



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

**CAUSE NO. FSD 163 OF 2022 (RPJ)**

**BETWEEN:**

**BLACK GOLD INVESTMENT HOLDINGS INC**

**First Plaintiff**

**HCS INVESTMENT HOLDINGS, LTD  
(formerly known as 2013401 Alberta, Ltd)**

**Second Plaintiff**

**SEMPER LUXEMBOURG HOLDING**

**Third Plaintiff**

**-v-**

**ERIN WINCZURA**

**First Defendant**

**CANTERBURY SECURITIES, LTD (IN OFFICIAL LIQUIDATION)**

**Second Defendant**

**CANTERBURY GROUP**

**Third Defendant**

**LEEWARD INVESTMENTS SPC**

**Fourth Defendant**

**Before:** The Hon. Raj Parker

**Appearances:**

Mr James Clifford, Mr Max Galt and Ms Jade Parker (Articled Clerk) of Ogier for the Plaintiffs

Mr Richard Annette and Mr Adam-Russell-Knee of Stuarts Humphries for the First and Third Defendants.<sup>1</sup>

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<sup>1</sup> On 3 September 2024, the Court was notified that an Order was granted for Stuarts Humphries to cease acting. Their comments were accordingly not sought on the draft of this Ruling.

<b>Heard:</b>	Determination on the papers
<b>Date of decision:</b>	4 September 2024
<b>Draft Ruling circulated:</b>	5 September 2024
<b>Ruling delivered:</b>	18 September 2024

*Application for adjournment-breaches of procedural directions - compliance with discovery-sophisticated litigant-interests of justice and prejudice-application to set aside Unless order-nature of Unless order.*

### **RULING**

1. The Court has agreed to determine these matters on the papers based on written materials<sup>2</sup> submitted by the parties.

#### *Adjournment*

2. The Court will first deal with D1 and D3's Summons dated 22 August 2024 for an adjournment.
3. The Court has carefully considered the evidence and issues raised by D1 and D3. The essential question for the Court is whether it is in the interests of justice to grant the adjournment or to proceed to determine the Defendants' application.
4. There has been a lack of engagement by D1 and D3, having made an application to set aside an Unless order pursuant to which judgment was entered, and they have failed to comply with a number of directions put in place to resolve the application.
5. They have failed in particular to comply with the 7 August Consent Order (containing directions for the hearing of D1 and D3's 30 July Summons).
6. In breach of paragraph 3, which required them to serve evidence in answer by 4pm on Friday 16 August 2024, they served their evidence late.

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<sup>2</sup> Including D1's first affidavit of 9 August 2024, Mr Ducharme's third affidavit of 13 August 2024, Ms Scott's first affidavit of 13 August 2024 and written arguments and materials

7. In breach of paragraph 7, which required them to file and serve written submissions by 4pm on Tuesday 20 August 2024, they failed to file any written submissions at all.
8. As a consequence, the parties were not able to file reply submissions, in accordance with paragraph 5. D1 and D3 also failed to prepare the Hearing Bundle.
9. As to this lack of engagement, D1 and D3 say that this is due to a lack of funds with which to pay attorneys. Up until their previous attorneys McGrath Tonner came off the record they say they had fully participated in these proceedings.
10. The Plaintiffs disagree<sup>3</sup> and say that discovery was not properly complied with even when McGrath Tonner were acting. The Plaintiffs say McGrath Tonner were in fact handling four separate cause numbers for D1 and had been looking for a convenient time to come off the record before the Directions hearing on 29 April 2024 and in fact had done so by an Order made on 26 April 2024<sup>4</sup>.
11. D1 and D3 now say they have been unable to pay their most recent attorneys (Stuarts who have now come off the record<sup>5</sup>) and so they have been unable to progress matters to determine this application. In the Court's view it was obvious that their attorneys would not be prepared to continue to work for free and D1 and D3 should not have been surprised that Stuarts would be likely to terminate their retainer.
12. Moreover, the Court is of the view that even allowing for an unfortunate illness in mid July 2024, D1, Ms Winczura could and should have taken steps to continue with discovery obligations so as to comply with the Unless Order with or without the assistance of Cayman attorneys.
13. D1 is evidently an experienced litigant, having been engaged in FSD litigation before the Grand Court for many years. It is not necessary to rehearse the adverse findings made against D1 and the companies she was involved which have been recorded in a number of reported cases<sup>6</sup>. Suffice to say the Court has taken due note of the previous findings of Kawaley J who was unimpressed by her lack of veracity, conduct and reliability with regard to the Court's processes.
14. The Court also notes that in another case *Canterbury Securities Ltd (in Official Liquidation) (and Others) v Erin Winczura (and Others)* FSD 133 of 2024 Doyle J said:

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<sup>3</sup> Ducharme 3 §§ 12-24

<sup>4</sup> Ducharme 3 §§20-22

<sup>5</sup> By order dated 3 September 2024

<sup>6</sup> *Fortunate Drift Limited v Canterbury Securities Ltd* FSD 227 of 2018, *In the Matter of Canterbury Securities Ltd* FSD 364 of 2023, *Canterbury Securities Ltd (in Official Liquidation) (and Others) v Erin Winczura (and Others)* FSD 133 of 2024 (all Kawaley J)

*"14. On 1 May 2024, 4:26pm, the First Defendant indicated by email to Mr Harris that she would probably need 2 – 3 weeks to get counsel "in and up to speed". We are now at 12 July 2024. She has had plenty of time to engage attorneys to appear on her behalf but has failed to do so. Moreover, she has failed to appear today. Frankly, I am not impressed with her lack of timely and positive engagement."*

15. The short point for this Court's purposes is that D1 is a sophisticated enough litigant to have provided discovery of relevant documents. Some 357 documents were provided on 4 April 2023. The Plaintiffs wrote to the Defendants on 27 April and 19 May 2023 to give notice that they would be seeking orders for further discovery to be verified on affidavit<sup>7</sup>. The Plaintiff made out a case that the Defendants' compliance with discovery was insufficient at the Directions hearing<sup>8</sup> and the Defendants then did not comply with the terms of the Unless order.
16. The sole reason advanced for an adjournment is to give the Defendants more time is so that funding may be obtained to pay for legal representation. However, having reviewed the Defendants' evidence there is no good reason to believe that alternative sources of funding will be found.
17. The Court has found D1's evidence to be wholly unconvincing in relation to unidentified third party funders. D1 does not name the potential funders, or the amounts they might provide, or even when they might provide any funds.
18. The Court is not prepared, given the background to this matter and D1's conduct to date in this case, to allow further time for an application to be made to vary the freezing order continued by Doyle J, which would again require funding and new attorneys being engaged. No application to vary the freezing order to permit payment of legal expenses has apparently been heard to date .
19. The Plaintiffs should not be further prejudiced by any further delay in these proceedings and the application for an adjournment is refused.

*Application to set aside the Unless order*

20. The Court has carefully considered the matters raised for the Defendants in Stuarts' letter of 30 July 2024 and D1's affidavit evidence.

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<sup>7</sup> Ducharme 3 §30

<sup>8</sup> See Ducharme 2 of 9 March 2024

21. The Court is not persuaded that it should set aside or vary the Unless order. The Plaintiffs' case is for damages for fraud and conspiracy. The First and Third Defendants have failed to give proper discovery.
22. The Defendants did not comply with the discovery ordered in paragraphs 5 to 8 of the Directions Order dated 29 April 2024. The Court then made an Unless Order in this regard on 17 July 2024. The effect of this order was that unless the Defendants gave discovery by 31 July 2024 their defence was to be struck out and judgment was to be entered against them.
23. At the 11<sup>th</sup> hour on 30 July 2024, D1 and D3 applied to set aside the Unless order saying it was unjustified and unfairly obtained. The Court does not agree. No advantage was taken by the Plaintiffs of D1 and D3<sup>9</sup>. By the time the Unless order was made, they had had over 6 weeks to comply with the Order for proper discovery to be given<sup>10</sup> and so the Defence was struck out and judgment was entered against them. There was nothing unfair or improper in that.
24. The question now is whether in all the circumstances the Court should exercise its discretion to set aside the Unless order and extend the time for giving discovery. The Court has searched in vain for any good reason to do so.
25. There has been no convincing explanation or proper excuse from the Defendants for failing to comply with a peremptory order of the court. Unless orders are not made lightly and must be complied with. They are an order of last resort.
26. D1 and D3 are not now specifically asking for more time to serve a Re-Amended Defence and to give discovery. They are asking for more time in the hope that they can raise funding to be legally represented again.
27. The Re-Re Amended Statement of Claim was served on 2 May 2024. The Defendants then had 28 days to serve a Re Amended Defence. They did not do so. Pleadings closed on 30 May 2024. The Defendants had until 13 June 2024 to comply with the Directions Order (§§ 5-8). That is 45 days after the Order was made.
28. The overall justice of this case is clearly that the Defendants should not be granted any further indulgence.

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<sup>9</sup> Ducharme 3 §§ 32-35

<sup>10</sup> Ducharme 3

29. They have had ample opportunity to get their case prepared and to comply with the procedural orders of this Court. They have failed to do so without any reasonable excuse and in the Court's view have sought to string matters out for tactical reasons.
30. The applications by the Defendants are dismissed with costs and their Defence remains struck out and Judgment remains entered against them.



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