



IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 237 OF 2024 (NSJ)

TIANRUI (INTERNATIONAL) HOLDING COMPANY LIMITED

Plaintiff

AND:

- (1) CHANG ZHANGLI
- (2) WU LING-LING
- (3) CHANG MING-CHENG
- (4) LI JIANWEI
- (5) HSU YOU-YUAN
- (6) ASIA CEMENT CORPORATION
- (7) CHINA NATIONAL BUILDING MATERIAL CO. LTD
- (8) CITHARA GLOBAL MULTI-STRATEGY SPC – CMB CHUNG WAI GREATER CHINA ALPHA STRATEGY SP
- (9) GREATER BAY INVESTMENT FUND LP
- (10) TFI ASSET MANAGEMENT LIMITED
- (11) WONDERFUL SKY FINANCIAL GROUP HOLDINGS LIMITED
- (12) LUK CHING SANNA
- (13) WONG HAM CHI
- (14) CHIANG CHING FENG
- (15) SHEN NENG INTERNATIONAL SPC – GREEN PLANET SP
- (16) CHINA SHANSHUI CEMENT GROUP LIMITED

Defendants

JUDGMENT ON EX PARTE APPLICATION FOR EXTENSION  
OF VALIDITY OF THE DERIVATIVE CLAIM WRIT

1. On 29 November 2024 Tianrui (International) Holding Company Limited (the *Plaintiff*) filed an *ex parte* summons (the *Summons*) pursuant to GCR O.6, r.8(2) for an order that the validity of the writ filed in these proceedings on 3 August 2024 (the *Derivative Claim Writ*) be extended for a period of four months.

2. The First Affidavit of Ms Gemma Lardner (*Lardner 1*), a highly respected partner in Ogier, the Plaintiff's attorneys, was filed in support of the Summons. Ogier's letter to the Court also dated 29 November 2024 attached a copy of the Summons, Lardner 1 and a draft order and requested that the application be dealt with on the papers.
3. This is my brief judgment in respect of the Summons.
4. I am prepared to deal with the Summons on the papers but in view of the issues that arise I consider that my decision should be recorded in a written judgment, in particular for the benefit of the Defendants (who of course have a right to apply to set aside the order made on the *ex parte* summons).
5. I use in this judgment the same definitions as are used in Lardner 1.
6. The Plaintiff's position and submissions are set out in Lardner 1.
7. As regards the applicable law, Ms Lardner notes that the Plaintiff must show a good reason for the extension (even where, as in this case, the application is made during the validity of the Derivative Claim Writ) and that the Court may consider and to balance the relevant hardships that will be sustained by the Plaintiff and the Defendants when considering whether to grant the application to extend.
8. I would note that the exercise of the Court's discretion (including the taking into account of relative hardships) follows upon a showing of good reason by the applicant. Hardship to the applicant is not a substitute for good reason. Applications for an extension of the validity of a writ involve a two-stage enquiry and the discretion to extend should be exercised with caution and renewal will not be granted as a matter of course (see the commentary to the 1998 White Book at 6/8/6 at page 55).
9. Ms Lardner submits that there is a good reason for the grant of the extension in this case. She argues, as I understand it, that it was appropriate and reasonable for the Plaintiff to defer serving the Derivative Claim Writ pending and until the conclusion of the JCPC Appeal because until the decision of the JCPC was known the Plaintiff was unable to assess its overall strategic position in relation to the complex and wide ranging dispute and the various interrelated pieces of litigation between and involving the parties to the Derivative Claim Writ (including the Writ Proceedings and the Petition Proceedings), of which the Derivative Claim Writ forms only a part. It was reasonable for the Plaintiff to await the outcome of the JCPC Appeal since that

would affect its assessment of its overall strategy and whether to proceed with the Derivative Claim Writ at all or as amended. The JCPC has only recently delivered the JCPC Judgment (on 14 November) and the Plaintiff needs further time in which to review and consider the impact of the JCPC Judgment on its overall strategy and on the Derivative Claim Writ.

10. Ms Lardner says (at [15]-[16] of Lardner 1) that she is not aware of any hardship which the Defendants would suffer if the Derivative Claim Writ is extended but that the Plaintiff would clearly suffer serious hardship because *"if the Court were not to grant the extension ... due to limitation periods and the length of time it has taken to progress the Writ Proceedings and Winding Up Proceedings, [the Plaintiff] may potentially lose the ability to unwind the First Bond Issue, the Second Bond Issue and the subsequent conversion and issuance of new shares which may mean that even if [the Plaintiff] were successful in the Petition Proceedings and/or the Direct Writ Proceedings, it would be a pyrrhic victory, as its shareholding would remain diluted."*

11. At [12] Ms Lardner noted that:

*"The Plaintiff's rationale for filing the Derivative Claim Writ (without waiving privilege) was:*

- (a). *given that the First Bond Issue, the Second Bond Issue and subsequent conversion and issue of the new shares occurred in 8 August 2018, 3 September 2018, 6 October 2018 and 7 October 2018 (respectively), there were limitation period concerns in respect of claims belonging to the Company against the Director Defendants, ACC, CNBM and the Bondholder Defendants.*
- (b). *the Derivative Claim Writ was filed following the hearing of the JCPC Appeal but prior to the handing down of the JCPC Judgment and it was therefore unclear whether the JCPC would find that [the Plaintiff] did not have standing to bring the claims in the Direct Claim Writ. Had the Court found against [the Plaintiff], it have been time barred from commencing proceedings on a derivative basis."*

12. Ms Lardner in discharge of the Plaintiff's duty of full and frank disclosure on an *ex parte* application states (at [18]) that the Defendants may say that the Plaintiff unduly delayed considering whether to amend the Derivative Claim Writ, but she says that this would be unreasonable. The JCPC Appeal was only handed down two weeks ago and the Plaintiff reasonably needs more time to assess its overall litigation strategy generally and in particular which defendants and claims it now needs and wants to pursue.

13. It is, of course, clear (although Ms Lardner does not say so) that a writ will not normally be renewed so as to deprive a defendant of the accrued benefit of a limitation period. The Court will be slow to allow renewal of a writ where a limitation period has expired during the four months in which the initial writ was valid. It may well be unfair, and represent a serious hardship, to a defendant if they are unable to plead a limitation defence because the Court has exercised its discretion in favour of renewing a writ after the limitation period has expired.
14. I am concerned to see that this potentially serious hardship affecting at least some of the Defendants (and this issue) was not clearly and directly flagged and more fully addressed on this application.
15. As regards the good reason test and limb of the enquiry, I am prepared to accept (at least at this stage) that the existence of the JCPC Appeal meant that there was real and significant uncertainty as to the Plaintiff's position and rights of action and that its position would only become clear once the JCPC Appeal had been determined. There is no doubt that the litigation between the Plaintiff and the Defendants is very complex as is the interrelationship between the different sets of proceedings and that decisions as to which claims to pursue against whom are not straightforward and become much clearer only after the JCPC Appeal has been decided. I am also prepared to accept (at this stage and on balance) that in light of these difficulties and uncertainties, even though the Plaintiff could have sought the Defendants' agreement to deferral of service of the Derivative Claim Writ pending the outcome of the JCPC Appeal and could have served the Derivative Claim Writ before the conclusion of the JCPC Appeal, there were material benefits to be derived from not serving the Derivative Claim Writ before the conclusion of the JCPC Appeal, in particular the greater ability to amend before service and not disclosing to the Defendants the manner in which claims had been provisionally formulated. Accordingly, for the purpose of this application, I conclude that the Plaintiff satisfies the good reason requirement.
16. As regards hardship, I have to say that I am seriously concerned by the limitation issues. It appears from Lardner 1 that there is a real risk that limitation periods (in respect of claims by the Company against at least some of the Defendants) may have expired during the four months in which the Derivative Claim Writ was valid. Before finally permitting the Derivative Claim Writ to be extended I would need to see much more detail and further evidence would need to be adduced on this issue and whether exceptions to the general rule (that writs are not extended where to do so would deprive a defendant of an accrued limitation defence) or exceptional circumstances exist. However, since the information before the Court at present is limited and significantly because the Defendants will have the opportunity to apply to set aside the ex parte

order made on the Summons (and put before the Court the relevant evidence and submissions, at which point the Plaintiff will be able to respond), I have decided that the right course is to grant the application made in the Summons but to direct that a copy of this judgment be provided to the Defendants when the Summons, Lardner 1 and the Court's order are served on them. I hesitate and do not consider that it would be right to dismiss the application to extend in a complex and large case such as this on the basis only of limited (and without more) information on the limitation issue and while I could direct that the Plaintiff files further evidence and further submissions (and indeed that an oral hearing be listed in respect of the Summons), it seems to me that the most cost-effective, expedient and fairest way to proceed is to make the order but clearly to draw these concerns and this issue to the attention of the Defendants who can consider their position and apply to set aside if they consider that to be appropriate.



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**The Hon Justice Segal**  
**Judge of the Grand Court, Cayman Islands**  
**Financial Services Division**  
**11 December 2024**