

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

**CAUSE NO FSD 172 of 2016 (IMJ)**

**BETWEEN**

**MERIDIAN TRUST COMPANY LIMITED  
AMERICAN ASSOCIATED GROUP LTD**

**Applicants**

**AND**

**(1) EIKE FUHRKEN BATISTA  
(2) 63X INVESTMENTS LTD  
(3) 63X FUND  
(4) 63X MASTER FUND  
(5) MAPLES CORPORATE SERVICE  
(6) BANCO BTG PACTUAL S.A.**

**Respondents**

**IN CHAMBERS**

**Appearances:** Mr. G Halkerston of Counsel instructed by Ms. L Hatfield and Mr. J McGee of Solomon Harris  
Mr. J Golaszewski, Ms. A Dixon and Ms. C Dolbeare of Carey Olsen on behalf of the 1<sup>st</sup> to 4<sup>th</sup> Respondents

**Before:** Hon. Justice Ingrid Mangatal

**Heard:** 26 and 27 April 2017

**Delivered:** 27 April 2017

**Transcript of Ex Tempore**

**Ruling Circulated:** 28 April 2017

**Ruling (No.4) Published:** 9 October 2017

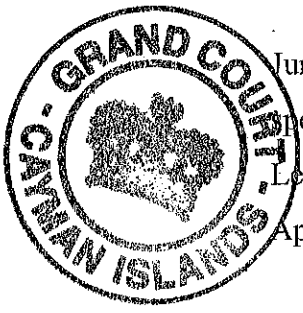


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**TRANSCRIPT OF EX-TEMPORE RULING**

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1. This is my Ruling on the Summons for Adjournment and Summons for Leave to Withdraw, filed on behalf of the 1<sup>st</sup> to 4<sup>th</sup> Respondents.
2. I have refused both applications because in my view, no good reasons were advanced in support of these applications, when the Summonses of 22 February 2017 'Challenging



Jurisdiction' and 'Seeking to Set Aside the Order for Substituted Service' were specifically set during the April 2017 hearing at the request of the Respondents. Indeed, Leading Counsel for the Respondents specifically asked for a convenient hearing in April, saying that a listing in June would result in unacceptable delay.

3. There is no evidence to substantiate the reasons advanced in *Thor 7*, i.e. that there is a need for input from Mr. Batista, nor is there any evidence of attempts to engage with Mr. Batista in the interim.
4. Secondly, *Thor 7* claims that because of limited resources within EBX, a decision was taken to focus resources on the Florida proceedings and the Brazilian proceedings. There is no evidence to support lack of funding for EBX or as to any efforts made to obtain funding from other sources. Any alleged urgency in the Florida proceedings appears to have been entirely self-imposed.
5. It is also my view that these Respondents have treated the Court's Orders with scant regard. This is not the first time that they are acting as if the Court had never made orders, with no satisfactory explanation as to why or what efforts have been made to comply.
6. I have formed the view that the Applicants will be prejudiced if the summonses of 22 February are not heard today, particularly as the Respondents seem to think that they can simply come back and resurrect them at any time. I have therefore gone on to consider these summonses.
7. I should indicate, in addition to what I said ex tempore in Chambers yesterday, that it was indicated to me by Counsel for the 1<sup>st</sup> to 4<sup>th</sup> Respondents, Mr. Golasweski, before I had ruled on the Summons for Adjournment and Summons for leave to withdraw, that if the relief in these Summonses was refused, his instructions were that he should not advance any arguments regarding the Summonses challenging jurisdiction and seeking to set aside the Order for Substituted Service. Consequently, after I had refused the adjournment and

leave to withdraw summonses, I heard argument in opposition to the summonses dated 22 February 2017, only from Mr. Halkerston, Counsel for the Applicants.

8. As regards the Order for Substituted Service, I am of the view that it was properly made and I refuse to set it aside.
9. As regards the issue of S.11A *Grand Court Law* Jurisdiction, for the reasons given in my decision delivered on 11 November 2016, I am satisfied that Mr. Batista's challenge to the jurisdiction of this Court is without merit. Indeed, since the initial grant of the Worldwide Freezing Order ("WFO") it has been confirmed that Mr. Batista has assets of approximately US\$7,166,901.53 in this jurisdiction (as defined in the WFO) in the BTG Cayman Islands bank accounts. The decision is consistent with authority, in particular *Motorola Credit Corp v Uzan* (No.2) [2003] [EWCA] Civ. 752.
10. As regards the treble damages issue, in my judgment I accept that there is a good and arguable basis for the principles set out in the applicant's skeleton argument, that all treble damages provisions are not the same – there is a spectrum. Principle 2 - that the US Supreme Court has classified Federal Rico as compensatory, and so have many Federal Appeal Courts. Principle 3 - Florida Rico is based on Federal Rico and that Florida Courts look to the interpretation of the Federal Rico when construing and applying Florida Rico.
11. I accept Mr. Murray's professional opinion that a party arguing that treble damages under Florida Rico are remedial and not punitive, will have much the better of the argument.
12. The two summonses dated 22 February 2017 are therefore dismissed.

  
**THE HON. JUSTICE MANGATAL**  
**JUDGE OF THE GRAND COURT**

