

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

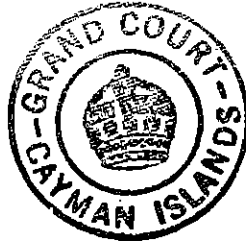
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4 **Cause No: FSD 160/2012**

5
6 **BETWEEN:**

7 **WEAVING MACRO FIXED INCOME**
8 **FUND LIMITED (IN OFFICIAL**
9 **LIQUIDATION)**

10
11 **PLAINTIFF**

12 **AND:**



13 **1. ERNST & YOUNG CHARTERED**
14 **ACCOUNTANTS (A FIRM)**

15 **FIRST DEFENDANT**

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17 **2. ERNST & YOUNG LTD.**

18 **SECOND DEFENDANT**

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20 **3. ERNST & YOUNG (A FIRM)**

21 **THIRD DEFENDANT**

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27 **Appearances:**

28 **Mr. James Thom Q.C. and Ms. Anna Littler**
29 **instructed by Mr. Michael Makridakis and**
30 **Ms. Amy Altneu of Carey Olsen on behalf of**
31 **the Plaintiff**

32 **Mr. Justin Fenwick Q.C. and Mr. Graham**
33 **Chapman Q.C. instructed by Mr. Michael**
34 **Mulligan and Mr. Ben Hobden of Conyers**
35 **Dill & Pearman on behalf of the Defendants**

36
37 **Before:**

The Hon. Mr. Justice Charles Quin Q.C.

38 **Written Submissions:**

27th March 2015

39 **Supplementary Written Submissions:**

2nd April 2015

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41 **JUDGMENT ON COSTS**
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1 *INTRODUCTION*

2 1. The Plaintiff, by its Summons dated the 30th January 2015, sought:

3 (a) An Order that:

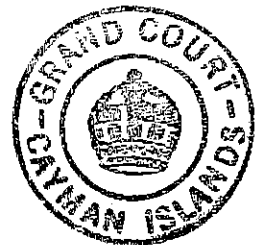
4 i. The Fund be given leave to further amend its Amended Statement of
5 Claim filed on the 15th April 2014; and

6 ii. So far as may be necessary, the time for filing and serving the further
7 Amended Statement of Claim be abridged;

8 (b) Further, or in the alternative, an Order granting leave to the Plaintiff to use the
9 documents discovered by the Defendants in the present proceedings (Cause
10 Number FSD 160 of 2012 CQJ) in new proceedings against the Defendants for
11 the following purposes:

12 i. The purpose of issuing a Writ making such further allegations against
13 the Defendants in connection with the Defendants' audits of the Fund
14 as the Fund may wish to pursue;

15 ii. Any and all purposes connected with the prosecution of the
16 proceedings commenced by such Writ (including consolidation of the
17 new proceedings with the present proceedings).



1 2. In a written ruling dated the 19th February 2015 the Court granted the Plaintiff leave
2 to amend its Amended Statement of Claim and concluded by stating if costs could
3 not be agreed the court would consider written submissions or, alternatively, oral
4 and written submissions at the earliest convenient time to both parties.

5 3. On the 24th February 2015 in the Order granting the Plaintiff leave to amend, the
6 Court directed that the costs of and occasioned by the said amendment and the costs
7 of the Plaintiff's summons dated the 30th January 2015 shall be decided on written
8 submissions to be lodged and exchanged by the parties on or before the 27th of
9 March 2015 with any supplemental written submissions in reply to be lodged and
10 exchanged on or before 3 April 2015. On the 27th March 2015 the Court received
11 written submissions on behalf of the Plaintiff and the Defendants and on the 2nd
12 April 2015 the Court received the Plaintiff's written submissions in Response to the
13 Defendants' submissions, and the Defendants' written submissions in Reply.

14 4. On the 28th February 2015 the Court conducted a telephone hearing with Mr.
15 Makridakis appearing for the Plaintiff and Mr. Mulligan appearing for the
16 Defendants. It became apparent during this telephone hearing that the Defendants
17 were contemplating making an application for leave to appeal against the Court's
18 decision dated the 19th February 2015 and, consequently, the Court made an order
19 dated the 2nd March 2015 giving the Plaintiff leave to use the documents discovered
20 in Cause Number FSD 160 of 2012 for the purpose of new Writ proceedings
21 against the Defendants.



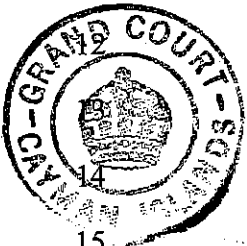
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1 *THE DEFENDANTS' POSITION*

2 5. The Defendants submit that the costs of, thrown away and occasioned by the
3 amendments to the Plaintiff's Amended Statement of Claim must be paid by the
4 Plaintiff, as the amending party, in the usual way.

5 6. The Defendants further submit that the costs of and thrown away by the abandoned
6 claims in deceit against Ms. Allen and Mr. Barber should be paid by the Plaintiff in
7 any event and further these costs should be assessed on the indemnity basis.

8 7. The Defendants' leading counsel submitted in their written submissions that the
9 costs of the Plaintiff's summons should be paid by the Plaintiff at least up to and
10 including the first day of the two-day hearing before the court (10th and 11th
11 February). It is the Defendants' case that the Plaintiff required the indulgence of the
12 court to be permitted to amend and to make use of the Defendants' discovery and so
13 it is appropriate that the Plaintiff should pay the costs of and occasioned by
14 preparing, issuing and serving the summons. The Defendants argue because the
15 Plaintiff's position was not clearly set out in its supporting affidavit but only
16 explained in its leading counsel's written and oral submissions that it was perfectly
17 reasonable for the Defendants to resist the Plaintiff's application to amend at least
18 until the end of the first day of the hearing. Accordingly the Defendants submitted
19 that the Plaintiff should pay the Defendants' costs up to that point. The Defendants'
20 submissions concede that, save for the costs relating to what the Defendants
21 described as the two abandoned deceit claims, it is accepted that the costs should be
22 taxed on the standard basis if not agreed.



1 8. The Defendants contend that the Plaintiff's claim for deceit in respect of the 2006
2 audit was premised entirely and solely upon the alleged knowledge and dishonesty
3 of Ms. Allen for whom the Defendants are said to be vicariously liable. The
4 Defendants contended that any cause of action based upon the alleged knowledge
5 and dishonesty of Ms. Allen was expressly withdrawn to be replaced instead by a
6 new claim in deceit based entirely and solely upon the alleged knowledge and
7 dishonesty of Ms. O'Malley.

8 9. In relation to the 2007 audit the Plaintiff has, by the amendments, abandoned its
9 claim against the Defendants for deceit and at the same time especially withdrawn
10 the alleged knowledge and dishonesty of Mr. Barber which grounded this particular
11 claim. Accordingly the Defendants contend that the Plaintiff as the amending party
12 must pay the costs of and thrown away by its decision to withdraw these allegations
13 and the abandoned claims.

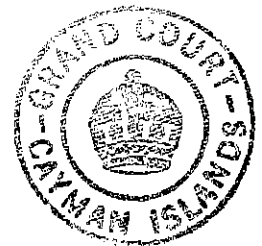
14 10. In their written submissions the Defendants' leading counsel submit that in granting
15 leave to amend the court found that this was a new cause of action arising out of the
16 same or substantially the same facts as those already pleaded and therefore the
17 Plaintiff as the amending party must pay the costs of and thrown away by this
18 decision to abandon claims, withdraw allegations and plead new causes of action.
19 The Defendants argue that from the court's finding as to the amendments
20 constituting new causes of action it follows that the claims abandoned were causes
21 of action which the Plaintiff required (and has been granted by way of the leave to
22 amend) leave to discontinue pursuant to GCR O.21 r.3(1).



1 11. Accordingly the Defendants contend that the abandonment of these claims carries
2 with it a recognition, on the part of the Plaintiff, that these are and always were
3 hopeless claims which could not succeed. The Defendants submitted that an award
4 on the indemnity basis is the appropriate order where a claim in fraud is dismissed
5 and all the more so, where it is made, maintained and then discontinued. The
6 Defendants argue that having had to face allegations of the most serious type, the
7 Defendants ought to be able to recover the costs incurred of successfully meeting
8 those allegations to the fullest possible extent.

9 12. As the costs of dealing with the abandoned claims are substantial and will need to
10 be taxed the Defendants argue that it is an appropriate case for an interim payment
11 on account to be made of these costs pending taxation. The Defendants contend that
12 the parties accept that it will not now be possible to tax the costs of the abandoned
13 claims until the conclusion of the proceedings given the Plaintiff's contention that
14 at least some of these costs will be relevant to the remaining and or new claims. The
15 Defendants submit that the approach taken in Mr. Bodden's fourth affidavit
16 demonstrates that the Defendants would expect to recover not less than US 1
17 million on taxation with respect to the costs of the abandoned claims and costs
18 thrown away. Accordingly the Defendants invite the court to exercise its discretion
19 and to award an interim payment on account of either the sum set out in Mr.
20 Bodden's affidavit or a sum representing a substantial proportion of it on the basis
21 that it can be confident that such a sum would be exceeded when the costs are
22 agreed or taxed.

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PLAINTIFF'S POSITION

13. The Plaintiff's claim in deceit in relation to the 2005 audit continues. The Plaintiff contends that in relation to its 2005 claim in deceit Mr. Tiernan is added as an additional servant or agent of the Defendants in respect of whom deceit is alleged and additional particulars of deceit are alleged against Ms. O'Malley.

14. The Plaintiff's claim in deceit in relation to the 2006 audit continues. This claim will be based upon the actions and/or omissions of Ms. O'Malley instead of those of Ms. Allen. However, the Plaintiff contends that Ms. Allen's role in the 2006 audit will continue to be highly relevant, and, indeed, critical. The Plaintiff contends that Ms. Allen's emails, the swap documents she received and her role on the files on and in relation to the swap documents are essential to the Plaintiff's amended claim.

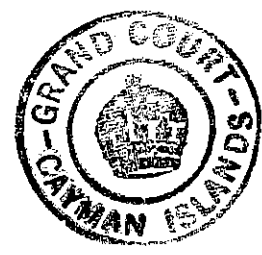
15. The Plaintiff's claim in negligence in relation to the 2007 audit will continue but the deceit claim is abandoned. However the Plaintiff maintains that the continuing claim will still be based on the actions and omissions of Mr. Barber. The Plaintiff contends that the swap documents Mr. Barber received and his notes are essential to the amended claim. Furthermore the failure to report the breach of investment restrictions was part of the original claim and remains part of the amended claim. It is the Plaintiff's case that Mr. Barber is essential for this since it was he as the Defendants' servant or agent who made the misconceived calculations.



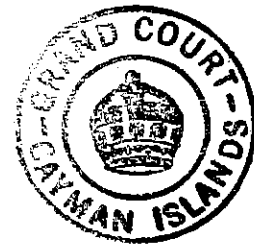
1 16. Leading counsel Mr. Thom QC submits that the Plaintiff accepts, and does not for a
2 moment seek to downplay the fact that these differences are very important to the
3 individuals involved. However leading counsel for the Plaintiff reminds the court
4 that the litigation is not between the Plaintiff and the individuals but between the
5 Plaintiff and EY Ireland and EY Cayman only.

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7 17. The Plaintiff contends that as between the Plaintiff and the Defendants it is hard to
8 see how any, let alone any substantial costs will be rendered useless by the
9 amendment: the same documents have to be discovered, the same witnesses have to
10 be proofed however the Plaintiff's claim is put. Mr. Thom submits that it is
11 possible, but by no means certain, that if the Plaintiff's case had always been
12 pleaded on the basis of the latest amendment there might have been a slightly
13 different emphasis to the collection of documents and to the questioning of
14 witnesses but this is not clear. The Plaintiffs remind the court that the Defendants'
15 retainer with the Plaintiff stipulated that no claim could be brought against any
16 individuals and that any claim could only be brought against EY. Accordingly the
17 Plaintiff argues that the fact that individual servants and agents of the Defendants
18 have not been sued is not a coincidence but a state of affairs which the Defendants
19 intended to bring about. The litigation will always be between the Plaintiff and EY.

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1 18. Mr. Thom continues by submitting that it cannot be disputed that at least some, and
2 the Plaintiff would say all, or at least the vast majority of the costs of the case down
3 to the amendment will remain of utility to the case after the amendment. The
4 Plaintiff challenges the averments contained in Mr. Bodden's fourth affidavit where
5 he states that 30% of the then costs to date will relate directly to the abandoned
6 allegations in deceit and accordingly will be entirely thrown away by the
7 abandoned allegations. The Plaintiff contends that there must be a high degree of
8 overlap between the work done on the withdrawn allegations and the work which
9 would have been necessary for the claim as amended. The Plaintiff's leading
10 counsel illustrates this by highlighting the fact that in the Amended Statement of
11 Claim in relation to each year, (paragraph 60 (2005), paragraph 87 (2006) and
12 paragraph 96 (2007) have been amended to refer to the new discovered documents,
13 but there is minimal deletion. In other words the Plaintiff submits that the
14 documents relied upon before the amendment are still relied upon after the
15 amendment and furthermore for the reasons stated Ms. Allen and Mr. Barber are
16 equally relevant as witnesses after the amendment as they were before the
17 amendment.



1 19. In conclusion the Plaintiff's leading counsel submits:

2 (a) The Plaintiff cannot say that **none** of the costs incurred in relation to the
3 original case are of no value to the amended case and therefore have been
4 useless;

5 (b) The Defendants cannot say that **all** of the costs incurred in relation to the
6 original case are of no value to the amended case and therefore have been
7 useless;

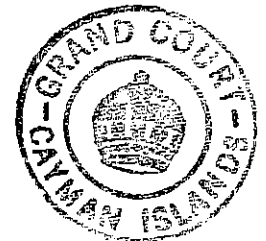
8 (c) It follows that some, but the Plaintiff would say a very small proportion, of the
9 costs incurred in relation to the original case may have no value to the amended
10 case and therefore may have been useless;

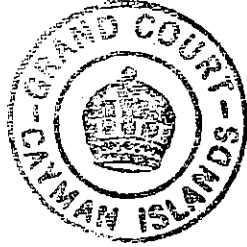
11 (d) It would have been entirely reasonable if the Plaintiff had sought an order that
12 in the exceptional circumstances of this case the Defendant should pay the costs
13 of the funds application as a direct result of the unreasonable objection.
14 However, the Plaintiff accepts that it should pay the costs of the application
15 which would have been incurred if the application had been unopposed and the
16 costs of consequential amendments in each case on the standard basis.

17 (e) In relation to the question of costs of the abandoned allegations, the Plaintiff
18 submits that there should be no separate order made in relation to those costs or
19 preferably that they should be expressly ordered to be costs in the cause.

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1 *CONCLUSION*

2 *THE LAW*

3 20. Section 24(1) of the Judicature Law (2013 Revision) reads:

4 *“Subject to the provisions of this or any other Law and to rules of court, the*
5 *costs of and incidental to all civil proceedings in ... shall be in the discretion of*
6 *the court”.*

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8 Section 24 (3) reads:

9 *“The court shall have full power to determine by whom and to what extent the*
10 *costs are to be paid”.*

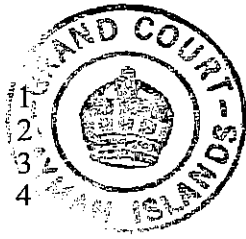
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12 21. GCR 62, r.4 (2) reads.

13 *“The overriding objective of this Order is that a successful party to any*
14 *proceeding should recover from the opposing party the reasonable costs*
15 *incurred by him in conducting that proceeding in an economical, expeditious*
16 *and proper manner unless otherwise ordered by the Court”.*

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18 GC R 62, r.4 (5) reads:

19 *“If the Court in the exercise of its discretion sees fit to make any order as to the*
20 *costs of any proceedings, the Court shall order the costs to follow the event,*
21 *except when it appears to the Court that in the circumstances of the case some*
22 *other order should be made as to the whole or any part of the costs.”*

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24 22. This Court receives helpful guidance from Order 20 rule 8 of the Supreme Court
25 Practice 1999 where paragraph 20/8/52 reads:



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“The usual penalty imposed as a term for giving leave to amend is that the party seeking the amendment should pay in any event all the costs incurred and thrown away by the amendment and the costs of any consequential amendment.”

23. In my ruling dated the 19th February 2015 I held that unless there was a good reason, such as a possible limitation defence, for requiring the Plaintiff to bring any amended claim by a new writ it was preferable for the amended claim to be brought in the existing proceedings. I had hoped that the question of limitation could have been avoided so that the Court could deal with all the real issues between the parties in one set of proceedings, thereby saving significant time and costs. However, with the knowledge of an impending appeal against my decision of the 19th February 2015 the question of possible limitation arose, and, consequently, on the 2nd March 2015 I made the Order giving the Plaintiff leave to use the discovered documents in new Writ proceedings against the Defendants. On the 5th March 2015 the Defendants issued a Summons in these proceedings seeking leave to appeal in respect of the ruling dated the 19th February 2015 and the Order dated the 2nd March 2015.

24. For the sake of clarification I confirm that in my Ruling dated the 19th February 2015 I did not find that the Plaintiff’s amendments constituted new causes of action. I found that the new allegations against Mr. Tiernan and Ms. O’Malley arose out of the same or substantially the same facts as the existing claim and further came about as a result of the recent discovery made by Defendants to the Plaintiff. Having considered the evidence put before the court and the submissions of both counsel in the hearing which took place on the 10th and 11th of February 2015, I find that the amendments sought by the Plaintiff were necessary in order for

1 the court to be able to decide the real issues between the parties and further that any
2 loss to the Defendants could be compensated by costs.

3 25. Having read and taken into account the Plaintiff's Skeleton Argument on Costs and
4 the Defendants' Written Submissions together with the Plaintiff's Response and the
5 Defendant's Reply on Costs I hereby order that the Plaintiff pay the costs of,
6 thrown away and occasioned by the amendments to its Amended Statement of
7 Claim up to and including the first day of the hearing (10th Feb) in any event and
8 further that these costs should be taxed on the standard basis if not agreed. Should
9 the parties be unable to agree these costs I order that the Defendants' costs thrown
10 away and occasioned by the Plaintiff's application for leave to amend up to and
11 including the first day be taxed within sixty (60) days from today's date pursuant to
12 GCR O.62, r.9(2).

13 26. I make no Order in relation to the costs of the telephone hearing of the 28th
14 February 2015 and the subsequent Order dated the 2nd March 2015 giving the
15 Plaintiff leave to use the documents discovered by the Defendants in these
16 proceedings for the purpose of new writ proceedings against the Defendants.

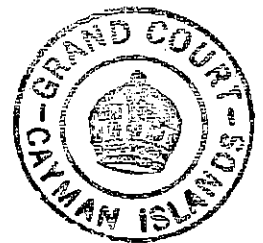
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ABANDONED CLAIMS

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27. I turn now to the question of costs in relation to the abandoned claims. The allegations of deceit made against Ms. Allen were abandoned although the claim in deceit in relation to the 2006 audit continues. The Plaintiff's claim will now be based upon the actions and/or omissions of Ms. O'Malley. The allegations of deceit made against Mr. Barber in relation to the 2007 audit were abandoned and the Plaintiff's claim in deceit has been discontinued. The claim for negligence in relation to the 2007 audit continues and the Plaintiff submits that the negligence claim will still be based on the actions and omissions of Mr. Barber as servant or agent of the Defendant.

28. There is considerable force to the Plaintiff's leading counsel's submissions that there must be a high degree of overlap between the work done in relation to the withdrawn allegations and the work which will be necessary for the claim as amended and the Plaintiff's claim that all the work conducted in relation to quantum is common to the claim before the amendment and the claim after the amendment. It would be extremely difficult, if not impossible, for this court at this stage of the proceedings to try and separate the work undertaken by the Defendants to defend the allegations of deceit against Ms. Allen from the allegations of deceit against Ms. O'Malley in relation to the 2006 audit. Furthermore it would be extremely difficult, if not impossible, for this Court at this stage of the proceedings to decide which work is necessary for the Defendants to undertake in defending the Plaintiff's claim for negligence as a result of the actions and or omissions of Mr.

1 Barber and to determine with any precision which actions of Mr. Barber were
2 negligent and which were deceitful.

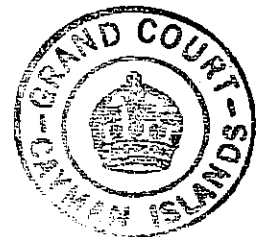
3 The Plaintiff contends that either the Court should make no separate Order in
4 relation to the costs of the withdrawn allegations or preferably, the costs should be
5 expressly ordered to be costs in the cause whereas the Defendant seeks indemnity
6 costs and an interim order for payment.

7 29. I find that this Court would be quite unable to do justice to the parties if it were to
8 embark on a time consuming and expensive enquiry at this stage of the proceedings
9 and before discovery had been completed. Furthermore it has to be acknowledged
10 by both the Plaintiff and the Defendants that such an exercise could much more
11 easily and more accurately be performed after the trial of the real issues between the
12 parties.

13 30. The Defendants' position is that they are entitled to their costs of the abandoned
14 claims in deceit on the indemnity basis. The Defendants contend that an award on
15 the indemnity basis is the appropriate Order where a claim in deceit is dismissed
16 and all the more so, where it is made, maintained and then discontinued. See
17 *Sagicor General Insurance (Cayman) Ltd. v. Corporate Adjusters (Cayman) Ltd*¹.

18 31. GCR O.62 r.4(11) is the rule which governs the Court's power to award costs on
19 the indemnity basis and it reads:

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¹ [2008] CILR 482

1 “The Court may make an inter partes order for costs to taxed on the indemnity
2 basis only if it is satisfied that the paying party has conducted the proceedings,
3 or that part of the proceedings to which the order relates, improperly,
4 unreasonably or negligently.”

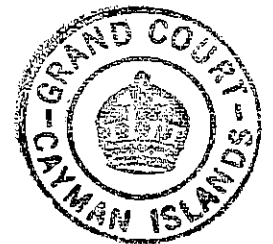
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6 32. The learned Chief Justice reviewed the question of indemnity costs in *Ahmad*
7 *Algoasibi and Brothers Company v. Saad Investments Company Ltd & Ors*²
8 (*Saad Investments*). In the first holding of the Chief Justice’s decision in *Saad*
9 *Investments* at page 346 he found:

10 “In considering awards for indemnity costs, the court’s focus should be
11 primarily on the conduct of the losing party, not on the substantive merits of the
12 case. Such an award should be made only in exceptional circumstances, such
13 as where the losing party has behaved improperly, negligently or
14 unreasonably.”

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16 33. I can find no exceptional circumstances in this case at this stage of the proceedings,
17 nor is there any evidence that the Plaintiff has behaved improperly or negligently or
18 unreasonably in relation to its claim in respect of either the 2006 or the 2007 audits.

19 34. In relation to the abandoned allegations of deceit made against Ms. Allen, I have
20 decided to reserve the question of any costs – whether standard or on the indemnity
21 basis – until the outcome of the trial of this action.

22 35. The Plaintiff has abandoned its allegations of deceit against Mr. Barber and its
23 claim against the Defendants in deceit in relation to the 2007 audit.

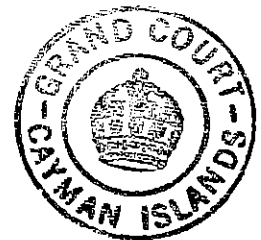


² (2013) (2) CILR 344

1 36. Although the Plaintiff did not make an application for discontinuance pursuant to
2 GCR O.21 r.3(1) in effect the Plaintiff has discontinued its claim against the
3 Defendants in deceit in relation to the 2007 audit. Accordingly I award the
4 Defendants their costs to be taxed on a standard basis if not agreed, in relation to
5 the abandoned allegations of deceit against Mr. Barber and the Plaintiff's
6 discontinued claim in deceit relating to the 2007 audit and in any event.

7 37. However, I cannot at this stage of the proceedings make any proper decision as to
8 whether the Plaintiff behaved improperly or negligently or unreasonably.
9 Accordingly, I reserve the question of an award of costs on the indemnity basis
10 until the outcome of the trial of this action. Accordingly the question as to whether
11 the Plaintiff should pay the Defendants' costs on the indemnity basis remains a live
12 issue.

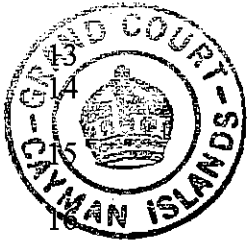
13 38. For sake of completeness I now turn to the Defendants' application for an interim
14 payment. The Defendants contend that the costs of dealing with the abandoned
15 claims are substantial and will need to be taxed. Consequently, they seek an interim
16 payment on account of these costs, pending taxation.



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1 39. The Defendants submit that it would be unjust to keep the Defendants out of their
2 costs of the abandoned claims until the conclusion of the proceedings. Relying upon
3 the decision of Jones J. in *Al Sadik v. Investcorp Bank BSC*³ the Defendants
4 maintain that such that an award on an interim basis is justified on the facts in this
5 case. Grounding their application on the contents of Mr. Bodden's Fourth Affidavit,
6 the Defendants invite the Court to exercise its discretion and to award an interim
7 payment of the figure suggested by Mr. Bodden or a substantial portion of it
8 because the Court can be confident that such a sum will be exceeded when the costs
9 are agreed or taxed.

10 40. In relation to their request for an interim payment GCR O.62 r.9 gives some
11 guidance as to at what stage in the proceedings costs should be taxed. GCR O.62
12 r.9(1) reads:



13 *"Subject to paragraph (2), the costs of any proceedings shall not be taxed until*
14 *the conclusion of the cause or matter in which the proceedings arise."*

15 GCR O.62 r.9(2) reads:

17 *"If it appears to the Court when making an order for costs that all or any part*
18 *of the costs ought to be taxed at an earlier stage it may order accordingly."*

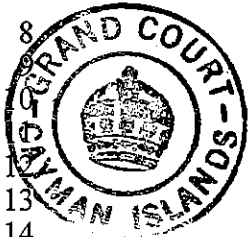
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20 And GCR O.62 r.9(4) reads:

21 *"Where it appears to the Court on application that there is no likelihood of any*
22 *further order being made in a cause or matter, it may forthwith order the costs*
23 *of any interlocutory proceedings which have taken place to be taxed."*

³ (2012) (2) CILR 33

1 41. In *Al Sadik v. Investcorp Bank* (unreported) 3rd July 2012, Jones J held that there
2 was inherent jurisdiction to make “an interim order” but stated at paragraph 20 of
3 his ruling: that such jurisdiction would only be exercised “*in rare and exceptional*
4 *cases.*”

5 42. Some 15 months after Jones J’s decision the learned Chief Justice was called upon
6 to consider the question of an interim payment in *Saad Investments*. In the fourth
7 holding on page 348 the learned Chief Justice held:



8 “The Grand Court did not have power to award an interim payment on account
9 of costs. The jurisdiction to order such an interim payment, even though costs
10 had not yet been determined, was granted to the English courts for the first time
11 under the Civil Procedure Rules 1998. There is no similar provision in the
12 Cayman Islands and therefore no such jurisdiction existed. The power to award
13 costs was (apart from the equitable power in cases of fraud) statutory which
14 strongly suggested that its enlargement was not a matter for the exercise of the
15 inherent jurisdiction of the court.”

16

17 43. On the question of whether this Court should make an interim order in favour of the
18 Defendants, it is my view that even if Jones J. were correct, which is currently
19 questionable, the Defendants have not established that there is a rare and
20 exceptional case to justify the making of any interim order.

21 44. There is authority – *Colchester Estates (Cardiff) v. Carlton Industries*⁴ – for the
22 proposition that where there are different decisions by judges of coordinate
23 jurisdiction, the later decision should be followed if it considered the earlier. In
24 *Saad Investments* the Chief Justice had the benefit of considering the decision of
25 Jones J in *Al Sadik*. The learned Chief Justice decided that, under Cayman Islands

⁴ [1986] Ch. 80

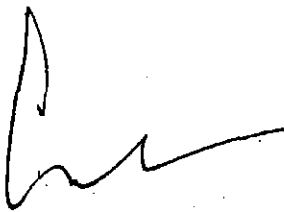
1 Law as it stands, there is no jurisdiction to order an interim payment and declined to
2 follow Jones J. I concur with the learned Chief Justice and also find that the
3 jurisdiction to award an interim order is a matter of statute and not the subject of
4 inherent jurisdiction.

5 45. I agree with the submission of leading counsel for the Plaintiff that if the Rules
6 Committee takes up the Chief Justice's suggestion in *Saad Investments*, and they
7 should consider whether to make provision for payments on account of costs, they
8 may decide to introduce provision for payments on account, or decide against it, or
9 to do so subject to conditions. The Courts should resist the temptation to pre-empt
10 any decision made by the Rules Committee. Accordingly, I can find no basis for
11 making an interim order in this case and I adopt and follow the Chief Justice's
12 decision on the question of an interim Order and decline to make such an Order.

13 46. In view of the fact that I have reserved the question of costs in relation to the
14 abandoned allegations against Ms. Allen and the question of indemnity costs in
15 relation to the Plaintiff's claim in deceit in respect of the 2007 audit, I believe that
16 the fair and proper order in relation to this application is to order costs to be costs in
17 the cause.

18 Dated this the 5th May 2015

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Honourable Mr. Justice Charles Quin Q.C.
Judge of the Grand Court