



Neutral Citation Number: [2025] CIGC (FSD) 002

CAUSE NO: FSD 2024-0090 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)
AND IN THE MATTER OF SHILIU INVESTMENT GROUP LIMITED

BETWEEN

JIA LING JIANG LIMITED

Petitioner

-and-

- (1) QI XIA SHAN LIMITED**
(2) ZI JIN SHAN LIMITED
(3) WU TONG SHAN LIMITED

Respondents

Appearances: **Mr Ben Hobden and Ms Kelsey Sabine of Harneys for the Petitioner**
Mr Tom Lowe KC instructed by Mr Denis Olarou and Mr Jason Mbakwe of Carey Olsen for the Respondents

Before: **The Honourable Justice Jalil Asif KC**

Heard: **6 January 2025**

Ex tempore judgment delivered: **6 January 2025**

Finalised judgment approved: **10 January 2025**

Practice and procedure—late adjournment of trial due to unavailability of witnesses

JUDGMENT

1. This is my judgment on two summonses issued by the Petitioner and Respondents respectively on 17 December 2024 and 20 December 2024.
2. This matter is listed for a trial to commence on 10 January 2025, with a reading day, and to commence in court on 13 January 2025. It is a contested winding up petition in respect of Shiliu Investment Group Limited on the “just and equitable” basis in circumstances where the relationship between the two individuals behind the Company has broken down.
3. Shiliu Investment Group Limited is a Cayman Islands company, registered in February 2021, and is the ultimate holding company of a group of companies undertaking real estate development in the People’s Republic of China (the PRC). Approximately 42% of the Company’s shares are beneficially owned by Mr Chunhua Sang, who is the individual behind the Petitioner, and 58% of the Company’s shares are beneficially owned by Mr Cui Wei through the Respondents. Mr Sang and Mr Cui are both physically located in the PRC.
4. The Petitioner alleges that the Company was operated as a quasi-partnership. The nature of the relationship between the individuals in question, Mr Sang and Mr Cui, is therefore likely to be the key issue at the hearing of the petition.
5. The matter was last before the court on 7 November 2024, when I made an order by consent on the papers requiring that Mr Sang and Mr Cui attend the trial of the petition in person to be cross-examined on their respective affirmations.
6. It now appears that Mr Sang and Mr Cui are not able to travel to the Cayman Islands, due to travel restrictions imposed upon them by the authorities in the PRC.
7. It also appears that Mr Sang and Mr Cui were each aware of their respective travel restrictions at the time that the Petitioner and the Respondents agreed to the court making the consent order but had not told the Cayman Islands attorneys acting for the Petitioner and the Respondents.
 - a) Mr Sang appears to have believed that he would be able to resolve the issue in time for him to attend the trial and was working with PRC lawyers from about August 2024 onwards to do so. As a result, he did not inform the Petitioner’s Cayman Island lawyers of the restriction.
 - b) Mr Cui also appears to have been working with his personal Chinese lawyers during 2024 to remove the travel restriction affecting him and believed that the travel restriction would be

lifted before the end of 2024. He also did not inform the lawyers in the PRC and in the Cayman Islands handling this matter on behalf of the Respondents that he was subject to that restriction.

8. It is against that background that the two summonses have come on for hearing before me today. Both parties seek leave that their intended witness should be permitted to give evidence by video link from Hong Kong rather than appearing in person in the Cayman Islands.
9. Secondly, the Petitioner seeks an order that the trial should proceed without the benefit of oral evidence from, and cross-examination of, any witness not able to travel to Hong Kong. On the other hand, the Respondents seek an order that the trial should be adjourned if either Mr Sang or Mr Cui is not able to travel to Hong Kong to give evidence. This would be to enable further efforts to be made to obtain permits for them to travel to the Cayman Islands or to Hong Kong, or to obtain permission from the PRC authorities to give evidence remotely from within the PRC itself under the terms of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.
10. The summonses have generated a large volume of evidence, little of which has been properly sworn or affirmed and filed, and the parties will be required to swear and affirm and file all material that has been put before the court.
11. The argument before me so far has focused on the question whether the trial should be adjourned, and this judgment therefore addresses that question alone.
12. I am displeased that the issue of the attendance of the witnesses has only now raised its head, less than one week before the trial is due to commence. Mr Sang and Mr Cui are both to be criticised for failing to keep the attorneys for the Petitioner and the Respondents updated during 2024, so that they, the attorneys, and the court would have had an opportunity to address this issue much earlier at the various directions hearings that took place during 2024.
13. For example, a letter of request under the Hague Convention could have been sent to the authorities in the PRC in the spring of 2024 to permit evidence to be given from within the PRC, and would probably have been determined by now. Certainly, the parties could have made more strenuous efforts to obtain permission for Mr Sang and Mr Cui to travel at an earlier stage, and with support from the court, with the likelihood that the current difficulties could have been avoided.
14. I am even more unhappy that Mr Sang and Mr Cui did not promptly inform the Petitioner's and Respondents' Cayman Islands attorneys of their difficulties in November 2024 when the Petitioner and Respondents submitted the consent order to the court requiring the personal attendance at trial of both Mr Sang and Mr Cui. The question of their availability for the trial could and should have been fully canvassed before the court at that time.

15. Very recently, within the last week, Mr Sang has been given permission to travel to Hong Kong and has obtained the necessary permit from the PRC authorities. Subject to my agreement, Mr Sang may be able to give evidence by video link from Hong Kong. The position regarding his evidence has therefore been resolved in part.
16. Mr Cui has not so far been given a permit to travel to Hong Kong. There is a faint possibility that he might still be given permission in time for the trial, which he describes as a 50% chance. But in my judgment, the court must grasp the nettle now and make a decision whether or not the trial should proceed on the assumption that Mr Cui will not be able to attend Hong Kong to be cross-examined, otherwise the matter is left in limbo, with no clear direction as to how the trial will be conducted, and with the risk of further costs being wasted.
17. The Petitioner and the Respondents both accept that it is strongly preferable that the witnesses should attend in person in the Cayman Islands to give evidence, if possible. But this is not possible for the currently listed trial, and it is unclear whether Mr Sang and Mr Cui will be able to attend the Cayman Islands at any time in the reasonably foreseeable future, although Mr Lowe dangles this possibility before me as a carrot to encourage the court to order an adjournment.
18. The Respondents' position is that there are two possibilities, each of which is unsatisfactory.
 - a) First, pursuant to GCR O.38, rule 2(3), if Mr Cui does not attend to be cross-examined at the trial, then the Respondents will be barred from relying on his evidence without leave of the court, which would be highly detrimental, not just to the Respondents' case, but also to the court's ability to conduct a fair trial of the proceedings.
 - b) Secondly, if Mr Cui's evidence is admitted without cross-examination, the Petitioner will inevitably invite the court to give limited weight to Mr Cui's affirmations, and to resolve all evidential conflicts in favour of Mr Sang, and this is likely to place the Respondents at a significant disadvantage.
19. As a result, the Respondents' position is that it would be wholly unsatisfactory for the trial to go ahead without Mr Cui giving oral evidence and being cross-examined. The Respondents say it will risk the winding up of a multimillion-dollar company being determined on disputed facts which have not been properly tested through cross-examination.
20. The Respondents contend that the critical nature of the disputed facts in the case makes it of paramount importance that each party's witness is properly cross-examined. Reliance on either the filed affidavits alone or cross-examination of only one witness is likely to lead to an unfair outcome at trial.

21. The Respondents therefore request the trial be adjourned for about 6 months to allow Mr Cui and Mr Sang to obtain permission to travel to the Cayman Islands, or at least for Mr Cui to resolve the restrictions preventing his travel to Hong Kong, and in parallel, to enable a letter of request to be sent to the PRC authorities to allow Mr Cui to be cross-examined by video link from PRC, if that becomes necessary. The Respondents' evidence is that this last option would take up to 6 months for a determination by the PRC authorities.
22. In support of their application to adjourn the trial, the Respondents rely on *Bilta (UK) Limited v Tradition Financial Services Ltd* [2021] EWCA Civ 221, *Fitzroy Robinson Ltd v Mentmore Towers Ltd* [2009] EWHC 3070 (TCC) and my unreported decision in *The Armand Hammer Foundation, Inc. v Hammer International Foundation and Ors* (unreported FSD 113 of 2023, 9 April 2024).
23. In *The Armand Hammer Foundation* case I said at paragraph 35, “*the fundamental question for the court is, will the refusal of an adjournment lead to an unfair trial?*”. I indicated at paragraph 36 that the approach of the court should be as follows:
- a) The court must engage in an evaluative assessment of all the material placed before it.
 - b) The court does not assume that there can only be one fair outcome: different outcomes may still be fair but equally in some circumstances there may be only one answer in reality.
 - c) Fairness involves fairness to both parties. Inconvenience to the other party (or to other court users) is not a relevant countervailing factor and is usually not a reason on its own to refuse an adjournment unless there is truly uncompensatable injustice to the other party.
 - d) In assessing what is fair, the court will look at:
 - i) the parties' conduct and the reasons leading to the request for the adjournment;
 - ii) the extent to which the difficulties relied on in support of the adjournment can be overcome before the trial – even if significant work may be required;
 - iii) whether there are specific matters that have arisen affecting the trial, such as the illness of a critical witness, and whether they may be managed without losing the trial;
 - iv) the consequences of an adjournment for the plaintiff, the defendant, and the court.
24. The Respondents argue that determination of the petition will be dependent on resolution of the conflicting accounts of Mr Sang and Mr Cui, where much of the dispute concerns the nature of the relationship between them over an extensive period back to 1998, and where there is little contemporaneous documentary material for much of that period. The witness evidence is therefore of cardinal importance, so say the Respondents, hence the November 2024 consent order requiring personal attendance of the witnesses for cross-examination. And the Respondents say that this importance has not diminished. Even if Mr Sang is now available for cross-examination, Mr Cui is not and the Respondents say they will be significantly prejudiced, because the playing field will not

be level: the Petitioner will either object to Mr Cui's evidence altogether or argue that it should not be given any weight by virtue of Mr Cui's non-attendance for cross-examination.

25. The Respondents say that a party's inability to call its own witnesses is a conventional basis for granting an adjournment, precisely because such a party inevitably suffers prejudice because of its inability to rely fully on its own evidence. However, I interject that this does depend on the reasons for the witness's unavailability.
26. The Respondents say they are ready for trial, but the unavailability of Mr Cui means that a fair trial cannot take place.
27. Finally, the Respondents contend that the Petitioner's position is protected in the interim by the undertakings given by the Respondents and by Mr Cui.
28. On the other hand, Mr Hobden, who appears for the Petitioner, submits that the hearing should proceed as planned. He points out:
 - a) the petition was issued almost a year ago;
 - b) the Petitioner has sought to move the case forwards rapidly throughout, whilst the Respondents have not done so;
 - c) the hearing date was fixed almost 6 months ago, and so everyone has known of the need for the attendance of the witnesses throughout that period;
 - d) Mr Sang, he says, has actively taken steps to obtain permission to travel to Hong Kong;
 - e) Mr Cui, by comparison, appears, he says, to have been blasé in his efforts;
 - f) the parties have incurred significant legal costs which are likely to be wasted if the trial is adjourned; and
 - g) valuable court time has been set aside that will otherwise not be used.
29. So, as a result of these points, Mr Hobden says that the parties agreed the consent order, when Mr Cui knew that he might not be able to give evidence. Mr Cui should have taken earlier and more strenuous efforts to obtain permission to travel to Hong Kong, and Mr Hobden submits that the Respondents' difficulties are of their own making, or perhaps more accurately, of Mr Cui's making.
30. In response to this, Mr Lowe describes the Petitioner's position as being opportunistic, given that Mr Sang only obtained permission to travel to Hong Kong on about 3 January 2025, and until then the Petitioner was in precisely the same position as the Respondents.
31. To pick up Mr Hobden's submissions, he says that if the hearing proceeds, then the Respondents should not be permitted to rely on Mr Cui's affirmations without leave of the court. Whilst the Petitioner says it would not oppose the grant of leave if the Respondents make a proper application

under GCR O.38, r.2(3) to rely on Mr Cui's affirmations, Mr Hobden says it would still be for the parties to address the court on the weight to give to Mr Cui's evidence in the absence of his cross-examination.

32. In the course of argument, the parties indicated that if an adjournment were to be ordered, the matter could be re-listed in April 2025, in approximately 3 months' time.
33. Against that background, I remind myself that I should be fair to both parties and that inconvenience to one party and to other court users is not a relevant countervailing factor and is not usually reason on its own to refuse an adjournment in the absence of truly uncompensatable injustice to the other party.
34. In my judgment, based on the material that has been put before me, I agree with the Respondents that the playing field will not be level if Mr Sang is able to give oral evidence and to be cross-examined when Mr Cui is not. Whilst the Respondents will still be able to rely on Mr Cui's written evidence, I accept Mr Lowe's submission that that evidence is likely to have reduced weight and in addition it seems to me the Respondents will not be able to deal with and respond to the substance of Mr Sang's oral evidence. It is not unusual for additional details and features to come out in the course of oral evidence, and in particular, as a result of cross-examination which other witnesses then need to address and deal with.
35. In those circumstances. I accept Mr Lowe's submission that Mr Cui's current inability to attend would result in the trial not being fair. As I recorded in *The Armand Hammer Foundation*, drawing on the statement of Henshaw J in *Barclays Bank plc v Shetty* [2022] EWHC 19 (Comm) at [45], "*if the Court concludes that it is necessary to adjourn a hearing in the interest of fairness, then it must be adjourned, for the court cannot countenance an unfair hearing.*"
36. It seems to me both parties are to blame for the reasons leading to the request for the adjournment. I agree with the Respondents' argument that the Petitioner's position is somewhat opportunistic, given that Mr Sang's difficulties only resolved on 3 January 2025.
37. I am not satisfied that Mr Cui's approach to resolving his travel restrictions is so different from that of Mr Sang that it would be right to criticize him substantially more than Mr Sang.
38. The difficulties that face both parties and face the court cannot sensibly be overcome before the trial is due to commence, but there is, it seems to me, a real prospect that they may be addressed if the trial is adjourned for a short period.

39. There is no evidence before me of specific prejudice to the Petitioner that cannot be compensated, so far as appropriate, by an order for costs. And finally, in terms of the factors to bear in mind, the effect on the court and other litigants is not such that it would not be right for me to refuse the adjournment requested by the Respondents.
40. I therefore grant the Respondent's application on the basis that the trial is re-listed to commence in April 2025. Subject to hearing Counsel, my intention is that it should be listed to commence on 9 April 2025, with 9 April as a reading day, so the first day in court will be 10 April 2025. I think that gives just enough time to complete the hearing before the Easter vacation starts.
41. I urge the parties to continue with their efforts to obtain permission for Mr Sang and Mr Cui to travel to the Cayman Islands in the meantime. As I said a moment ago, I accept the submission that was made by both sides that it is far preferable for Mr Sang and Mr Cui to attend in person in the Cayman Islands to give evidence, but I am alive to the possibility that the Chinese authorities may not give that permission. In the absence of that permission, it seems to me that evidence from Mr Cui and Mr Sang by video link from Hong Kong will be a just-about acceptable substitute. If the position is that Mr Cui still does not have permission to travel to Hong Kong in April 2025, it seems to me that we may well reach the stage at that point that the matter should go ahead nonetheless. But I will wait to hear from the parties closer to the time if that turns out to be the situation.
42. Costs reserved.

Dated 10 January 2025



THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT