IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. G 154 OF 2001

BETWEEN:

AX

(Suing by his Guardian ad Litem Tabitha Philander)

Plaintiff

-and-

(1) A
(2) B
(3) C

Defendants

Appearances:

Mr Robert Lindley, Conyers Dill & Pearman, for the Guardian ad litem

Mr James Chapman, counsel for a noticed party (asserting the right to represent the Plaintiff)

Ms Clare Allen for the Solicitor General.

Mr James Kennedy, KSG Attorneys, in attendance

Before: The Hon. Justice Kawaley

Heard: In Chambers

Date of Decision: 27 June 2023

Draft Reasons circulated: 29 June 2023

Reasons Delivered: 7 July 2023

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Application to discharge Guardian ad litem first appointed in 2015 on an interim basis pending the appointment of a professional trustee to manage substantial damages award-history of chronic procedural delay-refusal of application by Plaintiff to postpone granting of discharge order- no identifiable grounds for postponing making of order-abuse of process-importance of the Overriding Objective-Grand Court Rules Order 80 rule 32

REASONS FOR DECISION

Background

1. The Plaintiff suffered serious injuries in a boating accident in 1998 when he was 12 years old and commenced proceedings against the Defendants for damages for personal injuries caused by the Defendants' negligence as a minor in 2001. For most of the period since he attained his majority, the present proceedings have been conducted on the Plaintiff's behalf by various Guardians *ad litem*. The first was appointed under section 14 of the Grand Court Law on 3 October 2006 by Henderson J. Judgment was entered against the Defendants for damages to be assessed by Smellie CJ on 10 July 2023.

2. The present Guardian was first appointed by Order of Quin J dated 4 May 2015 for the primary purposes of (a) giving instructions to progress the case to settlement or trial and (b) assisting the parties in the post-settlement/judgment phase "*in the short term*". She was at that time the Clerk of the Court. The Solicitor General was unable to act for conflict of interest reasons. Her appointment continued after she demitted office as Clerk to the Court because of difficulties in appointing a professional trustee to manage the award, which the Plaintiff lacked competence to manage himself, pursuant to Justice Swift's 29 July 2016 Judgment on quantum.

3. Final Judgment was entered in favour of the Plaintiff in the amount of CI$6,760, 355.00 in an Order made by Justice Malcolm Swift (Acting) dated 9 June 2017. In his supplementary Judgment of the

same date, he expressed concern that outstanding issues had not been resolved in a timely manner and made reference to the Overriding Objective. The subsequent course of the proceedings which had the primary purpose of transferring the Plaintiff's damages award (the "Fund") to a professional trustee so that his financial and medical needs could be justly met have been an embarrassment to modern notions of civil justice. The lack of momentum is undoubtedly partly attributable to an absence of vigorous judicial case management; this matter has passed through far too many judicial hands. But the lack of momentum is substantially due to a failure of the parties to effectively discharge their duty to assist the Court to achieve the Overriding Objective.

4. The Court is best equipped to manage how proceedings before it are conducted, but depends heavily on the parties when it comes to the extra-judicial implementation of Court orders. Most pivotally, the present legal context (managing a substantial damages award for the benefit of a partially incapacitated personal injuries claimant) cried out for a conciliatory approach. The mission of this phase of the proceedings ought to have been clear and simple: to expedite the discharge of the Guardian and place the funds for long-term investment and management in the hand of a professional trustee with minimum delay and minimum expense. Instead, this substantially concluded proceeding has spawned a forest fire of satellite litigation through the deployment of a scorched earth approach by counsel purporting to act in the Plaintiff's best interests.

5. By Order dated 23 October 2019, filed on 3 February 2020, I approved the Guardian's final accounts and discharged her with effect from the date that a Deed of Settlement was executed and the funds were transferred to the proposed Trustee. That Deed of Settlement was never executed and it now appears to be common ground that the proposed Trustee was not a suitable one. Chapmans filed a Notice of Change of Attorney on 5 August 2020, purporting to replace the Guardian's attorneys, but Margaret Ramsay-Hale J (as she then was) by Order dated 4 September 2020 ordered that that Notice be removed from the file and directed instead that the Plaintiff could "*receive independent legal advice*". This Order both confirmed that the Guardian retained the sole authority to give instructions in relation to the Plaintiff's interests in the present proceedings and also acknowledged that the Plaintiff retained the competence to obtain independent legal advice in relation to his position. Nonetheless, it is impossible to conceive of why (against the history of the proceedings since 2016 when this Court determined that the Fund should for the Plaintiff's own protection be managed by a professional trustee) the simple objective and sole focus for the Plaintiff ought not to have been to complete the process of replacing the Guardian with a professional trustee.

6. Instead, the following pieces of satellite litigation were commenced in 2021, all by Chapmans:

   (a) G 160 of 2021, Plaintiff's Notice of Originating Motion seeking, *inter alia*, declarations as to the validity of the Guardian's appointment and its scope (29 July 2021);

   (b) G 167 of 2021, Plaintiff's mother's Writ against the Guardian seeking historic costs for care and assistance out of the Fund (5 August 2021); and

   (c) G 175 of 2021, Plaintiff's father's Writ against the Guardian, seeking historic costs for care and assistance out of the Fund (5 August 2021).

7. Each of these proceedings were inherently likely to (if not designed to) delay the proper conclusion of the Guardian's tenure and the professional investment and management of the damages award and, more importantly, diminish the Plaintiff's Fund by increasing the costs burden upon it. That there may have been in abstract conceptual terms some legal merit to each proceeding is a matter of largely academic concern. Prayers for Orders that the Guardian not be reimbursed for defending the proceedings out of the Fund were more symbolic than real. They would only 'bite' if the Guardian was shown at the end of the day to have acted improperly. Viewed in a straightforward way, the various proceedings launched against the Guardian seemed to have had the consequence aggravating rather than remediating the problem of the need for the Fund to be placed under long-term professional management. An illustration of an overly aggressive and rash litigious approach can be extracted from the beginning of both G167 and G175 of 2021. A Default Judgment was obtained 1 September 2021 in each matter after apparently invalidly serving the Guardian's attorneys, compelling the Guardian to apply to set aside the Default Judgment and the plaintiffs to apply for leave to serve out. On the hearing of the cross-Summonses, Smellie CJ stayed the actions on 29 October 2021 directing the parties to attempt to agree the sums that were due, having clear regard for the Overriding Objective and the need to avoid the Fund being depleted through unnecessary litigation costs.

8. These attempts at judicial case management did not bear fruit; instead 2022 yielded another bumper crop of satellite litigation initiated by Chapmans, including the following originating and interlocutory applications:

(a) In G 167 of 2021, a Summons was filed seeking judgment in favour of the Plaintiff's mother in the amount of CI$102,964.65;

(b) G 91 of 2022, was commenced by a Specially Indorsed Writ on 21 April 2022 against the Guardian and her attorneys. The Guardian was required to hire a fresh set of attorneys while her former attorneys represented themselves. Beguilingly, Orders were again sought that the Fund should not bear the defence costs. Defences were filed in or about August 2022. By letter dated 16 August 2022, Conyers on behalf of the Guardian queried the authority of Chapmans to bring the "Breach of Duty" proceedings without a next friend. Whether such authority exists was argued on 27 June 2023 in that action and judgment was reserved;

(c) in the present proceedings, by Summons dated 9 May 2022 filed on behalf of the Plaintiff (styled as Intervenor) applied to set aside the 4 May 2015 Order of Quin J appointing the Guardian on 9 separate grounds. Ms Kim Grandage in a responsive Affidavit averred: "*I reiterate that the guardian ad litem and my firm…wish to bring our involvement in this long and difficult case to a conclusion. We have persevered in order to protect the Plaintiff's best interests but ask that this is resolved urgently. The work created by the Plaintiff and Chapmans by the extent of correspondence sent (often threatening and abusive) and numerous Writs and summons filed is extensive*" (13 May 2022, paragraph 49);

(d) in G 167 of 2021, a Summons dated May 13, 2022, was filed on behalf of the Plaintiff's mother seeking discovery and seeking an order that Smellie CJ recuse himself from hearing this matter or any other matter concerning the Guardian. That Summons was heard on 23 May 2022 with Smellie CJ dealing with the recusal application and refusing it by Order dated 24 May 2022 filed on 3 October 2022. In Reasons delivered on 7 October 2022, Smellie CJ expressed strongly worded concerns about Mr Chapman's role in relation to the Plaintiff's affairs which he considered was in conflict with the guardianship position, describing counsel's involvement as "*very hostile and litigious*". He also observed that "*the current state of paralysis afflicting Ms Philander's attempts to transfer* [AX]*'s fund to a professional trustee must not be allowed to continue. It is in* [AX]*'s best interests*

that the transfer be effected as soon as possible" (paragraph 44). These strident concerns were reiterated in Smellie CJ's Ruling of 31 March 2023 (see below);

(e) in G 225 of 2022, on 11 October 2022 a Writ was issued by the Plaintiff against his father seeking possession of certain property. A Default Judgment was entered on 30 November 2022. Directions were ordered by Carter J on 13 April 2023 in relation to an application to set aside, which remains pending;

(f) on 3 November 2022 in G175 of 2021, Chapman's came off the record as attorneys for the Plaintiff's father having issued proceedings against him in G 225 of 2022;

(g) in G 167 of 2021, a Summons dated 4 November 2022 sought leave to appeal against the recusal refusal decision;

(h) in G 91 of 2022, a Summons for Directions was filed on behalf of the Plaintiff on 6 November 2022, again seeking specific discovery. This Summons was assigned to me on a freestanding basis affording me no visibility of the wider procedural picture described above. I was wholly unaware of Smellie CJ's Judgment dated 7 October 2022. I accordingly, gave routine directions for the hearing of the Plaintiff's Summons. I somewhat naively accepted at face value Mr Chapman's complaints that the Listing Office was failing to promptly list his applications, unaware that the Office's natural 'gag reflex' had likely been triggered by a torrent of filings it was difficult to manage in an effective way.

9. Conyers for the Guardian having foreshadowed an application for summary judgment in G91 of 2022 on or about 21 March 2023, with a view to achieving a summary disposition of the present action I made a Case Management Order of the Court's own motion herein on 24 March 2023 designed to expedite the Guardian's discharge. My 24 March 2023 Reasons for that Case Management Order provided in salient part as follows[1]:

[1] Paragraph 9 hereof was amended to refer to the Reasons for the Case Management Order after a draft of this Judgment was circulated for editorial comments. This relevant part of the background was omitted from the initial draft in error.

"*1. It is a matter of record herein that the Plaintiff was 12 on 13 April 1998 when he unfortunately suffered serious injuries which resulted in a substantial award of damages herein on 9 June 2017 (Swift J). The award included a six figure amount for a professional trustee to manage the award on the grounds that the Plaintiff lacked capacity to manage his own affairs. Then Clerk of the Court*
Tabitha Philander (the 'Guardian') was appointed Guardian ad Litem and Receiver for the Plaintiff by Quin J on 4 May 2015 although the subsequent Swift J judgment implicitly contemplated her replacement by a professional trustee because he explicitly found that 'the plaintiff's family members are not equipped to perform the role.'

2. It is also a matter of record that in January 2017, the Guardian demitted office as Clerk of the Court but agreed to continue in her private capacity. By 2019 she was even resident in the Cayman Islands, and sought her discharge on the basis that the trustee professional trustee contemplated by the Swift J Judgment would replace her role in relation to management of the Plaintiff's damages fund. On 23 October 2019, I granted her discharge conditional upon the execution of an agreement relating to the appointment of a professional trustee. The file was not reserved to me and so I had no involvement in subsequent applications. However, one separate action was assigned to me, namely G 91/2022, [AX]-*v- Tabitha Philander and KSG Attorneys which seeks Orders that, inter alia, the damages fund be paid over to the Plaintiff's trustee of his choice. An application under GCR Order 14 by the Guardian is due to be heard later this year as a result of directions ordered by consent on 22 March 2023.*

3. In preparing for that hearing and reflecting on the oddness of a claim purportedly being brought by a person declared by this Court to lack capacity to manage his own affairs against his own Guardian, I reviewed the file in this matter in an attempt to make sense of why my Order of 23 October 2019 had not yet been implemented. The picture was far from clear, however, in a 7 October 2022 recusal Judgment in G 167/2021, Sir Anthony Smellie CJ, in addition to expressing strong concerns (without making any findings) about the impropriety of Mr Chapman purporting to act as the Plaintiff's receiver and lawyer, recorded the following findings about the failure to consummate the discharge I ordered in 2019:

'23. This order has not, however, been implemented because of a stay application filed by Mr Chapman purportedly on [AX]*'s behalf…and which has not been adjudicated because of a failure to bring it to trial…*

44. I also feel compelled to add that the current state of paralysis afflicting Ms Philander's attempts to transfer [AX]*'s fund to a professional trustee must not be allowed to continue….'*

4. Against this background, on 22 March 2023 I invited comments within an admittedly tight 2 day window, from counsel involved in G91/2022, on a Case Management Order I proposed to make in
the following terms:

'This Court of its own motion pursuant to paragraph 4.3 of the Preamble to the Grand Court Rules and GCR Order 80 rule 18 doth hereby ORDER as follows:

1. The Solicitor General is hereby directed to apply for the discharge of Ms Tabitha Philander as interim receiver and Guardian ad Litem of the Plaintiff by 31st May 2023.""

10. Thereafter all matters related to the present action were assigned to me and I directed that all matters should be mentioned on 27 June 2023, with the issue of Chapman's standing to bring proceedings on behalf of the Plaintiff being dealt with substantively. On 31 March 2023, Smellie J refused leave to appeal against his recusal decision. He observed, *inter alia*:

"*14. I was informed at the May 2022 hearing leading to the Order, by Mr Kennedy on behalf of the Defendant, that ongoing delay in the handing over of the Fund to a professional trustee to be managed for* [AX]*'s benefit is the result of the action threatened by Mr Chapman. This includes an application filed by him for an injunction preventing her from doing so pending the action which he threatens. This all despite an order made by Justice Kawaley, as long ago as in October 2019, permitting her to do so.*"

The Guardian's 31 May 2023 Discharge Summons

Preliminary

11. Against the above background, the Guardian's 31 May 2023 Summons was heard on 27 June 2023 when I granted the relief sought. These are the reasons for that decision.

12. The application came to be decided substantively on the first return date in the following way. The Guardian's attorneys by email to the Court on 1 June 2023 requested a substantive hearing of the application alongside the issue of Chapmans' authority to issue the G 91 of 2022 proceedings. I instructed my Personal Assistant to ensure that Mr Chapman was given an opportunity to respond to this request and to call his office to ensure that he was receiving emails. Having confirmed that he was receiving emails, he responded to the Court over the weekend, on 5 June 2023 the following direction was communicated to counsel:

> "*(a) the Summons should be listed in the first instance for 27 June 2023;*
>
> *(b) notice of the application should be given to Chapmans;*
>
> (d) *if Chapmans do not propose to oppose the application, it can be dealt with on the papers in advance of the assigned hearing date.*"

13. This direction clearly signified that the Court considered the application could be dealt with administratively unless notice was given of opposition before the 27 June hearing. On or about 7 June 2023, Conyers emailed the Court to confirm that formal notice had been given to Chapmans and to indicate that would advise the Court of any response they received from Chapmans. I received no indication of any opposition by the time the hearing commenced at 10.00am on Tuesday 27 June 2023, but did not consider dealing with the application administratively as a related hearing was scheduled in any event.

14. In moving an oral adjournment application, Mr Chapman indicated that on Friday 23 June 2023, he had filed a Summons relating to the Discharge Summons. That Summons was not (seemingly) accompanied by any covering letter requesting that it be brought to my attention in time for the 27 June 2023 hearing. I discovered the Summons on my desk after I had already refused Mr Chapman's adjournment application and granted the Order the Guardian sought. It was in brief yet another device for delay.

The Application

15. The Guardian's Fifth Affidavit dealt with three important matters. Firstly, the need for long-term professional management of the Fund:

> "*13. It is my view that a professional trustee would be best-placed to determine the appropriate manner in which to invest the Award so as to provide for the Plaintiff's long-term future. It has already been determined by the Court in these proceedings that the Plaintiff lacked the capacity to manage his legal and economic affairs and that such situation was likely to ensure indefinitely. I am not aware of any order which overturns the Court's determination as to the Plaintiff's capacity to manage the Award.*"

16. Secondly, Suntera (Cayman) Limited's consent to act was exhibited. The main contact is a former Cayman National Trust Co. Ltd, employer, Ms Angela Williams-Myer, whom the Plaintiff's mother had previously expressed a desire to work with. As I observed in the course of argument, Ms Williams-Myers was a witness who impressed me in a recent trust trial (*In the Matter of the Poulton Family Trust*, FSD 121 of 2016 (IKJ), Judgment dated 18 February 2022 (unreported)). I felt comfortable in viewing her as a safe pair of hands.

17. Thirdly as regards the proposed Declaration of Trust which was exhibited together with a Fee Schedule and proposed Indemnities:

    (a) the proposed Trust had unremarkable terms. The Plaintiff is to be the sole beneficiary and will receive a monthly stipend to be reviewed from time to time. This will without prejudice to their ability to make additional advances for irregular expenses;

    (b) the Trustee will only be required to consult with any duly appointed legal guardian or professional case managers where the beneficiary is incapacitated and shall have a right to consult with family members. These express provisions in no way modify the general trust practice whereby trustees will consult with beneficiaries generally to ascertain their interests when they possess capacity;

(c) the Fee Schedule indicates that annual management fees will not be based on hourly rates but rather on a percentage scale based on the value of assets (ranging from 0.50% to 0.15% with a minimum annual fee of US5, 500.00. However, hourly rates will clearly apply when professional work is required. As there is no suggestion that the Trustee is to be involved in managing the Plaintiff's life, once standard financial needs are met and addressed through the monthly stipend, the need for "billable time" should be appropriately controlled;

(d) the proposed indemnities (typically given by successor trustees) will only indemnify the Guardian against liability for costs she would be entitled to recover out of the Fund in any event. It will not extend to any costs relating to unsuccessfully defending the Breach of Duty Claims (i.e. if she is found guilty of fraud, negligence or misconduct), as she makes clear in paragraph 26 of her Fifth Affidavit.

18. The proposed Order read so far as is material as follows:

"*1. Tabitha Philander is discharged as Guardian ad Litem and interim receiver for the Plaintiff following the approval of her final accounts by the Court within one month of the date of this Order.*

*2. Tabitha Philander will effect the appointment of Suntera (Cayman) Limited ("**Suntera**") as trustee for the trust which is proposed to be established to hold funds for the sole benefit of the Plaintiff (the "**Award**") pursuant to the terms and provisions of the draft Declaration of Trust in the form (or substantially similar to the form) exhibited to the Fifth Affidavit of Tabitha Philander.*

3. If the appointment of the proposed trustee referred to at paragraph 2 of this Order is not effected within one month of the date of this Order, the Solicitor General shall make an application to be appointed as Guardian ad Litem and Receiver for the Plaintiff.

4. All fees and expenses of Tabitha Philander are approved and to be paid from the Award on the indemnity basis and Tabitha Philander is to file her final accounts in

relation to the Award for the Court's approval within one month from the date of the Order.

5. *The Court approves the proposed indemnity arrangements between Suntera and Tabitha Philander as exhibited to the Fifth Affidavit of Tabitha Philander*."

19. Ms Allen for the Solicitor General did not positively object to paragraph 3 of the Order, but informed the Court that if that clause were triggered, it would be likely that the Solicitor General would appear in short order to seek to be replaced by a professional trustee. My provisional view is that if the Solicitor General is the appropriate public official to serve as the default guardian *ad litem*, her office ought not to be able to escape discharging such functions on conflict of interest grounds, even if the Solicitor and certain individual lawyers might be conflicted. This question does not arise for present determination and, hopefully, will not arise in the present case.

20. The merits of the application essentially spoke for themselves. No positive opposition was advanced. I was accordingly satisfied that it was appropriate to grant an Order substantially in terms of the draft Order. The most valid concerns articulated by Mr Chapman related to the need to avoid any suggestion that the effect of discharge was to extinguish pending claims against the Guardian. Although I had pronounced my decision, I considered it necessary to consider some refinement to paragraph 4 which, subject to hearing counsel, I on 29 June 2023 I indicated I was minded to re-word as follows:

"4. *Tabitha Philander is to file her final accounts in relation to the Award for the Court's approval within one month from the date of the Order. All fees and expenses of Tabitha Philander are approved and to be paid from the Award on the indemnity basis:*

(a) subject to the approval of the said accounts by the Court; and

(b) without prejudice to any future determination by this Court in any pending proceedings against the Guardian that she is not entitled to be indemnified out of Award for the costs of defending such proceedings."

21. GCR Order 80 rule 32 (1) provides:

"***Removal of guardian (O.80, r.32)***

> *32. (1) A guardian may apply to the Court for the guardian's own removal on the ground that —*
> *(a) the guardian desires to resign; or*
> *(b) the patient has recovered, is of sound mind and no longer suffering from mental illness, provided that an order shall not be made under subparagraph (a) of this rule unless and until the Court is able to appoint a successor.*" [Emphasis added]

22. In this case the Guardian (now a former Clerk of the Court living abroad) was appointed with the expressly narrow and short term mandate set out in paragraph 2 of Quin J's 4 May 2015 Order as follows:

> "*a) To provide instructions in the case to move forward to either settlement or trial.*
>
> *b) To assist the parties in the post settlement/judgment phase, concluding matters and dealing with the costs issues and holding and release of funds in the short term.*
>
> *c) To assist with handing over the case to any firm of occupational therapists/life care planning firm instructed by the plaintiff's Attorneys."* [Emphasis added]

23. There was in my judgment a complete alignment between the interests of the Plaintiff in having the Fund managed on a long-term basis by a professional trustee and the interests of the Guardian in desiring to be discharged from an appointment which she has been forced to hold onto for far too long. A successor had finally been found, and the Order discharging the Guardian would only take effect when the proposed Trustee (or the Solicitor General in default) was appointed.

The adjournment application

24. The Guardian's Discharge Summons was served on the Plaintiff's attorney three weeks before the date when it was heard. The Court directed that the application could be dealt with administratively before the 27 June 2023 hearing if Chapmans did not signify any opposition. They did not signify any opposition prior to the hearing. At the hearing Mr Chapman did not advance any positive ground of opposition to the merits of the application. Instead, he asked for an adjournment complaining that he had not had an opportunity to consult with the proposed Trustee, although no formal adjournment application was before the Court. Bearing in mind the disgraceful history of delay in the present proceedings, the consistent role Mr Chapman has played in facilitating this

delay and the fulsome notice I made sure he was given of the present application, the suggestion that he had been "ambushed" was hollow rhetoric indeed[2].

25. No tangible need to consult with the proposed Trustee was articulated, other than a vague suggestion that it needed to be clarified that the Trustee would not be seeking to manage the Plaintiff's general affairs. The draft Trust Deed was sufficient to dispel any such concerns. Mr Lindley also confirmed to my satisfaction that:

(a) the timeline of one month for the succession to occur was sufficient to allow the desired consultation to take place; and

(b) there was no basis for Mr Chapman's supposed concern that the discharge would deprive the claimants in existing proceedings against the Guardian of the ability to continue them hereafter. (The same principle would obviously apply to the claim against KSG).

26. I had little difficulty in refusing the application for an adjournment as it seemed to me to be a very obvious abuse of the process of the Court to make it in all the circumstances of the present case. The Overriding Objective in the Preamble to this Court's Rules provides in salient part as follows:

"***1. The Overriding objective***

1.1 The overriding objective of these Rules is to enable the Court to deal with every cause or matter in a just, expeditious and economical way.

1.2 Dealing with a cause or matter justly includes, as far as is practicable —
(a) ensuring that the substantive law is rendered effective and that it is carried out;
(b) ensuring that the normal advancement of the proceeding is facilitated rather than delayed;
(c) saving expense;

[2] It was fair for Mr Chapman to point out in correspondence with the Court after the hearing that I had myself signified in correspondence on 7 June 2023 that the Guardian's application was listed for mention. I did not regard that as precluding the Court from granting the Discharge order on 27 June 2023 in the absence of arguable grounds of opposition.

(d) dealing with the cause or matter in ways which are proportionate

(i) to the amount of money involved;

(ii) to the importance of the case; and

(iii) to the complexity of the issues;

(e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other proceedings.

2. Application by the Court of the overriding objective

2.1 The Court must seek to give effect to the overriding objective when it

(a) applies, or exercises any discretion given to it by these Rules; or

(b) interprets the meaning of any Rule.

2.2 These Rules shall be liberally construed to give effect to the overriding objective and, in particular, to secure the just, most expeditious and least expensive determination of every cause or matter on its merits.

3. Duty of the parties

The parties are obliged to help the Court to further the overriding objective. In applying the Rules to give effect to the overriding objective the Court may take into account a party's failure to help in this respect..." [Emphasis added]

27. The Overriding Objective derives from the English CPR which was inspired by the Woolf Reforms. One of the main drivers for those reforms was the goal of facilitating substantive justice in cases such as personal injuries cases where overly adversarial and uneconomic litigation in cases such as personal injuries cases would result in chunks of damages awards intended to compensate the claimant being consumed by legal costs. The litigation approach reflected in the various pieces of satellite litigation commenced by Chapmans in relation to the present action, whatever the motivation and their legal merits may be, represents a form of legal guerrilla warfare against the Overriding Objective and the proper use of the processes of this Court as regards their impact on the present proceedings. This is essentially why, as already noted above, Sir Anthony Smellie CJ (as he then was) stated on his 7 October 2022 Judgment in G 167 of 2021 that "*the current paralysis afflicting Ms Philander's attempts to transfer* [AX]*'s fund to a professional trustee must not be*

allowed to continue". The needs of substantive justice, economy and expedition all cried out for the Discharge Order to be finally made and for the adjournment application to be refused.

Summary

28. For the above reasons on 27 June 2023, I granted the Guardian's application to be discharged and replaced by a professional trustee and refused the Plaintiff's counsel's application for an adjournment.

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