



**NEUTRAL CITATION NUMBER: [2026] CIGC (FSD) 48**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NO: 212 OF 2025 (NSJ)**

**BETWEEN:**

**NICOLA COWAN AND MICHAEL PEARSON  
(JOINT LIQUIDATORS OF NATURAL CAPITAL LIMITED (IN OFFICIAL  
LIQUIDATION))**

**PLAINTIFFS**

**AND:**

**JOHN ADRIAN BUCK**

**FIRST  
DEFENDANT**

**AND:**

**JOHN ASHLEY BUCK**

**SECOND DEFENDANT**

**Before:**

**The Hon Justice Segal**

**Appearances:**

**Mr Sebastian Gollins and Mr Kai McGrielle of KSG  
for the Plaintiffs (the Joint Official Liquidators)**

**Heard:**

**8 May 2026**

**Amended pleadings  
and further evidence  
filed:**

**14 May 2026**

**Draft judgment:**

**22 May 2026**

**Judgment:**

**1 June 2026**

**JUDGMENT ON EX PARTE APPLICATIONS FOR PERMISSION TO SERVE OUT,  
PERMISSION TO AMEND AND EXTENSION OF DURATION OF THE  
WRIT**

**Introduction**

1. On 25 July 2025 the official liquidators (the *JOLs*) of Natural Capital Limited (*NCL*) issued a writ with an indorsed statement of claim (the *Original Writ*) seeking relief against the First Defendant and the Second Defendant.
2. The Second Defendant, who resides in the Cayman Islands, was duly served with and has acknowledged service of the Original Writ.
3. The First Defendant resides in Georgia in the USA. The JOLs made efforts to serve the Original Writ on him before they applied for permission to serve out but do not claim that service was validly effected (for which they would need retrospective leave).
4. On 19 December 2025 the JOLs issued an *ex parte* summons seeking permission to serve the Original Writ and other documents on the First Defendant at his residential address in Georgia. I heard that summons on 23 January 2026 but adjourned the hearing in order to give the JOLs an opportunity to give further consideration as to how they wished to formulate the claims set out in the Original Writ. I was not satisfied at that hearing that the claims as formulated were coherent or adequately pleaded.
5. On 5 May 2026 the JOLs issued an amended *ex parte* summons (the *Summons*) seeking permission to serve an amended version of the Original Writ (including an amended statement of claim) on the First Defendant. The Original Writ was amended on 1 May 2026 (the *Amended Writ and Statement of Claim*). The JOLs also applied for an order that the validity of the Amended Writ be extended by a further two months.
6. I heard the Summons on Friday 8 May 2026. Mr Sebastian Gollins of KSG appeared for the JOLs. During the hearing various legal issues relating to the basis and formulation of the JOLs' amended claims were discussed and in response to a number of questions raised by me Mr Gollins, on instructions from the JOLs, referred to and provided some

important further information beyond what had been adduced by the JOLs in support of their applications. In view of this, at the conclusion of the hearing I invited the JOLs to prepare and file a revised version of the Amended Writ and Statement of Claim to deal with the various issues that I had raised and to file a further affidavit putting in evidence the factual matters which Mr Gollins had referred to during the hearing. I said that I would review these further filings and then give my decision on the JOLs' applications.

7. On 14 May 2026 the JOLs filed an amended form of the Amended Writ and Statement of Claim (the *Re-Amended Writ and Statement of Claim*), an amended version of the Summons (the *Amended Summons*), the Fourth Affidavit of Ms Ruth Egan (*Egan 4*) together with an exhibit, Exhibit RE4 and a revised form of draft order. Ms Egan is an attorney employed by KSG. Egan 4 supplemented the earlier evidence filed by the JOLs in particular Mr Pearson's First Affidavit filed on 19 December 2025 (*Pearson 1*). Mr Pearson is one of the JOLs. The Amended Summons (still an *ex parte* summons) now sought leave to further amend the Amended Writ and Statement of Claim as well as permission to serve the Re-Amended Writ and Statement of Claim out of the jurisdiction on the First Defendant and an order that the validity of the Re-Amended Writ be further extended for a further two months.
8. The revised drafting of the JOLs' claim in the Re-Amended Writ and Statement of Claim reflects the points discussed during the hearing and Egan 4 has put in evidence the facts and matters referred to at the hearing. Having reviewed the Re-Amended Writ and Statement of Claim and Egan 1 together with the other evidence adduced by the JOLs and the JOLs' written and oral submissions I am satisfied that the JOLs have satisfied the conditions for the granting of leave to serve out and that in all the circumstances this is a proper case for service out and that the Court ought to exercise its discretion to permit service of the Re-Amended Writ and Statement of Claim (and the related documents) on the First Defendant out of the jurisdiction. I am also satisfied that it is appropriate to grant the JOLs' application for a further short extension of the duration of the Re-Amended Writ to allow the JOLs time to effect service. I now explain my reasons for this decision.

### The background

9. The First Defendant was a director of NCL from 17 January 2013 until a date which the JOLs are currently unable to identify. The Second Defendant was a director from 17 January 2014 until 18 December 2018 (although he did not give notice of his resignation until 31 January 2109).
  
