



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

CAUSE NO. FSD 23 of 2022 (DDJ)

**IN THE MATTER OF THE COMPANIES ACT (2022 REVISION)
AND IN THE MATTER OF SEAHAWK CHINA DYNAMIC FUND**

Appearances: Sebastian Said, Conal Keane and Zacharie Caudeiron of Appleby on behalf of the Applicant Lau Chun Shun
Paul Smith and Lachlan Greig of Harneys on behalf of the Company and Hao Liang

Before: The Hon. Justice David Doyle

Heard: 10 February 2022

**Date Ex Tempore
Judgment delivered:** 10 February 2022

**Draft transcript
of Judgment
circulated:** 11 February 2022

**Date transcript
of Judgment approved:** 16 February 2022

HEADNOTE

Determination of ex parte on short notice application for the appointment of joint provisional liquidators – section 104 of the Companies Act (2022 Revision) – the four hurdles



JUDGMENT

Introduction

1. There is before the court an *ex parte* on short notice application dated Thursday, 3 February 2022 by Lau Chun Shun (the “**Applicant**”) for the appointment of joint provisional liquidators (“**JPLs**”) in respect of Seahawk China Dynamic Fund (the “**Company**”) which was registered in the Cayman Islands on 21 August 2017 as an exempted limited company.

Appearances

2. Sebastian Said appears on behalf of the Applicant. At short notice Paul Smith appears on behalf of the Company and Hao Liang (“**Mr Liang**”). I am grateful to counsel for their helpful assistance to the court.

Documentation and submissions considered

3. I confirm I have considered the skeleton argument dated 8 February 2022 in detail. I have also considered the oral submissions presented to the court today and they form part of the court record.
4. Over the last few days, I have considered the contents of the seven hearing bundles which were filed on Tuesday including the summons for the appointment of JPLs, the petition and the evidence in support.
5. I have considered the correspondence between Harneys and Appleby which was brought to my attention this morning namely:



- (1) Harneys letter dated 8 February 2022;
 - (2) Appleby letter dated 9 February 2022;
 - (3) Harneys letter dated 10 February 2022 together with enclosures; and
 - (4) Appleby letter dated 10 February 2022.
6. I record that I have considered yesterday the affidavit of Conal Keane sworn on 9 February 2022 in respect of the short notice given of today's hearing. I note that the Company, Mr Liang and the Hong Kong lawyers (the well known firm of Woo Kwan Lee & Lo) were provided on Monday, 7 February 2022 with short notice of this hearing which is taking place today Thursday, 10 February 2022.
 7. Mr Smith for the Company and Mr Liang referred to the voluminous material recently made available upon which he is still taking instructions. Mr Smith suggested an adjournment and referred to the recent suggestions of his clients namely that the position be dealt with by way of undertakings and the appointment of Inspectors.
 8. Mr Smith indicated that he was not in a position to engage today with the substance of what has been said on behalf of the Applicant. Suffice to say his clients feel ambushed by the *ex parte* proceedings in Hong Kong and by these *ex parte* on short notice proceedings in the Cayman Islands and they strongly dispute the evidence and suggest that what this case is really about is the Applicant's desire for early redemptions.
 9. Mr Smith stressed that there was no real risk of dissipation. Moreover, he says that Mr Liang has offered "*full transparency*" and is content for an independent director to be appointed or, failing that being agreed, for the individuals proposed as JPLs to be appointed as Inspectors instead. Mr Smith referred to the undertakings offered by his clients.



10. Mr Smith submitted that the balance of convenience does not lie in favour of appointing JPLs and that such an appointment would adversely impact on the reputation of Mr Liang who Mr Smith described as a leading fund manager.

Background

11. I refer now to some brief background to the matter.
12. The Applicant says that Mr Liang holds 100% of the management shares, which are non-participating voting shares (and the only voting shares) of the Company. The Company's investment manager is stated to be Gold Dragon Worldwide Asset Management Limited, a company incorporated with limited liability in Hong Kong (the "**Manager**").
13. The Applicant says that Mr Liang has used his role as director of the Company (and his control of the Company by virtue of his shareholding) to seek to manage the Company in place of the Manager. Mr Liang was until 29 December 2021 the CEO and CIO of the Manager but was suspended by the board of the Manager with effect from that date.
14. The Applicant is an individual investor holding shares in the Company with a net asset value ("**NAV**") of approximately US\$306,156,549.47 representing approximately 70.30% of the total NAV of the Company as at 30 November 2021. Approximately 18.46% of the Company's NAV is held by the Applicant's wife and relatives who he says are supportive of the winding up petition. The remaining 11.24% of the NAV is held by investors, including those associated with or referred to by Mr Liang.
15. The Applicant says that on or about 19 November 2021 he became aware of conduct on the part of Mr Liang in respect of the Company which the Applicant considers dishonest, in particular what he refers to as (1) the Unauthorised Scheme and (2) the Late Trade Allocations.



16. Certain legal proceedings were commenced in Hong Kong by the Manager and on 30 December 2021 an *ex parte* injunction was made against Mr Liang. I note the terms of the prohibitory injunction granted by the High Court in Hong Kong in HCA 1935/2021. Mr Liang was restrained from directing or causing the Company (1) to carry out or act upon (a) purported amendments made on 9 August 2021 to the Investment Management Agreement and/or (b) the purported Supplementary Agreement dated 16 November 2021; (2) to pay any performance fees and/or allocate any performance allocation to Mr Liang and/or issue any further performance shares to him. Mr Liang was also restrained from dealing with any purported Performance Allocation Shares and/or any dividends or other distributions arising therefrom. I note that Mr Liang “*intends to vigorously oppose the grant of the injunction*” but sensibly had no objection to the continuation of the Order made on 30 December 2021 until the substantive hearing. It is stated that he will in due course “*apply for the discharge of the injunction and fortification*” (paragraph 3 of his proposed directions dated 6 January 2022). The date of the substantive hearing in Hong Kong has not yet been set. I have considered the two volumes of papers filed in respect of the proceedings in Hong Kong.
17. The Applicant in early February 2022 presented a winding up petition in the Cayman Islands and he now seeks the appointment of JPLs on an urgent *ex parte* short notice basis.

The relevant law

18. I remind myself of the relevant law in respect of *ex parte* applications and *ex parte* applications for the appointment of JPLs as briefly outlined in my judgments in *Cathay Capital Holdings III L.P* (24 August 2021) and *Principal Investing Fund I Limited* (17 September 2021) and Parker J’s judgment in *Al Najah Education Limited* (9 August 2021). I have also considered the other authorities referred to in the skeleton argument.



19. I accept that a court must be especially careful when allegations of dishonesty are made at a hearing on an *ex parte* or *ex parte* short notice basis.

20. Section 104(1) of the Companies Act (2022 Revision) (the “Act”) provides as follows:

“Subject to this section and any rules made under section 155, the Court may, at any time after the presentation of a winding up petition but before the making of a winding up order, appoint a liquidator provisionally.”

21. Section 104(2) of the Act provides as follows:

“(2) An application for the appointment of a provisional liquidator may be made under subsection (1) by a creditor or contributory of the company or, subject to subsection (6), the Authority, on the grounds that –

(a) there is a prima-facie case for making a winding up order; and

(b) the appointment of a provisional liquidator is necessary in order to –

(i) prevent the dissipation or misuse of the company’s assets;

(ii) prevent the oppression of minority shareholders; or

(iii) prevent mismanagement or misconduct on the part of the company’s directors.”

Decision on proceeding *ex parte* on short notice

22. I am satisfied, in the somewhat exceptional circumstances of this case, that it is appropriate to proceed on an *ex parte* short notice basis.

23. If further notice was given to Mr Liang it may well defeat the object of the application.



24. I accept the Applicant's position that it is appropriate to proceed on an urgent *ex parte* short notice basis as to provide further notice to Mr Liang would increase the immediate risk of dissipation of assets and the risk of concealment or destruction of documents and records and to a significant extent defeat the purpose of the application before the Court.
25. I note the concerns that Mr Liang appears to be in control of the Company and could transfer the Company's assets out of the Company's control at any time. I note the serious allegations of dishonesty and concealment. There is something in the Applicant's point that now that Mr Liang has knowledge that his alleged wrongdoing has been discovered "*there is clearly a risk that Mr Liang begins acting so as to protect himself by further concealment by e.g. destruction of records and documents that might shed further light on the wrongdoing that has already [been] discovered, or (more likely) wrongdoing that has not yet been discovered.*"
26. In summary, if further notice were given to Mr Liang, there would be a significant increase in respect of the risks of improper dissipation and misuse of assets of the Company and the risks of concealment and or destruction of relevant documents and records. The preservation of relevant documents and records will assist investigations into *prima facie* wrongdoing.
27. I am satisfied that this is one of those rare and exceptional cases where, if justice is to be done, the Court must proceed on an *ex parte* short notice basis.

The four hurdles

28. I am also satisfied that the Applicant has jumped the four necessary additional hurdles namely:

- (1) the presentation of the winding up petition hurdle – a winding up petition has been presented and the directions summons is listed for 3pm on 24 February 2022;
- (2) the standing hurdle – the applicant is a contributory and has standing;
- (3) the *prima facie* hurdle; and
- (4) the necessity hurdle.

