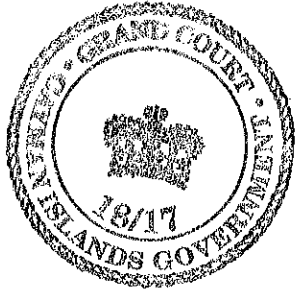


**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

Cause No: FSD 57 of 2019 (IMJ)

BETWEEN



XIO GP LIMITED

Plaintiff

AND

**(1) JOSEPH PACINI
(2) CARSTEN GEYER
(3) FEI (MURPHY) QIAO**

Defendants

AND

**GWYNN HOPKINS AND GORDON MACRAE IN THEIR CAPACITY AS JOINT AND
SEVERAL INTERIM RECEIVERS OVER XIO FUND 1 LP AND ITS ASSETS**

As Intervenors

HEARD AT THE SAME TIME WITH:

Cause No: FSD 73 of 2019 (IMJ)

BETWEEN

**(1) JOSEPH PACINI
(2) CARSTEN GEYER
(3) FEI (MURPHY) QIAO**

Plaintiffs

AND

**(1) XIO GP LIMITED
(2) XIANG (ATHENE) LI**

Defendants

AND

**GWYNN HOPKINS AND GORDON MACRAE IN THEIR CAPACITY AS JOINT AND
SEVERAL INTERIM RECEIVERS OVER XIO FUND 1 LP AND ITS ASSETS**

As Intervenors

COURTROOM 4 AS CHAMBERS

Appearances: Mr. Robert Levy QC instructed by Mr. Alistair Abbott and Ms. Fleur O'Driscoll of Forbes Hare for XiO GP Limited and Ms. Xiang (Athene) Li
Mr. Michael Bloch QC instructed by Mr. Ben Tonner QC of McGrath
Tonner for Joseph Pacini, Carsten Geyer and Fei (Murphy) Qiao
(collectively "JCM")

Also Present: Mr. Adam Crane of HSM observing on behalf of the Interim Receivers
Mr. Luke Stockdale and Mr. Paul Smith of Maples and Calder observing
on behalf of Shanghai Li Hong Investment Centre LP ("SLH")

Before: **The Hon. Justice Ingrid Mangatal**

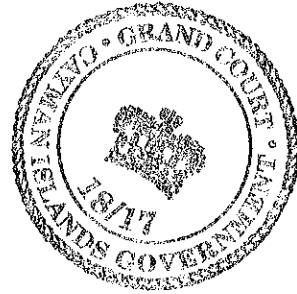
Heard: **13 September 2019**

Oral Rulings

Delivered: **13 September 2019**

Written Transcript

Circulated: **16 September 2019**



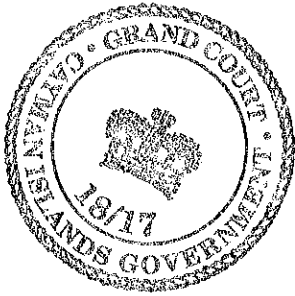
EX TEMPORE RULINGS

1. On 12th of August 2019 I handed down an unreported Judgment and Written Reasons in respect of Preliminary Issues agreed between the parties to these two law suits.

2. Four summonses have been filed which are said to be consequential upon my Judgment. In essence, these are:

(1) XiO GP Limited's ("**XiO GP**") Summons in FSD 57 of 2019 for judgment to be entered in a certain format; costs on an indemnity basis and for an interim payment on account [**"Summons No. 1"**];

(2) JCM's Summons in FSD 57 of 2019 asking the Court to construe the Judgment and Written Reasons and make certain determinations, and in the



alternative, seeking to re-open and adduce further evidence and other relief [**“Summons No. 2”**];

(3) In FSD 73 of 2019, XiO GP and Xiang (Athene) Li, (**“Ms. Li”**)’s Summons seeking to have that claim dismissed, also with indemnity costs, and an interim payment on account of costs [**“Summons No. 3”**];

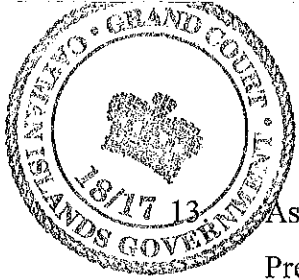
(4) JCM’s Summons in FSD 73 of 2019 seeking that the Court declare that, amongst other matters, it made no final determination as to the existence or non-existence of the Partnership and that that issue still falls to be determined. JCM also sought directions for trial of this allegedly outstanding issue [**“Summons No. 4”**].

3. In two of the Summonses (Nos. 2 and 4 above), JCM have requested that I construe the Preliminary Issues and true impact of my Judgment and Written Reasons. Having been asked to rule on this issue, I rule that the Judgment and Written Reasons were dispositive, as contended by XiO GP, and were very plainly not merely indicative as JCM contend. Further, I rule that the findings in respect of the Partnership issue were final and conclusive.
4. In those circumstances, the application by JCM seeking a re-opening of the hearing or trial and seeking to have additional evidence advanced, which application was filed by Summonses (Nos. 2 and 4), on 6 September 2019, arises for consideration and determination. The application was advanced by Mr. Bloch QC on behalf of JCM, and opposed by Mr. Levy QC on behalf of XiO GP and Ms. Li.
5. In my judgment, there is no proper basis upon which this Court should exercise its discretion to re-open the trial. Applying the *Ladd v Marshall* [1954] 1 WLR 1489 factors more leniently, since this application is before me as trial judge, I am not satisfied that the majority of the evidence now being sought to be admitted, via the 4th Affidavit of Mr. Pacini and exhibits thereto, could not have been obtained with reasonable diligence for use at the trial in May-June 2019.



Further, the proposed evidence would not, in my view, have had an important influence on the result of the case. This includes the evidence sought to be led in relation to what took place at the Hong Kong Arbitrations when Ms. Li was cross-examined regarding *Wee Chats* that were also cross-examined about here in the trial in the Cayman Islands, but from another perspective. The Hong Kong Arbitration proceedings of course, took place after the Cayman Islands trial, and are not yet completed.

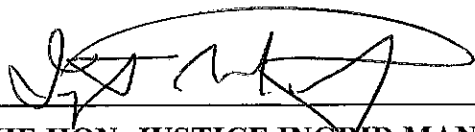
7. Reference can be made to my judgment in *Midtown Acquisitions LP v Essar Global Fund* 2017 (2) CILR 776, and to that of Segal J *In the matter of Shanda Games Ltd*, 27 July 2017, unreported. Justice Segal's decision was approved by the Court of Appeal.
8. As stated by Segal J in *Shanda*, "*once a judgment has been handed down, then a further issue arises, namely the question of reconsideration ...and the impact of depriving a successful party of a judgment already rendered needs to be taken into account when the Court is applying the overriding objective.*"
9. In my judgment, it would not be just to re-open this case, particularly given the Preliminary Issues that were formulated and agreed between the parties, and the issues of fact that were determined after live evidence of witnesses and cross-examination took place.
10. Although I appreciate that as trial Judge I have a wider discretion than the Court of Appeal would have to let in fresh evidence, and I appreciate that the trial of the Preliminary Issues did take place within a very compressed time table, I remain of the view that it would not be just to re-open the case.
11. There are no powerful factors in JCM's favour to persuade me to allow a re-opening given that this is inherently contrary to the public interest and unfair on the other side that an unsuccessful party should be allowed to raise new points or call fresh evidence after a judgment has been given against him.
12. Further, it would not be proportionate to re-open the case to allocate a further share of the court's resources to these issues. The application to re-open is therefore refused.



As I understand it, JCM do not require leave to appeal against my decision on the Preliminary Issues – See *Court of Appeal Rules* (2014 Revision) Rule 12(4), and *O/59/1A (3) and (4) and Note 95/1A/4 of the 1999 White Book*. However, leave to appeal is required from my exercise of my discretion refusing to re-open the case.

14. Mr. Bloch applied for leave to appeal, which was opposed by Mr. Levy.
15. Leave to appeal is refused because this is an exercise of my discretion as a trial judge and if I do not think that there is any real prospect of success on appeal, or have doubts about that, then this is a matter that should be left to the Court of Appeal to decide whether to grant leave.
16. The next application that arises for consideration was the form of judgments that were appropriate and I rule that these were in essence what were set out in the drafts annexed to XiO GP and Ms. Li's Summons Nos. 1 and 3 in the respective suits, save for the question of indemnity costs, and other matters discussed.
17. Mr. Levy, with great persuasion, applies for indemnity costs and referred to the very useful decision of the Chief Justice in *Talent Business Investment Limited v China Yinmore Sugar Company Limited* 2015 (2) CILR 113.
18. Mr. Bloch opposes the application, pointing out (as did Mr. Levy), that the Court had found that JCM's case on the Partnership was weak. However, Mr. Bloch makes the point that the Court did not find that JCM had perjured themselves. He also makes the point that the question of Partnership viewed objectively, was not straight-forward and is a mixed question of fact and law.
19. I did indeed consider JCM's case on the Partnership issue a weak one. However, I also consider the case to be a peculiar one. In all of the circumstances I am not satisfied that JCM have conducted the proceedings improperly, unreasonably or negligently. My instincts are that the appropriate order is to make a standard order for costs.
20. Mr. Levy has applied for leave to appeal the costs order, which I refuse.

21. The last application is an application for interim payment on account of costs (Summonses Nos. 1 and 3). Bearing in mind the stage that the matter has reached, with judgments being entered in favour of XiO GP and Ms. Li, and having regard to the recent decision of Kawaley J in *Al Sadik v Investcorp Bank BSC* - unreported 6 August 2019, referred to by Mr. Levy, I feel that it is just to order, not the figures of US\$270,000 or lower figures of US\$250,000 sought by XiO GP, nor US\$150,000 proposed by JCM. I order that the sum of US\$200,000, with US\$100,000 being allocated in each suit be paid in the interim on account of costs within 21 days of today's date. JCM are jointly and severally liable for those costs.



**THE HON. JUSTICE INGRID MANGATAL
JUDGE OF THE GRAND COURT**

