

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

IN THE HIGH COURT OF JUSTICE

COMMERCIAL DIVISION

CLAIM NO. BVIHCM 2022/0016

BETWEEN:

[1] NAM TAI PROPERTY INC.
(a company incorporated in the British Virgin Islands)

[2] NAM TAI GROUP LIMITED
(a company incorporated in the Cayman Islands)

[3] NAM TAI INVESTMENT (SHENZHEN) CO LTD
(a company incorporated in the People's Republic of China)

Applicants/Claimants

and

[1] GREATER SAIL LIMITED
(a company incorporated in the British Virgin Islands)

Respondent/First Defendant

[1] KAISA GROUP HOLDINGS LIMITED
(a company incorporated in the Cayman Islands)

Second Defendant

IN CHAMBERS

Appearances:

Vernon Flynn K.C., with him Robert Nader, Daniel Warents and Christopher Bromilow for the Applicant/ Second Defendant

Edward Davies, K.C., with him Anna Scharnetzky, Nicholas Burkill, Emily Rivett, and Rondelle Keller for the Claimants/ Respondents

2023: March 7 (Hearing);
July 14 (Further evidence
and submissions);
October 19, 24, 31;

JUDGMENT

- [1] **Mangatal J:** This judgment arises out of the hearing of the application of the Second Defendant, Kaisa Group Holdings Limited ("**Kaisa**") by which it seeks an order setting aside service of these proceedings on it, or alternatively staying the proceedings on *forum non conveniens* grounds pursuant to ECSC CPR rr. 7.7, 9.7 or 9.7A. The application was filed on 15 November 2022.
- [2] In April, after the hearing in March 2023, Kaisa's legal practitioners emailed the Court seeking to be permitted to adduce further expert evidence. This was vehemently opposed by the Claimants' legal practitioners. Kaisa also remarkably had asked me to determine its application on the papers. This in the face of what had been a hotly contested inter partes hearing, recorded (as is customary) by Official Court Reporters. I refused to deal with the application on the papers for a number of reasons, not least of which was that in fairness, I would also have to give the Claimants the opportunity to respond. I therefore directed that the parties approach the Registry to obtain a convenient date. That date for the hearing of the application to admit further evidence was fixed by the Registry for 21 June 2023.

[3] However, the parties jointly communicated with the Court in June 2023 and indicated that since there had been some developments in the People's Republic of China ("**PRC**"), they no longer required that hearing, and would instead agree to the further evidence of Kaisa's expert Mr. Jiang being admitted into evidence. Further, that the Claimants did not wish to put in any expert evidence in response and the parties would make further submissions as to the expert evidence and the new developments on paper by 14 July 2023. These developments were set out in the 7th Affidavit of Michael Cricenti, Chairman and a director of the First Claimant and a director of the Second Claimant. I so ordered by consent and the parties have provided their written submissions, supported by authorities. I will therefore have to consider where relevant the matters before me at the hearing in March, as well as the further evidence and the July 2023 further submissions.

[4] In summary, in its original Skeleton Argument, Kaisa argues that its application should be granted for the following reasons:

- (1) That a focused reading of the Re-Amended Statement of Claim ("**RASOC**"), demonstrates that the claims advanced in these proceedings exclusively concern a dispute about the internal management of companies incorporated in the PRC and all of the conduct complained of is said to have taken place in the PRC and not in the BVI;
- (2) Subject to the "*necessary or proper party*" gateway under ECSR CPR 7.3(2)(a) (the determination of which depends on the outcome of an appeal by the First Defendant Greater Sail Limited ("**GSL**") in relation to its own forum challenge- this will be discussed further), the Claimants cannot establish that there is any applicable gateway for serving these proceedings on Kaisa outside the BVI. In particular, ECSR CPR r.7.3(4) is not applicable because the Claimants have suffered no damage in the jurisdiction and ECSC CPR r.7.3(7) does not apply because that rule is concerned with the internal management of BVI companies

whereas these proceedings concern the internal management of PRC companies;

- (3) The expert evidence served by the parties plainly establishes that to the extent (which is not accepted) that the Claimants' claims have any merit, the courts of the PRC are an available forum for the pursuit of the Claimants' claims;
- (4) Applying well-established principles, the courts of the PRC are the more appropriate forum for the resolution of the Claimants' claims bearing in mind in particular the fact that (i) the claims concern the internal management and control of PRC companies so that the claims must be determined under PRC law, (ii) the claims raise allegations which exclusively relate to conduct that is said to have occurred in the PRC and not in the BVI, (iii) the presence of witnesses in or close to the PRC (and a long way from the BVI) whose first language is likely to be Mandarin, and (iv) the likelihood of relevant documents being located in the PRC and written in the Chinese language; and
- (5) The Claimants are guilty of a serious breach, and flagrant disregard of, the duty of full and frank disclosure in that they obtained permission to serve these proceedings on Kaisa at an *ex parte* hearing, including on the basis that the PRC is supposedly not an available forum, without drawing to the Court's attention to material demonstrating that the 3rd Claimant can in fact pursue its claims in the PRC. The correct remedy in these circumstances is that the order for service out should be set aside, and not re-made, on this ground alone.

[5] As pointed out by Mr. Vernon Flynn K.C. who appeared for Kaisa, on any jurisdiction challenge, in order to ensure that the issues are considered and determined proportionately, the Court must focus its analysis closely on the pleaded claims

advanced. Reference was made to the decision of the UK Supreme Court, **Okpabi v. Royal Dutch Shell**¹ at paragraph 103, where Lord Hamblen explained:

“If the issues are addressed by reference to the pleaded case, then the focus of the inquiry is clearly circumscribed and problems of lack of proportionality should generally be avoided.”

- [6] The introductory paragraphs of the RASOC identify the First Claimant Nam Tai Property Inc (“**C1**”) as a BVI company, the Second Claimant Nam Tai Group Limited (“**C2**”) as a Cayman Company which is a wholly owned subsidiary of C1 and that the Third Claimant Nam Tai Investment (Shenzhen) Co. Ltd (“**C3**”) is in turn a PRC company which is a wholly owned subsidiary of C2. C3 in turn owns a number of other PRC companies (“**the PRC Subsidiaries**”). Kaisa is a Cayman Company of which GSL is a wholly owned indirect subsidiary, with GSL having previously been a shareholder in C1.
- [7] It was Learned Counsel’s submission that the conduct complained of in the RASOC is all said to have occurred exclusively in the PRC and concerns the control of C3 and the PRC subsidiaries.
- [8] Reference was made to detailed paragraphs of the RASOC where the Claimants refer to a previous dispute litigated to its conclusion in the BVI in earlier proceedings (“**the IsZo Proceedings**”). These proceedings concerned the validity of a share issue in C1 which was ultimately set aside by the BVI Court and following which a new board of directors assumed control of C1. Mr. Flynn K.C. points out that, however, these matters are expressly identified as “*background*” and no cause of action is said to arise against Kaisa from the matters there pleaded.
- [9] Learned Counsel went on to, however, say that it is important to note that the IsZo Proceedings undoubtedly concerned issues as to the control and ownership of C1 which, the submission continues, were properly litigated in the BVI. However, that

¹ [2021] 1 WLR 1294 (UKSC).

dispute has been fully and finally resolved (including the dismissal of an appeal to the Court of Appeal). The argument therefore continues that accordingly, there can be no suggestion that there is any basis on which the issues concerning the control or ownership of C1 would need to be re-litigated in the BVI.

[10] The argument segued into asserting that nor can there be any suggestion that the orders made at the conclusion of the IsZo Proceedings need, in any sense, to be enforced. Accordingly, such attempts as there are by C1 to suggest that the present proceedings somehow represent the “*enforcement*” of the orders made in the IsZo Proceedings is entirely misconceived both legally and factually, and it was submitted, should be rejected.

[11] It was further argued that in any event, the IsZo Proceedings did not in any way concern the control of C2, C3 or the PRC subsidiaries.

[12] Kaisa provides a summary of the factual allegations by the Claimants which are said to give rise to a cause of action in the present proceedings and are set out under the heading “*Efforts by [D2],[D1], Mr. Wang and Ms. Zhang to frustrate the transition of control of the NTP Group in the New Board and those appointed by it*” at paragraphs 32-52B. The summary is as follows:

- (1) An allegation that both Kaisa and Mr. Wang (said to have been claiming to act on behalf of C3 without proper authority to do so) wrote letters in December 2021 to a PRC body, the Bao’an AMR, which, amongst other matters, determines who should be registered as officers of companies within the jurisdiction, opposing the registration of the changes said to have been made to the officers of C3. It is specifically pleaded that GSL did this through its Beijing lawyers and it appears to be common ground that Mr. Wang has at all material times been located in the PRC. It is also pleaded that the Bao’an AMR subsequently refused to register the changes of the officers of C3 said to have implemented by C2 as the sole shareholder of C3;

- (2) An allegation that Mr. Wang refused to hand over C3's company chops, licence and other assets or to cede control of C3's premises or operations on 9 December 2021;
- (3) An allegation that Mr. Wang, and Ms. Zhang, failed to meet with the individuals said to have been newly appointed as officers of C3 on 13 December 2021 to discuss the handover of C3 and the PRC Subsidiaries;
- (4) An allegation that Mr. Wang and Ms. Zhang, failed to agree to hand over control of C3 and the PRC Subsidiaries at a meeting on 28 December 21;
- (5) An allegation that Mr. Wang and Ms. Zhang refused to comply with various further notices requiring them to hand over control of C3 and the PRC Subsidiaries;
- (6) An allegation that the new management of C3 was wrongfully excluded from C3's premises in the PRC;
- (7) An allegation that Mr. Wang caused a statement to be published on C3's website stating, amongst other things, that he (Mr. Wang) "*is the legally appointed executive director, manager and legal representative*" of C3;
- (8) An allegation that on 6 January 2022 and 18 January 2022, Mr. Wang caused proceedings in the name of C3 to be brought in the PRC against C2 in circumstances in which he was not authorized to do so; and
- (9) An allegation that on or about 26 February 2022 Mr. Wang commenced proceedings in the PRC in which he asserted that the various resolutions by which the officers of C1 and its subsidiaries are said to have been changed following the conclusion of the IsZo Proceedings are invalid.

[13] Mr. Flynn K.C. points out that from this list of allegations it is evident that all the conduct about which complaint is made occurred exclusively in the PRC and concerns the control of C3 and the PRC Subsidiaries.

[14] As to some of the other factual allegations, and relief sought, for example, at paragraph 74A, various declarations are sought as to the validity of resolutions passed in respect of the appointment and removal of officers of C1. However, those declarations (as is expressly pleaded at paragraph 74B) had already been granted

by Jack J in substantially the terms sought prior to these proceedings being served on Kaisa and therefore those claims for declaratory relief have no bearing on the claim advanced against Kaisa, it was submitted.

[15] As for the relief sought against Kaisa, the prayer to the RASOC makes it clear at ((1)(a)) that the Claimants seek an injunction against GSL and Kaisa to prevent them or their officers from doing anything that may hinder or delay “*the board of directors of the Claimants taking control of the Claimants or any subsidiary of the Claimants*”. Although widely expressed, Learned Counsel asserts that there is plainly no issue there about the board of C1 taking control of the assets of C1 and none has been pleaded.

[16] Kaisa goes on to argue that the only other specific relief (aside from interest and costs) sought against Kaisa is at (2) of the prayer which seeks “*damages and equitable compensation*” but, again, there is nothing on the face of RASOC which suggests C1 has suffered any loss for which it could plausibly seek (in its own right) to recover any equitable compensation or damages. Further, Counsel submits that the reference to “*equitable compensation*” is obscure since no equitable wrong appears to have been pleaded. He further points out that the only claims identified on the face of the RASOC are tortious claims for which the applicable financial remedy could only be damages.

The Claimants’ Submissions

[17] In their skeleton argument, the Claimants assert that the claims in these proceedings are based on a conspiracy to injure or unlawful means conspiracy between Kaisa, GSL and others, designed to thwart the Claimants’ efforts, by its new and duly appointed management, to take control of the NTP group.

- [18] It is said that the backdrop to this conspiracy is that the new management of the Claimants were appointed to replace directors and officers that were affiliated with Kaisa. These management changes were effected following contested proceedings involving C1 and GSL in this jurisdiction in the IsZo Proceedings, which ultimately led to a court-ordered special general meeting at which resolutions were passed to replace the Kaisa-affiliated directors of C1.
- [19] Mr. Davies K.C., who appeared for the Claimants remarks that Kaisa now challenges the jurisdiction of this Court, even though a similar application by GSL on *forum non conveniens* grounds has been dismissed. GSL has filed an appeal against the dismissal of its forum challenge. The Claimants refer to the fact that in refusing GSL's application for a stay pending that appeal, Webster JA stated that "[GSL] *does not have a strong likelihood of success.*" My recent enquiries of the parties have indicated that no date has yet been fixed for that appeal.
- [20] In their skeleton argument, the Claimants set out their view that Kaisa's application is misconceived, in summary, for the following reasons:
- (1) The Claimants' claims plainly meet the threshold for service out of a "*serious issue to be tried.*" (Kaisa has indicated, although the underlying allegations are not accepted, it is prepared for the purpose of this Court dealing with the application, to not ask this Court to determine that the pleaded case of the Claimants does not have a realistic prospect of success);
 - (2) There is no sensible basis upon which it might be argued that Kaisa is not a proper party to the claim brought against GSL, which is already a defendant before the Court in these proceedings. The Claimants' claim against Kaisa, being based on an alleged conspiracy between Kaisa and GSL, it was submitted, obviously meet the requirements of the "necessary or proper party" jurisdictional gateway;
 - (3) The Court is clearly and distinctly the appropriate forum in which the claims should be tried in the interests of justice. The proceedings against Kaisa's

alleged co-conspirator, GSL, are underway in this jurisdiction and there is an obvious advantage, both in practical terms, and also in terms of ensuring consistency of outcome, in having the conspiracy allegations against each of Kaisa and GSL determined at the same time;

- (4) Moreover, according to the Claimants, the continuing and wrongful efforts on the part of Kaisa and its affiliates to prevent C1's new management taking control of the NTP group are effectively frustrating the outcome of the IsZo Proceedings. Those proceedings had eventually resulted (after a year of litigation, a two -week trial in the Commercial Court and an appeal) in the Kaisa-affiliated directors of NTP being replaced on 30 November 2021. However, due to the conspiracy, the new management have still not been able to take control of the NTP group in the PRC some fifteen months later. Accordingly, it is right that this Court should have jurisdiction over the claims against Kaisa given the importance of protecting the integrity and efficiency of this Court's previous judgments and orders; and
- (5) Finally, the PRC courts, which are said by Kaisa to be the most appropriate forum, are not an available forum for C3 to bring its claims against Kaisa. It was in the skeleton argument initially stated that C3 is a PRC incorporated entity, but, as a direct result of Kaisa's conspiracy, C3 is not able to commence proceedings or to reliably or adequately obtain representation in the PRC Courts. It is in relation to this last point that there have been developments and which I will deal with when I come to look at the submissions filed in July.

Background that the Claimants say is relevant

- [21] As indicated previously, the Claimants say that these proceedings follow earlier proceedings and appeals to the Court of Appeal in the IsZo Proceedings brought against C1 (then under the control of the Kaisa-affiliated management) and GSL by

a minority shareholder IsZo Capital LP. According to the Claimants, the common theme of the present proceedings and the earlier IsZo Proceedings is that they both concern the affairs of C1, a company incorporated in the BVI, and, in particular, the issue of the control of C1 (and thus, its subsidiaries, comprising the broader NTP Group).

- [22] In the IsZo Proceedings, IsZo Capital LP sought amongst other things an order requiring C1 to hold a general meeting for the purpose of allowing resolutions to be put to the members to remove and replace certain of C1's directors who were affiliated with Kaisa. That claim followed a requisition ("**the Requisition**") which had been served on C1 under section 82(2) of the Business Companies Act 2004 and Article 22 of C1's Articles of Association by members holding almost 40% of the shares in C1 requiring it to convene a shareholders' meeting for the purpose of passing resolutions to remove the five Kaisa-affiliated directors and to appoint a slate of new directors in their place ("**the Proposed Resolutions**").
- [23] The main issue in the IsZo Proceedings concerned the validity of a placement of shares that the Kaisa-affiliated directors had caused to be made in favour of GSL (Kaisa's subsidiary) following service of the Requisition ("**the Placement**"). The effect of the Placement was to increase GSL's shareholding from 23.9% to 43.9%, thereby effectively giving GSL the ability to defeat the Proposed Resolutions.
- [24] Following trial in the IsZo Proceedings, Jack J (Ag) upheld IsZo's claim that the Placement was void, because it had been carried out by Kaisa-affiliated directors for the improper purpose of securing Kaisa's *de facto* control of C1. It was held, amongst other matters, that C1's then Chairman had "*displayed partisanship in favour of Kaisa*", that four other directors were not independent of Kaisa, that C1's then CEO, Jiabiao Wang ("**Mr. Wang**"), was Kaisa affiliated and that the decision for GSL to participate in the Placement "*must have been taken at the highest levels of Kaisa*".

- [25] In BVIHCMAP2021/0010, by order dated 4 October 2021, the Court of Appeal upheld the first instance judgment of Jack J and directed C1 to hold a special general meeting of its shareholders. That meeting was held on 30 November 2021 (“**the SGM**”), and at the meeting C1’s shareholders voted in favour of the removal of the (then) Kaisa-affiliated directors and their replacement by six new directors. The directors of C1 immediately after the SGM are referred to as (“**the New Board**”).
- [26] Following the SGM, the New Board appointed new directors and officers of C1’s subsidiaries, including its immediate subsidiary, C2 and C2’s subsidiary, C3. The New Board sought to take control of the assets and affairs of NTP group. However, asserts, Mr. Davies K.C., these efforts have been-and are continuing to be thwarted by the actions of Kaisa, GSL and their associates.
- [27] The Claimants explain their complaints in some detail throughout their skeleton argument. In essence, they claim that there has been a sustained campaign orchestrated by Kaisa, GSL, Mr. Wang and Ms Zhang (former supervisor of C3), to frustrate the effective transfer of control of the assets and affairs of the NTP group to the legitimately appointed Boards of directors and officers of C1 and its subsidiaries. Accordingly, despite the New Board having taken steps formally to replace the officers and management of its direct and indirect subsidiaries, including C2 and C3, the new management have been unable in practice to take control of the affairs of much of the NTP Group, including, importantly, its business in the PRC. Amongst other things, it was argued at the hearing in March, that the new management have been prevented from accessing office premises, bank accounts and corporate chops (or seals).
- [28] The Claimants say that, in light of the steps which have been taken to frustrate the New Board’s ability to take control of the NTP Group and all its assets, the Claimants have brought these proceedings seeking injunctive relief and compensation for loss and damage as well as (by amendment) certain declaratory relief. The Claimants’

claim was filed on 26 January 2022 and amended on 10 May 2022 and 20 September 2022.

[29] On 31 January 2022 Jack J granted an *ex parte* injunction requiring GSL to send letters to the PRC authorities and not to do any act that might delay or hinder the board of C1 taking control of C1 or any of its subsidiaries or any of their property (“**the 31 January Order**”). GSL appealed against the grant of the 31 January Order. On 21 June 2022, the Court of Appeal dismissed that appeal on the basis that it was an abuse of process and the 31 January Order was upheld.

[30] GSL issued an application seeking a stay of these proceedings on *forum non conveniens* grounds. At a hearing on 1 March 2022 Jack J dismissed the challenge and provided written reasons on 14 March 2022.

[31] At paragraph [6] of the judgment, Jack J stated:

“[6] On those facts I considered that the claimants have shown a sufficient case that Mr. Wang, Ms. Zhang and Greater Sail were all involved in a conspiracy orchestrated by Kaisa to prevent the new Board of Nam Tai taking operational control of the PRC subsidiaries.”

[32] At paragraph 13, Jack J concluded that “*this Court is the ‘natural forum’ for ensuring that there is a proper handover of control from the old board of Nam Tai to the new Board.*”

[33] GSL was granted permission to appeal on 31 May 2022 but I understand from Counsel that no date has yet been fixed for the hearing of the Appeal. I should just note that both learned Kings Counsel expressed the view that I am not bound by the findings made by Jack J although he has made a determination in relation to GSL’s forum challenge, and one of the issues before me now is a forum challenge by Kaisa, the parent of GSL.

[34] The Claimants go on to outline that so far as the underlying proceedings are concerned, the Claimants filed an Amended Statement of Claim on 10 May 2022. GSL filed a Defence on 8 June 2022. On 1 June 2022, the Claimants applied for summary judgment in respect of the declarations sought in the Amended Statement of Claim as to the validity of the SGM, the resolutions passed at the SGM and a board resolution for the appointment of an additional director of C1. An order granting summary judgment in respect of those declarations was made on 6 July 2022.

[35] On 20 September 2022 the Claimants filed the RASOC which joined Kaisa as a Second Defendant. On 20 September 2022 the Claimants obtained permission from Jack J to serve Kaisa out of the jurisdiction in the Cayman Islands and served Kaisa.

The new evidence, new matters that occurred since the Hearing

[36] By a consent order dated 20 June 2023, the parties agreed to file and exchange further written submissions in relation to the impact on Kaisa's application of: (1) The seventh affidavit of Mr Cricenti which was filed on 7 June 2023 ("**Cricenti 7**") (2) The supplemental expert report of Mr Jiang dated 24 March 2023 ("**the Supplemental Expert Report**").

[37] The Claimants initially resisted Kaisa's application to adduce the Supplemental Expert Report but have now consented to it being adduced and they have also confirmed that they will not be serving any expert evidence in response.

Kaisa's Position

Cricenti 7

- [38] Mr. Flynn K.C. in his written submissions reminds the Court that one of the key issues in dispute between the parties at the hearing on 7 March 2023 (and which occupied most of the submissions at the hearing) was whether the PRC is an available forum for C3 to bring its claims.
- [39] In essence, the Claimants' position was that the PRC was not an available forum because Mr Yu did not have possession of C3's company chop. Kaisa's position was that C3 could (acting through Mr Yu) bring its claims in the PRC even without the company chop.
- [40] Cricenti 7 describes events which have taken place since the hearing on 7 March 2023 which establish that, at least today, Kaisa submits, there is no dispute that the PRC is an available forum for C3 to bring its claims.
- [41] In particular, following an exchange of correspondence between the parties' attorneys on 19 June 2023, and based on what was alleged in Cricenti 7, it is common ground that:
- (1) Mr Yu lawfully obtained possession of the corporate chop for C3 on 26 April 2023 - paragraph 6 of Cricenti 7);
 - (2) Mr Yu has now (at an unspecified date after obtaining the company chop for C3 on 26 April 2023) been registered as, inter alia, C3's legal representative in the PRC (see paragraph 9 of Cricenti 7); and
 - (3) As a matter of PRC law, as Mr Yu now has control of, inter alia, C3's company chop and is registered as, inter alia, C3's legal representative, Mr Yu can cause C3 to commence claims in the PRC Courts.
- [42] It is also common ground (in the light of Ogier's letter of 12 June 2023) that the Court can take account of the matters referred to at paragraph [41] above in determining Kaisa's forum challenge pursuant to CPR 9.7A ("**the Forum Challenge**") since those developments occurred prior to the determination of the Forum Challenge:

Reference was made by Mr. Flynn K.C. to the decision of the Court of Appeal in **WWRT Ltd v Carosan Trading**.²

- [43] Accordingly, the submission continues, the Forum Challenge must be determined on the basis that the PRC is now an available forum for C3 to bring its claims.
- [44] The parties also agree that Kaisa's jurisdiction challenge pursuant to CPR 7.7 and 9.7 ("**the Jurisdiction Challenge**") must be assessed by reference to the factual position as it stood at the time of the original ex parte order permitting service out of the jurisdiction (i.e. 20 September 2022). It is for this reason, submits Mr. Flynn, that the Supplemental Expert Report (which addresses the issue of whether C3 could bring its claims in the PRC without Mr Yu having obtained C3's company chop) remains relevant to the Jurisdiction Challenge.
- [45] So far as the Forum Challenge is concerned, now that it is common ground that the PRC is an available forum, Kaisa's position is that its case as to why the PRC is the more appropriate forum is overwhelming.
- [46] Learned Counsel drew attention to the fact that at paragraph 14 of Ogier's letter of 19 June 2023, the Claimants stated that they nonetheless consider that Cricenti 7 does not "*materially affect the position in respect of forum non conveniens considerations*" because: "*The courts of this jurisdiction are clearly and distinctly the appropriate forum for the trial of our clients' claims (and those of the PRC are not) in light of (i) Kaisa's and GSL's continuing actions as described in Cricenti 7 designed to prevent the new management from taking control of NTI and its subsidiaries in the PRC as well as (ii) the other reasons already provided in the context of the 7 March 2023 hearing, notably: (1) The proceedings against Kaisa's alleged co-conspirator, GSL, are underway in this jurisdiction and there is an obvious advantage, both in practical terms, and also in terms of ensuring consistency of outcome, in having the conspiracy allegations against each of Kaisa*

² [2022] BVIHCPMAP 2022/0002, [85].

and GSL determined at the same time. (2) The continuing and wrongful efforts on the part of Kaisa and its affiliates to prevent NTP's new management taking control of the NTP group are effectively frustrating the outcome of the IsZo proceedings. Accordingly, it is right that this Court should have jurisdiction over the claims against Kaisa given the importance of protecting the integrity and efficacy of its previous judgments and orders."

