



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

**Neutral Citation Number: [2025] CIGC (FSD) 19**

**CAUSE NO. FSD 273 OF 2024 (IKJ)**

**IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)  
AND IN THE MATTER OF INTERNATIONAL AIRFINANCE CORPORATION**

**IN CHAMBERS**

**Before:** The Hon. Justice Kawaley

**Heard:** On the papers

**Draft Ruling  
circulated:** 21 February 2025

**Ruling delivered:** 11 March 2025

**Appearances:** Mourant Ozannes (Cayman) LLP for the Petitioner  
Ogier (Cayman) LLP for the 1<sup>st</sup> Respondent

*Summons for Directions-exchange of expert reports initially ordered on the application of 1<sup>st</sup> Respondent-whether sequential reports should be ordered- Financial Services Division Guide, 2<sup>nd</sup> edition, section B 5.5*

**RULING ON MODE OF SERVICE OF EXPERT REPORTS****Introductory**

1. It ought not to have been necessary for the Petitioner to issue his Summons dated 22 January 2025 seeking an Order that:

“1. *The parties shall exchange at a mutually agreeable time within 24 hours of the date of this Order, their client's respective expert witness reports pursuant to paragraph 12 of the directions order dated 10 October 2024 (the **Directions Order**).*

2. *The parties shall, by no later than 14 days after the exchange of expert witness reports, serve supplementary expert witness reports, if so advised, pursuant to paragraph 13 of the Directions Order.”*

3. On 10 October 2024 I made the following directions which were sought by the 1<sup>st</sup> Respondent over the objections of the Petitioner and a contested oral hearing on 17 September 2024 of the Summons for Directions:

“12. *The parties shall, by no later than 18 December 2024, each serve the report of the expert witness on whose evidence they intend to rely.*

13. *The parties shall, by no later than 8 January 2025, serve supplementary expert reports, if so advised.”*

4. My Ruling of the same date recorded the following decision:

“32. *... The Respondent proposed the following directions which I approve (subject to any modifications which may be agreed in light of matters which may only become apparent after the parties have had a chance to consider the present Ruling):*

(a) *no later than 5 weeks after responsive factual evidence is served, expert reports should be served; and*

(b) *supplementary reports (if any) should be served two weeks thereafter.”*

5. The 1<sup>st</sup> Respondent clearly proposed a simultaneous exchange of expert reports on the same date, as opposed to sequential exchanges, and the Order made accepted this proposal.

#### **Background to the application**

6. The scheduled exchange did not take place on 18 December 2024. Correspondence exhibited to the Affidavit in support of the 22 January 2025 Summons shows that:

- (a) on 18 December 2024 Mourant wrote to Ogier complaining that their client’s expert report could not be finalised until the 1<sup>st</sup> Respondent provided certain documents;
- (b) on Friday 17 January 2025 Mourant indicated they were ready to exchange expert reports at 4.30pm that day;
- (c) Ogier responded the same day saying they hoped to be able to respond on Monday 20 January 2025;
- (d) at 8.58 am on Monday 20 January 2025, Mourant sent a short chasing email;
- (e) at 12.30pm on 21 January 2025, Mourant sent a longer email complaining about the delay, requesting a response by 4pm that day and indicating they were instructed to apply to the Court for an order for exchange of reports forthwith;
- (f) at 8pm on 21 January 2025, Ogier said they were seeking instructions and hoped to be in a position to respond the following day.

7. There was seemingly no response before the Petitioner’s 22 January 2025 Summons was filed. Over a month after the deadline for exchanging reports had expired, the Petitioner had justified a delay on logistical grounds (attributed to the 1<sup>st</sup> Respondent) and sought to exchange as soon his report was prepared. The 1<sup>st</sup> Respondent had raised no objections of principle to the

proposed exchange nor given any indication that his report was not ready for the scheduled exchange over a month earlier.

### The conduct of the Summons

8. The Summons came to be determined on the papers in the following curious way:
- (a) the Petitioner requested that the Summons be dealt with on the papers. On the face of it this seemed sensible to save costs in circumstances where fixing a date for exchanging the reports ordered on the 1<sup>st</sup> Respondent's application seemed to be a mere formality;
  - (b) the Summons was forwarded to me on 29 January 2025. Just as I was about to inquire of counsel whether the request for a paper hearing was a joint one, Ogier advised they were seeking instructions. Ogier emailed the Court to advise:

*“We are still awaiting (and continuing to seek, with urgency) instructions from our client, and we will respond as soon as we receive instructions.*

*In the interim, we respectfully request that the Honourable Justice Kawaley not make any decision until we have our instructions.”*

- (c) seven days later, the promised response was not forthcoming and on 5 February 2025 I gave the following case management directions of the Court's own motion:

*“The Petitioner applied by Summons dated 22 January 2025 for a hearing on the papers for an Order fixing a fresh deadline for the exchange of expert evidence which was previously directed to be exchanged on 18 December 2024.*

*It is obvious that the Court in order to ensure the integrity of its processes must now fix a fresh date for the exchange of expert reports and that the only serious question is when. As the Respondent is at risk*

*for costs, a hearing on the papers would save costs and appear to be in his best interests.*

*Seven days ago, the Respondent's attorneys indicated they were seeking urgent instructions and invited the Court to postpone making any Order until they could advise their clients' position.*

*A reasonable time having elapsed for the Respondent to give instructions about the mode of disposal of the simplest of case management summons, the Judge now directs:*

- (1) the Summons shall be determined on the papers;*
- (2) the Respondent shall file any responsive evidence and/or short submissions within 7 days;*
- (3) the Petitioner shall, if so advised, file any evidence or short submissions in reply within three working days thereafter.”*

9. The Respondent did not file any evidence in response to the Summons within the prescribed time or insist on an oral hearing. Instead, each party’s lawyers wrote the Court a letter dated 12 February 2025, which were both forwarded to me on 17 February 2025:

- (a) Ogier’s letter was sent first. It responded generally to the Summons, taking issue with any suggestion that the 1<sup>st</sup> Respondent had delayed the process unduly but then making a surprising proposal, based primarily on the position on value adopted in the Petition dated 30 August 2024, that expert reports should be sequentially filed;
- (b) Mourant responded concisely that the Court should proceed to deal with the Summons as it was clear the 1<sup>st</sup> Respondent was unwilling to exchange reports.

10. The capacity of commercial litigants to advance genuinely surprising points helps, yet again, to explode any suggestion that commercial litigation is a dry and colourless legal domain.

Declining the opportunity to advance an evidence-based opposition to a seemingly simple timetabling application, the following dramatic change of course was proposed in a lawyer's letter:

- “6. *As to the exchange of expert reports, in its Ruling dated 10 October 2024, the Court made the following observation (see para [31]):*

*On reflection, it is easy to see why the Petitioner would be somewhat diffident about grappling with valuation now. If he is buying, his commercial interests favour a low price. From open correspondence, it appears that the Petitioner's opening offer envisages he would be the buyer.*

7. *It was not just in his letter before action that the Petitioner posited a USD 17,000,000 valuation for the sale or purchase of the shares in the Company. By the relief sought in paragraph 12 to the prayer to the Petition, the Petitioner pleaded as follows:*

*In the alternative, the Petitioner humbly requests the Court to exercise its jurisdiction to make the following orders pursuant to section 95(3) of the Companies Act:*

- (a) an order requiring Mr Alaoui to purchase the shares held by the Petitioner in the Company at a price of US\$17,000,000; or alternatively*
- (b) an order requiring Mr Alaoui to sell the shares held by him to the Petitioner at a price of US\$17,000,000.*

8. *This price was presented as a non-negotiable to the First Respondent in the Petitioner's letter before action, and none of the Petitioner's subsequent letters indicated any willingness to revise or negotiate the offer. Furthermore, the Petitioner has repeatedly asserted the fairness of his offer to the Respondent on 22 July 2024, 24 July 2024, 7 November 2024, and 22 November 2024. In his letter of 22 November 2024, addressed directly to the Respondent, the Petitioner stated:*

*My offer was extremely fair because, if you consider my sale price to be too high, you had the opportunity to sell your shares to me at the same price.*

9. *In light of the above, the stance adopted by the Petitioner in respect of the Summons presently before the Court suggests that either:*
- (a) *The Petitioner simply intends to provide evidence in support of its valuation of the Company at USD 17 million as pleaded in the relief to its Petition; or*
  - (b) *The Petitioner, having commenced these proceedings on the basis of a clear and unequivocal valuation price of USD 17 million, now seeks to change its position, to the detriment and prejudice of the First Respondent in the event that, contrary to the First Respondent's position, the Court finds that the grounds for a just and equitable winding up have been made out and makes an order that the First Respondent buy the Petitioner's shareholding.*
10. *Whilst the First Respondent welcomes any direction that seeks to clarify and explain the basis of the valuation at USD 17 million, as pleaded in the Petition, he considers it appropriate, and indeed necessary, for the process by which the valuation is determined to be one which safeguards against the very real concerns, held by the First Respondent, that the Petitioner is putting himself in a position to significantly move the goalposts in these proceedings. This would plainly have a prejudicial effect on our client which has heretofore been litigating these proceedings on the basis of the clear and unambiguous relief prayed for in the Petition.*
11. *On that basis, the First Respondent no longer considers the directions proposed by the Petitioner to be appropriate. The Petitioner initiated these proceedings, and in the course of doing so has taken a number of steps which have severely disrupted the management and running of the Company, including (i) abruptly resigning as director of the Company without any notice, (ii) with the assistance of the Company's former CEO, engaging with investors with a view to seizing control of the Company (as detailed in the First Respondent's affidavit at [223 to 228], and (iii) various other disruptive actions. Each of the above has resulted in significant operational disorder which has required urgent intervention as described in both pleadings and evidence.*

12. *In these circumstances, it is incumbent upon the Petitioner to plainly and transparently inform the First Respondent whether he intends to maintain the position adopted in his pleadings or, as is feared, is preparing to substantially change that position.*
13. *Accordingly, the First Respondent now considers that the provision of sequential expert reports is far more appropriate in the circumstances.*
14. *In the event that the Petitioner files expert evidence which departs from its pleaded position, and without prejudice to any consequential applications that may follow, the First Respondent would then be afforded a right to file a responsive expert witness report (if so advised). Following this sequential exchange, the respective experts could meet in the usual way to see if the areas of disagreement (if any) can be narrowed.*
15. *This approach is in keeping with the overriding objective as it would have the potential to reduce the costs and delay in these proceedings by, for example, removing the need of the parties to file supplemental expert witness reports (as currently provided for in paragraph 13 of the 10 October 2024 Directions Order).*
16. *On that basis, it is therefore humbly requested that the Court direct that: Paragraph 13 of the 10 October 2024 Directions Order be varied to provide that the First Respondent shall, by no later than 28 days after the service of the Petitioner's expert witness's report, serve a responsive expert witness report, if so advised."*

11. The change of course proposed is surprising for the following reasons:

- (a) it is based on matters the 1<sup>st</sup> Respondent was aware of when he proposed mutual exchange at the hearing of the Summons for Directions (the Petition and proposals made by the Petitioner before the Petition was filed) of when he proposed mutual exchange at the 17 September 2024 hearing, five months ago;
- (b) the speculation that the Petitioner may seek to rely on a value different to that which he has previously asserted is mere speculation, and can be dealt with appropriately if the need arises;

- (c) the only obvious consequence of sequential filing is to add further delay to the original timetable for no clearly defined corresponding procedural benefit;
- (d) the 1<sup>st</sup> Respondent offers no explanation, let alone apology, for his own unexplained delay in instructing his attorneys to deal with the issue of exchanging reports in an appropriately prompt manner over the 4 weeks since the Petitioner indicated he was ready for an exchange of reports;
- (e) this is not the first, or even second occasion on which the 1<sup>st</sup> Respondent has sought to undermine an Order of the Court. The approach adopted here may be more passive than aggressive, but it clearly demonstrates a clear indifference to the need to conform to accepted standards of litigation conduct. This is also surprising because it is wholly at odds with the merits of the 1<sup>st</sup> Respondent's case that, contrary to my provisional view that a *prima facie* case for winding-up was disclosed on the documents, a full trial of the case for winding-up is required. If this issue was being seriously contested, the 1<sup>st</sup> Respondent ought logically to have been attempting to burnish (rather than burn) his credentials as the consummate "reasonable man". I was forced to say something very similar in a Case Management Ruling dated 9 December 2024, which was circulated to counsel on or about that date but which (due to an oversight) was not finalised until I began to prepare the present Ruling and sought to refer to it.

12. By a Summons dated 4 December 2024, the 1<sup>st</sup> Respondent sought relief which prompted the following remarks:

*"10. This Summons is breath-taking for how blatantly it seeks to ride a coach and horses through the letter and spirit of the case management principles set out in the 10 October 2024 Ruling under the guise of responding to the direction as to whether or not grounds for winding-up ought not to be summarily decided in favour of the Petitioner. It is aggravated by the fact this is the second occasion on which an attempt has been made by the Respondent to invite the Court to reconsider a matter it has just decided against him. Paragraphs 34-55 of the 10 October 2024 Ruling gives reasons for rejecting the Respondent's application for a direction that the Petition should not be placed on the public file. I was*

*required to decide summarily a further informal confidentiality application seeking to prevent that Ruling from being publicised.*

...

