number 2021-0268, Cause Number 2021-0269 and Cause Number 2021-0270. The three summonses, one in each case, are in materially identical terms and seek orders joining Mr Mutaz Otaibi, Mr Hussam Otaibi and Mr James Wilcox as Third to Fifth Respondents to the winding up petitions in each matter for the purpose of the Petitioner seeking a non-party costs order against each of those three individuals pursuant to section 24(3) of the Judicature Act (2021 Revision).

2. The Petitioner has been represented before me by Mr James Collins KC instructed by Mr David Lee and Mr Zuhair Farouki of Appleby (Cayman) Ltd. The First and Second Respondents in each cause were not represented and did not appear. Mr Mutaz Otaibi, Mr Hussam Otaibi and Mr James Wilcox, who I will refer to as the Intended Respondents, have been represented by Mr Bhavesh Patel of Travers Thorp Alberga.

3. The background to the applications is that the Petitioner sought to wind up the three funds in these matters who are the First Respondent in each cause on the just and equitable basis. Those petitions were fully defended by the Second Respondent in each case but succeeded. The Petitioner has obtained substantial costs orders against each of the Second Respondents, exceeding US $18 million, but those costs orders have not been paid and the Second Respondents in each case are in insolvent liquidation.

4. The Petitioner wishes to pursue an application against the Intended Respondents for non-party costs orders. The Petitioner contends that it is just and appropriate that the Intended Respondents are ordered to pay the costs of the petitions because: (a) they controlled the defence of the petitions; (b) they provided substantial funding to the Second Respondent in each petition; and (c) they did so for their own personal benefit. In particular, Mr Collins argues that if the defence of the petitions

had been successful, that would have stymied fraud proceedings being brought against the Intended Respondents before the High Court in England by the liquidators of each Second Respondent.

5. On 28 July 2025, Kawaley J heard an *ex parte* application by the Petitioner for leave to serve the summons and evidence upon the Intended Respondents out of the jurisdiction. He concluded that the Petitioner had a good arguable case for non-party costs orders to be made against the Intended Respondents and gave leave accordingly. The Intended Respondents have not applied to set aside Kawaley J's order.

6. Accordingly, the issue before me today is whether I should order the joinder of the Intended Respondents for the purpose of allowing the Petitioner to pursue its application for non-party costs orders.

7. Mr Collins reminds me that the question of joinder involves a relatively low threshold. All that the Petitioner needs to demonstrate is that it is reasonably arguable that a non-party cost order could be made against the Intended Respondents at the hearing of the substantive application in due course. He contends that if I am satisfied that the Petitioner's application for a non-party costs order is reasonably arguable then the Intended Respondents should be joined and the application for a non-party cost order should then proceed to a final determination on its merits.

8. Mr Patel has put forward all possible arguments that he could reasonably be expected to present on behalf of the Intended Respondents. He seeks to argue that, at least in relation to two of the three Intended Respondents, if not all three of them, there is no arguable case that ought to go forward for further debate and analysis at a substantive hearing of the Petitioner's summonses.

9. The principal basis on which Mr Patel makes that argument is that he says there are three requirements for a successful non-party costs order of funding, control and benefit, which are not, and will not conceivably be, made out against the Intended Respondents. As regards Hussam Otaibi and James Wilcox, Mr Patel submits that there is no evidence at all that either of them contributed any funding to the Second Respondents' defences of the petitions. He says that demonstrating that

a non-party has provided funding is a necessary requirement before a non-party cost order can be made against them.

10. As regards Mr Mutaz Otaibi, Mr Patel accepts that he did provide some funding to the Second Respondents in the winding up petitions, but Mr Patel maintains, as he does in relation to Hussam Otaibi and James Wilcox, that there is no evidence that the Intended Respondents obtained any personal benefit from the defence of the litigation. Mr Patel says that it is simply not arguable that they received any benefit sufficient to justify their joinder and their having to resist the Petitioner's summons for non-party cost orders.

11. I should start by noting as Mr Patel urges me, and Mr Collins recognises, that I should consider the position of each of the three Intended Respondents separately from the position of the other Intended Respondents. That is legally correct. However, in this case, factually, it appears from the material that I have seen that all three of the Intended Respondents acted together in their role in directing the defences of the winding up petition. On the material that I have seen, apart from the question of funding, it is difficult to identify any factual difference in the three Intended Respondents' apparent involvement in the underlying proceedings. Thus, whilst technically it is correct that the position of each of the Intended Respondents needs to be considered separately, when I come to do that exercise practically it is difficult, apart from the question of funding, to make much distinction between their roles.

