IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO. 108 OF 2022 (IKJ)

IN THE MATTER OF SECTION 92 OF THE COMPANIES ACT (2022 REVISION)

AND IN THE MATTER OF GLOBAL CORD BLOOD CORPORATION

IN CHAMBERS

Appearances:

Bedell Cristin, on behalf of Blue Ocean Structure Investment Company Limited (the "Petitioner")

Kobre & Kim for Golden Meditech (Shanghai) Company Limited ("GMSCL"), the Applicant

Before:	The Hon. Justice Kawaley
Heard:	On the papers
Date of decision:	25 May 2023
Draft Reasons circulated	27 June 2023
Reasons delivered:	4 July 2023

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Delivery of interlocutory judgment without a hearing - whether time for leave to appeal runs from date of circulation of final judgment or date order giving effect to the judgment is made Court of Appeal Rules, rule 11(5) - Grand Court Rules Order 42 rules 3, 5 - Companies Winding Up Rules Order 1 rule 4 (3)

REASONS FOR DECISION

Introductory

1. This judgment addresses a point of practice which has only been briefly noted in the law reports. Where judgment has not been pronounced at a hearing in a relation to a decision which can only be appealed with leave, from what date does the 14-day period for seeking leave start to run? In the instant case the clarity of the relevant rule ultimately explains why there is a dearth of authority.

2. On 31 March 2023, I delivered a judgment, without a hearing to formally hand it down, dismissing GMSCL's application to intervene in the present just and equitable winding-up proceedings. Because GMSCL was a non-party and had limited access to the e-filing portal through which counsel ordinarily accesses sealed judgments and orders, and the judgment was not emailed to its counsel, it did not receive a copy of the judgment on the date of delivery. This in part explains why there was a delay in settling the terms of the Order, which were not agreed, and which I was required to settle on the papers in a Ruling dated 25 May 2023.

3. I was also asked to resolve a dispute as to when the 14-day period for seeking leave to appeal started to run against GMSCL. I ruled:

> "*7. The parties also fail to agree on the operative date of the Order for the purposes of time running to seek leave to appeal. The Petitioner contended that time should run from the date of the Judgment and GMSCL complained that it never received the Judgment in a timely manner. GMSCL, which more substantively relied upon Panier-v-Burns [2001 1 CILR Note 27], is in my judgment on* [sic] *right to seek a direction that time will run from the date the Order is perfected.*"

4. By letter dated 29 May 2023, the Petitioner's counsel invited me to reconsider this decision. By email dated 30 May 2023, my Personal Assistant communicated the following response to counsel:

> "*As to the question of when time runs for seeking leave to appeal the Judge will provide fuller reasoning for his decision which he does not propose to revisit. As he is currently on leave and commences a trial next week such reasons will be provided as soon as reasonably practicable.*"

5. I now give the requested fuller reasons for my summary and largely instinctive 25 May 2023 ruling 'on the question of when time runs for the purposes of seeking leave to appeal in relation to an interlocutory decision.

The Petitioner's Submissions

6. Bedell Cristin's concise submissions on this point are set out below in full:

> "***Leave to appeal***
> *The Petitioner is mindful of His Lordship's Ruling and does not wish to re-litigate matters which have already been determined. However, the Petitioner submits that His Lordship has erred by determining that the time for GMSCL's application for leave to appeal runs from the date of the filing of the Order rather than the date of the filing of the March Judgment.*
>
> *It is common ground between the parties that GMSCL requires leave to appeal. In such circumstances and as noted in the Petitioner's submissions dated 11 May 2023, the time by which GMSCL's leave to appeal application must be made is set by Rule 11(5) of the Court of Appeal Rules (the 'Rules'), which provides as follows:*
>
> *'(5) In any case in which leave to appeal is required, an application for leave shall be made to the court below –*
>
> *(a) at the time the judgment or order is pronounced; or*
>
> *(b) by summons or motion issued within fourteen days from the date on which the judgment or order is filed.'*
>
> *Rule 11(5)(a) is not relevant in the present circumstances because the 31 March 2023 judgment (the 'March Judgment') was not handed down orally. The only material question is whether time runs from the date on which the March Judgment was filed (as the Petitioner contends) or the date on which the Order was perfected and filed (as GMSCL contends).*
> *Whilst there is a question raised by GMSCL as to when it became aware of the March Judgment that is a factor which, in the Petitioner's submission, ought not to be taken into*

account because all that is relevant under Rule 11(5)(b) is the date on which either the judgment or order are filed. The Rules do not impose any additional obligation or requirement for either a judgment or order to be circulated to the parties provided that it has been filed.

That is understandable and correct because if the Rules had regard to when parties became aware of the handing down of judgments or the perfection of orders otherwise than them being filed, it would introduce unhelpful ambiguity and lead to factual disputes between parties that the Court should not need to resolve.

However, the Petitioner notes that even if time ran from the date on which GMSCL became aware of the March Judgment (which appears to have been on 5 April 2023, based on GMSCL's submissions) then the 14-day period prescribed under Rule 11(5)(b) has long since expired. Notably, GMSCL made no attempt in that 14-day period to comply with its requirement to make its application for leave to appeal. In any event, in the Petitioner's submission, if His Lordship has had regard for any delay that GMSCL may have encountered in actually receiving the March Judgment then he has erred in taking that into consideration.

In the Petitioner's submission, it is plain that the March Judgment was filed on 31 March 2023 and that the Order was filed on 25 May 2023. Further, it is the Petitioner's submission that, properly construed, Rule 11(5)(b) provides that time runs from the date on which the judgment is filed and that time only runs from the date of the filing of the order if, as is often the case in interlocutory applications, no judgment is filed. This is a consideration which was expressly acknowledged by the Court in Panier v. Burns [2001 CILR Note 27], the case on which GMSCL relies.

The Petitioner wishes to briefly address Panier v. Burns since it appears that His Lordship relied upon it in the Ruling. Whilst the Court determined in Panier v. Burns that time would not run until the filing of an order, the circumstances of the case were markedly different to those before the Court here. In that case, written reasons had been given by the Court, but no judgment or order had been filed. In which case, time could not run under Rule 11(5)(b) because no judgment or order had been filed. However, had the Court filed a judgment containing the relevant order (as opposed to written reasons) then time would

have started to run on the leave to appeal application. The Petitioner submits that there is nothing in the decision in Panier v. Burns which is inconsistent with that proposition.
In the Petitioner's submission, by determining in these circumstances that time runs from the filing of the Order, His Lordship has extended the time for GMSCL to make its leave to appeal application in a manner which is inconsistent with the Rules and where he does not have the requisite discretion to do so, whether under the Rules or the Court of Appeal Act (2023 Revision)."

Findings

Rule 11(5)

7. Rule 11(5) of the Court of Appeal Rules by its terms requires an application for leave to appeal to be made either:

(a) when a judgment or order "*is pronounced*"; or

(b) within 14 days of when a judgment or order "*is filed*".

8. The point of construction raised by the Petitioner's counsel is essentially whether:

(a) the term "judgment or order" in 11(5)(a) and (b) is intended to distinguish between two distinct legal documents, judgments and orders, as counsel contended; or

(b) the term "judgment or order" is intended to connote the decision, whatever form it may be recorded in depending on the nature of the decision and the practice usually followed in relation thereto. This was the unarticulated view which I preferred.

9. Reading Rule 11(5)(a) in a straightforward way, the term "judgment or order" is clearly used in the broader sense of describing the pronouncement of a decision, whatever form it may take. A decision pronounced at a hearing may in some cases entail handing down a formal judgment, in other cases it may be simply pronouncing that an order will be granted. A decision in favour of an applicant for relief under GCR Order 14 may technically be granted as a "judgment"; a successful applicant for the appointment of a provisional liquidator is technically only granted an "order". Whatever form of relief the decision pronounced at a hearing grants, Rule 11(5)(a) provides without

distinction that an application for leave to appeal must be filed within 14 days of the pronouncement.

10. Why then should the term "judgment or order" in Rule 11(5)(b) be construed in a different manner to Rule 11(5)(a)? There is nothing in the context of Rule 11(5)(b), construed in light of established practice and standard legal language, which suggests a different construction:

> "*(b) by summons or motion issued within fourteen days from the date on which the judgment or order is filed.*"

11. Here, the date from which time starts running is on a straightforward reading identified as the date when the document giving effect to a decision, whatever label may be attached to it, "*is filed*". That document will ordinarily be styled as an "order". The standard form of order filed in the Grand Court has a date and a filing date on it. The "date" signifies the operative date of the order (typically, but not invariably, the date of any judgment setting out the reasons for the decision or the date when the decision was pronounced) and the "filed" date signifies when the order was perfected and actually signed by the Judge. The standard form of judgment in the Grand Court displays a "date of delivery", because judgments (in the sense of reasons for a decision) are invariably "delivered" and are never described (in my experience) as being "filed".

12. It is therefore entirely counterintuitive to suggest Rule 11(5)(b) of the Court of Appeal Rules should be construed as providing that the 14 days for seeking leave to appeal starts running from the date that a judgment is formally "delivered", rather than from the date when the order giving effect to it is "filed" (i.e. the date when the order is perfected). Moreover, if the drafters of the rule had intended to provide for two potential 14-day periods, one starting with the date of judgment and the other with the date of filing the order giving effect to the judgment, they would have specified whether the earlier or later period applied.

13. Before considering the authorities, it is also helpful to take into account how Rule 2 of the Court of Appeal Rules defines the term "order":

> "'*order' includes decree, judgment, sentence, decision or direction of a court below, and references to filing of orders means the drawing up and filing of orders in accordance with GCR Order 42 rule 5;...*" [Emphasis added]

14. This fortifies the view that "judgment or order" in Rule 11(5) is intended to be a composite rather than a disjunctive term, and notably explicitly confirms that the reference to the filing date in Rule5(b) is indeed a reference to the perfection of orders under GCR Order 42 rule 5. GCR Order 42 uses the term "*judgment or order*" in a similar composite sense. For instance, GCR Order 42 rule 3 provides:

> "*(3) Whenever any judgment or order is drawn up and filed after the date upon which it is pronounced, given or made, it shall bear the date of filing in addition to the date upon which it was pronounced, given or made.*"

15. GCR Order 42 is applied to winding-up proceedings by CWR Order 1 rule 4(3).

16. This process of statutory interpretation only finds support in the authority to which counsel referred and upon which GMSCL's counsel aptly relied: *Panier v. Burns* [2001 CILR Note 27] (Smellie CJ). The Note records:

> "*The plaintiff obtained leave to serve a writ on the defendant outside the jurisdiction. The Grand Court (Kellock, Ag. J.) gave written reasons for granting leave but no formal order or judgment was extracted for signature or filed. The defendant applied for leave to appeal from the decision more than 14 days after it was given, arguing that since no judgment had been filed in accordance with the procedure in the Grand Court Rules, O.42, r.5, the time for notification of the appeal had not begun to run against her under r.11 (5) of the Court of Appeal Rules (2001 Revision).*
>
> ***Held:*** *The defendant was not barred from seeking leave to appeal. Time would not begin to run against her until the filing of a formal order containing that decision. It was immaterial that r.11(4) of the Court of Appeal Rules specified that the time for appeals* without *leave should be calculated from the date of the filing of the order in accordance with O.42, r.5, whereas r.11(5) referred only to the filing of the order without reference to the Grand Court Rules. Order 42, r.4 required that an order granting leave to serve a writ outside the jurisdiction was to be drawn up and filed unless the court directed otherwise. As a matter of principle, rr. 4 and 5 applied to appropriate interlocutory as well as final orders, since interlocutory orders were often not accompanied by a written judgment and no record of the decision would otherwise exist.*"

17. Smellie CJ was considering a situation on all fours with the present case where if the 14-day time limit ran from the date of judgment, the time for seeking leave had expired; but if time ran from the

date of perfecting of the order, time had not expired. He held that Rule 11(5) prescribed 14 days from the date of the filing of the order, not from the date of the earlier judgment recording the reasons for the Court's decision. It appears to me that the *Panier* case reflects a consensus as to the construction of Rule 11(5) of the Court of Appeal Rules which has not been doubted for over 20 years. I saw no basis for departing from this settled view of the applicable rule of practice which Kobre & Kim rightly relied upon.

Conclusion

18. For these reasons on 25 May 2023, I ruled that time for applying for leave to appeal against the decision explained in my judgment of 31 March 2023 (delivered without a hearing) expired 14 days after the Order giving effect to it was filed, pursuant to Rule 11(5)(b) of the Court of Appeal Rules.

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