



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

**Cause Nos FSD 268, 269 and 270 OF 2021 (IKJ)**

**B E T W E E N :**

**CREDIT SUISSE LONDON NOMINEES LIMITED**

**Petitioner**

**- and -**

**PRINCIPAL INVESTING FUND I LIMITED (FSD 268)**

**LONG VIEW II LIMITED (FSD 269)**

**GLOBAL FIXED INCOME FUND I LIMITED (FSD 270)**

**First Respondents**

**- and -**

**FLOREAT PRINCIPAL INVESTMENT MANAGEMENT LIMITED (FSD 268)**

**LV II INVESTMENT MANAGEMENT LIMITED (FSD 269)**

**FLOREAT INVESTMENT MANAGEMENT LIMITED (FSD 270)**

**Second Respondents**

**AND**

**Cause No. FSD 106 of 2024 (IKJ)**

**B E T W E E N :**

**MR CHIA HSING WANG**

**Plaintiff**

**- and -**

**LV II INVESTMENT MANAGEMENT LIMITED**

**Defendant**

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Credit Suisse London Nominees Limited v Floreat Principal Investment Management Limited et al- FSD 129,130 and 131 of 2024(IKJ)- Reasons Refusing Leave to Appeal*

AND

Cause Nos FSD 129, 130 and 131 of 2024 (IKJ)

**B E T W E E N:**

**CREDIT SUISSE LONDON NOMINEES LIMITED**

**Petitioner**

**- and -**

**FLOREAT PRINCIPAL INVESTMENT MANAGEMENT LIMITED (FSD 129)**

**LV II INVESTMENT MANAGEMENT LIMITED (FSD 130)**

**FLOREAT INVESTMENT MANAGEMENT LIMITED (FSD 131)**

**Respondents**

**IN COURT**

**Before:** The Hon. Justice Kawaley

**Appearances:**

Mr James Collins KC of Counsel with Mr David Lee and Mr Zuhair Farouki of Appleby (Cayman) Limited for the Petitioner

Mr Tom Richards KC of Counsel with Mr Alan Quigley of Forbes Hare for the Respondents

**Heard:** 13 August 2024

**Date of decision:** 13 August 2024

**Draft Reasons  
circulated:** 15 August 2024

**Reasons delivered:** 21 August 2024

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Credit Suisse London Nominees Limited v Floreat Principal Investment Management Limited et al- FSD 129,130 and 131 of 2024(IKJ)- Reasons Refusing Leave to Appeal*

*Applications for leave to appeal-relevant test-adjourning of winding-up petitions pending renewed applications for leave to appeal from Cayman Islands Court of Appeal*

## REASONS REFUSING LEAVE TO APPEAL

### Background

1. The present Judgment arises in relation to the following sets of proceedings:
  - (a) FSD 106 of 2024 (the “Declaratory Relief Proceedings”) in which on 2 July 2024, for the reasons delivered on 15 July 2024, I granted the final declaration the Plaintiff (Mr Wang) sought and dismissed the interlocutory Jurisdiction Summons of the Defendant (“LV2IM”);
  - (b) FSD 268-270 of 2021 (the “Contributory Petition Proceedings”) in which on 2 July 2024 I dismissed the Second Respondents’ Stay Summonses (applications to stay the Costs Orders made against them in those proceedings);
  - (c) FSD 129-131 of 2024 (the “Winding-Up Proceedings”) which I adjourned on 19 July 2024 pending the determination of leave to appeal applications by LV2IM and the Second Respondents against the two interlocutory decisions made on 2 July 2024. On the same date I also rejected LV2IM’s crossclaim defence.
2. The leave to appeal applications and the Winding-Up Proceedings were listed for hearing on 13 August 2024. I refused the leave to appeal applications and summarily decided to further adjourn the Winding-Up Proceedings pending the determination of LV2IM’s application for leave to appeal against my 19 July 2024 dismissal of its crossclaim defence and (without deciding the precise terms of the adjournment) pending its renewed application for leave to appeal to the Cayman Islands Court of Appeal. In the course of the hearing, I observed that the Second Respondents appeared to be engaged in an elaborate straw-clutching exercise.
3. I gave brief oral reasons for my refusal of the leave to appeal applications which, as promised, I now memorialise somewhat more fully.

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**Leave to appeal: the legal test**

4. The legal test was agreed. In *Select Vantage Incorporated v Cayman Islands Monetary Authority* [2017] (2) CILR N 4, the Court of Appeal articulated the following governing principles for granting leave to appeal:

*“The general rule is that leave to appeal will be given only in the case of an appeal with a realistic (as distinct from a fanciful) prospect of success. In exceptional circumstances, leave may also be given if there is an issue which, in the public interest, should be examined by the Court of Appeal. Leave will generally not be given in the case of an appeal against a judge’s exercise of a discretion (unless it can be shown to have been palpably wrong)...”*

5. I consider that the applicable test primarily requires an objective assessment of whether an appeal against an impugned interlocutory decision has realistic prospects of success in the sense of procuring a reversal of the impugned decision on its merits. This requirement is of course not essential in the exceptional cases where it is contended that the public interest justifies appellate consideration of a legal issue, even if the appeal is in merits terms unlikely to succeed.
6. Decisions relating to jurisdiction or staying enforcement of judgments while discretionary invariably require the trial judge to consider and evaluate factors the law regards as relevant to the exercise of the relevant discretion. In my judgment it is not enough for the leave applicant to advance an arguable basis for establishing a failure of the trial judge to accurately record the relevant legal principles or explicitly deal with every point the leave applicant advanced. The leave applicant must demonstrate a realistic prospect of demonstrating that the impugned decision properly analysed should be set aside.

**The Jurisdiction Summons**

7. The Jurisdiction Summons was argued together with the Declaratory Relief application which I granted and in respect of which LV2IM is entitled to appeal as of right. The essential finding was that this Court had jurisdiction to grant a declaration that the ultimate beneficial owner (Mr Wang) of one Cayman Islands company was not personally liable as a matter of Cayman Islands law for the debts owed by that company to LV2IM, another Cayman Islands company in circumstances where:

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- (a) there were no pending foreign substantive proceedings in Switzerland where LV2IM had commenced attachment proceedings against Mr Wang;
- (b) the Plaintiff's evidence that Swiss conflict rules suggested that if the same issue was determined by the Swiss Court, it would likely apply Cayman Islands law, was not contradicted by any other Swiss law opinion evidence; and
- (c) as a matter of law, the onus lay on LV2IM to demonstrate that some other more appropriate forum was available.

8. As regards the legal principles, I found:

*“18. It is possible to extract from Smellie CJ’s reference to ‘the plaintiff’s prima facie right to bring the action in this jurisdiction’ (KTH Capital Management Ltd v. China One Financial Ltd [2004-05 CILR 213] at paragraph 33) a requirement for the Plaintiff to prove facts supporting that prima facie legal entitlement. In many cases, establishing the factual basis for the entitlement to sue the defendant within the jurisdiction will be (as here where the Defendant is a Cayman Islands company) straightforward and not capable of reasonable dispute.*

*19. It is also right to accept that this Court should in assessing which is the appropriate forum generally take into account the fact that there are foreign substantive proceedings involving a wider dispute of which the claim prosecuted in this jurisdiction merely forms a part. As Doyle J found in Maples FS Ltd., the fact that the Cayman Islands claim forms part of a wider dispute which is properly (and substantively) before a foreign court in advanced proceedings will often be a strong pointer towards the appropriateness of the foreign forum.*

*20. There accordingly appeared to be a huge contextual chasm between the facts of this case and the facts of the cases upon which the Defendant’s counsel relied to support the essential hypothesis of the jurisdictional challenge: that Switzerland was clearly and distinctly the most appropriate forum.”*

9. The first ground of appeal, as advanced through argument, complained that I had failed to properly evaluate the connecting factors LV2IM relied upon which were set out in paragraph 27 of its Skeleton as follows:

*“27.1. the domicile and residence of Mr Wang;*

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*27.2. his participation in the attachment proceedings brought against him by LV2IM and FPL;*

*27.3. the location of the assets against which attachment action is being taken;*

*27.4. the applicability of Swiss law to all or most of the legal issues in those proceedings, namely: (i) whether the attachment proceedings were abusive, (ii) what law applies to the applicants' enforcement claim as a matter of Swiss private international law, (iii) whether the assets are attachable under the Durchgriff principle if Swiss law applies, and (iv) whether if Cayman Islands law is potentially applicable there are grounds to apply Swiss law in any event; and*

*27.5. the fact that Mr Wang had chosen to adduce evidence of Caymans Islands law in the Swiss Proceedings, which remained before the Swiss Court to resolve (insofar as it arose at all)."*

10. The second ground of appeal, a gloss on the first as advanced in oral argument, complained that I had failed to consider as an additional connecting factor the fact that Floreat Private Limited ("FPL") was still pursuing attachment proceedings against Mr Wang in Switzerland in respect of its LCIA Award costs claim against another Cayman Islands company ("AGH").
11. Central to the challenge to my dismissal of the Jurisdiction Summons was the contention that I had given undue emphasis to the fact that no foreign substantive proceedings were pending in Switzerland and gave insufficient weight to the pendency of the attachment proceedings and the steps Mr Wang had taken in those proceedings (including relying on this Court's Declaration). Mr Richards KC accepted that he had not identified any authority which directly supported the relevance of non-substantive foreign proceedings to the appropriate forum analysis.
12. As I indicated in my oral decision, I accepted that it was arguable that I failed to explicitly evaluate each connecting factor to Switzerland upon which LV2IM relied. However, I was unable to accept that, as a result, the challenge to the merits of the impugned decision had realistic prospects of success. The jurisdictional factors in favour of the Cayman Islands as the appropriate forum were in my judgment compelling in the context of:

- (1) determining whether to grant a declaration under Cayman Islands law as of right against a Cayman Islands company;

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- (2) a case where there were no pending substantive foreign proceedings; and
- (3) applying traditional forum principles, none of the factors relied upon (individually or cumulatively) appeared to me to even arguably point to Switzerland as clearly and distinctly the most appropriate forum.

### The Stay Summons

13. The Second Respondents sought to stay enforcement of the Costs Orders obtained by the Petitioner in the Contributory Petition Proceedings based on the alleged injustice of Mr Wang failing to provide further financial support to Blue Water so it could meet its far larger obligations to LV2IM under the LCIA Awards, in circumstances where he was not personally liable for those debts. Under Garnd Court Rules Order 45 rule 11, it was common ground that no stay was possible because no post-judgment events were relied upon. It was contended that this Court's inherent jurisdiction could be invoked. I agreed with LV2IM that this jurisdiction was potentially available but there was no proper basis on the facts for exercising it:

*“39...this Court has the inherent jurisdiction to grant a stay of execution based on circumstances which pre-dated the entering of judgment, notwithstanding the terms of Order 45 rule 11, but only where such power is needed to prevent some serious form of injustice or to prevent an abuse of the processes of the Court.*

*43. The critical question was the following: is it manifestly legally unfair or abusive for the Petitioner to enforce its costs award against, inter alia, LV2IM because the individual for whose ultimate benefit it is acting has declined to voluntarily advance further capital to another company which he ultimately owns which is substantially indebted to LV2IM and (apparently) another which is substantially indebted to FPL?*

*44. Legal logic very quickly generated a negative answer to this question. Predictability in this area of the law is sacrosanct. Costs follow the event. Litigation strategies are devised and implemented based on the assumption that costs orders which are made will be enforceable, without regard to the exigencies in unrelated but tenuously connected separate proceedings. I felt bound to conclude that the inherent jurisdiction to stay execution of judgments is not intended to be used by judges to achieve highly subjective, quixotic notions of justice...”*

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14. The Respondents relied upon three draft grounds of appeal:
- (a) I erred in finding that exercising the inherent jurisdiction to grant relief inconsistent with this Court’s Rules required “serious” injustice as opposed to merely injustice *simpliciter*, and added a gloss unsupported by any authority;
  - (b) I erred in finding that the Swiss attachment proceedings were only “tenuously” connected to the Contributory Petitions when the human actors behind the corporate entities were the same;
  - (c) “*LV2IM had a real prospect of recovering from Mr Wang directly in Switzerland on the basis of the Swiss law principle of Durchgriff; whether Mr Wang was liable as a matter of Cayman Islands law (which] the Appellants had not suggested) was irrelevant to the demands of justice.*”
15. As regards the first ground, I accepted that it was arguable that I had expressed the legal test in a semantically imperfect manner. However, I was unable to accept that if such an error was found to have occurred, there was in addition a realistic prospect that such an error would result in my decision to refuse to grant the stay being set aside. It seemed fanciful to contend that the Court’s inherent jurisdiction could potentially be exercised in an entirely untrammelled manner to override the express terms of this Court’s stay of execution rules.
16. As regards the second and third grounds of appeal, as developed in argument, the central single broad complaint was that I had failed to have any or sufficient regard to the prospects of LV2IM achieving success in substantive proceedings in Switzerland. Again, I was able to accept that I had arguably failed to adequately explain precisely why I considered the substantive claims that LV2IM (and/or FPL) might at some future point commence in Switzerland against Mr Wang to be of tenuous relevance.
17. However, I was unable to accept that the Second Respondents had demonstrated realistic prospects of success in terms of establishing an entitlement to the stays they sought. This is because the circumstances of the present case appeared to me to make it unrealistic to contend that recognised notions of justice required a stay, having regard to:

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- (a) the fact that this Court had already determined that Mr Wang was not personally liable for the substantial LCIA Award debt (against Blue Water in favour of LV2IM);
- (b) the fact that there was no Swiss law evidence before the Court supporting the proposition that substantive proceedings against Mr Wang would have a realistic prospect of being determined under Swiss law, let alone of succeeding under Swiss law;
- (c) the fact that the relevant substantive proceedings had yet to be commenced in any event. There was no reasonable basis for concluding that justice required a stay pending the determination of proceedings not yet commenced; and
- (d) the proposition that the Court could infer realistic prospects of success of a substantive Swiss law claim against Mr Wang by LV2IM from the original and/or recent Swiss attachments was inconsistent with the only direct Swiss law expert evidence placed before the Court in support of the Declaratory Relief Proceedings.

### Conclusion

18. For these reasons, on 13 August 2024 I refused leave to appeal against the Orders dated 2 July 2024 dismissing LV2IM's Jurisdiction Summons and the Second Respondents' Stay Summonses.



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

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