IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

Neutral Citation Number: [2025] CIGC (FSD) 48

CAUSE NO: FSD 79 OF 2022 (DDJ)

IN THE MATTER OF THE COMPANIES ACT (2025 REVISION)
AND IN THE MATTER OF POSITION MOBILE LTD SEZC

Before:	The Hon. Justice David Doyle
Heard:	On the papers
Draft Judgment circulated:	6 June 2025
Judgment delivered:	10 June 2025

Determination of various costs applications

JUDGMENT

Introduction

1. On 17 April 2025 I delivered a judgment (the "Judgment") dismissing the summons of Technology Investment Consortium LLC (the "Petitioner") dated 16 February 2025 (the "Summons").

2. In that Summons the Petitioner sought an order that Genimous Investment (Hong Kong) Co., Ltd and Genimous Holding (HK) Limited (the "Respondents") provide a further and better list of documents verified by affidavit and an order requiring the Respondents to make an affidavit stating whether the documents specified in Schedule One are, or have been at any time been, in the Respondents' possession, custody or power. Schedule One refers to code repositories and drafts and final versions of documents referred to in an email between Benjamin Newell and Dirk Van Dyke sent on 24 November 2021 (2024 erroneously referred to in the Summons). By a further Schedule provided on 7 March 2025 the Petitioner sought to extend the category of documents to relevant electronic messages sent or received by certain third parties and custodians via personal email accounts and other personal devices, and what was unhelpfully described simply as "Relevant partially privileged documents".

3. In response to questioning from the court at the hearing, the Respondents gave an undertaking to produce the discoverable documents identified as a result of the supplementary discovery exercise referred to in their evidence and also to provide a supplemental list of documents verified by affidavit or affirmation. Such documents would include the drafts or final versions of valuations referred to in the email of 24 November 2021. I also made an order that the Respondents file the verifying affidavit or affirmation referred to at section N paragraph 55 of the Discovery Protocol. To that limited extent it can be seen that the Petitioner enjoyed some partial success in respect of its Summons.

4. On the main battleground in respect of code repositories and relevant personal messages on electronic devices and personal email accounts of third parties and custodians the Petitioner was wholly unsuccessful.

<u>The documentation</u>

5. In connection with the costs application, I have considered the documentation placed before the court including:

    (1) Petitioner's written submissions on costs dated 13 May 2025;

(2) the Respondents' skeleton argument on costs dated 13 May 2025;

(3) the eighth affidavit of Chen Zhifeng also known as Zhifeng (Tony) Chen sworn on 8 May 2025 and exhibit TC-8; and

(4) the Petitioner's further written submissions on costs dated 5 June 2025.

Determination

6. There are now before the court various applications in respect of costs by the Petitioner and the Respondent which are to be dealt with on the papers pursuant to the order made on 6 May 2025.

7. Costs are in the discretion of the court but that discretion must, of course, be exercised judicially. Normally costs follow the event. The successful party can normally reasonably expect a costs order to be made in his favour.

8. In this case the Petitioner enjoyed some, albeit limited, success as outlined above. The Respondents also successfully repelled the Summons insofar as it related to the source code repositories and the electronic messages on personal email accounts and personal devices.

9. I had considered whether no order as to costs would be the most appropriate way of dealing with costs but I do not think that would justly cover the position. On two of the main matters in dispute the Petitioner lost. On the other two matters the Petitioner won but I do not think on a costs basis that it can correctly be described as a score draw. At the risk of stretching the football analogy too far, the Respondents won on penalties with a couple of bad misses by the Petitioner, but it was not a total victory for the Respondents and without the Summons the undertakings may not have been forthcoming.

10. Insofar as the outcome of the Summons was concerned the Respondents were more successful than the Petitioner. Furthermore, I was critical of the Petitioner's conduct and dished out a couple of yellow cards and that must also be weighed in the balance. See for example my comments at [19], [25], [69], [87], [90], [99], [105], [106] and [107] of the Judgment.

11. The Petitioner did not pursue its request for "Relevant partially privileged documents" (see [105] to [107] of the Judgment). It is wrong for the Petitioner to say (as it does at paragraph 3 (b) of its written submissions dated 13 May 2025) that by its Summons it sought an "Affidavit from the PRC law firm charged with sifting the Respondents' documents located in the PRC concerning the reasons why documents were withheld from discovery". The Summons made no reference to such an affidavit and neither did the Schedule to the Summons or the subsequent 7 March 2025 Schedule. For the Petitioner in its written submissions on costs to describe such affidavit as one of the "five main items" sought by its Summons was wrong and could have potentially misled this court if I had not taken time to check the documentation previously filed.

12. Considering the skeleton arguments and the oral submissions the main contentious issues in this case related to the source code repositories and the electronic messages on personal email accounts and personal devices. The Petitioner was unsuccessful on those important core issues.

13. Upon receiving the Judgment I doubt the Petitioner's legal team would have been punching the air in victory or if they had been they would have been suffering from delusion. I think however that the Respondents' legal team would have had smiles on their faces for defeating the Petitioner's application for the code repositories and the messages on third party personal electronic devices and personal email accounts.

14. In my judgment justice is best achieved in the particular circumstances of this case by making an order that the Petitioner pays 50% of the Respondents' costs in respect of the Summons, such costs to be taxed on the standard basis in default of agreement. Although I have been critical of the Petitioner in a number of respects, I am not satisfied that the Petitioner's conduct was so unreasonable as to take this case out of the norm and to justify an order on the indemnity basis, as requested by the Respondents.

15. In respect of the application for an interim payment on account again the court has a discretion. I have considered the submissions and the evidence and figures referred to. In the particular circumstances of this case I think an interim payment on account is fully justified. Adopting a cautious approach I order that the Petitioner pay the sum of US$25,000.00 within 28 days. There should also be interest at the prescribed rate of 2.375% per annum as properly requested by the Respondents.

16. Counsel should provide a draft order (agreed as to form and content), reflecting the determinations in this Judgment, to my Personal Assistant within 7 days from the delivery of this judgment.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT