

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CIVIL DIVISION**

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4
5 **Cause No: G 0228/2014**
6

7 **BETWEEN:**

8 **LIN HUI-MEI**

9 **PLAINTIFF**

10
11 **AND:**

12 **MAYER HOLDINGS LIMITED**

13
14 **DEFENDANT**

15
16
17 **Appearances:**

18 **Mr. Edwin Gomez of Ritch & Conolly for the**
19 **Plaintiff**

20 **Mr. Nick Hoffman of Priestleys for the**
21 **Defendant**
22

23 **Before:**

Mr. Justice Robin McMillan (Actg.)

24 **Heard:**

26th February and the 6th March 2015



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26 **REASONS FOR JUDGMENT**
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30 1. This Application was made on behalf of the Defendant for an order that the Plaintiff
31 furnish security for the costs of the Defendant in the sum of US\$150,000 or such further
32 or other sum that the Court might deem fit and proper.
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BACKGROUND

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2. The Plaintiff's Statement of Claim sets out that the Plaintiff is the registered owner of 7,500,000 Ordinary Shares in the share capital of the Defendant Company ("the Defendant"), a company incorporated under the laws of the Cayman Islands. The Plaintiff resides in Taiwan.

3. The Plaintiff alleges that the Defendant effectively excluded the Plaintiff from participating in the First and Second Extraordinary General Meetings ("EGMs") of the Defendant "*purportedly held on 9 October 2014*". At those EGMs ordinary resolutions were "*purportedly*" passed removing seven (7) Directors and five (5) ordinary resolutions were "*purportedly*" passed appointing a further five (5) Directors to the Defendant Company.

4. The Plaintiff contends that the Defendant failed to give notice of the EGMs and that any business "*purportedly*" transacted at the EGM's was void, and she claims declarations accordingly. The Defendant however places relevance upon the terms of certain Articles within the Articles of Association of the Defendant Company and in turn the Defendant alleges that notices were deemed to have been validly served.



1 5. I have reviewed the contents of a Joint Hearing Bundle submitted to me, including a
2 copy of a First Affirmation of the Plaintiff dated the 9th October 2014, and a copy of a
3 First Affirmation of Mr. Lau Kwok Hung, an Independent Non-Executive Director of
4 the Defendant, dated the 17th December 2014. I have also noted Exhibit "LKH-1"
5 attached to Mr. Lau Kwok Hung's Affirmation, where at pages 89-96 there appears an
6 additional First Affirmation of Lin Hui-Mei in Cause No. FSD 86 of 2014, in which
7 matter Henderson J. ultimately dismissed a petition to wind up the Defendant
8 Company.

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10 **GRAND COURT RULES**

11 6. GCR O.23 r.1(1) upon which the Defendant relies states as follows:
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13 *"1. (1) Where, on the application of a defendant to an action or other*
14 *proceedings it appears to the Court –*

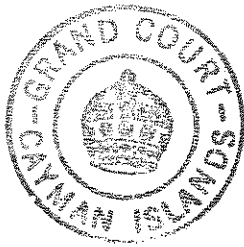
15 *(a) that the plaintiff is ordinarily resident out of the*
16 *jurisdiction; or*

17 *(b) that the plaintiff (not being a plaintiff who is suing in a*
18 *representative capacity) is a nominal plaintiff who is suing*
19 *for the benefit of some other person and that there is*
20 *reason to believe that he will be unable to pay the costs of*
21 *the defendant if ordered to do so; or*

22 *(c) subject to paragraph (3), that the plaintiff's address is not*
23 *stated in the writ or other originating process or is*
24 *incorrectly stated therein; or*

25 *(d) that the plaintiff has changed his address during the*
26 *course of the proceedings with a view to evading the*
27 *consequences of the litigation,*

28 *then if, having regard to all the circumstances of the case, the*
29 *Court thinks it just to do so, it may order that plaintiff to give such*
30 *security for the defendant's costs of the action or other*
31 *proceedings as it thinks just."*
32



33 7. In essence, the Defendant argues that both O.23, r.1(1)(a) and (b) are applicable to the
34 present circumstances.

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36 8. I shall deal with each of these provisions in turn.

GCR O.23 r.1(1)(a)

9. In relation to this provision, Smellie C.J. has provided important guidance in *In the Matter of the Cybervest Fund*¹, where the learned Chief Justice states at paragraph 23, pages 87-88, as follows:

"The wording does not admit any judicial policy that would mandate the making of an order simply because the plaintiff is a foreign plaintiff; the requirement that the plaintiff is ordinarily resident outside the jurisdiction is simply a pre-condition to the making of an order under the particular O.23, r.1(1)(a). It is a precondition just like those stipulated in (b)-(d), the other sub-rules, which are aimed at plaintiffs who may not ordinarily reside out of the jurisdiction. I must therefore proceed by explaining that I do not accept Mr. Farrow's submissions to the effect that the court would ordinarily require a foreign plaintiff to give security for costs because it will ordinarily be just to do so, following Porzelack KG v. Porzelack (UK) Ltd. (9) and Aeronave SpA. v. Westland Charters Ltd. (1)".

Smellie C.J. goes on to state at the conclusion of paragraph 24, page 88:

"I would simply add that discretion is to be exercised on a case-by-case basis, as the rule states, having regard to all the circumstances of the case".

10. The learned Chief Justice returns to this theme in *Ahmad Hamad Algozaibi and Brothers Company ("AHAB") v. SAAD Investments et al*², where at paragraph 59 he further expressly relies upon the following dictum of Sir Nicholas Brown-Wilkinson V.C. in *Porzelack KG v Porzelack UK Ltd*³. at page 1076:

"The purpose of ordering security for costs against a plaintiff ordinarily resident outside the jurisdiction is to ensure that a successful defendant will have a fund available within the jurisdiction of this Court against which it can enforce the judgment for costs".

¹ 2006 CILR 80

² Cause No. FSD 54 of 2009

³ [1987] 1 ALL E.R. 1074



1 11. It is in this overarching and critical context that the cases of *Elliot v. Health Services*
2 *Authority*⁴, *Gong v. CDH Chand Management Company Limited*⁵, and *Kernohan v.*
3 *H.E. The Governor*⁶, must ultimately be seen, where in the circumstances of those
4 cases the Grand Court saw its way to ordering security for an amount calculated to
5 cover any added difficulty and cost of enforcement overseas. As the provision
6 stipulates, the Court must have regard to all the circumstances of the case.

7
8 12. In the present matter, the Plaintiff has provided no evidence that she has assets
9 available within this jurisdiction apart from the shares which she owns or indeed any
10 evidence of assets available anywhere else. However, based upon the evidence before
11 me, and taking fully into account the fact that trading in the shares of the Defendant
12 has been suspended on the Hong Kong Stock Exchange, it is in my view impossible to
13 place any reliable value upon those specific shares at this time. In particular, as far as
14 any recourse by the Defendant is concerned, and bearing in mind the quoted comment
15 of Sir Nicholas Brown-Wilkinson V.C., those shares are effectively without value.

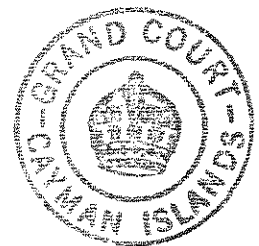
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17 13. In addition, I have reviewed, necessarily upon a preliminary basis only, the respective
18 cases put forward by the Plaintiff and the Defendant in the Statement of Claim and
19 Defence, and it would appear that, taken as a whole, the Plaintiff's case is not an
20 especially strong one, nor a promising one. Once again, in comparative terms, that is a
21 factor which is of some assistance to the Court in weighing the exercise of its
22 discretion at this stage to order security for costs.

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⁴ 2007 CILR 163

⁵ 2001 (1) CILR 57

⁶ Cause No. G255 of 2009



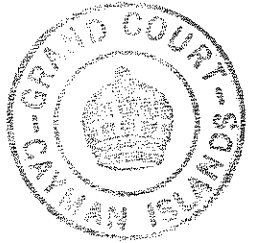
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14. Finally, in this regard it remains unclear as to how, even if the Plaintiff were to be successful, the remedies sought would ultimately enhance the value of her shareholding in any event, or indeed necessarily lead to a different outcome if the two EGMs were to be reconvened.

15. In all the circumstances therefore the Court has ordered that the Plaintiff should give security for costs under O.23, r.1(1)(a).

16. In the course of this hearing counsel for the Defendant gave an undertaking that the Defendant would in due course make an application for summary judgment. In light of that clarification, I have therefore ordered that security be provided up to and including the summary judgment application hearing. I further concluded that it would be just and reasonable to fix the security in the sum of US\$50,000 for these purposes.

17. In light of my comments as to the value of the shares, the sum of US\$50,000 must be paid into Court within 30 days of my decision, made on 16 March 2015.



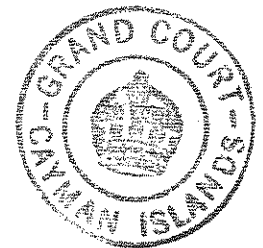
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2 *GCR O.23 r.1(1)(b)*

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4 18. I now turn to the alternative basis put forward for this application, namely that the
5 Plaintiff is a nominal plaintiff who is suing for the benefit of some other person and
6 that there is reason to believe that she will be unable to pay the costs of the Defendant
7 if ordered to do so.

8
9 19. It is the position that the Plaintiff has provided no evidence of any available assets
10 apart from the shares themselves, either within the Cayman Islands or indeed
11 elsewhere. Accordingly it is open to me to consider that there is reason to believe that
12 she would be unable to pay the costs or the Defendant if ordered to do so, and I do so
13 conclude.

14
15 20. As to the question of whether the Plaintiff is a nominal plaintiff only, I have already
16 alluded to the Court's difficulty in understanding or ascertaining what if any advantage
17 the Plaintiff would derive even if she were to be successful in her present action.

18
19 21. In light of this concern, I have considered carefully the contention of counsel for the
20 Defendant that the Plaintiff's Writ and Statement of Claim in this case constitute an
21 attempt by Mr. Lai Yueh-Hsing to disrupt the orderly handover of the Defendant to its
22 new owners and management and to seek to retain an illegitimate control.



1 22. I do not propose to set out the troubled history of the litigation which has taken place
2 in Hong Kong, and which is not yet finally concluded, other than to point out that Mr.
3 Lai is a former director of the Defendant Company and that interests associated with
4 him continue to be involved in the Hong Kong litigation. Indeed, it was Mr. Lai's
5 creditor petition in Cause No. FSD 86 of 2014 which Henderson J. dismissed on the 7th
6 November 2014.

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8 23. In the First Affirmation of Lin Hui-Mei dated the 9th October 2014 in Cause FSD 86 of
9 2014, which as I said has been exhibited in this case, the following paragraphs are of
10 potential relevance:

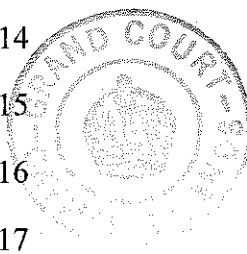
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12 "1. I am the legal and beneficial owner of 7,500,000 shares in Mayer
13 Holdings Limited ("the Company"). I have held these shares since about
14 2004 ("the Lin Shares"). I make this affirmation in support of Mr. Lai
15 Yueh-Hsing's ("Mr Lai") winding up petition in these proceedings.

16 2. I previously worked for Chin Fu Investment Company Limited ("Chin
17 Fu") as an accounting executive. Chin Fu's business primarily focuses
18 upon the investment in securities and property development. Since about
19 August 2012, I have fully retired and have become a full time housewife.

20 3. In or about 2004, not many Taiwanese enterprises were listed for trading
21 in other jurisdictions. The Company is one of them. As a support to
22 Taiwanese and based upon my then understanding about the Company's
23 then profitability and prospect, I then subscribed the Company's
24 shareholding, when it was listed for trading in Hong Kong.

25



1 4. *I did not know Mr. Lai until he came to see my husband, Mr. Kiu Teng*
2 *Hsiu, on 8 October 2014 as outlined below. For the avoidance of doubt, I*
3 *have not had any dealings or relationship with the Company, Mr. Lai or*
4 *any of the Company's directors.*

5 5. *On 8 October 2014, my husband met with Mr. Lai at his request. During*
6 *our meeting, he updated me on the Company's financial situation and*
7 *informed my husband that:-*

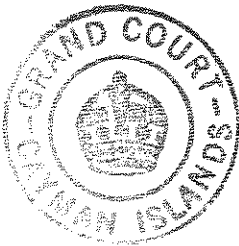
8 (a) *He had issued a winding up petition against the Company because*
9 *it was seriously insolvent.*

10 (b) *Such insolvency could be taken advantage of by one Mr. Lam Chin*
11 *Chun and his associated, who have been involved in a number of*
12 *legal proceedings against the Company.*

13 (c) *Mr. Lam and his associates have taken steps to reconstitute and to*
14 *seize control of the company's board of directors.*

15 (d) *There have been various legal proceeding in Hong Kong involving*
16 *the Company, its previously substantial shareholders and Mr. Lam*
17 *and his associates. Mr. Lai expressed his concerns that unless an*
18 *independent liquidator was appointed the Company there was a*
19 *risk that my investment in the Company could become worthless.*

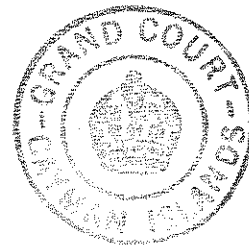
20 6. *Accordingly, I instructed my lawyers in Hong Kong to carry out enquiries*
21 *on my behalf. As a result of the information gleaned in those enquires, I*
22 *have decided to support Mr. Lai's petition in order to protect my own*
23 *interest in the Company. For the avoidance of any doubt, my participation*
24 *in these proceedings is without any influence from Mr. Lai or any other*
25 *party connected to the Company in any way whatsoever."*



1 24. Although it must be borne in mind that the Plaintiff has asserted in paragraph 6 that her
2 participation in the winding up proceedings was without any influence from Mr. Lai or
3 any other party connected to the Company in any way whatsoever, nonetheless it is
4 clear that the factual circumstances of the meeting as set out are not themselves in
5 dispute in this application.

6
7 25. Having considered this account, together with the contention of counsel for the
8 Plaintiff that her course of conduct is entirely to protect her own interests, I find as a
9 fact that the Plaintiff is in reality a nominal plaintiff who issued proceedings either for
10 the benefit of Mr. Lai or for the benefit of interests connected to Mr. Lai, and that in
11 light of the absence of any evidence as to any viable means, there is reason to believe
12 that the Plaintiff will be unable to pay any costs of the Defendant if ordered to do so.

13
14 26. Therefore having regard to all the circumstances of the case the Court considers it just
15 to order the Plaintiff to give security for the Defendant's costs in the amount and
16 manner previously outlined.



1 *THE PRINCIPLE IN THE KERNOHAN CASE*

2
3 27. Even if I were wrong as to my conclusions set out above in relation to O.23, r.1(1)(a)
4 and (b), a further aspect of this matter arises for consideration.

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6 28. In the present case any enforcement may involve recovery proceedings in Hong Kong,
7 Taiwan, Cayman Islands and possibly elsewhere.

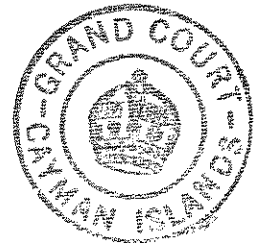
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9 29. Similarly in the *Kernohan* case Sir Alan Moses⁷, states at page 65, lines 8-18:

10
11 *"The costs that should be ordered should be those which might reasonably be*
12 *foreseen to be incurred over and above those which would anyway be incurred for*
13 *enforcing costs within the Cayman Islands. Costs have already been incurred in*
14 *tracing the Plaintiff and in finding out whether he has assets in California. There*
15 *is a risk that there will be costs incurred in enforcing either in Scotland or in*
16 *California, as well as in England and Wales."*
17

18 The learned Judge further states at pages 66-67, lines 22-25 and lines 1-6 respectively:

19
20 *"The Plaintiff has only himself to blame, although in circumstances which I*
21 *sympathize, for the concern the Defendants have as to the necessity of enforcing in*
22 *a number of jurisdictions. In those circumstances, I shall order security for costs,*
23 *which I have diminished to some extent, because they represent only a risk, in the*
24 *sum, namely, 49,200 USD."*
25
26

27 30. Upon this alternative basis of reasoning, I would in any event direct under O.23
28 r.1(1)(a) that security for costs should still be given by the Plaintiff in the sum of
29 US\$50,000.



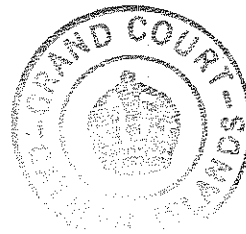
⁷ Sitting as an Acting Judge of the Grand Court

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3 **CONCLUSION**

4 31. The Defendant Company has therefore succeeded its application and as the party in
5 whose favour the order has thus been made I have directed that the Defendant is
6 entitled to its costs in respect of the part of the proceedings to which this application
7 and the order relates.
8
9

10 **Dated this the 20th day of March 2015**

11
12 *Robin McMillan*



13 **Mr. Justice Robin McMillan (Actg.)**
14 **Acting Judge of the Grand Court**