Neutral Citation Number: [2026] CIGC (FSD) 77

Cause No: FSD 2025-0134 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

BETWEEN:

(1) RASIA GROUP
(2) RASIA FZE
(3) MONDOE COMPANY LIMITED

Plaintiffs

-and-

(1) CRAIG ANTHONY RANSLEY
(2) MATTHEW PHILLIP CRAWFORD

Defendants

Appearances:	**Mr Peter Hayden of Haydens Law for the Plaintiffs** **Mr Peter Sherwood of Carey Olsen Cayman Limited for the First Defendant** **The Second Defendant was not represented and did not appear**
Before:	**The Honourable Justice Jalil Asif**
Heard:	**31 August 2026**
Ex tempore judgment delivered:	**31 August 2026**
Finalised judgment approved:	**21 September 2026**

Civil procedure—failure to give discovery—whether to make unless order for discovery

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JUDGMENT

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1. By a summons filed on 17 August 2026, the Plaintiffs seek an unless order against the First Defendant, requiring that he give discovery within 14 days and, in default of doing so, he should be debarred from defending the claim and the Plaintiffs should be entitled to enter judgment against him in the proceedings for damages to be assessed.

2. The proceedings in this matter were commenced in May 2025. There was some delay in procedural progress as a result of the need to obtain orders for service out of the jurisdiction in respect of both Defendants and to effect service upon them. Once service had been effected, I made a consent order for directions on 24 April 2026 which provided that the parties should give discovery by 3:00 pm on 11 June 2026. Despite having agreed to that date, neither of the Defendants was ready to give discovery on 11 June 2026. As a result, the Defendants sought extensions of time and these were agreed by the Plaintiffs. The first agreed extension of time pushed the date for discovery to 9 July 2026. This was further extended by agreement to 16 July 2026. Those agreed extensions of time were recorded in a consent order filed on 10 July 2026. The Defendants were still unable to comply with that second extended date and the parties agreed a further extension to the date for discovery to 13 August 2026, albeit this has not been recorded in a consent order.

3. Once again, neither of the Defendants was able to comply with that date, although the Plaintiffs did exchange discovery with the Second Defendant shortly after 13 August 2026. As far as the First Defendant is concerned, he did not respond to the Plaintiffs' enquiry as to when he was going to provide his discovery with the result that on 17 August 2026, as I have indicated, the Plaintiffs filed their summons seeking an unless order against him. The Plaintiffs sought to have that summons listed as a matter of urgency over the summer vacation due to their concerns about the knock-on effect of the First Defendant's delays on the overall procedural timetable and the impact on the trial window, which is in early 2027.

4. Against that background, the Plaintiffs' summons has come on for hearing today, 31 August 2026, at short notice for argument and for decision.

5. On 26 August 2026, the First Defendant provided a short signed, but unsworn, affidavit seeking to provide an explanation for his failure to comply with his discovery obligations. I have been told by his attorney that that affidavit has now been sworn, although I have not seen a sworn copy. As I indicated at the outset of this hearing, the First Defendant must undertake to file and serve the sworn version of his affidavit forthwith.

6. The First Defendant puts forward as his explanation for his failure to give discovery that he has been facing financial difficulties and has therefore been unable to pay the legal fees which are required for him to progress the discovery exercise. He indicates in his affidavit that he anticipates his financial position will significantly improve very shortly and he expects to be able to give discovery by 15 September 2026.

7. The First Defendant explains in his affidavit that he currently does not have sufficient liquid assets to pay his legal representatives' outstanding fees and to meet the estimated costs of the discovery exercise. He says in his affidavit that his available cash resources are currently around US $9,000 and he exhibits a copy of an online bank account balance evidencing that. But, as the Plaintiffs' attorney has pointed out, the First Defendant has failed to give any proper and adequate disclosure of his financial situation, for example whether he has any other bank accounts or assets, etc, as the case law authorities indicate he ought to provide in a situation such as this.

8. Continuing on in the First Defendant's evidence, he says that he has reason to believe that his financial position will significantly improve, he says, over the next few days, and he sets out some information about an incentive scheme through his employer that he expects will result in him receiving sums that he anticipates will enable him fully to comply with his discovery obligations.

9. The First Defendant completes his affidavit by saying he is not intending to abandon his defence of the claim against him and he has not made any decision not to comply with the Court's orders. He says the delay has arisen because of his funding difficulties and once sufficient funds become

available, he intends immediately to continue the discovery process so that discovery can be completed by 15 September 2026.

10. The attorneys appearing before me, Mr Peter Hayden of Haydens Law for the Plaintiffs and Mr Peter Sherwood of Carey Olsen Cayman Limited for the First Defendant, have each provided me with helpful submissions on behalf of their clients. They have both relied primarily on two cases. The first is a decision of Doyle J in *Canterbury Securities Limited v Winczura* (unreported 17 October 2024) and the second is a judgment of Cockerill J (as she then was), sitting in the Commercial Court in England, in *Al-Subaihi v al-Sanea* [2020] EWHC 3206 (Comm).

11. Mr Sherwood has drawn my attention to the rather extreme circumstances of the main defendant protagonist's behaviour in *Canterbury Securities* that gave rise to the application for an immediate debarring order, which Doyle J refused in the event and instead made an unless order. The circumstances involved brazen failures on the part of Ms Winczura to give discovery as required for the purposes of the proceedings.

12. In paragraph 124 of his judgment in *Canterbury Securities*, Doyle J summarised what he considered to be the applicable principles when deciding whether to make a debarring order. Mr Hayden relies in particular on a passage at paragraph 124(6), where Doyle J said this in relation to an assertion of lack of financial resources:

> *"(6) … If a defaulting party uses lack of financial resources as an excuse it should be supported by detailed, cogent and proper evidence which gives full and frank disclosure of the financial position including any prospect of raising the necessary funds. […]"*

13. Mr Hayden criticises the First Defendant's affidavit for failing to go into sufficient detail of his financial circumstances. I am not sure that Mr Hayden also criticises the First Defendant for failing to give adequate details of the prospect of raising the necessary funds, but it seems to me that there is merit in Mr Hayden's complaint that the First Defendant has failed to give full and proper disclosure of his financial position.

14. Reading on in Doyle J's judgment in *Canterbury Securities* at paragraph 142, the learned judge criticised the defendant in that case for not providing any reasonable explanation or justification for

her serious failure to comply with the disclosure order that had been made. He noted that she had found money to fund various attorneys and to seek to defend her position in the proceedings, but it appeared that she was unwilling to spend money on complying with the disclosure order, which Doyle J said should have been her priority. Justice Doyle noted that the defendant had failed to acknowledge that the disclosure order should have been fully and properly complied with; that she failed to give any apology or reasonable explanation for her failure to comply with it; and that the only response that she had given demonstrated a shocking disregard for court orders, the legal process and the rule of law.

15. Justice Doyle stressed, as a number of judges have done in other cases, that in deciding the nature of the order to make in response to a failure of this kind, the Court needs to ensure that whatever sanction is ordered should be proportionate. Even in the extreme circumstances of the *Canterbury Securities* case, Doyle J reiterated this approach at paragraph 152 of his judgment and concluded that a proportionate response to the defendant's Winczura's failure to comply was not to make an immediate debarring order, but to give her one final opportunity to provide the disclosure that had been ordered.

16. It is helpful to record that Doyle J explained in paragraph 156 of his judgment that:

> *"156. [A failure to comply] with court orders strikes at the very heart of the rule of law and the effective, just, and fair administration of justice. Individuals or other legal entities cannot reasonably say that they will only comply with court orders if they have funds to instruct lawyers […]. To allow that would lead to anarchy and that is no place that any reasonable and civilised individual would wish to go to. Most reasonable and civilised people would much prefer an existence conducted in accordance with the rule of law and in a place where the truth matters."*

17. Mr Hayden points out that in *Canterbury Securities*, the order that was breached by the defendant was an order for specific disclosure rather than an order for general discovery in the proceedings. He argues that in this case the First Defendant has entirely failed to comply with the obligation to give discovery, which he says is an aggravating feature of the First Defendant's breach. I consider that Mr Hayden is right to indicate that a failure to give general discovery, rather than specific discovery, is properly to be considered to be an aggravating feature since it undermines the ability to have a fair trial at all.

18. Going to Cockerill J's judgment in *Al-Subaihi v al-Sanea*, similarly to Doyle J in *Canterbury Securities*, Cockerill J highlighted the need to ensure that whatever response the court orders is proportionate to the nature of the breach. The learned judge drew attention to the fact that making an unless order, with the automatic consequence that a party is unable to advance their case or certain aspects of their case if they fail to comply with that order, is a nuclear option.

19. In this case, the relevant circumstances are, first of all, there has been a long period of default in providing discovery by the First Defendant. As I have indicated, the 24 April 2026 directions order, made by consent, provided for discovery to be given by 11 June 2026. It is now 31 August 2026 and the First Defendant is indicating that he anticipates being able to give discovery by 15 September 2026, some 3 months after the date when discovery was originally due. The First Defendant's default in providing his discovery has an obvious knock-on effect on all consequential steps in the procedural timetable, and at least risks imperilling the trial date, or delaying the commencement of the trial, if it has not already had that effect.

20. On the other hand, Mr Sherwood is right to point out that the Plaintiffs agreed a number of extensions of time up to 13 August 2026, rather than digging their heels in at those earlier stages, as they would have been entitled to do. It is also right to recognise, as Mr Sherwood submits, that as a result there is no history of previous procedural default by the First Defendant in the context of these proceedings.

21. Mr Hayden argues that I should infer that the First Defendant has simply taken no steps at all to progress discovery in the period since the consent order was made on 24 April 2026, and that as a result of the First Defendant agreeing the subsequent extensions of time for discovery, he has simply spun out the clock. Mr Hayden submits the First Defendant has no real intention to start the discovery process or to complete it by 15 September 2026. I have read carefully through the First Defendant's affidavit and I do not consider that I can properly draw that inference from what he says. There are several passages in the First Defendant's affidavit where he uses language to describe his discovery exercise in terms that at least are consistent with and suggest that he has made a start on it but has then run out of funds in order to complete the process. It seems to me it would be

rather strong to make the inference that Mr Hayden invites me to on the basis of the evidence that is before me. It may be that Mr Hayden is correct, but I do not think it would be appropriate for me to reach that conclusion on the evidence that I have seen.

22. Ultimately, I am faced with a situation where there is a significant and serious breach of his discovery obligation by the First Defendant. There is a lack of any contrition on the First Defendant's part in respect of his failure to give discovery, as he had agreed to do on three occasions and as was reflected in two separate consent orders. There is some explanation, albeit rather thin, by the First Defendant as to his reasons why he has not complied with his discovery obligation, and there is an offer to comply with that obligation within the next two weeks based on his anticipated receipt of funds with some limited explanation as to how the First Defendant intends to achieve that compliance within what is a relatively short period for a discovery exercise.

23. I have considered quite carefully whether this is an appropriate case in which I should immediately make an unless order against the First Defendant for his failure to provide discovery. Bearing in mind the guidance to be gained from Doyle J and Cockerill J in the two cases on which both attorneys have relied, it seems to me that I need to be careful to make sure that whatever order I make at this stage is proportionate to the First Defendant's breach and its effect on the proceedings, and is therefore a just result. Overall, I am not persuaded by Mr Hayden that, on the first occasion where the First Defendant has actually breached an order in this case, a proportionate response is to go straight to making an unless order.

24. However, I will make a final order, and I am sure both attorneys are familiar with that term, which is discussed in the *Supreme Court Practice 1999*, that the First Defendant provide his discovery by 15 September 2026. I will give the parties liberty to restore this summons on short notice if there is any breach of that order by the First Defendant. I fully anticipate, as would normally follow the making of a final order, that if there is a failure to comply with that order then an unless order will follow as a matter of course unless there is some extraordinary unforeseen development in the two weeks between now and then.

25. In addition, I consider it sensible to include in the order the provision offered on behalf of the First Defendant in the letter from Carey Olsen dated 25 August 2026 that the First Defendant will notify the Plaintiffs by 4:00 pm on 7 September 2026 if he anticipates any difficulty at all in meeting the deadline for disclosure and, if so, how he plans to address the difficulty. Save for the question of costs, those are the substantive orders that I will make.

26. So far as costs is concerned, Mr Sherwood has put forward an attractive argument that the hearing today was unnecessary as a result of the First Defendant's offer on 25 August 2026 to agree to certain orders being made, so that the First Defendant's liability for costs should terminate on or shortly after that date. However, I consider that Mr Hayden is correct that the Plaintiffs have achieved more than was on offer from the First Defendant, particularly in that I have made a final order for the First Defendant's discovery. It is therefore right that the First Defendant should pay the Plaintiffs' costs of the summons with no temporal cut-off.

27. As far as the basis of assessment is concerned, Mr Hayden argues that the First Defendant should pay the Plaintiffs' costs on the indemnity basis. Whilst Mr Hayden is right in the criticisms that he has made of the First Defendant's conduct, the Plaintiffs did consent to a number of extensions of time for discovery, as I have indicated. I am not persuaded that the First Defendant's conduct was unreasonable, negligent, or improper such that an order for indemnity costs should follow, and so I will order costs on the standard basis.

28. I will, however, make an order, as sought by Mr Hayden, that the First Defendant should make a payment on account of the Plaintiffs' costs that have been incurred in relation to the summons. The general approach nowadays of the Courts in the Cayman Islands on almost any interlocutory application, where an order has been made for costs in favour of one of the parties, is to make an order for a payment on account at the same time. As I indicated in the course of argument, that is not the same as ordering a taxation of those costs forthwith and this is not an appropriate case in which I would make a forthwith taxation order. As Mr Sherwood argues, there may well be future costs orders going in the other direction, and it would not be fair or just to make a forthwith taxation order.

29. So far as the amount of the payment on account is concerned, Mr Hayden has provided a schedule of costs totalling some US $40,594. I have real concerns about the overall level of those costs for a relatively straightforward application for an unless order. In addition, I have concerns about the lack of delegation to more junior fee earners for a number of tasks which appear to be relatively routine, for example, preparing indexes to hearing bundles, etc. I also accept Mr Sherwood's point that on a standard basis taxation, Mr Hayden’s fees, which are claimed at US $1,600 per hour, would only be recoverable at up to US $1,250 per hour.

30. In my view, there are significant reductions that need to be made to Mr Hayden’s headline figures to reflect both of those factors. In practice, I have seen parties use what is described as a “blended” hourly rate to reflect an appropriate delegation of work between junior fee earners and more senior ones. I consider that, in this case, I can appropriately adopt a blended rate of around US $900 an hour as a broad brush to reflect an appropriate level of delegation of work, which I think would reduce Mr Hayden’s overall claim for costs to around US $22,800, and which I will round down to US $22,000. On the basis of a standard basis taxation, the payment on account that I should order that the First Defendant should pay would be roughly 50% of that figure, but I will add in a figure to cover the filing cost for the summons and round the resulting figure up, and so I will order that the First Defendant make a payment on account of costs of US $12,000. I stress that when making an order for a payment on account, the Court’s task is to estimate an appropriate figure to reflect what is likely to be recovered on taxation: there is no need for an exact calculation given, as I have indicated in previous judgments, that the one certainty when making a payment on account of costs is that the figure that I select will not be the final figure that is determined following taxation.

Dated 21 September 2026

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THE HONOURABLE JUSTICE JALIL ASIF
JUDGE OF THE GRAND COURT