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

**CAUSE NO. FSD 50 OF 2023 (DDJ)**

**IN THE MATTER OF THE FRAUDULENT DISPOSITIONS ACT (1996 REVISION)**

**BETWEEN:**

**(1) KISHA DEAN TREZEVANT**
**(2) SEVEN MILE BEACH HOTEL DEVELOPMENT CORP. LTD**

Plaintiffs

**AND**

**(1) STANLEY H. TREZEVANT III**
**(2) R&W CAYMAN PROPERTIES, LTD**

Defendants

**THE REGISTRAR OF LANDS**

Interested Party

| | |
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| **Before:** | The Hon. Justice David Doyle |
| **Appearances:** | Blair Leahy KC and Harry Shaw of Campbells LLP for the Plaintiffs |
| | David Quest KC, Nicholas Fox and Lisa Yun of Mourant Ozannes (Cayman) LLP for the First Defendant |
| | Quentin Cregan and Luke Armitage of Maples and Calder (Cayman) LLP for the Second Defendant |
| **Heard:** | 24 July 2024 |
| **Supplemental skeleton arguments filed:** | 7 August 2024 |

**Draft Judgment circulated:** 23 August 2024

**Judgment delivered:** 29 August 2024

*Determination of various issues in respect of directions as to split trials/preliminary issues, expert evidence, discovery, witness statements and ancillary issues*

**JUDGMENT**

**Introduction**

1. I provide the following high level broad brush concise introduction to the issues that are presently pending before this court for determination.

2. The First Plaintiff and the First Defendant are nationals of the United States of America and were formerly husband and wife. They married in September 1990 and were declared divorced by the Tennessee Circuit Court as long ago as March 2017.

3. The Second Plaintiff is a company which was incorporated in the Cayman Islands. It is the registered legal owner of certain parcels of land at West Bay North West Point in the Cayman Islands ("North West Point"). Prior to 6 July 2022, the Second Plaintiff appears to have been legally owned and controlled by the First Defendant. Since 6 July 2022, the First Plaintiff has been its sole director and shareholder.

4. The First Defendant is the registered legal owner of one parcel of land located at West Bay South in the Cayman Islands ("West Bay").

5. I refer to the North West Point and West Bay together as the "Cayman Properties".

6. The Second Defendant is a company which was incorporated in the Cayman Islands on 20 September 2020. Its registered directors are members of the McCarthy family including Keith McCarthy. There is a dispute between the Plaintiffs and the Defendants as to whether the First

Defendant and Keith McCarthy are merely acquaintances or as the Plaintiffs contend close personal friends since childhood.

7. In proceedings between the First Plaintiff and the First Defendant, there have been judgments and orders of courts in the United States of America some of which relate to what is described as marital property.

8. The family finance proceedings in Tennessee appear to have been protracted and hotly contested up to appeal level. It appears common ground on the pleadings that the First Defendant was convicted of 19 counts of contempt including failure to disclose property in the divorce proceedings and he was sentenced to 55 days in jail.

9. It appears that the First Defendant entered into contracts dated 29 January 2021 whereby he sold (or in the words of the Plaintiffs "purportedly" sold) the Cayman Properties to the Second Defendant (the "Sales").

10. It is the Plaintiffs' case that a judgment delivered in Tennessee in the United States of America in 2021 is entitled to recognition in the Cayman Islands and that the Plaintiffs are entitled to declarations in respect of the beneficial interest in certain property in the Cayman Islands, including the Cayman Properties.

11. The Plaintiffs also seek (1) a declaration that the Sales are sham contracts and are accordingly null and void and of no legal effect (2) alternatively, a declaration that the sale transactions were fraudulent dispositions within the meaning of the Fraudulent Dispositions Act (1996 Revision) and ought to be set-aside and (3) further or alternatively, personal relief against the First Defendant for breach of trust and/or breach of duty and proprietary and personal relief against the Second Defendant for knowing receipt of trust property.

12. The Defendants deny that the relevant foreign judgment is capable of recognition in the way asserted by the Plaintiffs and further claim that the Sales were arm's length transactions and for good consideration.

13. The Plaintiffs commenced these proceedings on 1 March 2023 and filed their Re-amended Writ of Summons and Re-amended Statement of Claim on 1 March 2024. The Second Defendants'

Amended Defence and Counterclaim followed on 24 May 2024 and the Defence of the First Defendant on 27 May 2024. The Plaintiffs' Replies were filed on 18 June 2024.

**The Summons**

14. By summons dated 14 March 2024 (the "Summons") the Second Defendant applied for directions as to:

(1) the filing and service of remaining pleadings;

(2) discovery and inspection of documents;

(3) witness statements, hearsay notices and attendance of witnesses for cross-examination at trial;

(4) fixing a trial date and the filing of skeleton arguments and trial bundles; and

(5) costs.

15. There was no mention of split trials, preliminary issues or expert evidence.

**The disputed issues**

16. There are five main areas of disputed issues. When the Summons came on for hearing on 24 July 2024 the main argument amongst the parties related to (1) whether there should be split trials and if so what issues should be dealt with at such split trials and (2) expert evidence. The parties were also in dispute as regards (3) the wording of category number 1 of the Discovery Protocol and whether the wording should be to "the McCarthy family" or limited to "Keith McCarthy", (4) certain timings for discovery and factual evidence, and hearsay notices (if any) and (5) whether the Order should include a paragraph as follows: "Each party shall be permitted up to 10 minutes with each witness they call or such additional time as the trial judge directs to address any additional matters necessary to be covered by that witness's evidence in chief." (the "10 minutes reference").

**Determination**

17. I now turn to my determination of the various disputed issues.

**Split trials/preliminary issues?**

18. I have considered all that the parties have had to write and say on this contentious topic. I am not persuaded that I should order split trials or the determination of preliminary issues in this case.

19. I do not need to set the law out in detail. It is common ground amongst the parties and is adequately summarised in *Arnage v Walkers* (FSD unreported judgment 5 May 2021). What is in dispute between the parties is the application of those well established legal principles to the facts and circumstances of the case presently before the court.

20. The parties have not agreed a factual basis for the determination of any agreed issues. The parties cannot even agree the precise issues that should be split and determined at a first stage trial. The First Defendant at paragraph 34 of his skeleton argument dated 19 July 2024 openly admits that the "precise formulation of the Phase 1 Issues are the subject of ongoing correspondence between the parties". The Plaintiffs do not agree to split trials. The First and Second Defendants do not agree on the issues for a "Phase 1 Trial". Evidence would have to be given and cross-examination would have to take place. There would be duplication. There would be no real savings in respect of time or costs.

21. Counsel suggested that a combined single trial would take approximately two weeks whereas a prior separate trial would take between 2-4 days. This is not a case where an initial trial on specific issues may take under a week and could possibly avoid a second trial spanning over many months. Furthermore, if there were split trials, counsel inevitably accepted that there would be some duplication of witnesses with at least the First Plaintiff and the First Defendant (who reside out of the jurisdiction) having to attend to give evidence twice. That is undesirable.

22. In this case it is preferable for all disputed issues to be dealt with at one trial. I do not think that the issues can be conveniently or safely split. It is best that all issues be dealt with at one trial. There should not be in effect two sets of onerous discovery exercises and two sets of trial

preparation. In the circumstances of this protracted litigation it is far better to have one single trial which will resolve all issues on one occasion. I am unpersuaded that split trials are appropriate in this case. I am unpersuaded that there are likely to be significant savings either of time or money if split trials are ordered. Indeed, I think in the long run split trials would just add to delay and costs. There are no good reasons to split the trial that would outweigh the objective of dealing with all aspects of the case on the same occasion. The overriding objective will best be achieved by having one trial and determining all relevant issues at that trial.

23. Preparation for and attendance at one main trial may in fact prove less time-consuming and costly than time and money spent on preparation for and attendance at two separate trials.

24. I am not persuaded that I should order a separate trial of separate issues or that I should order the determination of preliminary issues as I think it could be a "treacherous short cut", to use a phrase referred to in the authorities. A separate trial would not be determinative of the whole proceedings or potentially decisive, or dispose of significant aspects of the case, or conveniently avoid expense and delay.

25. In my judgment based on the evidence and arguments put before the court it would not be just or appropriate to order separate trials and I do not do so.

**Expert evidence**

26. There was reference to expert evidence in two areas (1) Tennessee law and (2) property valuation.

*No single joint experts in this case*

27. At the hearing, bearing in mind the suggested areas that the expert was to cover (foreign law and property valuation) and noting, pursuant to PD2 of 2024, the commentary at paragraph 38/4/1/2 of Hong Kong Civil Procedure 2024 "Areas in which the appointment of single joint experts may be appropriate may include … uncontroversial questions of foreign law or straightforward property or share valuations" and noting B5.1(b) of the Financial Services Division Guide and its steer to the use of single joint experts in appropriate cases, I raised with counsel the possibility of single joint instructed experts, one in foreign law and one on property valuation. Counsel openly admitted that

this possibility had not been considered. I therefore gave them an opportunity to take instructions and file supplementary skeleton arguments on the point.

28. I have considered their supplementary skeleton arguments in respect of their positions on joint single experts. Suffice to say no-one agrees to the appointment of single joint experts.

29. Having considered the position and the supplementary skeleton arguments I am not minded to direct the appointment of single joint experts in respect of Tennessee law and Cayman property valuations. To act upon that somewhat simplistic, although well-intentioned thought may, in the circumstances of this case, have led to more time and costs rather than saving time and costs. I am grateful to counsel for their assistance in enabling me to arrive at that conclusion.

*The Tennessee law expert evidence*

30. The Plaintiffs say that it appears to be accepted by all parties that expert evidence on Tennessee law will be necessary and would assist the court. The Plaintiffs say that the court will be assisted by Tennessee law evidence in resolving various disputed issues.

31. The First Defendant says that it is not in dispute that the resolution of the dispute will require expert evidence as to Tennessee law, there being various disputes between the parties as to Tennessee law on the face of the pleadings. The First Defendant is however content that, in relation to Tennessee law he should share an expert with the Second Defendant (to the extent that the Second Defendant wishes to advance such evidence at all) in circumstances where, on the face of their pleaded cases, there is no reasonable scope for conflict between them. The Second Defendant says he would be content for the parties to use a single joint expert on Tennessee law if the court, after considering the other parties' submissions, determines that it is appropriate. A fortiori, it appears that the Second Defendant would have no objection to sharing an expert on Tennessee law with the First Defendant.

32. The Second Defendant says that "there are very few (if any) issues of Tennessee law that are relevant to matters in issue between it and the other parties" (paragraph 4 of its supplemental skeleton argument dated 7 August 2024). The Second Defendant does however refer to some issues of Tennessee law that may concern it including those that could be relevant to determining the legal effect (if any) of a judgment handed down by a court in Tennessee in 2021 (the "Tennessee

Judgment") in the Cayman Islands in respect of the Cayman Properties. The Second Defendant also accepts that whether an issue estoppel arises under the Tennessee Judgment may involve issues of Tennessee law where expert evidence would assist the court.

33. It appears from paragraph 6 of the Second Defendant's skeleton argument dated 19 July 2024 that it recognises that Tennessee law may be of some relevance to the enforcement of the Tennessee Judgment in respect of the Cayman Properties and the issue of whether (or to what extent) the Tennessee Judgment, as a consequence of its recognition in the Cayman Islands or otherwise, prevents the parties from reopening in these proceedings any issues determined in the Tennessee Judgment, including the question of the value of the Cayman Properties.

34. I am content that the Plaintiffs instruct one expert on Tennessee law and the Defendants do likewise.

35. I do not need to adjourn my consideration as to whether the court would be assisted by the provision of expert evidence on Tennessee law. At least as between the Plaintiffs and the First Defendant this is obvious and beyond reasonable dispute. I turn later in this judgment to a mechanism for agreement or determination of the precise issues that should be referred to the Tennessee law experts in due course.

*The Cayman property valuation expert evidence*

36. I turn now to the position in respect of the Cayman property valuation expert evidence.

37. The Plaintiffs proposed that leave be granted to adduce expert valuation evidence in relation to the Cayman Properties. The Plaintiffs say that valuation evidence is relevant to liability on at least three of their causes of action. They say the true market value of the Cayman Properties is a relevant consideration in respect of the sham transactions and fraudulent depositions claims and it is a material consideration in relation to the breach of duty claims. The Plaintiffs proposed that they jointly instruct one expert and that the First Defendant and Second Defendant jointly instruct another. The First Defendant opposed the proposal for the Defendants to jointly instruct one valuation expert.

38. The Plaintiffs in their skeleton argument dated 19 July 2024 say that if leave to adduce expert valuation evidence is granted, the Plaintiffs propose that they jointly instruct one expert and that

the First Defendant and the Second Defendant instruct another (given, they say, the Defendants' defences regarding valuations are indistinguishable). The Plaintiffs say that this will also ensure that related costs are shared between the Defendants, and that the expert conferral process and trial time is streamlined by having two experts, rather than three.

39. The Plaintiffs in their skeleton argument dated 7 August 2024 maintain their position that it is appropriate that the Defendants jointly instruct one valuation expert given their pleaded cases in valuation is the same. The Plaintiffs add that the Second Defendant's counterclaim (pleaded in the alternative to its primary case) does not impact on its primary position on valuation.

40. In relation to the valuation of the Cayman Properties the First Defendant's position outlined at paragraph 54 of his skeleton argument dated 19 July 2024 is that it is plainly appropriate that he be permitted to adduce his own expert valuation evidence where his position and the position of the Second Defendant are far from wholly aligned. The First Defendant adds that he faces a counterclaim by the Second Defendant for an indemnity and/or damages in the event that the First Plaintiff is held to be registered proprietor of the Cayman Properties, the quantum of which may turn on this expert evidence.

41. The First Defendant's position in his supplementary skeleton argument dated 7 August 2024 remains that he and the Second Defendant should each have their own valuation expert. The First Defendant says that this is appropriate in circumstances where the valuation of the Cayman Properties may in due course be in issue as between them (e.g. if the Cayman Properties are awarded to the First Plaintiff and the First Defendant faces a claim from the Second Defendant for breach of contract and/or an indemnity). The First Defendant says that this is all the more so in circumstances where Maples (on behalf of the Second Defendant) pointedly failed to confirm in response to a letter dated 26 July 2024 from Campbells (on behalf of the Plaintiffs) that their counterclaim was not for damages equal to the true market value of the property.

42. The Second Defendant's position in its supplementary skeleton argument dated 7 August 2024 is that the mere existence of its counterclaim, which is brought in the alternative to its primary case, does not raise any conflict or other issues that would weigh against the Second Defendant and the First Defendant sharing an expert valuation witness. The Second Defendant adds that its primary case and the First Defendant's primary case, is that the purchase price for the Cayman Properties

in the sale contracts was not on uncommercial terms. The Second Defendant adds that accordingly their interests are aligned on the issue. The Second Defendant says that the sharing of an expert valuation witness would be more cost effective and would not unduly lengthen the trial (as it says would be the case with three rounds of cross-examination of expert valuation witnesses).

43. The Second Defendant at paragraph 7 of its supplementary skeleton argument dated 7 August 2024 submits that, if the court does not order a split trial, using a single joint expert between all parties on valuation issues is unlikely to be an efficient or cost-effective way to resolve the valuation issues in dispute. At paragraph 8 the Second Defendant says that if the court does not order a split trial it would be content with a single joint valuation expert for both Defendants (with the Plaintiffs having their own valuation expert). The Second Defendant's position is that the mere existence of its counterclaim does not raise any conflict or other issues that would weigh against it and the First Defendant sharing an expert valuation witness.

44. I think to limit the First Defendant and Second Defendant to the same single valuation expert may risk running into problems in the future at the trial. The Plaintiffs say that this is a "heavy and complex case" and in my view to limit the Defendants to one joint valuation expert may, in the long run, be a false economy.

45. The Second Defendant in its supplementary skeleton argument dated 7 August 2024 regarding single joint expert witnesses makes the point, albeit in submissions focused on preventing the appointment of a single joint expert between all parties on valuation issues, that "it is likely to lead to a fairer outcome by the Court hearing from more than one expert, who may have differing opinions and adopt differing valuation methodologies". In the grand scale of things I do not think that allowing each of the parties to engage their own valuation experts will disproportionately add to the cost or length of the trial.

46. On reflection I think it safer to permit the First Defendant to instruct his own valuation expert.

47. The Plaintiffs are content to instruct one valuation expert rather than separate experts for each of them and I am also content with that.

*Issues and directions in respect of expert evidence*

48. At this stage on the basis of the pleadings and the submissions it is relatively clear that the court would benefit from expert evidence being adduced in respect of the issues of Tennessee law and Cayman property valuation. Unfortunately, the parties have not yet agreed upon the issues to be covered by the experts. The issues of Tennessee law raised by the Defendants seem to be relevant. There will also need to be valuation evidence in respect of the Cayman Properties.

49. The Plaintiffs, other than the points of Tennessee law they raise in their pleadings, provide very little exposure to what they think should be the issues for the Tennessee law experts. They simply fail to grasp the nettle and seek to defer proper consideration of these issues by saying that the timing and scope of expert evidence as to Tennessee law will likely need to be determined after there is clarity on the mode of trial.

50. The First Defendant in his skeleton argument dated 19 July at paragraph 51 says that the issues for Tennessee law expert evidence are as follows:

(1) What, if any, interest passes to a spouse that receives an award of marital property in that property as a matter of Tennessee law? Without prejudice to the generality of the foregoing, does an order awarding a spouse real property in and of itself confer beneficial and/or legal ownership of that property as a matter of Tennessee law?

(2) Was the First Defendant barred from selling or disposing of marital property, including the Cayman Properties between 1 March 2017 and 5 January 2021 as a matter of Tennessee law and, if so, on what basis?

(3) What is the nature and effect of the stipulations as to value made by the parties and/or determinations made in the Tennessee Proceedings as to their value as a matter of Tennessee law?

(4) Is there a presumption as a matter of Tennessee law that property acquired during a marriage (including after the commencement of divorce proceedings but before

the grant of a final decree of divorce) is acquired with marital assets or their proceeds as alleged by the Plaintiffs at paragraph 28(2)(d) of their Reply to the First Defendant's Defence and, if so, what is its basis and extent?

51. The Plaintiffs in their supplementary skeleton argument dated 7 August 2024 at paragraph 8.2 say that the breadth of potential Tennessee law issues is unclear but potentially wide-ranging. At paragraph 10 the Plaintiffs add that the parties should be afforded time to identify the issues in dispute before expert evidence is ordered. The First Defendant in his supplementary further written submissions dated 7 August 2024 at paragraph 9.1, albeit in the context of arguing against the appointment of a single joint expert, states that agreeing the terms of reference, instructions and agreed factual assumption especially as regards Tennessee law will be difficult and time consuming. The Second Defendant in its supplementary written submissions dated 7 August 2024 at paragraph 7.1, again the context of arguing against the appointment of a single joint expert, says that it is likely to be time-consuming and difficult for the parties to agree upon the expert's terms of reference.

52. I have covered above the Second Defendant's submissions as to the issues of Tennessee law which it says concerns its position.

53. As regards the expert valuation expert evidence, the Plaintiffs simply suggest that the true market value of the Cayman Properties is plainly a relevant part of the evidential matrix. The Defendants do not shed any meaningful light on what they say should be the precise issues for the property valuation expert evidence.

54. The Second Defendant says that claims that (1) the contracts pursuant to which the Cayman Properties were sold were sham contracts and are null and void and of no legal effect; (2) the sale of the Cayman Properties were fraudulent dispositions and at an undervalue with intent to defraud creditors and voidable; (3) in respect of proprietary and personal relief for knowing receipt all raise the issue of the value of the Cayman Properties.

55. Although the parties have had a lot on their respective plates, it is difficult to understand why they apparently seek to delay progress in agreeing the issues for the experts. The issues for the experts

should have been agreed long ago but I am willing to give the parties some further time to finalise those agreed issues.

56. The parties should try and agree upon the issues to be covered by the experts and file an agreed list of issues before 3pm on 25 October 2024. If they cannot agree on the issues then they should specify on what issues they cannot agree upon and why and file competing drafts of the list of issues for the experts with concise (no more than 5 pages) written submissions in support. I intend then to determine the issues for the experts "on the papers" without the need for a further hearing in that respect. The parties should, however, be able to agree the issues for the experts on the basis of the pleadings and they do not have to wait until completion of discovery and inspection or the filing of factual evidence to finalise the issues for the experts.

57. The parties should also, when they file the draft list of issues for the experts, file draft directions in respect of the timescale for the exchange of expert reports, subsequent meetings of experts and the filing of joint reports outlining the agreed areas and the areas of disagreement (if any) and a brief summary of the reasons for such disagreement. I would encourage the experts to keep it short and simple and to have at the forefront of their minds the need to assist the court and to avoid taking a partisan approach that favours the instructing party. He who pays the piper does not call the tune insofar as expert evidence is concerned.

58. In respect of the number of experts to be engaged, in summary, I confirm that I am content that both Plaintiffs instruct just one expert on Tennessee law between them. I am also content that both Defendants instruct just one expert on Tennessee law between them (which appears now to be the agreed position of the Defendants). I direct that each Defendant may instruct their own expert on Cayman property valuation. For the reasons I have already provided above, I do not think it desirable, in the particular circumstances of this case, that both Defendants be limited to one Cayman property valuation expert.

**The Discovery Protocol**

59. In respect of the Discovery Protocol the parties eventually agreed the naming conventions for documents as per the First Defendant's draft and that in the "Party to produce documents" column the words "All parties" should appear. Indeed it may be better if that column was deleted in its

entirety as paragraph 4 already starts with "The parties shall discover …" and such phrase would include "all parties", so the additional column is now superfluous.

*Category number 1 "McCarthy family" or "Keith McCarthy"?*

60. There was however a remaining dispute as to the wording of category number 1 which in the Plaintiffs' draft read:

> "All documents/communications concerning, or evidencing, the relationship between Mr Trezevant and the McCarthy family and their historic interactions."

61. The phrase "the McCarthy family" was not defined in the Discovery Protocol. The Plaintiffs maintained that such wide phrase should remain included but the Defendants submitted that the name "Keith McCarthy" should be inserted instead.

62. Before determining the wording in category number 1 it is important to understand the relevance of this point to the issues that are in dispute on the pleadings.

63. Paragraph 9 of the Re-amended Statement of Claim pleads that the registered directors of the Second Defendant are:

> "Keith, Meredith, Robert and William McCarthy. Keith and Meredith are husband and wife, and Robert and William are their adult children. Stanley [the First Defendant] has been close personal friends with Keith and his brother, Kevin McCarthy, since childhood."

64. In the Amended Defence and Counterclaim of the Second Defendant, a corporate entity, at paragraph 9.2 the Second Defendant avers that:

> "Keith first met Stanley during their childhood when they were neighbours in Memphis, Tennessee. Stanley was a childhood friend of Keith's brother Kevin McCarthy and no more than an acquaintance of Keith's for a brief period during their childhood. Keith left Memphis at the age of 15 and had very little contact with Stanley from that point onwards until a visit to the Cayman Islands in 2017 and the discussions over the sale of North West

Point and West Bay which commenced in July 2020. The only conversations between Stanley and Keith during the 40 years between them when Keith moved from Memphis and the visit to the Cayman Islands in 2018 were at family weddings involving Keith's brother Kevin and two or three other meetings. The description of Stanley as a close personal friend of Keith is therefore denied."

65. At paragraph 8.1 of the First Defendant's Defence the first three sentences of paragraph 9 of the Re-amended Statement of Claim are admitted but at paragraph 8.2 the fourth and final sentences are denied and it is averred:

> "Stanley is not, and never has been, a "*close personal friend*" of Keith McCarthy. He was friend with Keith's brother, Kevin McCarthy, but was no more than an acquaintance of Keith. Save for family weddings, Stanley had little contact with Keith between approximately or around 1973, when the McCarthy family left Memphis, and July 2018 when they spoke before Keith and his wife visited the Cayman Islands and the discussions over the sale of North West Point and West Bay which commenced in or around June or July 2020."

66. At paragraph 65(2) of the Re-amended Statement of Claim it is pleaded:

> "Stanley had been a close personal friend of Keith McCarthy and his brother Kevin since childhood."

This pleading is in the context of the Plaintiff's claim against the Defendants in relation to the Cayman Properties and the allegation that the contracts in respect of the Sales were sham transactions.

67. In the Amended Defence and Counterclaim of the Second Defendant at paragraph 26.3 the Second Defendant denies paragraph 65(2) and repeats paragraph 9.2 of its Defence.

68. In the Defence of the First Defendant at paragraph 55 paragraph 65 is denied and at paragraph 55.2 paragraph 65(2) is denied and the First Defendant repeats paragraph 8.2 of his Defence.

69. At paragraph 11 of the First Defendant's skeleton argument dated 19 July 2024 the First Defendant describes Kevin McCarthy as a "good friend". It does not appear to be disputed that the First Defendant and Kevin McCarthy are good friends. The dispute appears to be in respect of the relationship between the First Defendant and Keith McCarthy and whether they are mere "acquaintances" or "close personal friends".

70. On the basis of the pleadings and the issues that are in dispute, in my judgment the phrase "the McCarthy family" is far too wide. It should be deleted and the name "Keith McCarthy" inserted.

**Timings in respect of discovery, factual evidence and hearsay notices (if any)**

71. There was a dispute as to timings in respect of discovery, factual evidence and hearing notices (if any).

72. The Plaintiffs argued that the Defendants should not be permitted to delay giving fulsome discovery in a timely manner. The Plaintiffs further submitted that the court's summer recess and individual's unparticularised potential holiday plans did not justify the parties failing to progress discovery and much could and should be done by the parties and their attorneys over the summer months.

73. The First Defendant says that the Plaintiffs' timetabling sees (1) discovery being given seven weeks from the date of the Order and (2) witness statements five weeks from the date of discovery. The First Defendant does not consider this timetable to be realistic having regard to the nature and complexity of the issues in dispute in these proceedings. The First Defendant, if the court is against him on a split trial and directs a single trial (with the attendant consequences for the scope of the discovery exercise), invites the court to direct (1) discovery to be given thirteen weeks from the date of the Order (which period takes account of the fact that, otherwise, much of the time afforded for disclosure will span the long vacation period which in Cayman is from 1 August 2024 to 16 September 2024), (2) written statements to be exchanged six weeks from the date of discovery.

74. I take account of the time since the hearing in July and also the fact that the court is presently in long vacation. It would be unrealistic, and a little like an ostrich sticking its head into a big lump of sand on a volleyball court on Seven Mile Beach, to ignore the fact that in August over-worked attorneys and stressed parties and potential witnesses in legal proceedings sometimes take well

deserved holidays and time away from the usual hurly burly of hotly contentious litigation. In some cases it is essential that they do so to maintain their mental health.

75. Some litigants may crave litigation focus and expedition 365 days of the year, others will seek to delay when they think it suits them and others will fall somewhere in the middle. In setting time limits, courts must do their best to strike a balance between the respective reasonable needs of the litigants and the administration of justice generally. It is in the interests of justice that reasonable time be given to parties to complete the onerous and important tasks of discovery and the finalisation of witness statements but I do not underestimate the need for proceedings to be progressed expeditiously. Nor do I underestimate the time and effort that it will take to ensure that full discovery is properly completed and appropriate witness statements are provided. I will therefore give sufficient time at this stage so that no extensions need to be sought later.

76. Having considered the competing arguments on the timings I resolve them as follows:

1. Discovery and inspection shall be by 3pm on 8 November 2024;

2. Factual evidence (in the form of signed statements) and hearsay notices (if any) shall be due by 3pm on 13 December 2024 (35 days after discovery), with reply evidence and hearsay notices (if any) due by 3pm on 3 January 2025 (21 days thereafter).

**The 10 minutes reference**

77. The First Defendant says that the 10 minutes reference is unnecessary or inappropriate. The First Defendant adds that the draft directions already make provision for reply witness statements and to the extent that a party seeks to adduce further witness evidence orally, the proper course is for it to seek permission from the trial judge for all such evidence.

78. I have considered the provisions of the Grand Court Rules ("GCR") in respect of the exchange of witness statements. Order 38 rule 2A (7)(b)(ii) of the GCR provides that a party may not without the consent of the other parties or leave of the court adduce evidence from a witness, the substance of which is not included in the witness statement served, except in relation to new matters which have arisen since the witness statement was served on the other party. Under Order 38 rule 2A(17)

of the GCR the court has power to vary or override rule 2A(7)(b)(ii) of the GCR and to give such alternative directions as it thinks fit.

79. I note that the 10 minute reference does not appear in Section B4 of the Financial Services Division Guide (Standard Pre-Trial Directions) and I am not persuaded it is appropriate to include it in this complex highly contentious finance case.

80. The 10 minutes reference in the draft Order should be deleted. It is not appropriate, particularly in the circumstances of this case. There should be no surprises at trial. I appreciate that a witness may sometimes seek to amplify his witness statement and give evidence in relation to new matters which have arisen since the witness statement was served on the other parties. In the draft Order supplied by the parties there is reference to "The parties shall not be entitled to adduce evidence at trial from any witness whose signed statement has not been served in accordance with this Order, except with leave of the trial judge." This sensible provision should not be diluted by the additional 10 minutes reference. In the hotly contested case presently before the court I think it would be best to case manage in a way that will reduce the risk of unnecessary surprises at trial which may necessitate wasteful adjournments. If witnesses wish to update their witness statements after they have been filed and served they should give the other parties plenty of notice prior to trial and make any appropriate applications for leave of the court well in advance of the trial and in that way the smooth running of the trial and fairness to all parties will be further facilitated.

81. Heavy and hotly contested finance litigation is not a game of cards but if it were the cards would be placed all face up on the table from an early stage. Evidential cards would not be kept up sleeves or in back pockets to be produced late in the day as tactical surprises and increasing the risk of adjournments or even worse unjust and unfair outcomes.

82. If a witness needs to update a witness statement in the case presently before the court that should be done well before trial and permission should be sought for such. If it is left until the day the witness is due to give evidence at the trial that runs the risk of unnecessary adjournments and costs and time being thrown away. This case has dragged on long enough already.

83. The filing of witness statements in this case shall be within the requirements of the Order to be drawn up following the delivery of this judgment and there should be no filings outwith the terms

of the Order. If the genuine necessity for the filing of a supplementary witness statement arises the permission of the court should be sought in good time, well before the trial where possible.

**The Registrar of Lands**

84. The Registrar of Lands appears in the pleadings as an "Interested Party". I should add, for the sake of completeness, that no written or oral submissions were presented to the court on behalf of the Registrar of Lands at the hearing of the Summons. It may be that the Registrar was not served with the Summons or notified by the parties of the hearing on 24 July 2024. The parties should give thought to what, if any, role the Registrar of Lands is to play at the substantive hearing and factor in any suggested necessary directions in that respect in due course.

**The Order**

85. I think that resolves all the disputed issues between the parties in respect of the directions. The attorneys should file an updated draft Order agreed as to form and content reflecting the determination in this judgment within 14 days following the delivery of this judgment.

86. I am grateful to counsel for their continuing assistance.

David Doyle

**THE HON. JUSTICE DAVID DOYLE**
**JUDGE OF THE GRAND COURT**