13. *However if he wishes to portray himself as a paragon of corporate virtue, the Respondent should be mindful of the apparent logical inconsistency between such a characterisation and the way in which he advances his case before the Court...*
14. *Unreasonable litigants often obscure the merits of their case. In the post-Covid-19 era, I have observed a distinct uptick in the number of litigants who seem motivated to reducing judicial utterances to incoherent babblings of outrage. In reality, of course, such is unlikely to be the real motivation for what litigants are likely convinced is appropriate conduct. It may simply be that more litigants feel more passionately about their cases, and litigants who litigate with undue passivity may risk ending up in the unemployment line. If notions of normality have shifted in the commercial world, however, it is surely the function of the Court to adhere, so far as is reasonably possible (and comprehensible to lay litigants), to traditional standards of substantive and procedural law.*
15. *The present Summons is not just abusive in seeking a split-trial in circumstances where a single one is more consistent with both parties' legitimate commercial interests and rational case management. Around the edges it bears the marks of 'over-litigating'.*

13. I did not dismiss that Summons altogether and it might be said in hindsight that I was overly lenient in merely awarding costs against the 1<sup>st</sup> Respondent to be taxed if not agreed on the standard basis.
14. Although the way the present application should be resolved seems obvious, I have satisfied myself that principled legal support justifies my instinctive sense of where the merits lie.
15. The Financial Services Division Guide ("FSD Guide") Second Edition deals with service of expert reports as follows:

***“B5.5 Exchange of reports***

*In appropriate cases the Court may direct that experts' reports be exchanged sequentially rather than simultaneously. The sequential exchange of expert reports may in some cases save time and costs by helping to focus the contents of responsive reports upon true rather than assumed issues of expert evidence and by avoiding repetition of detailed factual material as to which there is no real issue. Sequential exchange is likely to be particularly effective where experts are giving evidence of foreign law or are forensic accountants. This is an issue that the Court will normally wish to consider at a case management conference.”*

16. The norm (according to the FSD Guide) is the simultaneous exchange of reports, but sequential reports can be ordered for good cause, following a proper hearing to explore the issue, the FSD Guide suggests. Here, the case management hearing took place on 17 September and the 1<sup>st</sup> Respondent proposed the usual rather than the exceptional course. I agreed and made an Order accordingly. No material change of circumstances has occurred since. All that has happened is that the 1<sup>st</sup> Respondent has sought to undermine provisions of an Order he asked the Court to make. It is not seriously arguable that expert valuation evidence falls into a category of case where it is recognised that sequential service would be helpful.
17. Even in the case of fair value proceedings under section 238 of the Companies Act (2023 Revision), where the dissenter bears the burden of proving a value higher than the fair value offer made by the company, mutual exchange is the norm. The implicit assumption in that arena appears to be that valuing a company is a ‘neutral’ exercise, to be distinguished from forensic evidence in relation to wrongdoing, foreign law evidence in support of a legal claim or cases where the issues to be addressed by the respective experts are unclear.
18. Persuasive judicial support for the principles found in section B.5,5 of the FSD Guide can be found in the English Commercial Court decision in *Travelport Limited and Ors-v-Wex Inc.* [2020] EWHC 1960 (Comm) where Cockerill J held:

“29. ... *I do not think that this is a case for sequential experts' reports. It is not the normal kind of case in which one would order sequential experts. Accountancy and foreign law is the other area where we normally order sequential. One might order sequential in a case where the issues are not quite clear, but this is not that case either.*”

19. The 1<sup>st</sup> Respondent's approach to the exchange of expert evidence was unreasonable.

**Disposition**

20. I accordingly grant the following Order sought by the Petitioner on his 22 January 2025 Summons:

- “1. *The parties shall exchange at a mutually agreeable time within 24 hours of the date of this Order, their clients' respective expert witness reports pursuant to paragraph 12 of the directions order dated 10 October 2024 (the **Directions Order**).*
2. *The parties shall no later than 14 days after the exchange of expert witness reports, serve supplementary expert witness reports, if so advised, pursuant to paragraph 13 of the Directions Order.”*

21. Unless either party applies by letter to the Court to be heard as to costs within 14 days of the date of delivery of the present Ruling, the 1<sup>st</sup> Respondent shall pay the Petitioner's costs of the present Summons to be taxed if not agreed on the indemnity basis and payable forthwith.



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**THE HONOURABLE MR JUSTICE IAN RC KAWALEY**  
**JUDGE OF THE GRAND COURT**