



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

CAUSE NO. FSD 210 OF 2022 (DDJ)

BETWEEN

- (1) REN CI**
- (2) DAOYI HOLDING LIMITED**

PLAINTIFFS

AND

- (1) NEBULA (CAYMAN) LIMITED**
- (2) CHANG SHUAI**
- (3) WANG YANZHI**
- (4) ZHANG FAN**
- (5) HU HAO**
- (6) JIANG YANMENG**
- (7) MAN HO KEE HARRY**
- (8) LCA NINJA PTE LTD**
- (9) MATRIX PARTNERS CHINA VI HONG KONG LIMITED**
- (10) ALPHA STARTUP FUND LP**

DEFENDANTS

Before: The Hon. Justice David Doyle
Heard: On the papers
Draft Judgment circulated: 27 July 2023
Judgment Delivered: 1 August 2023

HEADNOTE

Determination of application for interim payment and costs

JUDGMENT

Introduction

1. On 10 March 2023, following my judgment delivered on 16 February 2023, I made an order as follows:
 - “1. Save as provided in paragraph 2 below, the Plaintiffs are to pay the First Defendant’s costs of and incidental to the Summons and these proceedings generally on a joint and several basis, such costs to be taxed on the indemnity basis if not agreed.
 2. The costs of the First Defendant’s application for injunctive relief by way of summons dated 16 November 2022 are reserved.”
2. By Summons dated 28 April 2023 (the “Summons”) the First Defendant (“D1”) sought an order that:
 - (1) the Plaintiffs (“Ps”) shall make an interim payment on account of costs of D1 in the amount of US\$725,000 (the “Interim Payment”);
 - (2) the Interim Payment shall be paid within 14 days;

- (3) the Ps shall pay the D1's costs of the Summons to be taxed on the indemnity basis if not agreed.

The documentation

3. I have considered the hearing and joint authorities bundles and:
 - (1) a 25 page document entitled "Amended skeleton argument on behalf of the First Defendant Application for interim costs" dated 18 July 2023 from Paul Smith and Caitlin Murdock of Harney Westwood & Riegels; and
 - (2) a 19 page document with 23 further pages attached entitled "Plaintiffs' written submissions in response to First Defendants' (sic) application for payment on account of costs" dated 19 July 2023 from Jalil Asif KC of Kobre & Kim (Cayman).

I deprecate the prolixity of such documents.

The submissions

4. On behalf of D1 it is submitted that:
 - (1) the fees and disbursements that D1 has incurred in the defence of these proceedings (not including the costs associated with its application for injunctive relief) exceed US\$970,000;
 - (2) Ps did not initially agree to the Summons being dealt with on the papers and the matter was listed for 10am on 25 July 2023 (max 2 hours). On 15 June 2023 D1's attorneys wrote to Ps' attorneys inviting an interim payment in the sum of US\$650,000 but the offer was rejected on 30 June 2023. On 14 July 2023 Ps requested that the hearing be vacated as Ps

now agreed that the matter could be dealt with on the papers. Indemnity costs should follow;

- (3) the relevant law in respect of interim payments and indemnity costs is well settled;
- (4) there is no good reason not to order an interim payment;
- (5) Ps are not actually being stifled from pursuing an appeal;
- (6) there is sufficient material before the court to enable a summary assessment of the interim payment amount to be carried out; and
- (7) there is nothing in Ps' objections.

5. On behalf of Ps it is submitted that:

- (1) the Court should decline to order a payment on account at this stage;
- (2) if any payment on account of costs is to be made it should be no more than US\$155,000;
- (3) the Court should suspend the order until after the determination of Ps' outstanding application for permission to appeal and any subsequent appeal;
- (4) the Court should make provision to secure repayment if Ps' appeal is successful, for example by ordering any money to be paid into court rather than to be paid to D1; and
- (5) Ps do not assert that an order for payment on account of costs will stifle their appeal. There is however a real question mark over whether D1 has sufficient assets to make any necessary repayment if Ps' appeal succeeds.

Determination

6. The relevant law in respect of interim payments and indemnity costs is not in dispute and is common ground in the skeleton arguments. There is no need to set it all out again in this judgment.
7. There is no good reason not to make an interim payment. It is just to make such an order.
8. As Ps accept, the making of such order will not stifle any appeal. I should record that on 23 March 2023 I made an order refusing leave to appeal. By a certificate of order made on 3 April 2023 it was recorded that “although it presently seemed to” Sir John Goldring, the President of the Court of Appeal, that “the judge was correct to conclude that the actions of the Proposed Respondent fell short of taking “a step in the proceedings”, he will give leave to the proposed Appellant to argue to the contrary before the Full Court.”
9. I have also considered the arguments in respect of quantum. I note that the order for costs made on 10 March 2023 was on the indemnity basis. I take a broad brush cautious approach in respect of quantum.
10. I also note Ps’ concerns, in view of the lack of evidence before the Court as to D1’s financial position as a holding company, that D1 may be unable to make any necessary repayment if Ps’ appeal is successful and the costs order overturned.
11. I make an order for an interim payment of US\$450,000 such sum to be paid, within 42 days, into court or into an account agreed between Ps and D1, to be held subject to further order or agreement of the parties pending the determination of the application for leave to appeal and any subsequent appeal, if leave is granted.
12. I make an order that Ps should pay D1’s costs of the Summons such costs to be taxed on the standard basis in default of agreement. Although it was unfortunate Ps did not agree at the outset to the Summons being determined on the papers, their conduct was not improper or unreasonable to a high degree or outside the reasonable norm.

13. Counsel are to file a draft order reflecting the determinations contained in the judgment within the next 5 days.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT