IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 132 OF 2024 (DDJ)

IN THE MATTER OF SECTION 92 OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF TFKT TRUE HOLDINGS

Before:	The Hon. Justice David Doyle
Appearances:	Thomas Grant KC and Anna Peccarino of Travers Thorp Alberga for Fester Global Ltd Spencer Vickers and Clare Bradin of Conyers Dill & Pearman LLP for Active Gains Universal Limited
Heard:	18 and 19 September 2024
Draft Judgment circulated:	27 September 2024
Judgment delivered:	3 October 2024

Determination of an application that the petitioner's claims in a winding up petition be struck out and/or dismissed on the ground they are an abuse of the process of the court or in the alternative that the claims be stayed pending the determination of proceedings in Hong Kong

JUDGMENT

Introduction

1. There was a hearing on 18 and 19 September 2024 in respect of an application to strike out or dismiss a winding up petition on grounds of abuse or in the alternative to impose a stay pending determination of proceedings in Hong Kong. I heard helpful submissions from Thomas Grant KC and Spencer Vickers. I am grateful to counsel for their valuable assistance. They gave me much to think about so I reserved judgment. I now deliver judgment.

The Summons

2. By summons dated 14 June 2024 (the "Summons") Fester Global Limited ("Fester" or the "Applicant") seeks "against Active Gains Universal Limited" ("Active Gains" or the "Petitioner") the following "orders and declarations":

> "1. An order that pursuant to GCR O.18, r.19 and/or the Court's inherent jurisdiction, the Petitioner's claims in the winding up petition be struck out and/or dismissed on the grounds they are an abuse of the process of the Court;
>
> 2. In the alternative to 1 above, pursuant to GCR O.18, r.19 and/or the Court's inherent jurisdiction, to the extent that any one or more of the Petitioner's claims are not struck out or dismissed, an order that such claims be stayed pending the determination of the proceedings currently before the Hong Kong Court in Case Nos. HCA 1469 of 2019 and 1942 of 2021 between the Applicant and the Petitioner."

The Petition

3. By a 46 page petition dated 25 April 2024 (the "Petition") Active Gains seeks an order that TFKT True Holdings (the "Company") be wound up pursuant to section 92(e) of the Companies Act (2023 Revision) (the "Act") on the just and equitable ground or in the alternative pursuant to section 95(3) of the Act an order providing for the purchase of the shares of Active Gains by other members of

the Company or by the Company itself at fair market value and, in the case of a purchase by the Company itself, a reduction of the Company's capital accordingly.

4. By order made on 18 June 2024 it was ordered that the Company shall be treated as the subject matter of the winding up proceedings and shall remain a party solely for the purpose of giving discovery. It was further ordered that the proceedings shall be treated as an *inter partes* proceeding between Active Gains and Fester in their capacity as members of the Company.

5. The following is taken from the Petition.

6. Active Gains says that it holds approximately 27% and Fester holds approximately 73% of the Company's total issued shares.

7. Active Gains complains that Fester caused some of its shares to be wrongly transferred to Fester on 29 January 2021 and before that transfer Active Gains held approximately 46% and Fester 54% of the Company's total issued shares.

8. Active Gains says that the Company was incorporated on a restructuring exercise involving a number of companies incorporated in Singapore which operate or operated fitness centres and gymnasiums in Singapore, Taiwan and the People's Republic of China. The restructuring exercise resulted in the Company becoming the holding company of the shares of True Fitness Holdings (Singapore) Pte Ltd. Prior to the restructuring the group was ultimately owned by Mr Wee Patrick John Ewe Seng ("Mr Wee"). The sole director and shareholder of Active Gains is Mr Wee.

9. Active Gains, at paragraph 13 of the Petition puts forward what it describes as seven "key allegations":

   (1) Fester has attempted to force the Petitioner's representatives out of the Company with an aim to take control over the Company;

   (2) Fester's representatives on the Company's board of directors have caused the Company to act in breach of and Fester has breached the Company's Amended and Restated Articles of Association dated 19 May 2017 ("Articles") and the shareholders' agreement dated 29 May 2017 (the "SHA") as part of an overall campaign to oppress and prejudice Active Gains as

a minority shareholder. Active Gains says that Fester (a) caused the board of the Company to pass board resolutions without the necessary quorum and/or voting thresholds having been met and (b) passed resolutions to force Active Gains' representatives to waive rights to challenge resolutions from being passed at inquorate Company board meetings;

(3) Fester and its representatives have engaged in misconduct and demonstrated a lack of probity in the conduct of the Company's affairs including acting in bad faith, exercising their powers for improper purposes, acting under a conflict of interest, and failing to act in the best interests of the Company as a whole. It is alleged that Fester has arranged for transactions to be authorised for the benefit of Fester's parent company and have not attempted to recover certain debts that are due and owing;

(4) Fester has excluded Active Gains from making decisions;

(5) Fester's representatives have failed to disclose "financial information in an acceptable standard" to Active Gains and prohibited Mr Wee access to the Company's records;

(6) Fester has commenced various "malicious proceedings" against Active Gains' representatives and caused Mr Wee "who is a single father with two children to be forced out of Taiwan … and have to travel in the midst of COVID to deal with various legal attacks in different jurisdictions"; and

(7) Fester has a history of not acting honestly with Active Gains.

10. Active Gains refers to a sale and purchase agreement entered into with Fester on 6 May 2017 (the "SPA") whereby Fester purchased a majority interest in the Company from Active Gains.

11. Active Gains at paragraph 22 refers to the SHA. Clause 4.1 of the SHA states "… the Board shall consist a maximum of 5 Directors." 4.2 provides that "The Board shall at all times consist of 3 Directors nominated by [Fester] … and 2 Directors nominated by [Active Gains] …". I also note the conflicting provisions for quorum in the Articles and in the SHA.

12. Active Gains says, at paragraph 24 of the Petition that immediately after the restructuring the board of directors of the Company consisted of:

(1) Mr Wee (nominated by Active Gains)

(2) Mr Phey Teck Moh (nominated by Active Gains) ("Mr Phey") (together the "Active Gains Directors");

(3) Mr Yi Peijan (nominated by Fester);

(4) Mr Zhang Yi (nominated by Fester);

(5) Ms Si Ton Man Wai (also known as Ms Catherine Si Ton) ("Ms Si Ton") (nominated by Fester) (together the "Fester Directors").

Mr Zhang Yi was later replaced by Mr Tan Kim Kong Sean ("Mr Tan") in February 2018. Active Gains say that based on a search conducted at the Registrar of Companies on 9 August 2024 the current directors of the Company are Ms Si Ton and Mr Zhang Jie.

13. Active Gains refers at paragraphs 26-106 of the Petition to "Relevant events in support of the key allegations" which it says has resulted in "a total breakdown of trust and confidence between the Shareholders." It does this under 11 headings:

(1) Attempted forced resignation of Mr Wee as chief executive officer.

The details pleaded under the heading appear to be based on events occurring in April and May 2018 some 6 years before the date of the Petition.

(2) Constructive dismissal of Mr Chen.

Under this heading there is reference to a conversation but a date is not given. There is however reference to a letter of resignation dated 18 April 2018.

(3) The appointment of senior management of the Company.

Under this heading there is reference 9 May 2018.

(4) [Active Gains'] Director denied access to the Company's property.

Under this heading there is reference to the period May 2018 and June 2018. There is also reference to a board meeting held on 21 June 2019.

(5) Failure to provide financial information of the Company to the director/shareholders.

Under the heading there is reference to May 2018, January 2019, June 2019 onwards, September 2019, May 2021, June 2022, July 2022 and November 2022.

(6) Failure to procure initial public offer ("IPO")/Trade Sale.

Under this heading there are references to December 2019, April 2020, May 2020 and June 2020.

(7) Unauthorised Loans.

Under this heading there are references to May 2018, February 2020 and May 2021.

(8) Limiting [Active Gains'] involvement in the preparation of the audit report.

Under this heading there is reference to October 2020.

(9) Wrongful transfer of the Company's shares held by [Active Gains].

Under this heading there is reference to December 2020 and January 2021.

(10) Failure to recover Franchise Fees and interest due under the Franchise Agreement.

Under this heading there are references to April 2018, May 2018, December 2018, May 2019 and June 2020.

(11) Unauthorised appointment of the Company's auditor.

Under this heading there are references to October 2020 and February 2021.

14. At paragraph 107 of the Petition Active Gains says that for "the reasons set out above and summarised below" it is just and equitable to wind the Company up. Active Gains sets out its "Grounds for Winding Up" at paragraphs 107-128 of the Petition under 5 headings:

(1) Breach of Legal Bargain.

Active Gains refers to "the above mentioned events" and relies on the SHA and the Articles and the allegations of breaches.

(2) Loss of confidence in management: misconduct by management and/or lack of probity in the conduct of the Company's affairs.

Active Gains refers to "the above mentioned events" and says it has had a total loss of confidence in the Board of the Company.

(3) Loss of trust and confidence.

Active Gains refers to "the above mentioned events" and says that during "the period between the year 2021 and to the date of the Petition, Fester has caused various legal proceedings to be commenced by Fester and/or its subsidiaries against Mr Wee and/or the Petitioner in Singapore and Hong Kong concerning *inter alia* the management of the Company/its subsidiaries and the directors' respective duties". It is added that "The Petitioner does not intend to plead the full particulars of those legal proceedings in this Petition as the various subject matter of those proceedings are not directly relevant to the matters in issue in this Petition. However, the above mentioned events and the existence of the proceedings themselves are obvious evidence that the Shareholders can (sic: no?) longer come to an alignment and there is a complete breakdown of trust and confidence between the parties."

(4) Deadlock.

There is reference under this heading to February 2020. It is also stated that on 24 September 2020 Mr Phey (one of the two Active Gains' directors) resigned as a director of the Company and on 30 July 2021 Mr Wee resigned as a director of the Company. It is stated at paragraph 122 that "no one in their right mind would agree to act as a director of the Company" and that Active Gains has been unable to find any candidates who are willing to act as the Company's directors and accordingly there is a deadlock in the management of the Company as the Board is not quorate (paragraph 125).

(5) Need for investigation.

At paragraph 126 there is reference to "As set out above" and at paragraph 128 it is stated that Active Gains "considers there is a need for a full investigation into the management of the Company".

15. At paragraph 129 of the Petition Active Gains say for "the reasons set out above, and summarised below it is just and equitable to wind the Company up" and relies on 5 points:

(1) repeated and serious breaches of the SHA;

(2) the Board has engaged in misconduct and had a lack of probity in the conduct of the Company's affairs and their actions have caused Active Gains to lose confidence in the management of the Company;

(3) irretrievable loss of trust and confidence between the Shareholders;

(4) the Board is deadlocked and unable to function as per the SHA given the composition of the Board; and

(5) "In light of the aforementioned, there is a need for investigation into the Company's affairs".

The position of Fester

Strike out

16. Fester says that in April 2019, 3 companies which were all wholly owned subsidiaries of the Company brought proceedings in Singapore against Mr Wee for breaches of contractual/fiduciary duties in his capacity as an employee of the first plaintiff and a director of all of the plaintiffs. The case came to trial in the Spring of 2022 and a judgment was handed down by the High Court of Singapore on 5 July 2022. The plaintiffs' claims were upheld. It was held that Mr Wee's employment was properly terminated on 9 May 2018. The trial judge made various findings of wrongdoing and dishonesty against Mr Wee. An appeal was dismissed by the Singapore Court of Appeal on 26 July 2023. Mr Wee's points were rejected and his conduct was again criticised. At paragraphs 106-113 the court considered whether the termination of Mr Wee's employment on 9 May 2018 was with or without cause and the court held that given Mr Wee's breaches the employment contract was terminated "with cause". Mr Wee now seeks to resurrect and relitigate this before the Grand Court in the Petition. Fester has also brought to the attention of the court a judgment *True Yoga Pte Ltd and others v Patrick John Wee Ewe Seng* [2024] SGHC 228 delivered on 5 September 2024 which sets out various parameters to enable the parties to instruct their experts and to reach an agreement on the value of the plaintiff's losses.

17. In August 2019 Mr Wee and Active Gains commenced proceedings in Hong Kong against Fester and Tong Fang Kontafarma Holdings Ltd ("Tong Fang") (the parent company of Fester) under reference HCA 1469 of 2019. The subject matter of the claim involved the SHA and the SPA and alleged breaches by Fester and Tong Fang.

18. A second set of Hong Kong proceedings were issued in 2021 under reference HCA1942 of 2021 by Fester against Active Gains and Mr Wee. Fester's pleading refers to the SPA and the SHA and seeks (1) damages and an injunction for Active Gain's alleged breaches of the SHA and (2) specific performance of the obligation to pay the 2019 shortfall, alternatively damages. The Defence and Counterclaim allege that Fester breached clause 11 of the SHA in failing to take steps for the purpose of obtaining a Trade Sale of the Company.

19. These two sets of proceedings in Hong Kong (the "Hong Kong Proceedings") have been ordered to be heard together.

20. On behalf of Fester it is stated that the Hong Kong Proceedings could take another 2-3 years to reach trial.

21. Fester says that the Petition emerged out of the blue, there being no relevant letter before action or prior intimation of the intention to issue proceedings. The last letter sent by Conyers had been sent about 2.5 years earlier on 10 November 2021.

22. Fester says that the complaints founding the Petition are of considerable antiquity, in large part dating to events occurring between 2018 and 2020. Active Gains and Mr Wee in HCA 1942 of 2021 progress a case of oppression as they plead at paragraph 111 of the Petition.

23. At paragraph 113 of the Petition complaint is made that Fester has commenced various legal proceedings against Mr Wee and/or Active Gains in Singapore and Hong Kong which have caused "extreme hardship" to Mr Wee and are "malicious".

24. The Petition omits the fact that it was Active Gains and Mr Wee who issued the proceedings in HCA 1469 of 2019. Fester also reiterates the point that the Singapore proceedings resulted in a defeat for Mr Wee. Fester says that it is difficult to see how such proceedings could properly be described as "malicious". Fester says that it is a very odd proposition that the shareholder in this case can rely on the Singapore proceedings to found a claim that there is a "complete breakdown in trust and confidence".

25. Fester adds that insofar as there is a deadlock it is because Active Gains has itself failed to nominate any directors to the board of the Company and it is an odd proposition that a shareholder can rely on a deadlock of its own making to justify a winding up.

26. Fester says that it is obvious that the Petition has been issued in the face of the ongoing Singapore and Hong Kong proceedings with a view to opening a new front to seek to obtain some form of collateral litigation advantage.

27. Fester in its skeleton argument at paragraphs 52 to 95 refers to the Petition and the pleadings in the Hong Kong Proceedings to submit that there is an "almost total factual overlap". Fester submits that "almost every" allegation founding the Petition is directly in issue in the Hong Kong

Proceedings and has been actively put into issue by Active Gains and Mr Wee. Fester provides a table showing a "comparison pleadings overlap".

28. Fester says that the Petition which has been presented is an abuse and should be struck out because:

(1) Active Gains and Mr Wee have shown that they are quite willing to and are litigating against Fester in an abusive way in the Hong Kong Proceedings;

(2) Active Gains having raised issues in one set of proceedings, is seeking to vex the same party with almost precisely the same set of issues in another set of proceedings. Active Gains now seeks to heap yet further cost, burden and inconvenience upon Fester. It seeks to require Fester to litigate essentially the same issues in another jurisdiction. No explanation has been given because there is no other explanation than one which reveals the abusive nature of Active Gains' strategy. Fester says the court should not tolerate this conduct;

(3) the Petition is an obvious tactical ploy. There is no explanation as to why it has been presented now, though it is clear that it is responsive to the fact of the quantum trial heard in Singapore and the expectation that judgment will be handed down for a substantial sum of money. Mr Wee is or will be liable personally for a very substantial money judgment; and

(4) the winding up petition procedure is not an appropriate mechanism for the resolution of contentious factual disputes that should properly be resolved by writ action.

29. Fester submits that "it is obvious that this Petition is vexatious and oppressive and should be stopped".

Stay

30. In support of its alternative application for a case management stay of the Petition pending the determination of the Hong Kong Proceedings Fester rely on *New Silk Route Advisors LP* (FSD unreported judgment 10 February 2022) and submit that where there are already ongoing proceedings in another jurisdiction where broadly the same, or similar or related, factual and legal

issues arise for determination then the court should, if it is not minded to strike out the Petition, be inclined to stay the Petition until the Hong Kong Court has decided those issues between the parties. It is clear that the vast bulk of the factual and legal issues sought to be aired in the Petition will be resolved by the Hong Kong Court.

31. Fester stresses that the Hong Kong Proceedings were initially instituted by Active Gains which is the petitioner in Cayman and where almost all the overlap issues have been raised by the petitioner.

32. Fester invites the Court to have regard to the following factors:

(1) substantial expense has been expended in Hong Kong;

(2) the Hong Kong Court will deliver a just resolution of the issues raised;

(3) it would be very wasteful for the parties to fight out the same issues in Cayman as in Hong Kong;

(4) a refusal of a stay would give rise to the very serious risk of inconsistent judgments/findings;

(5) the Hong Kong Proceedings are the "senior" set of proceedings;

(6) the outcome of the Hong Kong Proceedings will assist the Cayman Court enormously in resolving the issues raised by the Petition and cutting down the expense of those proceedings;

(7) the governing law of both the SPA and the SHA is that of Hong Kong;

(8) it would be oppressive for Fester to have to expend time and resources fighting on two fronts;

(9) none of the parties have any connection with the Cayman Islands other than their shareholding in a Cayman company. The business of the group is located in Singapore;

(10) Active Gains points to no urgency requiring the Petition to be heard expeditiously;

(11) Active Gains can drive the Hong Kong Proceedings forward to a swift conclusion; and

(12) if the Petition is allowed to proceed to trial and it succeeds and a buy out order is made it would not be possible for there to be a determination of the value of Active Gains' shares until after the Hong Kong Proceedings have concluded because the amount of shares owned by Active Gains is in dispute in the Hong Kong Proceedings and such would have to be determined before alternative relief could be granted in any meaningful form.

The position of Active Gains

33. Active Gains says that it has strong grounds for seeking the winding up of the Company on the just and equitable basis. It summarises its grounds under the following headings:

(1) Breach of legal bargain;

(2) Loss of confidence in management: misconduct by management and/or lack of probity in the conduct of the Company's affairs;

(3) Loss of trust and confidence;

(4) Deadlock; and

(5) Need for an investigation.

34. Active Gains says that the deadlock ground is "particularly straightforward, as the parties are in agreement that there is a deadlock between the directors of the Company. Although the reasons for this deadlock remain in dispute, the fact of the deadlock is not" (paragraph 8 of skeleton argument).

35. Active Gains say that Fester has failed to engage in good faith discussions for a buy-out and the only remaining option for resolution of the deadlock is for liquidators to be appointed or for the court to order the sale of the shares of Active Gains at fair market value.

Strike out

36. Active Gains says that the Hong Kong Proceedings do not render the Petition abusive for the following reasons:

(1) the nature and extent of the overlap between the Petition and the Hong Kong Proceedings is not as Fester has represented;

(2) in any event, the extent of overlap is not the relevant question for the court when considering whether to exercise its discretion to strike out the Petition;

(3) the existence of the Hong Kong Proceedings is only relevant insofar as they demonstrate that the parties have lost trust and confidence in each other; and

(4) the Petition seeks specific statutory relief which is only available from the Grand Court in the Cayman Islands.

37. Active Gains stresses the following additional points:

(1) the authorities indicate that the court will only strike out a winding up petition in a "plain and obvious" case and this is not such a case;

(2) the Petition is brought on proper grounds pursuant to the statutory rights of Active Gains and to protect it from further prejudice;

(3) Action Gains seeks relief which is only available from this court;

(4) it would be plainly wrong to strike out or stay the Petition at this preliminary stage, based on the evidence presently before the Grand Court;

(5) there are no alternative remedies. Active Gains has made numerous attempts to resolve the deadlock through mechanisms other than the Petition including reasonable offers to participate in a buy-out transaction;

(6) the Petition has not been brought for an ulterior or collateral purpose and any issue as to the purpose of Active Gains is not suitable for summary determination (*Tianrui (International) Holding Company Ltd v China Shanshui Cement Group Ltd* 2019 (1) CILR 481 at 40-42); and

(7) the parties expressly agreed that concurrent proceedings in multiple jurisdictions were permissible, as set out in the clear terms of the SPA and the SHA.

Stay

38. Active Gains says that a stay should not be granted for the following reasons:

(1) there are no "very strong reasons" for a stay which should only be granted in "rare and compelling circumstances";

(2) there is no basis for concluding that the Hong Kong Proceedings would or might be determinative of proceedings in the Cayman Islands and therefore a stay should be refused;

(3) the resolution of the Hong Kong Proceedings will make no difference to the decision which the Grand Court has to make on the Petition and nor is there any risk of inconsistent decisions between the Grand Court and the Hong Kong Court;

(4) the fact that there may be an overlap between the factual issues in the two proceedings is insufficient to justify the imposition of a stay;

(5) Active Gains would suffer substantial prejudice in the event that the Petition was stayed pending the determination of the Hong Kong Proceedings as the deadlock will continue and Active Gains is unable to exercise its voting rights and the Board is not quorate; and

(6) it is not open to Fester to argue that proceedings arising out of or in connection with the SPA or the SHA should not be run concurrently.

Law

39. I now set out the relevant law.

Strike out

40. The application is for the claims of Active Gains in the Petition to be struck out on the ground that they are "an abuse of the Court" (paragraph 1 of the Summons).

41. Order 18 rule 19(1)(d) of the Grand Court Rules ("GCR") provides that the court may at any stage of the proceedings order to be struck out any pleading on the ground that it is "an abuse of the process of the court" and "may order the action to be stayed or dismissed".

42. The applicability of Order 18 rule 19 appears to be common ground. Fester says that the Companies Winding Up Rules (2023 Consolidation) Order 3 rule 2(5) and Order 18 rule 19(3) of the GCR rules make it clear that this rule applies to winding up petitions and relies upon *Youbi Capital (Cayman) GP* (FSD unreported judgment of Parker J delivered on 4 April 2023).

43. The court also has an inherent power to prevent misuse of its procedure where proceedings although not inconsistent with the literal application of its procedural rules would nevertheless be manifestly unfair to a party to litigation or would otherwise bring the administration of justice into disrepute among right-thinking people (*Hunter v Chief Constable of the West Midlands Police* [1982] AC 529 (HL) at 536, referred to at paragraph 7(3) of *Arnage v Walkers* FSD unreported judgment 28 October 2022).

44. The jurisdiction is very wide and the court should consider all the circumstances of the case.

45. Smellie CJ (as he then was) said in *TMSF v Wisteria Bay Ltd* 2007 CILR 185 at [5]:

> "5. It is well established that the court has an inherent jurisdiction to stay or dismiss proceedings where, because there are parallel proceedings elsewhere, the continuance of the present proceedings would amount to an abuse of the process of the court. The principle connotes that the process of the court must be used *bona fide* and properly and not be abused by a litigant who invokes it. The court will, in a proper case, summarily prevent its

machinery from being used as a means for vexation or oppression in the process of the litigation. These are all long-standing principles: see *Castro v. Murray* (2). It is now clear that they extend to and include circumstances where abuse may flow from the institution of other proceedings elsewhere, which are criminal proceedings against the same party or parties."

46. Fester also refers to Parker J's judgment in *Circumference Holding Ltd* (FSD unreported 3 May 2021) and the following extracts:

> "36. The winding up procedure is generally intended to be used in clear cases. It is not for the resolution of disputed debts or other contentious disputes that should properly be resolved by writ actions or other litigation processes. In addition, in relation to any petition brought on the just and equitable ground, it must self-evidently be just and equitable to obtain the relief sought …
>
> 38. Further if any action is not brought *bona fide* for the purpose of obtaining the relief sought but for some ulterior or collateral purpose it will, *ex hypothesi*, not be just and equitable. It may be struck out as an abuse of the process of Court: *Lonrho PLC and Others -v- Fayed and Others (no 5) 1 W.L.R 1993, 1489 at page 1502 D-E*. Bringing a petition simply to exert pressure on the Company will also be an abuse of process."

47. Active Gains refers to my judgment in *New Silk Route Advisors LP* (FSD unreported judgment 10 February 2022) and my reminder at paragraph 55 that:

> "… the right to petition for a just and equitable winding up order is a remedy available as of right provided by statute and such right should not be lightly interfered with."

48. Active Gains also refers to paragraph 32 of that judgment. I set out paragraphs 31 and 32 as follows:

> "31. Order 18 rule 19(2) of the Grand Court Rules provides that no evidence shall be admissible on an application under subparagraph (1) (a) namely a strike out of a pleading on the ground "it discloses no reasonable cause of action". Even when

considering a strike out under subparagraph (1) (d) namely "it is otherwise an abuse of the process of the court", the court needs to take care in its consideration of the admissible evidence before it during a strike out hearing.

32. In my judgment in *AquaPoint L.P.* (FSD; 23 November 2021) at paragraph 10(5) I referred to authority which indicated that the hearing of a strike out application is not the place for resolution of disputed facts. The parties in the case presently before me sensibly acknowledged that to determine the loss of trust and confidence ground would require a trial. The court must normally assume that the facts asserted by the petitioner are true at the strike out hearing stage. If the court, on a review of the material that has properly been put before it, finds that there are facts in dispute which are or may be material to a determination in the petitioner's favour on the petition, then it must usually let it go to trial. On the other hand, if the facts which must be taken to be true or (where evidence is admissible) are established by evidence which is not disputed, lead the court to the clear view that the petition is bound to fail, then it would be pointless to allow the petition to go to a hearing. A court should be prepared to scrutinize the properly available undisputed evidence supporting the allegations and to strike out the petition if it is obviously unsustainable. In *AquaPoint*, I reiterated the obvious point that it is only if it can clearly be seen that the just and equitable ground for winding up cannot be established that it will be appropriate to strike out the petition. There is clearly a danger in pre-judging the outcome of the hearing of a petition and the court's strike out jurisdiction needs to be exercised carefully. Equally, the court needs to be careful to ensure the winding up procedure is not being improperly used."

49. Active Gains also refers to Parker J's judgment in *Youbi Capital (Cayman) GP* (FSD unreported 4 April 2023) and his acceptance at paragraph 40 that the court should apply the following principles:

"(1) The Court will only strike out a petition in a "plain and obvious" case.

(2) It is not appropriate to seek to resolve disputed issues of fact on an application to strike out: disputed issues of fact should be resolved when the petition is heard.

(3) If the actions of a company (through its directors) have resulted in a justifiable loss of confidence in the management of the company, then a contributory has a statutory right to petition for the winding of the company on the just and equitable ground. It cannot and should not be deprived of that right merely because the company can point to some other remedies that may legitimately go some way to compensating the contributory. On the contrary, the contributory is entitled to take the view that it would prefer for the company to be wound up as against having to pursue a series of piecemeal other steps.

(4) Nevertheless, the Court must consider whether there is an alternative remedy available to the Petitioner.

(5) The Court must also consider whether the petitioner is acting unreasonably or improperly in pursuing the petition and in not pursuing an available alternative remedy."

50. Active Gains also refers to paragraph 41 where Parker J sets out the following extract from the Court of Appeal's judgment in *Tianrui (International) Holding Company Limited v China Shanshui Cement Group Limited* 2019 (1) CILR 481:

> "It is only if it can be clearly seen at the outset that the just and equitable ground for winding up cannot be established that it will be appropriate to strike out the petition … In all but a plain and obvious case, it is likely to be necessary for the facts underlying a petition to be established at trial before the adequacy of a suggested alternative remedy, and the reasonableness or otherwise of the petitioner in failing to pursue it, can be established. Indeed, the structure of the Cayman legislation indicates that in ordinary circumstances the decision on the suitability of an alternative remedy, at least a remedy specified in s.95(3) of the Law, is to be made after the allegations in the petition have been determined by the court and a prima facie case for a just and equitable winding up made out. Unless, therefore, an available alternative remedy can be seen, without full examination of the facts, to be capable of satisfying the petitioner's concerns to an extent that would make it clearly impossible for him to persuade the court that it would be just and equitable to wind up the company, the petition should proceed."

51. Parker J at paragraph 42 cited *TMSF* and stated:

> "The bringing of parallel proceedings in different jurisdictions can also be an abuse of process depending on the circumstances."

52. At paragraph 43, Parker J referred to the following extract of Buckley J's judgment in *Thames River Launches Ltd v Trinity House Corp* [1961] Ch 197 at 207:

> "As I understand it, the principle is that if two courts are faced substantially with the same question, it is desirable to ensure that that question is debated in only one of those two courts if by that means justice can be done."

Stay

53. In *New Silk Route Advisors LP* (FSD unreported judgment 10 February 2022) I endeavoured to set out the law on case management stays at paragraphs 49-57 and do not repeat it all again here and those paragraphs should be treated as incorporated by reference. The main points to stress are that a relevant factor is whether the outcome of one set of proceedings would resolve the issues in the Cayman proceedings or may have an important effect on the conduct of the Cayman proceedings. The avoidance of conflicting judgments and the saving of costs are also relevant factors. The burden on an applicant for a case management stay is high as a stay would prevent a petitioner from its fundamental right of access to the court. If earlier resolution of certain issues in the foreign proceedings, which contain similar or related issues between the same or related parties, would better serve the interests of justice a stay may be granted. At paragraph 60 I stated:

> "Each case, of course, must be decided on its own facts and circumstances. As can be seen from a review of the authorities the relevant test is not limited to proving that the issue to be determined in the foreign proceedings would be determinative of the proceedings in the Cayman Islands. A stay may be granted if the outcome of the foreign proceedings may have "an important effect" on the proceedings in the Cayman Islands. A stay may be granted where it would "better serve the interests of justice." It is also essential to have

regard to the likely benefits and disadvantages of imposing a temporary case management stay."

54. I also stated:

"70. I should add that active judicial case management has moved on considerably since 28 June 1999, the date upon which the judgments of the English Court of Appeal were delivered in *Reichhold*. It may be that Lord Bingham's "rare and compelling circumstances" comments in *Reichhold* need to be read in light of the more modern litigation culture in 2022 which requires active judicial case management that was in its infancy in 1999. In any event, Lord Bingham's words must be seen in their proper context, namely a response to a floodgates argument advanced by counsel in 1999. Moreover Lord Bingham's words should not be construed and applied as if they were words in a statute. Lord Bingham, in an address delivered at the Centenary Conference of the Bar on 29 October 1994, commented that "there seems now to be a large measure of agreement that movement towards some system of case management (however described) is overdue." *Reichhold* was an important development, so much so that it warranted a mention by Sir Bernard Rix (Justice of Appeal Rix in this jurisdiction) in his chapter entitled "Lord Bingham's Contributions to Commercial Law" in *Tom Bingham and the Transformation of the Law* (2009) at page 676.

71. The law and practice in respect of case management stays has been developing since the 1990s. With much more cross-border international litigation in 2022 as compared to 1999 it is inevitable that the circumstances that justify a temporary case management stay in 2022 will not be as rare as the circumstances prevailing in 1999. I stress again that each case, of course, must be decided on its own facts and circumstances. To justify a temporary case management stay there needs to be a good reason. At the very least the determinations in the foreign court must be considered to be likely to have "an important effect" on the proceedings in the Cayman Islands, if not actually determinative of them. Moreover, temporary case management stays may be imposed where imposing such would "better serve the interests of justice". The court has a wide discretion which must be exercised

cautiously with regard to the relevant facts and applying the relevant principles outlined in the authorities specified above."

55. I should add for the sake of completeness that in an *ex tempore* judgment delivered on 27 June 2023 I lifted the stay in *New Silk Route* principally because the timeline for the determination of issues in the New York Complaint had significantly changed.

56. Parker J in *The Port Fund LP v Walkers (Dubai) Limited Liability Partnership* (FSD unreported judgment 27 June 2022) stated:

> "78. I adopt what Justice Doyle had to say in *New Silk Route Advisers* in February of this year (although his comments were made in the context of cross border litigation with parallel cases in more than one jurisdiction). I agree that the approach to case management stays needs to be adapted to current times where there is a greater emphasis on the importance of active judicial case management, which leads to efficiency in disposing of litigation. The principle seems to me to apply even more so to the Court controlling procedure in its own jurisdiction in the present circumstances."

57. In *MYF Maximus Limited v DNB Bank ASA* (FSD unreported judgment 3 June 2024) I refused an application for a case management stay and dealt with the law as follows:

> "108. I have considered the relevant law including *Athena Capital Fund v Holy See* [2022] EWCA Civ 1051; [2022] 1 WLR 4570 delivered on 26 July 2022 and my judgment *New Silk Route Advisors LP* (FSD unreported judgment delivered 10 February 2022). It is interesting to note that the case management stay in that case was subsequently lifted principally in view of the extended timeline for the determination of issues in legal proceedings in New York (see FSD unreported judgment delivered on 27 June 2023). In *New Silk Route* (10 February 2022) at paragraph 70, I stated that Lord Bingham's "rare and compelling circumstances" comments in *Reichhold* may need to be read in light of the more modern litigation culture in 2022. It is also interesting to note that the English Court of Appeal (Peter Jackson, Males, Birss LJJ) in *Athena Capital* held that there was no separate test

of "rare and compelling circumstances" in cases where there were parallel proceedings in another jurisdiction. The single test to be applied was whether in the particular circumstances of the case it was in the interests of justice for a stay to be granted and that is the test I apply in this case."

58. On 20 September 2023 the Judicial Committee of the Privy Council decided the appeal in *FamilyMart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holding Corporation* [2023] UKPC 33. Lord Hodge at paragraph 102 stated:

> "102. The Board is inclined to think, in agreement with Kawaley J and Sir Terence Etherton MR, that in the Cayman Islands as in England and Wales there is a statutory basis for the grant of a stay of a winding up petition. The Board therefore does not need to determine whether and to what extent a discretion exists under the court's case management powers apart from statute. In *In re Nanfong International Investments Ltd* [2018] CILR 321 ("*Nanfong*") the Cayman Islands Court of Appeal adopted a restrictive approach to the grant of a discretionary stay, applying the principles set out by Lord Bingham of Cornhill CJ in *Reichhold Norway ASA v Goldman Sachs International* [2000] 1 WLR 173 ("*Reichhold*"). Moses JA adopted the same approach in this case, holding at para 138 that a stay will be granted only in rare and compelling circumstances. The Board observes that in *Reichhold* and *Nanfong* the basis on which a stay was sought did not involve an assertion that all or some of the matters in the legal proceedings fell within the scope of a binding arbitration agreement. While it is not necessary for the Board to decide this matter, it questions the proposition that a discretionary case management stay of winding up proceedings on the just and equitable ground where a substantial part of the dispute between the parties or some of the parties to the petition falls within the scope of a binding arbitration agreement should be granted only in rare and compelling circumstances. Such a conclusion appears to be inconsistent with the support which the courts give to arbitration and the trend of case law internationally."

59. In a judgment in *Abraaj SPV 108 Limited v 1 GCP SPV 21 Limited* (FSD unreported judgment 14 June 2024) Segal J stated:

"93. It is clearly established that the test to be applied by the Court when considering a case management stay is whether the stay is, in the relevant circumstances, in the interests of justice. It is also established that (as Justice Doyle said in *Enigma Diagnostics v Boulter*) that the jurisdiction should be exercised with caution and only for a very good reason (where there are strong reasons). There is however no separate requirement of rare and compelling circumstances.

94. The need for strong reasons was made clear in a number of the Cayman authorities. For example, by Moses JA in *Nanfong* (at [43]) where he found in that case that there were "*compelling and very strong reasons for granting a temporary stay in order to manage the order of proceedings … to ensure that the issue is decided in the order that will most likely further the ends of justice*." In *Port Fund* at [71] Justice Parker said that the question he asked himself was "*whether in all the circumstances there [were] strong reasons for granting a stay to further the ends of justice carefully weighing the benefits and any prejudice which are likely to result*." This seems to me to be an accurate summary of the law. I do not see that there is a distinction of substance between the references to strong and very strong reasons. The applicant for a stay must overcome a high bar and establish serious prejudice and factors of considerable weight that demonstrate why the plaintiff's important right to litigate its claim is, in the interests of justice, to be subordinated. I would also note that I sought to summarise the law in my judgment in *Tianrui (International) Holding Company Limited v China Shanshui Cement* [2020] (2) CILR 6] at [141].

95. As we have seen, the recent appellate decisions in England make the same point. In *Athena Capital* Males LJ said that there it was only in rare and compelling cases that it would be in the interests of justice to grant a stay on case management grounds in order to await the outcome of foreign proceedings since the usual function of a court was to decide cases and access to justice was a fundamental principle to be taken into account. It seems to me that, at least as a general matter, the same reasoning will apply in a case involving an application for a case management stay to await the outcome of other domestic proceedings.

96. I agree with the submission made by the SPV 21 Proceedings Plaintiffs and the Ashary Plaintiffs that neither Justice Doyle (in *New Silk*) nor Justice Parker (in *Port Fund*) intended to reformulate or lower the threshold to be satisfied in the core test for granting a case management stay. Both of my brother judges were concerned, in my view rightly, to emphasise the importance of the Court's role in actively case managing proceedings and how this impacts on the dynamics of and the Court's consideration of a stay application. The Court will be proactive and will not hesitate to order a stay in an appropriate case. But in order to show that the interests of justice are satisfied in denying a party the right to proceed to trial with proceedings properly commenced in this jurisdiction strong reasons must be shown."

Determination

60. Having dealt above in some detail with the (1) Petition; (2) the respective position of the parties in respect of the Summons and (3) the law, I can now deal with the determination section of this judgment relatively concisely. I deal first with the strike out application.

Strike out

61. Fester's main case on the strike out application is that Active Gains and Mr Wee seek to vex Fester in the Cayman Islands with almost precisely the same set of issues which they have raised in the Hong Kong Proceedings. Fester says that having first commenced proceedings in Hong Kong they now seek to heap yet further cost, burden and inconvenience upon Fester and seek to require it to litigate essentially the same issues in the Cayman Islands. Fester says that Active Gains are adopting an abusive strategy and the court should not tolerate this abusive conduct. Fester says the Petition was clearly presented in response to the pending quantum trial in Singapore. Fester says that it is obvious that the Petition is vexatious and oppressive and should be stopped.

62. Fester also places secondary reliance on an improper or collateral purpose point, which I shall come to shortly.

63. Mr Grant launched a powerful attack upon Active Gains in respect of the filing of the Petition. The allegations in it are historical allegations with some dating back to 2018 and yet Active Gains left it for 6 years before filing the Petition and did so just a few weeks before a hearing in Singapore where no doubt Mr Wee (the sole director and sole member of Active Gains) was expecting another defeat. Mr Grant added that the filing of the Petition was tactical and for the improper purpose of putting pressure on Fester.

64. Mr Grant also launched a powerful attack upon defects on the face of the Petition including drawing the attention of the court to, amongst other points:

(1) the staleness of the claims, some going back to 2018;

(2) the lack of particularity as to how it is said that a quasi-partnership could have arisen especially in circumstances where the parties had contractually agreed that their relationship did not amount to a partnership;

(3) Active Gains' position in respect of deadlock where it had admitted it was in breach of the SHA in failing to put forward two directors;

(4) the statements that "malicious" proceedings had been started in Singapore and Hong Kong when in Singapore Mr Wee had been unsuccessful at first instance and on appeal and it was Mr Wee and Active Gains that first commenced proceedings in Hong Kong.

65. I note the points raised on behalf of Fester but as Mr Grant was at pains to stress it is not for this court at this interlocutory stage dealing with an application to strike out on the grounds of abuse to determine the merits of the Petition or to delve into them too far. It was not part of Fester's case at this interlocutory stage that the Petition was unarguable or bound to fail.

66. Irrespective of the defects on the face of the Petition, its timing and the improper purpose point, Mr Grant submitted that Active Gains' conduct was abusive and vexatious because it sought to litigate the same issues in both Hong Kong and the Cayman Islands.

67. Cutting to the chase, I simply do not think there is enough to justify taking the serious step of striking out or dismissing the Petition at this stage.

68. I deal with Fester's two grounds for the strike out or dismissal as follows.

69. In respect of its principal ground (vexation and oppression), as will be seen below I have concluded that the overlap/duplication of issues in the Hong Kong Proceedings and in the Cayman Islands justifies this court in imposing a temporary case management stay of the proceedings in the Cayman Islands pending determination of the Hong Kong Proceedings. Fester will not therefore be vexed in Hong Kong and Cayman on the same issues. Time and costs shall not be wasted. This removes what I see as the main plank of the strike out or dismissal application.

70. In respect of its secondary ground (improper or collateral purpose) I am not in a position on the material presently provided to the court to reach the conclusion that Active Gains has simply presented the Petition for the improper or collateral purpose of putting pressure on Fester and to vex it twice unnecessarily.

71. Mr Grant drew the court's attention to the lack of explanation from Mr Wee in respect of the timing of the Petition and asked the court to infer, in the absence of a proper explanation, that Active Gains was pursuing the Petition for an improper purpose namely to put pressure on Fester and vex it twice.

72. Mr Vickers referred to paragraph 13 of Mr Wee's second affirmation of 12 July 2024 where he says that "whilst I was hoping at the beginning of the Hong Kong Proceedings that with time, the parties may reach a settlement on the Hong Kong Proceedings and mend their relationship, it is clear to me now that this is unlikely to happen" in an endeavour to explain the delay and the belated timing of the filing of the Petition. It is difficult on the face of it to understand why Active Gains waited 6 years before filing the Petition and its timing does obviously and understandably excite the suspicions of Fester. I cannot however resolve this improper purpose point at this interlocutory hearing on the limited material made available to the Court and without hearing the cross-examination of Mr Wee as to his company's purpose in filing the Petition when it did. I keep a mind entirely open to persuasion on that point and indeed on all other points in respect of the merits or otherwise of the Petition.

73. Mr Vickers briefly touched upon a point to the effect that Fester would have to prove that all of the purposes of Active Gains were improper and collateral relying in a footnote on *Re China CVS*

(Cayman Islands) Holding Corp 2019 (1) CILR 266 at [52]. I did not hear full argument on this point and am simply not in a position to decide it at this interlocutory stage.

74. I do not therefore strike out or dismiss the Petition at this stage. I now turn to deal with the application for a stay.

Stay

75. In considering the application for a stay the court should take into account the overriding objective of the GCR namely "to deal with every cause or matter in a just, expeditious and economical way". I accept that dealing with a cause or matter justly includes as far as practicable:

(a) ensuring that the substantial law is rendered effective and that it is carried out;

(b) ensuring that the normal advancement of the proceeding is facilitated rather than delayed;

(c) saving expense;

(d) dealing with the cause or matter in ways which are proportionate – (i) to the amount of money involved; (ii) to the importance of the issues; and (iii) to the complexity of the issues; and (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other proceedings.

76. The Preamble to the GCR provides that the Rules should be liberally construed to give effect to the overriding objective and in particular to secure the just, most expeditious and least expensive determination of every cause or matter on its merits.

77. I am also reminded of the wise words of Christopher Clarke LJ in *Ecobank Transnational Inc. v Tanoh* [2016] 1 WLR 2231 at paragraph 132:

> "… Courts around the free world endeavour to do justice between citizens in accordance with applicable laws as expeditiously as they can with the resources available to them. This is an exercise in the fulfilment of which judges ought to be comrades in arms. The burdens

> imposed on courts are well known: long lists, size of cases, shortages of judges, expanding waiting times, and competing demands on resources …"

78. In this case, such is the nature of adversarial advocacy, at times Mr Grant attempted to slightly exaggerate the overlap or duplication of the issues in the Hong Kong Proceedings and the proceedings before this court and Mr Vickers often attempted to seriously underplay them. Mr Grant placed much emphasis on *New Silk Route* where a temporary case management stay was granted. Mr Vickers placed much emphasis on *Youbi* where a stay was refused. This impressive forensic display was cogent evidence to support the trite statement that every case depends on its own facts and circumstances. Temporary case management stays are acutely fact sensitive.

79. Looking at the facts of the case presently before me I accept, of course, as Mr Vickers stressed that in the proceedings before this court a winding up order is requested whereas in Hong Kong it is not. I also accept that out of the 11 events in support of the 7 key allegations in the Petition only 2 (Forced resignation of CEO and failure to recover franchise fees) are not in issue in the Hong Kong Proceedings. In fact, although the 12 April 2018 resolution which arises under the heading Forced resignation of CEO is not raised in the pleadings in Hong Kong, the 9 May 2018 termination is in issue on the pleadings in Hong Kong so even that issue is partly before the Hong Kong Court. Fester added that the forced resignation of CEO event was determined in its favour in the Singapore proceedings both at first instance and on appeal (*True Yoga Pte Ltd & Ors v Wee* [2022] SGHC 155 and *Wee v True Yoga Pte & Ors* [2023] SGHC CA) 26).

80. I spent some considerable time going through the Petition and the pleadings in the Hong Kong Proceedings to ascertain the overlap and duplication of issues. I was greatly assisted by Fester's "Proceedings Comparison Table: Cayman and Hong Kong" and paragraphs 51 to 95 of Fester's skeleton argument dated 11 September 2024. It was obvious that a lot of valuable and painstaking work had gone into the creation of those documents which were of considerable assistance to the court. Active Gains at paragraph 10 a) of its skeleton argument dated 11 September 2024 attempts to bat away the overwhelming overlap and duplication of core issues by simply stating:

> "The nature and extent of any overlap between the Petition and the Hong Kong Proceedings is not as Fester has represented in its evidence."

I note the use of the words "any overlap". Active Gains cannot even bring itself to recognise that there is an obvious and significant overlap. It reflects badly upon Active Gains that it does not acknowledge the obvious and significant overlap and it does not really engage with the overlap other than to say if there is "any overlap" it "is not as Fester has represented in its evidence." In my judgment the overlap is very well represented by Fester's Comparison Table and its skeleton argument.

81. I pressed Mr Vickers as to how Fester had misrepresented the overlap and was frankly unimpressed with his responses. An attorney is, of course, only as good as the evidence he has to rely on and I make no criticisms whatsoever of Mr Vickers personally. He is a very eloquent attorney but even his eloquence could not turn a sow's ear into a silk purse and persuasively deny the clear duplication of issues.

82. Mr Grant is right when he says in effect that it would be absurd to envisage two common law courts, one in Hong Kong and one in Cayman, spending many weeks of scarce and valuable court time hearing from the same witnesses on the same issues (9, in fact nearly 10, out of 11 of the events relied upon in the Petition). From a case management perspective, it is best to await the determination of my international judicial colleagues in Hong Kong on these important common issues and then the hearing of the Petition in Cayman, if it proceeds, would be reduced to a matter of days rather than extend into many weeks. Moreover, it would not be in accordance with the overriding objective for the parties in Cayman to go through a duplicate discovery process, exchange witness statements and prepare for a full prolonged trial on at least 9 out of the 11 issues. That would be a terrible waste of time and costs. Justice is better served by this court waiting for the determination of the common issues in Hong Kong before proceeding to the hearing of the Petition.

83. Mr Wee at paragraph 9 of his second affirmation seeks to seriously downplay the overlap between the issues in the proceedings before this court and the issues in the Hong Kong Proceedings but accepted that "the Hong Kong Proceedings share a similar factual background to these proceedings". He adds however "they seek different relief and the Company is not a party to any of the Hong Kong Proceedings". It has however already been ordered by this Court that these proceedings shall be treated as *inter partes* proceedings between Active Gains and Fester who are parties to the Hong Kong Proceedings.

84. Mr Wee at paragraph 11 of his second affirmation says that what is not in issue in the Hong Kong Proceedings is whether there is a loss of confidence in management, a loss of trust and confidence between shareholders and a deadlock with the management of the Company. That is however nothing to the point and in fact elements of the alleged deadlock are before the Hong Kong Court (see paragraphs 35-38 of the Defence and Counterclaim of Active Gains). To persuade the court to grant a winding up order Active Gains relies on 11 events in support of its 7 key allegations. Those 11 events are in issue in the Cayman proceedings. At least 9 of these events are also in issue in the Hong Kong Proceedings. The determination of those issues and any relevant findings of fact by the Hong Kong Court will be of significant assistance to this court in the determination of the Petition and will avoid much duplication of time and the expenditure of money in Cayman for the parties, it will also save a lot of valuable court time in Cayman. The SHA and the SPA are governed by Hong Kong law and determination of the issues in Hong Kong will largely, if not entirely, obviate the need for expert evidence on the laws of Hong Kong being adduced in the Cayman proceedings with much saving of time and costs.

85. Mr Vickers says that the burden is on Fester to demonstrate that "very strong reasons" exist for a stay and that a stay should only be granted in "rare and compelling circumstances." As can be seen from my review of the authorities the imposition of stays are not limited to "rare and compelling circumstances" and "very strong reasons" puts the test too high.

86. I do not accept Mr Vickers' bold submission that the resolution of the Hong Kong Proceedings will make "no difference" to the decision which the Grand Court has to make on the Petition or that there is no "risk of inconsistent decisions between the Grand Court and the Court in Hong Kong".

87. Mr Vickers says that the outcome of the Hong Kong Proceedings will not have "an important effect" (paragraph 76 of the skeleton argument) on the Cayman Proceedings. Mr Vickers says that "there is no basis for concluding that the Hong Kong Proceedings would or might be determinative of proceedings in the Cayman Islands and therefore a stay should be refused". But that submission ignores the fact that such is not the relevant test. As I said in *New Silk Route* at paragraph 60 "the relevant test is not limited to proving that the issue to be determined in the foreign proceedings would be determinative of the proceedings in the Cayman Islands. A stay may be granted if the outcome of the foreign proceedings may have "an important effect" on the proceedings in the Cayman Islands. A stay may be granted where it would "better serve the interests of justice". It is

also essential to have regard to the likely benefits and disadvantages of imposing a temporary case management stay".

88. In my judgment the benefits of granting a temporary case management stay in this case clearly outweigh the disadvantages to Active Gains.

89. The main disadvantage to Active Gains will be a delay in the determination of its Petition. Fester says the Hong Kong Proceedings might take another 2-3 years to be resolved at first instance. Further time may be spent on appeals. But that period of time must be considered in context. The Petition was not filed until the end of April 2024 and relates to events dating back to May 2018. Active Gains and Mr Wee commenced proceedings in Hong Kong as long ago as August 2019. Those proceedings appear not to have been pursued expeditiously. They do not seem in a rush to crack on with legal proceedings. Allegations have been made against them that they have been slow in providing discovery and otherwise progressing the Hong Kong Proceedings.

90. Active Gains says that the deadlock is giving rise to prejudice to them but do not descend into the detail of such prejudice. The deadlock seems to date back many years and on the face of the pleadings and evidence any assertions of urgency for determination of the complaint of the alleged deadlock and the Petition seem somewhat hollow. One way of solving the deadlock would be by Active Gains putting up two individuals to act as directors. Mr Vickers says it is not that simple and he may be right about that but the fact remains that Active Gains appears to have wasted many years before it filed its Petition and that does not give the flavour of genuine urgency and a need for speed.

91. I searched Mr Wee's second affirmation long and hard to see what he had to say about disadvantages and prejudice if the court stayed the Petition. At paragraph 17 Mr Wee says that Active Gains "would suffer substantial prejudice in the event that the Cayman Islands proceedings were to be struck out and/or stayed by the Court. Amongst other things, it would take several years for the Hong Kong Proceedings to be resolved given they are both at the discovery stage." Mr Wee does not descend into any meaningful particulars as to the "substantial prejudice". There was also one vague and generalised line at paragraph 21: "the Petitioner is of the view that the Petition ought not to be struck out or stayed as that will prolong the suffering of the Petitioner resulting in serious injustice." Again, Mr Wee did not descend into giving details of the "suffering" of Active Gains, his corporate entity.

92. The benefit to Fester of a stay would be the avoidance of the obvious waste of time and costs in having to fight at least 9 of the 11 events complained about in the Petition both in Hong Kong and Cayman. It is no answer to that for Mr Vickers to suggest, as he in effect does, that Fester had to fight on two fronts, Singapore and Hong Kong, and the Singapore proceedings are nearly finished so Fester will have the time and money to deal with both the Hong Kong Proceedings and the Cayman proceedings. Furthermore, I think it unrealistic, from what has now been placed before the court, to assume that the Cayman proceedings could be determined in "only six months" as Mr Vickers suggests (paragraph 78c of the skeleton argument).

93. I do not accept Mr Vickers' submission that there is not a "significant duplication" between the issues in the Hong Kong Proceedings and the issues in the Cayman proceedings. Of the 11 events relied on by Active Gains in the Petition, at least 9 of them are issues in the Hong Kong Proceedings. One of them (Forced resignation of CEO) was dealt with in the Singapore proceedings against Mr Wee. Although the 12 April 2018 Resolution is not referred to in the Hong Kong pleadings, the 9 May 2018 termination is. I accept that the other (Failure to recover franchise fees) does not appear in the Hong Kong pleadings.

94. I also accept that the issues in the Hong Kong Proceedings will not be determinative of the issue as to whether this court should grant a winding up order on the just and equitable basis but they should significantly assist this court in achieving justice in this case, making the best use of limited court time and resources, avoiding unnecessary duplication and reducing the risk of inconsistent judicial findings on common issues. The determinations of the Hong Kong Court will have an important effect on these proceedings in the Cayman Islands and should be well worth waiting for.

95. The imposition of a temporary stay will not permanently deprive Active Gains of access to the courts. It will simply delay access to final judgment day in Cayman on the Petition until the determination of the Hong Kong Court on at least 9 of the 11 core events relied upon in the Petition. There is, of course, no guarantee that the Hong Kong Court will determine and make findings of fact on all these issues but on the pleadings that would be a reasonable expectation. Justice delayed is not always justice denied. The wider interests of justice, the undesirability of vexing a litigant with the same issues in two jurisdictions and the need in accordance with the overriding objective to make best use of limited judicial resources dictate that a temporary case management stay should be imposed in this case for the reasons I have stated in this judgment.

96. A temporary case management stay would better serve the interests of justice than by allowing the proceedings in the Cayman Islands to continue before the Hong Kong Proceedings are determined and judicial findings made in respect of issues which are central to the Petition.

97. I therefore grant a temporary case management stay of these proceedings pending the determination of the Hong Kong Proceedings. I am also content to give liberty to apply.

Consequential issues

98. The attorneys should provide, for my approval, within 7 days from the delivery of this judgment, an order reflecting the determinations I have arrived at in this judgment.

99. I am content to decide any consequential issues such as costs on the papers without a further hearing. Any concise (no more than 5 pages) written submissions on any consequential issues should be filed within 21 days of the delivery of this judgment.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT