



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

Cause No. FSD 22 of 2018 (RPJ)

B E T W E E N:

- (1) GEORGE ALLEN COWAN
(2) GEORGE ALLEN COWAN, ON BEHALF OF EQUIS SPECIAL L.P.
(PREVIOUSLY KNOWN AS EQUIS ASIA FUND SPECIAL L.P.)**

Plaintiffs

- and -

- (1) EQUIS SPECIAL L.P. (PREVIOUSLY KNOWN AS EQUIS ASIA FUND SPECIAL L.P.),
ACTING BY ITS GENERAL PARTNER EQUIS SPECIAL GP
(2) EQUIS SPECIAL GP (PREVIOUSLY KNOWN AS EQUIS ASIA FUND SPECIAL GP), IN
ITS CAPACITY AS GENERAL PARTNER OF EQUIS SPECIAL L.P.
(3) DAVID CHARLES RUSSELL
(4) ADAM BERNHARD BALLIN
(5) LANCE MICHAEL COMES
(6) JOSEPH THOMAS CARMODY
(7) RAJPAL SINGH CHAUDHARY
(8) TONY GIBSON**

Defendants

Before: The Hon. Justice Parker

Appearances: Mr Thomas Grant KC and Mr Nicholas Dunne, Mr Brett Basdeo and Mr David Lee of Walkers (Cayman) LLP for the Plaintiffs

Erik Bodden of Conyers Dill & Pearman LLP for the Sixth Defendant

Ms Anneliese Day KC and Mr Quentin Cregan, Ms Tiana Ritchie and Ms Mehreen Siddiqui of Maples and Calder (Cayman) LLP for the First to Fifth Defendants and Seventh to Eight Defendants

Heard: Written submissions

**Draft Decision
circulated:** 30 July 2024

Decision delivered: 7 August 2024

Costs-Judicature Act (2021 revision) s.24-Order 62-costs of amendments-discretion-appropriate reduction in respect of one aspect-indemnity costs-payment forthwith or at conclusion of case-interim payment

Decision on Costs

Introduction

1. The Court gave Judgment on 22 May 2024. The Court has been asked to make a determination on costs in the absence of agreement between the parties. The Court has agreed to proceed ‘on the papers’ and has reviewed the written submissions of each of the parties.

Law

2. The costs of and incidental to these proceedings are in the discretion of the Court-see *Judicature Act (2021 Revision)*, §24(1).
3. The Court has the power to determine by whom, to whom and to what extent the costs are to be paid-see *Judicature Act (2021 Revision)*, §24(3).

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4. Costs should normally follow the event, but the Court retains a discretion to make other costs orders in the interests of justice¹.

Costs of the amendments in the 4ASC

5. Ps sought leave to amend their pleadings to introduce four new claims. Three were allowed to proceed. The first question is what order should follow in relation to the costs of and occasioned by the amendments to the three new claims in the 4ASC which were allowed.
6. In the Court's discretion the ordinary rule that the amending party will pay such costs² is not displaced in this case.
7. A fair Order that does justice between the parties in relation to this item is that the costs of and occasioned by the amendments allowed in the 4ASC shall be payable by P on the standard basis.

Costs of the summonses

8. There were three summonses dealt with by the Court: the Amendment Summons; the Security Summons; and the Disclosure Summons.

Amendment summons

9. As stated above, there were four new claims which were considered in detail. Ps lost the Japan Solar amendment application on the basis that it was not properly arguable and was an abuse of process. They should therefore bear the costs of this. Taxation on the indemnity basis for advancing this case is in the Court's view not appropriate to reflect Ps' conduct. Although the claim failed, Ps' conduct was not unreasonable or improper to a high enough degree³.
10. In the Court's estimation an appropriate Order is that Ps should in all the circumstances suffer a 20% deduction in their overall recovery to reflect the justice of having lost this part of the application and in light of the time taken on this aspect of the case, and the Court's finding that the claim was an abuse of process.

¹ See GCR O.62, r.4(5)

² O.62, r.6(5)

³ O.62, r.4(11)

11. Ds lost their opposition to the Japan Wind, India Wind and Equis Renewables claims as a result of an initial agreement to those claims being introduced which was held to be valid and binding. The opposition to these claims took up a considerable amount of time at the hearing and involved a large amount of evidence, which was filed late (see §§ 16-17 of the Judgment dated 22 May 2024). As the Court said in §48 of the Judgment “...*Having consented to the amendments it is not fair to the Ps to have a full scale merits case advanced by the Maples Ds so late before this hearing in the guise of a strike out application...*”.

Security summons

12. The Court found that Ds' foundational basis for this application was misconceived. It was also made over 5 years since the proceedings were commenced.

Disclosure Summons

13. The Ds lost their application for disclosure relating to the third-party funding by a private individual.

Ds' conduct

14. The Court is of the view that Ds' conduct across these applications was unreasonable to a high degree. The way in which they litigated these summonses was in the Court's view outside the norm and warrants an Order of indemnity costs. The Court is of the view however that there is no good reason for taxation forthwith. The costs can be assessed at the close of these proceedings in the usual way.
15. The Court notes in particular the following aggravating factors in relation to Ds' conduct: that Ds sought to resile from the original agreement in relation to the Amendment Summons which resulted in the assessment of a large volume of evidence, filed late, which took up considerable resources in breach of the Overriding Objective; unnecessary complexity took the matter sufficiently outside the norm to justify indemnity costs⁴; the Security Summons was manifestly hopeless; and the

⁴ See *Kang v Kang* [2021] EWHC 3122 (Ch) at § 26

Disclosure Summons was also filed very late and failed. The tactical and strategic motivation for the litigation to have been conducted in this way became clear to the Court during the hearing.

Payment on account

16. The Court is of the view that the Ds should make a payment on account of these costs⁵. The Ps' schedule is a reasonable and appropriate estimate and seems reasonably conservative to the Court as an initial assessment.
17. As Ps' costs are to be taxed on the indemnity basis, their recoverable costs and also the payment on account should include the fees of their foreign lawyers: *The Armand Hammer Foundation Inc v Hammer International Foundation* (unreported, 24 April 2024) at [6]-[7].
18. There should also be an order that the normal restrictions in relation to foreign lawyers' fees and expenses in GCR O.62, r.18(3)-(7) are to be disapplied on the taxation.
19. The payment on account is to be US\$560,000.

D6 Mr Carmody

20. D6 did not participate in or take any position on any of the contested applications. There was a 'watching brief' only. In the circumstances the fair outcome is that there is no order as to costs in relation to D6.
21. The Mediation summons took up no real contested time and the just Order is that there should be no order as to costs on this summons.
22. The parties are invited to draw up an agreed Order for the Court's approval.



THE HON. MR. JUSTICE RAJ PARKER
JUDGE OF THE GRAND COURT

⁵ O.62, r.4(7)(h)