- [47] Kaisa's reaction is that in so far as the Claimants are simply repeating the points made at the hearing on 7 March 2023, those arguments have already been addressed and are not affected by Cricenti 7.
- [48] Kaisa in summary, reiterates that the BVI is not the appropriate forum because the claims advanced in these proceedings have no connection to the BVI and exclusively concern allegations about events in the PRC relating to the internal management of PRC companies which must be determined by applying PRC law.
- [49] Learned Counsel asked the Court to refer to the earlier submissions, The only point Mr. Flynn makes by reference to Cricenti 7 is the allegation that the BVI is said to be the appropriate forum because of "*Kaisa's and GSL's continuing actions as described in Cricenti 7 designed to prevent the new management from taking control of [C3] and its subsidiaries in the PRC*".
- [50] However, Kaisa argues that the allegations made against it in this regard do not assist the Claimants in relation to the Forum Challenge because: (1) The allegations as to conduct since 7 March 2023 all concern events in the PRC, not events in the BVI. (2) The allegations as to conduct since 7 March 2023 all concern the management or control of companies incorporated in the PRC (and not companies incorporated in the BVI). (3) In the light of the matters referred to at paragraph 41 above, there can be no suggestion that the allegations against Kaisa concern matters which could prevent any of the Claimants from pursuing claims in the PRC.

[51] Accordingly, none of the allegations in Cricenti 7 establishes any connection between this dispute and the BVI. Thus, the only significant consequence of Cricenti 7 for the purposes of the Forum Challenge is that it removes as an issue the central plank of the Claimants' argument, namely the Claimants' case that the PRC is not an available forum.

The Supplemental Expert Report

[52] Learned Counsel points out that the Supplemental Expert Report is only relevant to the Jurisdiction Challenge aspect of the November 2022 Application since that aspect of the Application must be determined by reference to the factual position as it stood on 20 September 2022 (i.e. before Mr Yu obtained possession of D3's company chop). Kaisa sought to adduce the Supplemental Expert Report in order to address an argument which emerged in the course of the hearing on 7 March 2023 as to the consequence of Kaisa no longer being an indirect shareholder of C3 on the issue of whether Mr Yu would be permitted to conduct litigation in the PRC on behalf of C3 despite not having possession of C3's company chop.

[53] What had transpired was that the Claimants' expert (Mr Ma) drew a distinction in his report between "internal" disputes and "external" disputes. In particular, he stated at paragraph 83 of his report that:

"83. According to the above legal provisions and the SPC's judicial rule, in external disputes of the company, the legal representative registration in the AMR shall prevail and the registered legal representative has the authority to represent the company. In internal disputes arising 6 between the company and the shareholders, the valid resolution of the shareholders' meeting that appoints the management shall prevail.

83.1. Regarding the distinction between external disputes and internal disputes, the Second Chamber for Civil Trials of Shanghai High People's Court pointed out that: (3) The principle of distinguishing internal disputes and external disputes of the company The right to represent the company

can reflect the competition of the company shareholders' and management's control of the company, which is an internal dispute within the company. However, in the actual cases, there are both internal disputes and external disputes of the company. The former includes, for example, the disputes over the return of the company's license, the disputes over shareholders' harm to the company's interests, the disputes over the dissolution of the company, etc. The latter includes, for example, sales contract dispute, loan contract disputes, etc.

83.2. If, NTI brings a claim against Kaisa/GSL under Article 1168 or Article 1169 of the PRC Civil Code before the PRC court, the dispute would be characterized as an internal dispute, if Kaisa and GSL has an indirect shareholding interest in NTI, and that the claimed tortious act conducted by Kaisa and GSL substantially relates to the internal right of management and control over NTI."

[54] Mr Ma went on to say that he considered that Mr Yu could not represent C3 in pursuing internal or external disputes. Mr Ma's analysis in relation to those matters has been addressed already at the hearing on 7 March 2023 where the point was made by Kaisa that Mr Ma's expert opinion, at its highest, was that the proceedings might be suspended whilst issues of standing were determined and therefore there was no "real risk" of a claim being dismissed by the PRC Courts.

[55] For present purposes therefore, Kaisa submits that the key point is that Mr Ma apparently accepted that C3's claims would be characterised by the PRC Court as an "internal" dispute and accordingly he accepted that in principle "*the valid resolution of the shareholders' meeting that appoints the management shall prevail*" in determining who could represent C3 in such a dispute.

[56] However, Kaisa's Further Submissions continue that, at the hearing on 7 March 2023, the Claimants unexpectedly submitted that the effect of the words "*if Kaisa and GSL has an indirect shareholding interest in NTI*" in paragraph 83.2 of Mr Ma's

report meant that it was Mr Ma's view that the dispute was incapable of being characterised as an "internal" dispute by the PRC Court regardless of any other factors.

[57] Kaisa submits that Mr Ma's report does not, on its face, support that extreme submission but since it had been assumed before the hearing that it was common ground that in so far as the dispute had to be characterised as "internal" or "external, it would be characterised as "internal", the reply report of Kaisa's expert (Mr Jiang) had not addressed that issue. This led to the application to adduce the Supplemental Expert Report after I had reserved my decision in March. Mr. Flynn submits that the Supplemental Expert Report makes clear, that if the PRC Court were to characterise the present dispute it would characterise it as an "internal" dispute regardless of whether Kaisa is an indirect shareholder of C3.

[58] Learned Counsel drew attention to paragraph 10.3 of Mr Jiang's report, where he states that the source of PRC law relied on at paragraph 83.1 of Mr Ma's report (namely the Overview of the Discussion on Difficult Issues Regarding the Application of Law in Company Law Disputes (II) issued by the Second Chamber for Civil Trials or the Shanghai People's Court) itself gives the example of "*disputes over the return of a company's licence*" as a dispute which would be characterised as "internal" but does not suggest that such a dispute would be "external" if the other party to the dispute was not a direct or indirect shareholder of the company.

[59] It was submitted that this strongly supports the view that (contrary to the Claimants' submissions at the 7 March 2023 hearing) Mr Ma did not intend to suggest that a dispute could only ever be characterised as "internal" if the defendant was a direct or indirect shareholder.

[60] It was posited that, (as now explained in detail in the Supplemental Expert Report) that what matters for the purposes of this characterisation is the nature of the dispute rather than the status of the defendant as a direct or indirect shareholder.

[61] Mr Jiang's evidence at paragraph 16 of the Supplemental Expert Report, is that the true position is that:

"In relation to an underlying allegation that a person has wrongly retained company seals and/or wrongly refused to recognize the authority of a new legal representative appointed by the company's shareholder and/or otherwise wrongly interfered with the ability of the new legal representative appointed by the shareholder to exercise authority over the company and civil cases involving the control and management of a company higher up the corporate structure, I opine that since the dispute substantially relates to the internal right of management and control over a company, it shall be characterized as "internal disputes" by PRC courts drawing such a distinction of "internal disputes" and "external disputes."

[62] Notably, says Kaisa, despite the Claimants being given an opportunity to respond to the Supplemental Expert Report if they so wished, the Claimants have chosen not to serve any expert evidence in response. Nor have the Claimants ever suggested, since receiving the Supplemental Expert Report, that they disagree with the substance of that report. In the circumstances, it is to be inferred that in reality the Claimants accept that the Supplemental Expert Report is correct. In any event, there is no contrary evidence of PRC law before the Court and, given that Mr Jiang's views are fully and logically supported by even the legal source referred to by Mr Ma, the Court should have no difficulty in accepting that Mr Jiang's expert opinion on this issue is correct.

[63] The Court should therefore, Mr. Flynn K.C. urges, determine the Jurisdiction Challenge on the basis that if C3's claims were to be characterised by the PRC Court, they would be characterised as an "internal" dispute with the consequence that (as Mr Ma put it) *"the valid resolution of the shareholders' meeting that appoints the management shall prevail"*. On that basis, Mr Yu was able to commence

proceedings in the name of C3 in the PRC even before he had obtained C3's company chop.

- [64] Consequently, the PRC must be regarded as an available forum for the purposes of the Jurisdiction Challenge.

Claimants Submissions

- [65] The Claimants argue that, given that (i) the proceedings are underway against GSL, Kaisa's wholly-owned subsidiary and alleged co-conspirator, in this jurisdiction (ii) the need for this court to protect the integrity of its own proceedings, and (iii) Kaisa's and GSL's continued use of illegitimate means in the PRC thwarting the new management's efforts to take control over C3, Kaisa is patently unable to discharge the burden that it bears under the forum challenge of establishing that the courts of the PRC are 'clearly and distinctly' the appropriate forum.
- [66] Mr. Davies K.C. in written submissions argued that the Supplemental Expert Report is of no relevance to the forum challenge because the issues of PRC law which it addresses are no longer pertinent given the developments described in Cricenti 7, and the Supplemental Expert Report changes nothing in relation to the Jurisdiction Challenge (which is determined by reference to the position as at 20 September 2022, as indicated above). This is because even if the court considered, having read the Supplemental Expert Report, that the PRC courts would characterise the dispute between C3 and Kaisa as 'internal', both experts agree that, on the particular facts as at 20 September 2022, C3's new management would not have been able to, or might well not have been able to bring proceedings in NTI's name in the PRC given that Mr Wang (of C3's old management) remained the registered legal representative.
- [67] The backdrop to this conspiracy is that the new management of the Claimants were appointed to replace the previous directors and officers who were affiliated with

Kaisa. These management changes were effected following contested proceedings involving the C1 and GSL in this jurisdiction (i.e. the IsZo Proceedings described in more detail in Claimants' Skeleton Argument, paras. 8 to 12), which proceedings ultimately led to a court-ordered special general meeting at which resolutions were passed to replace the Kaisa-affiliated directors of C1. Thereafter, further resolutions were passed to remove Kaisa-affiliated management, and appoint new management, for C1's subsidiaries, including C2 and C3.

[68] As is set out in Cricenti 7, since the hearing of Kaisa's jurisdiction challenge on 7 March 2023, the following matters have occurred: (1) Mr Wang (of C3's old management) has handed over the chops and licenses of C3 to C3's new management (2) C3's new legal representative (Mr Yu) has now been registered at the responsible AMR (and Mr Wang has withdrawn his claim in the PRC by which he challenged the validity of C2's resolution for his removal as C3's legal representative) (3) Nonetheless, Kaisa and GSL continue to be intent on thwarting the new management's efforts to take control of C3 and its subsidiaries. In particular: Kaisa filed objections to the registration of new management of C3 and its subsidiaries at the responsible AMR and successfully prevented registration in respect of one of C3's subsidiaries. Further, where new management has been successfully registered, Kaisa and GSL have, the Claimants allege, taken steps designed to achieve a reversal of that registration. Kaisa is actively preventing new management from taking control over C3's business and premises, having illegitimately instructed a large number of private security personnel to physically obstruct access; and GSL has commenced a new lawsuit in the PRC courts designed to obstruct the AMR registrations in relation to C3 and various of its subsidiaries.

[69] It was submitted that Kaisa has chosen not to file any evidence in response to Cricenti 7 and therefore must be taken to accept the truth of those matters. Regarding GSL's new lawsuit in the PRC referred to in Cricenti 7, little detail was available at the date of Cricenti 7. GSL's BVI Counsel refused to provide any further

information in response to Ogier's (the Claimants' BVI Counsel) written request by letter dated 27 June 2023. However, from what is known (and what can be inferred from GSL's failure to respond), it is plain, Mr. Davies K.C. argues, that by commencing those proceedings, GSL has blatantly breached the injunction granted by this court against it on 31.1.2022 (and continued by the order of Jack J dated 20.9.2022), in the following terms:

"The First Defendant shall forthwith cease to, and shall not until judgment or further order, whether by its directors officers agents or otherwise howsoever, do any act that might delay or otherwise hinder the board of directors of the First Claimant [Nam Tai Property Inc.] elected by the shareholders at the meeting of shareholders of the First Claimant on 30 November 2021 taking control of the First Claimant or any subsidiary of the First Claimant (including Nam Tai Investment (Shenzhen) Co Ltd) and any property of the Claimants or any subsidiary of the First Claimant."

[70] Whilst that injunction was not granted against Kaisa, GSL is a wholly-owned subsidiary of Kaisa and so the Claimants' position is that Kaisa is clearly implicated in this breach of the court's order.

[71] As to the other ramifications of the recent developments described in Cricenti 7, the Claimants accept that, as a matter of PRC law, Mr Yu of C3's new management is, in principle, now in a position to bring a claim in the PRC courts against Kaisa in NTI's name, given that Mr Yu is now C3's registered legal representative and has control of the chop. However, as explained above, that development cannot be taken into account when determining Kaisa's jurisdiction challenge, as it post-dates Jack J's decision on 20 September 2022 to grant permission to serve Kaisa out of the jurisdiction. The fact that Mr Yu can now bring proceedings in C3's name is of no relevance to the question whether permission was rightly granted at the time. Moreover, it cannot sensibly be said that this development throws any light on the position as it existed on 20 September 2022, at which time Mr Wang was resisting all attempts by the new management to obtain the chop.

- [72] The Claimants accept, however, that the court may take this development into account when determining Kaisa's Forum Challenge. As regards the Forum Challenge, however, it is important to note that the burden is on Kaisa to show that the PRC courts are 'clearly' or 'distinctly' the appropriate forum in which the case can suitably be tried in the interests of all parties and the ends of justice: ***Chen Mei-Huan v Victory Success Holdings Limited & ors.***³ The notion that the PRC court is clearly or distinctly the appropriate forum for these proceedings is completely unsustainable.
- [73] It was argued that there is still a 'real risk' that C3 will, in practice, be unable to pursue proceedings in the PRC, and that therefore the PRC courts are not 'available' to C3.
- [74] Alternatively, there is a very real risk that justice will not be achieved if C1 were left to attempt to pursue Kaisa in the PRC courts. Under the second limb of the ***Spiliada*** test (see the Claimants' Skeleton Argument, paras. 72 to 73), the BVI court ought to decline to order a stay in those circumstances and instead exercise its jurisdiction.
- [75] The Claimants repeat that, as set out in the Claimants' Skeleton Argument, the BVI court should protect the integrity of its own proceedings (specifically, the IsZo Proceedings), by retaining conduct of the present proceedings which are designed to uphold the outcome of the special general meeting that was ordered by the court and that resulted in the change of management. Through their conspiracy, Kaisa (and GSL) have sought to subvert the substance of this court's decisions.
- [76] The BVI court should further protect the integrity of the present proceedings and the injunction against GSL, a wholly-owned subsidiary of Kaisa, by retaining conduct of the proceedings and, if required, making further orders to uphold that injunction and prevent Kaisa from breaching the spirit of that injunction.

³ [BVIHCMAP2020/0028].

- [77] Further, that, the court should not sever the claim against Kaisa from the proceedings against GSL given the clear risk of irreconcilable judgments as well as the duplication of costs and other matters. There are further factors pointing towards the BVI as the appropriate forum as outlined in the Claimants' Skeleton Argument. Above all, the Claimants submit that the court should not entertain this attempt by Kaisa to persuade it to decline jurisdiction over this matter in favour of the PRC courts in circumstances where there is ample basis to consider that Kaisa would then seek to sabotage any attempts by the Claimants to pursue proceedings against it in the PRC.
- [78] However, given the respective positions already taken by the experts in the reports that were before the court on 7 March 2023, as outlined above, the question of whether the dispute would be characterised as internal or external could only be of academic interest. Either way, Kaisa's expert accepted that the PRC court might well exercise its discretion to prevent the new management of C3 pursuing a claim.
- [79] Accordingly, even if the court considered, on reading the Supplemental Expert Report, that the PRC courts would be likely to characterise the dispute between C3 and Kaisa as 'internal', there is cogent factual evidence (as summarised in the Claimants' Skeleton Argument, para. 85) and expert evidence (as summarised in the Claimants' Skeleton Argument, paras. 86 to 89, and including in Jiang 1 and Jiang 2) before the court that establishes that, as at 20. September 2022 (the date of Jack J's ex parte order for service out), there was at least a real risk that C3 would practically be unable to bring proceedings against Kaisa in the PRC.
- [80] On that basis, the Supplemental Expert Report has no impact on the issue of forum conveniens for the purposes of Kaisa's Jurisdiction Challenge which was and remains unsustainable. The Claimants submit that, to the restricted extent that Cricenti 7 and the Supplemental Expert Report may now be taken into account, they do not affect their original submission that the Court ought not to decline jurisdiction.

Accordingly, the Court is respectfully invited to dismiss the November 2022 Application.

Discussion and Analysis-The Legal Principles Applicable to a Jurisdiction/Forum Challenge and application to the instant case

[81] The learned author of *Briggs on Civil Jurisdiction and Judgments* (7th Edition), at paragraph 27.07 makes it clear that on an application for permission to serve out of the jurisdiction, the Claimant bears the burden at the *inter partes* hearing of proving that it was entitled to permission.

[82] In this case, the Claimants relied upon three different gateways, i.e. CPR 7.3(2)(a) “the necessary or proper party gateway”, 7.3(4) claims in tort, and 7.3(7), claims about companies.

[83] In my judgment, the Claimants cannot establish that they have a good arguable case that their Claims fall within r. 7.3(4) because the Claimants cannot demonstrate that they have suffered damage within the jurisdiction. I am also of the view that r. 7.3(7) does not apply because that rule is concerned with the internal management of BVI companies whereas these proceedings do indeed seem, as Mr. Flynn K.C. has argued, to concern the internal management of PRC Companies. The Claimants do not have the better argument as to these two gateways.

[84] However, Gateway 7.3 (2)(a) is of a very different nature. CPR 7.3(2)(a) provides as follows:

“A claim form may be served out of the jurisdiction if a claim is made-

(a) against someone on whom the claim form has been or will be served,
and

(i) there is between the claimant and that person a real issue
which it is reasonable for the court to try; and

- (ii) *the claimant now wishes to serve the claim form on another person who is outside the jurisdiction and who is a necessary or proper party to that claim*"

[85] The principles applicable to this gateway have been well-discussed in the decision in ***Nilon Ltd. v Royal Westminster Investments SA***.⁴ At paragraph 15 the relevant principles were stated as follows:

"(1) The necessary or proper party head of jurisdiction was anomalous, in that, by contrast with the other heads, it was not founded upon any territorial connection between the claim, the subject matter of the relevant action and the jurisdiction of the English Courts.

(2) Caution must always be exercised in bringing foreign defendants within the jurisdiction under that head, and in particular, it should never become the practice to bring in foreign defendants as a matter of course, on the ground that the only alternative requires more than one suit in more than one different jurisdiction.

(3) The fact that the defendant within the jurisdiction (D1 or the anchor defendant) is sued only for the purpose of bringing in the party outside the jurisdiction (D2) is not fatal to the application for permission to serve D2 out of the jurisdiction, but it is a factor in the exercise of the discretion.

(4) The action is not properly brought against D1 if it is bound to fail.

(5) If a question of law arises on the application which goes to the existence of the jurisdiction, the court will normally decide it, rather

⁴ [2015] 3 All E.R. 372 (P.C.).

than treating it as a question of whether there is a good arguable case.

(6) The question of the merits of the claim is relevant to the question of whether the claim against D1 is 'bound to fail' and to the question whether there is a 'serious issue to be tried' in relation to the claim against D2; and there is no practical difference between the two tests, and they in turn are the same as the test for summary judgment.

(7) In considering the merits of the claim, whether the claim against D1 is bound to fail on a question of law should be decided on the application for permission to serve D2 (or to discharge the order), but it would not normally be appropriate to decide a controversial question of law in a developing area particularly because it is desirable that the facts should be found so that any further development of the law should be on the basis of actual and not hypothetical facts.

(8) The question whether D2 is a proper party is answered by asking: 'Supposing both parties had been within the jurisdiction would they both have been proper parties to the action?'

I accept Learned Counsel Mr. Flynn K.C.'s submission that **Nilon** makes it clear that the Court should not accept jurisdiction under this gateway merely because there is a triable issue against a defendant within the jurisdiction, even if it means that there may need to be proceedings in more than one jurisdiction. However, in the instant case, I think that the Claimants' allegations as to conspiracy on the part of Kaisa, Greater Sail, Mr. Wang and Ms. Zhang, make for an even firmer tie between the anchor defendant, GSL, and Kaisa. There is indeed a risk of inconsistent rulings, and a high interest in maintaining consistent outcomes. In my judgment, the Claimants satisfy me that they have a good arguable case under this gateway; they have the better argument on a plausible evidential basis. The on-going proceedings against GSL do sufficiently engage this gateway and it would not be appropriate to

sever the claim against GSL from a claim against Kaisa in all of the circumstances. Posing the question at paragraph (8) above, in **Nilon**, if I were to suppose that both parties had been within the jurisdiction my answer would be that they would both have been proper parties to the action.

[86] As regards the question of full and frank disclosure, I agree with Mr. Davies K.C. that there was no failure on the part of the Claimants in that regard, on the without notice / *ex parte* application for service out.

[87] The law is well-settled as to the Forum Challenge. The Claimants must establish that the BVI is distinctly and or clearly the appropriate forum for the trial of the dispute and that in all the circumstances the Court ought to exercise its discretion to permit service out of the jurisdiction. However, in relation to the application for the stay under Rule 9.7 or 9.7 A, the burden is on the Second Defendant, Kaisa.

[88] In my judgment, the combined effect of the expert evidence does demonstrate that as at the date of the Order granting permission to serve outside of the jurisdiction, i.e. on 20 September 2022, the PRC was an available forum, because whether or not Mr. Yu had the chops of C3, if C3's claims were to be characterised by the PRC Court, they would be characterised as an "internal" dispute with the consequence that (as Mr Ma put it) "*the valid resolution of the shareholders' meeting that appoints the management shall prevail*". On that basis, Mr Yu was able to commence proceedings in the name of C3 in the PRC even before he had obtained C3's company chop. However, there were obviously practical and procedural difficulties at that stage.

[89] Consequently, the PRC must be regarded as an available forum for the purposes of the Jurisdiction Challenge. However, that is not the end of the matter. On balance, given the rulings previously made by Jack J in relation to the GSL challenge, the proceedings here that (subject to appeal), are still continuing in this jurisdiction against GSL, and the allegation that Kaisa, the parent company of GSL is a co-

conspirator, then this Court in those circumstances is clearly the appropriate forum for the claims to be tried in the interests of justice.

[90] Subject to what is determined on GSL's appeal, there is an obvious advantage, both in practical terms and also in terms of consistency of outcomes, in having the conspiracy allegations against each of Kaisa and GSL determined at the same time. Although I am entitled to take into account matters that have transpired since the hearing in March 2023 when considering the Forum Challenge, in my judgment, it makes no difference. The proceedings against GSL are still ongoing in this jurisdiction.

[91] Since the evidence in *Cricenti 7* it seems plain that the PRC is an available forum. In his judgment in this very same matter, Jack J has held in relation to GSL's forum challenge, that this Court is the natural forum for ensuring that there is a proper handover of control from the old board to the new board. He also expressed the view, at paragraph 12 of his judgment, that this current action is brought in support of orders which he made in the *IsZo* Proceedings, and which were upheld on appeal. Jack J went on to express the view that "*This Court will protect the integrity of its own proceedings*".

[92] In those circumstances, I think this Court is faced with a difficult situation. My understanding of the law and practice is that a judge is not bound by the rulings of another judge of coordinate jurisdiction. However, in the interests of consistency and predictability of outcomes and comity, I would not disagree with a judge of coordinate jurisdiction unless convinced that the decision is wrong. I cannot say, in light of the history, previous decisions, judgments and holdings in this matter, and in the *IsZo* Proceedings, that the decision of Jack J that BVI is the natural forum is wrong. I do not think it is desirable that in the very same matter, BVI should be found to be the natural forum (on GSL's stay application) and found not to be (on Kaisa's jurisdiction and in the alternative, stay application), even if there is new evidence for a Court to take into account such as the handing over of the chops. In my view, the

proper approach for me to take is to exercise my discretion by dismissing both the jurisdiction and the forum challenge. The application dated 15 November 2022 is therefore dismissed.

[93] At paragraph 35 of Kaisa's original Skeleton Argument Mr. Flynn K.C. quite pragmatically suggested that if I was satisfied about the "necessary or proper party" gateway, then I should grant permission to Kaisa to appeal. I grant permission to Kaisa to appeal, if so advised, in respect of both the Jurisdiction and Forum Challenges. In that way, these issues can be ventilated before the Court of Appeal in due course, and good case management may suggest that the appeal be dealt with and heard together with GSL's appeal. In light of my views that the threshold for two of the three gateways under which the Claimants proceeded has not been met, I also grant permission to the Claimants to appeal, if so advised. In my view, the appeals on both sides have real prospects of success.

[94] I therefore make the following orders:

- (1) The 2nd Defendant's Notice of Application dated 15 November 2022 is dismissed.
- (2) The 2nd Defendant is to file and serve its Defence by 28 November 2023.
- (3) The question of costs is reserved. The parties are to file brief written submissions limited to 5 pages each, within 7 days of the date hereof.
- (4) Both the 2nd Defendant and the Claimants are granted leave to appeal.
- (5) A Case Management Conference ("**CMC**") is to be fixed by the Registry in respect of all parties, not before the 11th January 2024, with a time estimate of half a day. GSL has liberty to apply in relation to the length of the CMC.

[95] It just remains for me to thank both sides for their very helpful and illuminating submissions, covering the wide-ranging and complicated facts and circumstances of this application.

Ingrid Mangatal (Ag)
High Court Judge

By the Court

Registrar