



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

**FSD 157 of 2021 (DDJ)**

**IN THE MATTER OF AQUAPOINT L.P. (IN OFFICIAL LIQUIDATION)**

**Before:** The Hon. Justice David Doyle

**Heard:** On the papers

**Draft Judgment  
circulated:** 11 October 2022

**Judgment delivered:** 14 October 2022

**HEADNOTE**

*Judgment in respect of costs against a general partner and an interim payment on account of costs*

## REASONS FOR JUDGMENT

### Introduction

1. In this matter Dr. Xiaohu Fan was the Petitioner and on the other side was AquaPoint L.P. (in Official Liquidation) (the “Partnership”) acting through its general partner, Genscript Corporation (the “General Partner”).
2. On 21 July 2022, I made the following order:
  - “1. The Petitioner’s costs of and related to the Petition (as amended) be paid by the General Partner, to be taxed on the standard basis if not agreed; and
  2. the General Partner forthwith make a further interim payment to the Petitioner of US\$150,000 within 28 days of the date hereof.”(the “Order”).
3. These costs orders were, without objection, dealt with on the papers and at the time, during a busy court schedule, I did not think reasons were necessary.
4. The request for reasons (made by Walkers (Cayman) LLP who now represent the Partnership acting through the General Partner) contained in an email dated 22 July 2022 to court administration was only brought to my attention on 7 October 2022 following a chaser from Walkers to court administration in an email dated 7 October 2022. Walkers say they need reasons as “[w]ithout written reasons, our client is unable to amend its

Memorandum of Ground (sic) of Appeal to address the appeal on costs. Our client's Amended Notice of Appeal is listed for hearing on 1 and 2 May 2023." The comments of Coulson LJ in *Anwer v Central Bridging Loans Limited* [2022] EWCA Civ 201 at paragraph 17 are worthy of noting.

5. I now, however, provide reasons as requested and with apologies for the delay.

**Documentation considered**

6. I record that prior to making the Order I had considered:
  - (1) a summons dated 27 June 2022 from the Petitioner seeking a costs order against the General Partner to be taxed on the indemnity basis if not agreed and an order that the General Partner make "a further interim payment to the [the Petitioner] of US\$220,000.";
  - (2) the Petitioner's costs submissions dated 27 June 2022, supporting authorities and draft order;
  - (3) the written submissions of the Partnership acting through the General Partner dated 11 July 2022 and supporting authorities;
  - (4) the Partnership's written submissions on costs hearing bundle; and
  - (5) the Petitioner's costs submissions in reply dated 18 July 2022.

**The main submissions put before the court**

7. I do not set out the written submissions in detail. They form part of the court record and I have regard to all of them.
  
8. The main submissions were as follows:  
On behalf of the Petitioner
  - (1) the petition was treated throughout as an *inter partes* proceeding between the Petitioner (as limited partner) and the General Partner (as general partner). None of the costs should be paid out of the assets of the Partnership (because those are the Petitioner's assets): the unsuccessful party (the General Partner) should pay the costs of the successful party (the Petitioner);
  
  - (2) it was "unreasonable" for the General Partner to defend the petition and its defence was hopeless and an indemnity costs order is justified. Moreover the Petitioner should be entitled to the same costs benefit a petitioning creditor would obtain, namely, in full;
  
  - (3) the General Partner has already made an interim payment of US\$80,000 in respect of the Order made on 26 January 2022 and it should make an additional interim payment of US\$220,000.00, based on the Bills of Costs provided.
  
9. On behalf of the Partnership acting through the General Partner:

- (1) the proceedings were ordered to be treated as proceedings against the Partnership (see paragraph 1 of the Order made on 19 July 2021) and the general rule is that the costs of a successful petitioner should be paid out of the assets of the liquidation estate;
- (2) in the alternative, if the court makes an order against the General Partner such costs should be awarded on the standard (rather than indemnity) basis as the proceedings were not conducted “unreasonably”;
- (3) it is not appropriate for the court to make an order for the interim payment of costs by the General Partner where the Petitioner’s costs are properly paid out of the liquidation estate of the Partnership;
- (4) alternatively, if the court orders that the General Partner should pay the Petitioner’s costs on the standard basis and the court is minded to make an interim payment order the US\$220,000.00 claimed is unreasonably high having regard to the specific objections as to the costs specified. Any interim payment should not exceed US\$133,177.04 and should in fact be substantially less; and
- (5) the General Partner is not a respondent in its own right to the proceedings. The Petitioner has not made any submissions to the effect that these are “exceptional and special circumstances” that would justify the making of a costs order against a non-party, and there are no such circumstances.

10. On behalf of the Petitioner in reply:

- (1) The Petitioner holds 69.95% limited partnership interest and therefore the practical consequences of the position adopted by the Partnership acting through the General Partner would be that the Petitioner would bear 69.95% of any costs order made in his own favour as the successful party despite the fact that the petition was only resisted, tooth and nail, by the Partnership because the General Partner (acting through Dr Zhang) was implacably opposed to the relief the court has now granted; and
- (2) just as the court made an order in January 2022 that the General Partner should pay the costs of the adjournment (notwithstanding that the General Partner was, at that stage also, not formally a party to the proceedings) a similar departure from the “general rule” in Order 24 rule 8 (2) (a) of the Companies Winding Up Rules 2018 is both appropriate and necessary in the exceptional and special circumstances of this case as set out at paragraph 10 of the Petitioner’s Costs Submissions.

### **Brief Reasons**

11. This court has a wide discretion in respect of costs but such discretion must be exercised judicially. I note the reference by the attorneys for the Petitioner and the Partnership (acting by its General Partner) to Order 24 rule 8 (1) and (2) of the Companies Winding Up Rules 2018 and the general rule that costs of the successful party are normally paid out of the assets of the company. Under Order 24 rule 8 (4) the court is directed to make orders for costs in accordance with the general rules specified unless it is satisfied that there are exceptional and special circumstances which justify making some other order or no order as to costs.

12. It should be plain from my judgment delivered on 10 June 2022 that it was the conduct of the General Partner (controlled by Dr Zhang) that has caused all the costs to be incurred. In the exceptional and special circumstances outlined in my judgment delivered on 10 June 2022 it was right that the General Partner be responsible for the Petitioner's costs. Without the misguided opposition of the General Partner (with Dr Zhang pulling its strings) these costs would never have been incurred. It would have been quite wrong for the court to have made an order that the Petitioner's costs be paid out of the assets of the Partnership. In effect the Petitioner would thereby have been unjustly and unfairly deprived of a significant percentage of his costs in circumstances where he had been successful.
13. I was not however persuaded that the General Partner's defence of the petition was so unreasonable and outside the norm that I should order costs on an indemnity basis. I therefore ordered costs on the standard basis.
14. I was persuaded that an order for an interim payment was justified. I noted the concerns and objections of the Partnership (acting through the General Partner) as to some of the costs claimed. The detail of these objections are more appropriately dealt with by the taxing officer. Taking a high-level broad brush approach at this stage I heavily discounted the amount of the interim payment and concluded that it would be safe (in terms of being significantly below what will finally be permitted), appropriate and just to make an order for an interim payment in the much reduced amount of US\$150,000.00 and therefore made such order.

15. These are my brief reasons for making the Order.

*David Doyle*

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**The Hon. Justice David Doyle**  
**Judge of the Grand Court**