IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS
ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CICA (Civil) Appeal No 18 of 2020
(Formerly FSD 127 of 2019 (CRJ))

IN THE MATTER OF LUNG MING MINING CO. LTD

BETWEEN:

Mr. Xiaoming Li

Appellant

AND

Mr. Kris Beighton and Mr. Patrick Cowley
(in their capacity as former Joint Official Liquidators of the Dissolved Company)

Respondents

BEFORE:	**The Rt. Hon Sir John Goldring, President** **The Rt. Hon Sir Bernard Rix, Justice of Appeal** **The Hon John Martin, Justice of the Peace**
Appearances:	**Mr. Tom Lowe QC instructed by Mr. Ian Lambert of HSM Chambers for the Appellant.** **Conyers, Attorneys for the Respondents, not present.**
Heard:	**10 November 2020**
Oral Ruling delivered:	**10 November 2020**
Written transcript delivered:	**16 April 2021**

PRELIMINARY RULING

The Rt. Hon Sir Bernard Rix, Justice of Appeal

1. This is a hearing on a preliminary issue in an appeal pursuant to an Order of this court made on 7 October 2020.

2. The preliminary issue is one as to the jurisdiction of this court. Is an appeal available in terms of the *Court of Appeal Law (2011 Revision)*?

3. The background can be taken from some essential paragraphs of the judgment of the Honourable Justice Cheryll Richards QC below, as follows.

4. By a summons filed on 18 November 2019, Messrs Patrick Cowley and Kris Beighton, the Joint Official Liquidators (the "JOLS") of Lung Ming Mining Co. Ltd ("the Company"), applied for its dissolution pursuant to section 152(1) *Companies Law (2018 Revision),* and Order 22 of the *Companies Winding Up Rules 2018* ("*CWR*") (the "Application").

5. The Application, which was made on the basis that the affairs of the Company had been completely wound up, was opposed by Mr. Xiaoming Li ("Mr. Li"). Mr. Li was a controlling shareholder and a former director of the Company. It is asserted on his behalf in summary, that the Company is the owner of an asset which has significant value and that the JOLs have not properly enquired into or taken account of this asset.

6. The Company was incorporated in the Cayman Islands as an exempted limited liability company on 6 May 2018. It acted as a holding company with primary business operations in Mongolia and the People's Republic of China ("PRC"). These operations involved the production of iron ore and the operation of the Mongolia Rogol Iron Ore Mines.

7. Following an investigation of the issue raised by Mr. Li as to an outstanding valuable asset of the Company, the Judge concluded, on balance, that the JOLs were correct in their assessment that no value can practically or realistically be ascribed to this asset. Put another way, from all the evidence that the Judge had seen, there appeared to be no real prospect of realisation of some value. The Judge therefore, for the reasons contained in the Judgment, considering all the evidential material before the court, and accepting the submissions of the JOLs, was satisfied that the affairs of the Company had been completely wound up. An order was therefore made pursuant to section 152 (1) of the *Companies Law*.

8. Section 152(1) simply says:

> "*When the affairs of the company have been completely wound up the Court shall make an order that the company be dissolved from the date of that order or such other date that the Court thinks fit, and the company shall be dissolved accordingly."*

9. On this appeal the point has been made in writing, both in correspondence, and in a written skeleton argument on behalf of the JOLs, or as they would prefer to be called at this point, the

'former JOLs', that this court has no jurisdiction following the dissolution of the Company to entertain this appeal.

10. The JOLs (as I will for the sake of brevity continue to describe them), rely for these purposes on some jurisprudence in these Islands, namely *Schramm and Hiscox Syndicate 33 v Financial Secretary,* heard by the Chief Justice 2004 05 CILR 39, and affirmed on appeal by this Court as reported in 2004/05 CILR 104 – that case standing for the proposition that a company dissolved under section 146, following the striking off of the Register by the Registrar at the conclusion of a voluntary liquidation, could not be brought back onto the Register pursuant to the provisions of section 178. The point made in the *Schramm* case is that there are no provisions, as there have been for the last century or so in the UK, to allow for the restoration of a company following its dissolution in such a way.

11. However that jurisprudence which in itself followed 19th century jurisprudence in the UK in cases such as *In re: Pinto Silver Mining Company* (1878) 8 Ch Div 273 did not concern a question of appeal, but of an un-appealed dissolution of a company.

12. In the present case we are concerned with the question of an appeal against a dissolution pursuant to section 152(1). The question of jurisdiction for such an appeal *prima facie* has to be determined by reference to the *Court of Appeal Law*. Section 6 of the *Court of Appeal Law* makes provision for cases for which there is no appeal.

13. Section 6 begins as follows: "*No appeal shall lie .."* and there then follow in sub-sections (a) – (h) a variety of cases in which no appeal shall lie. For example sub-section (a) which provides that no appeal shall lie against *"any order allowing an extension of time for appealing from a judgment*"; and sub-section (b) "*from an order of a judge of the Grand Court giving unconditional leave to defend an action."*

14. Sub-section (c) is the important one for present purposes-

> "*from any decision of the Grand Court in respect of which it is provided by any law in force in the Islands that such decision is to be final."*

15. The question therefore arises whether there is any law in force in these Islands whereby a decision of dissolution under section 152(1) of the *Companies Law* is to be final.

16. Section 152 itself does not express such a dissolution to be a final decision and nor does any other provision of the *Companies Law* which has been brought to our attention.

17. This can be contrasted, although it is not a matter of company law at all, with sub-section (d) of section 6 *Court of Appeal Law* which talks not about the dissolution of a company, but the dissolution of a marriage, which is certainly as important a matter.

18. Thus section 6(d) *Court of Appeal Law* provides expressly that no appeal shall lie from "*any order absolute for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree, except upon some point that would not have been available to such party on such appeal".*

19. There are other provisions that are relevant. Sub-section (g) of section 6 of the *Court of Appeal Law* says no appeal shall lie "*in any case in which, before the decision of the Grand Court, the parties have agreed in writing that such decision shall be final*." There is no such agreement in this case. And sub-section (h) says no appeal shall lie "*in such other cases as may be prescribed by rules of court as, in the opinion of the Authority having power to make such rules, are of the nature of final decisions"* - but there are no rules of court that prescribe that a dissolution under section 152 are of the nature of a final decision.

20. It follows that this Court's jurisdiction is not prohibited by section 6 of the *Court of Appeal Law* and therefore there is no prohibition on such an appeal as is sought in the present case of dissolution of a company.

21. The JOLs have submitted nevertheless, that following dissolution they are *functi officio.* That may be the case, but if an appeal is permissible then whether or not they are *functi officio* must be subject to any decision on appeal.

22. Thus it is in the case of arbitration. Arbitrators are *functi officio* when they publish their final award, but if that award perchance might be subject to challenge in the court and following that challenge there is a reference back to the arbitrators by the court, then their jurisdictional functionality as arbitrators arises again – as it may also do in such a case of dissolution of a company.

23. The Court of Appeal of course have all the powers that the trial judge would have had.

24. I quite understand that the JOLs are concerned about the expenses of the appeal and of any continuing litigation, but they are entitled to ask for security for costs as they have suggested that they are minded to do, were they to fail in this preliminary issue, and there may be other alternative methods by which provision may be made to secure their costs, but those matters do not lie before this court at this moment.

25. The Court has briefly heard from Mr. Tom Lowe QC on behalf of the Appellant. The JOLs, having put in their written skeleton, have not appeared at this preliminary issue.

26. In conclusion, I accept that on this preliminary issue there is jurisdiction for an appeal to lie. I therefore decide this preliminary issue in favour of the Appellant.

The Hon John Martin, Justice of Appeal

27. I agree.

The Rt. Hon Sir John Goldring, President

28. I also agree.

*****