Prima facie hurdle

29. In respect of the *prima facie* hurdle, I have considered the Applicant’s winding up Petition and the evidence filed in support of it. The Applicant says that he has justifiably and irretrievably lost all confidence in the Company’s management because of a clear lack of probity of one of the Company’s directors, namely Mr Liang, who is also the Company’s sole voting member. The Applicant says that Mr Liang has abused and misused his power in a manner that favours his own interests to the detriment of the interests of the Company and thereby the Applicant and other investors. The Applicant does not beat about the bush and directly alleges that Mr Liang has been dishonest. In particular it is said that Mr Liang:

- (i) through the Unauthorised Scheme (set out at paragraphs 23 – 36 of the Petition) attempted to secretly strip approximately US\$20 million for his own benefit from the Company;
- (ii) through the Late Trade Allocations (set out at paragraphs 37 – 39 of the Petition) has orchestrated a deliberate and cynical system to siphon moneys to The Hover4pi Master Fund and The Hover4pi Offshore Feeder Fund (“**the Hover4pi Funds**”) (controlled by Mr Liang and his wife) while simultaneously causing significant

losses to the Company. With one exception, every time a trade was liable to result in a profit it was diverted to the Hover4pi Funds and every time a trade was liable to result in a loss it was diverted toward the Company and away from the Hover4pi Funds. In doing so, he deliberately preferred the interest of the Hover4pi Funds, and ultimately himself, and has deliberately caused the Company to suffer losses of approximately US\$8 million;

- (iii) purported to make significant amendments to the Company’s constitutional documents and the investment management agreement which in short would have enabled Mr Laing “*to divert the performance fee payable to the Manager to himself.*” (paragraph 24 of the Petition);
 - (iv) convened board meetings on 11 August and 16 November 2021 without providing the required notice to the Applicant despite dishonestly recording the contrary in the relevant minutes;
 - (v) passed resolutions at those board meetings by a majority “*which, as he had been advised, he could have passed even if the Petitioner had attended the board meetings and not been agreeable, from which it can be inferred that Mr Liang was seeking to conceal his actions*”;
 - (vi) sought to conceal his illegitimate actions;
 - (vii) purported to create a new class of shares which he subsequently allocated to himself; and
 - (viii) removed the Applicant from the board of the Company.
30. The Applicant also pleads in detail an irretrievable breakdown of a quasi-partnership and unjustifiable exclusion from management and the disregard of his legitimate expectations.

31. The Applicant also refers to oppression, prejudice and undermining of the Applicant's rights and interests.
32. The Applicant stresses that there is an urgent need for an investigation. He says that, in the 3 months since November 2021, the Applicant and the Manager have discussed what he describes as *"a series of dishonest and deliberately concealed acts on the part of Mr Liang – the Unauthorised Scheme (relating to the attempted diversion by Mr Liang of over USD 19m in performance fees), and the Late Trade Allocations (relating to losses caused to the Fund of over USD 8m). Both matters have now been reported by the Manager to the Regulator and the Police in Hong Kong. The Unauthorised Scheme is also the subject of civil proceedings in Hong Kong brought by the Manager, in which an ex parte Injunction against Mr Liang has been granted."*
33. The Applicant says that the discovery of the Unauthorised Scheme, the Late Trade Allocations together with the lack of transparency and concealment around both, *"urgently requires an independent investigation by independent liquidators into the affairs of the Fund."*
34. I note that on 30 December 2021 the High Court of Hong Kong granted the Manager an *ex parte* injunction against Mr Liang.
35. The Applicant seeks a winding up order in respect of the Company on the basis that it is just and equitable for the Company to be wound up.
36. Whilst I have considered over the past 2 – 3 days the seven files provided on Tuesday and I note the substantial amount of evidence produced to support the Applicant's very serious allegations against Mr Liang, I agree with Mr Said that the background to the Petition and the application to appoint JPLs and the allegations in respect of the two distinct courses of alleged dishonest conduct by Mr Liang (described as the Unauthorised Scheme and the Late Trade Allocations) appears to be relatively *"straightforward"*.

37. I stress again that I am conscious that I am yet to hear Mr Liang’s side of the story but, based on what I have read and heard to date, there seems to be considerable force in Mr Said’s submissions that a winding up order is indeed likely to be made. I do, of course, keep a mind that is open to persuasion at any substantive hearing of the winding up Petition.
38. Suffice to say for the purposes of today’s hearing, I am satisfied that the Applicant has easily cleared the *prima facie* case hurdle in respect of a winding-up order. In particular there appears, on the basis of what I have read and heard to date, an objectively justifiable loss of confidence in Mr Liang on account of alleged serious misconduct of Mr Liang in respect of the Company.
39. Moreover, the need for an investigation into the affairs of a company may be a free-standing basis for making a winding up order on the just and equitable ground (Henderson J in *Paradigm Holdings Limited* 2004-05 CILR 542 at paragraph 35 and Smellie CJ in *GFN Corporation Limited* 2009 CILR 135 at paragraph 42 but see also Cresswell J in *Fortune Nest Corporation* (unreported 5 February 2013) at paragraphs 30 - 33 where the issue was left open).
40. I note that Mr Liang would be content if Inspectors were appointed but opposes the appointment of JPLs as this would be, in Mr Smith’s words, “*a sledgehammer to crack a nut.*” Mr Liang should welcome and fully co-operate with an independent investigation by JPLs if he has nothing to hide. If he has done nothing wrong it will provide him with an opportunity to clear his name. If Mr Liang has committed the serious wrongdoing as alleged by the Applicant an independent investigation will assist in bringing him to justice and enabling the courts in Hong Kong and the Cayman Islands to provide appropriate judicial relief.

The necessity hurdle

41. I turn now to the necessity hurdle.

42. I accept Mr Said’s submission in effect that there is no less intrusive remedy that would be adequate in the circumstances of this case.
43. I accept the Applicant’s reasonable concern that Mr Liang appreciates that the injunction granted by the High Court in Hong Kong does not prevent him from managing the portfolio of the Company and that Mr Liang has recently demonstrated an intention to continue trading on behalf of the Company with in the Applicant’s eyes “*the real risk that he will act as we now know he has done previously – for his own substantial benefit, at the substantial expense of the Company, and seeking to deliberately conceal such acts from others.*” Moreover, I accept the Applicant’s position that the recent offers from the Company and Mr Liang to provide undertakings, to appoint an independent director or, failing that, Inspectors are inadequate to address the serious concerns in this case.
44. I am satisfied that the appointment of the JPLs is necessary to prevent the dissipation and or misuse of the Company’s assets and to prevent mismanagement and or misconduct on the part of Mr Liang, one of the Company’s directors. The appointment of Inspectors would not prevent those serious risks as Mr Liang would still be involved in the management of the Company.
45. There are serious concerns over the assets of the Company. Moreover, it is important that all the Company’s books, documents and records are secured.
46. Parker J in *Al Najah* at paragraph 51 stated that:

“I should add that the need for an investigation is not enough by itself to satisfy the statutory test under s.104(2). The court only has jurisdiction to appoint JPLs if it is necessary to prevent one or more of the risks set out. There needs to be strong evidence to show that an order is necessary for that purpose.”

47. I am satisfied that two of the risks set out (namely dissipation and, or, misuse of the Company's assets and mismanagement and/or misconduct on the part of Mr Liang) are present in this case.
48. There is strong evidence presently before the Court which reveals that there are serious risks in respect of the dissipation and/or misuse of the Company's assets and mismanagement and/or misconduct on the part of Mr Liang. There is clear and strong evidence that the necessity hurdle has been jumped in this case.
49. In my judgment, the balance of convenience clearly weighs strongly in favour of the appointment of JPLs notwithstanding the fact that the Company is solvent. Appointing JPLs (as opposed to leaving Mr Liang in control of the management of the Company and its assets) is the course likely to cause the least irremediable harm (*Al Najah* at paragraph 34). I note also that the Applicant has given the usual undertaking.
50. In addition, in my judgment, on the facts and circumstances of the case presently before the Court, an urgent independent investigation is plainly required and must start forthwith. The appointment of JPLs should also assist in dealing with the confusion/near paralysis that appears to exist across a number of the Company's brokerage accounts as to whether instructions should be taken from the Manager or Mr Liang.
51. In my judgment, the limited scope of the injunction granted in Hong Kong does not deal with the concerns and clear risks in this case. Moreover, I am of the view that the approach suggested by the Company and Mr Liang in the recent correspondence, namely the appointment of Inspectors pursuant to section 64 of the Companies Act and certain limited undertakings by the Company and Mr Liang, would not adequately deal with the concerns and clear risks in this case.

Full and frank disclosure

52. I record that I have considered Section Q of the Applicant's Second Affirmation in respect of his duty of full and frank disclosure and I have considered paragraphs 126 – 149 on pages 41 – 51 of the Skeleton Argument of the Applicant. I also note what Mr Said said during his oral submissions to the court today, which forms part of the court record.

The Order

53. For the reasons stated I am content to make an Order substantially in terms of the draft helpfully provided to the Court on Tuesday.

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT