



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

**CAUSE NO. FSD 163 OF 2022 (IKJ)**

**IN THE MATTER OF AN APPLICATION FOR A DISCLOSURE ORDER**

**BLACK GOLD INVESTMENT HOLDINGS INC**

**First Plaintiff**

**HCS INVESTMENT HOLDINGS, LTD  
(formerly known as 2013401 Alberta, ltd)**

**Second Plaintiff**

**SEMPER LUXEMBOURG HOLDING**

**Third Plaintiff**

**-v-**

**ERIN WINCZURA**

**First Defendant**

**CANTERBURY SECURITIES, LTD**

**Second Defendant**

**CANTERBURY GROUP**

**Third Defendant**

**LEEWARD INVESTMENTS SPC**

**Fourth Defendant**

**IN CHAMBERS**

20 September 2023

**INDEX**

*Apparent bias-voluntary recusal- precautionary principle- Code of Conduct for the Cayman Islands Judiciary, paragraphs 16, 18*

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**RECUSAL RULING**

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1. The present cause was assigned to me on 26 July 2022. I accepted the assignment with some reservations in light of the potential for conflicts to arise from my concurrent handling of FSD 227/2018 (IKJ), *Fortunate Drift Limited-v-Canterbury Securities Ltd*, in which the 1<sup>st</sup> Defendant was a likely key witness, and the 2<sup>nd</sup> Defendant was the sole Defendant. I did not resolve my somewhat intangible conflict concerns at the outset believing that I could revisit the issue should the need to do so arise.
2. Apart from granting a Confidentiality Order on or about 10 August 2022, I have not yet considered any substantive applications in the present matter. On 20 September 2023, I granted a Consent Order staying this action. This prompted me to apply my mind to the potential conflict of interest issues arising for the present case in light of very recent developments in FSD 227/2018.
3. In the event, the trial of FSD 227/2018 took place in June 2023. The 1<sup>st</sup> Defendant herein was a key witness. On 17 August 2023, I granted judgment against the 2<sup>nd</sup> Defendant herein and 7 September 2023 granted a post-Judgment injunction against the 2<sup>nd</sup> Defendant herein. Although the issue of apparent bias has not been raised by any party, it now seems strikingly obvious that it might fairly be raised by these Defendants, even though I do not subjectively doubt my ability to actually adjudicate this matter in an impartial manner.
4. The most comprehensive recent judicial analysis of recusal applications of which I am aware is to be found in *Re Principal Investing Fund I Limited et al*, FSD 268-270 of 2021 (DDJ), Judgment dated 21 November 2022 (unreported). In that case, David Doyle J observed that:

*“148... special regard must be had to the contents of the relevant local judicial codes of conduct. In this case the applicable Cayman Judicial Code reinforces and gives particular weight to the precautionary principle.” [Emphasis added]*

5. The ‘Code of Conduct for the Cayman Islands Judiciary’ provides in pertinent part as follows:

*“[16] Appearance of partiality or bias can arise where bias does not exist in fact. The test is whether a reasonable, fair-minded and informed observer would reasonably conclude that there is a real possibility that the judge is not impartial. The appearance of partiality may be impossible to dispel: leaving the litigant – and the informed observer – with a sense of injustice which is destructive of confidence in judicial decisions...*

*[18] Apparent conflicts of interests can arise in many different situations. A judge must be alert to any appearance of bias arising out of connections with litigants, witnesses or their legal advisers. The parties should always be informed by the judge of facts within his or her knowledge which might reasonably give rise to a perception of bias or conflict of interest...*

*[19] ... If the issue of apparent bias is raised before the judge has embarked on the hearing, it may be sensible for the judge to decline to sit in order to avoid adding that issue to the other contentious issues in the case...” [Emphasis added]*

6. Applying the precautionary principle in relation to a matter which I have not embarked upon to any material extent and where apparent bias has arisen (albeit without being formally raised by any party), I have concluded that the circumstances are such where it is clearly “*sensible for the judge to decline to sit in order to avoid adding that issue to the other contentious issues in the case*”. As this action is presently stayed, this step at this stage should occasion no wasted costs or inconvenience to the parties.
7. I accordingly voluntarily recuse myself from this matter and will invite the Chief Justice to reassign it as soon as possible.



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**THE HONOURABLE MR JUSTICE IAN RC KAWALEY**  
**JUDGE OF THE GRAND COURT**