



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

CAUSE NO: FSD 302 OF 2023 (DDJ)

**IN THE MATTER OF THE EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS)
(CAYMAN ISLANDS) ORDER 1978**

**AND IN THE MATTER OF A CIVIL PROCEEDING NOW PENDING BEFORE THE
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK
ENTITLED AS FOLLOWS: SECURITIES AND EXCHANGE COMMISSION V
TERRAFORM LABS, PTE. LTD and DO HYEON JWON, No 1:23-cv-1346 (JSR)**

Before: The Hon. Justice David Doyle

Heard: On the papers

**Draft Judgment
circulated:** 15 February 2024

Judgment delivered: 19 February 2024

HEADNOTE

Determination of application for leave to appeal

JUDGMENT

Introduction

1. By a summons dated 22 December 2023 (the “Application”) Binance Holdings Limited (“Binance”) seeks leave to appeal “the Order of the Honourable Justice Doyle dated 11 December 2023 and filed on 12 December 2023” and that “the costs of this Summons be in the cause of the Appeal.”
2. I have considered:
 - (1) Binance’s skeleton argument dated 1 February 2024 and its authorities bundle;
 - (2) the Order made on 11 December 2023 for the reasons for such order provided in an *ex tempore* judgment delivered that day; and
 - (3) the skeleton argument dated 15 February 2024 and the authorities bundle of Terraform Labs, Pte. Ltd and Do Hyeong Kwon.

The relevant test

3. In *Wang v Credit Suisse AG* (unreported FSD judgment delivered on 10 May 2022) I referred to *Telesystem International Wireless Incorporated v CVC/Opportunity Equity Partners LP* 2001 CILR N-21 (Grand Court: Sanderson J) and the general test:

“Does the appeal have a real (i.e. realistic, not fanciful) prospect of success? ... In exceptional circumstances, leave will be granted even where no such prospect exists if the appeal involves an issue which should be examined by the Court of Appeal in the public interest, e.g. when a public policy issue arises or a binding authority requires reconsideration ... if the Court is unsure whether leave should be granted, it should then refuse leave and allow the Court of Appeal to decide the matter.”

4. Morrison J.A. in his reasons delivered on 21 September 2017 in *Select Vantage Inc. v Cayman Islands Monetary Authority* (Civil Appeal No 22 of 2017) reiterated the general rule as follows at paragraph 26:

“The general rule is that leave to appeal will be given only in the case of an appeal with a realistic (as distinct from a fanciful) prospect of success. In exceptional

circumstances, leave may also be given if there is an issue which, in the public interest, should be examined by the Court of Appeal. Leave will generally not be given in the case of an appeal from a judge's exercise of a discretion (unless it can be shown to have been palpably wrong); nor will leave usually be given in the respect of a proposed appeal from a decision based on a judge's evaluation of oral evidence as to the primary facts.²¹"

Footnote 21 reads:

"See generally Practice Direction (Court of Appeal: Leave to Appeal and Skeleton Arguments) [1999] 1 WLR 2."

Determination

5. Binance, in short summary, relies on the following grounds:
- (1) the court erred as a matter of law and/or fact by finding that the requests complied with section 2(4) of the Evidence (Proceedings in Other Jurisdictions) (Cayman Islands) Order 1978 (the "Evidence Order");
 - (2) the court erred as a matter of law and/or fact by finding that the requests complied with section 2(3) of the Evidence Order;
 - (3) the court erred as a matter of law by placing reliance upon the statements of relevance by the foreign court in circumstances where it had not considered the more restrictive requirements of Cayman law;
 - (4) the court erred as a matter of law by failing to refuse the requests which failed to meet the requirements of the Evidence Order and/or failing to refer the requests back to the US District Court for clarification; and
 - (5) the appeal raises issues of public importance which would benefit from the matter being considered by the Court of Appeal.

6. In my judgment leave to appeal should not be granted in this case as the appeal does not have a real prospect of success and there is nothing otherwise in the public interest which warrants the matter being considered by the Court of Appeal as requested by Binance. Accordingly, I refuse leave to appeal and can, in the circumstances, keep my reasoning concise.
7. In respect of grounds (1) to (4) the *ex tempore* judgment delivered on 11 December 2023 speaks for itself and I am simply not persuaded that any of these grounds taken individually or collectively have a real prospect of success.
8. In respect of ground (5) the Court of Appeal clearly set out the relevant law in *United States v Carver* 1980-83 CILR 297 and I am not persuaded that any exceptional circumstances exist in this case that requires the Court of Appeal, as a matter of public interest, to revisit the relevant law which is now well established and clear. In short, I am not persuaded that there are any legal issues arising which warrant, in the public interest, the time and attention of a busy Court of Appeal.
9. For these reasons I refuse leave to appeal and dismiss the Application. Binance should pay the costs of its failed application for leave to appeal. The attorneys should provide a draft Order within the next 5 days reflecting the determinations contained in this judgment.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT