



Neutral Citation Number: [2026] CIGC (FSD) 66

Cause No: FSD 2026-0096 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

BETWEEN:

BWB LLC

Petitioner

-and-

TACHYUM, LTD

Respondent

Appearances: Mr Andrew Ayres KC of counsel instructed by Ms Laure-Astrid Wigglesworth of Walkers (Cayman) LLP for the Petitioner

Mr Nigel Smith of Carey Olsen Cayman Limited for the Respondent

Before: The Honourable Justice Jalil Asif

Heard: 5 August 2026

Ex tempore judgment delivered: 5 August 2026

Finalised judgment approved: 13 August 2026

Winding-up petition—late application to adjourn trial—whether fair to proceed with hearing—terms on which adjournment would be granted

JUDGMENT

1. This is my judgment on a very late application to adjourn the trial of the petition in this matter, which is due to commence today. The Petitioner filed the winding-up petition on 18 March 2026. This matter has had an unfortunate procedural history, which I will set out in some detail, as it underpins a number of the criticisms of the Respondent's position that have been advanced by Mr Andrew Ayres KC, who appears on behalf of the Petitioner, instructed by Ms Laure-Astrid Wigglesworth of Walkers (Cayman) LLP. Mr Nigel Smith of Carey Olsen Cayman Limited appears on behalf of the Respondent and has sought to advance as many arguments as are reasonably presentable on behalf of the Respondent in order to seek to persuade me to adjourn this trial.
2. As I indicated, I will start off with the procedural chronology, which seems to me to be relevant to the matters I need to decide today. The first checkpoint is that on 6 May 2026, the petition having been presented on 18 March 2026, the matter came before me on a summons for directions at which point the Respondent was represented by Campbells LLP. I was presented with a largely agreed form of directions order, but the parties were unable to agree an appropriate date for the trial of the petition.
3. I gave some general indications as to my view when the trial ought to take place, namely that it should take place sooner rather than later since it involved a winding-up petition, and indicated to the parties that I had some availability at the end of July and possibly at the beginning of August 2026, although I indicated that if I was going to hear the petition in those windows, I would have to change my personal travel arrangements to be available. In those circumstances, I adjourned the summons for directions until 12 May 2026 in order to give the parties time to discuss and potentially agree a hearing date for the trial, and required that the parties notify the court by 8 May 2026 if they were able to agree a date for the trial.

4. On 8 May 2026, Walkers wrote to the court on behalf of both parties indicating that the parties were agreed that the trial should be listed for the first available date after 1 August 2026. Taking that statement of agreement at face value, I arranged to have the trial listed to commence today, 5 August 2026 and I agreed to vacate the adjourned hearing of the summons for directions that was fixed to continue on 12 May 2026, and that was communicated to the parties on 13 May 2026.
5. However, on 14 May 2026, Campbells on behalf of the Respondent wrote both to the court and to Walkers indicating that, contrary to what had previously been said, they were not available on 5 August 2026. They indicated that they were canvassing alternative dates with the Petitioner and would provide an update as soon as possible. That position, understandably, met with opposition from Walkers on behalf of the Petitioner. Later that day, Campbells wrote to clarify that the Respondent's representative and intended witness, the partner leading the matter at Campbells and the Respondent's proposed leading counsel did not have mutual availability during 21 July to 31 July 2026 and equally were not all available in the period from 5 to 7 August 2026. They proposed, as a result, that the petition be listed during the period from 1 to 4 September 2026.
6. That was not acceptable for a number of reasons. First of all, because the court was not available on those dates, but also, having regard to the indications that I gave at the hearing of the summons for directions and the prior agreement between the parties, I considered that the petition should be listed for trial on 5 August 2026, as originally intended. The parties were informed of this by Ms David on behalf of the Registry in an email dated 15 May 2026, saying this:

"The judge has read the emails from Walkers and from Campbells.

- *The judge notes that at the conclusion of the hearing of the summons for directions on 6 May 2026, the parties were to liaise regarding a possible date for hearing the petition in the periods 20-22 July 2026, 27-29 July 2026 or during the vacation. The parties were instructed to update the court by 8 May 2026 and the judge adjourned the summons for directions for further hearing on 12 May 2026 if the parties were unable to agree a hearing date.*
- *On 8 May 2026, Walkers informed the court that the parties were agreed that the petition should be listed for the first available date on or after 1 August 2026. Campbells were copied into that email and did not demur from its contents nor provide any unavailable dates. Accordingly, the summons for directions was not re-listed for further hearing on 12 May 2026.*
- *On 12 May 2026, the court confirmed that the petition would be listed for hearing on 5 August 2026.*
- *At 2:03 pm on 14 May 2026, Campbells stated that the Respondent's side were not available on 5 August 2026 and stated that they were canvassing alternative dates with the petitioner.*

- *At 2:17 pm on 14 May 2026, Walkers complained that Campbells were now saying the Respondent's side were unavailable for the whole of July and August 2026, and requested that the petition be listed for hearing on 5 August 2026 as indicated.*
- *At 3:36 pm on 14 May 2026, Campbells responded that the Respondent's side had difficulties with the combined availability of attorneys, leading counsel and client from 21-31 July 2026 and on 5-7 August 2026 and requested a hearing on 1-4 September 2026 if suitable for the court.*

The judge directs that the petition will be listed for hearing on 5 August 2026, as originally indicated, for the following reasons:

- *A hearing in September 2026 is not suitable for the court.*
- *If the petition is not heard on 5-7 August 2026, it is unlikely to be heard until the week of 19 October 2026, at the earliest, due to the listing of other matters, which are unlikely to settle.*
- *It is important that winding up petitions and other insolvency matters are heard promptly.*
- *It is currently unclear whether any oral evidence will be required to determine the petition beyond the affidavit evidence to be filed and served. If oral evidence is required, then the short duration of the hearing should not unduly impinge on the witnesses, and the court can consider permitting them to give evidence by video link if necessary.*
- *Paragraph B4.3 of the FSD Users Guide, 2nd edition notes that the court will not allow hearing dates to be unduly delayed, for example by reason of the unavailability of individual lawyers.*
 - *Campbells are a well-resourced firm and should be able adequately to conduct the hearing for the Respondent even if Mr Burrows is not personally available.*
 - *As regards leading counsel, the matter is still at an early stage and so, if it is necessary for the Respondent to find alternative leading counsel, the impact on the Respondent will be minimised.*
- *The Respondent initially agreed that a listing in August 2026 was suitable, without indicating any limitations on the Defendant's availability. It was only after the court provided a listing date that the Respondent first raised its stated difficulties."*

The upshot of this was that the matter was listed for trial to commence today.

7. The Directions Order was finalised on 21 May 2026 and required the Respondent to file its Defence by 3 June 2026 and to file its evidence in opposition to the petition by 10 June 2026. The Directions Order was sealed the same day and circulated to the parties the same day or the following day. Notwithstanding the Directions Order having been made and the procedural timetable to trial having been set, within 8 days the Respondent sought extensions of time both for its Defence and for its evidence in opposition. The Petitioner agreed with this request. As a result, I approved a Consent Order on 29 May 2026, extending time for the Respondent's Defence by two weeks to 17 June 2026 and granting a consequential extension of time for its evidence to 24 June 2026. Attendance at the hearing of the summons for directions and service of its Defence to the petition are the only procedural steps that the Respondent has complied with.

8. It has now been explained in the evidence before me in support of the Respondent's application for an adjournment of the trial that, on or around 22 June 2026, two days before the Respondent's evidence was due to be filed, the professional relationship between the Respondent and Campbells broke down in some way: the Respondent has not deigned to give an explanation, even at high level, as to why that occurred. However, the Respondent says that as from 22 June 2026, it was no longer receiving substantive advice from Campbells.
9. On 26 June 2026, Campbells filed a summons seeking a declaration that they had ceased acting for the Respondent. On 9 July 2026, an Order in those terms was made.
10. Returning to the procedural progress of this matter, on 25 June 2026, the Petitioner filed a summons seeking leave to amend its petition. The circumstances giving rise to that application were that the original petition relied on, amongst other things, a number of loan notes issued by the Respondent during the course of 2025, which at the time the petition was issued, had not yet matured but which the Petitioner asserted the Respondent would be unable to pay. However, by 25 June 2026, those loan notes had matured and the Petitioner had made a formal demand for payment, which the Respondent had not complied with. The amendments sought on 25 June 2026 were to rely upon the demand for payment in respect of those matured loan notes as giving an alternative justification for seeking the winding-up of the Respondent. As the Respondent was by then unrepresented, on 13 July 2026, I made an Order giving the Petitioner leave to amend its petition as sought, but expressly giving the Respondent the opportunity to apply to set aside that Order within 7 days of service of the Order upon the Respondent. The Respondent did not and has still not applied to set aside that Order and so, as of today, the Petitioner is fully entitled to proceed on the amended petition.
11. The Respondent took a little time from 26 June 2026 to identify Carey Olsen as alternative attorneys. All I am told by the Respondent is that it was on 3 July 2026 that the Respondent first contacted Carey Olsen to inquire about replacement representation. No explanation is given by the Respondent as to whether any other firms of attorneys were approached, when they were approached, and why it took until 3 July 2026 for the Respondent to identify Carey Olsen as

alternative counsel who were willing to take the Respondent on as a client. This is against the background that the Respondent was already in breach of the Consent Order for service of its evidence and that the trial of the petition was fixed to commence on 5 August 2026.

12. What I am told is that on 8 July 2026, the Respondent signed Carey Olsen's engagement letter and provided an initial retainer. However, it appears from the evidence that Carey Olsen required further funds to be provided by the Respondent, and those funds were not provided until as late as 27 July 2026. Again, there is no explanation in the evidence before me as to why it took the Respondent that period to provide Carey Olsen with additional funds. It is, again, highly material to bear in mind that at all times, the Respondent was well aware that it needed to prepare itself for the trial of the petition starting today and, if it wished to seek an adjournment of the trial, then it needed to do so as soon as conceivably possible.
13. Going back to the chronology, notwithstanding that Carey Olsen did not serve any Notice of Acting until yesterday, 4 August 2026, they did engage in some correspondence with Walkers concerning a possible adjournment of the trial. Carey Olsen wrote on 14 July 2026 inviting the Petitioner's consent to such an Order. Walkers responded the following day, 15 July 2026, rejecting that request and strongly encouraging the Respondent, if it wished to seek an adjournment of the trial, to make a formal application to do so by 12:00 pm on 16 July 2026.
14. The Respondent did not do so. It did not file any summons to adjourn the trial until yesterday afternoon at approximately 3:15 pm when Carey Olsen also filed a Notice of Acting, and I am told that the Respondent's skeleton argument in support was served and filed after 11:00 pm last night.
15. It is difficult to see a case where the Respondent could have delayed later than it has done in making its application for an adjournment. The Respondent's conduct throughout the course of this matter so far rightly deserves criticism from the Court, in that it appears to involve a wholesale disregard of the directions that have been ordered and of the requirements of the overriding objective.
16. However, as both attorneys have pointed out to me, the core question that I must ask myself is whether it is fair in all the circumstances to proceed with the hearing of the petition in the current

circumstances. Mr Ayres has helpfully referred me to my judgment in the case of The Armand Hammer Foundation Inc v Hammer International Foundation and Others (unreported, 9 April 2024), drawing on, first of all, Bilta (UK) Ltd v Tradition Financial Services Ltd [2021] EWCA Civ 221, and secondly, Fitzroy Robinson Ltd v Mentmore Towers Ltd [2009] EWHC 3070 (TCC). I summarized the applicable principles as being as follows, beginning at paragraph 35 in Armand Hammer:

“35. Drawing on the reasoning in the English authorities relied on by Mr McPherson, the fundamental question for the court is, will the refusal of an adjournment lead to an unfair trial? If so, then the hearing must be adjourned because the court cannot countenance an unfair hearing: see Fitzroy Robinson Ltd v Mentmore Towers Ltd at [45].

36. In deciding that question:

- a) The court must engage in an evaluative assessment of all the material placed before it.*
- b) The court does not assume that there can only be one fair outcome: different outcomes may still be fair but equally in some circumstances there may be only one answer in reality.*
- c) Fairness involves fairness to both parties. Inconvenience to the other party (or to other court users) is not a relevant countervailing factor and is usually not a reason on its own to refuse an adjournment unless there is truly uncompensatable injustice to the other party.*
- d) In assessing what is fair, the court will look at:*
 - i) the parties' conduct and the reasons leading to the request for the adjournment;*
 - ii) the extent to which the difficulties relied on in support of the adjournment can be overcome before the trial - even if significant work may be required;*
 - iii) whether there are specific matters that have arisen affecting the trial, such as the illness of a critical witness, and whether they may be managed without losing the trial;*
 - iv) the consequences of an adjournment for the plaintiff, the defendant, and the court.”*

17. It seems to me that those are the principles that I must apply in deciding whether or not to accede to the Respondent's application for an adjournment. I will therefore look at those four headline factors and reach my conclusion on those. I will focus first of all on the factors set out in subparagraph 36(d).

18. As I suspect is clear from my description of the Respondent's behaviour during the course of this matter, the Respondent's conduct has been, it seems to me, extremely poor and is rightly to be criticised. To a large extent, the Respondent is the author of its own difficulties in now being unable to present the case that it wishes to advance before the court in opposition to the winding-up petition. I have listened carefully to what Mr Smith has sought to put forward to explain and to exculpate the Respondent's procedural failures, and I do not accept his explanations. It seems to me that, as I have indicated, the Respondent has dragged its feet at pretty much every stage of the

procedural progress of this matter. Once Campbells indicated they were not willing to continue to act as the Respondent's attorneys, the Respondent has clearly not taken seriously its need to make alternative arrangements as a matter of urgency in order not to prejudice this trial proceeding today. The Respondent deserves no sympathy at all for the position in which it finds itself.

19. Consideration (ii) is the extent to which the difficulties relied upon can be overcome before the trial. They clearly cannot. It seems to me that the two alternatives really are that the trial proceeds today with no meaningful input from the Respondent and, unless the evidence and Mr Ayres' advocacy wholly fails to persuade me, the strong likelihood is that a winding-up order would be made against the Respondent. The second alternative is that, if I do accede to the Respondent's application, then that will obviously result in a complete waste of the time and the effort that has been taken on the Petitioner's side, in preparing for the hearing of this trial.
20. The third consideration is whether there are specific matters that have arisen affecting the trial, such as the illness of a critical witness, and whether they may be managed without losing the trial. In my view, there are no such critical features that have arisen. There is a faint suggestion in Dr Danilak's evidence, who is the Respondent's witness, that he may have a medical issue. However, there is no proper explanation of what is that issue, and no proper explanation why it means that Dr Danilak could not give evidence, if not in person, at least remotely, as was countenanced in the email from the court dated 15 May 2026, which expressly indicated that witnesses might give evidence remotely by video link.
21. I have already touched on item (iv), the consequences for the plaintiff, the defendant and the court. As far as the court is concerned, an adjournment is extremely disruptive, as Mr Smith has accepted. However, on the other hand, it does mean I could spend the time usefully trying to finish judgments that are overdue in other matters. Accordingly, as far as the court is concerned, apart from the time that has been wasted yesterday and this morning in pre-reading and dealing with this application for an adjournment, the impact is minimal.

22. The impact on the Petitioner is that it will have incurred a very significant sum by way of costs that will be completely wasted, although this can be compensated by an award of costs. In addition, the determination of its petition will be delayed and there will be a consequential delay in obtaining payment of the debt it alleges is owed to it, but this also can be compensated by an award of interest on the debt.
23. The impact on the Respondent, if the adjournment is refused, I have indicated is likely to be drastic: the Respondent will lose its opportunity to put forward what it says are genuine grounds for opposition to the winding-up petition and a winding-up order is likely to be made. If the adjournment is allowed, then the Respondent gets a short breathing period in which, first of all, to assemble and to finalise its evidence in opposition to the petition, but also, as indicated by Dr Danilak in his evidence, the Respondent has the possibility of exploring some kind of restructuring implicitly, I read into that, with a view to making sure that the Petitioner is paid the sums that are due to it on a fairly prompt basis.
24. As to the Respondent's intended opposition to the petition, I accept Mr Ayres' submission that the Respondent's position appears to be that it does not dispute the debt due under the 2025 notes, but it asserts that it has cross-claims that significantly exceed the value of the debt and that it would therefore be an injustice to the Respondent to make a winding-up order where the overall net position might be that the Respondent is a net creditor.
25. I also am cognisant that if there were to be a restructuring, and there is currently no evidence to indicate even whether a restructuring is viable at all, it is often said that a restructuring tends to provide a more favourable outcome than a liquidation, where assets are simply realised as quickly as possible on a forced sale basis.
26. I have real doubts about the merits of the cross-claims that the Respondent seeks to put forward. However, it does not seem to me that I can entirely reject those cross-claims out of hand. With some real hesitation, I am persuaded that I should adjourn the hearing of this petition, as a matter of fairness, to give the Respondent a final opportunity to put those matters forward. But it seems to

me, as I canvassed with counsel during the course of argument, that that opportunity should be conditional on the following requirements:

- 26.1 First of all, the Respondent must pay the Petitioners' costs of the Respondent's summons to adjourn and the costs thrown away as a result of the adjournment of the trial today, on the indemnity basis.
 - 26.2 Secondly, the Respondent must make a very substantial payment on account of those costs, within a period, I will say, of 21 days. I will give the Petitioner leave to file a very short affidavit within the next 7 days summarising its costs thrown away. Mr Smith is aware that Mr Ayres has already indicated that those costs are likely to be in the region of over US \$360,000, and the Petitioner will be seeking a payment on account of, I think he said, US \$250,000. I strongly suggest that the Respondent starts making arrangements today to have those funds available.
 - 26.3 Thirdly, I will order that the Respondent pay the full amount due under the 2025 notes into court within 21 days. If there is any application by the Respondent for a short extension of that period, it will need to be justified by cogent evidence to explain absolutely plainly what is the Respondent's financial position and why it is not able to make such payment within 21 days.
 - 26.4 Fourthly, to the extent that there is a difference between the Petitioner's costs thrown away by the adjournment and the payment on account of costs, I will order that the Respondent shall also pay that sum into court to await the outcome of the petition in due course.
27. In saying that the adjournment is conditional on those matters, it is my intention that compliance with those provisions should be on an unless basis, with the Respondent to be debarred from defending the petition if it fails to comply with any of those requirements. In addition, insofar as a new directions timetable is required to permit the Respondent to adduce evidence in opposition to the petition, compliance with that revised directions timetable by the Respondent will also be on the same unless basis.
28. So far as relisting the trial of the petition is concerned, as I have indicated to the parties and indicated back in May 2026, I am not available to hear the trial of this matter until 19 October 2026 at the

earliest. Having consulted with counsel, I will re-list this trial for hearing commencing on 26 October 2026, with a time estimate of 3 days.

Dated 13 August 2026

A handwritten signature in blue ink, appearing to be 'Jalil Asif', written over a horizontal line.

**THE HONOURABLE JUSTICE JALIL ASIF
JUDGE OF THE GRAND COURT**