



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

CAUSE NOS: FSD 268, 269 AND 270 OF 2021 (DDJ)

**IN THE MATTER OF THE COMPANIES ACT (2022 REVISION)
AND IN THE MATTER OF PRINCIPAL INVESTING FUND I LIMITED (FSD 268)
AND IN THE MATTER OF LONG VIEW II LIMITED (FSD 269)
AND IN THE MATTER OF GLOBAL FIXED INCOME FUND I LIMITED (FSD 270)**

CREDIT SUISSE LONDON NOMINEES LIMITED

Petitioner

and

**PRINCIPAL INVESTING FUND I LIMITED (FSD 268)
LONG VIEW II LIMITED (FSD 269)
GLOBAL FIXED INCOME FUND I LIMITED (FSD 270)**

First Respondents

**FLOREAT PRINCIPAL INVESTMENT MANAGEMENT LIMITED (FSD 268)
LV II INVESTMENT MANAGEMENT LIMITED (FSD 269)
FLOREAT INVESTMENT MANAGEMENT LIMITED (FSD 270)**

Second Respondents

Appearances: James Collins QC, David Lee and David Lewis-Hall of Appleby
for the Petitioner
Tom Weisselberg QC, Alistair Abbott and Alan Quigley of
Forbes Hare for the Second Respondents
Sam Dawson and Jason Mbakwe of Carey Olsen for the Joint
Provisional Liquidators

Before: The Hon. Justice David Doyle



Heard: 31 May 2022

Ex Tempore

Judgment delivered: 31 May 2022

**Transcript
of Ex Tempore Judgment
circulated:**

1 June 2022

**Transcript of
Ex Tempore
Judgment approved:**

9 June 2022

HEADNOTE

Amendment of pleadings and case management directions

JUDGMENT

Introduction

1. I have read the hearing bundles, the skeleton arguments and the two versions of the draft Order. I am content to permit the first affidavit of Alan Thomas Quigley of Forbes Hare sworn on 27 May 2022 to be produced as evidence insofar as it is relevant and note there was no active opposition to its late production. I have also considered the oral submissions. James Collins QC appeared for the Petitioner and Tom Weisselberg QC for the Second Respondents.

The issues

2. There are two main issues before the court today for determination: (1) an application to reamend the petitions; and (2) further directions towards a trial of these long outstanding petitions.

Determinations

3. I now turn to my determination of the issues before the court.

Leave to re-amend

4. I have no hesitation in granting leave to re-amend the petitions. The Second Respondents did not object to the application for leave to re-amend but made such agreement subject to their costs being paid and the giving of further and better particulars.
5. I reserve costs as I think the court will be in a better position to determine costs after the hearing of the winding up petitions.
6. The Re-Amended Petitions shall be deemed to be served on the Second Respondents today 31 May 2022 and the finalised pleading should be filed in court before 4pm tomorrow.
7. The Second Respondents shall file and serve their Amended Defences before 4pm on 21 June 2022 and if so advised the Petitioner shall file and serve Amended Replies before 4pm on 5 July 2022.



8. I make no orders in respect of further and better particulars as no such applications are before the court and in any event the Second Respondents can plead to the Re-Amended Petitions without further particulars.
9. I now turn to the directions towards trial.

Directions towards trial

10. The petitions in these cases are dated 14 September 2021. As long ago as 25 October 2021 I made Orders in respect of notification to registered shareholders, pleadings and exchange of lists of documents and inspection.
11. By consent Order made only last month on 8 April 2022 the date for exchange of lists was extended to 31 May 2022. Nowhere do I detect in the evidence filed and arguments made on behalf of the Second Respondents any apology for their anticipated failure to comply with such Order, or any genuine desire to progress these proceedings to a hearing within a reasonable time. It appears that the Petitioner would have been ready to exchange lists on 2 May 2022 (David Lewis Hall an attorney and senior associate at Appleby (Cayman) Limited; affidavit 25 May 2022 paragraph 10).
12. I make the following Orders using the draft from the Petitioner (attached to the Appleby letter to Forbes Hare dated 25 May 2022):
 - (1) Paragraph 1 date 31 May 2022 not 3 May and finalised re amended petitions should be filed with the court before 4pm tomorrow;
 - (2) Paragraph 2 a,b,c yes;
 - (3) Paragraph 3, no;



- (4) Paragraph 4 a, b, c and d yes but I express the wish that the parties sensibly agree such matters without bothering the court for determinations. These issues, with good faith cooperation on all sides, should be capable of agreement;

Paragraph 4 e discovery and inspection by the extended time of 4pm 13 October 2022;

4 f yes;

4 g 4 pm 14 November 2022 not 1 November 2022;

4 h yes;

4 i JPLs by 4pm 24 November not 15 November. Also add - Parties' affidavits in response to g and i by 4pm 5 December 2022;

4 j yes to the general topics but no to the detail beside them. No doubt the parties and their attorneys can constructively co-operate together and agree before 4pm on 19 July 2022 a detailed list of issues to be addressed by the respective experts on the various issues;

4 k yes;

4 l experts' affidavits to be exchanged by 4pm on 25 January 2023 not 1 November 2022;

4 m discussions by 4pm 15 February 2023 not 4pm 22 November 2022;



4 n joint memo by 4pm 28 February 2023 not 4pm 6 December 2022- plus also add in “by 4pm on 8 March 2023 the parties must exchange any short supplemental expert reports.”;

4 o yes;

4 p 6 week hearing commencing 3 April 2023 and the court will not sit on Easter Monday, or on Fridays;

4 q yes plus the bundle should be duly paginated and should include an agreed chronology, dramatis personae and a list of core issues for determination by the court - , r, s yes;

(5) Paragraph 5 yes;

(6) Paragraph 6 yes, liberty to apply;

(7) Add new paragraph 7- There should be no further extensions or filings outwith this Order or the FSD Guide without leave of the court.

Brief reasons for case management decisions

13. Although these are simple and straightforward decisions on case management issues I should provide some brief reasons for them and I do so as follows.

14. The starting point must be the overriding objective and the FSD Guide. Matters should be dealt with “in a just, expeditious and economical way”. FSD Guide at B4.3 gives important guidance to the effect that the court must ensure that matters proceed and are determined on the merits in the most expeditious way and that there are no unreasonable



delays and that a trial proceeds quickly and efficiently. The parties' legal representatives are expected to co-operate with each other and the court in achieving these objectives. The Guide stresses the following:

“The FSD will give these obligations particular regard in giving directions concerning timetables and setting hearing and trial dates. It will not allow hearing or trials dates to be unduly delayed, for example merely to suit the availability of individual overseas lawyers. It is ultimately for the Court to set a hearing or trial date having regard to all the circumstances and requirements of the overriding objective.”

I have borne that helpful guidance firmly in mind when deciding what Orders I should make in respect of progressing the petitions to trial.

15. I accept Mr Collins' submission that there is an enhanced need for expedition in winding up cases. I also accept Mr Weisselberg's submission that justice and economy are referred to in the overriding objective. I also take on board the need for fairness. I have tried to balance all these factors in arriving at the Orders I have made.
16. It would appear that Mr Cooke (an English solicitor who swore an affidavit on behalf of the Second Respondents on 23 May 2022) has not read the FSD Guide or if he has he has chosen to ignore it as it does not suit his purposes. Mr Cooke at paragraph 26 of his affidavit says that “Counsel availability will be important when it comes to setting the timetable in these proceedings” and then goes on to say that one QC is only available from 3 July 2023 for 4 weeks but is otherwise available from 2 October 2023 and the other QC is only available for a trial from November 2023. It may be that the Second Respondents will have to instruct other counsel to ensure availability for trial. I do not set trial dates merely at the convenience of counsel.



17. I have to say that Mr Wang has the right idea when at paragraph 19.1 of his sixth affidavit he says :

“I will ensure that the availability of my counsel team is not a factor which causes delay in the hearing of the Petition and, to the extent that my existing team is not available on dates which are convenient to the Court for the hearing of the Petition, I will instruct new counsel”.

18. I have taken into account the lack of availability of the Second Respondents’ leading counsel but such factor has not been paramount in my mind. I have also taken into account the proceedings in the BVI and the arbitration proceedings in London but again these are not paramount factors of great weight. I do however note the procedural timetable in respect of the arbitration in London culminating with a two week hearing commencing on 15 May 2023. There is no application for a case management stay before this court but I do not ignore the existence of the arbitration proceedings and the contents of the procedural timetable made on 7 February 2022.

19. I have borne firmly in mind section 7(1) of the Bill of Rights included in the Constitution of the Cayman Islands which provides:

“Everyone has the right to a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial court within a reasonable time.” (my underlining).

20. With respect to the eminent arbitrators (Michael Brindle QC, Sir Nigel Teare and Lord Dyson) these winding up proceedings, in the place of incorporation of the target companies, cannot be unduly delayed. I hope the arbitrators will appreciate the position of this court in that respect.



21. I turn now to some other issues raised before the court. I make no orders in respect of security for costs as no such applications are before the court. The Second Respondents appear to have left any security for costs issues rather late in the day and I will not permit such issues to unreasonably delay the progress of these proceedings or to adversely impact on the hearing dates.
22. I do make Orders (paragraphs 2 a,b,c of the draft referred to) in respect of the provision of information to the shareholders as I think it would be useful for them to have this updated information in relation to the existence of the Re Amended Petitions.
23. I do not make the Orders at paragraph 3 of the draft as I do not think that appropriate.
24. A reasonable and proportionate approach needs to be taken in respect of discovery and inspection. It is not for the Second Respondents to dictate to the court in this respect. Mr Cooke's evidence (see paragraph 20) and the Second Respondents' skeleton argument (see paragraph 25.2) had the unfortunate flavour of the Second Respondents in effect saying in respect of discovery "We will take as long as it takes" (on their present view a further 8-9 months) and they add in effect that "If this means pushing the hearing of the winding up petitions out to 2024 so be it."
25. It is for the court to make appropriate Orders and for the Second Respondents to focus their efforts and resources into complying with such Orders and if they do not then they must take the consequences. The court takes into account the need to progress these matters expeditiously and the need to give all parties a fair hearing.
26. Mr Wang adopts the right attitude when he states "I will ensure that the discovery exercise is appropriately resourced such that lists of documents can be exchanged on any date considered by the Court to be appropriate." (paragraph 19.2 of his sixth affidavit). I note the position of the Second Respondents that their discovery exercise will be far more extensive than the Petitioner's and that the Petitioner had more time in



advance of the petitions being filed. I have factored those points into my thought process when determining the additional time that reasonably should be given for the discovery exercise to be properly completed. I accept that the discovery exercise will be substantial and a lot of time and resource will have to be devoted to it.

27. I have taken into account the need to progress these matters expeditiously, justly and economically and the need to give all parties a fair hearing. I have granted a further extension of time for discovery and inspection but not the 8-9 additional months unreasonably demanded by the Second Respondents.
28. There is no need for the over-elaborate provisions which the Second Respondents suggest for discovery and inspection which are not just and proportionate. It is not appropriate as the Second Respondents suggest for the JPLs to give discovery first. There is no need for a “rolling” or multiple stage discovery process. Moreover, it is not appropriate to include provision for applications in respect of discovery on the expectation that disputes will arise. I reasonably expect the parties and counsel as officers of this court to constructively co-operate in respect of discovery and inspection within the yet further extended period given by the Orders I have just made.
29. In respect of the witness and expert evidence I have, trying to balance the interests of all parties, made such orders as I consider appropriate. I think it just to permit the parties to briefly respond to each others’ evidence and the evidence of the JPLs (which should reduce the need to deal with any fresh matters in oral examination in chief and save time at trial). Such evidential responses should be limited to strict factual matters and not comment, argument or opinion.
30. I stress yet again that the factual evidence should contain just facts and not comment, argument, opinion or submissions.



31. I have extended the time period for the expert evidence and they will, on this extended timetable, have the factual evidence available for review if they think that helpful. I also thought it would be useful to make an Order in standard terms that the parties exchange short supplemental expert reports.
32. I expect the parties and their attorneys to come to sensible agreements in respect of the refined issues for the experts. I was content with simultaneous rather than sequential exchange of expert reports. It should be extremely helpful if the experts after the exchange of their reports meet and sensibly produce a joint memorandum for the benefit of the court recording areas of agreement and where there is disagreement a brief summary in concise terms of the reasons for the disagreement. Again, I expect the parties and their attorneys to come to sensible agreements in respect of the refined issues for the experts. I am content that the parties by way of agreement produce a further refined list which should be filed with the court as soon as it is agreed and in any event before 4pm on 19 July 2022.
33. Moreover the expert witnesses should focus on the main issues and keep their evidence concise and clear. It almost goes without saying that the experts should strictly comply with their professional duties and all relevant rules and law in respect of the giving of expert evidence.
34. In view of the history of the proceedings I am content that the JPLs be granted leave to put in any short responsive evidence after the parties have served their evidence and I have made an Order accordingly.
35. With proper cooperation between the parties and their attorneys as officers of this court I am content that a 6 week trial period should be more than sufficient to permit a fair and just determination of the refined issues in dispute between the parties and to reach a conclusion as to whether winding up orders should be made or not. I agree that the 12



weeks suggested by the Second Respondents is not a reasonable or fair allocation of judicial resources.

36. Paragraph 1.2(b) of the Preamble to the Grand Court Rules, which sets out the overriding objective, requires the court, so far as practicable, to ensure that the normal advancement of proceedings is facilitated rather than delayed. Paragraph 1.2(e) refers to the allocation of “an appropriate share of the Court’s resources, while taking into account the need to allot resources to other proceedings”. Paragraph 2.2 stresses the need for “the just, most expeditious and least expensive determination of every cause or matter on its merits.” Paragraph 3 importantly provides that “The parties are obliged to help the Court to further the overriding objective.” The court “must further the overriding objective by actively managing proceedings” (paragraph 4.1) by way of “fixing timetables or otherwise controlling the progress of the proceeding” (paragraph 4.2(f)) and “giving directions to ensure that the trial proceeds quickly and efficiently” (paragraph 4.2(l)).
37. I do not want any tactical games to be played by the parties. I want the attorneys to rise above any undue pressure placed upon them by those who instruct them. I want the parties and their attorneys, as they are duty bound to do, to constructively assist this court in the fair and just determination of the petitions.

Orders

The court made the following orders, set out below for FSD 268 of 2021 (DDJ) but also made in substantively identical terms in FSD 269 of 2021 (DDJ) and FSD 270 of 2021 (DDJ):

1. *The Petitioner is hereby granted leave to file and serve a Re-Amended Winding Up Petition in substantially the form exhibited to the Sixth Affidavit of Michael Pearson*



*dated 2 May 2022 (**Re-Amended Petition**). The Re-Amended Petition is deemed served on the Second Respondent on 31 May 2022.*

2. *By 4pm on 10 June 2022, the Petitioner shall send by letter and email a notice to each registered shareholder of participating shares in the Company (**Participating Shareholder**) a notice (**Notice**) informing them of the existence of the Re-Amended Petition and confirming that:*
 - a. *Should they wish to receive copies of the documents relating to these proceedings, then they should instruct Cayman Islands attorneys as soon as reasonably practicable and the Petitioner will provide the same to the instructed attorneys;*
 - b. *The Participating Shareholder may make an application to seek to participate in these proceedings if they see fit (such application to be made as soon as reasonably practicable after instructing Cayman Islands attorneys); and*
 - c. *If permissible under the laws of the jurisdiction in which a Participating Shareholder is situated, such notice shall enclose a copy of the Re-Amended Petition and this Order.*

3. *Paragraph 6 of the Directions Order be substituted with the following directions:*
 - a. *The Second Respondent shall file and serve an Amended Defence in response to the Re-Amended Petition by 4pm on 21 June 2022;*
 - b. *If so advised, the Petitioner shall file and serve an Amended Reply by 4pm on 5 July 2022;*



c. *By no later than 4pm on 12 July 2022 the Petitioner and the Second Respondent are to agree:*

i. *a list of issues in relation to which each party, including the Company, is to give discovery.*

ii. *a 'Discovery Protocol' governing the process by which discovery is to be given by the JPLs on behalf of the Company. Such Discovery Protocol shall set out:*

- 1. The date range to be covered by the Company's searches for documents.*
- 2. The forms of electronic communications for which the Company should be searching.*
- 3. In what format and on what media documents that are available in electronic form will be disclosed, including how the additional information stored and associated with those electronic documents known as metadata is to be disclosed.*
- 4. Those documents that should be disclosed by category rather than by their responsiveness to key words;*
- 5. The keywords that should be used for keyword searching where appropriate;*

d. *In the absence of agreement on the matters set out in 3(c)(ii) by the dates above, then the parties shall provide to the Court a joint letter outlining the areas of agreement and disagreement enclosing competing drafts of the Discovery Protocol by 4pm on 19 July 2022 and the Court shall then determine on the papers the appropriate Discovery Protocol covering the matters set out above at paragraph 3(c)(ii) which will govern the discovery to be given by the JPLs on behalf of the Company.*



- e. *Discovery and inspection are to be given simultaneously by the Petitioner and the Second Respondent, and made by the JPLs on behalf of the Company in accordance with the Discovery Protocol, by 4pm on 13 October 2022.*
- f. *Evidence is to be given by affidavit and the deponents shall attend for cross examination at the hearing of the petition if notice to do so is given by the party upon whom the affidavit is served within 21 days of the service of the affidavit.*
- g. *Affidavits are to be exchanged by 4pm on 14 November 2022. The parties are at liberty to share the contents of any reports filed by the JPLs in these proceedings with their prospective witnesses to assist with the preparation of their evidence, provided that such witnesses are informed that they are not to share the contents of the PL Reports with any third party.*
- h. *Unless otherwise ordered, affidavits are to stand as the evidence in chief of the deponent at the hearing.*
- i. *The JPLs shall file and serve any affidavits in response to matters raised in the evidence filed by the parties upon which they consider the Court will be assisted by their input by 4pm on 24 November 2022.*
- j. *Any affidavits in response to 3(g) and 3(i) to be filed and served by 4pm on 5 December 2022.*
- k. *The Petitioner and the Second Respondent each have permission to adduce evidence from one expert (which must be the same evidence as is adduced under the identical permission granted in the directions of the same date as this Order given in FSD 269 of 2021 and FSD 270 of 2021) in each of the following fields:*



- i. Property valuation*
 - ii. Art Valuation*
 - iii. Aviation asset valuation*
 - iv. Technology company assets valuation*
 - v. Accountancy*
 - vi. Fund Management*
 - vii. Metadata and document authenticity.*
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- l. For each of the fields listed at paragraph 3(k) above, the Petitioner and the Second Respondent are to agree a list of issues to be addressed by their respective experts by 4pm on 19 July 2022.*
 - m. The experts' affidavits are to be exchanged by 4pm on 25 January 2023.*
 - n. Unless the reports are agreed, there must be a without prejudice discussion between the experts of like discipline by 4pm on 15 February 2023.*
 - o. The experts from each respective discipline who have met in accordance with paragraph 3(n) above must exchange a joint memorandum which addresses the issues on which they agree and on which they disagree, with a summary of their reasons, by 4pm on 28 February 2023.*
 - p. By 4pm on 8 March 2023 the parties must exchange any short supplemental expert reports.*



- q. *If the experts' reports cannot be agreed, the parties are at liberty to call expert witnesses at the trial, limited to those experts whose reports have been exchanged pursuant to paragraph 3(m) above.*
 - r. *The Petition be heard together with the petitions in FSD 269 of 2021 and FSD 270 of 2021 on 3 April 2023, with a combined time estimate of 6 weeks (**Petition Hearing**). The Court shall not sit on Easter Monday or on Fridays.*
 - s. *The Petitioner shall lodge with the Court an agreed paginated trial bundle to include an agreed chronology, dramatis personae and list of core issue for determination by the Court in both hard copy and soft copy by no later than 4pm on the day 14 days before the Petition Hearing and shall make a soft copy of the same available to the Second Respondent and the JPLs.*
 - t. *Skeleton arguments shall be filed with the Court and exchanged by no later than 4pm on the day 10 days before the Petition Hearing.*
 - u. *The Petitioner shall lodge with the Court an agreed authorities bundle in both hard copy and soft copy by no later than 4pm on the day 5 days before the Petition Hearing.*
4. *Costs of this Order be costs in the Petition, save that the costs of and occasioned by the amended pleadings ordered to be filed and served pursuant to paragraphs 1, 3(a) and 3(b) above are reserved to the hearing of the Petition.*
5. *Liberty to the parties and to the JPLs to apply for further or other directions.*

6. *There should be no further extensions or filings outwith this order or the FSD Guide without leave of the Court.*

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT