



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

CAUSE NO: FSD 72 OF 2022 (DDJ)

CAUSE NO: FSD 74 OF 2022 (DDJ)

**IN THE MATTER OF THE COMPANIES ACT (2022 REVISION)
AND IN THE MATTER OF NEW FRONTIER HEALTH CORPORATION**

Before: The Hon. Justice David Doyle

Heard: On the papers

**Draft Judgment
circulated:** 23 May 2024

Judgment delivered: 28 May 2024

Determination of application for permission to appeal and a stay pending determination of appeal

JUDGMENT

Introduction

1. By judgment delivered on 24 April 2024, I dismissed an application by New Frontier Health Corporation (the “Company”) for further time to comply with its obligation to give discovery in

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these proceedings. On 29 April 2024, an order to that effect was made (the “Order”) and the Company was, at paragraph 2, ordered to upload its discovery to the Data Room forthwith.

2. The parties were given 14 days to file and serve any ancillary applications (such as costs or leave to appeal) together with concise written submissions in support and any concise written submissions in opposition to be filed and served within 14 days. I indicated that I was minded to deal with any such applications on the papers. The parties sensibly agreed a costs order.

The application for leave to appeal and a stay

3. By summons dated 8 May 2024 (the “Summons”) the Company applied for:
 - (1) leave to appeal the Order;
 - (2) an order that paragraph 2 of the Order be stayed pending the final and effective determination or other disposal of the Company’s appeal to the Court of Appeal of the Cayman Islands; and
 - (3) the costs of and occasioned by the Summons to be costs in the appeal.

The submissions

4. I have considered:
 - (1) the Company’s written submissions dated 8 May 2024;
 - (2) the Company’s draft grounds of appeal; and
 - (3) the written submissions dated 21 May 2024 of the Dissenters (as listed in Appendix 1 of the Order) and the first affidavit of Kalyani Sanjay Dixit of 21 May 2024 and Exhibit KSD-1.
5. In respect of the application for leave to appeal, the Company says that the issues in the proposed appeal are important. The Company seeks in effect to challenge the Grand Court’s acceptance of

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Bank Mellat v HM Treasury [2019] EWCA Civ 449 as good law in the Cayman Islands. The Company says that the approach adopted by the Court of Appeal of England and Wales in *Bank Mellat* was inconsistent with the case law from which it was derived. The Company adds that the proposed appeal is the first opportunity the Court of Appeal of the Cayman Islands will have to deal with *Bank Mellat* “and would be the first opportunity of any court of coordinate jurisdiction to consider the matter”.

6. In respect of the application for a stay, the Company says that the appeal will be rendered nugatory if a stay of paragraph 2 of the Order is not granted. The Company says it “would offer an undertaking to seek an urgent listing of the appeal and to do what it accepts it must, to use best endeavours to persuade the authorities in the PRC to permit transfer of the discoverable documents outside of the PRC to minimise any delay.”
7. The Dissenters say that leave to appeal should be refused as the intended appeal has no real prospect of success.
8. In respect of the stay application, the Dissenters refer to *Wahr-Hansen v Bridge Trust Company Limited* 1994-95 CILR 435 and submit that an extension of time for giving disclosure is not a substantive right but a procedural right to which the parties have no legitimate expectation. They add that if a stay is granted and the appeal dismissed, the victory for the Dissenters would be no more than pyrrhic as the Company would have obtained a further lengthy extension of time by the back door. The Dissenters add that the Company’s application is not supported by any evidence and that the balance of justice and convenience is against the grant of a stay in any event.
9. The Dissenters say that the merits of the appeal are (at best) weak. The Dissenters say that the proposed appeal is not important. They say the law in this area has been well-settled in England and Wales for many years and the Privy Council in *Brannigan* has already held that there is no absolute privilege against self-incrimination where the risk of prosecution is under a foreign law. The Dissenters do not however refer to any judgments of the Court of Appeal of the Cayman Islands in this important area of law.

The Law

10. I have considered the relevant law in respect of applications for leave to appeal including *Wang v Credit Suisse AG* (unreported FSD judgment delivered on 10 May 2022), which in turn considers various authorities.
11. I have also considered the relevant law in respect of applications for a stay pending appeal including *Aquapoint LP (in official liquidation)* (unreported FSD judgment delivered on 29 September 2022) and cited with approval by the Court of Appeal in *Re Trina Solar Ltd* (unreported, CICA, 4 August 2023) and referred to by the Court of Appeal in *Virginia Solutions SPC Ltd* (unreported, CICA, 10 November 2023).

Determination*(1) Leave to appeal*

12. The appeal does raise issues of public importance and interest, which in my judgment should be examined by the Court of Appeal. The legal issues raised have not been considered by the Court of Appeal in this jurisdiction. At first instance, Parker J followed *Bank Mellat* in *Re Sina* (unreported FSD judgment delivered on 6 February 2024) and I did likewise in this case in my judgment delivered on 24 April 2024. The issues raised are likely to arise again in future cases under section 238 of the Companies Act. It is therefore of great public importance and in the public interest for the Court of Appeal in the Cayman Islands to have an opportunity to consider whether *Bank Mellat* is good Cayman law and whether the approach I took in this case, in following *Bank Mellat*, was the correct approach to take as a matter of the laws of the Cayman Islands. In such circumstances, I grant leave to appeal.
13. As Malone CJ said, albeit in a different context, in *In re Universal & Surety Co* 1992-93 CILR 157 at 159:

“The fact is that this issue is one of importance upon which further argument and the decision of the Court of Appeal would be to the public advantage. On that ground leave to appeal is granted.”

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(2) *Stay*

14. On the question of a stay, applying well-established principles and accepting the arguments put forward on behalf of the Company, I agree that if a stay was not granted any successful appeal would be rendered nugatory. Having taken into account all the circumstances of the case I have concluded that, despite the arguments advanced on behalf of the Dissenters, the Company has shown “good cause” or “good reason” for the imposition of a stay pending appeal. The appeal, if successful, would be rendered largely ineffective if a stay is not granted. I accept that if a stay is granted and the appeal is unsuccessful there will be some prejudice to the Dissenters in the form of undue delay. If however a stay is not granted and the appeal is successful, if the Company is right, significant and serious prejudice could be caused to the Company.

15. If the Company is right, the Grand Court was wrong to require it to act in breach of the laws of the People’s Republic of China and if it acts in breach certain adverse consequences will follow. It will be of little or no use to the Company if it is successful in its appeal but a stay is not granted in the meantime.

16. In my judgment, the balance of justice and convenience is in favour of granting a stay. Before complying with the Order, the Company should have an opportunity to persuade the Court of Appeal that I was wrong to apply *Bank Mellat* and I was wrong to make the Order. I therefore grant a stay of paragraph 2 of the Order.

(3) *Costs*

17. The costs of and occasioned by the Summons should be costs in the appeal.

(4) *Expedition*

18. The Company should now take steps to progress its appeal expeditiously subject, of course, to the existing commitments of the Court of Appeal.

(5) *Draft Order*

19. Counsel should, within the next 7 days, email my PA with an updated draft order reflecting the determinations in this judgment, for my approval.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT