IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

Cause No. FSD 163 of 2017 (RPJ)

IN THE MATTER OF GRAND COURT LAW (2015 REVISION)
AND IN AN APPLICATION OF BDO CAYMAN LTD CONCERNING ARGYLE FUNDS SPC INC (IN OFFICIAL LIQUIDATION)

IN CHAMBERS

Appearances: **Mr. Graham Chapman QC instructed by Mr. Andrew Pullinger and Mr. Shaun Tracey of Campbells on behalf of BDO Cayman Ltd**
Ms. Clare Stanley QC instructed by Mr. Ulrich Payne and Mr. Paul Murphy of Ogier on behalf of Argyle Funds SPC Inc (in Official Liquidation).

Before: **The Hon. Justice Raj Parker**

Heard: **8 and 9 January 2018**

Draft Judgment Circulated: **26 January 2018**

Judgment Delivered: **13 February 2018**

HEADNOTE

Injunctions - anti-suit injunctions - injunction against foreign proceedings brought against auditors - jurisdiction to grant - proceedings brought in New York - whether court should grant anti-suit injunction in respect of New York proceedings - arbitration, exclusive jurisdiction, sole recourse and assignment clauses - approach to evidence - approach to construction and degree of probability to be applied to enforceability - Arbitration Law, 2012 section 7 (arbitration agreement enforceable in insolvency) and 8 (consumer arbitration agreement) - originating process - overriding objective - discretion to cure defect in procedure.

JUDGMENT

Introduction

1. BDO Cayman Ltd ("**BDO Cayman**") applies by ex parte Originating Summons on Notice for an anti-suit injunction against Argyle Funds SPC Inc. (In Official liquidation) ("**Argyle**").

2. It applies for an Order restraining Argyle from continuing proceedings in the Supreme Court of the State of New York, County of Nassau, (the "**New York Proceedings**") commenced against four entities: BDO Cayman, BDO USA LLP ("**BDO USA**"), BDO Trinity Ltd d/b/a BDO Trinidad & Tobago ("**BDO Trinity**") and Schwartz & Co LLP ("**Schwartz**"). I shall refer to the latter three entities as the "**other entities**" to distinguish them from BDO Cayman, although all four are defendants in the New York proceedings.

3. BDO Cayman relies upon arbitration and exclusive jurisdiction agreements contained in Engagement Letters between BDO Cayman and Argyle dated 3 May 2011, 1 February 2012, 22 July 2013 and 30 April 2015 (together the "**Engagement Letters**").

4. It relies also upon "*Sole Recourse*" clauses contained in the Engagement Letters between BDO Cayman and Argyle dated 1 February 2012, 22 July 2013 and 30 April 2015.

5. Argyle is a mutual fund organised under the laws of the Cayman Islands. It is now insolvent. David Griffin and Andrew Morrison were appointed on 26 April 2016 as the Joint Voluntary Liquidators and on 31 May 2016 as the Joint Official Liquidators ("**JOLs**").

6. BDO Cayman is a limited company incorporated and existing under the laws of the Cayman Islands. It was the statutory auditor of Argyle for the audit years ending 31 December 2006 - 2014. BDO Trinity is a limited company incorporated and existing under the laws of Trinidad & Tobago. BDO Cayman engaged BDO Trinity to assist with the conduct of the audits. BDO USA is a limited liability partnership existing under the laws of Delaware. Schwartz is a limited liability partnership existing under the laws of New York. BDO Cayman, Trinity and USA are members of BDO International, a global network of public accounting, tax, consulting and business advisory firms. Schwartz is an

independent accountancy firm and BDO alliance firm that is not a member of BDO International.

7. The New York proceedings were commenced by Argyle, acting by the JOLs on 21 June 2017. The Complaint makes serious allegations against all four of the defendants relating to the provision of services under the Engagement Letters.

8. In particular taking this further than what might be termed the usual 'auditors negligence' case: fraud, professional gross negligence and unjust enrichment are pleaded.

9. It is alleged that the defendants' conduct was, for example "… *wilful, purposeful, knowing, malicious and in extreme departure from the norms expected of auditors*" (see paragraph 234 of the Amended Complaint). Despite language in the Engagement Letters waiving the right to punitive damages, punitive and exemplary damages are claimed in the Amended Complaint.

10. The causes of action in the Amended Complaint (see paragraphs 221-254) include tort claims (fraudulent concealment, gross negligence, and professional negligence).

11. They are made against BDO Cayman and the other entities. Restitution is claimed against BDO Cayman and the other entities and breach of contract is claimed against BDO Cayman only. Damages of at least US$86 million are claimed on the basis that BDO Cayman and the other entities, through their alleged gross negligence and/or intentional and fraudulent misconduct, caused catastrophic loss to Argyle.

12. Argyle claims to be the victim of two frauds. One took place between 2010 and 2016 when its New York-based credit advisers, Donald Barrick and his corporate entities RMP and ECB ("**Barrick**'), misappropriated funds for their own purposes. The fraud was discovered in 2016 after which judgments were obtained against Barrick. Apparently Barrick has no assets left against which to enforce the judgments obtained.

13. The New York State Supreme Court, Nassau County has assigned the New York proceedings to the Honourable Stephen A Bucaria, the same judge who oversaw the actions against Barrick, as well as the individual actions against Mr Barrick and his wife personally.

14. The second fraud took place between 2004 and 2012 when Argyle's Canadian credit advisers ("**NSF**") and a Mr. Ovenden also misused funds and made fraudulent misrepresentations. The fraud was not discovered until April 2012. Again legal process was followed against the perpetrators and claims submitted in insolvency and other proceedings.

15. The upshot of the attempts to recover in New York and Canada has been that to date no recoveries have been made: due apparently to a combination of persons making themselves judgment proof, creditor protection regimes and lack of funding. Apparently as a result of these frauds Argyle, and in turn its investors, have lost over US $71 million.

16. In summary the case against the auditors is that BDO Cayman's audit reports did not alert Argyle and its investors to the impairment of the NSF investments until after the fraud was discovered and did not alert Argyle to the Barrick fraud at all.

17. In relation to the Barrick fraud it is alleged that the audit reports offered positive endorsements of the value of the investments and that inexplicably a warning in a draft report as to doubtful recovery of some of the investments was removed in the final report, which gave a clean opinion. It is alleged that the fraudulent actions of the auditors were motivated in large part by the concern that issuing anything less than a clean opinion could result in the loss of substantial business from Argyle and other related entities, as well as the desire to collect significant fees - see paragraph 238 of the Amended Complaint.

18. BDO Cayman and the other entities deny all the allegations made against them. There are serious disputes of fact as to which entities were involved in the audits and in which respects.

19. On 18 May 2017 Mr Justice McMillan gave directions to the JOLs permitting them to bring proceedings against BDO Cayman and the other entities in New York which were then commenced on 21 June 2017. After BDO Cayman issued this application, the JOLs went back to Mr Justice McMillan on 3 November 2017 who gave further directions authorising the JOLs to defend it.

20. On 11 September 2017 pursuant to a stipulation agreed between the parties and approved by the New York Court, the New York proceedings were stayed pending the outcome of this application.

The Engagement Letters

21. The four engagement letters relevant to this application cover the audit years 2010-2013, pursuant to which BDO Cayman provided certain audit services as statutory auditor to Argyle for the years ending 31 December 2010-2013 respectively. They each contain law and jurisdiction clauses in the following material terms:

> ***"Applicable Law***
>
> *This Agreement shall be governed by and construed in accordance with the laws of the Cayman Islands."*
>
> ***"Jurisdiction***
>
> *The courts of the Cayman Islands shall have exclusive jurisdiction in relation to any claim or matter arising from this Agreement."*

22. They also each contain a clause headed **"Dispute Resolution Procedure"** in the following material terms:

> *"If any dispute, controversy, or claim arises out of, relates to, or results from the performance or breach of this Agreement,[excluding claims for non-monetary or equitable relief](collectively, the "Dispute") either party may, upon written notice to the other party, request non-binding mediation. A*

recipient party of such notice may waive its option to resolve such dispute by non-binding mediation by providing written notice to the party requesting mediation and then such parties hereto shall resolve such dispute by binding arbitration as described below..."

23. The carve out in relation to claims for non-monetary or equitable relief from the procedure appears only in the two later years in question, namely 2012 and 2013, and not in either of the 2010 or 2011 Engagement Letters. The dispute resolution procedure goes on to provide in material terms:

> *"Any Dispute not resolved first by mediation between the parties, (or if the mediation process is waived as provided herein) shall be decided by binding arbitration. The seat of the arbitration proceedings shall be the Cayman Islands, unless the parties agree in writing to a different seat, and governed by the prevailing Arbitration law.*
>
> .....
>
> *The governing law of the arbitration shall be the law of the Cayman Islands and the substantive law of the Cayman Islands shall apply to all issues therein...."*

24. The Engagement Letters for the 2011, 2012 and 2013 years (but not for 2010) also contained a sole recourse clause in the following material terms:

> *"Sole Recourse*
>
> *This agreement is made between [Argyle] and [BDO Cayman] only....*
>
> *If one of our affiliates carries out any work for you in relation to the services to which this agreement applies, our affiliates will do so as a subcontractor of [BDO Cayman]. [BDO Cayman] will remain the contracting party and will be the sole entity that is responsible to you, including for the work carried out by any of our affiliates.*

Also, where appropriate, we may use a Permitted Assignee to assist us with the services to which this agreement applies. Notwithstanding the fact that the services may be carried out by other member firms of the International BDO network assisting us as supplemental providers of services and as subcontractors of [BDO Cayman] you agree that [BDO Cayman] shall have the sole liability for both its acts and/or omissions and also all acts and/or omissions of any Permitted Assignee and you agree that you shall bring no claims or proceedings of any nature whatsoever(whether in contract, tort, breach of statutory duty or otherwise) against any Permitted Assignees or BDO International entities.... or other member firms of the International BDO network in any way arising from, in respect of or in connection with the services or this agreement.

These exclusions shall not apply to any liability, claim or proceeding founded on an allegation of fraud or wilful misconduct or other liability that cannot be excluded under the applicable laws.

It is agreed that, unless otherwise specified, the limitation of liability provisions in this agreement shall apply equally to [BDO Cayman], our affiliates and any Permitted Assignees we may involve in the services.

You agree that any of our affiliates and any BDO subcontractors who we may involve in the services of BDO International entities or other BDO member firms shall each have the right to rely on and enforce the paragraphs above as if they were parties to this agreement".

25. All four of the Engagement Letters also included the following assignment clause which in material terms provides:

"Assignment

BDO [Cayman] shall have the right to assign its rights to perform a portion of the services described above to any affiliates (including, where applicable, member firms of the international BDO network and/or their independent Alliance members), agents, or contractors (a "Permitted Assignee") without the classes' prior consent. If such assignment is made, the classes agree that, unless it enters into an engagement letter directly with the Permitted Assignee, all of the applicable terms and conditions of this agreement shall apply to the Permitted Assignee. We agree that we shall not permit the Permitted Assignee to perform any work until it agrees to be

bound by the applicable terms and conditions of this agreement. We further agree that [BDO Cayman] will remain primarily responsible for the services described above, unless we and the classes agree otherwise, and we will properly supervise the work of the Permitted Assignees to ensure that all such services are performed in accordance with applicable professional standards. From time to time, and depending on the circumstances, Permitted Assignees located in other countries may participate in the services we provide to the classes. In some cases, we may transfer information to or from the Cayman Islands or another country."

Summary of BDO Cayman's case

26. Mr. Chapman QC for BDO Cayman submitted that in view of the terms of the Engagement Letters this is a straightforward case. Argyle should be held to their bargain and prevented from forum shopping. He characterised Argyle's conduct as "*a paradigm example of a party seeking to obtain impermissible procedural and strategic advantages by seeking to avoid restrictions to which it is subject as a result of the contractual obligations that it freely agreed and entered into*".

27. Put simply, BDO Cayman and Argyle agreed that any dispute or claim arising out of or in relation to the Engagement Letters was to be finally resolved by binding arbitration in accordance with the terms of those Letters. In breach of those terms, Argyle commenced the New York proceedings.

28. Where BDO Cayman engaged a third party to assist with the performance of the audit services pursuant to the Engagement Letters, he relies on the Sole Recourse clauses to show that BDO Cayman is solely responsible for both its acts and/or omissions and those of its assignee and that Argyle should not be permitted to bring any claims or proceedings of any nature whatsoever against any assignee. Moreover he says in accordance with the express terms of the assignment clauses, BDO Cayman remains primarily responsible for the services provided to Argyle pursuant to the Engagement Letters.

29. It follows from this, he submits, that Argyle has agreed to pursue all of its claims only by arbitration against BDO Cayman alone and to the extent there is any dispute about the meaning and effect of the terms of the Engagement Letters or as to the applicability of those terms then, if they are not resolved by the arbitral tribunal itself, they are to be resolved exclusively by the Cayman court in accordance with Cayman law. Argyle should be prevented from pursuing its claims against BDO Cayman and the other entities in the New York proceedings.

Summary of Argyle's case

30. Ms. Clare Stanley QC for Argyle developed a number of points in the course of her submissions in opposition to the application.

31. She took issue with the nature of the originating process by which this case came to a hearing and more particularly submitted that since Argyle was not a party to the action (it having been brought by way of ex parte originating summons with notice) that it was not amenable to an injunction. She argued that Argyle should have been made a defendant to the originating process and has suffered prejudice as a result of an inappropriate procedure having been followed.

32. She further submitted that the arbitration clauses within the Engagement Letters were unenforceable for a number of reasons.

33. The first was that Argyle is a "*consumer*" within the meaning of the *Arbitration Law, 2012* (section 8) and accordingly Argyle is protected by the right to consider, after a dispute has arisen, the agreement to refer the matter to arbitration, certifying in writing that it has read and understood the agreement and agrees to be bound by it, which it has not done.

34. Second, Argyle is in court supervised liquidation and its liquidators are not bound by the arbitration clauses because they had not adopted the contracts by reason of section 7 of the *Arbitration Law, 2012.*

35. Third, as a matter of construction, the arbitration provisions do not mandate a reference to arbitration unless and until a mediation has failed or the parties have declined to mediate. Mediation has not taken place or been requested so the clause is not engaged. There were also various points of ambiguity in relation to the sole recourse clauses and assignment clauses that should be resolved in her clients' favour.

36. She went on to develop a submission that even if the dispute resolution provisions applied, there were good reasons why the court should not make the order applied for against BDO Cayman because this court could not grant the relief sought against the other parties. The New York proceedings should continue against them before a New York judge who has intimate familiarity with the underlying facts from presiding over related proceedings. She submitted that it was clearly preferable in a substantial case against auditors that a single forum should decide all of the claims in order to avoid the risk of inconsistent decisions and for efficiency.

37. In any event she submitted that this court in its discretion should dismiss the application and leave it to the New York Court to make a decision as to whether to stay the proceedings against BDO Cayman and in respect of any other arguments advanced in defence of those proceedings by BDO Cayman and the other entities. The New York Court was perfectly capable of applying Cayman law and dealing with cases of this nature, including the defences the Defendants are likely to run. She submitted that this court should not interfere, and should leave all such matters to the New York court.

38. Finally, in considering matters relevant to the exercise of its discretion, she submitted that this court should give considerable weight to Argyle's legitimate interest in seeking to prosecute its claims in an affordable way for the benefit of the estate as a whole. In that regard access to justice is facilitated by the availability of contingency fee arrangements with the Argyle's retained law firm, Reed Smith in New York.

Applicable legal principles

39. These principles may be summarised as follows:

The court's jurisdiction is derived from section 11 of the Grand Court Law (2015 Revision) read together with section 37 (1) of the Senior Courts Act 1981.

Section 11 provides:

> *"The Court shall be a superior court of record and, in addition to any jurisdiction heretofore exercised by the Court or conferred by this or any other law for the time being in force in the Islands, shall possess and exercise, subject of this and any other law, the like jurisdiction within the islands which is vested in or capable of being exercised in England by-*
>
> *a) Her Majesty's High Court of Justice; and*
> *b) the Divisional Courts of that Court,*
>
> *as constituted by the Senior Courts Act, 1981, and any Act of Parliament of the United Kingdom amending or replacing that Act".*

40. There is a long-standing and well-recognised jurisdiction to enforce the negative obligation not to commence proceedings in any other forum (contained in an agreement to arbitrate disputes in a particular forum), by restraining foreign proceedings brought in violation of the arbitration agreement and that is so even when arbitration proceedings have neither been commenced nor were being contemplated: see *AES v Ust [2013] 1 WLR 1889* SC.

41. Of course any exercise of this jurisdiction is not directed at the foreign court and does not call into question the jurisdiction of the foreign court. It is granted under the "*in personam*" jurisdiction of a court of equity against the relevant parties – see *Turner v Grovit [2002] 1 W.L.R 107* at paragraph 23.

42. Mr. Justice Cresswell held in this court in *Origami [2012] (2) CILR 191* in distinguishing between anti-suit injunctions founded on jurisdiction or arbitration agreements and other cases:

"96. The Grand Court may restrain a party over whom it has personal jurisdiction from the institution or continuance of proceedings in a foreign court in breach of a contract to refer disputes to the Grand Court (or, it seems, another foreign court) .... Where the basis for the exercise of the Court's discretion is that the defendant has bound himself by contract not to bring the proceedings which he threatens to bring/has brought in the foreign court, the principles which guide the exercise of the discretion of the Court are distinct from those which govern applications for anti-suit injunctions not founded on contractual agreements.... In particular, there is no need to show that there is oppression or vexation or that the Cayman Islands are the natural forum for the claim....

97. The Grand Court also has jurisdiction in personam *to restrain, by injunction, foreign proceedings brought in breach of an agreement to refer disputes to arbitration...."*

43. In the *Angelic Grace [1995] 1 Lloyd's Rep 87* Lord Justice Millett dealt with the issue of anti-suit injunctions to restrain proceedings commenced in breach of an arbitration agreement in the following way at page 96:

"In my judgment, the time has come to lay aside the ritual incantation that this is a jurisdiction which should only be exercised sparingly and with great caution. There have been many statements of great authority warning of the danger of giving an appearance of undue interference with the proceedings of a foreign Court. Such sensitivity to the feelings of a foreign Court has much to commend it where the injunction is sought on the ground of forum non conveniens or on the general ground that foreign proceedings are vexatious or oppressive but where no breach of contract is involved. In the former case, great care may be needed to avoid casting doubt on the fairness or adequacy of the procedures of the foreign Court. In the latter case, the question whether proceedings are vexatious or oppressive is primarily a matter for the Court before which they are pending. But in my judgement there is no good reason for diffidence in granting an injunction to restrain foreign proceedings on the clear and simple ground that the defendant has promised not to bring them.... I cannot accept the proposition that any Court would be offended by the grant of an injunction to restrain a party from invoking a jurisdiction which he had promised not to invoke

and which it was its own duty to decline.... In my judgment, where an injunction is sought to restrain a party from proceeding in a foreign Court in breach of an arbitration agreement governed by English law, the English Court need feel no diffidence in granting the injunction, providing that it is sought promptly and before the foreign proceedings are too far advanced. I see no difference in principle between an injunction to restrain proceedings in breach of an arbitration clause and one to restrain proceedings in breach of an exclusive jurisdiction clause.... The justification for the grant of the injunction in either case is that without it the plaintiff will be deprived of its contractual rights in a situation in which damages are manifestly an inadequate remedy. The jurisdiction is, of course, discretionary and is not exercised as a matter of course, but good reason needs to be shown why it should not be exercised in any given case."

44. The principles were further considered in the House of Lords in *Donohue v Armco [2002] 1 Lloyd's Rep 425* and in the Supreme Court in the case to which I have already referred: *AES v UST [2013] 1 WLR 1889.*

45. From these authorities it is clear that the jurisdiction is discretionary and will not be exercised as a matter of course, but if the court finds that there is a binding arbitration or jurisdiction clause identifying a forum, then the court will ordinarily grant the injunction to enforce the contractual right that a party has bound itself to, unless there are good or strong reasons why that should not be done.

46. I also bear in mind that I should apply a 'common-sense business-like' approach to the construction of an arbitration clause, absent some clear indication to the contrary. This was an approach adopted in the House of Lords in *Fiona Trust [2007] 4 All ER 951 HL per* Lord Hoffmann at paragraph 13*:*

"... The construction of an arbitration clause should start from the assumption that the parties, as rational businessman, are likely to have intended any dispute arising out of the relationship into which they have entered or purported to enter to be decided by the same tribunal. The clause should be construed in accordance with this presumption unless the language makes it clear that certain questions were intended to be excluded from the arbitrator's jurisdiction."

47. Further, the burden of proof is clearly on BDO Cayman to establish that it is entitled to the relief sought and that burden is a high one - see *Midgulf [2009] 1 CLC 984 per* Teare J at paragraph 36:

> *"This is a case where an anti-suit injunction is sought at the interlocutory stage of proceedings. However, if the injunction is granted its effect is likely to be final because it will be the end of the Tunisian proceedings and enable the arbitration proceedings to be completed. In such circumstances this court has required the applicant for an anti-suit injunction to establish a 'high degree of probability' that its case against the respondent is right and that it is indeed entitled as of right to restrain the respondent from taking proceedings abroad; see Bankers Trust v Jakarta Int [1999] 1 Lloyd's Rep 910 at 913 and American International Specialty Lines Insurance v Abbott Laboratories [2003] 1 Lloyd's Rep 267 at p275."*

48. The burden is a high one in this case as well because the effect of granting the injunction is to bring the New York Proceedings to an end. If I am satisfied that the burden has been discharged in relation to the claims made (it is agreed that the application has been made promptly) then the respondent, in order to prevent an injunction being granted, needs to establish that there are good or strong reasons for not enforcing the clauses.

49. *Donohue* was such a case. A claim for fraud and conspiracy was brought against Mr. Donohue in New York in breach of an agreement providing for the exclusive jurisdiction of the English courts. Mr. Donohue was refused an anti-suit injunction because strong reasons (in the form of alleged participation in the alleged fraud of other New York defendants not party to any exclusive jurisdiction agreement) existed as to why the New York proceedings should continue. The proceedings against Mr. Donohue in New York included "RICO" claims and a potential liability for triple damages. In the event the respondent gave an undertaking not to enforce any multiple or punitive damages award, and the injunction was refused.

Analysis and discussion

Improper procedure

50. I will first deal with Ms. Stanley QC's submissions in relation to proper procedure. Ms. Stanley QC argued that since Argyle was not a defendant to the action it was not amenable to an injunction and that remained the position unless and until it was made a party. She went so far as to submit that the court cannot make injunctions against non-parties and unless the defect was cured that I should dismiss the application '*in limine*'. However she fairly accepted that this was not an incurable defect and invited Mr. Chapman QC to make an application to join Argyle formally to the process.

51. He did not do so and I do not believe he needed to do so. As I have said, this court has jurisdiction to grant the order in personam over Argyle. In any event it is clear from reviewing the correspondence between the attorneys (particularly in August 2017) when deadlines were looming in the New York proceedings, that the way in which the matter proceeded to a hearing had effectively been agreed. It was in my view a sensible way to proceed in the circumstances and has caused no prejudice to Argyle.

52. Ogier acting for Argyle made it clear that they wished to be heard on the ex parte originating summons and agreed directions for such a hearing. Documents were not provided under ***GCR*** Order 24 Rule 10 in relation to the affidavit evidence relied on by Campbells acting for BDO Cayman. A point was taken by Argyle that leave was needed under section 97(1) of the Companies Law (2016 Revision) to proceed in circumstances where Argyle was in official liquidation. Leave was sought and obtained effectively by consent from me on 13 September 2017. Correspondence between the attorneys proceeded to seek the determination of the application on an inter partes basis, but Campbells made the point that if the New York proceedings were not stayed or extensions for compliance with time limits were not agreed, it would have to proceed on an ex parte basis. In fact such a stay of the New York proceedings was agreed and the summons proceeded on an inter partes basis. I do not detect any material non-compliance with the Grand Court Rules or unfairness which has resulted from that procedure being adopted in this case. Were it necessary to do so, under GCR Order 2 Rule 1, I would, in any event, have allowed the

defect to be cured by applying the Overriding Objective to deal with the matter justly and would have given a liberal interpretation to the Rules to secure the most expeditious and least expensive determination. I therefore reject the improper procedure argument.

53. Ms. Stanley QC also criticised the way in which the ex parte originating summons had been drafted in that it made reference only to the arbitration agreements, Sole Recourse and assignment clauses and made no express reference to the exclusive jurisdiction clause which Mr. Chapman QC also relies on. I do not believe there is anything that turns on the criticism because it is clear from the evidence filed by BDO Cayman on 1 August 2017 (see paragraph 9 of Trenouth) that the exclusive jurisdiction clause was also part of BDO Cayman's case. I do not believe that Ms. Stanley QC's client has not understood the case being made against it from the outset or has been prejudiced in any way by the way in which the Originating Summons was drafted.

54. I turn now to the evidence in relation to the issue of which entities were involved in the provision of audit services pursuant to the Engagement Letters.

Who was involved in the audits?

BDO Cayman

55. Mr. Trenouth who is a Director and Managing Partner of BDO Cayman in his affidavit of 7 August 2017 sets out the sources of his knowledge at paragraph 4:

> *" The sources of my knowledge are my direct involvement in the matters addressed in this affidavit and information contained in the files maintained by BDO Cayman and ... BDO Trinity, of which I am also a director, having been appointed on 13 September 2006. I was the Engagement Quality Control Partner responsible for second review of the Argyle audit reports and, as Managing Partner of BDO Cayman, I was responsible for overseeing the audit services provided to Argyle."*

At paragraph 17:

" In my experience as Managing Partner of BDO Cayman, it has been our practice to outsource work relating to the audit services to other firms within the BDO international network from time to time where that firm is better placed to provide the services than BDO Cayman. There are also a number of firms outside the international network of BDO firms that may assist in connection with the audit of a BDO client, for example because there is no BDO International network firm in a relevant jurisdiction. This is a common practice among international audit firms with a view to providing audit services to clients as efficiently and cost effectively as possible."

At paragraph 18:

" Nonetheless, whenever our client is a Cayman Islands mutual fund, it is our standard practice for the audit agreement to be made solely between BDO Cayman and the client. Among other things, this is because BDO Cayman remains the statutory auditor responsible for the audit. Therefore, and consistent with BDO Cayman's terms of engagement, any outsourcing arrangement is entirely an internal matter for BDO Cayman and its affiliates."

At paragraph 19:

" Consistent with the practice outlined above, certain of the audit work covered by the Engagement Letters, including the primary audit 'fieldwork' , was performed by BDO Trinity. This was partly because the investment manager of Argyle was Permanent Value Asset Management Inc, which was based in Barbados. BDO Cayman remained the statutory auditor responsible for the audit and the entity which issued the audit reports for the relevant years. To the best of my knowledge information and belief, none of the audit work relating to the Engagement Letters was performed by BDO USA or Schwartz & Co , neither of which had any role in relation to the audit of Argyle during the audit years covered by the Engagement Letters."

56. Mr. Ali who is partner of BDO Trinity in his affidavit of 8 December 2017 sets out his involvement and says:

Paragraph 4:

" I was personally involved with the conduct of the audits of Argyle, including pursuant to the audit Engagement Letters.... I was the audit manager and worked with my BDO Trinity colleagues Sue Ann Pierre and and Anil Ramkay, who were the audit senior and audit assistant respectively for the Argyle assignment, on all of the audits conducted pursuant to the Engagement Letters.....

Paragraph 15:

" BDO Cayman engaged BDO Trinity to assist with the provision of the audit services to Argyle. Pursuant to this arrangement BDO Trinity had primary conduct of the audits on behalf of BDO Cayman, and was responsible to BDO Cayman carrying out the necessary audit procedures and preparing draft audit reports for each of the relevant years. However, as the statutory auditor of Argyle, BDO Cayman was responsible for finalising the audited financial statements and issuing the audit opinion."

Paragraph 16:

*" Internal delegation of this nature ensures that audit services are conducted efficiently and cost effectively, and is common within international audit firms. Also, Argyle's investment manager, Permanent Value Asset Management Inc (**"PVAM"**), was based in Barbados (which is geographically closer to Trinidad and Tobago than the Cayman Islands, and in the same time zone) which facilitated the audit process being completed more efficiently."*

Paragraph 17:

" As noted above, I was the BDO Trinity Partner and audit manager responsible for the Argyle audits and was assisted by my colleagues Sue Ann Pierre and Anil Ramkay. Ms. Pierre and Mr. Ramkay were at all relevant times employed by BDO Trinity and continue to be employed by BDO Trinity.

Paragraph 21:

"Mr. Laffey and Mr. Morrison wrongly conflate the New York Defendants throughout their evidence. For example, Mr Laffey refers to audit reports in respect of Argyle that were "issued by the New York Defendants".

however the audit reports in respect of Argyle were only ever issued by BDO Cayman. Similarly in its Amended Complaint in the New York Proceedings Argyle makes little distinction between the four New York Defendants, which it refers to collectively as the "Defendants" or "BDO". The distinction between each of the four New York Defendants is in my view important, not least because it is only BDO Cayman with which Argyle had a contractual relationship and only BDO Cayman and BDO Trinity that had any relevant involvement in the audits to which the allegations relate.

Paragraph 28:

> *" In some of the audit years, site visits were made to the shared RMB/ECB [Argyle's credit advisers] offices on Long Island in connection with the Argyle audits. In relation to the 2010 and 2011 audits, I visited RMB/ECB's offices in long island for this purpose. As I explain further below, my BDO Trinity colleague Sue Ann Pierre visited RMB/ECB's offices in connection with the 2014 audit. Site visits were not conducted for the purposes of either the 2012 or 2013 audits, as the necessary information was obtained by email."*

Paragraph 29:

> *" To be clear, to the best of my knowledge, representatives of neither BDO USA nor Schwartz & Co ever visited RMP/ECB's [Argyle's credit advisers] Long Island offices in connection with any of the 2010 to 2013 audits of Argyle."*

57. He also supports at paragraph 24 the statement made at paragraph 19 by Mr. Trenouth that none of the audit work was performed by BDO USA or Schwartz & Co - and neither of those entities had any role in relation to the audit of Argyle during the relevant audit years.

Argyle

58. Mr. Laffey in his affidavit of 20 November 2017 disagrees with this evidence. He is a Partner at the law firm Reed Smith LLP who are the US Counsel to Argyle and whose name appears on the Amended Complaint.

59. He asserts in particular that there is compelling evidence to show that BDO USA and/or Schwartz & Co played "*crucial roles*" in relation to the audits. To this end he relies on (see paragraphs 66-72) the fact that the books and records at RMP/ECB were located on Long Island, New York. He asserts that therefore BDO Cayman was required to seek the assistance of the New York based affiliates in order to conduct the necessary file reviews. But that of course without more does not show that BDO USA or Schwartz were actually involved in relation to the relevant audits.

60. He also asserts that Mr. Barrick has confirmed that New York-based representatives of those two entities were involved in the relevant audits. Apparently Mr. Barrick's understanding of the reason for this was because the cost of flying BDO Trinity representatives to New York to conduct the site visits was prohibitive and BDO Cayman and BDO Trinity instead relied upon those other entities to carry out the file reviews on location in New York. In my view this is not persuasive. At best this is hearsay evidence from a person against whom judgments in fraud have been obtained.

61. Clearly Argyle is without the benefit of any formal discovery process to make good their assertions. Mr. Laffey relies on documents uncovered pre-discovery to attempt to show that BDO USA and Schwartz & Co were involved. In my view these matters (to which he refers at paragraph 71) are thin and unconvincing in this regard. I prefer the evidence of Mr. Ali - see paragraphs 22 to 42 which deal with Mr. Laffey's evidence in detail - and I accept Mr. Ali's conclusion that BDO USA and Schwartz had no relevant involvement.

62. Both Mr. Trenouth and Mr. Ali had direct and personal knowledge of the audits because they were the relevant individuals with responsibility. It follows that I may assume that they would know who was working on the assignment and where they were working and I accept their evidence in relation to the non-involvement of BDO USA and Schwartz.

63. Mr. Laffey speculates under the heading '*Evidence expected to be uncovered and grounds for belief*' at paragraph 73 *et seq*. This again does not assist in disturbing the evidence

adduced by BDO Cayman through Mr. Trenouth and Mr. Ali, which as I have said I accept on this aspect. Far from misrepresenting the position to this court as asserted by Mr. Laffey (paragraph 86) it seems to me that nothing put forward by his evidence disturbs BDO Cayman's evidence as to the involvement of the relevant entities. The point is important not least because Mr. Chapman QC submits that the reason those parties have been joined to the New York proceedings is in furtherance of Argyle's strategy to establish jurisdiction in New York where none exists, in order to bolster their arguments on discretion.

64. I deal next with the "*consumer*" argument.

Is Argyle a consumer?

65. Section 8 of the *Arbitration Law, 2012* which came into effect on 2 July 2012 deals with consumer arbitration agreements. By subsection (1) where a contract contains an arbitration agreement and a person enters into that contract as a consumer, the arbitration agreement is enforceable against the consumer only if, after a dispute has arisen, the consumer by separate written agreement certifies that he has read and understood the arbitration agreement and agrees to be bound by its terms. It is not in dispute that Argyle has not entered into such a separate written agreement after the dispute arose.

66. There is, if the clause applies, a measure of protection afforded to one of the parties if they are contracting as a consumer.

67. By subsection (4):

"In this section-

"consumer" in relation to-

a) any goods, means-

i. *a person who acquires or wishes to acquire goods for his own private use or consumption; and*
ii. *a commercial undertaking that purchases consumer goods;*

b) *any services or facilities, means any person who employs or wishes to be provided with the services or facilities, and*

c) *any accommodation, means any person who wishes to occupy the accommodation.*"

68. Whilst a distinction has therefore been made by the draughtsman in relation to 'goods' making it clear what a consumer is in that context, no such wording appears in relation to 'any services' provided to any person who wishes to obtain them. Ms. Stanley QC suggests that this was a deliberate decision taken by the draughtsman in order to give protection to commercial entities who contract with service providers in this jurisdiction because that protection is necessary in what is an economy which provides commercial and financial entities with many professional and other services. She submits that the Cayman legislature plainly chose not to adopt the conventional statutory definition of consumer which, for example, in the UK Unfair Contract Terms Act has been in place since 1977. She pointed to *the Consumers, Estate Agents and Redress Act 2007* in the UK for an analogous definition in s 3(2) (a) of a consumer who purchases goods or services which are supplied in the course of a business carried on by a person supplying or seeking to supply them.

69. As a matter of impression it seems to me most unlikely that the draughtsman would have intended businesses to be treated as consumers for the purposes of section 8. It would remove any distinction between consumers and non-consumers which was plainly not the intention behind this provision. Moreover it seems to me that the rationale and purpose behind section 8 is to give additional protection to natural persons who enter into contracts that contained an arbitration agreement where they are contracting as consumers not businesses. Mr. Chapman QC referred me to the *Consumer Arbitration Act 1988 (UK)* which has now been repealed, as the provenance of section 8. That Act did make the distinction between contracting in the course of the business and contracting as a consumer. It is also the case that in the consumer rights legislation in the UK which he also referred me to 'consumer' is regularly and consistently defined as meaning an individual acting for purposes that are wholly or mainly outside trade, business, craft or profession. That accords

with the ordinary and natural meaning of the term "*consumer*". He said if Argyle was right every business in Cayman that contracted to obtain services would be treated as a consumer and could obtain the protection afforded by the section. I agree. I find that Argyle is not a consumer because it contracted with BDO Cayman in the course of a business and does not fall within the section. Section 8 is of no application in this case and has no relevance to these proceedings.

70. I deal next with section 7 of the Arbitration Law.

Have the JOLs adopted the Engagement Letters?

71. Section 7 of the Arbitration Law provides:

> *"A contract in which the director of an insolvent body corporate has agreed to refer to arbitration any dispute arising from the contract shall be enforceable against the liquidator, receiver or administrator if either of them adopts the contract".*

72. Ms. Stanley QC argues that the JOLs have not adopted the Engagement Letters within the meaning of section 7. I can deal with this very shortly. I do not believe that any special procedure or formality is required in relation to 'adoption'.

73. The meaning of "*adopt*" was considered in *Powdrill v Watson HL 2 A.C [1995] at p 448. Lord Browne-Wilkinson said:*

> *" The word "adopt" is not a term of art but takes its colour from the context in which it is used. In section 323(4) of the Act of 1948 [Companies], the word "adopt" was used to describe the consequence of the liquidator failing to disclaim an unprofitable contract. In that context "adopt" plainly means a failure to disclaim, i.e. leaving in being an existing contractual relationship between the company and the creditor so as to permit the creditor to prove in the liquidation for subsequent breaches."*

74. Ms. Stanley QC sought to persuade me that the contracts in this case for audit services had been performed and that her client was suing for losses suffered by past breaches. Section 7 was to do with contracts to be performed in the future. She submitted that it was not right

to equate the reliance on the contracts made in the New York proceedings with "*adoption*" for the purposes of section 7.

75. I do not agree. In my view if a liquidator sues on a contract which has within it an arbitration agreement the section makes it absolutely clear that he is bound by the arbitration agreement as well.

76. Here where proceedings have been brought in New York by the JOLs relying on the Engagement Letters [see paragraphs 108, 136, 155 and 180 and 250 of the Amended Complaint] it seems to me that they have been adopted for the purposes of section 7 and so the forum clauses cannot be avoided by the JOLs. They have not been disclaimed in any way, but relied upon. I am satisfied they have been adopted for the purposes of section 7.

Construction and interpretation of the Dispute Resolution Procedure in the Engagement Letters

77. A central plank of Ms. Stanley QC's submissions was that as a matter of construction the arbitration provisions did not mandate a reference to arbitration unless and until a written mediation notice was given and either the mediation has failed or the party receiving the notice has waived its option to mediate. Since mediation has not taken place or been requested by either party the arbitration provisions have no application. I do not agree with such a construction. The language of the arbitration provisions do not operate to set up a condition precedent for mediation before the arbitration clause can bite. Mediation on the language of the clause is simply permissive so that on its terms any dispute not resolved first by mediation is to be decided by binding arbitration in the Cayman Islands. The language does not mandate a reference to mediation before the arbitration provisions are engaged at all. Even if it did, such a requirement was waived because Argyle commenced the New York proceedings. Such conduct has clearly evinced an intention not to be bound by any agreement to first mediate.

78. I accept Ms. Stanley QC's submission that clauses depriving a party of the right to litigate should be expected to be clearly worded, even where arbitration remains a real preference

for the commercial community – see UKPC in *Hermes One Ltd v Everbread Holdings Ltd [2016] 1 W.L.R 4098.*

79. However I also bear in mind the approach to construction set out by Lord Hoffmann in *Fiona Trust and Holding Corporation v Privalov HL [2007] 4 All ER 951* at paragraphs 6 and 7 on page 956*:*

> *"In approaching the question of construction, it is therefore necessary to inquire into the purpose of the arbitration clause. As to this, I think there can be no doubt. The parties have entered into a relationship, an agreement or what is alleged to be an agreement or what appears on its face to be an agreement, which may give rise to disputes. They want those disputes decided by a tribunal which they have chosen, commonly on the grounds of such matters as its neutrality, expertise and privacy, the availability of legal services at the seat of the arbitration and the unobtrusive efficiency of its supervisory law. Particularly in the case of international contracts, they want a quick and efficient adjudication and do not want to take the risks of delay and, in too many cases, partiality, in proceedings before a national jurisdiction.*
>
> *If one accepts that this is the purpose of an arbitration clause, its construction must be influenced by whether the parties, as rational businessmen, were likely to have intended that only some of the questions arising out of their relationship were to be submitted to arbitration and others were to be decided by national courts..."*

80. In this case I am satisfied as to the validity and enforceability of the arbitration provisions, the commercial purposes of which are in my view clear. It seems to me that not only by this procedure was Argyle required to pursue any claims arising under or in relation to the Engagement Letters by arbitration against BDO Cayman, if there was a dispute about the meaning and effect as to its applicability, then if not resolved by the arbitral tribunal itself, it was to be resolved exclusively by the Cayman court pursuant to the exclusive jurisdiction clause and in accordance with Cayman law.

81. The second area of attack on the dispute resolution procedure agreed by the parties in the Engagement Letters concerned the Sole Recourse and assignment clauses. Ms. Stanley QC argued that the arbitration provisions had no application to the other entities. Moreover the exclusions of liability having no application where claims, as is the case in the New York proceedings, are 'founded on an allegation' of fraud or wilful conduct or other liability which cannot be excluded under applicable laws.

82. Further she argued that the entities which assisted BDO Cayman are not easily identified by the wording used viz. '*affiliates, permitted assignees, sub-contractors*'. She argued that the court cannot construe this clause in a vacuum without knowing the admissible factual background relating to which type of entity each of the other parties was and how they in fact each operated. This led her to the submission that the proper application of the clause is a matter which can only be determined after the New York Court makes findings of fact and should be determined in proceedings involving all the relevant parties, including principally the other entities. Her conclusion was that given the substantial ambiguities and difficulties of construction of applying the clauses, it cannot be demonstrated that the high degree of probability required had been made out to show they applied to the other entities.

83. As attractively put as these points were, I do not accept Ms. Stanley QC's submissions. It seems to me that on a proper interpretation of the relevant provisions the agreement to arbitrate with BDO Cayman alone remained where a third party was engaged to assist with the performance of the audit. BDO Cayman remained solely liable for its own performance *and* that of its assignee, and Argyle agreed not to bring claims or proceedings of any nature whatsoever against any assignee.

84. Similarly in accordance with the express terms of the assignment clauses BDO Cayman remained primarily responsible for the services provided. I accept Mr. Trenouth and Mr. Ali's evidence as to the purpose of the Sole Recourse clauses in this regard (see paragraph 24 of Trenouth and the way in which the delegation of function operated – and see paragraphs 19 of Trenouth and 14-17 of Ali).

85. It follows that BDO Trinity (an affiliate of BDO Cayman and a member firm of the international BDO network) performed work which was delegated to it by BDO Cayman and is entitled to the protection of the Sole Recourse clause. As I have said above the same would apply in respect of any work that was delegated to BDO USA or Schwartz because BDO USA is an affiliate of BDO Cayman and a member firm of the international network and Schwartz is a BDO alliance firm such that both fall within the terms of the Sole Recourse clause. However, for the reasons I have also given above, on the evidence before me there was no such delegation and neither entity was involved in the audits.

86. As I have said if there is a dispute as to the meaning and effect of those terms or their applicability on the facts that should be brought to the arbitral tribunal in Cayman and if not resolved there, to the court in Cayman to be determined in accordance with Cayman law.

87. As to the submission that the clauses have no application because there is a claim founded on an allegation of fraud or wilful misconduct or other liability which cannot be excluded under applicable laws in New York, I am not satisfied that this would be a reason to deprive the clauses of effect. It is of course the case that I am in no position to finally determine the merits of the claims made in the New York proceedings on this application, were they to proceed to trial because they are highly facts specific. However, for the exclusion to apply, the claims should contain the bare facts which support them to show that they are reasonably arguable. Otherwise at one extreme fanciful claims could be brought to avoid the effect of the clause.

88. I am also conscious that in forming any views on the way the claims are pleaded in New York I should not approach the case solely from the lens of Cayman and/or English law without regard to the fact that New York may well allow a more liberal approach to pleading, and the taking of evidence and discovery to support allegations which might not be able to be so readily made in Cayman or England without sufficient evidence – see *Elektrim SA v Vivendi Holdings [2009] 1 Lloyd's Rep 59.*

89. However, I am entitled to form a view in the round on the New York proceedings and I have formed a view on the evidence before me. Insofar as they plead fraud or wilful misconduct they are weak claims. Further, I bear in mind in this regard that they have been brought in the face of arbitration and exclusive jurisdiction agreements and in circumstances where I am asked to exercise my discretion to allow the New York proceedings to nevertheless continue on the basis that there are strong reasons to do so.

90. On the evidence before me I have not seen material that would need to be adduced in order to persuade an English or Cayman court to find that fraud or wilful misconduct by a reputable professional international firm (in the ways alleged in the Amended Complaint and with the motivations suggested), would be likely to be proven. Suffice it to say that I find the way the case has been put in New York against BDO Cayman and the other entities is inherently implausible. Broad assertions have been made with no particularity or supporting evidence and no specific collusion by the auditors with anyone else has been pleaded. Neither has cogent evidence of fraud been pleaded, and the motivations alleged are inherently implausible.

Strong reasons and discretion

91. Assuming I was against her on all the points that she advanced and that I was persuaded that the contractual dispute resolution scheme was enforceable, Ms. Stanley QC sought to persuade me that I should exercise my discretion not to make an anti-suit injunction in circumstances where the New York proceedings are taking place in a jurisdiction which has sophisticated and fair procedures and which is perfectly capable of applying Cayman law and making decisions in relation to the arguments raised by the defendants in defence of the claims, as well as to its own jurisdiction to continue to hear the matter. Indeed it was recognised by Lord Mance in *AES v Ust [2013] 1 WLR 1889* at paragraph 63 that there may be cases where the appropriate course will be to leave it to the foreign court to recognise and enforce the parties' agreement on forum.

92. In my view this is not such a case. The New York proceedings are in contravention of the dispute resolution mechanisms agreed in the Engagement Letters and this court should intervene to protect the *prima facie* right of BDO Cayman to enforce the negative aspect of the agreements.

93. She argued that the existence of the New York proceedings and the potential risk of inconsistent decisions is a strong reason for not granting injunctive relief. Moreover she submitted that the New York court is factually up to speed with the frauds and is more than capable of doing justice to all parties in an efficient way. I accept that the "*ends of justice*" would normally favour a single forum for resolution of all the various claims so as to avoid inconsistent results, unnecessary costs and delay and the problems having to call the same witnesses before more than one court.

94. It seems to me, however, that a party like Argyle, which as I have found notwithstanding agreements to adhere to a particular forum for the resolution of disputes then relies on foreign proceedings brought in breach of those agreements to make these arguments, should be carefully examined by the court. I have no diffidence in the circumstances of this case in restraining it from continuing to do something which it agreed not to do.

95. Ms. Stanley QC maintained that the claims against the other entities should continue even if the claims against BDO Cayman were prevented from continuing by reason of the arbitration clause. Moreover she submitted that if Argyle were prevented from suing them in New York they would not be able to sue them anywhere. As I have already said, BDO USA and Schwartz have not been shown to have had any involvement in the audits. As for BDO Trinity, it is an affiliate of BDO Cayman and any work performed was delegated to it. Under the Engagement Letters BDO Cayman is solely responsible to Argyle for the services provided by BDO Trinity and any claim relating to the work performed by BDO Trinity on a delegated basis must be pursued by Argyle through a Cayman Islands arbitration against BDO Cayman in accordance with the agreed provisions. The claims against BDO Cayman and the other entities should not continue in the New York proceedings.

96. The advantages that Argyle seeks to achieve in the New York proceedings have been clearly demonstrated. Not only are punitive damages claimed (notwithstanding a waiver in the Engagement Letters) but also the "*cap*" (which refers to a multiple of the audit fees for the relevant year save in the event of wilful default) is challenged by the pleas of wilful default and fraud. There may also be time bar points it seeks to avoid in the 2010 Engagement Letter, where the audit report was issued on 30 June 2011.

97. Moreover contingency fee arrangements are available in New York which would mean that legal fees would not have to be paid upfront by Argyle and may not be payable in the event the action was not successful. This it is said by Ms. Stanley QC is a significant practical advantage in favour of Argyle being allowed to pursue its legitimate interest in seeking to prosecute its claims in an affordable way for the benefit of its creditors and contributories as a whole. These do not in my view make out strong reasons why I should not grant the Orders sought. It may also be said that BDO Cayman would suffer considerable disadvantages if the New York proceedings were allowed to continue. For example, the cost of successfully defending the action by BDO Cayman and the other entities would not ordinarily be recoverable against Argyle in New York, unlike in a Cayman Islands arbitration, which of course would also be confidential and not heard in public, which has clear reputational implications.

Conclusion

98. This case concerns the audits of a Cayman fund by Cayman statutory auditors pursuant to Cayman law under Engagement Letters governed by Cayman law with Cayman jurisdiction and arbitration clauses. For the reasons I have given, litigation in New York is not the regime that was agreed to in the contractual documents. The clear contractual scheme cannot be conveniently side-stepped to obtain procedural or other strategic advantages secured in a chosen forum. There are no strong reasons that have been shown to me as to why the parties should not be held to their contractual agreements.

99. I am persuaded that an injunction against Argyle should be granted in the terms sought by BDO Cayman in its Originating Summons of 8 August 2017.

100. The New York proceedings breach the arbitration and exclusive jurisdiction agreements and the Sole Recourse clauses contained in the Engagement Letters between BDO Cayman and Argyle. The forum in which Argyle is required to pursue any claims arising under or in relation to the Engagement Letters is by arbitration against BDO Cayman alone. To the extent that there is any dispute about the meaning of the terms of those agreements or as to the applicability of those terms, if not resolved by the Cayman arbitration tribunal, it is to be resolved exclusively by this court and in accordance with Cayman law.

101. BDO Cayman seeks an order that Argyle pay its costs and those incurred in connection with the New York proceedings on the indemnity basis, alternatively the standard basis, to be taxed if not agreed. It sets out why this should be so in its written argument. Mr. Chapman QC accepted very fairly at the hearing that the right and convenient course is that argument on costs should follow on from this judgment. I invite the parties therefore to address me on costs, which may be conveniently done in writing.

THE HON. JUSTICE PARKER
JUDGE OF THE GRAND COURT

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