IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD 59 of 2023 (AWJ)

IN THE MATTER OF SECTION 46 OF THE COMPANIES ACT (2023 REVISION)
AND IN THE MATTER OF JUNIPER LIFE SCIENCES LTD

BETWEEN:

RBH HOLDINGS

Plaintiff

AND:

JUNIPER LIFE SCIENCES LTD.

Defendant

ON THE PAPERS

Coram: **Walters J. (acting)**

Appearances: **Mr Richard Millett KC instructed by Mr Jonathon Milne and Mr Jordan McErlean of Conyers for the Plaintiff**
Mr Alain Choo-Choy KC instructed by Mr Denis Olarou and Ms Kalyani Dixit of Carey Olsen for the Defendant

Draft circulated: 14 June 2024

Judgment: **20 June 2024**

JUDGMENT

1. On 23 February 2024, I heard an application by the Defendant ("**JLS**" or the "**Company**") for Orders:
   1.1 That the Plaintiff's ("**RBH**") summons dated 8 March 2023 (the "**Originating Summons**") be struck out pursuant to Order 18, rule 19(1)(a) and (d) of the Grand Court Rules (2023 Revision) ("**GCR**"), and/or pursuant to the inherent jurisdiction of the Court;

1.2 Alternatively, that these proceedings shall continue as if begun by writ, with pleadings, discovery and cross-examination of witnesses (if any) (the "**Strike Out/Directions Application**").

2. I handed down written reasons on 10 April 2024 (the "**Strike Out/Directions Judgment**") for my decision to dismiss the Defendant's application to strike out the Originating Summons and granting its alternative application that the proceedings continue as if begun by writ with directions for pleadings, discovery, evidence and setting down for trial.

3. The hearing of the Strike Out/Directions Application proceeded subject to an appeal that was being pursued by the Company against the order dated 7 July 2023, which gave effect to my decision to dismiss the application by the Company seeking a stay of the proceedings pursuant to the Overriding Objective, or Section 4 of the Foreign Arbitral Awards Enforcement Act 1997 or, in the alternative, Grand Court Rules Order 12, rule 8 (the "**Stay Application**").

4. The Company applied for leave to appeal in relation to the Stay Application (the "**Jurisdiction Appeal**"). I turned down that application, and the Company then applied to a single Judge of the Court of Appeal on 30 October 2023. That application was refused. The application for leave was renewed before the full panel of the Court of Appeal and heard on 16 April 2024. Leave was granted following that hearing. A special sitting of the Court of Appeal has been arranged for 10 July 2024 to hear the Jurisdiction Appeal.

5. As mentioned, the Strike Out/Directions Application sought an order for directions in the alternative, including a direction that "*2. Any steps taken by the Company in these proceedings shall be deemed to be without prejudice to the final determination of its appeal in the Cayman Islands Court of Appeal matter with cause no. CICA 24 of 2023 and shall not amount to a submission to the jurisdiction of the Court.*" (the "**Without Prejudice Direction**"). The Strike Out/Directions Application was also made subject to the following reservation of rights by the Company, which was set out on the summons:

> *"For the avoidance of doubt, this application is made expressly without prejudice to (1) the Company's contention that the issues raised in these proceedings are subject to mandatory resolution by arbitration pursuant to Clause 18 of the Amended Subscription Agreement dated 12 January 2022 (as amended) between Sylvan Asia Growth Master Fund I Pte. Ltd, the Company, and the Plaintiff, (2) the Company's pending appeal in relation to this contention in the Cayman Islands Court of Appeal matter with cause no. CICA 24 of 2023, (3) the Company's continuing challenge to the jurisdiction of this Court pursuant to the said appeal, and (4) the Company's right to seek a stay of these proceedings from the Cayman Islands Court of Appeal."*

In the Strike Out/Directions Judgment, I expressly noted that reservation of rights[1].

6. Indeed, the transcript of the hearing on 23 February 2024[2] begins with the following:

> *"**MR CHOO-CHOY:** ... So my Lord, before I start, may I make a reservation as to our position on jurisdiction? I do that only because you may have seen my learned friend's postscript[3] in his skeleton. I do not agree with what he said there but, as is acknowledged there, that is a matter for the Court of Appeal in relation to our renewed application for permission to appeal when that is served later in April.*
> *I, having been warned of what is to come, I better make sure that there is an explicit statement of our position as to non-submission to jurisdiction, notwithstanding the course that we are taking in relation to the two alternative set of directions that we are proposing."*[4]

7. The transcript further records, at pages 189 – 190, submissions of Mr Choo-Choy in relation to directions and the Jurisdiction Appeal:

> *"My Lord, I think my learned friend says that there was some kind of inconsistency in our approach because I said that we were willing to submit to directions B, even if we were right in relation to Nilon, but that we're not willing to submit to jurisdiction. Well, I mean there's no inconsistency there. (inaudible) directions B in the summons are expressly set out to be subject to our jurisdictional challenge. It's not unusual at all in a jurisdictional challenge case where the applicant disputing jurisdiction has lost first instance to participate to some limited extent because, for example, either because a -- well, often because a stay application's failed or because the court -- the party in question sees the sense in progressing to some extent whilst an appeal is pending. But as long as that is done very clearly on the basis of (inaudible) without prejudice to the jurisdictional challenge, that is often done. And that is what we have done, and therefore there's no inconsistency in us saying, "We're willing there to be directions."*
>
> *And of course, as you know, on our -- on our suggested timetable for directions the appeal, certainly the leave application, would be addressed long before because it's*

[1] Page 2, footnote 1.
[2] Hearing Bundle page 24.
[3] Arguing that the Company had already submitted to the jurisdiction of this court.
[4] Hearing Bundle pp 25-26.

going to be addressed in April of this year long before when an actual trial of the proceedings might take place. And so of course if we were to get leave to appeal, I can -- I can – I can say to your Lordship if we were to get leave to appeal, we will obviously reconsider the question of progress of the proceedings, depending upon what directions your Lordship makes. If your Lordship makes accelerated directions for a final -- to a final hearing, and in the meantime we get leave to appeal."

8. The directions that I proposed in the Strike Out/Directions Judgment were as follows:

"81.1 The action is to proceed as a writ action pursuant to GCR Order 28, Rule 8;

81.2 The Originating Summons shall stand as the Plaintiff's generally endorsed Writ;

81.3 The Plaintiff is to serve a Statement of Claim within 14 days;

81.4 The Defendant is to serve a Defence within 14 days of service of the Statement of Claim;

81.5 If so advised, the Plaintiff is to serve a reply within 14 days of service of the Defence;

81.6 No further pleadings to be served without Leave of the Court;

81.7 Lists of documents are to be exchanged within 14 days of close of pleadings, discovery being limited to the Article 9(1)(c) issue;

81.8 Inspection to take place 7 days after exchange of lists of documents;

81.9 The affidavits of Mr. Rudianto dated 6 March 2023 and 21 April 2023, Mr. Eyong dated 18 April 2023 and 24 April 2023 and Mr. Jeun dated 18 April 2023 stand as their evidence in chief and no further affidavits or witness statements from those parties are to be served without Leave of the Court;

81.10 Within 21 days of the exchange of lists of documents, the witness statements of any additional witnesses upon whose evidence it is intended to rely are to be exchanged;

81.11 The matter to be set down trial 14 days after close of pleadings with a time estimate of 4 days;

81.12Liberty to apply."

9 After handing down the Strike Out/Directions Judgment, the parties spent some time trying to agree the form of order to give effect to it. The Company sought more time for the service of its Defence than I had proposed in the Strike Out/Directions Judgment but, in the circumstances, I declined to extend it. There appears to have been some debate in writing between the parties as to whether the Without Prejudice Direction should have been included in the draft order. This was not an issue that was dealt with expressly by Counsel during the hearing. The Directions were incorporated in an order dated 7 May 2024 (the "**Directions Order**").

10 As mentioned, the Jurisdiction Appeal is due to be heard by the Court of Appeal on 10 July 2024. Pending that appeal, no stay of these proceedings has been ordered by the Grand Court or the Court of Appeal.

11 The Company now seeks:

11.12 an order that time is extended for the service of its Defence until the 7th business day after the dismissal of the Jurisdiction Appeal (if that is the outcome);

11.13 leave to appeal against the Directions Order in so far as it requires service of the Defence prior to the hearing of the Jurisdiction Appeal; and,

11.14 a stay of the requirement to serve its Defence pending the hearing of the Jurisdiction Appeal.

Position of Company in relation to extension of time

12 In relation to the application for an extension of time, the Company argues:

12.12 The Grand Court has jurisdiction to grant an extension of time in the absence of consent (whether under section 11(1) Grand Court Act (as revised), by analogy with GCR O.3, r.5, and/or pursuant to its inherent jurisdiction).[5]

12.13 The Company acknowledges that consideration of every request for time extensions starts from the proposition that: "*The need to comply with court orders [is] of "paramount importance".*[6] However, in the case of in-time applications (which this is), it contends that the Court "*will grant a reasonable extension if it does not impact on hearing dates or otherwise disrupt proceedings*" and need not consider the factors relevant to the granting of relief from sanctions (relevant for out-of-time applications).[7] It says that this is the case even where the application is made on the day for compliance such that it might be argued that there is "*little practical difference*" between an in-time and an out-of-time application.[8] The fact, it argues, that the Court will not come to determine the application until after the expiry of the deadline for compliance does not affect the status of the application as an in-time application.[9]

[5] GCR O.3 is not incorporated into the Companies Winding Up Rules by CWR O.1, r.4. However, the Court may use its inherent jurisdiction to fill a lacuna in the CWR (see *HSH Cayman I GP Limited et al* [2010 (1) CILR 114] and *In re Polarcus Limited (in Official Liquidation)* [2022 (2) CILR 49], and may do so by reference to the GCR and related authorities.

[6] *Re New Frontier Health Corporation* (unreported, Justice Doyle, 4 April 2023) at paragraph [29] quoting *Jalla v Shell International Trading and Shipping Co Ltd* [2021] EWCA Civ 1559.

[7] Ibid.

[8] *Everwarm Ltd v BN Rendering Ltd* [2019] 4 W.L.R. 107 at [36(c) and (d)].

[9] *Hallam Estates v Baker* [2014] EWCA Civ 661 at [26].

12.14 It argues that the relevant consideration for the Court is, therefore, to exercise its discretion in accordance with the overriding objective.[10] The overriding objective – "*to deal with every cause or matter in a just, expeditious and economical way*" – requires "*ensuring that the substantive law is rendered effective and carried out"*. The Company says that the exercise the Court performs is well summarised in the judgment of Quin J in *Gabato v Immigration Appeals Tribunal*[11]:

> "*When determining whether to grant an extension of time, the court needed to consider in the round whether there was an acceptable reason for the delay that justified departing from the time limits, and whether granting an extension would cause prejudice to the other party.*"

12.15 In the present case, it contends that the "*reason for the delay*" is that, by filing the Defence before the Jurisdiction Appeal is determined, the Company will be submitting to jurisdiction and rendering the Jurisdiction Appeal nugatory. It takes the position that this is an "*acceptable reason*" for delaying the filing of the Defence for a short period until after the Jurisdiction Appeal is determined.

12.16 It argues further that the time extension will cause no real prejudice to the Plaintiff. It says that trial in the proceedings is yet to be fixed, so there is no question of trial dates being vacated. It goes on to argue that no doubt the Plaintiff wants trial to be listed sooner rather than later, but the frustration of that desire common to all plaintiffs is not in itself a relevant prejudice. Certainly, a delay of about six weeks (the time remaining until the 10 July 2024 special sitting of the Court of Appeal) is not inherently prejudicial.

12.17 Overall, its position is that the extension sought would promote the overriding objective since it would allow the Jurisdiction Appeal to take its proper course. On the other hand, it says, denying the extension will effectively trespass on the jurisdiction of the Court of Appeal.

Position of Company in relation to the leave application and stay

13 In the alternative, the Company argues that, if the Court is not minded to grant an extension of time, leave to appeal the Directions Order should be granted. The Company also seeks a stay pending final determination of the appeal, which the Company intends to ask the Court of Appeal to hear concurrently with the hearing of the Jurisdiction Appeal.

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[10] *Robert v Momentum Services Ltd* [2003] 1 W.L.R 1577 at [33]: "*…the discretion should be exercised simply by having regard to the overriding objective*".

[11] [2011 (1) CILR Note 6].

14 It argues that leave to appeal should be granted because, it says, the draft Memorandum of Grounds for Appeal reveals grounds that have a realistic (i.e. a more than fanciful) prospect of success, or there is a real prospect that the Court of Appeal will come to a different conclusion that would materially affect the outcome of the case.[12]

15 The Company says that, as a general point, the overall proposition that the making of a direction that, in the face of a pending appeal, requires a party to take a step that would render that pending appeal nugatory is either an error of law or an appealable error in the exercise of judicial discretion, is plainly more than merely fanciful and merits leave.

16 In relation to the stay application, the Company says that the applicable principles are well-known:[13]

(a) there must be *'good cause'* or *'good reason'* for a stay;

(b) 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

(c) 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.

17 The Company submits that these requirements are satisfied in the present instance and that the grounds of appeal which the Company intends to rely on are arguable and have a realistic prospect of success.

18 The Company also says that the balance of convenience lies in favour of granting a stay for the same reasons that are set out above. It argues that denying the stay will render the Jurisdiction Appeal nugatory. Granting the stay will involve only a relatively short extension of the proceedings. It says that while the Court is rightly focused on dealing with this matter expeditiously, context and balance are key. The Company refers to the case of ***Re New Frontier Health Corporation*** **(unreported, Justice Doyle, 28 May 2024)**, in which Doyle J granted a stay pending appeal against his own decision to refuse a yet further extension of time for discovery despite the fact that such stay effectively rendered the dissenters' victory "*pyrrhic*" (at [8]) and further delayed discovery that had been the subject of litigation for several years.

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[12] *Telesystem International Wireless Inc v CVC/Opportunity Equity Partners LP* [2001 CILR Note 21]; *Merkanti Holding P.L.C and anor v Raiffeisen Bank International AG* CICA (Civil) Appeal 14 of 2021 at [5]; *Wang v Credit Suisse AG* (unreported, Justice Doyle, 10 May 2022).

[13] Section 19(3) of the Court of Appeal Act, and see also *The Deputy Registrar of the Cayman Islands Government v Day and Another* [2019 (1) CILR 510], and more recently *Re Aquapoint LP (in official liquidation)* (unreported, Justice Doyle, 5 October 2022), cited with approval by the Court of Appeal in *Re Trina Solar Ltd* (unreported, CICA, 4 August 2023) and referred to by the Court of Appeal in *Re Virginia Solutions SPC Ltd* (unreported, CICA, 10 November 2023).

19 The Company says that Doyle J acknowledged that granting the stay prejudiced the dissenters: "*I accept that if a stay is granted and the appeal is unsuccessful there will be some prejudice to the Dissenters in the form of undue delay*". Yet, such prejudice could not override the prejudice arising from the fact that the absence of a stay would render the appeal nugatory.

20 In the present case, the Company argues that the need for a stay is further underlined by a step that RBH took on 29 May 2024, when, apparently, it chose to file with the Court of Appeal a Respondent's Notice which indicates that at the hearing of the Jurisdiction Appeal, RBH intends to argue, among other things, that the mere fact that the Company pursued the Strike Out/Directions Summons (notwithstanding the express reservation of rights with regard to the Jurisdiction Appeal) itself amounted to submission to the jurisdiction. The Company takes the position that the present submissions are not the place to debate the merits of the Respondent's Notice, but its relevance to the Stay Application is that it shows beyond doubt that, should the Company file its Defence, as currently directed, RBH will argue that this disposes of the Jurisdiction Appeal.

21 Indeed, the Company goes on to say that its current submissions should not be construed as a submission to the jurisdiction of the Court.

Position of RBH in relation to extension of time

22 RBH refers to what it describes as the well-established rationale for the Overriding Objective and the need to manage cases in an efficient and cost-effective manner. It also refers to paragraph B4.3 of the Financial Services Division Guide, which emphasizes the importance of an efficient, expeditious and cooperative approach to litigation[14].

23 RBH also refers to a number of authorities dealing with the circumstances in which the Court might exercise its discretion to extend time limits and the importance of adhering to them[15]. RBH argues that the present application for an extension of time to serve the Defence should be dismissed for the following reasons:

23.1 directions have very recently been given after what RBH suggests is a deliberate and continuing delay on the part of the Company in these proceedings;

23.2 in accordance with the Directions Order, RBH served its Statement of Claim on 9 May 2024, and the Defence was due 14 days thereafter;

[14] See e.g. *Cowan et al v Equis Special LP et al* 22 March 2024 (FSD of 2018) at [19] and *In the Matter of Arnage Holdings Limited et al v Walkers (a Firm)* 25 January 2022 at [112-113].
[15] See e.g. *Fusechain v XDB Foundation* FSD 293 of 2023 at [7], *Jalla v Shell International Trading and Shipping Co Ltd.* [2021] EWCA Civ 1559 at [29] and *New Frontier Health Corporation* FSD 72 & 74 of 2022 4 April 2023 at [29].

23.3 the Company has already sought, unsuccessfully, an extension of time for service of its Defence when the Directions Order was being finalized;

23.4 the Directions Order was made as a result of an application by the Company itself, so for it to now seek to extend time and delay matters is a repetition of its previous behaviour; and,

23.5 to extend time now will prejudice RBH in that it will delay further the trial of these proceedings.

24 RBH also argues that the Company submitted to the jurisdiction by taking steps in the proceedings, including the Strike out/Directions Application. RBH cites a number of authorities dealing with when a party might be treated as having submitted to the jurisdiction. That is not an issue for me to decide now, just as it was not an issue with which I had to deal in the Strike Out/Directions Judgment.

Position of RBH in relation to Leave to appeal

25 RBH argues that there are no grounds upon which the Company can seek leave to appeal, especially with an interlocutory, case management order.[16]

Position of RBH in relation to Stay

26 RBH takes the position that the question of a stay only arises if I grant leave to appeal.

Decision

27 The question of whether or not the Company has submitted to the jurisdiction of this Court by way of the Strike Out/Directions Application was not an issue argued before me at the hearing of the Strike Out/Directions Application and is not an issue for determination here.

28 As I have outlined above, the Company has reserved its rights in that regard both in the summons that it issued in relation to the Strike Out/Directions Application and at the hearing itself. As I have highlighted above, the Company proceeded on the basis that if directions were ordered, then they would run concurrently with the Jurisdiction Appeal. That is what I had intended as the consequence of the directions that I gave.

29 There was no argument at the hearing of the Strike Out/Directions Application as to whether I could, in fact, make the Without Prejudice Direction and, if I did, what effect it would actually have on the question of submission by the Company to the jurisdiction.

[16] See e.g. *Merkanti Holding plc v Raiffeisen Bank International AG* (CICA (civil) Appeal No 14 of 2021) at [6].

30 In relation to the Company's Time Summons, my view is that time should not be extended. The Company itself argued initially that the time within which it should serve its Defence should be longer than fourteen days, suggesting eight weeks instead[17]. I declined to extend time at that point. By the time this judgment is handed down, more than twenty-eight days will have expired from the date of service of the Statement of Claim. The Statement of Claim itself is twelve pages long and relatively straightforward. In my view, bearing in mind the current stage of the proceedings, preparing a defence should not have needed more than fourteen days, let alone the additional time that will have passed before this decision is made available to the parties. Indeed, I am somewhat surprised that a draft defence has not been put into evidence in support of the current application. On that basis, I see no acceptable reason for delay.

31 The Company's argument in relation to the alleged prejudice to it by having to serve the Defence prior to the hearing of the pending appeal is, in my view, misconceived. The reasons for that view are as follows:

31.12 The position of the Company, as put forward by Mr Choo-Choy at the hearing on 24 February 2024, suggested that directions should run concurrently with the Jurisdiction Appeal, subject to a reservation of the Company's position in relation to jurisdiction which I noted.

31.13 This appears to be consistent with the approach of the Company's attorneys in correspondence with the attorneys for RBH. In an email dated 18 April 2024[18], Carey Olsen comment as follows:

> *"As of 16 April 2024, our client now has leave to proceed with its appeal, to be heard in late August or early September. Almost concurrently with this, the Directions Judgment has indicated His Lordship's proposed directions in the Grand Court and these will crystallise shortly, whether by agreement or by His Lordship's further determination.*
>
> *If the appeal succeeds (and the outcome may well be unknown until at least the Court of Appeal's winter sitting in November), these proceedings will be stayed in favour of arbitration. If that were to happen, everything done in these proceedings between now and the Court of Appeal judgment will be completely wasted. All of the parties' costs bringing the case to trial and all of the Court's time holding the trial will be thrown away.*
>
> *In the circumstances, we invite your client to consent to a stay of these proceedings pending determination of the appeal.*
>
> *While a complete stay would be most sensible, as a compromise (but without prejudice to the terms of any contested stay application our client might bring in which our client*

[17] Hearing Bundle page 225.
[18] Hearing Bundle page 232.

reserves its right to seek full stay), our client would be prepared to agree to a more limited form of stay, whereby the parties complete their pleadings, but all the remaining work in the proceedings, including discovery, trial evidence, and trial itself are stayed pending appeal. This would allow some progress to be made in case the appeal fails, while preserving the bulk of the costs and court time if the appeal succeeds.

Please let us know if your client will consent to a stay pending appeal on the terms proposed above."

31.14 The question of a stay appears to have come up after the Strike Out/Directions Application. As mentioned above, although the Strike Out/Directions Summons sought an order that "*2. Any steps taken by the Company in these proceedings shall be deemed to be without prejudice to the final determination of its appeal in the Cayman Islands Court of Appeal matter with cause no. CICA 24 of 2023 and shall not amount to a submission to the jurisdiction of the Court.*" I am not sure that I was in a position to make any such order. The question of submission to the jurisdiction was not argued before me on the hearing of the Strike Out/Directions Summons. That hearing proceeded on the basis that the Company reserved its rights in relation to the submission to the jurisdiction and it seemed to me to be clear that it was on that basis that the Company was itself seeking an order for directions. As I have already mentioned, I expressly noted in the Strike Out/Directions Judgment the Company's reservation of its position in that regard. To the extent, therefore, that the Strike Out/Direction order gave directions, in my view, it was subject to the reservation of the Company's position, as I noted. If I had been asked at the time the Strike Out/Directions order was being discussed how the deeming wording set out above might have been dealt with, then my suggestion would have been to include it as a recital in the order, effectively repeating what I had noted in my judgment. As it turns out, RBH is now seeking to argue that the Company has already submitted to the jurisdiction, a matter with which the Court of Appeal will need to deal. What I am prepared to order, pursuant to GCR O. 20, r. 11, is that the Company's express reservation of rights be added as a recital to the Directions Order in the following terms:

"For the avoidance of doubt, this order is made expressly without prejudice to (1) the Company's contention that the issues raised in these proceedings are subject to mandatory resolution by arbitration pursuant to Clause 18 of the Amended Subscription Agreement dated 12 January 2022 (as amended) between Sylvan Asia Growth Master Fund I Pte. Ltd, the Company, and the Plaintiff, (2) the Company's pending appeal in relation to this contention in the Cayman Islands Court of Appeal

matter with cause no. CICA 24 of 2023, (3) the Company's continuing challenge to the jurisdiction of this Court pursuant to the said appeal, and (4) the Company's right to seek a stay of these proceedings from the Cayman Islands Court of Appeal."

32 On the basis of the above, besides the fact that the Directions Order is interlocutory in nature with liberty to apply, I do not see any basis upon which there are grounds to appeal against it as suggested by the Company.

33 I also see no basis upon which the Directions Order should be stayed. The question of a stay did not arise at the Strike Out/Direction Application, and I see no grounds, therefore, to now grant one.

34 I am willing to deal with brief submissions on costs but it is difficult to see why RBH should not be entitled to its costs of this application on the usual basis.

The Hon. Justice Alistair Walters
Judge of the Grand Court (Actg.)