



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

CAUSE NO: FSD 226 OF 2021 (DDJ)

**IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)
AND IN THE MATTER PORTON CAPITAL INC AND PORTON CAPITAL LIMITED**

ENIGMA DIAGNOSTICS LIMITED (IN LIQUIDATION)

Petitioner

AND

HARVEY BOULTER

Respondent

Appearances: Peter Hayden and Jonathan Moffatt of Mourant Ozannes for Enigma
Diagnostics Limited (in liquidation) the Petitioner

Peter Tyers-Smith and Thomas Wright of Kobre & Kim (Cayman) for
Harvey Boulter the Respondent

Before: The Hon. Justice David Doyle

Heard: 19 January 2022

Date Ex Tempore

Judgment delivered: 19 January 2022

**Draft transcript
of Judgment**

circulated: 25 January 2022

Date transcript

of Judgment approved: 27 January 2022



HEADNOTE

The importance of complying with orders and directions of the Court – the need for parties and attorneys to assist the court in respect of the overriding objective of dealing with cases justly – the justifiable reluctance of the courts to vacate trial dates without good reason – the need for proper procedures to be followed – case management directions

JUDGMENT

Introduction

1. I shall now deliver judgment in respect of this matter.
2. Court administration by email dated Tuesday 11 January 2022 3:33pm notified the parties of my direction in respect of the Respondent’s summons for directions dated 7 January 2022 (the “Directions Summons”) as follows:

“The parties are to file and serve concise position statements and a paginated bundle including all pleadings, Summonses (including those dated 14 and 17 December 2021 and 7 January 2022) filed and all orders (including 10 September 2021 as amended) issued in this case by 4pm Monday, 17 January 2022. There are to be no further filings in respect of the hearing on 19 January 2022.

The parties and their attorneys are required to cooperate and assist the court. Any failure to do so may result in adverse/wasted cost orders.

Justice Doyle looks forward to receiving the cooperation and assistance of the attorneys involved in this case.”

3. It was further indicated that the hearing was at 3pm on Wednesday 19 January 2022 with a maximum of one hour allocated.
4. It was specifically directed that:

“There are to be no further filings in respect of the hearing on 19 January 2022.”



5. The Directions Summons seeks an order that paragraphs 7, 8 and 12 of the Order made on 10 September 2021 be set aside and the hearing date now listed for 3 – 4 March 2022 be vacated.
6. The Directions Summons in the alternative somewhat prematurely seeks further directions in respect of the service of the Amended Particulars of Fraud after the Petitioner has provided security or the court determining that no relief be granted pursuant to the Respondent's strike out/security summons.
7. The Respondent's belated strike out/security summons is listed for hearing on 3 February 2022.
8. Flying in the face of my specific direction that there should be no further filings in respect of today's hearing Kobre & Kim filed a letter dated 17 January 2022 enclosing the third affirmation of Stephen Richard Dillion Hayes, affirmed on 18 January 2022 who says that he is a solicitor of the High Court of England and Wales employed by Kobre & Kim to represent Harvey Boulter the Respondent. He acknowledges at paragraph 9 of his affirmation that "the Court directed that there should be no further filings ahead of the hearing of the Directions Summons" but he nevertheless in direct and open breach of that direction makes his affirmation and attaches inter partes communications and it is filed on his behalf.
9. I have however read that affirmation and the exhibit marked SRDH-3.
10. Mourant Ozannes for the Petitioner also sought to file late yesterday on 18 January 2022 at 5:03p.m. the transcript of the hearing on 30 August 2021. If that was to be relied on it is most unfortunate that it was not included in the hearing bundle.
11. If that was not enough by email dated this morning 19 January 2022 at 9:39am Kobre & Kim purported to file 151 additional pages and ironically finished their email with the words:

"Please let me know if we can provide any further assistance to you or His Lordship."
12. I would have been greatly assisted if attorneys complied with my direction that there be no further filings. I had another hearing this morning so the expressly prohibited late filings caused particular inconvenience but I have nevertheless taken time to consider them.



13. I wish to make it plain that the parties and their attorneys should in the future comply with directions issued by or on behalf of the court including a direction that there be no further filings. Adverse consequences may follow in the future if such directions are not complied with.

Documents and submissions considered

14. In addition to the belatedly filed documents I have, of course, also considered the hearing bundle in respect of the Directions Summonses filed in accordance with my direction.
15. I have considered the position statement filed on behalf of the Petitioner dated 17 January 2022.
16. I have considered the position paper of Harvey Boulter (described in it as the “Defendant”) dated 17 January 2022. By Order made as long ago as 10 September 2021 Mr Boulter was joined as a Respondent not a Defendant.
17. Despite the fact it was filed late and contrary to my direction in respect of no further filings I have also considered the undated Respondent’s addendum position paper which in the main appears to be a rambling complaint in respect of an approach to and a decision by the Attorney General.
18. I have considered the oral submissions of Peter Hayden for the Petitioner and Peter Tyers-Smith for the Respondent.
19. Conscious of the time and noting that one hour was allocated to this hearing, I do not set out the contents of the position statements or the oral submissions in this short judgment. They form part of the court record and I have full regard to them.

Determination

20. I now turn to my determination of the Directions Summons.
21. I am not persuaded that there is any good reason to vacate the hearing of the petition on 3 and 4 March 2022.



22. The petition was filed as long ago as 29 July 2021 and needs to be and can be fairly heard in early March.
23. I appreciate that proper procedures must be followed and the trial must be fair but with proper cooperation between the parties and attorneys that is achievable. This court must guard against undue delay. I entirely accept that it must also ensure that the hearing is a fair hearing and that all parties have a reasonable time to prepare for it. The directions I make today are made with those factors in mind.
24. The proposed amendments to the Particulars of Fraud are or should be uncontentious. The Respondent has had them since 3 December 2021.

Directions

25. It will assist both parties and be in accordance with the overriding objective if I make the following directions:
 - (1) The Petitioner is to file and serve its Amended Particulars of Fraud by 3pm Friday 21 January 2022;
 - (2) The Respondent is to file and serve any response to the Amended Particulars of Fraud by 3pm Friday 28 January 2022;
 - (3) The time period specified in paragraph 4 of the Order made on 10 September 2021 in respect of discovery is extended to 4pm 31 January 2022;
 - (4) I note that the Petitioner filed and served its evidence on 3 December 2021. The Respondent is to file and serve any responsive evidence by 3pm on Wednesday 9 February 2022, the time period requested by Mr Tyers-Smith if I was not with him on vacating the trial dates;
 - (5) The Petitioner is to file and serve any evidence in reply by 3pm Friday 18 February 2022; strictly in reply; any attempts to adduce evidence not strictly in reply may derail the March 2022 hearing so it is important that the Petitioner exercises strict discipline in that respect;



(6) The parties to file (if possible on an agreed basis and with proper cooperation between the attorneys this should be possible, in the unlikely event that it is not, then separately) a concise list of issues for determination of the court by 3pm Friday 25 February 2022; and

(7) Costs be costs in the cause.

Those are the directions I make.

I dismiss the other applications in the Directions Summons.

Additional comments

26. By way of assistance to the parties and their attorneys I make the following additional comments:
27. I keep an open mind that is open to persuasion but, and this may save the parties time and money, I have to say that my initial view in respect of the strike out summons is that the Respondent has left this far too late in the day and any arguments against granting the relief claimed in the Petition can be dealt with at the hearing in March.
28. In respect of the application for security for costs, again the Respondent has left it very late in the day and far too close to the hearing dates set many months ago now. I note also the reference in the correspondence in respect of ATE adverse costs provision of GBP 500,000. It may be that some accommodation can be arrived at between the Petitioner and Respondent in respect of the strike out/security summons but if not I will hear them on 3 February 2022 (with one day allocated) but I would ask the Respondent and his advisers to properly reflect upon the initial views I have expressed. If the summonses are unsuccessful and a day of valuable court time is wasted there may well be adverse costs consequences.
29. I also find it necessary again to remind the attorneys that as officers of this court they have an overriding duty to assist the court in the fair and efficient administration of justice and I expect all the attorneys engaged in this matter to do just that. They must ensure, insofar as it is within their control, that court orders and directions are complied with.
30. The parties and their attorneys also have an obligation to co-operate with each other and with the court in achieving the overriding objective (see B4.3 of the FSD Guide). The parties must

strictly comply with court orders and directions. In this respect I refer to the email from my Personal Assistant to the attorneys dated as long ago as 27 October 2021 at 8:25am sent on my instructions making reference to B4.3 with the penultimate paragraph of the email reading as follows:

“As with all cases before the courts the parties and their attorneys (who are officers of the court and owe an overriding duty to the court) should take great care to ensure that there is no abuse of the court process by way of undue delay.”

31. This is at least the second time I have had to give that warning.
32. That completes my short judgment in respect of the Directions Summons.

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT