



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

CAUSE NO. FSD 132 OF 2024 (DDJ)

**IN THE MATTER OF SECTION 92 OF THE COMPANIES ACT (2023 REVISION)
AND IN THE MATTER OF TFKT TRUE HOLDINGS**

Before: The Hon. Justice David Doyle

Appearances: Spencer Vickers and Jordan McErlean of Conyers Dill & Pearman LLP
for the Petitioner
Anna Peccarino of Travers Thorp Alberga for Fester Global Limited

Heard: 4 June 2024

***Ex Tempore* Judgment
delivered:** 4 June 2024

**Draft Transcript of
Ex Tempore Judgment
circulated:** 5 June 2024

Transcript approved: 6 June 2024

240604 In the matter of TFKT True Holdings – FSD 132 of 2024 (DDJ) - Judgment

Company law – adjournment of summons for directions in respect of a winding up petition – no order as to costs

JUDGMENT

Introduction

1. I shall now deliver a short judgment in proceedings cause number FSD 132 of 2024 (DDJ).
2. On 25 April 2024 Active Gains Universal Limited (the “Petitioner”) filed a petition (the “Petition”) seeking an order that TFKT True Holdings (the “Company”) be wound up on the just and equitable ground. The Petitioner says it holds 14,500 shares of the Company equivalent to approximately 27% of the Company’s total issued shares and Fester Global Limited (“Fester”) holds 38,790 shares of the Company equivalent to approximately 73% of the Company’s total issued shares. The Petitioner bases its case on 5 main headings: (1) breach of legal bargain, (2) loss of confidence in management: misconduct by management and/or lack of probity in the conduct of the Company’s affairs, (3) loss of trust and confidence, (4) deadlock in the management of the Company as the board of directors is not quorate and, (5) the need for an investigation.
3. The matter comes before the court today for directions to be issued leading to the hearing of the Petition.
4. The evidence confirms that notification of today’s hearing was provided to the Company c/o Harneys Fiduciary (Cayman) Limited on 26 April 2024.
5. Notification of today’s hearing was also provided to Fester via Vistra Corporate Services on 26 April 2024 and a further letter was served on 7 May 2024 requesting agreement in respect of directions for the hearing of the Petition.
6. Fester has been on notice of today’s hearing since 26 April 2024 and that much is common ground.

7. By email dated 9 May 2024, nearly a month ago now, Betty Young for and on behalf of Fester stated:

“We are considering the matter internally and seeking independent legal advice. We will revert in due course.

Nothing herein shall be construed as a submission to the jurisdiction of the Cayman courts. All our rights are hereby expressly reserved.”

The irregular application for an adjournment

8. In irregular course, Fester reverted by way of its attorney making a belated application for an adjournment on foot today in Court Number 6 in George Town, Grand Cayman, Cayman Islands.
9. No adjournment summons and no supportive skeleton argument was filed but although I deprecate the tendency of attorneys to attempt to litigate by way of emails and letters and am on record in that respect, I have noted the letters dated 30 May and 3 June 2024 from Travers Thorp Alberga, the attorneys for Fester.

The submissions

10. I have considered all that has been written and said on behalf of the Petitioner and Fester in respect of the adjournment and the directions.

Determination of the application for an adjournment

11. As I said, the papers were served on Fester on 26 April 2024. Its attorneys say they were only instructed on 29 May 2024. They say that there are connected proceedings in Hong Kong and there is much to look into. They add that these Cayman proceedings have come “out of the blue” as the last correspondence from Conyers, for the Petitioner, was on 10 November 2021. They in effect say that the Petitioner has had over 2 years to prepare and Fester only 5 weeks.

12. In respect of prejudice to the Petitioner of an adjournment its attorney refers to the need for speed and the wasted costs. Fester responds by saying it tried to agree a short adjournment but the Petitioner refused.
13. In these circumstances I am, albeit with some considerable reluctance, willing to grant Fester a short adjournment to 10am on 18 June 2024, with one hour allocated. Any relevant materials to be filed by 3pm on 14 June 2024. Hopefully draft directions will be agreed in the meantime. If not, opposing drafts and any evidence and skeleton arguments in support should be filed before 3pm on 14 June 2024.
14. I make no order as to costs.

David Doyle

The Hon. Justice David Doyle
Judge of the Grand Court