

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBE 16 of 2020

IN THE MATTER OF TRAVELWORLD
RESORTS PTE LIMITED a duly incorporated
company having its registered office at 60-62 Amy
Street, Toorak, Suva.

A N D

IN THE MATTER OF THE COMPANIES ACT

BETWEEN: **A K LAWYERS**

APPLICANT

A N D: **TRAVELWORLD RESORTS PTE LIMITED**

RESPONDENT

Appearances: Mr. A. K. Narayan (Jnr) for the Applicant
 Mr. Singh R. A. for the first Respondent
 Mr. Koya S. A. for the second Respondent
 Mr. Kant S. for Official Receiver

Date of Hearing: 17 March 2025

Date of Ruling: 10 September 2025

R U L I N G

(this is Ruling has been updated for some minor clerical errors pursuant to the SLIP RULE . Paragraphs 104 to 108 of the version which was handed down to the parties in Court this morning, now appear as paragraphs 107 to 111 below)

INTRODUCTION

1. Before me is a Summons which was filed by A. K Lawyers on 04 April 2024. It is supported by an Affidavit of Prashil Prabhash sworn on 29 October 2024.
2. The Summons seeks an Order of this Court to allow Western Builders Pte Limited (“WBPL”) to access and inspect the books and records of a certain commercially insolvent company which is presently in liquidation.

3. The company in question is Travelworld Resorts Pte Limited (“TRPL”), WBPL is one of the creditors of TRPL.
4. TRPL was ordered to be wound up by Mr. Justice A.G Stuart on 20 August 2020. Stuart J also appointed the Official Receiver as provisional liquidator.
5. AK Lawyers have filed the Summons for and on behalf of:
 - (i) WBPL – by virtue of the fact that WBPL is a creditor of TRPL.
 - (ii) a Committee of Inspection made up of creditors and contributories, and which is chaired by a Mr. Prashil Prabhash who is a director and shareholder of WBPL.
6. AK Lawyers are seeking orders against:
 - (i) the directors of TRPL.
 - (ii) a Mr. Pradeep Patel - a partner of BDO Chartered Accountants.
7. The respondents oppose the application. They have each filed an affidavit in opposition. I set these out below:

	Deponent	Date Sworn	Party
(i)	Pradeep Patel	13 December 2024	BDO (Chartered Accountants)
(ii)	Rakesh Gokal	17 December 2024	Contributories of TRPL

8. The parties have also filed the following submissions:

	Party	Date Filed
(i)	Howards Lawyers for Pradeep Patel (BDO)	17.03.25
(ii)	A.K Lawyers for WBPL (Applicant)	09.04.25
(iii)	Howards Lawyers for Pradeep Patel (BDO)	05.05.25
(iv)	Purshottam Lawyers for the Directors of TRPL (In Liquidation)	07.07.25
(v)	A.K Lawyers for WBPL (Applicant)	14.07.25

BOOKS & RECORDS SOUGHT

9. The books and records which WBPL seeks to access and inspect are listed in paragraphs 1 and 2 of the Summons.

10. Paragraph 1 (i) to (xv) seeks an Order that the directors of TRPL do make available for inspection within seven (7) days of the Order the following books and records of TRPL for the years 2013 to 2020:

general ledgers, trial balances, bank reconciliations, loan reconciliations, purchase ledger reconciliations, fixed assets schedules, cash books, report of all journal entries, bank deposit books and cheque book stubs, income tax returns, financial statements, all solvency statements and resolutions, corporate share registers, workpapers and information to BDO Accountants for income tax returns and a soft copy of the accounting software backup and company data file for all financials.

11. Paragraph 2 (i) to (vi) seeks an Order that Mr. Pradeep Patel, a partner of BDO Chartered Accountants, do make available for inspection within seven (7) days of the Order, the following books and records of TRPL for the years 2013 to 2020:

financial statements, income tax returns, books of accounts, information provided by TRPL to BDO, a soft copy of the accounting software backup and/or company data file for all financial information of TRPL - and a host of other documents lumped together in prayer [2](v) of the Summons (working papers, minutes of meetings, trial balances, reconciliation statements and e-mails between BDO and TRPL in relation to the affairs of TRPL.

BACKGROUND

12. Following the winding-up Order of Stuart J, the Official Receiver, being the provisional liquidator, immediately began to take steps to liquidate TRPL.
13. On 26 November 2021, an officer from the Official Receiver wrote to Mr. Pradeep Patel (of BDO) to request for some documents.
14. Patel responded a week later on 02 December 2021 and provided copies of the **“latest available statements”** and income tax returns for the year ending 31 December 2018.
15. On 15 December 2021, the Official Receiver convened a Creditors & Contributories Meeting.
16. At this meeting, it was noted that TRPL’s financial affairs were inconsistent. In addition, five names were nominated to constitute a Committee of Inspection (**“CoI”**) to delve into the inconsistencies.
17. What was also before the meeting was some information pertaining to a mortgagee sale which had happened two months earlier in October 2021. The property which was the subject of the sale was a five-star luxury resort hotel which belonged to TRPL.
18. Following the meeting of 15 December 2021, the Official Receiver then wrote a letter to all stakeholders. The letter updated them of all that transpired at the meeting. It also highlighted that there was no surplus realized from the sale of the luxury hotel for distribution between the unsecured creditors.

