

## Cayman court refuses to grant stay of proceedings in favour of Singapore arbitration

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On 8 June 2023, the Grand Court dismissed an application to stay declaratory proceedings in favour of arbitration pursuant to the Foreign Arbitral Awards Enforcement Act (FAAEA); alternatively on the grounds of case management and/or *forum non conveniens*.

This decision provides a helpful reminder of the approach the Cayman court will take when faced with a stay application. It further demonstrates that notwithstanding the Cayman Islands being a pro-arbitration jurisdiction that is willing to hold parties to their agreement to arbitrate, the Cayman court will properly scrutinise the matters in question and is willing to take a robust approach to determine disputes, outside the scope of an arbitration clause, which are subject to Cayman Islands law and which concern Cayman entities properly before the Cayman court.

### Background

The dispute in *RBH Holdings v Juniper Life Sciences Ltd* (FSD 59 of 2023, 8 June 2023) concerned a written resolution passed by the board of directors of the Defendant, Juniper Life Sciences Ltd (JLS) (the **Board**) to exercise their discretion under Article 9.1(c) of JLS's Articles of Association to redeem the 5,000 shares held by RBH Holdings (**RBH**), the wholly owned corporate vehicle of the Plaintiff, Mr Rudianto (the **Resolution**).

RBH commenced proceedings in the Cayman court seeking a declaration that the Resolution constituted an exercise of power for an improper purpose and was void; a declaration that RBH was still a shareholder of JLS; and for rectification of the Register of Members accordingly. In response, JLS issued a stay summons in which it sought a mandatory stay of the proceedings in accordance with Clause 18 of the Subscription Agreement, which provided that "*any disputes*

arising out of or in connection to that agreement" shall initially be referred to mediation and if unresolved, to arbitration, in Singapore (**Clause 18**).

In this case, the parties disagreed about the scope of the dispute before the court. JLS sought to argue that there was a real and substantive dispute between JLS and RBH regarding the basis upon which the 5,000 shares were initially allotted to RBH and the basis upon which it may be required to return them to JLS (the **Title Dispute**). RBH, in contrast, argued that the question before the court was much narrower: whether the Board of JLS, in passing the Resolution, exercised their discretionary power under Article 9(1)(c) for proper purposes and whether in consequence the Register should be rectified (the **Article 9(1)(c) Dispute**).

## Approach of the Cayman court on a stay application

The Honourable Justice Walters, applying the two-stage test outlined in *Republic of Mozambique v Credit Suisse International* [2021] EWCA 329, confirmed that the appropriate approach when determining a stay application is to:

1. First, identify the matter or matters in dispute in respect of which the proceedings have been brought; and
2. Second, consider whether those "matters" are "matters" which the parties had agreed to arbitrate.

If, following this analysis, the court determines that the "matter" in question does fall within the scope of the arbitration agreement, it will then go on to consider whether there is a "real, genuine and substantial" dispute.

Although the approach of the court is to construe arbitration clauses liberally in favour of arbitration (applying the House of Lords decision of *Fiona Trust v Privalov* [2007] Bus LR 686), the court will only grant a mandatory stay of the proceedings in favour of arbitration where there is a "real or genuine dispute" (or a "reasonably substantial" dispute) disclosed by the evidence filed: *SC Global Vision Fund SPC v Oasis Buono Ltd* (FSD No 39 of 2020, 8 July 2020, Unreported).<sup>1</sup>

## Judgment

Applying the two-stage test outlined above, Walters J held that the "matter" that was the subject of these proceedings was the Article 9(1)(c) Dispute; namely, whether the Board should have exercised its Article 9(1)(c) discretion at all and, if it was appropriate for it to have done so, whether its discretion was exercised in accordance with the *Braganza Principles*.

Whilst it was accepted that the Title Dispute might provide the *backdrop* to the Resolution,

Walters J considered that the Article 9(1)(c) Dispute was an entirely separate and distinct dispute which was liable to scrutiny in its own right. That dispute was wholly governed by Cayman Islands law; involving parties that were before the Cayman court as a matter of personal jurisdiction and was one which the court had the subject-matter jurisdiction to decide and make the necessary order. Accordingly, the court held that the dispute did not fall within Clause 18, and no mandatory stay should be imposed.

## Duties on directors when exercising a discretionary power

Although the court acknowledged that it was not tasked with reviewing the Board's decision to redeem the shares, given its findings on the issue of the scope of the arbitration clause, it did go on to provide its views on the law with respect to the exercise by directors of a discretionary power; holding that the Cayman Islands law recognises both the "proper purpose rule" as well as the "*Braganza Principles*" (as defined below). In summary:

- The "proper purpose rule" in English and Cayman Islands company law requires directors to exercise the powers conferred upon them for a proper purpose, and not some collateral purpose; if they fail to do so, exercise of the power will be open to challenge even if the directors believed in good faith they were acting in the best interests of the company (most recently confirmed in the UK Supreme Court's decision of *Eclairs Group Ltd Jkx Oil & Gas plc* [2015] UKSC 71); and
- The "*Braganza Principles*" provide, that a unilateral discretionary power conferred on one party (as it was in this case) must be exercised honestly, rationally, in good faith and in the absence of arbitrariness, capriciousness, perversity and irrationality: *Socimer International Bank Ltd v Standard Bank London Ltd* [2002] EWCA Civ 116; *Braganza v BP Shipping Ltd*. [2015] UKSC 17.

## Conclusion

The *Juniper* decision provides helpful guidance on the correct approach to be adopted by the court when considering applications for a stay under section 4 of FAAEA.

Walters J reaffirmed that the court's role is to determine whether there is a "real, genuine, and substantial" dispute falling within the scope of the relevant arbitration clause and the two-stage test from *Republic of Mozambique v Credit Suisse* serves as the foundation for that assessment.

The decision in *Republic of Mozambique v Credit Suisse* was appealed and the Supreme Court has recently handed down its decision. We will be putting together a further briefing on this development as, although the Cayman court will not be bound by the decision, it will be very persuasive; particularly given the Cayman court's heavy reliance upon the earlier decision.

[1] Importantly, the court is not required to make a final or summary determination of the merits of disputed factual accounts.

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