

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

Cause No.: FSD 204 of 2016(IMJ)

BETWEEN

STEVEN GOODMAN

Plaintiff

AND

**(1) DAWN CUMMINGS.
(2) DMS GOVERNANCE LIMITED**

Defendants

COURT 6 AS CHAMBERS

Appearances: Mr. Rees QC instruction by Mr. P Smith, Mr. B Hobden and Mr. J McErlean of Conyers Dill & Pearman
Mr. B Valentin QC instructed by Mr. M Goodman and Ms. K Houghton of Campbells

Before: The Hon. Justice Ingrid Mangatal

Heard: 17 and 18 January 2019

**Ex Tempore Ruling
Delivered:** 18 January 2019

**Transcript of Ex Tempore
Ruling Circulated:** 21 January 2019



EX TEMPORE RULING

1. This is my Ruling on the 5th Preliminary Issue, which Issue is as follows:

On the assumption that Preliminary Issues 1 to 4 are determined in the affirmative, (as they have been pursuant to my Ruling delivered 13



September 2018), whether the Plaintiff is obliged to provide a “back to back” indemnity in favour of Tangerine Investment Management Limited (In Liquidation) (“**Tangerine**”) pursuant to the terms of the Deed of Assignment entered into between (1) Tangerine, (2) Mr. Goodman, and (3) Ian Stokoe (in his capacity as one of the former Joint Official Liquidators of Tangerine), on 18 March 2014.

2. This Ruling is not intended to be a fully reasoned judgment, but it sets out the kernel of my reasoning. If necessary, I will deliver a more detailed reasoned judgment at a later date.
3. This Ruling now arises in the context of an application by the Plaintiff to discontinue the action against the 1st Defendant, ultimately consented to by the 1st Defendant. The sole remaining question is whether the terms which the Court may impose when granting leave to discontinue an action under G.C.R. Order 21 Rule 3(1), should be costs on the standard basis, or costs sought under the Contractual Indemnity to be considered in Issue No. 5. The 1st Defendant has made clear that it is not seeking indemnity costs under the Court’s general jurisdiction/discretion, as set out in GCR O. 62 r. 4(11).
4. In my judgment, the Plaintiff is obliged to indemnify Tangerine pursuant to the terms of the Deed in respect of any order for costs made against Tangerine, including the order made at paragraph 11 of the November 2018 Order.
5. Ms. Dawn Cummings, the 1st Defendant, is entitled to an order that the Plaintiff indemnify Tangerine, within 28 days, in respect of all costs and expenses incurred by the 1st Defendant in defending these proceedings, to the extent that these costs are not (or have not been) paid directly to the 1st Defendant by the Plaintiff.
6. In my view, the correct interpretation of Clause 4.1.4 of the Deed is that it requires the Plaintiff to indemnify the JOLs and/or Tangerine against any proceedings pursued by the Plaintiff against the 1st Defendant. Such costs and expenses necessarily include (to the extent not already paid by the Plaintiff) any liability for costs and expenses incurred by Tangerine by reason of Articles 149-154 of the Articles of Association.

7. This Court has already made an order that Tangerine shall pay to the 1st Defendant all amounts in respect of the legal fees, costs and expenses she incurs in future in defending these proceedings, all such amounts to be paid by Tangerine, for the avoidance of doubt, and in accordance with Article 154, in advance of the final disposition of the proceedings, and within 28 days of written demand by the 1st Defendant's attorneys: see the November 2018 Order at paragraph 11.

8. In my judgment, that Order is "*an order for costs*" in respect of which the Plaintiff is contractually obliged to indemnify Tangerine pursuant to Clause 4.1.4 of the Deed.

9. In any event, Foster J, in May 2015, sanctioned the Deed expressly on the basis that Tangerine would incur no liability as a result of the assignment of the various causes of action to the Plaintiff. It is not in dispute that the Articles of Association were known to the Plaintiff and the Court, when he sought the Court's sanction, and the Plaintiff cannot now argue that the assignment was sanctioned on any more limited basis.

10. It is, in my view, immaterial that the Deed makes no reference to, and does not incorporate, the Articles of Association.

11. In my judgment, the Plaintiff is not correct that there needs to be a two stage process, in respect of the 1st Defendant's costs, and the Court does have jurisdiction to impose a direct order against the Plaintiff. The Court's jurisdiction to make this order goes back in time to the Order for Directions made by Consent on 21 August 2017, entered into by the Plaintiff, the 1st Defendant and Tangerine.

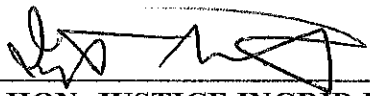
12. The Court also notes that the position adopted by the 1st Defendant is consistent with the position that was adopted by Tangerine (via the JOLs) in the Third Party Claim, during its short existence between 1 and 15 September 2017, when it was discontinued.

13. It is therefore ordered that:

- (1) the Plaintiff has leave to discontinue his action against the 1st Defendant on the following terms:



- i. the Plaintiff shall pay to the First Defendant her costs of and occasioned by her defence of this action, including for the avoidance of doubt, the Third Party Proceedings and the trial of the Preliminary Issues determined by judgment filed 13 November 2018, calculated on the indemnity basis provided for in Articles 149-154 of the Articles of Association of Tangerine Investment Management Limited. Such costs to be taxed on the indemnity basis, if not agreed. Credit is to be given to the Plaintiff to the extent of costs already paid.
- ii. The sum of US\$250,000 to be paid on account of the costs referred to above within 28 days of the date hereof.
- iii. The Plaintiff and any person claiming through him, shall be debarred from initiating or pursuing any further or other proceedings against the 1st Defendant arising out of her tenure as a director of Tangerine, or as an employee of any DMS group, company or affiliate in any jurisdiction, including (but not limited to) the Cayman Islands, the United Kingdom, Australia, Singapore and the United States of America.



**THE HON. JUSTICE INGRID MANGATAL
JUDGE OF THE GRAND COURT**

