



**IN THE CAYMAN ISLANDS COURT OF APPEAL ON  
APPEAL FROM THE GRAND COURT OF THE  
CAYMAN ISLANDS CIVIL DIVISION**

**CICA (Civil) Appeal 0017, 0018, 0019 of 2024  
(FSD 0268, 0269 and 0270 of 2021 (IKJ))**

**BETWEEN:**

**FLOREAT PRINCIPAL INVESTMENT MANAGEMENT LIMITED  
LV II INVESTMENT MANAGEMENT LIMITED  
FLOREAT INVESTMENT MANAGEMENT LIMITED**

**Applicants**

**- and -**

**CREDIT SUISSE LONDON NOMINEES LIMITED**

**Respondents**

**AND**

**CICA (Civil) Appeal 0016 of 2024  
(FSD 0106 of 2024 (IKJ))**

**LV II INVESTMENT MANAGEMENT LIMITED**

**Applicant**

**- and -**

**CHIA HSING WANG**

**Respondent**

**BEFORE:**

**The Rt Hon Sir John Goldring, President  
The Hon John Martin, Justice of Appeal  
The Hon Clare Montgomery, Justice of Appeal**

*CICA (Civil) Appeal No. 17, 18, 19 of 2024 Floreat Principal Investment Management Limited et al. and CICA (Civil) Appeal No. 16 of 2024 LV II Investment Management Limited v. Mr Chia Hsing Wang- Judgment*

**Appearances:**

Mr Tom Richards KC of Counsel with Mr Alistair Abbott and Mr Alan Quigley of Forbes Hare for the Applicants

Mr James Collins KC of Counsel with Mr David Lee, Mr David Lewis-Hall and Mr Zuhair Farouki of Appleby (Cayman) Limited for the Respondents

**Date of hearing: 6 September 2024**

**Draft circulated: 19 September 2024**

**Judgment delivered: 11 October 2024**

**JUDGMENT**

**MONTGOMERY JA:**

1. These applications for leave to appeal arise in the context of litigation in connection with Winding Up proceedings against the Applicants.
2. There are related proceedings brought by Mr Chia Hsing Wang (“Mr Wang”) seeking declaratory relief against LV II Investment Management Limited (“LV2IM”) for a declaration that Blue Water Limited (“Blue Water”) (against whom LCIA awards in favour of LV2IM have been made) has separate legal personality from Mr Wang and that he is not liable for the obligations of Blue Water under those LCIA awards. LV2IM applied to strike-out the Declarations Summons primarily on jurisdictional grounds. LV2IM failed in its challenge to the Jurisdiction of the Court. This is the subject of LV2IM’s proposed jurisdiction appeal (the “Jurisdiction Summons Appeal”).
3. In what became known as the “Stay Summonses”, Floreat Principal Investment Management Limited (“FPIML”), LV2IM and Floreat Investment Management Limited (“FIML”) sought a stay in respect of an interim payment of US\$5,600,000 ordered to be paid on account of costs.

The stays were refused and FPIML, LV2IM and FIML are the Applicants in an appeal against this refusal for which leave is now sought (the “Stay Summonses Appeals”).

4. On 2 July 2024 the Hon Kawaley J (the “Judge”) dismissed LV2IM’s Jurisdiction Summons and the Stay Summonses. On 13 August 2024 the Judge refused the Applicants leave to appeal against his Orders dated 2 July 2024.
5. These applications have been heard by the full Court on an expedited basis. There is an associated appeal against the declaration in the Declaratory Relief proceedings which is pursued as of right. The Winding Up proceedings have been adjourned pending these applications for leave.
6. The LV2IM Winding Up proceeding is also adjourned pending the resolution of an application for leave to appeal by LV2IM against the judgment of the Judge dated 8 August 2024 in relation to an asserted cross claim that I will be dealing with sitting as a single Judge of the Court of Appeal.
7. This Court may interfere in the exercise of a judicial discretion, such as the discretion to grant a stay, if the judge has either erred in principle in their approach, or has left out of account, or taken into account, some feature that they should, or should not, have considered, or that their decision is wrong because the court is forced to the conclusion that they have not balanced the various factors fairly in the scale. The authorities were reviewed by this Court in *Traded Life Policies Fund v Jeremy Leach* CICA 18 of 2021, 21 December 2021.
8. However, even where these factors are arguably present there must be a real prospect of success if the discretionary exercise were to be repeated. In this regard the test to be applied by the Court in relation to both applications for leave to appeal is common ground.

*“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)...” see Select Vantage Incorporated v Cayman Islands Monetary Authority [2017] (2) CILR N 4*

9. This is not a case in which any public interest is engaged. Accordingly, the issue for the Court is whether there was a material error in the Judge's analysis of the challenged decisions, and, if so whether the appeals have any realistic prospects of success so that the decisions of the Judge should be set aside.

### **The Jurisdiction Summons Appeal**

10. The Jurisdiction Summons challenged the jurisdiction of the Cayman courts to grant a declaration that the ultimate beneficial owner (Mr Wang) of a Cayman Islands company (Blue Water) was not personally liable as a matter of Cayman Islands law for the debts owed by that company to LV2IM (another Cayman Islands company). The burden of proof lay on LV2IM to demonstrate that some other more appropriate forum was available. On the evidence before the Judge:

1. LV2IM had commenced attachment proceedings against Mr Wang in Switzerland and had been granted attachments;
2. there were however no pending substantive proceedings in Switzerland or elsewhere outside the Cayman Islands; and
3. the Respondent's uncontradicted evidence suggested that, in the event of substantive proceedings being brought, Swiss conflict rules mandated that if the issue of the declaration was determined by the Swiss Court, it would likely apply Cayman Islands law.

11. The Judge held:

*“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.”*

12. The grounds of appeal in relation to the Jurisdiction decision are that the Judge failed to evaluate the connecting factors LV2IM relied upon as rendering Switzerland the most appropriate forum. I shall refer to these collectively as the Swiss factors. These were:

1. the Swiss domicile and residence of Mr Wang;

2. his participation in the Swiss attachment proceedings brought against him by LV2IM and Floreat Private Limited (“FPL”);
3. the location of the assets against which attachment action is being taken;
4. the applicability of Swiss law to all or most of the legal issues in those proceedings, namely: (a) whether the attachment proceedings were abusive, (b) what law applies to the applicants’ enforcement claim as a matter of Swiss private international law, (c) whether the assets are attachable under the *Durchgriff* principle if Swiss law applies, and (d) whether if Cayman Islands law is potentially applicable there are grounds to apply Swiss law in any event;
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); and
6. the fact that FPL was still pursuing attachment proceedings against Mr Wang in Switzerland in respect of its LCIA Award costs claim against another Cayman Islands company Amida Group Holdings (“Amida”).

**13.** Central to the challenge to the dismissal of the Jurisdiction Summons is the contention that the Judge had given undue emphasis to the fact that no foreign substantive proceedings were pending in Switzerland and gave insufficient weight to the Swiss factors. This challenge raises directly the relevance of the Swiss attachment proceedings to the appropriate forum analysis and the question whether the Judge was obliged to conduct a detailed evaluation of the Swiss factors listed above both cumulatively and individually before determining whether Switzerland had been shown to be the most appropriate forum.

**14.** It is of course possible that the existence of foreign attachment proceedings and individual aspects of such proceedings may carry significant weight in an exercise to determine the appropriate jurisdiction, particularly in a case where the claim to domestic jurisdiction is tenuous or where the issue in the domestic proceedings concerns foreign parties or foreign law.

15. However, in my judgment, the Applicant's concentration on the Swiss factors failed to recognise or give any weight to the conventional jurisdictional factors that overwhelmingly favoured the Cayman Islands as the appropriate forum for the Declaration (as well as the Winding Up) proceedings particularly in the absence of any expert evidence to support the inference, urged on the Court, that the *Durchgriff* principles were likely to be resolved in favour of LV2IM or FPL in Switzerland.
16. The Declaration claim sought the grant of a declaration under Cayman Islands law as of right against a Cayman Islands company in relation to issues of Caymanian companies law. In the absence of substantive foreign proceedings capable of determining these Caymanian issues equally conveniently and promptly, it is untenable to argue that the case should more suitably be tried in Switzerland, in the interests of all the parties and the ends of justice. The weight to be given to the Swiss factors identified by the Applicant was incapable of outweighing the obvious preference for Cayman jurisdiction. The Judge did not ignore the broader contours of the wider disputes. He clearly considered that that the Applicant had failed to establish that Switzerland was more suitable in the interests of justice.
17. The proof of this analysis is borne out by the developments in the case. The Declaration proceedings have been determined swiftly and without difficulty. No substantive legal issues arose. The only point made for the Applicants was that the court should not have made a declaration in the exercise of its discretion. This is an issue that the Court of Appeal will have to consider on the appeal as of right to the Full Court.
18. In the meantime, there is no evidence of any substantial progress in the Swiss proceedings so as to suggest the Caymanian process should now be stayed to allow the Swiss proceedings to be brought and litigated to a conclusion. The Applicant pointed to a further attachment order made by the Swiss Court on 26 July 2024, but there is no evidence of any substantive progress in resolving the *Durchgriff* claims and still no evidence to suggest that such claims are likely to succeed. The Applicant has not filed any application to adduce fresh evidence in relation to the latest attachment order. However, even if it were to be admitted it does not add significantly to

the weight of evidence as to whether the *Durchgriff* claims are more likely than not to succeed, since the grant of any attachment is based only on a provisional assessment of the likely substantive claim.

19. I consider that the Judge accurately identified and weighed the competing factors relied upon by the parties, in accordance with the principles identified in *Ahmad Hamad Algozaibi and Brothers Company v Saad Investments Company Limited* [2010] (2) CILR 289, [79], and his decision that the scales come down in favour of Cayman jurisdiction is unimpeachable.
20. In my judgment there was no failure to consider factors of the type identified in *VTB Capital plc v Nutritek International Corp*, [2013] UKSC 5. The distinction that the Judge drew between procedural and substantive proceedings in Switzerland does not seem to me to have led the Judge into error, still less significant error of principle. The use of the descriptions served to illustrate the difference between the stages that the proceedings had reached in Switzerland and Cayman and allowed the Judge to consider the remoteness of the possibility of the Swiss proceedings being more suitable in the interests of justice. The remaining Swiss factors did not add any significant weight to his determination.
21. In my judgment the Applicant has failed both before the Judge and before this Court to show that Switzerland was clearly or distinctly the appropriate forum.

### **The Stay Summonses Appeals**

22. The Applicants sought to stay enforcement of the Costs Orders obtained by the Respondent in the Contributory Petition Proceedings based on the claimed 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, as a matter of Cayman law, he was not personally liable for those debts. Under Grand 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 the inherent jurisdiction of the Court could nonetheless be invoked.

23. The Judge agreed with the Applicants’ submissions that the inherent jurisdiction, described in *Canada Enterprises Ltd v MacNab Distilleries Ltd* [1987] 1 WLR 813 and *Burnet v Francis Industries* [1987] 1 WLR 802, was potentially available but held that there was no proper basis on the facts for exercising it. The Judge did not, as the Applicants suggest, deny the possibility of looking behind corporate structures to consider the justice of a stay, merely holding that in this case the asserted injustice flowing from any inability to look through the corporate entities had no substance.

*“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...”*

24. The Applicants rely on three grounds of appeal. They are that the Judge was wrong:

(a) to hold that the exercise of the inherent jurisdiction to grant relief required “serious” injustice as opposed to merely injustice *simpliciter*; and

- (b) to find that the Swiss attachment proceedings were only “tenuously” connected to the Contributory Petitions when the human actors behind the corporate entities were the same; and
  - (c) not to recognise that 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.
25. In refusing leave to appeal the Judge accepted that any exercise of the inherent discretion did not require proof of “serious” injustice but held that there was in reality no injustice caused by his refusal of a stay in any event so that his decision had no prospect of being set aside on appeal even if the discretionary exercise were to be performed anew.
26. I do not accept as the Applicants contend that the Judge sought to limit the application of the Canada Enterprises principles. On my analysis of his reasoning, he gave full expression to the Canada Enterprises jurisdiction. He just did not consider that this exceptional jurisdiction should be exercised on the facts.
27. As regards the second and third grounds of appeal, the main complaint was that the Judge failed to have any or sufficient regard to interconnectedness of the various proceedings. However, whatever the degree of connection, in my judgment any injustice would only be manifest if there were evidence to establish the real likelihood of the Applicants achieving success in future substantive proceedings in Switzerland.
28. The criticism that the Judge failed to identify that the Swiss proceedings were ‘battles in the same war’ involving overlapping facts does not seem to me to advance the Applicants case on appeal in the absence of evidence that there was a real likelihood of success for the Applicants in Switzerland. As I have observed above, the Swiss attachment orders are based on preliminary analysis of the merits of the *Durchgriff* claims. They do not provide a basis for drawing any reliable inferential conclusion as to the likely outcome of any Swiss substantive

proceedings. The Applicants did not choose to adduce any expert evidence to undermine the Respondent's evidence that the proceedings were likely to fail.

29. Criticism is also made of the Judge's reference to the possibility of a stay riding a coach and horses through the ordinary legal processes. The Judge pointed out that the Cayman Court had determined that Mr Wang was not personally liable for the substantial LCIA award debt (against Blue Water in favour of LV2IM) and there was no Swiss law evidence before the Court supporting the proposition that substantive proceedings against Mr Wang (even if they were "most likely" to be commenced in Switzerland) would have a realistic prospect of being determined under Swiss law, let alone of succeeding under Swiss law in proving that Mr Wang was liable for the LCIA awards. I consider that his conclusion that there was no injustice in either a legal or popular sense in refusing a stay was, in the circumstances, correct. Questions about the justice of the case in the context of legal proceedings have to be asked and answered in the context of the applicable rules of law.
30. The possibility of similar Swiss proceedings being pursued by FPL, an English company, against another Cayman Islands company, Amida, and Mr Wang does not seem to me to add any meaningful weight to the case for a stay of proceedings. FPL's claims to secure enforcement of other arbitral awards against Amida carries little additional weight to the Applicants' claims and did not require separate description in a judgment, given their vestigial relevance. The Judge was entitled to confine his analysis to the statement that FPL's claims provided "no valid basis for declining to grant the declarations."
31. It was clear that the Judge considered that the FPL proceedings had little weight in the discretionary balancing exercise. I agree with this conclusion. If the LV2IM claims did not get within a measurable distance of constituting an injustice so as to justify the exercise of the Canada Enterprises jurisdiction, then the FPL claims did not advance the case for the Applicants any further.

32. In addition, as the Judge pointed out, the existence of the claims awarded in the arbitral proceeding were the result of commercial decisions made by LV2IM and FPL not to press for payment when their fees and claims fell due.
33. Finally, the Applicants also sought to rely on the rejection of Mr Wang's claims of conspiracy, fleeing, and the mishandling of investments made against the Applicants in the LCIA arbitrations. However, it seems to me that the failure of these allegations do not, of themselves, provide any proper basis for asserting there is any injustice in refusing a stay. The LCIA proceedings may be intimately intertwined with the Cayman proceedings, but that does not establish any manifest injustice in proceeding in Cayman proceedings and enforcing the costs orders that have been made, in the absence of any significant evidence that the Swiss court is likely to uphold the substantive claims of *Durchgriff*.
34. It follows that it is not possible to say that there has been any abuse of the courts process or that, absent a stay, manifest injustice would be caused in this case, see *Credit Lyonnais v SK Global Hong Kong Limited* [2003] HKCA 167 by Ma CJHC at [3] and by Rogers VP [25]. Given the nature of the claim against Mr Wang and the unlikelihood of it succeeding as well as the likelihood of significant delays in determining those claims, no special or exceptional circumstances exist to justify the grant of a stay, see Bingham LJ in *Burnet v Francis Industries* [1987] 1 WLR 802, at 811C-H.

### **Conclusion**

35. For these reasons, I would refuse leave to appeal against the Orders dated 2 July 2024 dismissing LV2IM's Jurisdiction Summons and the Applicants' Stay Summonses.

### **GOLDRING P:**

36. I agree.

### **MARTIN JA:**

37. I also agree.