10. The Re-Amended Writ and Statement of Claim relate to the transactions entered into between NCL and Global Fidelity Bank Limited (in official liquidation) (**GFB**). GFB was the parent company of and shareholder in NCL. On 1 May 2017 NCL and GFB entered into a Sale and Repurchase Agreement (**SRA**) in circumstances which are not yet clear to the JOLs. Under and on the face of the SRA, GFB agreed to provide funds to NCL for the purpose of allowing NCL to purchase gold from third party sellers, as agent for GFB. Title to the gold so purchased was to pass to GFB when the gold was delivered to a secured transporter who had been approved by GFB. Subsequently, no later than 21 days after GFB had paid to NCL the monies to fund the purchase of the gold, NCL was obliged to repurchase the gold from GFB at a defined price incorporating a margin for GFB. As a condition precedent to any gold transaction, NCL was required to deposit and maintain US\$500,000 in a blocked account under the control of GFB (the **Blocked Account**) and to grant GFB security over its assets.
  
11. It appears (in so far as the JOLs can ascertain at this stage) that between 19 May 2017 and 29 May 2018 GFB made a series of payments totalling US\$2,500,000. It appears that on 25 January 2019 GFB paid a further US\$250,000. The JOLs have been unable to locate any records which show that any gold was purchased using these funds (or otherwise).
  
12. It appears that the funds paid by GFB were not paid into a bank account in the name of NCL. Instead, they were into an account held by a US LLC which was probably owned and controlled by the Defendants. The JOLs understanding of the position was explained and set out by Ms Egan in Egan 4 as follows (my underlining):
  9. .... *NCL applied for Chapter 15 recognition in the United States in order to obtain discovery from United States banks. In or about April 2025, the Plaintiffs received unredacted Bank of America bank statements together*

*with a wire report in Excel format setting out the relevant transactions. This enabled the Plaintiffs to carry out further analysis to identify the destination and application of the Funds. There is now produced and shown to me at .... the relevant bank material, and ... an internal memorandum dated 28 April 2025 summarising that analysis.*

10. *From my review of those materials, together with GFB's records, I understand that payments corresponding to the advances made by GFB were paid not into an account held in the name of NCL, but into a Bank of America account in the name of NCM LLC.....*
11. *So far as the [JOLs] can presently ascertain, NCM LLC was a separate United States entity and had no ownership connection to NCL. The [JOL's] present understanding, based on the documents reviewed to date, is that the Defendants held interests in and/or exercised management and control over NCM LLC, and that the account into which the Funds were paid [with the Bank of America in the US] was used under their authority or for their benefit. Documents evidencing that understanding, including the original United States complaint filed by GFB in March 2020 and other materials reviewed by the Plaintiffs, are exhibited at ... The Plaintiffs do not yet have direct evidence identifying the formal signatories on the NCM LLC account."*
13. The JOLs' investigations are also continuing in relation to what happened to the funds so paid by GFB. The position was explained by Ms Egan at [12] – [14] of Egan 4 (my underlining):
  12. *The records presently available indicate that the NCM LLC account was used as a general operating account. The account was utilised for a range of transactions, including credit card payments, online bank transfers, cheque payments, travel expenses, salaries, boat payments, legal fees, "house payment", retail purchases (including Amazon, iTunes, Whole Foods and pharmacy transactions) and general ATM withdrawals. The statements also reflect payments to individuals and entities not, on their face, limited to Transactions under the SRA, including payments to entities such as The Kingdom Trust, DMCells LLC, Dynnasty Metals and Metalesa.*
  13. *Further, the records identify a number of larger transfers from the account, including payments and/or withdrawals for the benefit of, or referable to, the Defendants and persons associated with them, including individuals who appear to be members of their family, such as Samantha Buck. On the material presently available, the Funds were commingled with other receipts in the NCM LLC account. The [JOLs] have therefore been unable to trace with precision the full onward application of each advance made by GFB once those monies entered the NCM LLC account.*
  14. *On 28 May 2025, the [JOLs] sought further bank discovery from Bank of America, including in relation to The Kingdom Trust, in order to assist with tracing efforts. As at the date of this affidavit, no further information or*

*documentation has been provided in response to those requests. I am further instructed that NCM LLC was dissolved in or about 2018. So far as the [JOLs] are aware, the Funds have not been repaid or paid over to NCL.*

### **NCL's acknowledgement of a liability to GFB**

14. The Re-Amended Writ and Statement of Claim avers that on 31 December 2018 GFB wrote to NCL stating that, at the request of its auditors, it sought confirmation that NCL's records reflected the balance owing to GFB under the SRA (namely that the principal sum outstanding in respect of funds advanced for the purchase of gold as at that date was US\$2,500,000) and that in or around March 2019, NCL returned a copy of the letter from GFB signed by the Second Defendant confirming that the balance of US\$2,500,000 remained outstanding. Following that acknowledgment, and in reliance upon it, GFB had paid a further US\$250,000 to NCL on 25 January 2019 bringing the total funds paid to US\$2,750,000.
15. The Re-Amended Writ and Statement of Claim also avers that on 18 October 2019 GFB had made a formal demand for the delivery of gold or alternatively the payment of the sums advanced under the SRA, and issued a notice pursuant to the debenture granted by NCL declaring that an event of default under the SRA had occurred. NCL was granted 10 business days to remedy the event of default (until 1 November 2019). By a letter dated 1 November 2019, Nelsons, then the attorneys for NCL, acknowledged the indebtedness to GFB. However, NCL did not pay the sums demanded and GFB brought proceedings against NCL in this jurisdiction seeking repayment of the sums it claimed were owed, the appointment of a receiver under its security, and related relief. On 1 April 2022, a consent order was entered which provided for (*inter alia*) the following steps to be taken by 15 April 2022: (a) NCL to pay to GFB the sum of US\$2,750,000.00 and (b) NCL to pay to GFB pre and post judgment interest at the rate of 8% per annum and NCL to pay GFB's costs of the proceedings.

### **The JOLs' investigations**

16. The JOLs have been investigating the circumstances surrounding the SRA, NCL's apparent liability to GFB and what happened to the funds said to have been paid to NCL by GFB, as well as the basis for and the operation of NCL's arrangements with GFB.

However, they have only been given access to and able to access a limited number of documents and have received no assistance or cooperation from the Defendants. From what they have ascertained to date, they (entirely understandably) have serious concerns that the funds paid by GFB were never paid to or for the benefit of NCL and were misappropriated and paid away by or under the direction and for the benefit of the Defendants. But in view of the gaps the books and records to which they have obtained access and the missing records, the JOLs' immediate objective is to obtain an account of what happened to the funds paid by GFB and to obtain a detailed and accurate understanding supported by documents or confirmations on oath of NCL's true financial position and the whereabouts of its assets. The JOLs wish, indeed require, the Defendants to cooperate and provide to them both NCL's books, records and documents (to the extent that they have or can access them) and a detailed and verified account of the SRA, the GFB relationship and what happened to the funds paid by GFB (as well as a full account of NCL's assets and liabilities).

17. In Egan 4, Ms Egan explained the difficulties that have been faced by the JOLs and the documents and information that they seek from the Defendants as follows:

15. *The books and records presently available to the [JOLs] do not explain why the Funds were paid into NCM LLC rather than into an account in the name of NCL, on what basis NCM LLC received the Funds, who authorised that course, what obligations NCM LLC assumed to NCL in relation to the Funds, or what became of the Funds thereafter. Nor do the books and records presently available disclose a complete documentary trail showing the acquisition, transport, refinement, sale or repurchase of any gold referable to the Funds, or repayment of the Funds to GFB.*

16. *The categories of documents which the [JOLs] seek from the Defendants, and which are necessary to enable the account to be taken properly and NCL's position to be understood, include:*

- a. *account opening documents, mandates and signatory records for the NCM LLC account;*
- b. *complete bank statements and wire records;*
- c. *approvals, instructions and correspondence concerning the payment of the Funds into NCM LLC;*
- d. *confirmations and other documents relating to Transactions under the SRA;*

- e. *supplier, transport, refinery, custody and inventory records relating to any gold said to have been acquired;*
- f. *documents relating to any blocked account or security arrangement;*
- g. *records of any repayment or proposed repayment of the Funds; and,*
- h. *accounting records and documents evidencing any payments to the Defendants or persons associated with them.*

### **The claims against the Defendants**

18. Originally the JOLs formulated a claim against the Defendants based on a breach of their fiduciary and common law duties as directors and sought (a) a full accounting of where the funds paid by GFB were paid, how they were used and to whom they have been paid and where they are now and an order that the Defendants pay whatever sums are found to be due to NCL on the taking of such account and (b) a declaration that the Defendants have acted in breach of their fiduciary duty and/or common law duties arising from their failure to provide evidence to show that the monies paid by GFB under the SRA were used in the best interests of NCL and not for fraudulent purposes.
19. But the JOLs have recognised that the substantial gaps in their evidence mean that at present they cannot (or at least that it is difficult to) formulate a properly (or at least a fully) particularised claim for breach of duty against the Defendants. Although the facts referred to by Ms Egan in Egan 4 have revealed more of the picture and the payments by GFB to an entity other than NCL, in which the Defendants appear to have ownership interests and which is apparently controlled by them, raise grounds for an inference of misappropriation by the Defendants, the JOLs still do not know what happened to the funds paid to NCM LLC or have further details of the action taken by the Defendants. In these circumstances the JOLs have decided at this stage to focus on requiring the Defendants to give a proper account of how they dealt with NCL's funds and assets. They have narrowed their claim to prioritise and rely in particular on a claim in equity for an account.
20. The Re-Amended Writ and Statement of Claim sets out the JOLs' claims as follows (my underlining):

5. *At all material times, the Defendants were directors of NCL or otherwise responsible for the management and control of the affairs, business and assets of NCL.*
6. *Further, at all material times, the Defendants exercised control over and were responsible for the receipt, custody, application and disposition of Funds (as defined in paragraph [16] below) received by NCL from Global Fidelity Bank Limited (in Official Liquidation) (“GFB”), including the sums referred to below. Accordingly, the Defendants were under a duty to ensure that NCL maintained proper books and records sufficient to explain those matters.*
7. *By reason of the matters set out herein, and in circumstances where the facts concerning the application of the funds are within the Defendants’ knowledge, the [JOLs] are unable, without the assistance of the Court, to ascertain the manner in which those funds were applied or dissipated, the identity of the recipients, or the extent to which any part thereof remains recoverable.*
8. *Accordingly, the Plaintiffs’ claim is brought primarily for an account and inquiry in respect of US \$2,750,000 advanced by Global Fidelity Bank (In Official Liquidation) (“GFB”) for a specific and restricted purpose, as set out in further detail below, in circumstances where the Defendants were fiduciaries who are accountable as trustees, no account has been given to NCL of the Defendants’ dealings with the assets and all relevant facts concerning the application of the funds are within the Defendants’ knowledge (together with all consequential relief).*

.....

41. *In the premises and in the circumstances set out below, the Defendants are obliged to render an account:*
  - 41.1. *NCL received the Funds from GFB under the SRA for a specific and restricted purpose;*
  - 41.2. *as at 31 December 2018, US\$2,500,000 remained outstanding, which balance was acknowledged on behalf of NCL by the Second Defendant;*
  - 41.3. *thereafter, GFB advanced a further US\$250,000, bringing the total Funds to US\$2,750,000;*
  - 41.4. *no complete documentary record of any Gold transaction compliant with the SRA has been identified in the books and records presently available to the Plaintiffs;*
  - 41.5. *no Gold, or proceeds of sale of Gold, have been identified in those records;*
  - 41.6. *no repayment of the Funds has been made to GFB;*

- 41.7. *NCL's liability to GFB was established by the Consent Order in Action 186; and*
- 41.8. *the Defendants have failed to provide any proper account or explanation of the application of the Funds.*
42. *The Plaintiffs do not presently plead a freestanding claim of dishonest representation, secret profit, or self-dealing and reserve the right to raise such complaints in the context of an account. In the taking of any account the Plaintiffs will say that it is to be presumed that the Defendants have misapplied the funds or failed in breach of trust to safeguard the same in that they are in breach of the Defendants' duty to maintain proper records.*
43. *By reason of those matters, the Plaintiffs seek an order that each Defendant account for:*
- 43.1. *the receipt of the Funds;*
- 43.2. *the dates and amounts of each receipt;*
- 43.3. *the basis upon which the Funds were paid into NCM LLC rather than NCL;*
- 43.4. *the documents and approvals said to support each proposed Transaction;*
- 43.5. *the application or disposition of each sum;*
- 43.6. *any payments to the Defendants, persons associated with them or third parties; and,*
- 43.7. *the present whereabouts of any monies or assets representing the Funds or their proceeds.*
44. *The Plaintiffs reserve the right to amend these pleadings following disclosure, the production of further books and records, and/or the taking of an account as the relevant information is within the Defendants' knowledge and control and is not reflected in the books and records presently available to the Plaintiffs.*
45. *As against the First Defendant, the claim is advanced on the basis that he was a director of NCL during the relevant period, or part thereof, and was accordingly one of the persons responsible for the management of NCL, for the receipt and for ensuring that NCL was in a position properly to account for application of the Funds during his tenure and the use of the Bank of America Account.*

46. *As against the Second Defendant, the claim is additionally advanced on the basis that he remained a director throughout the relevant period and, personally executed the acknowledgement of the outstanding balance due to GFB, and was one of the persons responsible for NCL's management and for the receipt and application of the Funds and the use of the Bank of America Account.*

21. The JOLs also, as I indicated during the recent hearing, rely on the statutory jurisdiction under section 138(1) of the Companies Act (2026 Revision) (**Section 138(1)**) insofar as they seek an order requiring the Defendants to deliver up the Company's book and records in their possession. Section 138(1) is in the following terms:

*Where any person has in that person's possession any property or documents to which the company appears to be entitled, the Court may require that person to pay, transfer or deliver such property or documents to the official liquidator.*

22. In the prayer in the Re-Amended Writ and Statement of Claim the JOLs seek the following relief (I have not sought at this stage to assess whether the drafting of the claim for an account gives rise to any issues):

- (3) *A declaration that the Defendants, as former directors and/or officers of NCL, are "relevant persons" within the meaning of section 103(1) of the Companies Act and are subject to the duty to co-operate with the Plaintiffs, as Joint Official Liquidators of NCL, under section 103(2).*
- (4) *An order pursuant to section 103(3)(b) of the Companies Act that each Defendant do forthwith transfer or deliver up to the Plaintiffs, as Joint Official Liquidators of NCL, all property and documents belonging to NCL, including all books of account and material underlying documentation required to be kept pursuant to section 59 of the Companies Act.*
- (5) *An order pursuant to section 103 of the Companies Act that each Defendant do forthwith provide to the Plaintiffs, as Joint Official Liquidators of NCL, all information in his possession, custody or power concerning the receipt, transfer, application and present whereabouts of monies advanced to or for the benefit of NCL pursuant to or in connection with the SRA.*
- (6) *An order, pursuant to GCR O.43, that an account be taken of all monies received by, for, on behalf of, or to the order of NCL and/or either Defendant pursuant to or in connection with the SRA, including all sums advanced by or on behalf of GFB.*
- (7) *An order, pursuant to GCR O.43, for such inquiries as are necessary to determine:*

- a. *into what account or accounts those monies were paid;*
  - b. *whether those monies were received for the benefit of NCL;*
  - c. *how those monies were applied, transferred, withdrawn or otherwise dealt with;*
  - d. *whether any Gold was purchased, held, transferred, pledged or sold pursuant to the SRA; and,*
  - e. *what sum or sums (if any), are due from either Defendant to NCL following the taking of the account and the completion of such inquiries.*
- (8) *An order that any amount certified or found due to NCL upon the taking of the account- or the completion of the inquiries be paid by the relevant Defendant to the Plaintiffs, as Joint Official Liquidators of NCL, within such period as the Court directs.*
- (9) *Further or alternatively, equitable compensation and/or damages in respect of any breaches of duty established by the matters presently pleaded and/or found upon the account or inquiry.*
- (10) *Interest pursuant to the Judicature Act (2021 Revision), and the Judgment Debts (Rates of Interest) Rules (2021 Revision), alternatively pursuant to the Court's equitable jurisdiction, compounded in equity at quarterly rests, alternatively at common law, for such period and at such rate as the Court thinks just.*
- (11) *Further or other relief.*
- (12) *Costs.*

