IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO.: FSD 262 of 2021 (DDJ)

BETWEEN

CHIA HSING WANG

PLAINTIFF

AND

(1) CREDIT SUISSE AG
(2) CREDIT SUISSE LONDON NOMINEES LIMITED

DEFENDANTS

Appearances:	**Mr John Wardell QC and Mr David Lee, Mr Andrew Jackson and Mr David Lewis-Hall of Appleby (Cayman) Limited for the Plaintiff**
Before:	**The Hon. Justice David Doyle**
Heard:	8 September 2021
Ex Tempore Judgment delivered:	8 September 2021
Draft transcript of Judgment Circulated:	24 September 2021
Transcript of Judgment approved:	27 September 2021

HEADNOTE

Ex parte application for the appointment of receivers over shares in Cayman Islands registered funds to enable those receivers to commence winding up petitions and applications for provisional liquidators in the name of the registered shareholder

JUDGMENT

Introduction

1. Mr Chia Hsing Wang ("Mr Wang" / "Applicant") applies on an *ex parte* basis for the appointment of receivers over shares he says he beneficially owns in Long View II Limited ("Longview"), Principal Investing Fund I Limited ("PIF") and Global Fixed Income Fund I Limited ("GFIF"), which it is stated Credit Suisse London Nominees Limited ("CSLN") hold ultimately for Mr Wang as beneficial owner. Longview, PIF and GFIF (together the "Cayman Funds") are regulated by the Cayman Islands Monetary Authority.

2. It is stated that the Cayman Funds and an affiliated regulated BVI investment fund called Real Assets (RA) Global Opportunity Fund I Limited ("RAGOF") (together the ("Floreat Funds") were all established by Floreat Merchant Banking Services Limited. The Floreat Funds have been, and are, under the control of 'Floreat' and its principals, namely Mr Mutaz Otaibi, Mr Hussam Otaibi and Mr James Wilcox (together the "Floreat Principals").

3. Mr Wang makes very serious allegations of wrongdoing against the Floreat Principals. Mr Wang says that he has invested approximately US$500 million in the Floreat Funds. In this jurisdiction, Mr Wang seeks an order that receivers be appointed over the relevant shares in each of the Cayman Funds and for the receivers to pursue, in the name of CSLN, winding-up proceedings on the just and equitable ground and applications for provisional liquidators to be appointed over each of those funds in the meantime.

4. Mr Wang successfully obtained an order from the High Court of the British Virgin Islands dated 26 August 2021 appointing receivers over his shares in RAGOF and then on 1 September 2021 an order appointing provisional liquidators over that fund.

The *ex parte*/without notice issue

5. The first issue to determine is whether the Court should accept Mr Wang's invitation to proceed with his application *ex parte* / without notice to the Defendants /Respondents.

6. The Respondents are both legal entities outside the jurisdiction of this Court. Credit Suisse AG ("Credit Suisse") with an address in Switzerland and CSLN with an address in London. It is stated that the relevant shares are held in the name of the Second Defendant pursuant to a

custody arrangement between it and the First Defendant, the precise terms of which the Applicant states he is unaware of.

7. I endeavoured to outline some of the relevant law in respect of *ex parte* / without notice hearings in my recent judgment in *Cathay Capital Holdings III, L.P. v Osiris International Cayman Limited* (Unreported, FSD 245 of 2021 (DDJ), 30 August 2021) which is available online.

8. The Court was informed today that the Cayman attorneys for the Respondents were relatively recently placed on notice that this hearing would be taking place today.

9. On 30 August 2021 Appleby, the attorneys acting for Mr Wang, notified Credit Suisse that Mr Wang required their assistance in respect of the appointment of the receivers over his shares in the Cayman Funds. There is also reference to a note of a telephone conversation on 31 August 2021, with representatives from Appleby and Ogier, the local Cayman attorneys for the Respondents. It was indicated that Credit Suisse and CSLN are likely to adopt a neutral position. By email dated 6 September 2021 7:52pm Appleby notified Ogier of today's hearing. Ogier by return email noted the listing and the provision of the relevant papers. There is also a document, a note of a telephone call on 6 September 2021, confirming that Ogier acted for both Credit Suisse and CSLN. No jurisdictional issues were raised.

10. I am satisfied that the Respondents have received notice, albeit short, of this hearing and have had an opportunity to be heard in respect of the application presently before the Court, but have chosen not to appear. In short, I was satisfied that it was appropriate for this urgent hearing to proceed today.

Is the Applicant entitled to the relief he seeks?

11. Having satisfied myself on the *ex parte* / without notice point, the next point to consider is whether the Applicant is entitled to the relief he seeks. I am satisfied that it is appropriate to make a confidentiality order, at paragraph 1(a) of the draft order, subject to further order. I am also satisfied in respect of the gagging order at paragraph 1(b) of the draft order. These orders will enable the Applicant to take further action in an endeavour to progress his claim and secure the position. In exchanges with counsel, it was agreed that paragraphs 2(a) and (b) of the draft order are unnecessary and will be deleted.

The two questions

12. There are two questions over the substantive relief sought. Firstly, is it appropriate to appoint receivers over the shares? Secondly, if so, is it appropriate for Mr Michael Pearson and Ms Trudy-Ann Scott of FFP Limited to be appointed?

Should receivers be appointed?

13. In my judgment, in the particular circumstances of this case, it is just and convenient that receivers be appointed over the shares to give the Applicant a springboard from which to launch an application for the appointment of provisional liquidators. I do not decide today whether the receivers would have standing to make such an application or whether the Court would appoint provisional liquidators. That is for another day. In my judgment it is certainly just and equitable to appoint receivers to see if the Applicant may legitimately advance his position thereby.

14. I have considered the relevant law including section 11 of the Grand Court Act (2015 Revision). This Court has the same jurisdiction as the English High Court in respect of appointing receivers when it is just and convenient to do so.

15. I should also record that I have considered the 39-page skeleton argument and I have also carefully considered the oral submissions presented to the Court by Mr John Wardell QC, the limited admission attorney acting for the Applicant. I note the authorities referred to in the 39-page skeleton argument including *Asean Resources v Ka Wah International Merchant Finance* [1987] LRC 835 (Comm) and *Cruz City v Unitech* [2014] EWHC 3131 (Comm). I have also considered Kawaley J's judgment in *Hudson Capital Solar Infrastructure GP, L.P. v Sky Solar Holdings Ltd* (Unreported, FSD 166 of 2021 (IKJ), 27 August 2020).

16. The jurisdiction to appoint receivers is a wide jurisdiction but it must be exercised with caution to guard against abuse. In this case the appointment is on the basis that the Applicant hopes it will give the receivers legal standing to take action to appoint provisional liquidators and to seek a winding-up order. He says, as a beneficial owner rather than a registered owner of the shares, he cannot do that himself. The registered legal owners of the shares, namely CSLN, hold the shares as nominee for the Applicant. The Respondents should not be overly concerned if, on an application by the beneficial owner, receivers are appointed over the shares to enable them to seek the appointment of provisional liquidators and winding-up orders. It is difficult to

see what, if any, prejudice would arise to the Respondents in such circumstances. I am, in these circumstances, content therefore to appoint receivers.

The identity of the receivers

17. The next question relates to the identity of the proposed receivers. A review of the evidence shows the prior involvement of FFP Limited. In my recent judgment in *In the Matter of Global Fidelity Bank Ltd* (Unreported, FSD 168 of 2021 (DDJ), 20 August 2021) I dealt with an objection to the perceived independence of joint official liquidators. I appreciate such was in a liquidation context, rather than a receivership context, and that the Insolvency Practitioners' Regulations 2018 concern liquidators and not receivers. Mr Wardell submitted that the receivers, as opposed to the liquidators, do not need to be independent in the circumstances of this case, especially taking into account the very limited role that they will have to play. I am therefore content with the two specified individuals from FFP Limited being appointed as receivers.

Service out of the jurisdiction

18. I next deal with the issue of service out of the jurisdiction. I have read the concise skeleton argument on service out of the jurisdiction and I have considered the evidence in that respect. I am content to grant leave for service out of the jurisdiction of the writ of summons, together with applications and orders, on each of the Respondents by any means that is lawful under the laws of Switzerland, in the case of the First Respondent, and England, in the case of the Second Respondent. I express the wish, however, that the Respondents may see fit to authorise local attorneys to accept service as that would save a great deal of cost and time.

19. I record that I have considered *AK Investment CJSC v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7 and *Nilon Ltd v Royal Westminster Investments SA* [2015] UKPC 2 and I am satisfied that:

(1) there is a serious issue to be tried on their merits;

(2) there is a good arguable case that the claim falls within one or more of the classes of cases in which permission to serve out of the jurisdiction may be given, in particular in this case under Order 11, Rule 1(1)(i) and arguably Order 11 Rule 1(1)(c) of the Grand Court Rules; and

(3) in all the circumstances the Cayman Islands is clearly or distinctly the appropriate forum for the trial of the dispute and that in all the circumstances the Court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction. This matter concerns shares in companies incorporated under the laws of the Cayman Islands. Such proceedings should be heard in the Cayman Islands.

The Order

20. I make an order in terms of the draft helpfully submitted by counsel in advance of today's hearing, save for the removal of paragraphs 2(a) and (b) and the consequent renumbering of the subsequent paragraphs. That is my judgment in respect of the matters presently before the Court.

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT