



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

**CAUSE NO: FSD 289 of 2023 (DDJ)**

**IN THE MATTER OF MAXIMUS LIMITED**

**BETWEEN: MYF MAXIMUS LIMITED**

**PLAINTIFF**

**AND:**

- (1) DNB BANK ASA**
- (2) SWEDBANK AB (PUBL)**
- (3) NIBC BANK N.V.**
- (4) EKSPORTFINANSIERING NORGE**
- (5) NM SHIPHOLDING AS**
- (6) MAXIMUS LIMITED**

**DEFENDANTS**

**Before:** The Hon. Justice David Doyle

**Appearances:** Duncan Matthews KC, Peter Kendall and Adrian Fourie of Walkers (Cayman) LLP, on behalf of the Plaintiff

**Heard:** 6 December 2023

**Draft transcript  
of Judgment circulated:** 6 December 2023

**Draft transcript  
of Judgment approved:** 7 December 2023

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**HEADNOTE**

*Determination of application for permission to serve pleadings and connected documents out of the jurisdiction*

**JUDGMENT**

1. I am grateful to Duncan Matthews KC, Peter Kendall and Adrian Fourie who appear for the Plaintiff, for their valuable assistance to the court.
2. There is before the court a without notice application from the Plaintiff, MYF Maximus Limited (“MYF”), a company incorporated under the laws of the Cayman Islands, for permission to serve pleadings and connected documents out of the jurisdiction on D1, D4 and D5, companies incorporated in Norway, D2 a company incorporated in Sweden and D3 a company incorporated in the Netherlands (the “Overseas Defendants”).
3. D1-D4 are banks (the “Finance Parties”) which entered into a facility agreement with D6 (the “Company”), a company incorporated under the laws of the Cayman Islands, in order to purchase a vessel, the Normand Maximus (the “Facility Agreement”). The Facility Agreement is governed by Norwegian law.
4. MYF is said to have contributed US\$91.2 million to the Company and held 75% of the shares in the Company (the “Subject Shares”). In order to secure the loan granted to the Company by the Finance Parties, MYF granted a mortgage dated 28 October 2016 over the Subject Shares in favour of the Finance Parties (the “Share Pledge Agreement”) such mortgage is governed by the laws of the Cayman Islands (Clause 25.1) and there is a Cayman courts jurisdiction clause (Clause 25.2). I also note Clause 25.3. It is said that the Share Pledge Agreement did not grant to the Finance Parties the power to sell the Subject Shares to themselves.
5. Normand Maximus Limited (“NML”), which appears to be a company incorporated under the laws of Scotland, is said to have contributed US\$30.4 million to the Company and held the remaining 25% of the shares in the Company. In order to secure the loan granted to the Company by the Finance Parties, NML granted a mortgage over these shares in favour of the Finance Parties (the “NML Share Pledge Agreement”). The NML Share Pledge Agreement was entered into between

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NML and D1 which is said to have acted as agent for and on behalf of the Finance Parties. The NML Share Pledge Agreement is governed by the laws of the Cayman Islands (Clause 25.1) and there is a Cayman courts jurisdiction clause (Clause 25.2).

6. 3 March 2021 was a significant day in respect of the events giving rise to these proceedings. On 3 March 2021 D1, in its capacity as agent of the Finance Parties, sent a notice to MYF and NML declaring an Event of Default under the Facility Agreement, the Share Pledge Agreement and the NML Share Pledge Agreement. It notified MYF and NML of its intention to enforce its rights by transferring all of the shares in the Company to D5.
7. On 3 March 2021 the Finance Parties also entered into an agreement with D5 (“NMS”) pursuant to which the Finance Parties were given a put option to “sell” all of the shares in the Company to NMS for US\$1 (the “Fallback Agreement”). The Fallback Agreement is governed by Norwegian law and also gave the Finance Parties the option to buy back all of the shares for US\$1.
8. On 3 March 2021 the Finance Parties apparently exercised their put option under the Fallback Agreement to “sell” the shares in the Company to NMS for US\$1. All of the shares in the Company were transferred to NMS pursuant to two share transfer forms dated 3 March 2021.
9. On 3 March 2021 the Security Trustee, on behalf of the Finance Parties, entered into a mortgage with NMS whereby NMS mortgaged all of the shares in the Company. The mortgage was immediately amended and restated (the “A&R Share Pledge Agreement”).
10. On 18 October 2022 the sale of the vessel was completed and the proceeds were used to discharge all the outstanding debts secured by the Share Pledge Agreement and the NML Share Pledge Agreement.
11. MYF’s position is that:
  - (1) NMS (D5) was and is holding the Subject Shares merely as a nominee of the Finance Parties (D1-D4) and the purported sale is void or voidable;
  - (2) the Finance Parties became mortgagees in possession when they enforced the Share Pledge Agreement and, not having divested themselves of possession, they remain in possession.

12. In the Cayman Islands, MYF seeks the following relief, namely declarations that:
- (1) the purported sale on 3 March 2021 of the Subject Shares to NMS is void and/or voidable and should be set aside;
  - (2) the Finance Parties have held the Subject Shares as mortgagees in possession for MYF since 3 March 2021; and/or
  - (3) notwithstanding the purported sale, the Plaintiff has retained an equity of redemption in the Subject Shares, or alternatively should have such equity of redemption restored.
13. In the Cayman Islands, MYF seeks various orders including that:
- (1) the Subject Shares be transferred from NMS to it;
  - (2) the Company's share register be rectified to reflect the fact that MYF has held the Subject Shares since 18 October 2022; and
  - (3) the Finance Parties account to MYF on a wilful default basis in respect of the period during which the Finance Parties have been mortgagees in possession.
14. MYF appears to have unsuccessfully pursued the Finance Parties in Norway but they say that these proceedings in the Cayman Islands are "not duplicative of the claim that was brought by MYF before the Norwegian Court" and submit that "the existence of those proceedings is not a good reason to refuse permission to serve out of the jurisdiction". It is stated that the Finance Parties objected to the jurisdiction of the Norwegian courts on the basis that the Share Pledge Agreement contained an exclusive jurisdiction clause in favour of the Cayman Islands courts. I have considered the judgment of the Borgarting Court of Appeal in Norway issued on 13 December 2021, in respect of "the issue of the dismissal of a claim due to Norwegian courts lacking jurisdiction" (page 2). It is stated that on 7 July 2023 the Oslo District Court handed down a judgment in which it dismissed all of MYF's claims. I note the translation of part of that judgment. It starts at page 31 of the judgment and ends at page 40. Under the heading "4.2 Claim for damages for breaching duties of loyalty" on page 31 it is stated:

“MYF’s claim for damages is based on non-contractual duties of loyalty according to *Norwegian* law. It has not been asserted that the claim can be based on corresponding rules according to Cayman Islands law. Thus, it is a prerequisite for the claim that Norwegian law is applicable.

The District Court is of the opinion that Cayman Islands law is applicable and that, for that reason, the claim cannot succeed.” (internal emphasis)

15. The District Court appears to have concluded its section 4.2 on page 37 as follows:

“Accordingly, the court is of the opinion that MYF’s claim for damages is to be regulated by Cayman Islands law, both if it is adjudicated on a tort/non-contractual claim for damages (so that the country where the damage occurred is crucial) and if it is adjudicated on as a contract-law claim (so that the Mortgage Agreement’s choice-of-law clause is crucial.)

MYF has not pleaded that Cayman Islands law imposes duties of loyalty that the Banks have breached. The Claim for damages based on disloyalty and abuse of rights cannot therefore succeed.” (internal underlining)

16. When reading into this case I was initially concerned as to whether there was any potential *Henderson v Henderson* argument whereby a court would normally expect parties to litigation to bring forward their whole case at the outset. This initial concern was in light of the fact that there could potentially be an argument that MYF could perhaps have raised the present claims previously and the Finance Parties are going to be vexed twice with the claims of MYF. MYF say that they are not identical claims to those raised and dismissed in the proceedings in Norway. On behalf of MYF it is also submitted that the Norwegian proceedings did not cover the same ground and in effect that the Cayman relief claimed could not be claimed in the Norwegian proceedings. So they say there is no question of the Finance Parties being vexed twice or being oppressed. On balance, I have concluded that at this stage my initial concerns do not prevent me from considering and granting permission to serve out of the jurisdiction if the other relevant requirements have been met.

17. I now turn to those other requirements which for present purposes I will take relatively briefly:
- (1) I am satisfied that there is a serious issue to be tried on the merits against each of the Overseas Defendants;
  - (2) I am satisfied that there is a good arguable case that the claim falls within at least one of the jurisdictional gateways. The principal candidates are Order 11 rule 1(1) (d) (Cayman Islands law contract) (i) (rights in respect of property within the jurisdiction) (b) (injunction) and (c) (necessary or proper party). Under Order 11 rule 9, Order 11 applies to the service out of the jurisdiction of an originating summons;
  - (3) I am satisfied that the Cayman Islands is the forum where the case can be tried for the interests of all parties and for the ends of justice. MYF has persuaded me that the Cayman Islands is clearly the appropriate forum. The Share Pledge Agreement is governed by the laws of the Cayman Islands. The main issue concerns the ownership of shares in a Cayman Islands company. There is a Cayman jurisdiction clause in the Share Pledge Agreement (clause 25.2) and I also note clause 25.3. In the Norwegian Court of Appeal judgment issued on 13 December 2021 there is reference at page 4 to the Finance Parties' argument that the Norwegian claims must be dismissed due to a lack of jurisdiction on the part of the Norwegian courts and reference is made to the mortgage agreement containing "jurisdiction provisions that give Cayman courts the exclusive right to deal with disputes raised by MYF against the Banks";
  - (4) I am satisfied that the Order 11 rule 4(1)-(2) requirements have been complied with;
  - (5) I am content with the proposed methods of service; and
  - (6) I note the possible defences and the statements made in respect of disclosure.
18. I make an order substantially in terms of the draft handed into the court during the hearing this morning.

19. Counsel to email the updated draft order before 3pm today. Thank you.

David Doyle

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THE HON. JUSTICE DAVID DOYLE

JUDGE OF THE GRAND COURT