



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

**CAUSE NO: FSD 263 of 2021 (DDJ)**

**BETWEEN:**

**ASPECT PROPERTIES JAPAN GODO KAISHA**

**PLAINTIFF**

**AND:**

**JONATHAN CHENG**

**FIRST DEFENDANT**

**YICHENG CHEN**

**SECOND DEFENDANT**

**LC CAPITAL LIMITED**

**THIRD DEFENDANT**

**INFINITY CAPITAL GROUP LIMITED**

**FOURTH DEFENDANT**

**LC CAPITAL LIMITED**

**FIFTH DEFENDANT**

**ICG I**

**SIXTH DEFENDANT**

**IN CHAMBERS**

**Appearances: Mr Liam Faulkner of Campbells LLP for the Applicant**

**Before: Hon. Justice David Doyle**

**Heard: 24 September 2021**

**Ex Tempore Judgment  
Delivered: 24 September 2021**

**Draft Transcript of Judgment  
Circulated: 1 October 2021**



**Transcript of Judgment Approved: 5 October 2021**

## **HEADNOTE**

*Ex parte application for leave to serve a writ of summons out of the jurisdiction on foreign defendants*

## **JUDGMENT**

### **Introduction**

1. The Plaintiff makes an *ex parte* application to serve the First, Second and Third Defendants (the Foreign Defendants) out of the jurisdiction. The Fourth, Fifth and Sixth Defendants (the Cayman Defendants) are all exempted companies incorporated in the Cayman Islands which have been or will be served in the jurisdiction.

### **The position of the Plaintiff/Applicant**

2. On behalf of the Plaintiff it is submitted that:
  - (1) under Grand Court Rules Order 11 Rule 1 (1)(c) the Foreign Defendants are necessary or proper parties to the claims;
  - (2) under Grand Court Rules Order 11 Rule 1 (1)(f) the claim against the Foreign Defendants are founded on tort and fraud and that damage was sustained, or resulted from acts committed, within the jurisdiction; and
  - (3) under Grand Court Rules Order 11 Rule 1 (1)(ff) the claim is brought against a person who was a director, officer or member of a company registered in the jurisdiction and the subject matter of the claim relates to such company or to the status or duties of such director, officer or member (see *Bancredit Cayman Limited v Pellerano* 2010 (1) CILR 400; *Cairnwood Global Technology Fund Limited (in voluntary liquidation)* 2007 CILR 193 at paragraph 28).



### **The relevant law**

3. I turn now briefly to the relevant law as set out by Parker J in *Raiffeisen International Bank AG v Scully Royalty Ltd. et al* (unreported, 7 July 2020, FSD 162 of 2019 (RPJ)). Parker J took into account the judgment of the Privy Council in *AK Investment CJSC v Kyrgyz Mobil Tel Limited* [2011] UKPC 7 at paragraph 159 and concisely and helpfully outlined what factors had to be satisfied to obtain permission for service out of the jurisdiction, namely:

- (1) whether, in relation to each defendant, there is a serious issue to be tried on the merits, i.e. a substantial question of fact or law or both which has a real, as opposed to fanciful, prospect of success;
- (2) whether there is a good arguable case that the claim falls within one or more classes of case in which permission to serve out may be given, i.e. there is a jurisdictional gateway set out in Grand Court Rules Order 11 Rule 1(1); and
- (3) that in all the circumstances, the Cayman Islands is clearly or distinctly the appropriate forum for the trial of the dispute and that in all the circumstances the Court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction pursuant to Grand Court Rules Order 11 Rule 4 (2). See also the Court of Appeal's judgment in *Brasil Telecom S.A. v Opportunity Fund* 2008 CILR 2011 and *Ahmad Hamad Algosabi and Brothers Company v Saad Investments Company Limited and others* 2010 (2) CILR 289.

### **Determination**

4. I turn now to my determination of the application. I have considered the documents in the Hearing Bundle, in particular the Writ of Summons claiming damages for conspiracy, the draft Order, the two Affirmations of Fook Seng Heng and the two Skeleton Arguments.

5. I have considered all that Liam Faulkner of Campbells has had to say on behalf of the Plaintiff. I am grateful to Mr Faulkner for his continuing valuable assistance to the Court.



6. I note also the Plaintiff's belief as to where the Foreign Defendants are or probably may be found and the Plaintiff's belief, on the grounds stated, that the Plaintiff has a good cause of action against each of the Foreign Defendants.
7. In my judgment: (1) in relation to each Defendant I am satisfied that there is a serious issue to be tried on the merits and (2) there is a good arguable case that the claims fall within one or more of the jurisdictional gateways specified in Grand Court Rules Order 11 Rule 1 namely 1(c), (f) and (ff). The Foreign Defendants are necessary or proper parties to the claim. Conspiracy is a tort and arguably at least some of the damage was sustained or resulted from acts committed within the jurisdiction.
8. The claim is brought against the directors of companies registered within the jurisdiction and a member of such a company and the claim arguably also relates to the duties of such directors and member. The First Defendant is the sole director of the Fourth Defendant, the First and Second Defendants are directors of the Fifth Defendant and the Third Defendant is the sole member of the Fourth Defendant.
9. In my judgment the strongest jurisdictional gateway in the particular circumstances of this case is Grand Court Rules Order 11 Rule 1 (1)(c): the necessary or proper parties gateway.
10. In my judgment the Cayman Islands is clearly and distinctly the appropriate forum for the trial of the dispute and in all the circumstances I am persuaded that I should exercise the Court's discretion to permit service of the proceedings out of the jurisdiction.
11. The whole thrust of the claim is a claim in conspiracy against all Defendants and the use of companies incorporated in the Cayman Islands to further and facilitate such conspiracy. Moreover, it is plainly in the public interest (and to safeguard the international reputation of the Cayman Islands) that claims involving allegations of conspiracy against companies incorporated under the law of the Cayman Islands, and the use by individuals resident out of the jurisdiction of such companies, are properly dealt with by the Courts of the Cayman Islands.
12. Based on what I have read and heard to date, the Writ of Summons seeking damages for conspiracy against all the Foreign Defendants and Cayman Defendants, which concern companies incorporated under the laws of the Cayman Islands, should be dealt with in the Cayman Islands.

13. Accordingly, I make an Order in terms of the draft helpfully filed before today's hearing.

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**THE HON. JUSTICE DAVID DOYLE**  
**JUDGE OF THE GRAND COURT**