



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

Cause Nos: FSD 236 of 2020 (RPJ)

BETWEEN:

(1) KUWAIT PORTS AUTHORITY

(on its own behalf and on behalf of The Port Fund L.P)

(2) THE PUBLIC INSTITUTION FOR SOCIAL SECURITY

(on its own behalf and on behalf of The Port Fund L.P)

(3) THE PORT FUND L.P. (IN RECEIVERSHIP)

PLAINTIFFS

AND

(1) PORT LINK GP LTD. (IN VOLUNTARY LIQUIDATION AND RECEIVERSHIP)

(2) MARK ERIC WILLIAMS

(3) WELLSPRING CAPITAL GROUP, INC

(4) KGL INVESTMENT COMPANY ASIA

(5) GOLDEN SHAHIN GENERAL TRADING & CONTRACTING COMPANY

(6) APACHE ASIA LIMITED (A HONG KONG COMPANY)

(7) RONALD HENRY AYLIFFE

(8) KGL INVESTMENT COMPANY KSCC

(9) APACHE ASIA LIMITADA (A MACAO COMPANY)

DEFENDANTS

(1) GORDON MACRAE

(2) ELIZABETH MAKAY

(In their capacity as joint receivers of Port Link GP Ltd)

INTERESTED PARTIES

230918 – Kuwait Ports Authority et al v Port Link GP Ltd et al- FSD 236 of 2020 (RPJ)-Ex Tempore Ruling

Appearances:

Mr David Allison KC instructed by Ms Jennifer Fox and Mr Harry Clark of Ogier (Cayman) LLP for the Plaintiffs

Mr Andrew Johnstone and Ms Rhiannon Zanetic of Harneys for the Joint Voluntary Liquidators ("JVLs")

Mr Daniel Bayfield KC instructed by Mr Matthew Dors of Collas Crill, for the Interested Parties (the "Receivers")

Before: The Hon. Raj Parker

Heard: 18 September 2023

Date of Decision: 18 September 2023

Ex Tempore Ruling

Delivered: 18 September 2023

EX TEMPORE RULING

1. The Court undoubtedly has a statutory jurisdiction to determine the nature of the proceeding that should apply to the General Partner. It may be that there are arguments as to the scope of that jurisdiction, but I am satisfied the Court has jurisdiction and therefore is not bound to grant the supervision application.
2. I have carefully considered all the factual material and the helpful written submissions as well as the oral submissions of counsel for all three parties who have addressed me, and I have come to the view that the central importance of managing the FSD 236 of 2020 litigation -- you will forgive my shorthand -- but for all that encompasses, to an efficient, fair conclusion is of paramount importance. There has already been, in the Court's view, too much cost and delay expended on not progressing it sufficiently expeditiously. And it seems to me that, in the circumstances that I set out

230918 – Kuwait Ports Authority et al v Port Link GP Ltd et al- FSD 236 of 2020 (RPJ)-Ex Tempore Ruling

in my judgment at the end of May, receivers should be in place and the work they have done for the last 3 months at some considerable expense, should continue.

3. There has been, in my estimation, no material change in circumstance from the position the Court reached after a careful evaluation at that stage, where the Court was not persuaded that the rigid rules of a liquidation should be applied with all the other attendant consequences, which would not, in the Court's estimation, be in the interests of justice overall.
4. The Court is minded for the Receivers to continue with a flexible regime, for a supervising judge to be appointed as soon as practicable, for the reasons advanced by Mr Bayfield, and the consequence is therefore that the supervision application in my discretion should be dismissed. It will mean that the JVLs will need to determine what their continuing role should be, and the parties are encouraged to identify a practical solution to that as quickly as they can.
5. Alternatively, they as JVLs may also apply to the Court for any assistance that they require, but if it results in, as a practical matter, their resignation, the Court is alive to that potential outcome from this decision.
6. So, the litigation shall remain in the control of the Receivers and all further matters relating to reporting, regulatory compliance, approval of fees, should be allocated to a different judge, which is a far more sensible course of action in light of the considerable issues raised in both the 236 litigation and the supervisory jurisdiction the Court will be taking over the Receivers.
7. As to Mr Johnstone's application for costs of the JVLs, so far and in relation to this application, I think the best course is for those costs to be reserved until they have been identified in terms of quantum and in respect of what work has been done, and if the parties cannot agree to them in due course then the Court will deal with costs at a suitable point in the conduct of the proceedings. It may be that the JVLs will not have to wait until the absolute outcome of the FSD 236 of 2020 proceedings, but we will see how much they are and to what extent they might be met with the assistance of the Receivers as well in due course.
8. Counsel are to draw up an Order to reflect this Ruling for the Court's approval.

230918 – Kuwait Ports Authority et al v Port Link GP Ltd et al- FSD 236 of 2020 (RPJ)-Ex Tempore Ruling

9. Written reasons can be provided in due course if requested.



THE HON. MR JUSTICE RAJ PARKER
JUDGE OF THE GRAND COURT