

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

CAUSE NO: FSD 17 OF 2018 (IMJ)

BETWEEN:

- (1) DAVID JAMES BENNETT**
- (2) TSZ NGA GEORGIA CHOW**

Plaintiffs

AND

- (1) XIE ZHIKUN**
- (2) ATHENE (XIANG) LI**

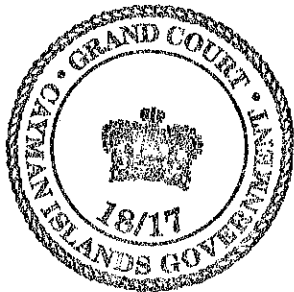
Defendants

Appearances:

**Christopher Levers and Jessica Vickers of Mourant Ozannes
on behalf of the Plaintiffs**

**Mac Imrie, Colin McKie QC and Paul Smith of Maples and
Calder on behalf of the First Defendant**

**Paul Smith and Spencer Vickers of Conyers Dill & Pearman
on behalf of the Second Defendant**



CAUSE NO: FSD 38 OF 2018 (IMJ)

BETWEEN:

DORSEY VENTURES LIMITED

Plaintiff

AND

XIO GP LIMITED

Defendant

AND

- (1) XIE ZHIKUN**
- (2) FORTUNE FAVORS HOLDINGS LIMITED**
- (3) SHENGSHI VIEW INTERNATIONAL HOLDING LTD**

Interveners

Appearances:

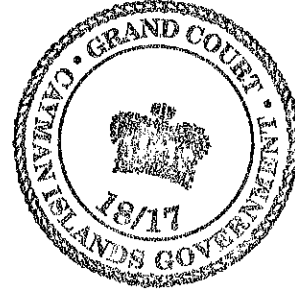
**Christopher Levers and Jessica Vickers of Mourant Ozannes
on behalf of the Plaintiff**

**Paul Smith and Spencer Vickers of Conyers Dill & Pearman
on behalf of the Defendant**

**Mac Imrie, Colin McKie QC and Paul Smith of Maples and
Calder on behalf of the Interveners**

Before: The Hon. Justice Mangatal

Heard: 31 October 2018



NOTE OF *EX TEMPORE* RULING

31 OCTOBER 2018

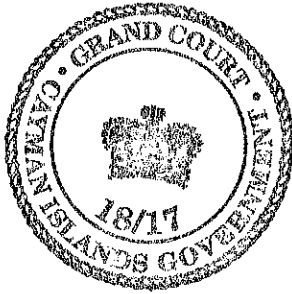
- 1 The applications before me in FSD 17 of 2018 and FSD 38 of 2018 are for stays pending the appeals respectively filed by Ms Li and XiO GP in respect of the judgments delivered by me on 22 October 2018.
- 2 The judgments largely concern questions of contractual construction as well as the provision of information arising from what this Court has determined to be the correct construction of the relevant provisions.
- 3 It is agreed on all sides that the principles upon which the Court should consider the grant of a stay of execution pending appeal is set out in section 19(3) of the Court of Appeal Law (2011 Revision), and are discussed in the decision of Justice Cresswell in *Heriot African Trade Finance Fund Limited v Deutsche Bank (Cayman) Limited* [2011] 1 CILR 34, in particular at paragraph 22. One should see also the recent decision of the Court of Appeal in *Select Vantage Inc v Cayman Islands Monetary Authority* (Unreported, 21 September 2017), paragraphs 33 to 39.
- 4 At paragraph 22 of *Heriot*, Justice Cresswell stated as follows:

"In my opinion, the relevant legal principles are as follows:

- (a) *...section 19(3) provides so far as material: "No stay of execution... shall be granted upon any judgment appealed against*

save... upon good cause shown to the Court or to the Grand Court";

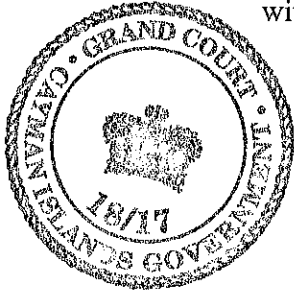
- (b) *the critical test is whether good cause has been shown;*
- (c) *the onus is upon an appellant to show good cause (ie., good reasons) for the imposition of a stay pending appeal;*
- (d) *in considering whether good cause has been shown, the court will have regard to all the circumstances of the case, including, without limitation:*
 - (i) *whether the appeal would be rendered nugatory if a stay is not granted (Wilson v Church 12 Ch. D. at 458 - 459);*
 - (ii) *whether the appellant can show a good arguable case;*
 - (iii) *whether the appeal is in exercise of a true right of appeal and not for some collateral purpose;*
 - (iv) *the balance of convenience (see Quintin v Phillips Petroleum Co., 1997 CILR N-4); and ...*
- (f) *the question whether or not to grant a stay is entirely in the discretion of the court; and*
- (g) *indications in past cases do not fetter the scope of the court's discretion."*



5 In my judgment, a stay should be refused in both of these two suits.

6 I am not satisfied that the applicants respectively have demonstrated good cause or reasons for the granting of a stay. I so state because, although I appreciate that obviously my judgments, or one or the other of them, may have been arrived at on a flawed basis, I do not think that on an objective basis there is a good, even a realistic, prospect of success on appeal. In both judgments I have construed certain contractual provisions, applying accepted canons of construction. The criticisms set out in the draft Grounds of Appeal are objectively weak, in my view. Had these been cases where leave was required in order to appeal - which of course they are not - I would not have granted the same.

7 I am also not satisfied that, viewed carefully and holistically, the appeals would be rendered nugatory if a stay is not granted. As pointed out at paragraph 23 of the submissions on behalf of Mr Xie, it may be that if the judgments are complied with, but later overturned on appeal, there is a risk that:



- (a) XiO GP may have provided Dorsey with information regarding the use of the US\$70m which it might not have had a strict legal obligation to do so;
- (b) Mr Xie may have received information regarding the same without having had a strict legal right to that information.

8 However, this does not mean that if confidential information is disclosed by XiO GP to Dorsey, and that in turn is disclosed by the independent directors to Mr Xie that information will no longer be confidential. Mr Xie is bound to keep information he receives from the independent directors confidential under clause 9 of the Protocol. Ms Li's assertions about Mr Xie leaking information does not in my view rise to a satisfactory level of proof.

9 Importantly, the balance of convenience plainly favours the refusal of a stay.

10 I do take into account that the applicants have not given any indication at all as to their efforts to comply with the Court's orders, or as to what compliance would entail, or involve. It must be remembered that these two cases are taking place against a backdrop that Ms Li and XiO GP refuse to provide information requested by professional directors accustomed to proper corporate governance.

11 I have serious concerns about the general lack of transparency on the part of Ms Li and XiO GP, that runs like a common thread throughout these two sets of proceedings.

12 In addition, there is a paucity of evidence from Ms Li and XiO GP as to any harm or hardship that they would be likely to suffer if the stay is refused.

13 In addition, in respect of the Protocol Proceedings, that is FSD 17 of 2018, a greater injustice does lie, it appears to me, against Mr Bennett and Ms Chow. There is a great risk that they will be unable to properly understand the financial

condition or position of Dorsey without investigating Dorsey's past affairs and management. Mr Bennett and Ms Chow will be significantly prejudiced in their ability to investigate and report pursuant to the Dorsey Protocol if the judgment is stayed pending determination of the appeals. This could take many months, even if the Court of Appeal were to expedite the hearing of the appeals. Certainly, I have not heard of a particular date being set by the Court of Appeal, although I appreciate that efforts are being made to expedite the hearing.

14 As regards the Disclosure Proceedings, FSD 38 of 2018, if a stay is granted, Dorsey will be deprived of information which I have held that it is otherwise entitled to, and which is required in order for the directors of Dorsey to fully understand the affairs of the Fund, including how the Fund has dealt with the US\$70 million Dorsey has invested in it.

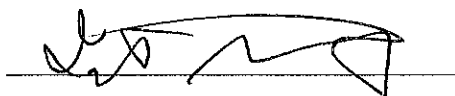
15 All told, looking at the entire evidential history put before me, and applying the principles as discussed, there is a greater risk of harm to the Plaintiffs, and a greater risk of injustice to the Plaintiffs in the respective lawsuits if the stay is granted, than the risk of harm or injustice to the Applicants if the stay is refused.

16 Having regard to all of these circumstances, I refuse the applications for stay filed in the suits respectively, and both filed 26 October 2018.

17 As to costs:

- (a) In FSD 17 of 2018: Costs to the Plaintiffs and the First Defendant, to be taxed if not agreed, payable by the Second Defendant; and
- (b) In FSD 38 of 2018: Costs to the Plaintiff and the Interveners, to be taxed if not agreed, payable by the Defendant.

Approved this 2nd day of November 2018



HON. JUSTICE MANGATAL
JUDGE OF THE GRAND COURT

