



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

FSD CAUSE NO: 54 OF 2023 (IKJ)

**IN THE MATTER OF THE COMPANIES ACT
AND
IN THE MATTER OF ATOM HOLDINGS (IN PROVISIONAL LIQUIDATION)**

IN COURT

Appearance

Mr. Adam Crane, Ms. Nicosia Lawson and Ms Nia Statham of Baker and Partners for the Petitioner

Ms Gemma Lardner and Mr Max Galt of Ogier for the Company

Jalil Asif KC of Kobre & Kim for the Joint Provisional Liquidators

Before: The Hon. Justice Kawaley

Heard: 7 July 2023

Date of Judgment: 7 July 2023

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Winding-up Petition- creditor petition-allegations of fraudulent mismanagement-evidence of insolvency and need for an investigation-late adjournment application by company-governing principles

EX TEMPORE JUDGMENT

Introduction and summary

1. I am satisfied that the Company's present application should be refused. The application for an adjournment in this case is made not just in the "59th minute of the eleventh hour"¹, but in the last minute of time added on for stoppages; and it is made in the weakest possible way.

Background

2. I am satisfied that the former Directors, whom I accept have standing despite their being removed from office to instruct counsel on behalf of the Company knew of the existence of these proceedings, despite the embargoes placed on the Order appointing the Joint Provisional Liquidators, from at least the middle of May this year.
3. On 20 June 2023, they seemingly resolved to instruct counsel to appear and oppose the Petition, but for reasons that are unexplained they took from 20 June until this week to instruct Cayman Islands counsel. The basis of the adjournment is set out in the Affidavit of a Hong Kong Ogier lawyer who, in effect, says that Ogier only became aware of the proceedings on 5 July (two days ago); and they need time, more time, to respond to the legal and factual issues raised in the Petition.
4. One might have thought that the former directors, having been aware of the existence of these proceedings since the middle of May would, if they were serious about opposing the Petition, have identified some basis for doing so before 5 July 2023, two days before the hearing of the Petition.

Grounds for adjournment application

5. Ms Lardner, who was asked in effect to lead the 'Charge of the Light Brigade', was forced to rely on this ground: the possibility that the Company may want to dispute the standing of the Petitioners. That ground is a potentially valid ground; however as far as the present case is concerned it is a somewhat tenuous one. Because I gave extensive reasons for finding at the interlocutory stage that

¹ *Re MV Cayman Ltd*, FSD 8 of 2022, Judgment dated 28 September 2022 (DDJ) (unreported), per Justice David Doyle at paragraph 9.

the Petitioners had sufficient standing to appoint provisional liquidators². And in appointing provisional liquidators I found that there was a *prima facie* case for winding-up³.

6. And while the decision that a contingent creditor has standing to petition under Cayman Islands law may be an unusual one, it is not unprecedented. So, there is no basis for anxiety that there is an obvious, cogent standing issue upon which the Company is likely to prevail⁴.

Governing legal principles

7. The key legal principles governing adjournments have been addressed in various cases. A local case that Ms Lardner relied upon was the decision of Justice Doyle on 28th September 2022 in the *MV Cayman Limited* matter and Justice Doyle, at paragraph 18, said this:

“18. In Evergreen⁵ at paragraph 55 Ramsay-Hale J stated: ‘It is well settled that if a creditor with standing to make an application wants to have a company wound up, and if the court is satisfied that the company cannot pay its debts, a winding up order will follow unless there are some special reasons why it should not.’ At paragraph 58 Ramsay-Hale J refers to authorities to the effect that in practice the court will only adjourn if there is credible evidence that there is a reasonable prospect of the petition debt be repaid within a reasonable time. Ramsay-Hale J at paragraph 61 adopting the words of Kawaley J in ASL Asean Tower (FSD unreported judgment 8 March 2019) stated that the court should be ‘leery’ in respect of last minute applications. It is right that the court should be cautious and wary in respect of last minute adjournment applications. I should, for present purposes, set Kawaley J’s ‘leery’ comment in context. The full sentence at paragraph 39 of his judgment was as follows:

‘In my judgment winding up courts should generally be leery of last minute adjournment applications made by insolvent companies and/or related parties and which are framed as requests to investigate for the first time matters which ought to have been investigated long ago.’....”

Application of principles to facts of the present case

8. In *MV Cayman* the position was that Justice Doyle found that there was a good reason to adjourn because there would be a relatively short adjournment, from the date of the hearing (28 September)

² Judgment dated 18 May 2023 (released for publication on 15 June 2023), at paragraphs 10, 37-44.

³ *Ibid*, at paragraphs 45-46.

⁴ In the course of the subsequent substantive hearing of the Petition I observed, by way of afterthought, that the Authority would probably have been able to apply to be substituted as petitioner to meet any valid standing objections.

⁵ *Re Evergreen International Holdings Limited*, FSD 349 of 2022 (MRHJ), Judgment dated 11 January 2022 (unreported).

until 25 October; and that period would have afforded the company an opportunity to pursue refinancing efforts with a view to paying off its creditors. Those factual circumstances could not be further from the present case.

9. Here it is believed that the former management of the Company have been involved in fraudulent conduct, have obstructed, or not cooperated with, the Provisional Liquidators and have left large numbers of creditors with individually small claims, but with claims cumulatively running into millions, unpaid and with no immediate prospect of any recovery. Moreover, in this case there is a public interest in an investigation, one of the winding-up grounds being that there is a need for an investigation and the Cayman Islands Monetary Authority has sent representatives to observe these proceedings.
10. The question of the approach to adjournments is also summarised crisply in French, *'Applications to Wind Up Companies'*, Fourth Edition, in a paragraph to which Mr Crane referred in opposing the application for an adjournment (paragraph 5.120). It is stated:

"A mere assertion by counsel for the company that, given time, it was hoped to obtain evidence to establish the petitioner did not have standing was not enough to obtain an adjournment in EG & H Nominees Proprietary Limited v General Insurance Company Limited..."

Conclusion

11. And so, in all the circumstances of this case I am bound to refuse the application for an adjournment and now just need to deal very summarily with the application to wind up this Company.



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