



**AND COURT OF THE CAYMAN ISLANDS
L 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**

Decided on the papers: The Hon. Justice David Doyle

**Draft Judgment
circulated:** 21 September 2022

Judgment delivered: 27 September 2022

HEADNOTE

Judgment in respect of an application for an interim payment on account of costs

JUDGMENT

1. Following judgment delivered on 9 August 2022, the Petitioner was, by order made on 18 August 2022 required to pay Mr Liang's costs and the Minority Shareholders' costs of the proceedings to be taxed on the indemnity basis, if not agreed, and which shall be paid within 21 days of such agreement or taxation. Mr Liang and the Minority Shareholders were also given liberty to apply for an interim payment on account of costs.

2. By summons dated 23 August 2022 Mr Liang sought an order that the Petitioner shall make an interim payment on account of Mr Liang's costs of the proceedings in the amount of US\$1,000,000.00 and that such be paid within 14 days. The summons was supported by an affidavit of Caitlin Patricia Murdock sworn on 23 August 2022. I note the evidence in respect of the fees and disbursements amounting in total to US\$3,476,364.97 for the period 7 February 2022 to 15 July 2022.
3. I record that I have considered the bundles filed with the court and in particular:
 - (1) the skeleton argument of Mr Liang dated 23 August 2022; and
 - (2) the skeleton argument of the Petitioner dated 6 September 2022 which at paragraph 2 states that he has agreed to make the interim payment sought by Mr Liang. I note also Appleby's letter dated 5 September 2022 wherein it was stated that the Petitioner agreed to make an interim payment of costs in the amount of US\$1 million within 14 days.
4. I note the relevant rules and caselaw referred to in the skeleton arguments.
5. I am satisfied, on the material provided, that an interim payment should be made and that it is appropriate to make such in the amount of the US\$1,000,000.00 requested, which is less than one third of the costs presently claimed in defending the misconceived and ill-founded petition. Such interim payment should be paid within 14 days of the date this judgment is delivered.
6. I make an order that the Petitioner should pay the costs of Mr Liang's summons dated 23 August 2022, such costs to be taxed on the standard basis in default of agreement. It was appropriate in the circumstances to make the application as agreement was not forthcoming until 5 September 2022. Appleby in its email dated 16 August 2022 declined to agree an interim payment order "in circumstances in which there is no application on foot for an interim payment, or evidence substantiating Mr Liang's or the Minority Investors' costs of the proceedings." In such circumstances it was not unreasonable for Mr Liang to file his summons and such cannot be validly criticised. Mr Liang's summons was successful and he is entitled to his costs of the summons but only on the standard basis.

7. Counsel are to email an updated draft of the order for my approval on the date this judgment is delivered.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT