



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

CAUSE NO. FSD 128 OF 2021 (RPJ)

IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)

AND IN THE MATTER OF SINA CORPORATION

Before: The Hon. Justice Parker

Appearances: Mr Jasbir Dhillon KC of counsel instructed by Zachary Hoskin, Ronan O'Doherty and Dawn Major of Collas Crill LLP, Farrah Sbaiti of Ogier (Cayman) LLP, Simon Dickson and Ella van der Schans of Mourant Ozannes (Cayman) LLP and Nigel Smith and Tom Stuart of Carey Olsen, attorneys for the Dissenters

Mr Stephen Atherton KC of counsel instructed by Harney Westwood & Riegels, attorneys for the Company

Heard: Proceedings decided on Written Submissions

**Draft judgment
circulated:** 25 June 2024

Judgment delivered: 5 July 2024

s.238 proceedings-fair value of Dissenters shares-ruling on costs-discrete application-costs to follow the event-GCR Order 62 - s.24 Judicature Law (2017 Revision)

RULING

Introduction

1. By a Judgment dated 3 June 2024¹ the Court substantially granted the relief claimed in the Dissenters' summons dated 16 January 2024.
2. As the parties have been unable to agree costs, the Court will determine the matter based on the written submissions of both parties.
3. On a fair reading of the Court's decision, the Dissenters succeeded in obtaining the majority of the relief they sought, which was resisted by the Company on a number of grounds.
4. The Company argues that costs should be in the cause (or reserved) for a number of reasons, including:
 - i) because the relief sought was beyond what the Cayman Islands' Court of Appeal (CICA) had indicated or intended in its judgment dated 26 September 2023, which formed the basis for this Court's decision to vary the discovery order.
 - ii) because the Dissenters were unsuccessful as regards the extent of the relief they were seeking.
 - iii) because the application was made under the liberty to apply provision in the Amended Directions Order under which costs were directed to be in the cause.
 - iv) the appropriate order is that costs should be 'in the cause' relying on previous decisions of this Court².
5. The Dissenters say they succeeded on their application and should have their costs in the usual way.

Law

6. The Court has a broad discretion in relation to its jurisdiction to make orders as to costs³.
7. GCR O.62 sets out the general principles as to costs. At GCR O.62 r4(2) the general rule as to the awarding of costs is stated as follows: "*[t]he overriding objective of this Order is that a successful party to any proceeding should recover from the opposing party the reasonable*

¹*In the Matter of Sina Corporation FSD 128 of 2021 (RPJ) 3 June 2024*

²*In the Matter of Nord Anglia Education, Inc. (Unreported, 24 October 2018), per Kawaley J at paragraph [32] In the Matter of Ehi Car Services Ltd [2020] (Unreported, 26 May 2020) per Parker J at paragraph [18] citing with approval Nord Anglia Education, Inc. (Unreported, 24 October 2018) and Kongzhong Corporation v Maso Capital Investments Ltd [2018] FSD No.112 of 2017 (RPJ) (18 December 2018)*

³ See generally: s.24(1) and (3) of the Judicature Law (2017 Revision); GCR O.62 and s.238(14) of the Companies Act

costs incurred by him in conducting that proceeding in an economical, expeditious and proper manner unless otherwise ordered by the Court”.

8. This general rule has exceptions in appropriate cases.
9. GCR O.62 r.4 (5) provides.....“*[i]f the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.*”
10. The costs to ‘follow the event’ principle is therefore the governing principle of the costs regime, providing that the successful party has pursued the proceedings ‘*in an economical, expeditious and just manner*’ and subject to the Court's discretion to make some other order⁴.

Decision

11. The Directions Order in this case had provided for the Company to give discovery of documents prepared or created on or before the Valuation Date.
12. The Dissenters were successful in their application in which the Court expanded the scope of discovery of documents to include documents relevant to price sensitive events for the period up to and including the merger completion date and until the date of the TuSimple initial public offering (**IPO**).
13. The Court decided as follows:

‘In the Court’s preliminary view both the Weibo and Tusimple transactions were foreseeable as at the Valuation Date. The Court agrees with the observations of CICA that significant price-sensitive events which occur after the Valuation Date, and which were foreseeable are relevant to valuation as at the Valuation Date’-see Judgment of 3 June 2024 §65
14. The Directions Order was varied so that the period in relation to which the Company was to provide discovery was to include the period during which the increase in value of the Weibo Shares occurred and the period during which the TuSimple IPO occurred so that the experts and the Court can be as well informed as possible about the causes of those events- *ibid.* Judgment of 3 June 2024 §66.

⁴ *Nord Anglia ibid. §31*

15. In addition, the Directions Order was varied by the Court so that the Company was required to give discovery of:

“all additional documents prepared or created from the Valuation Date to the Completion Date, which are related to the price sensitive events that may have had an impact on the value of the company as at the Valuation Date and are relevant to the determination of the fair value of the Dissenters’ shares in the Petitioner as at the Valuation Date.”

16. The result may be somewhat narrower than the Dissenters were contending for, but it still represents an overall success for the Dissenters. The Company’s position was that the Court should not extend the scope of the Company’s discovery obligations at all. In coming to its decision, the Court had regard to argument on both sides from Leading Counsel and reviewed expert evidence from both parties.
17. The Court has had regard to how the application was made and how it was argued and disposed of. In the Court’s assessment, the ‘costs to follow the event rule’ should apply to this application because this was essentially a distinct issue pursued on a free-standing basis by the Dissenters following the CICA judgment relied on, and was not part and parcel of the matters covered by the directions, even if it arose technically under the liberty to apply provision of the Directions Order.
18. It was brought, quite legitimately, as a consequence of the CICA’s judgment and the application was resisted ‘root and branch’ by the Company. It was not one of those applications where certain parties achieve a degree of success in furtherance of good case management/section 238 procedural jurisprudence and the further conduct of the case.
19. It may well be that the predominant practice⁵ in section 238 and other cases has been for costs generally to be “in the cause” for matters arising from those types of application. Directions hearings are as Kawaley J recognised in *Nord Anglia*, conceptually at least, an essentially neutral and necessary case management mechanism aimed at advancing proceedings to trial for the mutual benefit of all parties.
20. This is not an application at which it would be appropriate for the successful party to recover at the end of the trial on the basis of a ‘costs reserved’ or ‘costs in the cause’ order.
21. The Court in its discretion decides that, having regard to the nature of the application, the conduct of the parties and that the Dissenters were the successful party, a fair result is that the

⁵ see *In the Matter of Ehi Car Services Ltd, Kongzhong Corporation v Maso Capital Investments Ltd. and Nord Anglia* § 32

Dissenters should be paid their costs to be taxed on the standard basis if not agreed. Those costs are to include the costs of preparing these submissions.



THE HON. MR. JUSTICE RAJ PARKER
JUDGE OF THE GRAND COURT