NEUTRAL CITATION NUMBER: [2026] CIGC (Civ) 9

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

G 2025-0283

BETWEEN:

FUNDBANK LTD.

Plaintiff

AND

LAURA ACCURSO

Defendant

IN CHAMBERS

Before:	**Hon. Justice Alistair Walters J. (Acting)**
Appearances:	**Ms Harriet Ter-Berg, Mr Jaemin Shin and Ms Sofia Kranjec of Appleby (Cayman) Ltd for the Plaintiff** **Mr Ben Valentin KC and Mr Bhavesh Patel of Travers Thorp Alberga for the Defendant**
Heard:	**19 January 2026**
Draft written Judgment circulated:	**03 February 2026**
Judgment Delivered:	**24 February 2026**
Released for publication[1]:	**23 July 2026**

Application for an order sealing court file pursuant to GCRO. 63, r. 3, and for an order that the writ not be placed on the public register or in the alternative an order anonymizing parties names and details.
Consideration of the principle of open justice and the exceptions to that principle.
Extent to which damage to reputation, size of jurisdiction, terms of settlement agreement and interests of a minor might displace the basic principle.

[1] Publication delayed as a result of a court ordered stay.

JUDGMENT

1. This is an application by the Defendant by way of summons dated 21 November 2025 for the following orders:

   1.1 that the Court file be sealed and closed and not open to inspection by any party other than the parties without leave of the Court;

   1.2 that the Writ of Summons and any documents filed in the proceedings not be placed onto the public register;

   1.3 in the alternative, that the Parties' names be anonymized and any details identifying them be anonymized in the Writ and all Pleadings; and, in either case,

   1.4 that the Plaintiff do pay the Defendant's costs of and relating to this summons.

2 Proceedings were issued on 17 November 2025 by way of writ endorsed with a Statement of Claim. Pursuant to an order for directions dated 16 December 2025 a Defence and Counterclaim was served on 7 January 2026. Any Reply and Defence to Counterclaim is due to be filed by 9 March 2026.

3 From as early as 5 September 2025, the Defendant's attorneys ("TTA") raised with the Plaintiff's attorneys ("Appleby") their concern about the nature of the allegations being made against the Defendant bearing in mind her professional background and reputation and the passive, circumstantial involvement of a minor in the facts of the case (the "Third Party"). TTA sought confirmation from Appleby that if proceedings were issued, they would be under seal to preserve confidentiality.

4 Appleby did issue proceedings but not under seal. Thereafter, there was an exchange of correspondence with the Court which has led to this hearing. Up to this point, the Writ and Statement of Claim have not been entered on the public court register as they otherwise would have been. Although this matter has been shown in the Court cause list as "Private" there has been no previous application and no judicial determination that the matter should be heard "*in camera*" and the hearing proceeded as normal in chambers.

Background facts

5 With a view to the orders that I go on to make in this judgment I approach the background facts with some care.

6 The Plaintiff (the "Bank") is a bank incorporated in the Cayman Islands which provides banking and financial services to the asset management industry.

7 The Defendant was at all material times a senior employee of the Bank employed as Chief Banking Officer and General Counsel from 26 June 2023 and as Chief Executive Officer and General Counsel from 1 April 2024. From 24 July 2024 the Defendant was also a director of the Bank.

8 In its Statement of Claim the Plaintiff sets out in some detail the terms of the Defendant's employment contract with the Bank including its Code of Conduct, Employee Handbook, Conflicts of Interests Policy, Board Charter and associated policies (collectively the "Policies"). These documents included various obligations and duties including, in broad summary:

8.1 to act in good faith in the best interest of the Bank;

8.2 avoid conflicts of interest;

8.3 comply with the Employee Handbook;

8.4 be honest, truthful and to act with integrity and comply with the Conflicts of Interests Policy;

8.5 comply with the policy on receiving gifts which requires that before accepting a gift in excess of $100 prior approval should be obtained from the Chief Executive Officer or Chief Compliance Officer;

8.6 that it is never acceptable to solicit gifts, favours or business courtesies for the personal benefit of an employee, family member or friend.

9 The Plaintiff claims that between 8 and 17 April 2025, the Defendant breached the Policies and her duties by soliciting an invitation from a prospective client of the Bank (the "Prospective Client") for the Third Party to accompany her and attend the Saturday of the 2025 Miami Formula 1 Grand Prix (the "Grand Prix").

10 Further details are provided in the Defendant's Defence in which it is pleaded that the Defendant had met with a representative of the Prospective Client in New York in February 2025 and introduced them to the Bank. In March 2025, it is pleaded that the Defendant purchased her own tickets to the Grand Prix for the Sunday of the event including a ticket for the Third Party.

11 The Defence goes on to state that in April 2025 the Defendant apparently met again with a representative of the Prospective Client and mentioned that she was attending the Grand Prix. The representative of the Prospective Client said that the Prospective Client sponsored a Formula 1 team and that it therefore had sponsor tickets for the Grand Prix.

12 On 8 April 2025 it is claimed that the Prospective Client invited the Defendant to attend the Grand Prix on the Friday and Saturday of the event. For what appear to be its own internal compliance purposes the Prospective Client sent the Defendant a transparency letter (the "Transparency Letter") valuing the invitation at approximately US$14,000. It is further claimed that on 9 April 2025, the Defendant replied to the Prospective Client requesting that the Third Party be permitted to attend on the Saturday of the event and offered to meet any associated cost. The Defendant pleads that as sponsor tickets were not paid for but simply assigned a retail value, it was not possible for her to pay for one.

13 The Statement of Claim goes on to claim that an updated Transparency Letter was provided to the Defendant on 11 April 2025 which valued the revised invitation at US$28,000 (being US$14,000 per person). It is claimed that the Transparency Letter stated: *"… Ticket prices are more expensive than your typical hospitality event and thus, for full transparency and ensuring compliance with the Foreign Corrupt Practices Act, the UK Bribery Act And any other relevant rules and regulations, we would like for someone in your Compliance, Legal or Ethics Department, with suitable seniority, to confirm that their attendance is in line with your entity's own internal policies, rules and any potential laws and regulations."*

14 The Statement of Claim alleges that on 14 April 2025 the Defendant met with the Bank's Chief Compliance Officer, a Mr Damon Wilson ("CCO[2]"). It is alleged that during that meeting the Defendant failed to disclose that she had solicited the invitation for the Third Party to attend the Saturday of the Grand Prix and failed to obtain approval from the CCO for either the solicitation of or the acceptance of that invitation.

15 It is further alleged that on 14 April 2025 the Defendant signed and returned to the Prospective Client the updated Transparency Letter and copied in the CCO to her email. However, it is claimed that the CCO was not provided with a copy of the Transparency Letter prior to its signature and

[2] Who has subsequently left the Bank.

that the email chain to which the CCO was copied was altered to delete the parts that involved the solicitation of the invitation for the Third Party. It is further alleged that the Defendant did not have authority to sign and return the Transparency Letter.

16 In her Defence, the Defendant says that on 14 April 2025 she had an initial meeting with Mr Ian Comins, the Bank's Chief Operations Officer ("COO"). It is pleaded that although the meeting was primarily to discuss operational matters including apparent dissatisfaction on the part of the Bank with the CCO, the Defendant claims that during that meeting, she informed Mr Comins about the background with the Prospective Client including that it was hosting an event for its clients at the Grand Prix, that she was already attending the Sunday of the event, that the Prospective Client had extended an invitation to her to join its event and that she had asked the Prospective Client if the Third Party could also attend.

17 The Defendant pleads that it was subsequent to the meeting with Mr Comins that she first met the same day with the CCO. Amongst other things she claims that she did discuss the question of the invitation to the Grand Prix and told the CCO that she had asked the Prospective Client if the Third Party could accompany her.

18 The Defendant pleads that after the first meeting with the CCO there was an exchange of emails between them relating to the draft Transparency Letter and the CCO's notes of the first meeting. It is claimed that the CCO requested a second meeting that day to discuss the invitation from the Prospective Client. It is claimed that during the second meeting with the CCO there was general discussion about the Bank's policies and procedures in relation to matters such as gifts, the extent of those policies and procedures and whether they had been complied with and followed in the past. The Defendant says that she was advised by the CCO that due to the value attributed to the invitations, she would have to seek authorization from the Bank's Chief Risk Officer ("CRO") Ms Fletcher-Watts.

19 The Defendant states in her Defence that the same day she did meet with the CRO and, amongst other things, advised the CRO that she had asked that the Third Party be invited to the event. The CRO said that due to the value attributed to the tickets the Defendant would need to seek approval from the Bank's then Vice Chairman, Mr Colm O'Driscoll. The Defendant claims that despite sending an email to Mr O'Driscoll and despite having copied him in on emails to the CCO, she heard nothing back from him. The Plaintiff claims that in her correspondence with Mr O'Driscoll

the Defendant failed to disclose that she had solicited the invitation from the Third Party and that she had sought to conceal that fact from the CCO.

20 It seems that there was also an exchange of various emails between the Defendant and various senior members of the Bank including Mr Don Seymour, the majority shareholder and director of the Bank in relation to issues relating to the CCO and the invitation to the Grand Prix. The Defendant claims that having been ignored by Mr O'Driscoll and having been told by Mr Seymour that he did not have time to speak with her, on 17 April 2025 she advised the Prospective Client that she would be unable to attend its event at the Grand Prix and did not do so.

21 The Plaintiff alleges that on 17 April 2025, the parties entered into discussions regarding the Defendant's resignation from the Bank. The Defence states that on 17 April 2025, she received a message from Mr O'Driscoll asking to meet with her. He insisted on the meeting despite the Defendant's unexpected health concerns for her father. The Defence states that the meeting took place between the Defendant and the HR Manager of the Bank in person and Mr O'Driscoll and Mr Jacobs (the Chairman of the Bank) via Teams. It is alleged that Mr O'Driscoll advised the Defendant that there had been a whistleblower complaint made against her making serious allegations against her including that she had accepted a gift from a client. It is claimed that, despite her request, no further specifics were shared with the Defendant in relation to the alleged complaint.

22 It is claimed by the Defendant that Mr O'Driscoll gave her two alternatives; namely, that she either resigned or that the Bank would investigate the complaint. In correspondence, the Bank suggested that she was being dismissed for cause. There then followed an exchange of correspondence which led to negotiations via attorneys of the terms of a settlement agreement (the "Settlement Agreement") leading to the Defendant's departure from the Bank. The Defendant claims that in effect she was wrongfully dismissed without any justification and speculates in the Defence that this relates to the serious and valid concerns that she had raised about the CCO.

23 The Defendant pleads that immediately after that meeting she was locked out of the Bank's IT system. The Plaintiff alleges that on or about 30 June 2025 it discovered that between 14 and 17 April 2025 the Defendant deleted and, in some cases, "double deleted"[3] 199 emails including the

[3] Deleted from the Inbox and then deleted from the deleted items box.

email exchange relating to the solicitation of the gift and other emails relating to the gift. It is alleged that this was concealed.

24 The Settlement Deed was entered into on 23 April 2025 with an agreed effective date of 17 April 2025. The Plaintiff alleges that the Settlement Deed provided for the payment to the Defendant of various sums and included release and indemnity provisions in favour of the Defendant.

25 For the purposes of the Plaintiff's claim the primary clause of the Deed relied on is clause 7.1(c) by virtue of which the Defendant represented, warranted and undertook that:

> *"…she is not aware of any matters relating to her Employment, which if disclosed to the [Bank] would or might affect the decision of the [Bank] to enter into this Deed."*

26 Clause 7.2 stated:

> *"Ms Accurso acknowledged that the [Bank] is entering into this Deed in specific reliance on the representations, warranties and undertakings in clause 7.1."*

27 The Bank claims that after it found out that the Defendant had deleted emails relating to the invitation from the Prospective Client, it recovered the mailbox items and concluded that the Defendant had solicited the invitation for the Third Party, deliberately concealed this fact from Bank personnel and had deleted at least 199 mailbox items to conceal that conduct.

28 It is alleged that this concealment including not disclosing the relevant facts to the CCO, Mr O'Driscoll and the CRO meant that the representation made in clause 7.1 (c) was false. It is alleged that the Defendant had breached the Policies. The Plaintiff claims that the Defendant made the representation in clause 7.1 (c) fraudulently, in that at the time it was made, she knew that it was false or did not believe it to be true, or was reckless as to whether it was true or false.

29 The Plaintiff claims that this entitled the Bank to rescind the Settlement Deed and that it is entitled to damages. In the alternative, it claims that the same representation was made negligently or innocently which also entitles it to rescind the Settlement Deed and seek damages.

30 In her Defence, the Defendant denies the Plaintiff's claims, states that there was no cause to terminate her employment, argues that the whistleblower complaint was fictitious and reiterates that she had made full disclosure of the relevant facts as set out above. On that basis, she denies that there is any breach of clause 7.1 (c). The Defence goes on to put forward a counterclaim alleging that the Plaintiff has breached the terms of the Deed and claiming damages as a consequence. The particular provisions that are alleged to have been breached are:

> *"4. CONFIDENTIALITY*
>
> *4.1 Ms Accurso and the Company Agree to keep the terms of this Deed strictly confidential and agree not to disclose, communicate or otherwise make them public to anyone save professional advisors., or for the enforcement of the terms of this Deed or otherwise as may be required to be disclosed by law.*
>
> *4.2 Ms Accurso agrees, insofar as permitted by law, that she shall not make any statements, oral or written, touching upon or concerning her employment relationship with the Company, which are critical, adverse, negative or derogatory, or which might be detrimental to the interests of the Company.*
>
> *4.3 The Company agrees, insofar as permitted by law, that it and its. Associated Entities Shall not make any statements, oral or written, touching upon or concerning Ms Accurso's Employment relationship with the Company, which are critical, adverse, negative or derogatory, or which might be detrimental to Ms Accurso. The Company shall not authorize or encourage any and all global consultants or third parties with whom Ms Accurso interacted during the Employment to not make any such statements.*
>
> *4.4 Ms Accurso acknowledges and agrees that she will not defame or criticize the services, business, integrity, veracity or personal or professional reputation of the Group or any of their respective affiliates and any of the Group's respective officers, directors, partners., executives or agents thereof in either a professional or personal manner at any time. The Company acknowledge and agree that they shall not authorise or encourage their its [sic] Associated Entities, directors or senior officers to defame or make any disparaging statements regarding the services,*

integrity, veracity, or personal or professional reputation of Ms Accurso in either a professional or personal manner at any time.

4.5 The Company will make an announcement on execution of this deed in the form set out in Schedule 4 and neither party will make any statements to third parties (save as permitted under this clause 4) which is inconsistent with that announcement.

…

6.5 The Group hereby fully and forever releases Ms. Accurso from, and agrees not to sue concerning, any Claim or cause of action of any kind whatsoever relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, arising from any omissions, acts or facts that have occurred up until and including the Effective Date of this Deed, including, without limitation any claims related to Ms. Accurso's Employment. The Company further agrees to indemnity and hold harmless Ms. Accurso with respect to any Claim that is made against her with respect to her Employment, from 26 June 2023 until 17 April 2025, including any Claim made against her with respect to any officer, board, committee and other appointments or positions held in respect of the Group"

31 The Defendant claims that:

31.1 The Bank is in breach of clause 6.5 and its obligation not to sue her because the present claim relates to matters that occurred prior to 23 April 2025 relating to her employment with the Bank;

31.2 The Bank is in breach of its obligation under clause 6.5 to indemnify her and hold her harmless with respect to any claim that is made against her with respect to her employment with the Bank. Since the present claim is such a claim, the Bank is left with no cause of action against her; and,

31.3 the Bank is in breach of clause 4.3 because in the pursuit of this claim the Plaintiff has made a serious and unfounded allegation of fraud against her.

32 The Defendant claims damages against the Bank for breach of contract relating to her legal costs, damage to her reputation and capacity to earn a living.

THE SEALING APPLICATION

33 That then brings us to the present application which is supported by three affidavits sworn by the Defendant on 24 November 2025, 22 December 2025 and 14 January 2026 and two sworn in reply by Mr Seymour on 16 December 2025 and 12 January 2026.

34 I have summarized below the main points made by the Defendant in her first affidavit (where her affidavit overlaps with the Defence, I have not repeated the points made):

34.1 She recognizes that application to seal the Court file is a serious matter but states that in her view, were the serious but unproven allegations to become public they would cause her substantial and irreparable harm.

34.2 The Defendant is an attorney admitted to practice in New York, England and Wales and the Cayman Islands. She served as Vice President of the Cayman Islands Bankers Association from July 2024 to July 2025. She says that she has an unblemished professional and disciplinary record. The Defendant is Caymanian and has lived here for the past 15 years.

34.3 The Defendant reiterates that despite her request she still has not been provided with any specifics about the alleged whistleblower complaint said to have been made against her.

34.4 Apparently in an email sent on 22 April 2025 Mr O'Driscoll informed the Defendant that the board of the Bank had convened and decided to terminate her employment with cause but had given Mr O'Driscoll discretion to alter this to resignation if settlement could be reached by 5.30pm that day. No explanation was given to her for the alleged cause for termination. The Defendant says that the Bank was aware that her father had just had a heart attack and that she was about to fly to Canada to be with her family.

34.5 The Defendant goes on to say that on 23 April 2025, Ogier, the then counsel for the Bank, advised the Defendant that if she did not resign and sign a settlement agreement by 5.30 pm that day she would face an enquiry and investigation into her conduct. Apparently Ogier also stated that the Bank had a meeting scheduled with the Cayman Islands Monetary Authority ("CIMA") at 3.00pm the next day to report to CIMA if she did not sign a settlement agreement. The Defendant says that she regarded the threats relating to her conduct and termination as baseless but as it was clear to her that the Bank was determined that she leave and in order to bring a close to matters she took the decision to resign and on 23 April 2025 signed the Settlement Deed.

34.6 The Defendant says that on 29 August 2025 she unexpectedly received a letter before action and notice of rescission from Appleby, acting for the Bank. She says that this took her completely by surprise and that in her view the letter ignored all of the material facts. Her view is that the actions by the Bank were a vindictive response to her raising serious concerns about the Bank's operations and compliance program.

34.7 On 17 November 2025 the Defendant says that her attorneys were advised that a writ had been issued against her. At the time she was dealing with personal health issue and says that she was taken aback by this development. The Defendant says that her immediate concerns were that if the writ should become public it could cause irreparable damage to her reputation. She also says that she was concerned about the reference in the writ to the Third Party.

35 The Defendant goes on in her affidavit to deal with the events leading to this hearing and the associated correspondence between counsel. She also raises issues relating to the following:

35.1 Clause 4 of the Settlement Deed which set out the confidentiality and non-disparagement provisions of the Settlement Agreement, a factor that she argues should have caused the writ to have been issued under seal from the outset.

35.2 As a result of the allegations being made against her she says that material will be referred to and disclosed which is privileged and confidential by virtue of the Defendant's role within the Bank.

35.3 The Defendant says that although she appreciates that she will have the opportunity to defend herself against the allegations made, given the size of the population of the Cayman Island the publication of the writ would have a serious adverse impact on her reputation and cause her severe damage from which she would be unable to recover.

35.6 The Defendant claims that there is no wider public interest in the information in the proceedings or the writ from being open to the public given the private nature of the Settlement Deed, the fact that it relates to employment matters with whist she describes as a small bank in the Cayman Islands which is itself a small jurisdiction.

35.7 The Defendant refers in particular to a letter dated 20 November 2025 sent by Appleby to the Court in connection with the sealing application in which, amongst other things, it is said[4]:

> *"(e) In addition to the strong public interest, and the fundamental constitutional principles at issue, the Plaintiff has a strong interest in demonstrating that it requires the highest standards of conduct from its employees and officers. The Plaintiff bank has a strong interest in being,*

[4] Hearing Bundle page 290.

> *and being seen to be, transparent with the public and investors in relation to such standards."*

The Defendant argues that this demonstrates that the Bank wishes for the matter to be public so that it can seek to make an example of her for their employees, investors and the wider Cayman community. She says that *"[i]t seems from its contents that they wish to approach the Writ as if their malicious allegations have already been proven and leverage the reputational damage to me as part of their claim."*

36 Mr Seymour swore his first affidavit prior to the service and filing of the Defence. His affidavit repeats much of what has been set out above in terms of the Bank's position and was ventilated in inter partes correspondence. He reiterates that the Bank is not motivated by any inappropriate purpose and rejects the argument that the Court file should be sealed. Mr Seymour does suggest that if the Bank through him and Mr O'Driscoll had known of the alleged conduct by the Defendant, the Bank would not have entered the Deed or would have done so on substantially different terms.

37 In her second affidavit, the Defendant takes issue with much of what Mr Seymour says, reiterates that she had made full disclosure to the CCO of relevant matters and repeats her view that the sealing order should be made. One new issue arising is that fact that on 19 December 2025, just before her second affidavit was sworn, an open offer was sent by her attorneys, TTA, to Appleby. In summary, that letter states that the Defendant had recently been diagnosed with a serious health condition necessitating surgery. As a result, it is said that the Defendant wished to devote her energy to recuperation and recovery as opposed to defending these proceedings which are described as vindictive and in relation to which it is said that the Plaintiff can have no genuine belief in the truth of the core allegation. TTA suggest that the open offer essentially would give the Plaintiff the relief that it is seeking without any admission of any liability on the part of the Defendant. They proposed replacing the Settlement Deed with another deed.

38 Unsurprisingly, this generated further inter partes correspondence which did not lead to a settlement of the proceedings. The Defendant complains that the Plaintiff's vindictive position is on full display by virtue of its position[5] that despite what is offered, the Plaintiff does not accept there being no admission of liability. It is said that: *"[c]learly, were our client successful at trial, it would have the significant benefit of a judgment confirming your client's wrongdoing and, importantly the Bank's ignorance of the same. It would also obtain a remedy in the form of declaratory relief*

[5] Appleby letter dated 29 December 2025.

as to the resultant rescission... Given the regulatory and reputational back-drop, these are extremely important aspects of the relief sought by our client in the Proceedings" Appleby did put forward a counter-offer, one condition of which was that the parties agree a schedule of facts which could be provided to any regulatory, governmental or criminal agency if requested or if necessary. The Plaintiff's consent to any settlement, however, was said to be conditional on agreement as to the content of the schedule.

39 Mr Seymour's second affidavit reiterates the Bank's position and defends its position in relation to the open settlement discussions. Mr Seymour does say that the CCO denied having a conversation with the Defendant during which she informed him of the position in relation to the invitation for the Third Party but goes on to say that the Bank's position is that even if she had, oral notification would be insufficient to comply with the Bank's policies in relation to hospitality and her duties.

40 This application does not require me to make any findings of fact in relation to the substantive positions of the parties; indeed, pleadings are not yet closed. During the course of his submissions, Mr Valentin indicated that he did not anticipate that there would be an application to strike out the Statement of Claim because the disputes as to fact necessitate the cross examination of witnesses which means that the matter has to go to trial. He did also indicate that the Defendant accepts that any trial may be heard in open court and that any judgment would also be public.

RELEVANT COURT RULES AND GENERAL LEGAL PRINCIPLES

41 Grand Court Rules ("GCR") Order 63, rule 3 provides:

> *"Filing of documents (O.63, r.3)*
>
> *3. (1) Every document required to be filed in any proceeding must be placed on the Court file relating to such proceeding and sealed with a seal showing the date upon which the document was filed.*
>
> *…*
>
> *(3) Subject to paragraphs (4) and (5), the Court file relating to any proceeding shall be open to inspection only by the parties to that proceeding.*
>
> *(4) The Court may order that the Court file relating to any proceeding or any specific document therein be closed and not open to inspection by any party or other person except with the prior leave of the Court.*
>
> *(5) The Court may give leave in special circumstances on application to any person not a party to the proceedings to inspect the Court file or to take a copy of any document on the Court file relating to those proceedings."*

42 The legal principles that arise when the Court considers an application under GCR O.63, r.3 were considered by Smellie CJ (as he then was) in *In the Matter of The Sphinx Group of Companies (In Official Liquidation)*[6] in which the applicants for an order authorizing the completion of a confidential settlement agreement applied for an order that an affidavit containing confidential information be sealed and kept confidential on the Court file.

43 The application was granted and the Chief Justice explained the legal principes as follows:

> ***"Open justice and limitations to the principle***
>
> *7 Open justice is a fundamental principle of the common law and is enshrined in s.7 of the Constitution (the Cayman Islands Constitution Order 2009, Schedule 2) as follows:*
>
> > *"(1) Everyone has the right to a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial court within a reasonable time.*
> >
> > *…*
> >
> > *(9) All proceedings instituted in any court for the determination of the existence or extent of any civil right or obligation, including the announcement of the decision of the court, shall be held in public."*
> >
> > *…*
>
> *9 Given that the principle of open justice is, however, one of common law, it does not depend exclusively on s.7 of the Constitution being engaged. Rather, the principle requires that, in general, the public should have access to court proceedings and access to information about what occurs in such proceedings.*
>
> *10 This is the right to freedom of information about all aspects of the democratic process that enables members of the public to exercise the right to freedom of expression and participation in good governance. Furthermore, s.11 of the Constitution enshrines the principle of open justice more generally in that all persons should be free to "receive … information without interference." The right to receive information would therefore apply to all court proceedings, even those where the rights and obligations of adverse parties are not being determined. The principle of open justice would ordinarily therefore apply to*

[6] [2017 (1) CILR 176].

all court proceedings, including such as the present for the sanction of liquidators' decisions and whether partisan or otherwise.

11 *It is recognized, however, that the principle of open justice is not unlimited. Rather, open justice forms part of the overriding principle that justice must be done. As such, at common law, the general rule as to publicity must yield to this overriding principle and limitations can be placed upon the access to information by the public.*

12 *But these limitations are not left to the individual discretion of the judge based simply on what is convenient or desirable in the circumstances. Limitations can only be placed on the principle where the interests of justice so require. The court is therefore required to balance the general rule as to publicity against any requirements for confidentiality or privacy in the interests of justice that may arise in a particular case. In* Scott (or Morgan) *v.* Scott *(11), Viscount Haldane, L.C. stated as follows ([1913] A.C. at 435 and 437–438):*

> *"If there is any exception to the broad principle which requires the administration of justice to take place in open Court, that exception must be based on the application of some other and overriding principle which defines the field of exception and does not leave its limits to the individual discretion of the judge.*
>
> *…*
>
> *[T]he exceptions [to the principle of open justice] are themselves the outcome of a yet more fundamental principle that the chief object of Courts of justice must be to secure that justice is done … As the paramount object must always be to do justice, the general rule as to publicity, after all only the means to an end, must accordingly yield. But the burden lies on those seeking to displace its application in the particular case to make out that the ordinary rule must as of necessity be superseded by this paramount consideration."*

"13 That there can be exceptions or limitations to the principle of open justice to ensure that justice is done, both in the context of conducting hearings in camera *or in private (*i.e. *in chambers) and in the context of keeping documents or information relating to those court hearings confidential, is also expressly recognized by legislation and court procedure in the Cayman Islands.*[7] *This is the case both in civil proceedings generally and in liquidation*

proceedings more specifically. In particular, s.11(2)(b) of the Constitution provides, among other things, that the principle of open justice can be limited—

> *"for the purpose of protecting the rights, reputations and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, [and] maintaining the authority and independence of the courts …"*

Further, both the Grand Court Rules 1995 and the Companies Winding Up Rules 2008 expressly permit for documents to be sealed on the court file (see fn. 7 and further below).

14 In respect of hearings in chambers, it is relevant to note that such hearings are not automatically to be regarded as in camera. *Members of the public can be permitted to attend hearings in chambers with the permission of the judge. As was stated earlier by this court, the fact that the public does not have an automatic right to attend hearings in chambers does not however "automatically cloak them in secrecy."[8] Nor is there any automatic restriction on the disclosure of what occurred in chambers.[9]*

15 Hearings in chambers, however, often deal with sensitive or commercial matters and it is equally established that it may be appropriate for the court to make orders sealing the court file or limiting publication. This is expressly recognized in Practice Direction No. 3/1997, which provides:

> *"In view of the sensitivity of many proceedings now routinely being brought in the commercial or civil jurisdiction of the Grand Court, the parties involved in any matters taken in chambers about which information might be published but for an express prohibition, are to be at liberty to apply for an order against or delimiting publication."*

44 As Smellie CJ noted above, section 7 of the Cayman Islands Constitution Order 2009 (the "Constitution") provides statutory protection to the right to a fair and public trial but there is a qualification to that right in subsection 10 which reads as follows:

> *"(10) Nothing in subsection (1) or (9) shall prevent the court from excluding from the proceedings persons other than the parties to them and their legal representatives to such extent as the court—*

> *(a) may be empowered by law to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of minors or the protection of commercial confidence or of the private lives of persons concerned in the proceedings; or*
> *(b) may be empowered or required by law to do in the interests of defence, public safety, or public order."*

45 In *AHAB v Saad Investments Limited*[7] Smellie CJ dismissed an application by "Maples defendants" in the proceedings for an order disclosing a schedule of assets of another defendant. The schedule was on the court file but had been sealed by the Court with justification as it contained confidential information. Despite the principles of open justice, the Chief Justice declined to order that it be disclosed on the basis that it did not address any rights of the Maples defendants.

46 The Court of Appeal considered a similar issue in *Sasken Communication Technologies Limited v Spreadtrum Communications Incorporated*[8] in which the parties applied for an order sealing the Court file in an uncontested action to enforce an arbitration award in which two documents containing confidential material were exhibited. The material was confidential under the terms of a contract between the parties. At first instance the judge was of the view that there was sufficient protection on the basis that access to the Court file was restricted to the parties themselves and only open to third parties with leave of the Court. The Court of Appeal allowed the appeal on the basis that the protection afforded by GCR O. 63, r.3 (5) was insufficient protection in the circumstances of that case.

47 The relevant procedure and legal principles are not in dispute here.

SUBMISSIONS ON BEHALF OF THE DEFENDANT

48 The Defendant contends that the situations and circumstances in which justice may require or justify the closure of the Court file are necessarily varied. It is argued that the closure of the Court file may be justified in one or more of the following circumstances:

48.1 where the proceedings involve a serious allegation that, if made public, would be likely to cause irreparable damage to the reputation of one of the parties;

[7] [2011 (1) CILR 326].
[8] [2016 (1) CILR 1].

48.2 where the party making such an allegation has expressly agreed not to do so and breach of that contractual obligation is a matter in issue in the proceedings;

48.3 where the proceeding is centrally concerned with an agreement in which the parties have agreed to be bound by an obligation of confidentiality; or

48.4 where the proceeding raises other issue which are sensitive, confidential and/or privileged.

49 In this case the Defendant raises the following reasons for ordering closure of the Court file in the interests of justice:

49.1 Publication of the allegation of fraud against the Defendant with her professional background will cause irreparable damage to her reputation. There is no wider public interest in the case as it relates to the Defendant's employment with a small Cayman Islands bank. As mentioned above, during the course of his submissions Mr Valentin accepted that if the matter goes to trial, any judgment will be published and that the Defendant's position is that if the claim is ultimately dismissed, the Defendant will be vindicated; if it succeeds, the Plaintiff will have the benefit of the Court's judgment setting out its conclusions. In his submissions, Mr Valentin accepted that damage to reputation alone will not be sufficient to support the Defendant's current application but when combined with the other factors relied on it is relevant.

49.2 Unless and until the Plaintiff's claim succeeds, the allegations of fraud constitute a clear breach of the Plaintiff's obligations in clause 4.3 and 4.4 of the Settlement Deed. The Defendant argues that it would be entirely unjust if the Plaintiff is permitted to breach those obligations by means of the publication and dissemination of the allegations in the Statement of Claim. The Defendant argues that the obligations owed to the Defendant are also squarely in issue in the proceedings. It is said that the interests of justice are engaged where the case concerns whether the making of damaging and disparaging statements amounts to a breach of contract. Reliance is placed on *Taher v Cumberland*[9] and *Fulham FC Ltd v Kline*[10]. The *Taher* case involved committal proceedings in relation to the breach by a defendant of orders preventing that party from disparaging the claimants. The court ordered that the committal application be heard in private to avoid further dissemination of the disparaging material on the basis that there were limited other means to protect the claimants from the conduct of the defendant in question and that the damage being cause to the businesses of the claimant as a result of the disparagement was of critical importance.

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[9] [2019] EWHC 2589.
[10] [2020] EWHC 2907.

The *Fulham* case involved the question of whether a hearing in proceedings relating to confidential information should be in public or private where the former option would defeat the object of the hearing.

49.3 The Deed imposes a strict confidentiality obligation on the parties with respect to the Deed. The Defendant argues that it will be for all practical purposes impossible for the strict confidentiality in the Deed to be maintained unless the Court file is closed.

49.4 The protection of the privacy of the Third Party strongly militates in favour of sealing the Court file.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF

50 In addition to referring to the judgment of Smellie CJ in *Sphinx* case as set out above, the Plaintiff also refers to recent summaries of the relevant case law by Doyle J in *Re China Index Holdings Ltd*[11] and *Re Silicon Valley Bank (Cayman Islands Branch)*[12]. In *Julius Baer Trust Company (Channel Islands) Limited v AB and others*[13] Kawaley J heard an application by the plaintiff trustee for an order protecting confidentiality in relation to a substantive summons in which directions were to be sought concerning the administration of a Cayman Islands trust. Reference in the case was made again to the *Sphinx* decision mentioned above. The judge dealt with a number of aspects of privacy:

> "*13. The modern English Practice Guidance (Interim Non-disclosure Orders), to which the trustee's counsel also helpfully referred, clearly recognizes the interaction between privacy and open justice rights and commends the following stridently pro-open justice approach:*
>
> > *"10 Derogations from the general principle can only be justified in exceptional circumstances, when they are strictly necessary as measures to secure the proper administration of justice … Derogations should, where justified, be no more than strictly necessary to achieve their purpose.*
> >
> > *11 The grant of derogations is not a question of discretion. It is a matter of obligation and the court is under a duty to either grant the derogation or refuse it when it has applied the relevant test …*
> >
> > *12 There is no general exception to open justice where privacy or confidentiality is in issue. Applications will only be heard in private if and to the extent that the court is satisfied that by nothing short of the exclusion of the public can justice be done. Exclusions must be no more than the minimum strictly necessary to ensure justice is done and parties are expected to consider before applying for such an exclusion whether something short of exclusion can meet their*

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11 Unreported, 23 August 2024 at [89]-[113].
12 Unreported, 28 June 2023 at [23]-[38].
13 [2018] (2) CILR 1].

> *concerns, as will normally be the case … Anonymity will only be granted where it is strictly necessary, and then only to that extent."*

51 The judge went on to say:

> *"16 The basic grounds upon which private hearings may take place are circumstances of necessity or expedience involving the following categories of cases:*
>
> *(a) where publicity prejudices the public interest;*
>
> *(b) in interlocutory proceedings;*
>
> *(c) grounds of public morality;*
>
> *(d) the welfare of minors;*
>
> *(e) the protection of commercial confidence;*
>
> *(f) the protection of the private lives of persons concerned in the proceedings.*
>
> *17 To the extent that the common law in the Cayman Islands has developed (as elsewhere) the position whereby the mere fact that a hearing is interlocutory is insufficient to guarantee privacy, the relevant "gateways" for accessing a confidentiality order in relation to a non-contentious trust application will typically be (d) ("the welfare of minors") and/or (f) ("the protection of the private lives of persons concerned in the proceedings")."*

52 The Plaintiff argues that the question of derogation from the principle of open justice is not a question of discretion but rather is a matter of obligation. It says that the Court is under a duty to either grant the derogation where the interests of justice require or refuse it having applied the relevant test described by Smellie CJ in *Sphinx* as requiring the Court to balance the general rule as to publicity against any requirements for confidentiality or privacy in the interests of justice that may arise in a particular case.

53 The Plaintiff also refers to an extract from *Zuckerman on Civil Procedure*[14] and, in particular, the section dealing with the principle of publicity and the right to a public hearing. Various relevant points are discussed in the commentary:

[14] Principles of Practice, 5th edn.

53.1 Derogation from the principle of open justice may be made at common law on a case by case basis to protect vulnerable interest and sensitive information[15]. Generally, it can only occur on cogent and compelling grounds[16];

53.2 The prospect of damage to reputation as a result of litigation is unlikely of itself to justify a derogation from open justice. Cited in support of this principle is the case of *Global Torch Ltd v Apex Global Management Ltd*[17] which dealt in part with arguments for an order that certain proceedings in the English Companies Court should proceed in private. An element of the underlying arguments was that privacy was necessary to protect the reputation of those involved. The Court of Appeal reviewed the authorities dealing with damage to reputation and said as follows:

> *13 This year marks the centenary of the decision of the House of Lords in Scott v Scott (1913) AC 417. It was and remains a beacon of the common law. Outside three exceptional areas of wardship, lunacy and trade secrets (the third being a precursor of CPR39.2(3)(a)), the House of Lords emphasised the paramountcy of open justice. Almost every page of the speeches underwrites that principle. The following extracts will suffice. Viscount Haldane LC stated (at page 438):*
>
> > *"But the burden lies on those seeking to displace its application in the particular case to make out that the ordinary rule must as of necessity be superseded by this paramount consideration. The question is by no means one which, consistently with the spirit of our jurisprudence, can be dealt with the by the judge as resting in his mere discretion as to what is expedient. The latter must treat it as one of principle, and as of turning, not on convenience, but on necessity."*
>
> *He added (at page 439):*
>
> > *"A mere desire to consider feelings of delicacy or to exclude from publicity the details which it would be desirable not to publish is not, I repeat, enough as the law now stands. I think that to justify an order for hearing in camera it must be shown that the paramount object of securing that justice is done would really be rendered doubtful of attainment if the order were not made."*
>
> *Lord Atkinson stated (at page 463):*

[15] Paragraph 3.107.
[16] Paragraph 3.113.
[17] [2013] EWCA Civ 819.

> *"The hearing of a case in public may be, and often is, no doubt, painful, humiliating, or deterrent both to parties and witnesses, and in many cases, especially those of a criminal nature, the details may be so indecent as to tend to injure public morals, but all this is tolerated and endured, because it is felt that in public trial is to be found, on the whole, the best security for the pure, impartial and efficient administration of justice, the best means for winning for it public confidence and respect."*

Perhaps the most trenchant observations were those of Lord Shaw of Dunfermline who referred (at page 476) to

> *"A violation of that publicity in the administration of justice which is one of the surest guarantees of our liberties, and an attack upon the very foundations of public and private security.*

53.3 The case of *Scott v Scott* was clearly prior to the interlocution of the European Convention on Human Rights which as the Court of Appeal noted has added various statutory rights which have made a significant impact.

53.4 The Court of Appeal continued to say:

"33. When the open justice point was being argued before the Judge, the position was no different from that which is present in many cases, civil or criminal. There are allegations and counter-allegations of serious misconduct. A person on the receiving end of such allegations will always be at significant risk of reputational damage. However, if the allegations are false, he will obtain his vindication through the judicial process, if not as a result of interlocutory application, then after a trial. The Judge had this well in mind: see paragraphs 82-83.

34. Mr Warby attempted to respond to this analysis by an alternative submission whereby he contended that, at the interlocutory stage, the open justice principle might yield to the right to privacy and protection of reputation on the basis that the putative victim has at least an arguable case. This links with his fifth submission that the open justice principle can safely be mollified at the interim stage because, if the allegations are later found to be true at trial, publicity can follow, with the result that a temporary suspension of open justice will have done no harm. I can see no warrant for a general lowering of the bar. Outside the area of statutory or other established exceptions, the open justice principle has universal application except where it is strictly necessary to depart from it in the interests of justice. If an application for departure is made, it will fall to be decided by reference to the principles which I have been considering, whether the proceedings are at an interim or final stage. In the field of defamation, where the ultimate issue is reputational *damage, the courts do not generally grant injunctions to restrain publication pending trial: Bonnard v Perryman [1891] 2 Ch 269. Sometimes a degree of protection is necessary on an arguable basis, for example so as to protect against blackmail: see ZAM v CFW [2013] EWHC 662 (QB). However, the basis there is a case-specific analysis which results in the need for a degree of protection so as to avoid the full application of the open justice principle exposing a victim to the very detriment which his cause of action is designed to prevent. In that sense, it is more akin to a CPR39.2(3)(a) application. If such an approach were to be extended to a case such as the present one, it could equally be applied to countless commercial and other cases in which allegations of serious misconduct are made. That would result in a significant erosion of the open justice principle. It cannot be justified where adequate protection exists in the form of vindication of the innocent through the judicial process to trial.*

53.5 In cases involving confidential information, the Court has to form a view of the nature of the confidential information, its importance to the party and the damage that would be suffered by its disclosure, before deciding whether it is necessary to hold a hearing in private.[18]

53.6 Anonymity orders are dealt with in paragraph 3.141 where it is said that such orders:

> *"…may be made only on compelling grounds to maintain the administration of justice and to protect the legitimate interest of the person concerned. The interests of justice would require such an order to be made if revelation of the person's identity would unfairly prejudice the proceedings or undermine the very interest that the judicial process is seeking to protect. In deciding whether anonymity is necessary to protect the interest of the person seeking it, a careful balancing will be required between those interests and the fundamental principle of open justice, with regard being paid to such competing ECHR rights as are engaged…"*

54 The Plaintiff goes on to argue that where a party claims that information is confidential, the Court is required to form a view of the nature of the confidential information, its importance to the party and the damage that would be suffered by its disclosure before deciding whether a derogation is warranted in any particular case. In *ABC v Shulmans LLP*[19] the judge commented as follows:"

> *"Whilst the Court may use its powers to afford protection for information whose release into the public might cause harm … this will have to be justified by the circumstances and should be as narrowly used as possible. The existence of an obligation of confidence, per se, does not shift the balance."*

[18] Paragraph 3.124.
[19] [2019] EWHC 2458 (comm) at [35].

55 In *R v Legal Aid Board, ex parte Kaim Todner*[20] the court made it clear that the fact that case involved legal practitioners did not of itself mean that the principle of open justice should not apply.

56 In paragraph 4 of the judgment the court said:

> *"4. The fact that the outcome usually depends upon the assessment of the judge of the particular circumstances of a case explains why no consistent pattern can be identified by examining the cases where courts have made or declined to make an exception to the general rule. Furthermore in many of the cases the question will have been resolved in a summary manner, there being no objection from the other party, to anonymity. Sometimes the importance of not making an order, even where both sides agree that an inroad should be made on the general rule, if the case is not one where the interests of justice require an exception, has been overlooked. Here a comment in the judgment of Sir Christopher Staughton in ex parte P (1998), The Times Newspaper, March 31 1998, is relevant. In his judgment, Sir Christopher Staughton states:*
>
> > *"When both sides agreed that information should be kept from the public that was when the court had to be most vigilant."*
>
> *The need to be vigilant arises from the natural tendency for the general principle to be eroded and for exceptions to grow by accretion as the exceptions are applied by analogy to existing cases. This is the reason it is so important not to forget why proceedings are required to be subjected to the full glare of a public hearing. It is necessary because the public nature of proceedings deters inappropriate behaviour on the part of the court. It also maintains the public's confidence in the administration of justice. It enables the public to know that justice is being administered impartially. It can result in evidence becoming available which would not become available if the proceedings were conducted behind closed doors or with one or more of the parties' or witnesses' identity concealed. It makes uninformed and inaccurate comment about the proceedings less likely. If secrecy is restricted to those situations where justice would be frustrated if the cloak of anonymity is not provided, this reduces the risk of the sanction of contempt having to be invoked, with the expense and the interference with the administration of justice which this can involve".*

57 The Plaintiff raises some general points before addressing the specific arguments of the Defendant. Generally, it asserts that sealing the Court file will impair the Bank's ability to discharge its duties of internal and external transparency including with auditors, regulators, investors, and commercial

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[20] [1999] QB 966 (CA).

counterparties. It is suggested that if the proceedings were sealed it would prevent the Bank from giving "fulsome" disclosure of material litigation. It also suggests that it is incapable legally or operationally of supporting or participating in attempts to "conceal" material issues and investigations.

58 Dealing with what the Bank identifies as the six heads of argument advanced by the Plaintiff it argues as follows:

58.1 In relation to the allegations being of a sensitive and personal nature including references to the involvement of the Third Party it says that fraud and concealment allegations against a CEO of a regulated bank regarding her conduct and her employment and role are not "personal" or "extremely sensitive" in nature as claimed by the Defendant. It says that the allegations are particularly relevant to the public because of the significance of the allegations to the question of good governance and the global reputation of the Cayman Islands. It is said that the Bank must protect its reputation to demonstrate that it takes such conduct seriously. It is further argued that the allegations may be embarrassing to the Defendant but that is not a good reason for granting her special treatment and sealing the court file.

58.2 Dealing with the reference to the Third Party in the pleadings, the Bank says that the Third Party is not identified by name, is not accused of any wrongdoing, is not alleged to have been involved in any of the matters pleaded or had any knowledge of them. The Third Party will not be a witness and, indeed, as accepted by Ms Ter-Berg during the course of the hearing, the identity of the Third Party is wholly irrelevant to the Plaintiff's case. The Bank says that if the Court has any concern about the issue relating to the Third Party, then it proposes that the matter be dealt with by way of limited amendment of the pleadings or redaction. It is said that the Bank has previously proposed this course of action to the Defendant but that the Defendant has insisted that the only acceptable route is for the Court file to be sealed.

58.3 On the question of damage to reputation, the Plaintiff argues that this will not normally justify a derogation from open justice (see the extract from *Zuckerman* referred to above and *Kaim Todner*). Reference is also made to the judgment of Doyle J in *Silicon Valley Bank* mentioned above in which he says that:

> *"The need for open justice and transparency in respect of the serious issues raised in this case to my mind trumps any confidentiality or abuse concerns …One can see well the Company and its management are*

> *somewhat embarrassed by these proceedings, but that embarrassment does not justify taking the exceptional step of closing the Court file, Secrecy in this case will only assist in any potential wrongdoing and is not in the interests of justice.*[21]*"*

In that case depositors which had suffered losses as the result of the liquidation of Silicon Valley Bank were seeking a sealing order to protect their identities and avoid it becoming publicly known that they had suffered significant losses.

58.4 The Plaintiff also says that the fact that this is a small jurisdiction is also irrelevant. In *China Index Holdings* Doyle J cited[22] observations of Kay JA of the Court of Appeal of Bermuda in *DPP v Cindy Clarke*[23]:

> *"Kay JA at paragraph 5 emphasized that open justice was a fundamental principle of the judicial process and at paragraph 6 added that "…open justice is the rule, but there must be exceptions in circumstances where publicity would itself be productive of injustice". At paragraph 9, the Justice of Appeal added "…I do not accept that the size of the country requires the public interest in open justice to be modified…".*

The Plaintiff sums up this point by saying that the risk that the Defendant complains of is the ordinary consequence of being named as a defendant to fraud proceedings. Were this ground a valid basis to grant a confidentiality order of the scope sought, all defendants in fraud proceedings would seek the same relief.

58.5 Responding to the argument that clause 4.1 of the Settlement Deed imposes a confidentiality obligation on the parties justifying a sealing application, the Plaintiff says firstly, that its position is that the Settlement Deed has been rescinded. On that basis it says that clause 4.1 cannot apply. Regardless, it argues that it cannot have been intended that a party could be able to take steps to enforce the terms of the Settlement Deed by way of public proceedings without breaching clause 4.1 but that a party by way of public proceedings seeking to challenge a term in the Settlement Deed or rely on a term to establish misrepresentation would be in breach. It is pointed out that pursuant to clause 10 of the Settlement Deed the parties have agreed to the exclusive jurisdiction of this Court. There is no arbitration clause that would lead to any dispute being resolved in private. Finally, the Plaintiff says that if the Court is concerned about references to the Settlement Deed, those too could be dealt with by way of redaction.

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[21] At [44].
[22] At [100].
[23] [2019] CA (Bda) 8 Civ.

58.6 The question of the effect of clause 4.3 of the Settlement Deed is dealt with by the Plaintiff by arguing that; firstly, the Settlement Deed has been rescinded; and secondly, contractual confidentiality is not in itself a basis for derogation from open justice. Reference is made to the case of *CDE v NOP*[24] in which the claimants sought to rely in court on the findings of an arbitrator which had been reached in private. In that case, in a case management conference held in private, the court referred to *Scott v Scott* as mentioned above as confirming the position at common law. The issue in *CDE* was also subject to the English Civil Procedure Rule 39.2. CPR 39.2 reads as follows:

General rule – hearing to be in public

39.2

(1) The general rule is that a hearing is to be in public. A hearing may not be held in private, irrespective of the parties' consent, unless and to the extent that the court decides that it must be held in private, applying the provisions of paragraph (3).

(2) In deciding whether to hold a hearing in private, the court must consider any duty to protect or have regard to a right to freedom of expression which may be affected.

(2A) The court shall take reasonable steps to ensure that all hearings are of an open and public character, save when a hearing is held in private.

(3) A hearing, or any part of it, must be held in private if, and only to the extent that, the court is satisfied of one or more of the matters set out in sub-paragraphs (a) to (g) and that it is necessary to sit in private to secure the proper administration of justice –

(a) publicity would defeat the object of the hearing;

(b) it involves matters relating to national security;

(c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;

(d) a private hearing is necessary to protect the interests of any child or protected party;

[24] [2021] EWCA Civ 1908.

(e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;

(f) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or

(g) the court for any other reason considers this to be necessary to secure the proper administration of justice.

4) The court must order that the identity of any person shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that person.

(5) Unless and to the extent that the court otherwise directs, where the court acts under paragraph (3) or (4), a copy of the court's order shall be published on the website of the Judiciary of England and Wales (which may be found at www.judiciary.uk). Any person who is not a party to the proceedings may apply to attend the hearing and make submissions, or apply to set aside or vary the order.

58.7 The court made it clear[25] in *CDE* that confidentiality is not a "trump card" and that the critical question was whether it was necessary to sit in private to secure the proper administration of justice bearing in mind the passage cited above from *Kaim Todner.*[26]

58.8 The Plaintiff further argues that clause 6.5 includes an agreement not to sue in relation to matters arising up to and including the Effective Date but that the Settlement Deed was actually signed on 23 April 2025 which is when the misrepresentation was made by the Defendant. Clause 4.3 cannot have been intended to limit the circumstances in which proceedings could be commenced without giving rise to a breach of contract.

58.9 The Plaintiff approaches the Defendant's argument that there is no public interest basis to have the writ open to the public given the private nature of the Settlement Deed and matters in dispute by saying that the starting point is that the public interest requires open justice in every case and the burden is on the Defendant to demonstrate otherwise. The Plaintiff argues that the Defendant has not discharged that burden. It also says that any issues relating to internal matters of the Bank that might involve confidential information can be dealt with under the terms of the Confidential Information Disclosure Act as may be necessary and applicable.

[25] At [41].
[26] See also *White Crystals Ltd v IGCF General Partner Ltd* (unrep, 2 April 2024, Ramsay-Hale CJ.

58.10 Finally in relation to the allegation of lack of bona fides on the part of the Bank, it is denied that the Bank is motivated by any malicious intent. Reference is made to the open correspondence entered into in an attempt to settle matters and the Bank asserts that its position in those negotiations was reasonable.

DISCUSSION AND ANALYSIS

59 The legal principles to apply in this case are relatively straightforward. As can be seen from the cases referred to above, the principle of open justice is fundamental and only displaced in exceptional circumstances. As the extract from *Sphinx* quoted above sets out when in turn referring to *Scott v Scott:*

> *"If there is any exception to the broad principle which requires the administration of justice to take place in open Court, that exception must be based on the application of some other and overriding principle which defines the field of exception and does not leave its limits to the individual discretion of the judge.*
>
> *…*
>
> *[T]he exceptions [to the principle of open justice] are themselves the outcome of a yet more fundamental principle that the chief object of Courts of justice must be to secure that justice is done … As the paramount object must always be to do justice, the general rule as to publicity, after all only the means to an end, must accordingly yield. But the burden lies on those seeking to displace its application in the particular case to make out that the ordinary rule must as of necessity be superseded by this paramount consideration."*

60 The burden on this case is on the Defendant and that is not in question. Considering the various issues raised by the Defendant I have the following comments and observations:

60.1 <u>Damage to reputation</u> - as mentioned above Mr Valentin accepted that in this case, damage to reputation alone is not a sufficient basis for the Defendant to succeed with her application. The issue is the extent to which I place any weight on the submissions put forward on the Defendant's behalf in this regard. As the extract from *Zuckerman* and the decisions in cases such as *Global Torch, Kaim Todner,* and *Silicon Valley Bank* make clear, damage to reputation is only in exceptional cases likely to displace the principle of open justice. I have considered the evidence from the Defendant but in my view nothing that she says about her concern about the damage to her personal or professional reputation from this case should restrict it from proceeding in the ordinary course, without any orders sealing the court file. Subject to what I say below, from a reputational point of view, I do not believe that having the writ placed on the register of originating processes, even with the Statement of Claim endorsed on it would put at risk the due administration of justice or the conduct of a fair trial. The Defendant may take grave objection to the allegations made against her but the burden of proof on the Plaintiff is high in relation to such claims and there are associated costs risks. As was said in *Smith v Smith*, the protection in cases such as this is in the form of vindication of the innocent through the judicial process to trial.

60.2 The Defendant has argued that this is a small jurisdiction which means that the risk of damage to reputation is significant issue. As I have mentioned above, a point similar to this was dealt with in *China Index Holdings* by reference to *DPP v Cindy Clark* and it seems to me that the same approach must be adopted here; namely, to say that in this case, the size of the Cayman Islands does not require the public interest in open justice to be modified.

60.3 <u>Confidentiality of the Settlement Deed</u> - There are a number of aspects to the question of the Settlement Deed. Firstly, does clause 4.1 impose a strict confidentiality burden on the parties such that the parties have undertaken not to sue each other; secondly, does that Settlement Deed contain or comprise confidential information, the protection of which justifies the sealing of the court file; and thirdly, does the non-disparagement clause 4.3 in the Settlement Deed on its proper construction prohibit the commencement of proceedings against the Defendant.

60.4 The first and third arguments involve to some extent construing the relevant clauses to determine their meaning. I am of the view that it is not for me in these proceedings to take any steps to determine what the proper construction of those clauses might be. Indeed, I do not believe that the parties expect that the Court should embark on such an exercise at this stage of the proceedings. Regardless, it seems to me that it is clear that parties to a contract cannot contract out of the basic principle of open justice. As the court in *Kaim Todner* said, even where parties agree that an inroad should be made into the basic principle of open justice, unless the case is one in which the interests of justice require an exception, one should not be made. As was further confirmed in *ABC v Schulmans,* the mere existence of an obligation of confidence does not shift the balance.

60.5 The third question is whether the case involves confidential information, the nature of which is of such importance that sufficient damage would be caused by its disclosure to justify departing from the fundamental principle. This is not a case such as *AHAB v SAAD* or *Sasken* where specific information can be identified that is clearly confidential in its own right and which is not effectively the subject matter of the proceedings. The contents of the Settlement Deed may be expressed to be confidential but this dispute relates to the performance, breach and rescission of that agreement which in my view is an inherent part of the proceedings. Most importantly, I am not of the view that it has been demonstrated that the terms of the Settlement Deed are of such importance that disclosure of them in these proceedings would cause sufficient damage to justify departing from the fundamental principle of open justice.

60.6 Lack of bona fides on the part of the Bank - Whilst allegations have been made against the Bank and denied, I can reach no conclusions based on the limited evidence before me about the Bank's motivation. As indicated above, I am not sure that the parties expect me to do so. I also question the extent that the motivation of the Bank is relevant to the Defendant's application bearing in mind the principles set out above.

61 On the basis of the above, I am not satisfied that the Defendant has discharged the burden of demonstrating that there are exceptional reasons to derogate from the fundamental principle of open justice by sealing the court file.

62 The Defendant's application seeks in the alternative an order anonymizing the parties' names. Following the approach in cases such as *Julius Baer* and as outlined in *Zuckerman* as reviewed above, and for the same reasons that the Defendant's primary application fails, I am not satisfied that in this case revelation of the Defendant's identity would unfairly prejudice the proceedings or undermine the interest that the judicial process is seeking to protect.

63 The Third Party - However, I now have to come to the position of the Third Party. I am of the view that this is the only aspect of the Defendant's arguments which does raise serious concerns. The issue was raised with the Bank's counsel prior the issuance of proceedings. Despite that, an endorsed writ was issued with multiple references to the Third Party. I regard this as highly undesirable and an issue that should have been avoided. In my view this engages with the common law principles considered above that provide for exceptions to the principle of open justice and section 7(1)(a) of the Constitution and in particular the rights of and welfare of minors. The Plaintiff's counsel has already suggested that this issue should be dealt with by way of amendment to the pleadings or redaction.

64 Amendments to pleadings where leave is required as in this case are made pursuant to GCR O. 20, r. 5. I have considered how best to protect the interest of the Third Party. Conventional amendment to the pleadings will not be sufficient as the original text will remain, albeit struck through. Redaction seems a very clumsy approach in this case due to the frequency with which reference is made to the Third Party. However, I am not sure that there is a better alternative. In my view, therefore the Writ must be redacted prior to being uploaded to the register of originating process by redacting any reference to the Third Party or to any part of the pleading that might identify them. If there is any doubt as to what is required, the Plaintiff is to file a draft redacted pleading with the Court for approval prior to uploading.

65 This in turn will require that the Defence be redacted. The Defendant is therefore directed to re-file a redacted Defence and Counterclaim by redacting any reference to the Third Party or to any part of the pleading that might identify them.

66 Each redacted pleading should be endorsed with the fact that it is redacted pursuant to an order of this court in the same way as a writ re-issued pursuant to GCR O. 20, r.10 (3).

67 To the extent that either party is required to or feels it necessary to disclose the pleadings in this case to a third party then only the redacted Writ and/or Defence and Counterclaim may be disclosed other than with leave of the Court.

68 During the application Mr Valentin raised the question of the status of the hearing. As mentioned earlier, the cause list had the matter marked as “in private” however no order had been made that the court hear the matter *in camera*. As such, the matter proceeded as a normal chambers hearing. As outlined by Smellie CJ in *Sphinx,* hearings in chambers are not automatically to be regarded as *in camera*. Members of the public can be admitted to attend and there is no automatic restriction on the disclosure of what occurred in chambers. At the hearing of the Defendant’s application, evidence was adduced by way of affidavits as outlined above, in which multiple references were made to the Third Party as they were in the written and oral submissions. The concern about disclosure of this information was raised by Mr Valentin and, in response, Ms Ter-Berg confirmed that she was instructed that the Bank would undertake not to disclose such information from the hearing to any third party.

69 That then still leaves the question of the original pleadings, affidavits and written submissions which are on the Court file. As indicated earlier, a non-party may apply to the Court to inspect a court file pursuant to GCR O. 63, r.3(5). Practice Direction 1 of 2015 deals with such applications and was considered by the Court of Appeal in the *Sasken* case. The Court of Appeal considered the protection offered by GCR O. 63, r. 3(5) and was of the view that notice of an application under that rule should be given to the parties. It recommended that the Practice Direction be amended to specify that any such application should be made on notice. It does not appear that this amendment was made. The consequence of that is to leave open the possibility that an application might be made to the Court without notice to the parties and might be determined by the Court without their involvement. Bearing that in mind, I am of the view that for the protection of the interests of the Third Party, the original pleadings, along with the affidavits, written submissions and correspondence with the Court in relation to this application should be sealed on the Court file, subject to further order of the Court.

70 Returning to the Defendant's summons, I order as follows:

70.1 that the Writ and Defence and Counterclaim be redacted to remove any reference to the Third Party or matters that might identify them;

70.2 that the redacted Writ be placed on the public register of originating processes;

70.3 the original Writ and Defence and Counterclaim along with the affidavits, written submissions and correspondence with the Court relating to this application be sealed on the court file subject to further order of this Court.

71 I will give the parties 14 days to make brief submissions on the question of costs.

Hon. Justice Alistair Walters
Acting Judge of the Grand Court