

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

FSD NO: 72 OF 2019 (IKJ)

IN THE MATTER OF SECTION 131 OF THE COMPANIES LAW (2018 REVISION)

**AND IN THE MATTER OF ADAMAS ASIA STRATEGIC OPPORTUNITY FUND
LIMITED (IN VOLUNTARY LIQUIDATION)**

IN COURT

Appearances: Walkers on behalf of the Public Institution for Social Security for the
State of Kuwait (the “Petitioner”)
Ogier on behalf of Adamas Capital Partners Limited (the “Manager”)

Before: The Hon. Justice Kawaley

Heard: On the Papers

Ruling Delivered: 30 July 2019



RULING ON THE PAPERS

Introductory

1. On July 23, 2019, I delivered a judgment granting the Petitioner’s application as sole Participating Shareholder of the Company a Supervision Order under section 131(b) and appointing representatives of FTI Consulting as Joint Official Liquidators in place of the Joint Voluntary Liquidators appointed by the Manager as the sole holder of Founder Shares.
2. One central plank of this decision was that under generally recognised rules of winding-up law, the way in which a solvent or insolvent company should be wound-up should be determined by primary reference to the interests/wishes of the economic stakeholders. The second central plank of this decision was that the Petitioner had demonstrated sufficient grounds for the voluntary liquidation to be continued under the supervision of this Court on commercial grounds which were also infused with public policy considerations from a Kuwaiti and Cayman Islands perspective.

3. By a Summons dated July 25, 2019, the Manager seeks leave to appeal and a stay of the July 23, 2019 decision until its appeal has been determined by the Court of Appeal. An appeal raising similar points of law between essentially the same parties in a matter referred to in the Judgment as the *APCF* matter is due to be heard by the Cayman Islands Court of Appeal. The Manager hopes that this matter (if leave is granted) can be heard at the same time. The Petitioner fears that the appeal will not be consolidated and might be heard until April 2020 based on correspondence with the Registrar of the Court of Appeal.

Findings: leave to appeal application

4. It is common ground that the test for granting leave to appeal is whether there are realistic as opposed to fanciful prospects of success. The Manager also relied on the proposition that the appeal raises legal points of general importance. There is no binding appellate decision on the questions of (a) the construction of section 131(b), and/or (b) the respective rights of participating and management shares in a solvent winding-up. The Court of Appeal itself granted leave to appeal in the *APCF* matter, after McMillan J refused leave to appeal against his decision to grant a Supervision Order in that case.
5. I accept to a point the submission of the Manager that the guidance of the Court of Appeal would be beneficial, particularly in the context of the factual matrix of the present case. However, if the Manager is correct that the overlap between the legal issues raised in *APCF* and the issues which arise in this case are significant, the need for the issues to be canvassed on appeal in the present case become far less compelling.
6. I do not accept that the grounds of appeal foreshadowed in the Manager's Submissions have a realistic prospect of success. It would a body blow to the Cayman Islands fund industry if the Court of Appeal were to hold, contrary to widely accepted and respected principles of commercial law, that the interests of 100% of the economic stakeholders in a fund do not take precedence over the managers' interests in circumstances where an official liquidation is sought by those stakeholders to investigate the way in which the affairs of a fund have been conducted by those very managers. In contending that the Petitioner has no standing to dictate the course of a solvent winding-up, the Manager contends for a view of the law which is not even supported by the Articles of the Company in the present case.
7. I accordingly refuse leave to appeal.

Findings: application for stay pending appeal

8. The application supported by the First Affidavit of David Freeman seeks a stay either :
 - (a) until the appeal is determined; or



- (b) until the determination of the *APCF* appeal, so that an application for a stay can be renewed before me in light of that other appeal's result.
9. The Affidavit does not, as such, advance any substantive grounds for the stay, in circumstances where it appears to me, on any view, the Manager has no cognizable stake in how the Company is wound-up save for the assertion (rejected in the main Judgment) that reputational damage will be sustained if Official Liquidators are appointed. In the Manager's Skeleton, it is submitted that the appeal would be rendered nugatory and that the balance of convenience favours granting a stay.
10. The Petitioner vigorously argues that the case for a stay is not made out and that, most significantly, the balance of convenience favours refusing a stay. Having refused leave to appeal, the basis for a stay falls away. I find that the case for a stay is not made out because:
- (a) the appeal has no realistic prospects of success; (but even if it did)
 - (b) I am unable to identify any legally cognizable prejudice which the Manager will suffer. It has no economic stake in the winding-up and the notion that it will suffer reputational damage is fanciful;
 - (c) the Petitioner would clearly suffer prejudice to its commercial and public policy interests by being denied the fruits of its judgment, admittedly to an extent which is not precisely clear; and/or
 - (d) the balance of convenience clearly favours refusing a stay on any sensible view of the facts as I have found them to be.

Conclusion

11. The trial judge's view of the merits of an appeal and the appropriateness of a stay is not the last word on these matters. The Manager has the right, if so advised, to renew each of the applications which I have refused before the Cayman Islands Court of Appeal. In my judgment, justice accordingly requires that an interim stay be granted until August 21, 2019 so that the Manager can, if so advised, renew this application before the Court of Appeal before or at the conclusion of the *APCF* appeal currently scheduled for August 20-21, 2019. This is a more principled and efficient basis on which to grant a short stay than the alternative basis posited by the Manager which would result in delay by effectively postponing the consideration of an application which should be dealt with promptly until after the Court of Appeal decides the *APCF* matter. Such delay would compound the mischief created by the roadblocks the Manager has been putting in the Petitioner's path to commencing a winding-up process it has confidence in which the Supervision Order was designed to remedy.



12. Unless either party applies by letter to the Court to be heard as to costs, I would direct that the costs of the present application should be paid by the Manager in any event, to be taxed if not agreed.



THE HONOURABLE MR JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT