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Cause No: FSD 2024-0090 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)
AND IN THE MATTER OF SHILIU INVESTMENT GROUP LIMITED
BETWEEN

JIA LING JIANG LIMITED

Petitioner

-and-

(1) QI XIA SHAN LIMITED
(2) ZI JIN SHAN LIMITED
(3) WU TONG SHAN LIMITED

Respondents

Appearances:	**Mr Ben Hobden and Ms Kelsey Sabine of Harneys for the Petitioner** **Mr Denis Olarou and Mr Jason Mbakwe of Carey Olsen for the Respondents**
Before:	**The Honourable Justice Jalil Asif KC**
Heard:	**26 March 2025**
Ex tempore judgment delivered:	**26 March 2025**
Finalised judgment approved:	**10 April 2025**

Practice and procedure—second adjournment of trial due to unavailability of witnesses

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JUDGMENT

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1. This is an application by summons filed on 19 March 2025 for a second adjournment of the trial of the petition in this matter. The case was originally listed for hearing in January 2025 with a reading day on 10 January 2025 and to commence in court on 13 January 2025. By its petition, the Petitioner seeks the winding up of Shiliu Investment Group Ltd on the just and equitable basis. The Petitioner complains that the two individuals behind the company and its wider corporate group, both of whom are Chinese businessmen, have fallen out with each other, leading to the allegation that Shiliu Investment Group Ltd has been operated oppressively, justifying its winding up.

2. On 6 January 2025, I adjourned the trial due to difficulties with the two principal witnesses being able to attend the trial for cross examination. At that stage the difficulty facing the Petitioner's primary witness had been partially resolved 3 days before the hearing of the adjournment application. But the Respondent's principal witness was still subject to a travel restriction preventing him from leaving the PRC in order to give evidence, either in the Cayman Islands or by video-link from Hong Kong.

3. At the hearing of the adjournment application on 6 January 2025, I was still keen that, if possible and as originally provided for in the directions order, both the witnesses should travel to the Cayman Islands in order to give evidence and to be cross-examined in the normal way. On the invitation of the parties, I made some comments on the desirability of this in the course of my judgment on the application with a view to encouraging the Chinese authorities to look favourably on the applications to be made by the witnesses for them to be given permission to travel, preferably to the Cayman Islands but in default to Hong Kong, in order to be able to give their evidence.

4. At the time of the first application for an adjournment, I was able to offer the parties a new trial date commencing on 9 April 2005, with 9 April 2025 as a reading day. I made an Order to that effect at the conclusion of the hearing on 6 January 2025.

5. Unfortunately, it now appears that whilst the Petitioner's witness is now free, and has been since 3 January 2025, to travel to Hong Kong, neither witness is able to travel to the Cayman Islands and the Respondent's principal witness is still subject to a new travel restriction which prevents him

leaving the PRC to go to Hong Kong. This is the minimum currently necessary for him to be able to give evidence because the Chinese authorities do not permit evidence for foreign proceedings to be given remotely from within the PRC, and an application to the Chinese authorities under the Hague Convention to be permitted to give evidence from within the PRC has not yet been determined.

6. Finally, by way of introduction I should say that very shortly before the Respondent's summons was filed, I dealt with a restored application by the Petitioner for its witness to be allowed to give evidence from Hong Kong rather than requiring him to travel to the Cayman Islands for that purpose, and I granted that permission on the papers.

7. Initially, the Respondent also sought to renew its application for its witness to be given leave to give evidence from Hong Kong but due to some last-minute developments, in particular the discovery of a new travel restriction affecting him, the Respondent issued the summons now before me seeking a further adjournment of the trial.

8. As I said in both my previous judgment in this case, dealing with the same question, and in *Hammer Foundation v Hammer International Foundation & Ors* (unreported FSD 113 of 2023, 9 April 2024) at [35], the fundamental question for the court on any application to adjourn a trial is whether a refusal to adjourn would lead to the hearing being unfair, and if so the hearing must be adjourned because the court cannot countenance an unfair hearing. In *Armand Hammer* I referred to the *Fitzroy Robinson Limited v Mentmore Towers Limited* EWHC 3070 (TCC) at [45]. I then elaborated in [36] on the approach of the court to considering an adjournment application, and said this:

> *"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."

9. I bear that guidance in mind in reaching my conclusion on the present application for an adjournment.

10. Mr Hobden, who appears for the Petitioner, complains that the Respondent generally, and Mr Cui Wei in particular, who is the witness in question, has not made appropriate efforts to make himself available in order to be cross-examined. He complains that the Respondent, not just in relation to the requested adjournment of the trial, but throughout the procedural history of this case, has engaged in what he describes as delaying tactics. He relies heavily on my comment on the last application for an adjournment, and in particular at the end of [41], where I said:

> *"If the position is that Mr Cui still does not have permission to travel to Hong Kong in April 2025, it seems to me that we may well reach the stage at that point that the matter should go ahead nonetheless. But I will wait to hear from the parties closer to the time if that turns out to be the situation."*

11. Mr Hobden complains that Mr Cui has personally done very little in order to try to move forwards his ability to travel outside the PRC in order to be able to give evidence, and criticizes various aspects of the evidence that has been filed on behalf of the Respondent in support of the adjournment application.

12. Mr Olarou, who appears for the Respondent, has suggested that an adjournment would still result in the petition being decided within the sort of timescale that is common, or perhaps acceptable rather than common, for a petition of this kind. Mr Hobden criticizes that submission on the basis that he says the parties have been working towards having this petition ready for hearing for many months, and indeed it has been ready, at least from the Petitioner's side since at least January 2025: the only reason why the trial has had to be adjourned is Mr Cui's unavailability.

13. Mr Hobden goes on to say that any unfairness suffered by the Respondent essentially is of the Respondent's own making. He says that it can be addressed by allowing the Respondent to rely on Mr Cui's written evidence, and to treat that witness statement as being admissible subject to submissions as to its weight, given that Mr Cui will not be cross examined upon the content of that witness statement.

14. He also refers to the Petitioner's constitutional right to have a fair trial within a reasonable time and he complains that the Respondent is asking the court to override that constitutional right, so that Mr

Cui *may* be able to give evidence at a later stage. He makes that submission on the basis that Mr Cui accepts in one of his affirmations before the court that there is still no certainty, even if the trial were to be adjourned, that he would be able to give evidence in due course. This is simply because he cannot predict whether any further travel restrictions might be placed upon him by the Chinese authorities, and because there is the possibility that the Chinese authorities might still prevent his travel, whatever plans are made to facilitate that travel.

15. Mr Olarou candidly accepts that he is in a very unhappy situation having to make a second application for an adjournment of the trial, but nevertheless valiantly contends that it is the right decision in this particular case, because proceeding with the trial as originally ordered on 9 April 2025 will result in the trial being unfair. This is because Mr Cui is the Respondent's only factual witness, and he will not be able to give oral evidence at all if the trial proceeds on the current dates. As a result, the only factual evidence that the Respondent will be able to rely upon will be Mr Cui's written statement, which the Petitioner, no doubt, will seek to persuade the court to give no weight due to Mr Cui's unavailability for cross examination.

16. Mr Olarou bolsters the argument that it would be unfair to proceed with trial in those circumstances with the submission that there has not been any improper conduct on the part of the Respondent that is sufficiently serious to override the Respondent's right to a fair trial. He submits that Mr Hobden's reference to the constitutional right to a trial within a reasonable period overlooks that that constitutional provision also requires that the trial should be a fair trial. Mr Olarou therefore comes back to the position that proceeding on 9 April 2025 would not result in the trial being fair because of the Respondent's inability to adduce oral evidence from Mr Cui and for Mr Cui to be cross-examined upon it.

17. Mr Olarou characterizes the reason why Mr Cui is not available as being that Mr Cui is simply caught up by Chinese bureaucracy. His argues that there is no prejudice to the Petitioner that cannot properly be compensated by costs in due course. He contends that the prejudice which is put forward by the Petitioner in support of its opposition to the adjournment really is of no weight, and to the extent there is any merit in the suggested prejudice, they are all matters that can properly be compensated by costs.

18. This is not a happy situation for the court to have to consider a second application to adjourn a trial. As the parties have recognised, the court is keen to maintain progress in cases of this kind, indeed,

in cases generally, and it is therefore extremely unfortunate that the situation has arisen where a party is now asking for a second time for a trial to be a vacated.

19. I have listened very carefully to the submissions made on behalf of each party, and have considered as best I can on the basis of the material before me, whether, ultimately, fairness requires that I should adjourn the trial or whether the balancing exercise in what is fair to each party, which does involve taking into account questions of conduct, comes down on this occasion against the Respondent and in favour of proceeding with the trial on 9 April 2025.

20. With some hesitation, I am persuaded that the complaints about Mr Cui's conduct made by Mr Hobden are overstated. The evidence that I have seen does seem to me to indicate that Mr Cui has made attempts to deal with travel restrictions both himself and by employing appropriate individuals within the Respondent organisations to try to deal with matters related to the travel restrictions imposed upon him. On balance, it does seem to me that it is more accurate to describe the situation as being unfortunate bureaucracy rather than necessarily a dragging of heels by Mr Cui on this occasion. Bearing in mind the potential impact on the Respondents' position of Mr Cui not being available to give oral evidence and to be cross-examined, the likely impact of that on the conduct of the trial and the evidence that would be put before me as a result in order to decide the petition, with some hesitation I am persuaded that I should accede to the Respondents' application to adjourn the trial for a second time.

21. On this occasion, however, I repeat in more strident terms the warning that I gave in January 2025. It seems to me that this really is the last chance saloon: if Mr Cui is not available to give evidence at the adjourned trial then, in the absence of something really out of the ordinary having occurred, it seems to me that fairness will dictate on that occasion to go ahead with the trial of the petition without any further delay.

22. The Respondent shall pay the costs of the summons and the costs occasioned by the adjournment, including costs thrown away, to be taxed on the standard basis, if not agreed.

Dated 10 April 2025

THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT

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