



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

CAUSE NO: FSD 259 of 2022 (DDJ)

**IN THE MATTER OF THE COMPANIES ACT (2022 REVISION)
AND IN THE MATTER OF ASIA RENEWABLE ENERGY (CAYMAN) LTD.**

BETWEEN

YI-WEN LIN

Petitioner

AND

- (1) BLOSSOM INCREASE LIMITED**
- (2) FAITH FAME LTD.**
- (3) GRACE FINE LTD.**
- (4) LEAHO INVESTMENT CO. LTD.**
- (5) MODERN RICH INVESTMENT LIMITED**
- (6) MULTI ARROW GROUP LIMITED**

The Respondents

Before: The Hon. Justice David Doyle

**Appearances: Denis Olarou of Carey Olsen for the Respondents
Kai McGrielle of Bedell Cristin for the Petitioner**

Heard: 2 May 2024

**Ex tempore judgment
delivered: 2 May 2024**

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HEADNOTE

Determination of applications for extensions of time and unless/debarring orders

EX TEMPORE JUDGMENT

The Applications before the court

1. By summons dated 22 April 2024 (with a stated time estimate of 1 hour at its foot) the Respondents seek an order that:
 - (1) the time for the filing and exchange of any witness evidence upon which the parties intend to rely be extended from 22 April 2024 to 21 May 2024 and
 - (2) the time for the filing and exchange of any evidence in reply be extended from 20 May 2024 to 4 June 2024 (the “Respondents’ Summons”).
2. By summons dated 26 April 2024 (with a stated time estimate of 15 minutes at its foot), the Petitioner seeks an order that:
 - (1) unless the Respondents file and serve any witness evidence upon which they intend to rely by 6 May 2024 (which I note is a public holiday) the Respondents shall be debarred from filing any further witness evidence in these proceedings; and

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- (2) the Petitioner's costs of and occasioned by the Respondents' Summons and the Petitioner's Summons dated 26 April 2024 be paid by the Respondents on an indemnity basis (the "Petitioner's Summons").
3. These applications were heard today, 2 May 2024, during a week of numerous other pressing court commitments with a long, full day of intense legal argument on another matter yesterday, skeleton arguments in this case only being received on Monday, and the court being engaged in another hearing on Monday. The courts are busy in the Cayman Islands. Fortunately, Tuesday's hearing was vacated about half an hour before it was due to commence as the parties had agreed matters. That was, however, too late to prevent me from wasting time reading into it before the hearing. I have, however, managed to find adequate time to also read into this matter this morning, and I have been very much assisted by the well-focused oral submissions presented to the court this afternoon.

The Background

4. I now provide some brief background relevant to the applications before the court.
5. The 53-page petition was originally dated 11 November 2022, amended 20 January 2023 and re-amended on 27 March 2023. It seeks the winding up of Asia Renewable Energy (Cayman) Ltd (the "Company") pursuant to section 92(e) of the Companies Act on the ground that it is just and equitable that the Company be wound up.
6. The first order for directions was made by and with the consent of the parties on 18 January 2023.
7. On 27 March 2023 a consent order was made requiring what was described as "full discovery" to be provided by 31 May 2023. It was ordered that the parties file and serve any evidence upon which they intend to rely within 3 weeks of 31 May 2023 and any evidence in reply within 4 weeks after the evidence was filed and served.
8. By consent order made on 9 May 2023 the time for filing pleadings was extended.
9. By order made on 30 January 2024 the time for discovery was extended to 19 February 2024 and the filing and service of evidence by 15 April 2024 with any evidence in reply by 13 May 2024. The trial was listed for 10am 25 June 2024 with a time estimate of 10 days.

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10. By consent order made on 20 February 2024 the time for discovery was extended to 26 February 2024, the filing and service of any evidence to 22 April 2024 and the filing and serving of evidence in reply to 20 May 2024. The parties also agreed a consent order that they file and serve opening written submissions by 15 June 2024 (which I note is a Saturday).

The positions of the parties

11. I now turn to the respective positions of the parties.
12. The Respondents say they want further time because of (1) the extensive discovery (2) the logistical difficulties of preparing evidence in the Chinese language (3) the change of attorney by the First and Third to Sixth Respondents and (4) the Petitioner's withdrawn proposed amendments to the Re-Amended Winding Up Petition.
13. The Respondents refer to *New Frontier Health* (FSD, unreported judgment, Doyle J, 31 March 2023) quoting *Jalla v Shell Trading and Supply Co Ltd*, and submit that in the case of in-time applications the court "will grant a reasonable extension if it does not impact on hearing dates or otherwise disrupt proceedings."
14. The Respondents say that a refusal to extend time will mean that the Respondents would be unable to put forward any witness evidence for the trial. The Respondents say that this is the first extension they have sought and it will not imperil the trial.
15. The Respondents add that an unless/debarring order is not justified in this case.
16. I note all that is written in the Respondents' skeleton argument dated 29 April 2024 and all that is said in the oral submissions of Denis Olarou.
17. The Petitioner says that none of the reasons for the requested extensions should be entertained. The Petitioner says that its discovery was modest with the bulk of the discovery coming from the Company, most of which was produced on 31 October 2023 and the remainder of the discovery from the Respondents was modest. The Petitioner adds that many of the discovery documents were provided in English and that the relevant attorneys have offices in Hong Kong with Mandarin and

Chinese speakers. The Petitioner says that the change of attorneys which took place on 18 April 2024 cannot justify non-compliance and parties cannot hide behind their legal representatives when it comes to their direct responsibility to comply with their obligations under a consent order. Moreover, the Petitioner's proposed amendments to the petition are no longer pursued and no application was made. The Petitioner says that the proposed extensions imperil the trial date "or at the very least the orderly and efficient conduct of the trial". The Petitioner says that if the court was minded to make an unless order, it considers an extension to the deadline for reply evidence of one week to 27 May 2024 would be appropriate and notification of intention to cross-examine any witnesses to 30 May 2024.

18. The Petitioner recognises that an unless order is usually only made as a last resort but says that it is appropriate in the circumstances of this case to ensure that the overriding objective is met. The Petitioner submits that indemnity costs are appropriate because the Respondents' actions are "outside the norm" and unreasonable and/or negligent.
19. The Petitioner seeks an unless/debarring order and indemnity costs. I note all that is written in the Petitioner's skeleton argument (entitled "Petitioner's Submissions for hearing on 2 May 2024") dated 29 April 2024 and all that is said in the oral submissions of Kai McGriele.
20. Before leaving the positions of the parties and turning briefly to the relevant law and my determination of the applications before the court, I wish to thank both attorneys for their well-focused and concise oral submissions. I now turn briefly to the relevant law.

Law

21. I have considered the relevant law which is adequately outlined in the skeleton arguments from the parties. In particular I note the two authorities focused on by counsel namely, *New Frontier* on extensions of time and *Toledo v Walkers* (FSD, unreported judgment, Doyle J, 25 January 2022) on unless orders, and the references to the local and overseas caselaw on these important legal topics.

Determination

22. Having considered the relevant law, evidence and submissions I have concluded that it is appropriate to make the following orders:
- (1) The time for filing and service of trial evidence is extended to 21 May 2024 and the time for the filing and service of any reply evidence is extended to 4 June 2024. The deadline for the notification of intention to cross-examine any witness is extended to 10 June 2024. The time for the filing of written opening submissions is extended to before 3pm on 18 June 2024.
 - (2) The Respondents on a joint and several basis are to pay the Petitioner's costs on the standard basis of and incidental to the Respondents' Summons.
23. I am persuaded that the extensions sought are, although regrettable, necessary, appropriate and just. To refuse to grant the extensions sought or to grant a shorter extension on an unless/debarring basis could cause an injustice and would not be justified in the circumstances of this case. It is better for the court to consider the petition on the basis of evidence presented on behalf of the Petitioner and the Respondents. The trial dates will not be vacated. The trial is not imperilled, although I accept the timetable prior to trial will now be truncated and tight but it is achievable, and no unfairness or injustice should arise.
24. As to the application for indemnity costs, the Respondents have not conducted themselves in such a way as to take the case "out of the norm". There has been no improper, unreasonable or negligent conduct to a high degree that would justify costs on an indemnity basis. I am not persuaded that an order for indemnity costs is appropriate. The Respondents have, however, failed to comply with a court order and sought the court's indulgence seeking more time. In such circumstances (and having regard to GCR Order 62 rule 6(6)) it is right that they pay the costs of their summons and such costs should be taxed on the standard basis in default of agreement. In fairness the Respondents do not resist a costs order on the standard basis and that is the order I make.
25. An unless/debarring order is not appropriate. There is no history of persistent non-compliance. The delays have been explained. I dismiss the Petitioner's Summons. The Petitioner is to pay the

Respondents' costs on the standard basis of and incidental to the Petitioner's Summons. The Petitioner has been unsuccessful in that respect, and costs should follow the event. Indeed, the Petitioner's stance in filing its application has wasted time and costs and it should pay the costs of its failed application for an unless/debarring order.

26. There are a couple of other points I should mention. There is reference to a case management conference ("CMC") in the consent order made on 27 March 2023. Based on what has been brought to my attention to date, I do not think that a CMC is necessary. If it is necessary then I could presently make some time available at 10am on Thursday, 20 June 2024. If a CMC is still required, the parties should confirm its necessity within 7 days and provide an agreed agenda with any skeleton arguments in respect of any points arising to be filed before 3pm on 18 June 2024. Hopefully it will not be necessary to devote valuable and scarce time to a CMC, especially having regard to today's hearing and the orders I have made. The trial will commence at 10am on 25 June 2024 with 10 days allocated. Prior to the commencement of the trial, ideally before 3pm on 18 June 2024, I would benefit from paginated bundles and an agreed schedule being filed by the attorneys specifying the proposed time allocations for any oral opening submissions, the live witness evidence and the closing oral submissions.
27. I expect the attorneys in this case, in accordance with the overriding objective and pursuant to their duties as officers of this court, to co-operate sensibly, positively and constructively to ensure that the build up to the trial and the trial itself proceeds smoothly.
28. The attorneys should agree as to form and content a draft order reflecting the determinations contained in this judgment and file such draft order before 3pm on 9 May 2024 for my approval.

David Doyle

THE HON. JUSTICE DAVID DOYLE

JUDGE OF THE GRAND COURT