Neutral Citation Number: [2025] CIGC (FSD) 54

Cause No: FSD 2024-0335 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

BETWEEN:

JIE "IRENE" SHEN

Plaintiff

-and-

INSPIRE INC.

Defendant

Appearances:	**Mr Paul Smith and Ms Moesha Ritch of Forbes Hare for the Plaintiff** **Mr Jamie McGee of Nelsons for the intended Second Defendant**
Before:	**The Honourable Justice Jalil Asif KC**
Heard:	**9 May 2025**
Ex tempore judgment delivered:	**9 May 2025**
Finalised judgment approved:	**19 June 2025**

Practice and procedure—joinder of party—whether additional defendant to be joined to oppose letter of request issued by foreign court

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JUDGMENT

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1. This is an application by summons filed on 7 May 2025, two days ago, by Xiaohu Qie, also known as "Tiger", who wishes to be joined as a second defendant in the current proceedings. The proceedings concern a letter of request issued by the United States Superior Court of California, County of Santa Clara, in Case No. 21FL003738 by which the California court seeks assistance in obtaining discovery from the First Defendant, which is a company incorporated in the Cayman Islands. The California action concerns the divorce of the Plaintiff and Mr Qie, where Mr Qie is the Respondent, and the discovery sought is alleged to be relevant to the existence and value of Mr Qie's assets to be considered within the divorce proceedings.

2. The Plaintiff filed the originating summons in this matter on 13 November 2024. It was originally listed for hearing on 10 January 2025 but was adjourned by consent at the request of the First Defendant to be re-listed for the first available date after 28 March 2025.

3. On 6 March 2025, Mr Jamie McGee of Nelsons, who appears for Mr Qie, wrote to the Court indicating that his firm acts for Mr Qie and that Mr Qie wished to be joined to the originating summons proceedings as an interested party or to be given not less than 10 days' notice of any hearing and to be permitted to file evidence and submissions in opposition to the originating summons. It is clear that Mr Qie was aware by March 2025 of the existence of the originating summons proceedings. The Court's response the same day was that Mr Qie should make a formal application to be joined.

4. On 3 April 2025, the originating summons was re-listed for hearing on 9 May 2025. As Mr Qie had not been joined nor had he filed any application to be joined by that date, he was not served with the Notice of Hearing. Notwithstanding Mr McGee's letter of 6 March 2025, Mr Qie did not take any steps to file a summons to be joined until 7 May 2025, two days ago. Mr McGee informed me that he and Mr Qie only became aware that the originating summons was to be heard today as a result of seeing it included in the cause list for the week of 5 May 2025. This would usually have been

published on the preceding Friday, i.e. 2 May 2025. I infer that this is what prompted Mr Qie to file his summons on 7 May 2025.

5. Mr Qie's summons, as is obvious from the chronology, was issued very late in the course of the current proceedings before the Grand Court. The Plaintiff's application to the court in California was heard and determined on 25 July 2024. Mr Qie unsuccessfully opposed the Plaintiff's application. The court in California issued the letter of request on 7 October 2024. Mr Qie's application to be joined is thus made some 6 months after the originating summons was filed in the Grand Court, 7 months after the letter of request was issued by the court in California and 10 months after that court dismissed Mr Qie's objections and ruled in favour of the Plaintiff's application.

6. Mr Paul Smith of Forbes Hare, appearing for the Plaintiff, complains of the lateness of Mr Qie's summons and argues that there is no good explanation for Mr Qie's delay. However, once it became clear during the hearing that Mr McGee would not seek an adjournment of the hearing today if Mr Qie were to be joined, many of the aspects of prejudice to the Plaintiff that Mr Smith was intending to advance fell away. His position on Mr Qie's application essentially became neutral provided that the hearing of the originating summons does not need to be adjourned as a result of any joinder of Mr Qie. However, Mr Smith did argue that there is no merit in the substantive points that Mr Qie wishes to raise on the originating summons.

7. Mr McGee submits that Mr Qie should be joined as a defendant. Subject to a short adjournment of about 30 minutes to collect his thoughts, Mr McGee says he would be able to deal with the substantive originating summons this morning, so there would be no need for an adjournment to another day and no or minimal actual or potentially wasted costs resulting from an adjournment.

8. Mr McGee helpfully directs my attention to the terms of GCR O.15, r.6(2), of which subrule (a) is irrelevant for the purposes of today's hearing. Sub-rule (b) is as follows:

> *"(2) Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application —*
>
> *...*
>
> *(b) order any of the following persons to be added as a party, namely —*
>
> > *(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or*

> *(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between the person and that party as well as between the parties to the cause or matter."*

9. Looking first at GCR O.15, r.6(2)(b)(i), there is no suggestion by Mr McGee that Mr Qie *"ought to have been joined as a party"* when the originating summons was filed. However, Mr McGee argues that Mr Qie is someone *"whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon."*

10. In addition, Mr McGee relies on GCR O.15, r.6(2)(b)(ii) and submits that Mr Qie is a person between whom and the existing parties to the originating summons *"there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine.*"

11. Mr McGee says that Mr Qie's interest in these proceedings arises because he is, in essence, the only person with a direct personal interest in the scope of the documents sought to be disclosed by the First Defendant and the only person likely to put forward any opposition. The First Defendant has indicated that it is taking a neutral position on the provision of documents.

12. In support of his argument that I should order Mr Qie to be joined as a defendant, Mr McGee relies, in particular, on the judgment of Williams J in *Banks v Parsons* [2020] 1 CILR 560 at paragraph 21. Williams J said:

> *"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 stage at which we are in this matter. At this stage 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."*

13. In the course of argument, I raised with Mr McGee whether Williams J's statements that the threshold for joinder is relatively low, and that it is only in cases where it is plain and obvious that the application is abuse of process or is manifestly misconceived that the court should refuse to join an intended party, were limited to the situation of joinder of a person for the purpose of making a costs order

against them. In that situation, the application for joinder is made by an existing party and is likely to be opposed by the non-party, whereas this case does not involve costs and is a situation where the non-party wishes to be added to the existing proceedings.

14. Looking earlier in the judgment, it is clear that in paragraph 19 Williams J focussed on GCR O.15, r.6(2)(b) as providing the jurisdictional basis for joining a non-party. Paragraph 20 gives some limited support for Mr McGee's submission that Williams J was intending to express a view on the broader application of GCR O.15, r.6(2)(b) outside the specific context of joinder of a person for costs purposes.

15. I take the view that I do not need to reach a conclusion on the intended breadth of application of *Banks v Parsons*. However one looks at it, the threshold for joinder is clearly a low one. I simply need to be satisfied under GCR O.15, r.6(2)(b)(i) that Mr Qie's presence before the court is necessary so that all matters in dispute may be effectually and completely determined and adjudicated upon; or under GCR O.15, r.6(2)(b)(ii) that there may exist a question or issue arising out of or relating to or connected with the relief claimed which it would be just and convenient to determine.

16. In my judgment, it appears that GCR O.15, r.6(2)(b)(i) may impose a slightly higher threshold, as it is framed as *"necessary to ensure"*, whereas for (ii) the test is *"there may exist a question or issue"*.

17. Some of the issues that Mr McGee indicates that Mr Qie wishes to raise are points that have apparently already been ventilated and rejected by the court in California. Mr McGee suggested in the course of argument that whilst the Grand Court should have regard to what was decided by the judge in California when ruling upon the application for the letter of request to be issued, this Court nevertheless must exercise its own discretion whether to accede to the request for discovery communicated by the court in California to the Grand Court. In determining how the Court should exercise that discretion, the Court is not bound to accept the conclusions reached by the judge in California.

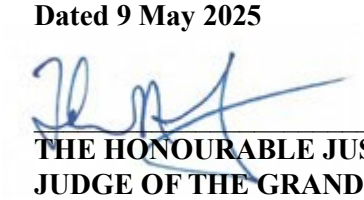
18. I agree with the proposition that Mr Qie is not necessarily precluded from arguing the same objections to discovery which he raised before the judge in California and which failed there. There is no

suggestion by Mr Smith that there is any form of estoppel or *res judicata* that would prevent Mr Qie from doing so.

19. I therefore reach the conclusion that in accordance with GCR O.15, r.6(2)(b)(ii) Mr Qie is someone for whom there may exist a question or issue arising out of or relating to or connected with the relief claimed which it would be just and convenient to determine. Accordingly, I order the joinder of Mr Qie as Second Defendant.

20. The parties agree that the appropriate order for costs is no order in light of the fact that the Plaintiff took an essentially neutral position once it was clear that there was no suggestion that the substantive hearing of the originating summons today should be adjourned. I agree that is the appropriate order.

Dated 9 May 2025



THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT