



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

CAUSE NO: FSD 318 OF 2021 (DDJ)

**IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)
AND IN THE MATTER OF HEC INTERNATIONAL, LTD (IN OFFICIAL LIQUIDATION)**

Before: The Hon. Justice David Doyle

Heard: On the papers

**Draft Judgment
circulated:** 11 August 2023

Judgment delivered: 15 August 2023

HEADNOTE

Determination of applications for leave to appeal and a stay

JUDGMENT

Introduction

1. There is before the court an application from Shang Peng Gao Ke, Inc. SEZC (the “Applicant”) for, if and insofar as is necessary, leave to appeal an order I made on 18 July 2023 (the “Order”) consequent upon my judgment delivered on 10 July 2023 (the “Judgment”) and for a stay of execution in respect of the Order and the Judgment pending the final determination or final

230815 In the matter of HEC International, Ltd – Judgment - FSD 318 of 2021 (DDJ)

1 of 4

disposition of the Applicant's application for leave to appeal (if and insofar as is necessary) and the substantive appeal to the Court of Appeal.

Documentation

2. I have considered:
- (1) Hearing bundle (2 volumes);
 - (2) Applicant's 21 page skeleton argument dated 1 August 2023;
 - (3) Applicant's authorities bundle containing 22 authorities;
 - (4) Official Liquidator's 3 page written submissions in response dated 3 August 2023; and
 - (5) the Applicant's 3 page skeleton argument dated 11 August 2023 and one additional authority in reply.

Law

3. I have considered the relevant law in respect of the determination of applications for leave to appeal. In *Wang v Credit Suisse AG* (unreported FSD judgment delivered on 10 May 2022) I referred to *Telesystem International Wireless Incorporated v CVC/Opportunity Equity Partners LP* 2001 CILR N-21 (Grand Court: Sanderson J) and the general test:

“Does the appeal have a real (i.e. realistic, not fanciful) prospect of success? ... In exceptional circumstances, leave will be granted even where no such prospect exists if the appeal involves an issue which should be examined by the Court of Appeal in the public interest, e.g. when a public policy issue arises or a binding authority requires reconsideration ... if the Court is unsure whether leave should be granted, it should then refuse leave and allow the Court of Appeal to decide the matter.”

4. Morrison J.A. in his reasons delivered on 21 September 2017 in *Select Vantage Inc. v Cayman Islands Monetary Authority* (Civil Appeal No 22 of 2017) reiterated the general rule as follows at paragraph 26:

“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 from a judge's exercise of a discretion (unless it can be shown to have been palpably wrong); nor will leave usually be given in the respect of a proposed appeal from a decision based on a judge's evaluation of oral evidence as to the primary facts.²¹

Footnote 21 reads:

“See generally Practice Direction (Court of Appeal: Leave to Appeal and Skeleton Arguments) [1999] 1 WLR 2.”

5. In respect of the relevant law on the determination of stays pending appeals I set out below paragraph 48 of the judgment of Birt JA (with whom Sir Richard Field JA and Sir Jack Beatson JA agreed) in *Trina Solar Limited* (CICA unreported judgement delivered on 4 August 2023):

“The principles for granting a stay of execution from a judgment of the Grand Court pending an appeal to this Court are well-established. We have been referred to a number of cases but I would quote only one. After a thorough review of the authorities in *Re Aquapoint LP* (Unreported, Grand Court, 5 October 2022), Doyle J said at [20]:

“It can be seen from the local Cayman authorities that: (1) an appeal does not operate as a stay; (2) the starting point is that there should be no stay and a successful party at first instance should not be deprived of the fruits of that success; (3) there must be ‘good cause’ or ‘good reason’ for a stay. In some of the English authorities there is reference to ‘solid grounds’; (4) the court is likely, all other things being equal, to grant a stay where the appeal could otherwise be rendered nugatory or deprived of much of its significance; and (5) in deciding whether or not to impose a stay the court will consider the grounds of appeal, their likelihood of success and the balance of convenience having regard to the interests of the relevant parties. The overriding feature is the interests of justice.”

Determination

6. If leave to appeal is required in this case I decline to grant it as the appeal does not have a realistic prospect of success and it does not raise any issues which should, in the public interest, be examined by the Court of Appeal.
7. I also refuse a stay. I have considered the interests of the parties and the interests of justice. There is no good cause for a stay. There is no arguable appeal and a stay is not needed to prevent the appeal being rendered nugatory. The balance of convenience does not favour the grant of a stay. The progression and finalisation of the liquidation has been held up for far too long already.
8. It is a matter for the Official Liquidator but he may wish to adopt a cautious approach and, even though this will involve some further albeit limited delay, to refrain from treating the entirety of the HEC Funds as a realisation in the Company's liquidation until the determination of any applications by the Applicant for leave to appeal and for a stay from the Court of Appeal, if any. Having refused a stay I leave this entirely to the Official Liquidator and do not seek to second guess his decisions in this respect.

Order

9. Counsel should file a draft Order reflecting the determinations in this judgment within the next 7 days.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT