Neutral Citation Number: [2026] CIGC (Civ) 29

COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

CAUSE NO: G0169 OF 2025

BETWEEN

MARK MATTHEWS

First Plaintiff

DAVID HOLDEN

Second Plaintiff

-AND-

BREAKERS BEACH CLUB LTD.

First Defendant

ALPHA CARTA, LTD.

Second Defendant

GREEN SAPPHIRE HOLDINGS, INC

Third Defendant

PRAIRIE PRIVATE TRUST COMPANY

Fourth Defendant

PAUL SCHROTH WOLFE

Fifth Defendant

YORKVILLE INVESTMENT 1, L.L.C.

Sixth Defendant

NORTHSEA LLC

Seventh Defendant

Before:	**The Chief Justice, The Hon Justice Margaret Ramsay-Hale**
Appearances:	**Mr Alexander Cook KC instructed by Mr Paul Keeble of Hampson & Co for the Plaintiffs** **Mr Kyle Broadhurst of Broadhurst LLC for the First and Third Defendants**
Heard:	**17 November 2025 and 21-22 January 2026**
Date Judgment circulated:	**5 August 2026**
Date Judgment delivered:	**22 September 2026**

Civil Procedure - summary judgment - real prospect of success - court to determine whether defence carries sufficient degree of conviction to justify trial -mere allegations of fraud, dishonesty or wider misconduct insufficient where contemporaneous documents and undisputed facts establish no realistic defence

Company - directors - authority - sole registered director - company bound by loan agreement and guarantee executed by sole director absent pleaded or evidenced restriction on authority - allegations of breach of fiduciary duty or dishonesty by director not, without more, sufficient to negate authority as against lender

Agency - ostensible authority - lender entitled to rely upon authority of sole registered director and shareholder approval- allegation that lender had been informed intermediary no longer acted for corporate borrower insufficient, without more, to place lender on inquiry as to director's authority.

Contract- formation- execution in counterparts - differences in execution dates, completion of clerical particulars after signature, and existence of multiple counterparts not preventing formation of binding agreement where essential terms agreed, documents executed and transaction performed

JUDGMENT

Introduction

1. These proceedings came before the Court on competing applications for summary judgment in respect of the Plaintiffs' claim under a loan agreement and related guarantee entered into in August 2023 (the "Fourth Loan Agreement" and the "Guarantee"). The Plaintiffs seek summary judgment against the First Defendant, Breakers Beach Club Ltd ("Breakers"), and the Third Defendant, Green Sapphire Holdings Inc ("Green Sapphire"), in respect of sums said to be due under those instruments. The Defendants seek summary judgment or strike out of the claim on the basis that no binding Fourth Loan Agreement or Guarantee came into existence. They also seek leave to file and serve an Amended Defence and Counterclaim.

2. Both the Plaintiffs and the Defendants seek summary determination of the Plaintiffs' debt claim. The Plaintiffs seek summary judgment on the basis that the Defendants have no real prospect of successfully defending the claim under the Fourth Loan Agreement and Guarantee. The Defendants, by contrast, seek summary judgment or strike out on the basis that no binding Fourth Loan Agreement came into existence and that the Plaintiffs' claim is bound to fail. The question for the Court, in relation to both applications, is whether either party has demonstrated that the other's case has no real prospect of success.

The Applicable Principles

3. The jurisdiction to grant summary judgment is contained in Order 14 of the Grand Court Rules. The question for the Court is whether the defendants have a real, as opposed to fanciful, prospect of successfully defending the claim, and whether there is any other compelling reason why the matter should be disposed of at trial.

4. The principles are well settled in this jurisdiction and were recently summarised by Walters AJ in *Akiwumi v Basson* [2025] CIGC (Civ) 12 at paras [52] to [54], where he stated that the Court is not concerned with whether a defence is merely arguable, but with whether it carries a sufficient degree of conviction to warrant a trial. A defence must be coherent, properly particularised, and supported by evidential material which, if proved, would amount to a legally sustainable answer to the claim.

5. The Court is not required to accept at face value every factual assertion advanced by a defendant. As Walters AJ observed in Akiwumi at [53], adopting the guidance *in Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch), the Court is entitled to examine the material before it and to assess whether there is any real substance in factual assertions, particularly where they are contradicted by contemporaneous documents. Further, as the Court of Appeal emphasised in *Kawasaki Kisen Kaisha Ltd v James Kemball Ltd* [2021] 3 All ER 978, it is not enough to plead allegations which, if true, might amount to a defence. There must be evidential material capable of supporting them.

6. The Court must not conduct a mini-trial but it is not precluded from granting summary judgment merely because issues of fact are raised. As Lewison J explained in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch), the existence of a factual dispute does not of itself require a trial. The question is whether the material before the Court discloses a real prospect that a fuller investigation at trial could affect the outcome.

7. The principle that has been consistently applied in this Court is that the judge is entitled to decide a short point of law or construction, if satisfied that it can properly be determined on the material available, as stated by Lewison J at para 15(vii):

> *"The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better."*

8. The learned Judge cautioned, however, that the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case.

9. The mere fact that allegations of fraud or dishonesty are advanced does not, of itself, render summary judgment inappropriate. It is well established that such allegations cannot be used as a forensic device to avoid judgment where they lack substance. Summary judgment may be granted even in complex cases involving allegations of fraud where the defence has no real prospect of succeeding: see *JSC BTA Bank v Ablyazov* [2013] EWHC 3691 (Ch).

10. The focus of the inquiry is therefore whether the Defendants' allegations, taken at their highest, are capable in law of defeating the claim. As was made clear in *HRH the Duchess of Sussex v Associated Newspapers Ltd* [2021] EWHC 273 (Ch), it is not sufficient for a defendant to assert that further evidence may emerge at trial. The question is whether any such evidence could realistically affect the outcome.

11. Drawing those principles together, the question is whether the defence advanced by the Defendants, whether in its original form or as subsequently elaborated through the proposed Amended Defence, Counterclaim and affidavit evidence, discloses a real prospect of successfully resisting the Plaintiffs' claim. The Court must evaluate the defence against the contemporaneous documents and the evidential record as a whole and determine whether the matters relied upon are capable, in law and fact, of providing an answer to the claim.

The Debt Claim

12. The First, Second and Third Loans[1] establish a clear course of dealing between the Plaintiffs and Breakers. Each loan was negotiated in a similar manner, each was secured over the same parcels of real property in Cayman, and each involved the Plaintiffs advancing substantial funds in reliance on representations made and documentation executed by Breakers and its representatives.

13. The first three loans were negotiated by Nathan Smith of 60 Degrees, which provided corporate services to the Defendants. They were executed on behalf of Breakers and the relevant guarantor by their directors, Mr Wolfe and Mr Cicoski. The proceeds of the Third Loan were paid into the IOLTA client account of the US attorney-at-law Charles Mack. The transaction was completed and repaid in full without objection. Breakers did not have a bank account and the First and Second Loan monies were paid at the request of Breakers and Alpha Carta to Alpha Carta's Cayman bank account, which held Breakers' funds. For the Third Loan, the Plaintiffs were instructed by Mr Smith to pay the Third Loan proceeds to the IOLTA client account of the US attorney, Charles Mack, and that arrangement was recorded in the Third Loan agreement.

14. The Fourth Loan was negotiated by Mr. Nathan Smith as before. The Loan agreement and the Guarantee were executed on behalf of Breakers and Green Sapphire by Ryan Cicoski who was, at the material time, the sole registered director of both companies. The constitutional documents of both companies permitted a sole director to enter into borrowing and guarantee arrangements of this nature. The transaction was approved at shareholder level with the documents being countersigned, or "blessed," as Mr Cook KC put it, by Alpha Carta the 100% shareholder of Breakers, and the shareholder of Green Sapphire through their representative, Mr Azzopardi. The written resolution authorizing the entry of Green Sapphire into the transaction on the basis that the guarantee was *"in Green Sapphire's best interest"* was also signed by Mr. Azzopardi.

[1] The Defendants assert that there were only two loans and reject the characterisation of the loans by the Plaintiffs including referring to the loan agreement which is sought to be enforced as the Fourth Loan.

15. The monies were paid to Mr. Mack as before and $2 million of the loan amount was paid into Alpha Carta's Cayman account and retained.

The Original Defence

16. The original Defence admits that on 15 August 2023 an agreement was entered into pursuant to which the First Defendant was the borrower and the Third Defendant was the guarantor. It admits the terms of that agreement and admits that the relevant transaction documents were executed on behalf of the corporate Defendants. The Defence also accepts that the Plaintiffs advanced funds pursuant to that transaction.

17. The Defence further admits that Mr Cicoski executed the relevant transaction documents on behalf of Breakers and Green Sapphire and that there are corresponding loan and guarantee documents bearing the signatures of the parties whose signatures appear upon them.

18. The Defence alleges that Mr Smith lacked authority to act on behalf of Breakers, that the Plaintiffs were aware of that fact, and that the monies advanced by the Plaintiffs were paid to Mr Mack's IOLTA account rather than directly to Breakers. The Defence also contains allegations of misconduct and fraud involving Mr Smith, Mr Mack and others, arising out of the wider facts relied upon in the Illinois proceedings.

19. Crucially, however, the Defence does not allege that Mr Cicoski lacked authority to execute the loan and guarantee, that the shareholder approvals executed by Mr Azzopardi were invalid, or that the Plaintiffs were liable for fraud, dishonest assistance or knowing receipt.

20. In my judgment, the Defence therefore does not plead material facts capable of establishing that the agreements were entered into without the authority of the persons who executed and approved them, or that the Plaintiffs were not entitled to rely upon that authority. The original Defence therefore discloses no defence with a real prospect of success.

The Draft Amended Defence and Counterclaim

21. The proposed defence is not contained wholly within the Draft Amended Defence itself. Certain aspects of the proposed defence are pleaded in greater detail in the Counterclaim and developed further in Mr Wolfe's affidavit evidence. In determining whether the proposed amended case discloses a defence with a real prospect of success, I have therefore considered the Draft Amended Defence together with the Counterclaim, the supporting affidavit evidence and the matters relied upon in support of the Defendants' own application for summary judgment, consistent with the approach adopted by the parties at the hearing.

22. The Draft Amended Defence and Counterclaim advance a substantially different case. Whereas the original Defence admitted the existence of the Fourth Loan Agreement and Guarantee, admitted their terms and admitted that Mr Cicoski executed the relevant transaction documents, the Defendants now contend that no binding Fourth Loan Agreement or Guarantee ever came into existence. In support of that contention, they allege that the

documents executed by Mr Cicoski differed materially from those executed by the Plaintiffs, that the transaction documents were affected by material irregularities and that the Charges ought to have been discharged following repayment of the First Loan. It also alleges that Mr Smith lacked authority to act on behalf of Breakers and that the Plaintiffs knew he lacked such authority, that the loan proceeds were not advanced to Breakers or any authorised recipient, and that the Fourth Loan and related security formed part of a wider fraudulent scheme.

23. The Counterclaim develops that case further. It alleges that Mr Smith, Mr Cicoski and Mr Mack participated in the alleged scheme and pleads breach of fiduciary duty against Mr Smith and Mr Cicoski, dishonest assistance against Mr Mack and unlawful means conspiracy against each of them. It also seeks declarations that the Charges were discharged upon repayment of the First Loan and that the putative Fourth Loan Agreement and Guarantee are void and of no effect.

Discussion

24. Although the Draft Amended Defence and Counterclaim contain a wide range of allegations concerning authority, the routing of funds, the continued registration of the Charges and the wider fraudulent scheme alleged in the Illinois proceedings, the Defendants' position was ultimately put on the basis that no binding Fourth Loan Agreement or Guarantee ever came into existence. Mr Broadhurst submitted that if no binding agreement came into existence, the Plaintiffs' claim for the debt and the Guarantee must fail and there could be no contractual basis for the anti-suit injunction sought by the Plaintiffs. I therefore begin with that contention before turning to the other matters relied upon in support of it.

25. The contention rests upon alleged discrepancies in execution dates, the existence of differing counterparts, the completion of certain details after signature, blank fields in the Charge documentation, and the proposition that no single document corresponding precisely to the agreement pleaded by the Plaintiffs ever existed.

26. In my judgment, this challenge to the Plaintiffs' case cannot be reconciled with the contemporaneous documentary record. Ms Grant, an associate at Boddens which acted for the Plaintiffs in the transaction, explains that the executed loan agreement returned by the borrower contained certain amendments to the draft previously circulated. Those amendments were identified by Boddens and specifically referred to the Plaintiffs for instructions. The Plaintiffs agreed the amendments proposed by the borrower, thereby accepting what Ms Grant described as the borrower's counter-offer. Only after that acceptance were the corresponding amendments made to the lenders' counterpart so as to ensure that it accorded in every material respect with the version signed on behalf of the borrower.

27. The law does not require all parties to sign the same physical document at the same moment in time to create a binding contract. The relevant question is whether the parties agreed the essential terms of the transaction and intended to be bound by them. The parties agreed the essential terms, the relevant documents were executed on behalf of the borrower and guarantor, and the loan monies were advanced pursuant to those arrangements. Of the funds

advanced, US$2 million was subsequently paid into Alpha Carta's account. The fact that the Plaintiffs pleaded the agreement as having been made on 15 August 2023 but the transaction documents were executed on different dates, in counterpart form, and that certain discrepancies appeared on some of the transaction documents, does not affect the conclusion that there was a binding agreement and the Plaintiffs' failure to amend their pleading is not fatal to their claim.

28. The other matters advanced include the allegation that the Charges should have been discharged upon repayment of the Third Loan, but the Plaintiffs kept the security in place to procure a further lending facility on unfair (usurious) terms. This allegation is not capable of establishing that no binding Fourth Loan Agreement or Guarantee came into existence. At most it amounts to a challenge to the circumstances in which the subsequent transaction came about and to the commercial wisdom of entering into it. The fact is that the Charges continued to be registered against Breakers' property and were amended and signed by Mr Cicoski as sole director of Breakers and the Fourth Loan Agreement and related documents were signed on behalf of Breakers and Green Sapphire by Mr Cicoski as sole director. The allegation that the transaction was entered into on unfavourable terms does not establish that those who executed the transaction documents lacked authority to do so.

29. The Defendants maintain the allegation made in the original Defence that Mr Smith lacked authority to negotiate or procure the Fourth Loan on behalf of Breakers and that the Plaintiffs knew he lacked such authority as they had been expressly informed that Mr Smith was no longer authorised to act on behalf of Breakers and that all communications concerning the company were to be directed to Ms Mathis. They further allege that Mr Smith, Mr Cicoski and Mr Mack participated in a wider fraudulent scheme and concealed the transaction from the authorised representatives of Breakers. The Defendants rely upon those matters, together with what they say are the unusual features of the transaction including inter alia, the continued registration of the Charges, documentary irregularities and the interest rate, payment to a third party and not to Breakers as supporting the inference that the Plaintiffs knew, or wilfully shut their eyes to the fact, that proper authority had not been obtained for the transaction.

30. In my judgment, the matters relied upon are not capable of sustaining that inference. The fact that the Plaintiffs were informed that Mr Smith was no longer authorised to act on behalf of Breakers and that communications should be directed to Ms Mathis did not, without more, establish that the transaction itself lacked proper authority. The transaction documents were executed by Mr Cicoski as sole director of Breakers and Green Sapphire and were supported by shareholder approvals executed in support of the transaction. The matters relied upon by the Defendants do not establish that those corporate acts were unauthorised or ineffective, nor do they provide a basis for concluding that the Plaintiffs knew them to be so.

31. The Defendants also assert that the loan monies were not advanced to Breakers or to any person authorised by Breakers, but were instead paid to Mr Mack's IOLTA account in Illinois. They rely upon that fact as further evidence of the alleged fraud and as supporting their contention that no binding agreement came into existence.

32. It is not denied that US$2 million of the monies paid to Mr Mack was subsequently paid by him to Alpha Carta. The Defendants' position is that the monies were paid, not as proceeds of a loan made to Breakers, but as payment of a debt said to be owed by another entity, Proton Green. Whatever the characterisation of that payment, Alpha Carta does not deny receipt of the funds. By the time the original Defence was filed in August 2025, they were aware that Alpha Carta had received and retained the US$2 million paid through Mr Mack in connection with the transaction which they now allege was invalid.

33. As explained in Halsbury's Laws of England, Agency (Vol. 1, 2022), para. 69, under the heading Ratification by Acquiescence, a principal who retains the benefit of an unauthorised transaction with knowledge of the material facts is treated as ratifying it. Their continued retention of those funds thereafter, without offer of return, therefore constitutes ratification by acquiescence: *Borvigilant v Romina G* [2003] 2 All ER (Comm) 736 at [59]-[61]; *Lass Salt Garvin v Pomeroy* [2003] EWHC 1007 (QB) at [27]-[30]. Any want of authority on the part of Mr Cicoski or Mr Mack has therefore been ratified. Ratification operates retrospectively and precludes the Defendants from denying the authority of those who entered into the transaction or the enforceability of the loan and guarantee.

Conclusion

34. In summary, the Plaintiffs' claim rests upon the existence of a valid loan and guarantee executed by Mr Cicoski as sole director and supported by shareholder approval. The Defendants rely upon a range of allegations concerning the conduct of Mr Smith, Mr Cicoski and Mr Mack and the wider fraud alleged in the Illinois proceedings. Even taking those allegations at their highest, they do not establish that Mr Cicoski lacked authority to execute the transaction documents on behalf of Breakers and Green Sapphire, nor do they undermine the validity of the shareholder approvals upon which the Plaintiffs were entitled to rely. The proposed Amended Defence and the matters advanced in the Counterclaim disclose no defence with a real prospect of success.

35. Mr Broadhurst had submitted at the outset that the issues raised by this application cannot fairly be determined without discovery and a summons for disclosure had been filed on behalf of the Defendants. This is not, in my view, a case in which a fuller investigation can reasonably be expected to produce material capable of affecting the outcome. The Court is able to assess the issues raised by reference to the contemporaneous documents and the evidential record now before the Court. In those circumstances, the mere assertion that further evidence may emerge through discovery does not constitute a compelling reason for a trial.

36. The Defendants' application for summary judgment or strike out is dismissed as is the application for leave to amend.

37. There will be summary judgment for the Plaintiffs against Breakers in respect of the sums due under the Fourth Loan and Green Sapphire in respect of its obligations under the Guarantee. The parties shall seek to agree the amount payable under the judgment, including contractual

interest. Failing agreement, written submissions setting out their respective calculations must be filed within 14 days of the date of this judgment.

DATED THE 22 SEPTEMBER 2026

THE HON. JUSTICE MARGARET RAMSAY-HALE
CHIEF JUSTICE OF THE GRAND COURT