### **The application for leave to serve out**

*What has to be shown in order for the Court to grant leave to serve out?*

23. The matters which the JOLs need to establish in order to obtain permission to serve out are well established. As I noted in my recent judgement in *Re Absolute Digital Technology Management LLC* at [16] an applicant must satisfy the court that:

- (a). there is a serious issue to be tried on the merits of the claim, i.e. a substantial question of fact or law or both (see *Altimo Holdings & Investment Ltd v Kyrgyz Mobil Tel* [2012] 1 WLR 1804 (JCPC) at [71] per Lord Collins). The current

practice in England and in this jurisdiction is that this is the same test as the test applied on an application for summary judgment, namely whether there is a real as opposed to a fanciful prospect of success. The Court will not permit service out of the jurisdiction if the claim is frivolous or groundless. The authorities also make it clear in respect of the Merits test that the Court is not to engage in a mini-trial without the benefit of disclosure; the Court is not to attempt to resolve conflicts of fact that are normally resolved in a trial process; the Court should look not just at the evidence before it but also evidence that can reasonably be expected to be available at trial and where the merits turn on a point of law the Court may but is not required to decide the legal question that arises (see Richards J in *Lenovo Group Ltd v Interdigital Technology* [2024] RPC 23 and *Tulip Trading v Bitcoin Association for BSV* [2023] 4 WLR 16) (the **Merits Test**).

- (b). there is a good arguable case that the claim meets at least one of the grounds for service out of the jurisdiction set out in GCR O.11, r.1(1). This requirement seeks to ensure that there is a sufficient connection between the claim and this jurisdiction to justify the Court assuming jurisdiction over the dispute. The relevant standard is a good arguable case (the **Gateway Test**).
- (c). in all the circumstances Cayman is clearly or distinctly the appropriate forum for the trial of the dispute and the Court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction. Cayman will be the appropriate forum if it is the most suitable jurisdiction for trying the claim in the interest of all the parties and in the interest of doing justice (the **Appropriate Forum Test**).
24. It is also important to note that GCR O. 11, r.4(2) states that: “*No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.*”
25. As regards the Merits Test, as I noted during the hearing the authorities make it clear that the analytical focus of the Court should be on the pleadings (see *Okpabi v Royal Dutch Shell* [2012] 1 WLR 1294 at [22]) and whether, on the basis that the facts there alleged are true, the cause of action has a real prospect of success. The approach to be adopted by the court was clearly and helpfully summarised by Lord Justice Popplewell in the

English court of appeal in *Kawaski Kisen Kaisha v James Kemball* [2021] 3 All ER 978 at [18] as follows:

*(1) it is not enough but the claim is merely arguable; it must carry some degree of conviction .... (2) the pleading must be coherent and properly particularised ..... (3) the pleading must be supported by evidence which establishes a factual basis which meets the merits test; it is not sufficient simply to plead allegations which is true would establish a claim; there must be evidential material which establishes a sufficiently argued case that the allegations are correct.*

*The issues in this case relating to the Merits Test*

26. As I reminded Mr. Gollins (counsel to the JOLs) at the hearing, I have on previous applications had real concerns about the manner in which the JOL's claim had been formulated and the absence of evidence as to what had happened to the funds paid by GFB. At previous hearings the JOLs' claim appeared to be primarily a claim for compensation based on a breach of duty by the Defendants. But at that time there was no evidence as to the account into which the funds had been paid, whether that was an account in the name of NCL, whether the JOLs had obtained bank statements for such an account, what payments out of the account had been made, to whom such payments had been made and any involvement of the Defendants in the receipt or payment away of those funds and generally as to what had happened to the funds paid by GFB. For this reason I had previously declined to grant leave to serve the Original Writ.
27. As I have noted, Egan 4 has materially added to the evidential base for the JOLs' claim. Further, the Re-Amended Writ and Statement of Claim now clearly includes as the primary claim, a claim for an account.
28. I would have expected and preferred to see the relevant facts set out by Ms Egan in Egan 4 (albeit subject to further verification) incorporated into the Amended Writ and Statement of Claim. In particular the facts regarding the payment by GFB of the funds under the SRA together with an allegation that the funds should have paid to NCL but were paid to an account in the name of NCM LLC which was owned and controlled by the Defendants and therefore it is to be inferred were paid to them or for their benefit. The Re-Amended Writ and Statement of Claim appears to base the claim for an account against the Defendants on the basis that as directors they had an obligation to maintain

proper books and records sufficient to show what had happened to the funds paid by GFB but they had, in breach of that duty, failed to do so. The Re-Amended Writ and Statement of Claim does not include an averment that the funds paid by GFB (NCL's funds) were received by or on behalf of the Defendants. At [8] of the Re-Amended Writ and Statement of Claim the JOLs state that their claim is based on the position of "*the Defendants were fiduciaries who are accountable as trustees, no account [having] been given to NCL of the Defendants' dealings with the assets and all relevant facts concerning the application of the funds are within the Defendants' knowledge ...*" At [6] the JOLs state that "*the Defendants exercised control over and were responsible for the receipt, custody, application and disposition of Funds (as defined in paragraph [16] below) received by NCL from Global Fidelity Bank Limited (in Official Liquidation) ("GFB"), including the sums referred to below. Accordingly, the Defendants were under a duty to ensure that NCL maintained proper books and records sufficient to explain those matters.*"

29. However, in view of the clear statements in [11] of Egan 4 that "*the Defendants held interests in and/or exercised management and control over NCM LLC, and that the account into which the Funds were paid was used under their authority or for their benefit*" I intend to proceed, at least for the purpose of this *ex parte* application, on the basis that the JOLs are also alleging that NCLs funds – the monies paid by GFB which should have been paid to NCL – were paid to and received by a limited liability company (formed under the laws of a US State) in which the Defendants had a an interest and over which they exercised control and that the funds were paid to NCM LLC under the authority of the Defendants [and] or for their benefit. Having said this, I appreciate that neither of the JOLs has given that evidence themselves and that the JOLs investigations are incomplete so that what is said is expressed to be only the JOLs' current view, and that in all these circumstances the Re-Amended Writ and Statement of Claim and the JOLs' evidence may need to be supplemented.

*The law governing a claim to an account*

30. Immediately prior to the start of the hearing I had sent to KSG (as already noted, the JOLs' attorneys) a copy of the judgment of Mr. Justice Newey in *GHLM v Maroo* [2012] EWHC 61(Ch) and directed their attention in particular to [147] - [149]. This case is authority for the proposition that the principle that a trustee must show what he had done

with the trust property applied to company directors. Mr Justice Newey had decided that this conclusion was supported by the judgment of Lord Neuberger in *Sinclair Investments v Versailles* [2011] 3 WLR 1153 at [34] and that:

*“ The close analogy between directors and trustees suggests, to my mind, that much as a trustee “ must show what he has done with [trust] property ” it is incumbent on a director to explain what has become of property in his hands. ”*

31. Mr. Justice Newey had had concluded that *“ In the circumstances .... Once it is shown that a company director has received company money, it is for him to show that the payment was proper .... ”*

32. I also referred Mr. Gollins to the statement of the applicable law in the excellent textbook, edited by Mr. Thomas Grant KC and Mr David Mumford, *Civil Fraud: Law, Practice and Procedure* (first edition, 2018) at [22-011] which is in the following terms (citing *Maroo* as authority):

*“ An order for an account .... strictly speaking ... will not lie against a company director by dint of his position as such, unless he receives company property personally. ”*

33. I indicated to Mr. Gollins that for the purpose of the JOL’s application for leave to serve out, in the absence of the citation of any other relevant to authority, I regarded the decision and analysis in *Maroo* as authoritative and considered that it should guide this Court’s assessment of and decision as to whether the claim for an account (against the First Defendant) in the Re-Amended Writ and Statement of Claim could be said to satisfy the Merits Test.

34. This meant that in order the JOLs to be able to assert a claim for an account against the First Defendant they needed to allege that he had received NCL’s property in a personal capacity, otherwise than as a director (the personal receipt requirement). At the hearing I said that I accepted that it remained to be established as to precisely what would need to be alleged in order satisfy this requirement and that I was prepared to accept that it was at least arguable that receipt of the property of the relevant company by a company which was fully owned or controlled by a director would satisfy the personal receipt requirement. I would also note that I said that it seemed to me that there may be grounds for going beyond the personal receipt requirement so as to recognise a common law claim

(cause of action?) against directors to provide information to a Court-appointed official liquidator (based on albeit expanding the reasoning of Lord Sumption in *Singularis Holdings Limited v PricewaterhouseCoopers* [2015] AC 1675).

35. Having regard to the claim now set out in the Re-Amended Writ and Statement of Claim as supported by Ms Egan in Egan 4, as I have understood it, as explained above, it seems to me that the JOLs have set out a claim against the First Defendant for an account which arguably satisfies the requirement for obtaining an order for an account in respect of a director. The JOLs claim at least in their evidence in support of their application that the receipt by NCM LLC constituted a receipt by or on behalf the Defendants of NCL's money and property is sufficient to engage the Court jurisdiction to make an order for an account against them. I appreciate, as I have said, that there may need to be some further amendments to the JOLs' pleadings and that some further evidence may be required and issues may need to be dealt with (including expert evidence as to the applicable US State law governing the relationship holders of interests in LLCs and the LLC and the management and governance of LLCs as well as the effect of receipt in the US by the LLC of payments from GFB) but it seems to me that the JOLs claim is sufficiently clearly formulated and particularised including by reference to the JOLs' evidence to satisfy the relatively low threshold in the Merits Test. I am therefore satisfied that the JOLs have satisfied the Merits Test in relation to their claim for an account, which is a core part of their claim against the First Defendant in the Re-Amended Writ and Statement of Claim.
36. I am also satisfied that the JOLs have satisfied the Merits Test in relation to their claim under section 138(1) for delivery up of NCL's books and records in 2b of the prayer in the Re-Amended Writ and Statement of Claim.
37. It is worth adding that at least part of the difficulties faced by the JOLs in the case has been caused by the absence from our Companies Act of statutory duties on directors to co-operate with official liquidators and to submit to private examinations (as are found in the UK's Insolvency Act 1986). As I have said it may be the common law can be extended to cover some of this territory (and I have not been referred to any of the relevant authorities on this point) but when confronted with a case like this the absence of relevant statutory powers and provisions does jump out as a rather glaring omission,

### The Gateway test

38. The JOLs submit that there is a good arguable case that the claims in the Re-Amended Writ and Statement of Claim within the GCR Order 11, r.(1)(1)(c), (f) and (ff). These sub-rules provide as follows:

(a). GCR Order 11 rule 1(1)(c):

*“...the claim is brought against a person who has been or will be duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper parties thereto”;*

(b). GCR Order 11 rule 1(1)(f):

*“...the claim is founded on a tort, fraud or breach of duty whether statutory at law or in equity and the damage was sustained, or resulted from an act committed, within the jurisdiction”;*

(c). GCR Order rule 1(1)(ff):

*“the claim is brought against a person who is or was a director, officer or member of a company registered within the jurisdiction ... and the subject matter of the claim relates in any way to such company ... or to the status, rights or duties of such director, officer or member ... in relation thereto.”*

39. The JOLs’ submitted , and it is well established, that a "good arguable case" connotes "that one side has a much better argument than the other": see *Royal Park Investments SA/NV v S&P Global, Inc and others* (unreported, 3 June 2024, FSD 37 of 2023, IKJ) at [13]. In this case Justice Kawaley stated at [14]-[15] that the following passage in *Brownlie v Four Seasons Holdings Inc.* [2018] 1 WLR 192 at [7] was helpful and highly persuasive judicial guidance in relation to the factual dimensions of applying the "good arguable case" test:

*"... What is meant is (i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway; (ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the Court must take a view on the material available if it can reliably do so; but (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible*

*(albeit contested) evidential basis for it. I do not believe that anything is gained by the word ‘much’, which suggests a superior standard of conviction that is both uncertain and unwarranted in this context.”*

40. The JOLs also cited and relied on a number of the well known authorities as to the scope and meaning of GCR Order rule 1(1)(ff). I do not propose to refer to these. It is clear that the authorities establish that the GCR Order rule 1(1)(ff) gateway is widely drafted and intended to capture a broad range of claims against directors and former director. I would just note what Justice Henderson said in his judgment in *Bancredit Cayman Ltd. v Pellerano* [2010 (1) CILR 400] at [16] (my underlining):

*"...Bancredit is a company registered within the Cayman Islands and is governed by the laws of the Islands. Mr. Pellerano was a director of Bancredit at all material times, and his fiduciary obligations to the company are those described by the laws of the Cayman Islands. The essence of the claim is an allegation that he has breached his fiduciary duty during the time he was a director and, as a consequence, has caused Bancredit to suffer a loss. That is enough to satisfy the requirements of O.11, r.1(1)(ff)."*

41. The JOLs submitted that the claim in the Re-Amended Writ and Statement of Claim against the First Defendant plainly satisfied the requirements of GCR Order 11, rule 1(1)(ff). At all material times the First Defendant was a director of NCL and the claims directly concerned the performance and an alleged breach of his duties to NCL (statutory, equitable and common law). The claims related to the First Defendant's actions and failures regarding decision making and dealings with NCL's assets as a director of NCL. The requirements of GCR Order rule 1(1)(ff) were clearly met.
42. I agree and accept this submission. There are two parts to the GCR Order rule 1(1)(ff) gateway. First, that the defendant is or was a director. That is satisfied here. Secondly, that *“the subject matter of the claim relates in any way to the company ... or to the status, rights or duties of such director, officer, member or partner in relation thereto.* The subject matter of the claims against the First Defendant in the Re-Amended Writ and Statement of Claim clearly relate (*“in any way”*) to NCL (its assets, liabilities and management) and also to the duties of the First Defendant as a director. This applies both to the claim for an account and the claims based on a breach of the First Defendant's duties as a director. It is worth noting that the claim for an account involves an action requiring the fiduciary to perform his duty and is not based on a breach of duty (according

to the majority of the Justices in the Supreme Court's decision in *Rukhadze and others v Recovery Partners GP Ltd and another* [2025] UKSC 10). Therefore, in this case the subject matter of the claim for an account involves the performance by the First Defendant of his duties as a director. It also seems to me that the statutory claim under section 138(1) for delivery up of NCL's books and records can also be said to relate to the First Defendant's duties as a director as he has (if he does have) possession of NCL's books and records in and by virtue of his having acted in his capacity as a director.

43. Since I have concluded that the requirements of GCR Order rule 1(1)(ff) are satisfied in respect of all the claims made in Re-Amended Writ and Statement of Claim, I do not need and do not propose to deal with the other gateways relied on by the JOLs. One gateway is sufficient.

### **The Appropriate Forum Test**

44. The JOLs submitted that the Cayman Islands was clearly the most appropriate forum in this case because:
- (a). NCL was incorporated in this jurisdiction. In addition, GFB, NCL's parent company, was also registered in the Cayman Islands during the relevant period.
  - (b). there are various events relating to NCL which have a Cayman Islands nexus. The JOLs have been appointed by this Court. The judgment debt owed by NCL to GFB arises from a Cayman Court order and is enforceable in the Cayman Islands. The Second Defendant is resident in the Cayman Islands. The corporate records, financial transactions and documents referred to in the Re-Amended Writ and Statement of Claim concern the affairs of a Cayman incorporated company and fall within the jurisdiction of the Cayman Islands.
  - (c). at the heart of the dispute is a claim by the official liquidators of NCL against its former directors (one of whom is the First Defendant) regarding their duties as directors of a Cayman Islands company.

45. I am satisfied that this Court is the most suitable jurisdiction to try the claims in the Re-Amended Writ and Statement of Claim in the interest of all the parties and in the interest of doing justice.
46. The focus of the claims is the duties and actions of the First Defendant (and the Second Defendant) as a director (directors) of NCL, a Cayman Islands company. I accept that in cases where the GCR Order rule 1(1)(ff) gateway is satisfied at least the starting point in the analysis of the most appropriate forum is that there is a strong local policy that such claims are most suited for being adjudicated here. But that is of course only a starting point. In this case, the relevant law is likely to be largely if not exclusively Cayman Islands law. I note that the First Defendant is resident out of the jurisdiction and will need to come to the jurisdiction for any trial but as has been said many times this is a factor of very limited weight. Someone who agrees to become a director of a Cayman company accepts that his/her actions will be governed by Cayman law and the oversight and jurisdiction of this Court in relation to the performance of his/her role and duties as a director and therefore the need to participate in related proceedings in this jurisdiction. I note that the Second Defendant is resident here and has already been served. I note that it appears that the funds paid by GFB were paid into bank accounts held by a US LLC in the US and that there are likely to be documents and evidence held in the US and possibly from other US persons that will be relevant and needed in these proceedings but that of itself, and certainly not when weighed against the other factors I have mentioned, does not indicate that this jurisdiction is not clearly the most appropriate forum to try the dispute.
47. In all the circumstances, I am satisfied that this is a proper case for service out.

### **Method of Service**

48. The JOLs noted that Mr Pearson at [7]-[19] of Pearson 1 had explained how they had already attempted to serve and how they intend to re-serve the First Defendant.
49. Of course “*re-serve*” is not the right terminology because the earlier delivery of the Original Writ to the First Defendant does not constitute, and the JOLs do not rely on what has happened before as constituting, service. But Mr Pearson’s evidence indicates that

the JOLs have been advised by their legal advisers in the State of Georgia that under applicable US law (I assume State and Federal law) personal service at the First Defendant's address in that State is permissible. I therefore assume that the proposed method of service will comply with and be in accordance with local law (and GCR.O11, r.5).

#### **Permission to amend the Original Writ and amended writ**

50. I am satisfied that in the circumstances of this case, where the amendments to the Original Writ and then to the amended writ and statement of claim, have been the result of hearings before the Court and issues raised by me during applications for permission to serve out, that it is just and appropriate to grant the JOLs' permissions to make the amendments contained in the Re-Amended Writ and Statement of Claim. These amendments are all being made before service on the First Defendant where there are no limitation issues and cannot be prejudicial to him. I appreciate that they are being made after service of and without notice to the Second Defendant. In the circumstances it seems to me that the Second Defendant will not suffer any or any material prejudice but if he wishes to challenge the decision to permit the amendments he should be able to do so and should have liberty to apply for that purpose.

#### **Extension of the validity of the Re-Amended Writ**

51. It also seems to me that it is appropriate to grant the JOLs' application for an extension of the duration of the Re-Amended Writ by two months.

52. As the JOLs noted, the principles governing the renewal and extension of a writ are well-established. They were set out in *Kleinwort Benson Ltd v Barbrak Ltd* [1987] 2 All ER 289 which decision has been frequently applied by the Courts in this jurisdiction (see *G Davidson & Others v Moualem & Others* 2014(1) CILR 99 at page 110; *Day v Merren and Hydes* 2020 (1) CILR Note 7; *Weaving and Ernst & Young* 2014(1) CILR 296, from [40] and *Baldwin Martin Troy Day v Henry Merren* (unreported, FSD 40 of 2019, 26 November 2019) at 5-12.

53. The test involves a two-stage enquiry: (a) first, the applicant must demonstrate a good reason for the exercise of the power to extend the writ and (b) secondly, the Court must decide whether, in the exercise of its discretion, an extension should be granted, having regard to all relevant circumstances, including the balance of hardship or prejudice to each party if the application is granted or refused. The question of the balance of hardship between the parties only arises if the plaintiff can show good reason. Hardship to the plaintiff is not a substitute for good reason (see my judgment in *Tianrui (International) Holding Company Limited v Chang Zhangli and Others* (unreported, FSD 237 of 2024 (NSJ), 11 December 2024) at 8).
54. I am satisfied that in this case the JOLs have shown that there is a good reason for the delay in effecting service before now and that it is just an appropriate in the circumstances to extend the Re-Amended Writ by a further short period to allow the process for service out which I have approved to be completed.
55. The delays have, as I have said and is self-evident from the procedural history I have outlined above, been the result of the issues which have arisen during the process of seeking leave to serve out and which the JOLs have had to address. I can see that it might be said that these problems were of the JOLs own making and should not have arisen had the claims been properly formulated and adequate evidence adduced in the first place. But I consider that this would be an unduly critical view and not justified in the circumstances. It is clearly in the interests the proper management and prosecution of these proceedings that they be put on a proper footing and this is what has now been done. Refusing to permit the requested extension would have prevented the process for service out being possible and required the JOLs to issue a further writ for service out (while the Original Writ was left in place in relation to the Second Defendant). The resulting addition costs and delays would be disproportionate and ultimately be of no material benefit to the Defendants.



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**The Hon. Justice Segal**

**Judge of the Grand Court, Cayman Islands**

**1 June 2026**