



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

CAUSE NO. FSD 295 OF 2023 (IKJ)

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF CHINA MEDONLINE INC.

IN COURT

Before: The Hon. Justice Kawaley

Appearances: Ms Nour Khaleq of Ogier on behalf of the Petitioner

Mr Spencer Vickers and Mr Jordan McErlean of Conyers on behalf of
the Company

Date of hearing: 27 September 2024

**Date of Ex Tempore
Judgment:** 27 September 2024

*Companies-winding-up-withdrawal of petition-jurisdiction-waiving failure to comply strictly with
advertising requirements-Companies Act (2023 Revision), section 95 (1) (d)-Companies Winding Up Rules
(2023 Consolidation) Order 3 rule 7-Grand Court Rules (2023 Revision) Order 1 rule 2 (4), Order 3.*

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EX TEMPORE JUDGMENT**Introduction**

1. The application before the Court today is by way of Summons dated 13 September 2024, seeking leave to withdraw the Petition. The Petition in this matter was presented by CTS Hermitage Healthcare Fund LP (the “Petitioner”) on the 29 September 2024. And it was then heard before me on 15 of December 2023, when the Company did not appear, but other Stakeholders did appear and opposed a Winding-up Order.
2. I granted an Adjournment Order until the first available date after 15 March 2024, because I was persuaded that the best interests of all stakeholders, both the petitioning creditor and the shareholders, lay in the pursuit of a sale of an underlying asset. A sale which it was felt, and I was persuaded, had a better prospect of success outside of a liquidation rather than within a liquidation.

The need for withdrawal

3. What I have been told today is that in fact that sale has now been consummated and the main obstacle in the path of completion is the pendency of this Petition.
4. The only procedural wrinkle in the application which Ms Khaleq referred to is the fact that the advertising requirements under the relevant Rules were not strictly complied with as regards the advertisements placed outside of the Cayman Islands, which had been published less than seven days before the hearing¹.

Abridgement of time

5. The jurisdiction that I was invited to exercise was the power conferred under the Grand Court Rules (the “GCR”) Order 3 to extend time, a power which has been conferred on this Court in the winding- up jurisdiction by the GCR².

¹ Companies Winding Up Rules (2023 Consolidation) Order 3 rule 6 provides: “*The advertisements shall be made to appear not less than 7 business days after service of the petition upon the company and not less than 7 business days before the hearing date.*” {Emphasis added}

² Order 1 rule 2 (4).

6. It was difficult to imagine any proper basis on which the Court could refuse to grant the abridgement of time which was sought.
7. In looking more broadly at procedural defects, it is important to remember that the power that the Court is being asked to exercise when hearing a petition is that conferred by section 95 of the Companies Act. And section 95(1) provides:

“Powers of the Court

95. (1) Upon hearing the winding up petition the Court may —

(a) dismiss the petition;

(b) adjourn the hearing conditionally or unconditionally;

(c) make a provisional order; or

(d) any other order that it thinks fit...” [Emphasis added]

Leave to withdraw the Petition

8. In fact, the jurisdiction to grant leave to withdraw the Petition, which is actually only explicitly dealt with under the Rules, derives from that express statutory provision (section 95 (1) (d)). A provision which confers upon the Court a broad jurisdiction to make any order that it sees fit on the hearing of a winding- up petition. And clearly, although the advertisements have referred only explicitly to the Summons, the advertisements were in substance giving notice of a hearing of the Petition at which leave to withdraw would be sought under CWR Order 3 rule 6.
9. And the reason for the advertisements was that CWR Order 3 rule 7 provides in paragraph 3:

“Leave for Petition to be Withdrawn (O. 3, r. 7)

(3) If a creditor's petition has been advertised, any application for leave to withdraw the petition must be made at the advertised hearing and in any such case the Court will consider making an order for substitution in accordance with Rule 10”

10. The Court clearly has jurisdiction to grant the Order sought and I do grant it.

CWR and irregularities

11. One reason why I felt it necessary to record reasons for doing so, is that, speaking extra-judicially last night at a RISA event³, I suggested that there was a defect with the CWR in that the ability to deal with irregularities was altogether lacking. Those observations were clearly “*per incuriam*”, because of course Order 2 of the GCR is incorporated into the CWR (by Order 1 rule 4 (1A)). And that rule provides that any procedural regularity should not invalidate any proceedings.
12. I think that a matter which is perhaps genuinely problematic under the Rules is the question of gaps in the rules (e.g. circumstances where it is impossible to comply with a rule expressed in mandatory terms). And that was an issue which I addressed in a judgment I delivered in *Herald Fund SPC, In Official liquidation*, FSD 27/2013, Judgment dated 4 June 2024 (unreported) where there was a problem of the Rules being silent as to what should happen when it was impossible to obtain the requisite consent of the Liquidation Committee for a particular sanction application⁴.
13. That type of issue, a “gap”, clearly does not arise in the present case and so this application is an entirely straightforward one.



THE HONOURABLE JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT

³ RISA Cayman, ‘*View From the Bench No 2*’, with Justice David Doyle, 26 September 2024, Hotel Indigo, Grand Cayman.

⁴ In that case the “gap” was filled by reference to section 109 of the Act. It was suggested (*obiter*, at paragraph 12) that the language of former rule 226 of the Companies Winding Act Rules 1949 (UK) was broader than GCR Order 2 and would permit appropriate departures from otherwise mandatory provisions of the CWR.

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