IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 213 OF 2021 (DDJ)

IN THE MATTER OF a settlement made by deed dated 27 December 2017 (the "MF Trust")
AND IN THE MATTER OF the Trusts Act (2021 Revision) and/or GCR O.85, r.2
BETWEEN

MAPLESFS LIMITED

Plaintiff

AND

1. **B&B PROTECTOR SERVICES LIMITED**
2. **PJSC NATIONAL BANK TRUST**
3. **PJSC BANK OTKRITIE FINANCIAL CORPORATION**

Defendants

Appearances:	John Machell QC and Adam Huckle of Maples and Calder (Cayman) LLP for the Plaintiff Alex Potts QC, Alecia Johns and Tonicia Williams of Conyers Dill & Pearman LLP for the Second Defendant
Before:	The Hon. Justice David Doyle
Heard:	14 June 2022
Ex tempore Judgment delivered:	14 June 2022
Draft transcript of ex tempore Judgment circulated:	15 June 2022
Judgment approved:	17 June 2022

HEADNOTE

Refusal of adjournment application – duties of attorneys

JUDGMENT

1. I am grateful to the attorneys for their continuing assistance in respect of this matter.

2. By summons dated 31 May 2022 and signed by Conyers Dill & Pearman LLP ("Conyers") as attorneys on record for the Second Defendant and Third Defendant (the "Russian Banks"), a belated application is made by the Russian Banks to adjourn today's hearing set as long ago as 10 March 2022 (the "Adjournment Application"). The signed and dated Adjournment Application was brought to my attention in a hearing bundle filed under cover of a letter dated 7 June 2022 from Conyers.

3. The Adjournment Application did not specify the grounds for the adjournment. The grounds were contained in a skeleton argument of Alex Potts QC, Alecia Johns and Tonicia Williams. At the end of the skeleton argument they were described as "Counsel for the Second and Third Defendants". The heading of the document was "Skeleton Argument of the Second Defendant (Adjournment Application)".

4. The main ground of the Adjournment Application appears to be that the Third Defendant remains on the Sanctions List and the application for a licence from the Governor's Office made on 3 March 2022 has not yet been determined. Conyers say that in the absence of a licence there is an unacceptable risk that they might be alleged to be committing a criminal offence in acting for, or for the benefit of, the Third Defendant other than on a pro bono basis and yet Conyers has not agreed to act for either the Second Defendant or Third Defendant on a pro bono basis.

5. Conyers remain the attorneys on record for both the Second Defendant and the Third Defendant. Evidence and a detailed skeleton argument of the Second Defendant had been filed in respect of the applications which are due for hearing today. Both the Russian Banks have been given an opportunity to file evidence and skeleton arguments and to attend the hearing.

6. I have considered the skeleton argument in support of the Adjournment Application and the oral submissions made by Mr Potts this morning. Mr Potts has also taken me to the judgment of Jack J in the case of *JSC VTB Bank v Sergey Taruta et al* (BVIHC(Com) 2014/0062; unreported 22 March 2022), which Mr Potts says is presently under appeal.

7. I have also noted the concise skeleton argument of the Plaintiff from John Machell QC and Adam Huckle and I have considered the oral submissions presented by Mr Machell this morning.

8. I have considered my judgment of 10 March 2022 and the Order made that day. I note previous submissions that the Second and Third Defendants were seeking to delay matters for tactical reasons as they wished to progress in England rather than in the Cayman Islands in respect of the Trust. Those submissions were repeated this morning and Mr Potts in reply denied that there was any cynical delaying strategy in place.

9. The applications due to be heard today 14 June 2022 are ready for hearing today.

10. Mr Machell refers to Grand Court Rules ("GCR") Order 67 and to the Code of Conduct for Cayman Islands Attorneys, in particular Rule 1.01(4) (which provides that an attorney must not conduct himself inconsistently with the proper interests of the client), Rule 1.04 (which provides that an attorney's primary duty is to his client, to whom he must act in good faith, and that an attorney must at all times and by all proper and lawful means advance and protect his clients' best interests without fear or regard for self-interest), and – most importantly, in the context of court proceedings – Rule 8.01, which provides that:

"The overriding duty of an attorney acting in litigation is to ensure in the public interest that the proper and efficient administration of justice is served. Subject to this, the attorney has a duty to act in the best interests of the client."

11. See also my judgments in *In re Porton Capital Inc and Porton Capital Limited* (FSD; unreported 19 January 2022) and *In re Toledo et al v Walkers (a Firm)* (FSD; unreported 25 January 2022) in respect of the overriding duty of attorneys to the court and the importance of the overriding objective. *Porton* also touched upon the justifiable reluctance of the courts to vacate trial dates without good reason.

12. Mr Machell in effect submits that Conyers, as the attorneys on record for the Russian Banks, are obliged as a matter of professional duty (and presumably under the terms of their retainer) to continue to act and do their best for the Russian Banks. See also paragraph 19 of my judgment delivered on 10 March 2022. I am not aware of any appeal against the Orders made that day.

13. Mr Machell submits that the Third Defendant is sanctioned as a "designated person". The provision of legal services is not itself prohibited. What is prohibited is payment for those services from the assets of a designated person in the absence of a licence.

14. It seems to be common ground that there is nothing to prohibit Conyers continuing to act pro bono, but Mr Machell submits that what the Adjournment Application is really about is the risk that a licence is never granted and Conyers cannot be paid for the services they are currently providing. Mr Machell adds that the Russian Banks have already obtained a licence for the LCIA arbitration and in such circumstances "the risk that a licence is not granted for the legal services being incurred in both the Cayman Islands and English proceedings seems non-existent or, at least, small" as he put it in his skeleton argument or as he put it this morning "In practice, no risk or a vanishingly small risk."

15. I have considered the third affidavit of Mr Dooley, an English solicitor. If the matter proceeds in this jurisdiction, before Mr Dooley files any further evidence in these

proceedings Mr Dooley may want to reflect upon paragraph 3(1) of my judgment in *Chia Hsing Wang v Credit Suisse AG & Ors* (FSD; unreported judgment 8 April 2022). Mr Dooley says he was authorised to make his affidavit on behalf of the Second Defendant and Third Defendant. The attorneys should also reflect upon GCR O.41 r.5 (1) – (3) and the judgment of Kawaley J in *Torchlight v Millinium* 2018 (1) CILR 244 at 277. The rules should be complied with.

16. Taking into account the overriding objective and balancing the legitimate interests of all parties and the need to make best use of scarce court time, I have concluded that it is in the interests of justice that the hearing should go ahead today and should not be adjourned. I am satisfied that a fair hearing can be held in respect of the issues before the court today.

17. I dismiss the Adjournment Application and am minded to do so with costs against the Russian Banks on a standard joint and several basis subject to consideration of any submissions to the contrary.

THE HON. JUSTICE DAVID DOYLE

JUDGE OF THE GRAND COURT