12. Looking at the applicable law, the Court has a very broad discretion: see Williams J in ***Banks v Parsons*** [2020] 1 CILR 560 at [20], which includes the power to make an order against a non-party resident outside the jurisdiction: see ***Kenney and CC International Limited v ACE Limited*** [2015] 1 CILR 367 at [88]. Williams J explains in ***Banks v Parsons*** that there are two stages that must be considered:

> *"21. In considering whether a costs order should be made against a non-party, the court takes a two-stage approach. The first stage is […] the court considers whether it is appropriate to join the non-party for the purpose of costs only. The threshold is relatively low. The court should refuse joinder only when it is plain and obvious that the application amounts to an abuse of process on the ground of delay or other misconduct on the part of the applicant, or when the application is seen to be manifestly and fundamentally misconceived. The court looks to see if the claim made by the plaintiff for a non-party cost order is arguable.*

> *22. The role of this court is not to predetermine the issue as to whether a non-party costs order will or should be made. That is the second stage when the court will consider whether, in the interest of justice, a costs order against the non-party should be made taking into account all the relevant factors. […]"*

I have borne that guidance in mind in my determination of the applications before me today for joinder of the three Intended Respondents, which is the first stage only of the two stage process identified by Williams J.

13. I also take note of the advice of the Privy Council in *Dymocks Franchise Systems (NSW) Pty Limited v Todd and others* [2004] UKPC 39 (an appeal from New Zealand), which has been followed in the Cayman Islands most notably by the Court of Appeal in *Kenney v ACE* at [87]. In that case, Lord Brown, giving the opinion of the Board, said:

> *"25. […] their Lordships […] would seek to summarise the position as follows:*
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> *1) Although costs orders against non-parties are to be regarded as 'exceptional', exceptional in this context means no more than outside the ordinary run of cases where parties pursue or defend claims for their own benefit and at their own expense. The ultimate question in any such 'exceptional' case is whether in all the circumstances it is just to make the order. It must be recognised that this is inevitably to some extent a fact-specific jurisdiction and that there will often be a number of different considerations in play, some militating in favour of an order, some against.*
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> *2) Generally speaking the discretion will not be exercised against 'pure funders', described in paragraph 40 of* Hamilton v Al Fayed *as 'those with no personal interest in the litigation, who do not stand to benefit from it, are not funding it as a matter of business, and in no way seek to control its course'. In their case the court's usual approach is to give priority to the public interest in the funded party getting access to justice over that of the successful unfunded party recovering his costs and so not having to bear the expense of vindicating his rights.*
>
> *3) Where, however, the non-party not merely funds the proceedings but substantially also controls or at any rate is to benefit from them, justice will ordinarily require that, if the proceedings fail, he will pay the successful party's costs. The non-party in these cases is not so much facilitating access to justice by the party funded as himself gaining access to justice for his own purposes. He himself is "the real party" to the litigation, a concept repeatedly invoked throughout the jurisprudence […]*
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> *4) Perhaps the most difficult cases are those in which non-parties fund receivers or liquidators (or, indeed, financially insecure companies generally) in litigation designed to advance the funder's own financial interests. Since this particular difficulty may be thought to lie at the heart of the present case, it would be helpful to examine it in the light of a number of statements taken from the authorities. […]*
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> *29.. In the light of these authorities their Lordships would hold that, generally speaking, where a non-party promotes and funds proceedings by an insolvent company solely or substantially for his own financial benefit, he should be liable for the costs if his claim or defence or appeal fails. As explained in the cases, however, that is not to say that orders will invariably be made in such cases, particularly, say, where the non-party is himself a director or liquidator who can realistically be regarded as acting rather in the interests of the company (and more especially its shareholders and creditors) than in his own interests."*

14. The English case of *Deutsche Bank AG v Sebastian Holdings Inc* [2014] EWHC 2073 (Comm) indicates that evidence that the non-party provided funding is not a requirement for making a non-party costs order. Cooke J said at [50] in *Deutsche Bank*:

> *"50. Funding of the proceedings by an individual is not a jurisdictional pre-requisite. This is clear from the decision of the Court of Appeal in* Petromec Inc v Petroleo Brasileiro SA Petrobras *[2007] 2 Costs LR 212 per Longmore LJ at para 10 and Lewison J (as he then was) in the Court of Appeal decision in* Systemcare (UK) Ltd v Services Design Technology Ltd *[2012] 1 BCLC 14 at paras 27, 32-33. Lewison J pointed out that it was not necessary for the non-party to both control and fund the litigation, referring earlier to* Symphony Group *(ibid.) and* Dymocks *(ibid.). He referred to the various categories that Balcombe LJ had identified in the earlier authority and said that the categories were 'neither rigid nor closed'. The principles were 'guidance not rules' and 'the ultimate question is whether it is just to make the order'. […]"*

This was endorsed by the English Court of Appeal when dismissing the appeal: *Deutsche Bank AG v Sebastian Holdings Inc* [2016] EWCA Civ 23:

> *"47. […] we agree with the judge that funding of the litigation by the third party is not to be regarded as a pre-requisite of an order for costs against him. It is a factor which may, depending on the circumstances, weigh in favour of making such an order, but no more than that."*

15. I have listened very carefully to the various points that Mr Patel has put forward on behalf of the Intended Respondents. Those points may well have merit and may well provide a basis at the substantive hearing of the application for the Court to determine that it is inappropriate to make a non-party cross order. However, in light of the authorities to which I have referred, it seems to me that Mr Patel's arguments fall a long way short of persuading me that it is plain and obvious that the Petitioner's applications are an abuse or that they are fundamentally misconceived or that there is no reasonable prospect of the applications succeeding. To the contrary, it seems to me to be reasonably arguable that the Court may be persuaded on a full analysis of the evidence and the arguments that it is appropriate to make non-party cost orders against the Intended Respondents. I do not need to be satisfied to any higher standard at this stage because the test for joinder is one of arguability.

16. I therefore conclude that this is an appropriate case where, considering each of the three Intended Respondents separately, each of the three Intended Respondents is properly someone who should be joined for the purpose of the Petitioner being able to pursue an application for a non-party costs

order against that Intended Respondent and for that Intended Respondent to put forward his response in opposition to the application.

17. As to costs, Mr Collins argues that the starting point is that costs should follow the event. He seeks an order for indemnity costs on the ground that the Intended Respondents' conduct takes the case out of the norm. He makes the following arguments:

    17.1 The Intended Respondents resisted their Joinder on the ground of abuse. They made very serious allegations in their affidavit evidence, including allegations against officers of the Court, and the history of the proceedings was grossly misrepresented. Those allegations of abuse were all then completely abandoned in their skeleton argument, without any explanation.

    17.2 Those allegations generated considerable work and costs, both in preparing responsive evidence and in the preparation of this hearing.

    17.3 The Intended Respondents raised the prospect of a jurisdiction challenge in their evidence, which was also simply dropped in their skeleton argument.

    17.4 This hearing was never the right time or place for the Intended Respondents to make their arguments as to the merits of the non-party costs application. The correct course would have been for the Intended Respondents to consent to their joinder and argue the merits at the final hearing.

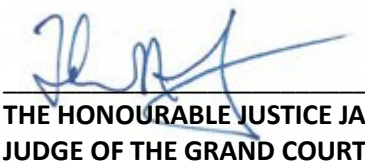
18. Basing his argument on ***Banks v Parsons***, Mr Patel submits that the appropriate order is costs in the substantive application. He points out that the summons seeks to cover all three aspects of the application for non-party costs, namely the application for leave to serve out, the application for joinder and the substantive application for a non-party costs order. Mr Patel argues that in those circumstances it would be more appropriate to deal with the costs issues of the whole summons together, after the determination of the application for a non-party costs order. If there are applications for specific costs orders within the overall costs, then they can be dealt with at that time. Mr Patel notes that Kawaley J's order on the first paragraph of the summons seeking leave to serve out was costs reserved.

19. Having heard submissions from Mr Collins and Mr Patel, my decision is that the Intended Respondents should pay the Petitioner's costs of this part of the summons, to be taxed on the indemnity basis if not agreed.

20. I consider that Mr Collins is right that the Intended Respondents should have consented to the joinder application and then raised their issues on the merits of the application at the substantive hearing. I do not accept Mr Collins' argument that the Intended Respondents' decision not to pursue their jurisdiction argument takes the matter outside the norm. Indeed, I am keen not to discourage attorneys from taking sensible views about what arguments should be raised and pursued, and making proper decisions not to pursue arguments that do not have merit and are going to take up time of the Court unnecessarily.

21. However, I am concerned about the Intended Respondents' conduct in raising serious allegations against officers of the Court, who appear before this Court on a regular basis, which were then abandoned without any explanation at all, and that the Petitioner has had to incur substantial time and costs in addressing these allegations, which has been completely wasted. I also consider it significant that the evidence, particularly from Mr Michael Pearson, is that the Intended Respondents have previously done the same thing. In my view, this does take this case outside the norm and justifies making an order for indemnity costs on the ground of unreasonable conduct on the part of the Intended Respondents.

Dated 4 March 2026



THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT