Neutral Citation Number: [2026] CIGC (FSD) 38

Cause No: FSD 2024-0203 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

BETWEEN:

LETTERONE TREASURY SERVICES S.A.

Plaintiff

-and-

EISLER CAPITAL MULTI STRATEGY FUND LTD

Defendant

Appearances:	**Mr Tom Smith KC of counsel instructed by Mr Jonathon Milne and Ms Clare Bradin of Conyers Dill & Pearman LLP for the Plaintiff**
	Mr John Machell KC of counsel instructed by Mr Adam Huckle and Mr Daniel Johnstone of Maples and Calder (Cayman) LLP for the Defendant
Before:	**The Honourable Justice Jalil Asif**
Heard:	**On the papers**
Judgment:	**21 May 2026**

Civil procedure—summary judgment for defendant—whether to grant leave to appeal

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JUDGMENT

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1. This is my decision on a summons filed on 3 February 2026 by the Plaintiff seeking leave to appeal against my order dated 15 January 2026 giving summary judgment for the Defendant and dismissing the Plaintiff's claim. That order gives effect to my judgment in ***LetterOne Treasury Services S.A. v Eisler Capital Multi Strategy Fund Ltd*** [2025] CIGC (FSD) 126 handed down on 30 December 2025. The Plaintiff continues to be represented by Mr Tom Smith KC instructed by Mr Jonathon Milne and Ms Clare Bradin of Conyers Dill & Pearman LLP, and the Defendant by Mr John Machell KC instructed by Mr Adam Huckle and Mr Daniel Johnstone of Maples and Calder (Cayman) LLP. This judgment was circulated in draft to the parties on 24 April 2026 but, due to staff sickness, unfortunately I did not receive the parties' proposed corrections to the draft judgment until 21 May 2026, when I immediately finalised the judgment.

2. Mr Smith and Mr Machell each prepared and filed skeleton arguments on the application for leave to appeal, which I have read carefully, and the parties have agreed that I should determine the Plaintiff's application on the papers.

3. In my judgment dated 30 December 2025, I concluded that in respect of the liability issues there is no significant dispute as to the underlying facts and that there is no need for any further discovery or factual witness evidence which would justify sending the claim to a full trial, although I accepted that there might be a need for discovery on quantum if the matter were permitted to proceed to trial. I therefore considered that this case was one where, as Mr Machell submitted, the Court should grasp the nettle and determine the issues of law and construction of the agreement between the parties which the Plaintiff contends allow it to advance a claim against the Defendant for breach of trust and/or for an account of profits, and which the Defendant denies.

4. For the reasons that I set out in detail in that judgment, I concluded that:

4.1 The Plaintiff's claim does not raise complex or novel points of law that require determination at trial. I considered that it is well established by the Privy Council that the relationship between a company and an unpaid redeemed shareholder is one of debtor / creditor. I did not consider that there were any factors specific to the agreement between the Plaintiff and the Defendant or to the Plaintiff's case that might reasonably lead to a different conclusion.

4.2 The documents governing the relationship between the Plaintiff and the Defendant do not expressly seek to create a trust. There is no proper basis to conclude that they gave rise to an implied, resulting or constructive trust.

4.3 There is also no proper basis for concluding that the Plaintiff had a proprietary interest in the redemption funds.

4.4 The Defendant's delay in paying the redemption proceeds into a bank account for payment to the Plaintiff did not result in redemption itself being delayed until 24 July 2023. The redemption of the Plaintiff occurred on 10 March 2022, as stated in the Redemption Notice.

4.5 Even if the delay in payment of the redemption proceeds had the effect of delaying when redemption occurred, that outcome would not result in any increase in the Plaintiff's entitlement upon the redemption.

4.6 The Defendant did not owe any relevant fiduciary duty to the Plaintiff outside the existence of a trust that would enable the Plaintiff to seek to recoup any profit made by the Master Fund and accruing for the benefit of shareholders in the Defendant, or to claim interest from the Defendant in equity.

5. Although not expressly stated in terms in my judgment, my overall conclusion was that the Plaintiff's complaint is about the terms of the bargain that it had struck with the Defendant, which expressly provides in the contractual documents that interest will not be payable upon redemption proceeds, and that the Plaintiff's claim is an illegitimate attempt to identify an alternative route to share in the profits earned by the Master Fund after the Plaintiff had already been redeemed as a shareholder in the Feeder Fund and had therefore become a mere creditor of the Defendant.

6. The Plaintiff seeks leave to appeal against that decision on three bases:

   6.1 The first is that I was wrong to conclude that the Plaintiff had no real prospect of succeeding on its claim that the Defendant held the redemption proceeds on an express, constructive or implied trust and was therefore liable to account to the Plaintiff for any profits earned from the use of the redemption proceeds before payment to the Plaintiff.

   6.2 The second is that I should not have followed and/or applied the Privy Council opinions in *Pearson v Primeo Fund* [2017] UKPC 19 and *DD Growth Premium 2X Fund v RMF Market Neutral Strategies (Master) Ltd* [2017] UKPC 36 but should have distinguished them.

   6.3 The third is that the Plaintiff's case raises an important novel legal point concerning the inability of the Plaintiff to pursue a claim for interest pursuant to section 34 of the Judicature Act (2021 Revision) because that requires the Plaintiff to have a subsisting claim for debt or damages and the Plaintiff does not because it has been paid the redemption proceeds.

7. In respect of the test to be applied when considering whether to grant leave to appeal, both parties refer my attention to *Telesystem International Wireless v CVC/Opportunity Equity Partners* (unreported, 05/10/23) and to *Re Trina Solar* (unreported, 30/10/17) as requiring that the intended appeal must have a real prospect of success, i.e. one that is realistic and not fanciful. Mr Machell refers to Segal J's gloss in *Re Trina Solar* at [5] that leave to appeal on a point of law should not be granted unless the judge considers that there is a real prospect of the Court of Appeal coming to a different conclusion. Mr Machell also draws my attention to, and implicitly invites me to apply in the Cayman Islands, the clarification in the *Practice Direction (Court of Appeal: Leave to Appeal and Skeleton Arguments)* [1999] 1 WLR 2 issued in England that:

> *"... if the court of first instance is in doubt whether an appeal would have a real prospect of success or involves a point of general principle, the safe course is to refuse leave to appeal. It is always open to the Court of Appeal to grant leave."*

Although I have not had to adopt that approach in this case in light of my conclusions, I consider this statement to be useful and pragmatic guidance to a first instance judge where she or he is in doubt whether or not to grant leave to appeal.

8. It is clear from my judgment that I considered each of the authorities relied upon by the Plaintiff to support its case. I concluded that the statement of Megarry J in *Re Kayford* [1975] 1 W.L.R. 279 on which Mr Smith relied before me, and which he submits that I wrongly failed to apply, was *obiter*, is difficult to reconcile with Harman J's discussion of *Moseley v Cressey's Co* (1880) 13 Ch.D 696 and *Lister & Co v Stubbs* (1890) 45 Ch.D. 1 in *Re Nanwa Gold Mines Ltd* [1955] 1 W.L.R. 1080 and appears to be contradicted by the Supreme Court's judgment in *Re Lehman Brothers International (Europe)* [2012] UKSC 6. I do not consider that Mr Smith's argument that I erred in this respect has a real prospect of success.

9. It follows that I do not consider there is any real prospect of success in Mr Smith's argument that the court could properly conclude that there was a trust obligation on the Defendant in the absence of a segregation obligation.

10. I carefully considered in the judgment the Plaintiff's argument that the effect of the contractual documents was to give rise to a segregation obligation upon the Defendant in respect of the redemption proceeds, which I rejected for the reasons set out in detail. Nothing in Mr Smith's skeleton argument in support of the Plaintiff's application for leave to appeal persuades me that my analysis and conclusion as to the proper construction of the Defendant's Amended and Restated Articles of Association, the subscription agreement, the private placement memorandum and the side letters is arguably incorrect or that the Plaintiff has a real prospect of successfully persuading the Court of Appeal that I was wrong.

11. As to *Pearson v Primeo Fund* [2017] UKPC 19 and *DD Growth Premium 2X Fund v RMF Market Neutral Strategies (Master) Ltd* [2017] UKPC 36, I consider that Mr Machell is correct in his skeleton argument where he states that:

> *"25. The submissions made at paragraph 34(c) of the Plaintiff's skeleton argument also miss the point. The point being made by the Judge in Judgment 70-71 is that the other terms he references that also govern the Plaintiff's subscription (Article 25.2 and the private placement memorandum) specifically define the relationship between the Defendant and a redeemed shareholder as one of debtor and creditor; that Article 24.5 must the read in that wider context; and that such an interpretation accords with well-established Privy Council authority on the effect of redemption of shares in a Cayman Islands company."*

It follows that Mr Smith's intended criticism in this respect is misplaced.

12. I do not consider that there is a wider public interest concerning the relationship between the Plaintiff and the Defendant regarding the redemption proceeds that should lead me to grant leave to appeal for that reason, as Mr Smith submits. In the absence of any indication as to the prevalence of Articles of Association being used by Cayman Islands domiciled investment funds that include similar language to that in the Defendant's Articles of Association, I am not persuaded that the outcome of this case has *"wide-ranging implications"*. In addition, I am not satisfied that it raises novel or complex issues rather than simply raising a question of the proper construction terms of the Defendant's Articles, relevant to this case alone.

13. Accordingly, my decision is that I refuse leave to appeal.

Dated 21 May 2026

THE HONOURABLE JUSTICE JALIL ASIF
JUDGE OF THE GRAND COURT