

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 82 OF 2010 (AJJ)
CAUSE NO: FSD 269 OF 2010 (AJJ)

The Hon. Mr. Justice Andrew J. Jones, Q.C.
In Chambers, 31 March and 15 April 2016

IN THE MATTER OF the Companies Law (2010 Revision)

AND IN THE MATTER OF ICP Strategic Credit Income Fund Ltd. – In Official
Liquidation

AND IN THE MATTER OF ICP Strategic Credit Income Master Fund Ltd. – In Official
Liquidation

Appearances:

Mr. D. Fraser Hughes of Conyers Dill & Pearman appears for the Official Liquidator.

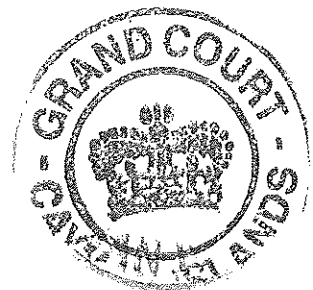


RULING

1. This is an application by Hugh Dickson and Michael Saville, in their capacity as joint official liquidators of ICP Strategic Credit Income Fund Ltd and ICP Strategic Credit Income Master Fund Ltd ("the Official Liquidators"), for an order that a 'court hearing fee' of CI\$750 paid under protest on 14 March 2016 be refunded by the Court. The outcome of this application turns upon the true meaning and effect of rule 5 of the Court Fees Rules 2009 and in particular rule 5(2).
2. The relevant factual background to this application can be stated quite shortly. On 18 July 2013 I made an order by which I sanctioned the decision of the Official Liquidators to enter into a contingency fee agreement with a firm of United States attorneys called Reed Collins & Tsai LLP ("the Lawyers"). My reasons for making that order are reported in *In Re Strategic* 2014 (1) CILR 314. By Clause 10 of this contingency fee agreement the proceeds of successful litigation are to be paid into a bank account under the control of the

Official Liquidations and monies are not to be distributed without first obtaining an order of the Court (referred to in the agreement as a 'Distribution Order'). The purpose of this provision is to ensure that the proceeds of the litigation come under the control of the Official Liquidators and that any dispute about the amount payable to the Lawyers is resolved by this Court.

3. In the event, the litigation was successfully concluded and the gross amount of the litigation proceeds was duly paid into the designated bank account. The amount properly payable to the Lawyers under the terms of the contract was agreed and, in the absence of any dispute, the application for an order authorizing payment would be a formality. In this context, it should be borne in mind that the application is required to be made to me as the assigned judge responsible for the supervision of these liquidations since their inception in 2010. The application was made by a letter dated 10 March 2016 and written to the Court by the Official Liquidators' attorneys. The letter stated all the relevant facts necessary to enable me to make a decision. Copies of the contingency fee agreement and sanction order were enclosed for my convenience, although this was not really necessary because these documents were readily available to me in the chronological liquidation files kept in my chambers. Having read this letter, it was perfectly clear that a Distribution Order should be made and I signed the enclosed draft order without raising any questions.
4. The Financial Services Division Guide (2nd Edition, August 2015), Section B1 sets out the circumstances in which written applications (usually described as "applications on the papers") may be made to the Court. This procedure is not limited to liquidation proceedings, but it is used frequently as a very efficient and economical way of dealing with routine sanction applications required to be made by official liquidators. In this particular case the Court staff required that a 'court hearing fee' of \$750 be paid. Suffice it to say that the Court has no right to require any litigant, let alone an officer of the Court acting in accordance with his statutory duty, to pay any fee as a precondition of making any application unless such fee is prescribed by the Court Fees Rules 2009 (as amended). No fee is prescribed in respect of 'applications on the papers' of the kind made in this case. The argument made against the



Official Liquidators is that, on a true construction of rule 5(2), they are liable pay a 'court hearing fee' of \$750 even though there was never any intention that a court hearing should take place and none did in fact take place.

5. Rule 5 provides (in part) as follows :-

- (1) *In the event that a civil proceeding involves a hearing lasting more than 3 days or a series of hearings lasting more than 3 days in total, the parties shall be liable to pay a court hearing fee of \$250 for each additional day or part of a day.*
- (2) *In the event that a financial services proceeding or an admiralty proceeding involves a hearing lasting more than 20 days or a series of hearings lasting more than 20 days in total, the parties shall be liable to pay a court hearing fee of \$750 for each additional day or part of a day.*

6. I agree with counsel for the Official Liquidators that, in the context of these rules, the expression 'hearing' can only mean a hearing before a judge at which the litigant is present (either in person or by counsel) for the purpose of making oral submissions, though not necessarily for the purpose of giving oral evidence. A 'hearing' or 'court hearing' is a proceeding at which oral argument is 'heard' by the judge. Such a proceeding may take place in open court or in chambers or sometimes by telephone or via a video link. Orders made at a hearing typically commence with the words 'Upon hearing counsel', meaning that the judge heard an oral submission. In contrast, orders made in respect of a written application typically commence with the words 'Upon reading', meaning that the judge read the relevant documents and made the order without hearing an oral submission.

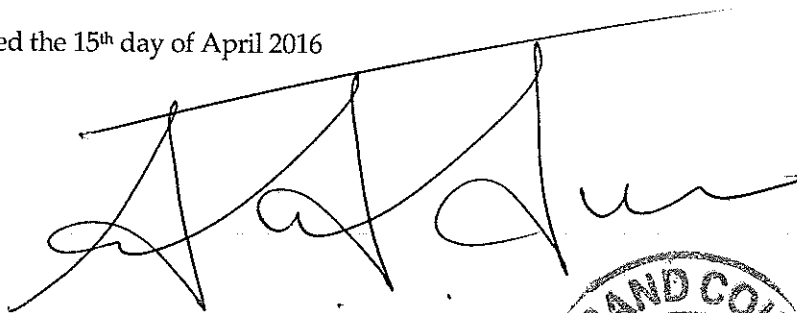
7. Rule 5 provides for court hearing fees to be calculated by reference to the number of days spent in court. I also agree with counsel that this methodology for determining liability clearly points to the conclusion that the fee is only payable in respect of actual hearings at which the parties (or a party) are present (either in person or by phone or via video link) and oral submissions are made. By rule 5(2), the liability arises only if the hearing lasts more than 20 days or there have been a series of separate hearings lasting more than 20 days in total. This methodology is not is not intended to measure the judge's reading time. Time spent by the judge before and after



an oral hearing is not taken into account for the purposes of calculating the number of days in respect of which court hearing fees are payable. If time spent out of court were to be taken into account, there would need to be some mechanism by which judges maintain daily timesheets for the purpose recording and certifying the number of hours spent on particular matters. This issue is not addressed by the Court Fees Rules which, in my view, confirms that court hearing fees are only intended to be payable in respect of oral hearings.

8. If the Grand Court Rules Committee had intended that fees be payable in respect of 'applications on the papers', it would have prescribed a separate fee and stated expressly the circumstances in which it is to be charged.
9. It follows that the fee of \$750 paid by the Official Liquidators on 14 March 2016 was charged unlawfully and must be repaid.

Dated the 15th day of April 2016



The Hon. Mr. Justice Andrew J. Jones QC
JUDGE OF THE GRAND COURT

