



1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 FINANCIAL SERVICES DIVISION
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Cause No: FSD 111/2017

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6 IN THE MATTER OF THE COMPANIES LAW (2018 REVISION)

7 AND IN THE MATTER OF THE WIMBLEDON FUND, SPC (IN OFFICIAL
8 LIQUIDATION)

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11 **Appearances:**

12 Mr. Kyle Broadhurst and Ms. Kate
13 McClymont of Broadhurst LLC on behalf of
14 the JOLs of Wimbledon Financing Master
15 Fund Ltd. (In Official Liquidation) for the
16 Applicants

17 Messrs. Nicholas Hoffman and Lachlan Greig
18 of Harneys Westwood & Riegels for the JOLs
19 of The Wimbledon Fund, SPC. (In Official
20 Liquidation) for the Respondents

21 **Before:**

The Hon. Justice Raj Parker

22 **Heard:**

19th November 2018

23
24 **HEADNOTE**

25 *Companies Law – The issue of Costs – GCR O.62 r.4 - Costs to be reserved and*
26 *the Court’s “unfettered discretion” to depart from the general mandate of costs*
27 *following the event, argued.*

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RULING ON COSTS
OF THE LEAVE APPLICATION
OF THE WIMBLEDON FINANCING MASTER FUND LTD
(IN OFFICIAL LIQUIDATION)



- 7 1. The Master Fund seeks its costs arising from an application under s.97 of the
8 Companies Law (2018 Revision) (“the Law”) for leave to commence legal proceedings
9 against The Wimbledon, SPC Fund (“the SPC Fund”) in New York.
- 10 2. The SPC Fund resists the application and argues that the costs should be reserved
11 pending the outcome of the New York proceedings.
- 12 3. Written submissions have been provided by the parties.
- 13 4. I heard the application for leave, which was contested, on the 19th November 2018. I
14 delivered a Judgment in early December 2018 – giving reasons why the Master Fund
15 should be given leave.
- 16 5. A successful party to a discrete application should recover its reasonable costs from the
17 unsuccessful party unless the Court otherwise orders.¹
- 18 6. However, the Court has an unfettered discretion to depart from the general mandate
19 that costs will ‘follow the event’ in the relevant circumstances of the case².
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¹ See GCR (Revised) O.62 r.4(2)

² See GCR O.62 r.4(5)

1 7. The SPC Fund argues that this was just the first obligatory procedural step in making
2 good the alleged claim. It would be manifestly unfair if it (the SPC) were to be
3 successful in defending the New York proceedings, were unable to recover its costs
4 under New York law, and, in addition, ordered to pay the costs of the application for
5 leave.

6 8. The SPC Fund argues that the situation is analogous to an order for directions where
7 the application is a necessary part of the trial process.

8 9. The SPC Fund states further that the Court should reserve costs until the outcome of
9 the New York proceedings is known, and then make the appropriate order, which
10 might be that the costs of the application for leave should be awarded to the Master
11 Fund. There is no need to determine the matter now.

12 10. I do not accept these submissions. I see no reason to depart from the overriding
13 objective of GCR O.62 r.4(2) that costs should 'follow the event'.

14 11. The matter I determined was a discrete matter .I did not consider the underlying merits
15 of the claim. It was a choice of forum decision based upon an exercise of discretion
16 following extensive submissions and evidence upon which I ruled in favour of the
17 Master Fund.

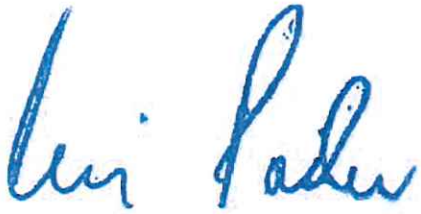


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1 12. The SPC Fund should pay the Master Fund's costs of the application on the standard
2 basis, to be taxed if not agreed within twenty-eight (28) days.

3 13. There are no circumstances in this case which would warrant an order for indemnity
4 costs.

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6 **Dated this the 31st day of December 2018**

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9 **The Honourable Mr. Justice Raj Parker**
 Judge of the Grand Court

