

Hungerstation Holding Ltd and Hungerstation LLC v Ninja Holding [2025] CIGC (FSD) 99

OCTOBER 2025

Court: Grand Court (Cayman Islands)

Subject: Application to stay proceedings on the ground of forum non conveniens

Judges: Doyle J

Summary

The decision highlights the need to obtain reasoned expert evidence in support of applications to stay proceedings on forum non conveniens grounds.

The Plaintiffs existed under the laws of the Dubai International Financial Centre (**DIFC**) and the Kingdom of Saudi Arabia (**KSA**) respectively, while the Defendant was Cayman incorporated. The Plaintiffs alleged breaches of duties by a former manager and unlawful means conspiracy, unlawful interference with the Plaintiffs' business and dishonest assistance in breaches of fiduciary duty by the Defendant. The Defendant applied to stay the Cayman proceedings on forum non conveniens grounds in favour of the KSA or DIFC. Applying the *Spiliada* test, the Defendant's stay application was dismissed.

Further details

Under the *Spiliada* test, first it is necessary to show that the foreign forum is 'available', meaning it has jurisdiction (personal and subject matter). Next, the court must consider whether it is the most appropriate, by reference to connecting factors. Even if more appropriate, the Cayman court can retain jurisdiction if the plaintiff shows by cogent evidence that there is a real risk that it will not be able to obtain substantial justice. The Defendant, being incorporated under the laws of the Cayman Islands, was served as of right and had the burden of showing the *Spiliada* test was satisfied.

It is worth bearing in mind certain dicta highlighted by Doyle J: *'An expert must explain the basis of his or her evidence when it is not a personal observation or sensation; mere assertion or "ipse dixit" carries little weight ... If anything, the suggestion that an unsubstantiated ipse dixit carries little weight is understated; in our view such evidence is worthless ...'* and *'what carries weight is the reasoning, not the conclusion'*: *Kennedy v Coria (Services) LLP* [2016] 1 WLR 597; [2016] UKSC 6.

The Defendant sought to rely on the DIFC being an alternative available forum due to a shareholders agreement and arbitration clause referring to arbitration under DIFC/LCIA Rules in Dubai at the DIFC. However, the Defendant was not a party to the arbitration agreement and had not adduced expert evidence on DIFC law and DIFC and Dubai arbitration, law

and procedure. Accordingly, the Defendant failed to discharge its burden under the *Spiliada* test. Further, the argument was raised late and it would not be fair to permit the Defendant to take the DIFC point.

Both parties adduced expert evidence on whether KSA was an available alternative jurisdiction. The Court found the Defendant's expert evidence to be unsupported by authority and, in parts, textually inaccurate, and preferred the Plaintiffs' expert evidence, which was supported by detailed reasoning and properly translated materials.

The Plaintiffs' expert demonstrated that KSA was not an available jurisdiction because:

1. the Defendant had no residence in KSA;
2. the claims did not involve any obligation that originated or was enforceable in KSA; and
3. there were no contractual provisions pointing to enforcement in KSA.

The Defendant relied on *Al-Aggad v Al-Aggad* [2024] 4 WLR 35, arguing that where there is a conflict in expert evidence that the court cannot resolve, principles of comity require the court to assume that the foreign forum is capable of delivering justice. The Court rejected that argument, holding that the Defendant had conflated the availability of a forum with access to justice, and had failed to prove that KSA was, in fact, an available alternative forum.

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