



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

CAUSE NO. FSD 236 OF 2024 (IKJ)

IN THE MATTER OF SECTION 11 OF THE GRAND COURT ACT (2015 REVISION)

BETWEEN:

(1) UNICORN BIOTECH VENTURES ONE LTD (in its capacity as general partner of Rigmora Biotech Investor One LP)

(2) UNICORN BIOTECH VENTURES TWO LTD (in its capacity as general partner of Rigmora Biotech Investor Two LP)

Plaintiffs

- and -

ATP III GP, LTD, (in its capacity as general partner of ATP Life Science Ventures, L.P.)

Defendant

IN CHAMBERS

APPEARANCES:

Mr Tom Smith KC of counsel and Mr Spencer Vickers of Conyers Dill & Pearman LLP for the Plaintiffs

Mr Rupert Bell and Mr Blake Egelton of Walkers (Cayman) LLP for the Defendant

Date of hearing:

On the papers

Close of Submissions:

18 November 2024

Date of Ruling:

25 November 2024

Draft Reasons circulated:

4 December 2024

Reasons delivered:

16 December 2024

241216 Unicorn Biotech Ventures One Ltd et al – FSD 236 of 2024 (IKJ) – Reasons for Ruling

Case management-whether first return date of originating summons should serve as the substantive hearing-dispute as to whether proceeding should be continued as if commenced by writ-default position in the absence of agreement-Grand Court Rules (2023 Revision) Order 28 rules 4, 8, 9, Order 72 rule 4 (1)-(2)-FSD User's Guide, Section B3

REASONS FOR CASE MANAGEMENT RULING

Background

1. The Plaintiffs commenced the present proceedings by Originating Summons dated 2 August 2024. The following substantive relief is sought:

“1. A declaration that, pursuant to paragraph 21(d) of the restated Limited Partnership Agreement dated 1 November 2012 (as amended) (the "LPA"), the Defendant is required to cause ATP Life Science Ventures, L.P. ("ATP LP") to distribute all of the net assets as specified in paragraph 21(d) of the LPA in accordance with (B) of the first sentence of paragraph 21(d).

2.An order that the Defendant shall within 7 days cause ATP LP to distribute all of the net assets as specified in paragraph 21(d) of the LPA in accordance with (B) of the first sentence of paragraph 21(d) of the LPA of the first sentence of paragraph 21(d) of the LPA.”

2. By Summons dated 16 September 2024, the Defendant applied for an Order under GCR Order 28 rule 8 continuing the action as if it was commenced by Writ. The following day the Plaintiffs' counsel requested a two-day hearing in November. On 25 September 2024, a hearing was fixed for 4-5 December 2024 which was said to be convenient to both parties. The nature or purpose of the hearing was not at this stage clarified.
3. By a Summons dated 7 November 2024, the Defendant sought the following directions (no directions for the hearing being agreed or ordered by the Court):

“1. The hearing listed for 4 and 5 December 2024 (the "Hearing") shall proceed as follows:

- (a) first, the hearing of the Defendant's Summons dated 16 September 2024 and filed herein (the "Writ Summons"); and*
- (b) second, if the Writ Summons is determined at the Hearing, the provision of directions for the conduct of the proceedings, whether they be continued as if begun by writ (as sought in the Writ Summons) or by way of the Originating Summons dated 2 August 2024 and filed herein, as the case may be.”*

4. By this juncture, at least, it was clear that there was a fundamental dispute about the basis on which the action ought to proceed and that directions of some sought would have to be given. However, by letter to the Court on 8 November 2024 the Plaintiffs' attorneys indicated their intention at the December hearing to:

- (a) oppose the Defendant's "Writ Summons"; and
- (b) seek the substantive relief sought under their clients' Originating Summons pursuant to GCR Order 28 rule 4 (1) and (2).

5. It was proposed that the Defendant's Directions Summons should not be heard in advance of the scheduled two-day hearing on 4-5 December. In effect, the Court was being requested to pre-emptively decide that the first hearing of the Originating Summons should serve as the trial date depending on what directions were ordered at that initial hearing. I have never made such directions save in relation to urgent interlocutory applications, absent agreement between the parties. However, the centrepiece of the request was that the Defendant had agreed with the Plaintiffs as to that course and was belatedly resiling from that agreement. On 12 November 2024, I asked for the following directions to be communicated to the parties:

“On or about 17 September 2024, the Judge listed the respective Summonses pursuant to a joint request. No consent order for directions was filed and the Court was not asked to decide what issues would be dealt with at the scheduled two-day hearing.

Walkers have issued a Summons for Directions which they contend should be heard in advance of the scheduled hearing while Conyers seek to pursue the contention that a merits hearing of their Originating Summons should take place as agreed, with the Court deciding the scope of the hearing on 4 December.

The Judge considers Walkers' Summons should be determined on the papers because, unless he is able to summarily find that a merits hearing has been agreed in correspondence, sensible case management suggests directions should be ordered by the Court in the absence of agreement, after hearing argument, on 4 December.

Conyers should forward the correspondence (or other documents) upon which reliance is placed as regards an agreed substantive hearing of the Originating Summons with a one-page supporting argument by close of business on Friday 15 November. Walkers should file a responsive one-page submission by close of business on Tuesday 19 November 2024."

The respective submissions

6. When the Plaintiffs filed their submissions and exhibited the relevant correspondence to an Affidavit, it was accepted that the proposition that the Originating Summons should be dealt with substantively if the Writ Summons was dismissed was merely a position contended for by the Plaintiffs, not an agreed position. The high point of the substantive hearing point was that two days would not have been agreed if a substantive hearing of the Originating Summons was not mutually contemplated.
7. The Defendant contended in response that the default position, having regard to this Court's Rules and the FSD User's Guide, was that directions should be given before an Originating Summons was substantively tried and that this was particularly appropriate in the context of the present case. However, on 13 November 2024, it had made the following open proposal:

"Accordingly, and as a truncated timetable to that previously proposed by our client in Maples' letter dated 30 September 2024, we now propose that the parties agree the following directions:

- a. The Parties to give mutual discovery by exchanging lists of documents by 14 February 2025;*

- b. *The Parties to file and serve any witness statements by 21 March 2025;*
- c. *The Parties to file and serve any witness statements strictly in reply by 17 April 2025;*
- d. *The Parties be given leave to file expert evidence on the matters set out in the First and Second Affidavits of Seth Harrison, with concurrent exchange of expert reports taking place by 6 June 2025; and*
- e. *A date to be fixed for trial not before 1 July 2025.”*

Directions ordered

8. On the face of the relief the Plaintiffs seek, their attorneys’ contention that the key legal dispute is a narrow point of contractual construction which does not require a full trial seems entirely plausible. However, this is a substantial dispute, with Leading Counsel on both sides, involving litigants who appear to have the resources to argue the smallest of points fully and to pursue technical interlocutory challenges.
9. The counter-arguments are that the merits of the declaration the Plaintiffs seek are dependent on disputed facts which require full adjudication including the reception of expert evidence. It seems unlikely that I would reject these arguments with such conviction that I would decide to immediately proceed with the merits of the declaratory application at the scheduled hearing, particularly in circumstances where the Defendant seemingly contends it has further evidence to file. More importantly still, I cannot fairly determine at this stage that sensible case management justifies the parties incurring the full costs of an Originating Summons hearing which may never take place in the abbreviated form the Plaintiffs seek.
10. In the absence of compelling reasons for expedition, this is the sort of case which cries out for considered and orthodox case management rather than what would amount to ‘case management on steroids’. The *inter partes* correspondence does not indicate, clearly or at all, an agreement that the Originating Summons should be heard on its merits at the scheduled hearing.
11. The default position is indeed that directions should be ordered assuming an Originating Summons is the correct procedure. GCR Order 28, rule 4 provides most pertinently:

“(1) The Court by whom an originating summons is heard may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require, but

241216 Unicorn Biotech Ventures One Ltd et al – FSD 236 of 2024 (IKJ) – Reasons for Ruling

where the Court makes an order under this paragraph against a defendant who does not appear at the hearing, the order may be varied or revoked by a subsequent order of the Court on such terms as it thinks just.

(2) Unless on the first hearing of an originating summons the Court disposes of the summons altogether or makes an order under rule 8, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof...”

12. GCR Order 28, rule 4 (1) clearly contemplates that substantive relief may be given without directions at the initial hearing, for instance if the respondent fails to appear. But otherwise, directions should be ordered, as sub-paragraph (2) provides. GCR Order 72, rule 4 (2), modifying the application of GCR Order 25 to FSD matters, provides:

“The Registrar shall issue an initial summons for directions in Form No.71 of the Grand Court Rules - Vol II - Forms (as amended and revised) in every financial services proceeding within 3 months of the date on which it was commenced or transferred to the Financial Services Division unless in the meantime —

- (a) the cause or matter has been finally determined;*
- (b) the Registrar has received notice that the cause or matter has been discontinued or settled;*
- (c) the Court has already made an order for directions; or*
- (d) one or other of the parties has taken out a summons for directions.”*

13. GCR Order 25 only strictly applies to actions begun by Writ, so it potentially applies if the Defendant’s Writ Summons is resolved in its favour. However, the FSD Users’ Guide, designed to facilitate expeditious and efficient proceedings emphasises the importance of case management in all FSD matters (section B3). Section B3 (3) refers to *“the unusual situation that a party does not issue a summons for directions or a case management conference is not held within a relatively short time of the commencement of the case”* and the Court’s power to convene a case management conference of its own motion.

14. In line with the Overriding Objective, the FSD Users’ Guide encourages a brisk but orderly advance towards the litigation finish line, not an instinctive and directionless rush as in ‘*Alice in Wonderland’s* ‘caucus race’.

Conclusion

15. Accordingly, for the above reasons, on 25 November 2024 I gave the following directions:

“(1) The hearing listed for 4 and 5 December 2024 (the ‘Hearing’) shall proceed as follows:

(a) the Defendant's Summons dated 16 September 2024 and filed herein (the ‘Writ Summons’) shall be heard first; and

(b) directions shall be given for the conduct of the proceedings, whether they be continued as if begun by writ (as sought in the Writ Summons) or by way of the Originating Summons dated 2 August 2024 and filed herein, as the case may be.

(2) If the proceedings continue by Originating Summons, directions for an appropriately expeditious trial will be given.”

16. I also indicated that I would reserve the costs of the Defendant’s Directions Summons.



THE HONOURABLE JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT