Neutral Citation Number: [2026] CICA (Civ) 11

IN THE CAYMAN ISLANDS COURT OF APPEAL
ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS

CICA (CIVIL) APPEAL NO. 3 OF 2026
(Formerly Cause No FSD 201 of 2025 (RPJ))

IN THE MATTER OF RULE 24(1) OF THE COURT OF APPEAL RULES (2014 REVISION)

BETWEEN:

CHARITABLE DAF HOLDCO, LTD (IN OFFICIAL LIQUIDATION)

Plaintiff / Appellant

AND

(1) MARK ERIC PATRICK
(2) PAUL MURPHY
(3) CDMCFAD, LLC
(4) DFW CHARITABLE FOUNDATION
(5) CDH GP, LTD. AS GENERAL PARTNER FOR AND ON BEHALF OF CHARITABLE DAF FUND, LP, AND IN ITS CAPACITY AS GENERAL PARTNER
(6) CLO HOLDCO, LTD.

Defendants / Respondents

Before:	**The Rt Hon Sir John Goldring, President** **The Hon Sir Richard Field, Justice of Appeal** **The Rt Hon Sir Jack Beatson, Justice of Appeal**
Appearances:	Ms Caroline Moran of Maples and Calder for the Appellant Mr Andrew Scott KC instructed by Campbells for the First, Third, Fifth and Sixth Respondents Mr David Quest KC instructed by Kobre & Kim for the Second Respondent Ms Fleur O'Driscoll of Baker & Partners for the Fourth Respondent
Date of Hearing:	**27 March 2026**
Draft Circulated:	**29 April 2026**
Judgment Delivered:	**15 May 2026**

Beatson JA:

1 On 10 February 2026, Parker J dismissed a summons by the JOLs of Charitable DAF HoldCo Ltd (in Official Liquidation), (hereafter "the Company", "the Appellant" and "the JOLs") applying for a proprietary injunction restraining the disposal and dealing by the Defendants with assets over which the Company claims a proprietary interest and ancillary relief by way of disclosure of certain payments and transactions pending trial of the Company's claims.

2 On 24 February 2026, the Company filed a Notice of Appeal against the Judge's decision.[1] On 3 March 2026 it filed a summons ("the Summons") applying to a single judge of this Court under Rule 24(1) of the Court of Appeal Rules for interim relief pending that appeal. On 19 March 2026, the President directed that the application be heard on an *inter partes* basis by a panel of three judges, and written submissions supporting and opposing the application were filed on 19 March. Following a hearing on 27 March 2026, on 31 March 2026 this Court granted the JOLs limited interim relief pending their appeal reflected in its order dated 22 April 2026. These are my reasons for that decision.

Summary of the background

3 The Company's sole asset is a limited partnership interest in a fund, Charitable DAF Fund, LP, a Cayman Islands Exempted Limited Partnership, hereafter "the Fund". The Fund was formed in 2011 at the instigation of Mr James Dondero and the founder of Highland Capital Management LP, to invest and manage assets for the benefit of four United States registered charitable organisations. The Defendants, now the Respondents to the appeal, are Messrs Patrick and Murphy, the Company's two directors ("the Directors") and four entities now controlled in different ways by one or both of them.

4 The JOLs' claims against the Directors and the other Respondents arise out of a series of restructuring transactions implemented by Messrs Patrick and Murphy. The restructuring transferred control of the Fund to entities under Mr Patrick's control in what the JOLs claim was a breach of fiduciary duty by him and Mr Murphy, and at what they claim is a gross undervalue.

5 The Judge held that the Company did not hold a proprietary interest in the Fund's assets or an indirect benefit in them as opposed to a mere right to be considered for potential distributions.

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1 By section 6(f)(ii) of the Court of Appeal Act 2011 leave is not required for an appeal against the grant or refusal of an injunction.

He did so notwithstanding his conclusion that there is a serious issue to be tried as to whether the Directors acted in breach of duty in undertaking the restructuring.

6 As explained below, the interim relief sought by the Company is in substantially similar terms to interim undertakings the Directors and other Defendants had given to it until the delivery of Parker J's decision pursuant to a consent order filed on 31 July 2025 ("the Consent Order") and recorded in the Schedules to that Order. Those interim undertakings thus came to an end on 10 February 2026.

7 There were two limbs to those interim undertakings. The first, now reflected in paragraphs 1 and 2 of the Company's Summons dated 3 March 2026, substantially reflected a Rule 11 agreement containing undertakings obtained in Texas proceedings. The Texas proceedings were brought by three of the Company's four original participating shareholders (hereafter the "Highland Foundations") against Mr Patrick and CDMCFAD, LLC, DFW Charitable Foundation and CDH GP, respectively the first, third, fourth and fifth Defendants/Respondents in these proceedings. Those undertakings were not to deal with or dispose of the assets of the Fund and specified Fund entities or to increase the remuneration paid to the Directors and employees outside the ordinary course of business.

8 The second limb of the interim undertakings, now reflected in paragraphs 3 to 5 of the Company's Summons to this Court, consisted of undertakings that were not in the Rule 11 agreement. They obliged the Defendants/Respondents and the Fund entities to disclose certain payments and transactions.

9 The interim undertakings were given after the JOLs issued their summons on 15 July 2025 requesting urgent relief and a hearing on an *ex parte* on notice basis was listed before the Judge on 31 July 2025. That hearing was adjourned by consent in the light of those undertakings. The JOLs describe the adjournment and the undertakings as agreed after negotiations with, and agreement, by the Directors and the other Defendants. The Directors and the other Respondents state that they "*reluctantly agreed to undertakings at the last minute to avoid having to defend a broad, onerous injunction application on the last day of term before the long vacation, without a reasonable opportunity to consider thousands of pages of materials or [to] file evidence in reply*".[2]

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[2] Respondents' Omnibus submissions, paragraph 8.

10 The relief granted by this Court on 31 March 2026 differed in two respects from that in the interim undertakings given pending the decision below. The first is that it contains a variation in relation to what distributions to charities fell within the "*in the ordinary course of business*" proviso to the undertakings recorded in the Schedules to the Consent Order and in paragraph 7(a) of the Rule 11 agreement. The second is that the undertakings in the Rule 11 agreement do not include any disclosure obligations similar to those in the interim undertakings recorded in the Schedules to the Consent Order.

11 The background to the dispute is set out in some detail in the judgment below but, for present purposes, the following suffices. The JOLs claim that the effect of the restructuring transactions was that the Company, until then the Fund's sole limited partner and owner of a 99% partnership interest in it, was left with only a minority interest in the participating shares.

12 The interests of the Company's original participating shareholders which acted as supporting organisations of the four registered United States charities were diluted from 100% of the economic interest in the Fund to less than 50%. This was achieved by issuing 318 participating shares to the fourth Respondent, DFW Charitable Foundation (hereafter "DFW"), a Delaware corporation organised exclusively for charitable purposes. Mr Patrick is the sole member of DFW and the effect of the restructuring was that DFW owned 51.04% of the participating shares of the Company. The JOLs claim that the restructuring thus prejudiced the Highland Foundations which, as stated, are three of the Company's four original participating shareholders, and consequently the four charities supported by them and the Community Foundation of North Texas ("CFNT") who the JOLs claim are the "ultimate indirect beneficial owners" of the Company in a number of ways. They submit these included paying themselves excessive remuneration in breach of their duties, and making distributions to charities other than those supported by the Highland Foundations.

13 The Respondents' position is that the restructuring was needed because there was a heightened risk that the IRS could revoke the tax-exempt status of the participating shareholders. That, they maintain, would imperil the Company's assets. They claim that the risk was that Mr Dondero, who sits on the Boards of the Highland Foundations and in effect controls them, would use the Fund for his private benefit.

The need for interim relief

14 Before the Judge, and before this Court the JOLs submitted that without any injunctive relief over the underlying assets of the Fund the charities supported by the Highland Foundations

would be deprived of the funds they need to continue their charitable commitments[3] and the Directors would be left free to continue to pay themselves excessive remuneration and to pay their legal fees out of the structure.[4] They also maintained that the Directors could potentially carry out another restructuring or transfer the limited partnership interest in the Fund out of the structure.[5] They submitted that, without disclosure orders reflecting the interim undertakings that were in place until the Judge dismissed their summons, such payments and transfers would not be visible to them, and they would be unable to monitor and police compliance with the orders.

15 The JOLs' case is that interim relief is needed for the following reasons:

(i) the Company's claim is proprietary and damages are an inadequate remedy.

(ii) As a result of the Directors' previous conduct in transferring the partnership interest in the Fund with no notice to the Company and in paying themselves excessive remuneration, there is a real risk to the partnership assets pending the appeal by further dealing with them that could render the appeal nugatory.

(iii) Although Mr Patrick and the third to fifth Respondents are bound by the similar undertakings in the Texas Rule 11 agreement, Mr Murphy and the sixth Respondent, CLOHoldCo, Ltd. ("CLO HoldCo"), are not so bound and there are no disclosure provisions in the Rule 11 agreement.

(iv) The JOLs are not party to the Rule 11 agreement, and that agreement is not enforceable in the Cayman Islands. The obligations in it are subject to a possible application to vacate it at any time and thus stand or fall according to events in Texas and not in these proceedings or this appeal.

(v) The Respondents who are in the Texas proceedings initially challenged the jurisdiction of the Texas Court but have consented to the jurisdiction of the Grand Court and this Court. For those reasons, the JOLs believe that the Cayman Islands is a more appropriate jurisdiction for the issues in these proceedings, and an order of this Court is needed pending their appeal.

The JOLs also submit that because most of the Respondents are already bound by the Rule 11 agreement and their investment activities and ability to pay directors and employees were not

3 Transcript p 6, lines 9-12 (all references are to the agreed Transcript, received on 28 April 2026).
4 Transcript p 30, lines 4-18.
5 Transcript p 7, lines 15-20.

unduly affected by the interim undertakings, continuing them pending the appeal would not cause them material damage or disruption.

16 The Respondents' case relies on two procedural matters and a number of substantive points. The first procedural matter is that the JOLs did not apply to the Judge below for interim relief pending appeal, as they had stated they would in a letter dated 3 February 2026 and, not having made the application for an interim injunction "*in the first instance to the court below*",[6] were precluded from applying to a single Judge of this court. The second is that below they had expressly disavowed relying on there being a risk of dissipation of assets notwithstanding the refusal of Mr Patrick, the first Respondent, to give an undertaking, on an essentially similar basis as the Judge's subsequent decision. The first falls away as the full Court undoubtedly has discretion to grant such relief and I took account of the second in reaching my decisions.

17 The Respondents' substantive case is that no arguable ground of appeal is raised by the Judge's refusal to grant an injunction on the grounds summarised at [5] above but at [40] of their written submissions they recognise that is not something which they are realistically able to address in those submissions. At the outset of the hearing the President stated that had leave to appeal been required the Court would have granted it on the ground that there is, in its view, a seriously arguable appeal. In the light of that, at the hearing the matters relied on by the Respondents concerning interim relief were:

(i) the absence of evidence of urgency or risk to assets.

(ii) the view of the Judge in the Texas proceedings when rejecting emergency injunctive relief that there is no risk of irremediable harm,[7] and of the Judge below after his full review of the evidence.[8]

(iii) the effect of the binding agreements in the Rule 11 agreement which included undertakings not to make payments other than in the ordinary course of business, that investments and monies be kept in the entities in which they were currently, and for there to be no further change to the corporate structure.

(iv) the absence of an offer of a cross-undertaking in damages or fortification.

(v) the rejection by the JOLs of offers by the Respondents since May 2025 of a "*financial reporting protocol … to assuage any concerns that the JOLs might have about dealing with assets outside the ordinary course of the Fund's charitable activities*".[9]

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6 See Respondents' Omnibus submissions, paragraphs 12-15 and Court of Appeal Rules, r. 21(4).
7 Judgment below at [121]
8 Judgment below at [240] – [241]
9 Transcript, p 89 lines 6-13.

18 The reason that the Court concluded that there is a seriously arguable appeal is that, in the light of *Aquapoint LP (in Official Liquidation) v Fan* [2025] UKPC 56 at [48], it is arguable that the Company was entitled to injunctive relief to preserve the value of its partnership interest in the Fund even if it has no direct legal or beneficial interest in its underlying assets.

Interim relief broadly reflecting that in the Texas Rule 11 agreement and paragraphs 1 and 2 of the Summons

19 As to the other matters relied on, the Court decided that interim relief should be given pending the appeal and that it should broadly follow that in paragraph 7(a) to (f) of the Texas Rule 11 agreement set out in paragraphs 1 and 2 of the Summons filed by the JOLs on 3 March 2026. I joined in that decision because I do not consider that reliance on an agreement entered into by the parties to the Texas proceedings suffices and that an order of this Court is needed pending the appeal of the JOLs.

20 First, the parties differ. The JOLs are not parties to the Rule 11 agreement and cannot enforce it, and Mr Murphy and CLOHoldCo are not parties to it and are not therefore liable under it.

21 Secondly, it has become apparent since Mr Patrick's recent affidavit dated 24 March 2026 that he was incorrect in stating that there is no realistic prospect that the Rule 11 agreement will fall away before this appeal is determined. His reason was that the challenge to the Texas Court's jurisdiction has been stayed pending the joinder of the JOLs to those proceedings, and that has been adjourned to 27 August 2026.[10] That reason was given on the basis that the appeal in these proceedings could be listed before a special sitting of this Court in the near future. It has, however, become apparent that in the light of other special sittings already arranged for the period between the April/May Spring sitting of this Court and its August/September Summer sitting that the substantive appeal is unlikely to be heard before early September 2026.

22 My third reason concerns balancing hardship to the Company if relief is not granted with hardship to the Respondents if it is. I note that the Judge below and the judge in the Texas proceedings considered that there is no risk of irremediable harm to the Fund. But, if the charities supported by the Highland Foundations and CFNT continue to be excluded from the distributions and the JOLs' appeal succeeds, it is not clear how donations made to other charities since the restructuring would be recovered.

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[10] Affidavit dated 24 March 2026, paras 29-31.

23 My fourth reason is that any lack of clarity or disputes as to the scope of the obligations in the Rule 11 agreement would ultimately have to be resolved in the Texas Court. One such dispute has already arisen. It is whether distributions since the restructuring to charities that are not supported by the Highland Foundations fall within the "*in the ordinary course of business*" proviso to paragraph 7(a).

24 The Court's decision, however, varied in one respect from the provisions in paragraph 7(a) to (f) of the Texas Rule 11 Agreement set out in paragraphs 1 and 2 of the Summons. That variation addresses the lack of clarity which gave rise to the dispute as to whether distributions since the restructuring to charities that are not supported by the Highland Foundations fall within the "*in the ordinary course of business*" proviso to paragraph 7(a) of the Rule 11 agreement.

25 The Respondents maintain that such distributions fall within that proviso and are "*the absolute core of this fund's business*".[11] Not to regard them as within "*in the ordinary course of business*" proviso would lock down the charitable activities of the Fund by impairing its ability to make donations to charities other than those supported by the Highland Foundations and CFNT. The JOLs submit that such distributions do not qualify.[12] It was not in the ordinary course of business to admit DFW into the structure and it is "*not in the ordinary course of business to make those payments to DFW*".[13]

26 The Judge considered (at [243]) that the balance of convenience firmly favoured the Respondents. Granting the relief sought by the JOLs would lock down those activities and place the Fund under the control of the JOLs which would be unjustified at what is an interlocutory stage. In resolving this issue, we had regard to the need not entirely to lock down the charitable activities of the Fund by considering the distributions to charities that have been made since the restructuring. We decided that payments to the charities that now qualify should be permitted pending the appeal provided they are of the same order of magnitude as the approximately 30 payments made between 11 July 2025 and 30 September 2025 which were referred to at the hearing. The total of those distributions is approximately US$465,000. In order to provide a measure of certainty, we decided that pending the appeal payments totalling US$200,000 per month should be permitted for the purposes of paragraphs 1.1 and 2.1 of the

11 Transcript, p 62 lines 5-9, and p 111 lines 3-10.
12 Transcript, p 31 lines 18-32 line 8.
13 Transcript p 134 lines 6-20.

Order and therefore not be a breach of the Order, but subject to the liberty to apply included in our Order.

27 We also decided that, since the Respondents did not agree that paragraph 1.3 of the Summons and the draft Order precluded them from transferring the Appellant's limited partnership interest in the Fund, the limited interim relief pending the appeal with protection for payments by the Respondents of up to $200,000 per month should include precluding the Respondents from transferring the limited partnership interest in the Fund.

28 In relation to Mr Murphy, we decided that paragraphs 1 and 2 of the Order only apply to him in respect of his position as a director of the Third, Fifth and Sixth Respondents,[14] and of two other Fund Entities identified in the Schedule of Fund Entities, namely: MGM Studios HoldCo, Ltd. (Cayman Islands) and CLO HoldCo LLC (Delaware). This had not been contested by the JOLs.[15] Accordingly, paragraph 3.3 of the Order provides that those paragraphs do not restrict or otherwise affect any remuneration funds received by him as a director of the Appellant or the Fund entities.

The Disclosure Obligations sought

29 The other area of contention at the hearing was that the Rule 11 agreement does not include any disclosure obligations similar to those in the interim undertakings agreed to in the Consent Order adjourning the hearing originally listed for 31 July 2025 which ended when Parker J's judgment was delivered and in paragraphs 3-5 of the Summons.

30 The submission made by the JLOs that an Order reflecting the Rule 11 agreement would in practice cause little or no hardship to the Respondents because they are not free to deal with the assets in any event (see [15] above) cannot be made in respect of the disclosure obligations sought. The primary reasons we decided that no disclosure obligations should be imposed on the Respondents pending the appeal are the evidence, albeit contested evidence, that the disclosure obligations in the interim undertakings were onerous in terms of time for compliance (and therefore cost) and the absence of any offer by the JLOs of a cross-undertaking in damages or of fortification for the interim relief.

31 Mr Patrick's affidavit dated 24 March 2026 claims at paragraphs 34-37 that the disclosure obligations in the interim undertakings were onerous in terms of time for compliance (and

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14 They are identified in the Schedule of Fund Entities as CDMCFAD, LLC (Delaware); CDH GP, Ltd (Cayman Islands) and CLO HoldCo, Ltd. (Cayman Islands)

15 Transcript pp 128 and 157.

therefore cost) in part because of what he alleges were demands for information to which the JOLs were not entitled and unreasonable interpretations of the disclosure obligations.

32 Mr Patrick also alleges that the Cayman Islands proceedings and the interim undertakings that were in place until the decision below have been used for collateral purposes by Mr Dondero and the JOLs, which has caused prejudice to the Respondents. He refers at paragraphs 48 ff to an investment by the sixth Respondent, CLOHoldCo, in MidWave Wireless ("MidWave"), an entity indirectly controlled by Mr Dondero, and an attempt to amend the loan agreement to designate CLOHoldCo as a defaulting lender. It is alleged that MidWave did this on the basis of CLOHoldCo's involvement in the Grand Court proceedings. It stated that CLOHoldCo "*is the subject of a proceeding under Bankruptcy Law related to a proceeding in which it has consented to certain court orders*". The effect was *inter alia* to extend the maturity date of MidWave's obligations to CLOHoldCo and to require CLOHoldCo to issue proceedings in the United States to protect its position. At paragraphs 48 ff Mr Patrick refers to an assertion that a September 2025 settlement between CLOHoldCo and UBS was a breach of the interim undertakings which, because the assertion threatened the settlement, posed an existential threat to CLOHoldCo.

33 These allegations are all contested and, while I have noted them, and the prejudice to the Respondents that is alleged, at this interlocutory stage, I do not consider that they would in themselves justify ordering the disclosure sought absent a cross-undertaking in damages or fortification.

34 As already stated, these are my reasons for granting the JOLs limited interim relief pending their appeal.

Field JA:

35 I agree.

Goldring P:

36 I also agree.