19. Patel responded to the Official Receiver on 19 December 2021. The next day, on 20 December 2021, the Official Receiver emailed Gokal to request various outstanding documents and information.
20. On 26 January 2022, at a meeting of the Col, the Col was “formalized” to assist the Official Receiver in the liquidation and the winding up of TRPL. It was at this meeting where Mr. Prabhsh was appointed chair of the Col.
21. Mr. Prashil Prabhsh is the Director of Finance and Chief Financial Officer of WBPL. The other *provisional appointees* to the Col are:
- (i) Shanel Goundar,
 - (ii) Ravindra Singh,
 - (iii) Jiten Narsey, and
 - (iv) Vikesh Gokal
22. I use the term *provisional appointees* because there is an issue in this case as to whether or not the Col is yet fully constituted.
23. On 25 February 2022, a second Col meeting was held.
24. A few days later, on 01 March 2022, the Col released an Interim Report to the Official Receiver. This Report detailed all that the Col had done from 31 January 2022 to 21 February 2022 in terms of its inquiries and investigation into TRPL’s affairs.
25. Notably, the Report concludes that there were inconsistencies in TRPL’s books and that information on the financial affairs of TRPL was incomplete.

WHY THE APPLICANTS ARE SEEKING TO ACCESS THE BOOKS & RECORDS?

26. The applicants are of the view that the affairs of TRPL are inconsistent.
27. The affidavit of Mr. Prashil Prabhsh deposes that, while certain information has been provided, there are certain irregularities in the books. Despite repeated requests, a vast majority of the information is still to be provided. This has been going on for almost five years. They need these documents and information to be disclosed in order to advance the liquidation and conclude it.
28. This view was confirmed at the meetings of the creditors and contributories.
29. Clearly, the creditors and contributories formed this view following a preliminary review of TPRL’s books and records provided to the Official Receiver by Mr. Pradeep Patel and the directors of TRPL.
30. The creditors and contributories saw the need for further scrutiny. It was against that background, that the decision was made at their meeting of 26 January 2022 to appoint a Col.

31. It is to be noted that the minutes of the meeting¹ record the Official Receiver as having said that he:

“...is still in the process of filing an application to court to formally appoint the above individuals”

32. It is common ground that the Official Receiver has, since the meeting, never applied to the Court to formally approve the nominees.
33. Clearly, the intention is that the CoI would assist in clarifying the inconsistencies in so far as that would assist in the furtherance of the process of liquidation.
34. It is to be noted that since 26 January 2022, the CoI has had countless meetings and engaged with third parties for and on behalf of the Official Receiver. It has written to, and received responses from, and replied to third parties.
35. All this while, the Official Receiver has remained provisional liquidator, and the creditors and contributories have yet to express a position as to whether or not they would want a liquidator appointed by the Court to take over the liquidation of the company.

THE MORTGAGEE SALE

36. The hotel which was the subject of the mortgagee sale mentioned above was Pullman Nadi Bay Resort (“**the Pullman**”).
37. The Fiji Development Bank (“**FDB**”) the Home Finance Company Limited (“**HFCL**”) were the only secured creditors which held a security interest over the Pullman.
38. The Pullman was sold for FJD\$56 million. However, the cumulative debt which TRPL owed to FDB and HFCL was FJD\$66 million.
39. As it happened, the HFCL debt was paid off first and was fully discharged.
40. The balance from the proceeds of sale was then applied towards the FDB loan. However, this was not enough to fully discharge the FDB loan. FDB was left with a deficit of \$13,139,905.99.

FDB IS PURSUING A JUDGEMENT IN A PENDING CIVIL CLAIM TO RECOVER THE BALANCE OUTSTANDING

41. Prabhash deposes in his affidavit that the FDB pursuing a judgement in a pending civil claim against the directors of TRPL and a related company, namely, McGregor Investments Limited – to recover the deficit of \$13,139,905.99.
42. At this point, I remind myself that the directors of TRPL are also the subject of this application.

¹ annexed and marked PP5 in the affidavit of Prashil Prabhash.

ISSUES

43. Two main issues arise from this application. The first is whether the Col has *locus standi* to apply to this Court.
44. This issue is raised as a preliminary point by the first respondent because of the fact that there has been no Court Order to formally appoint the Col in question. This has in turn raised the question as to whether a Court Order is required at all in the circumstances of this case.
45. The second issue is whether or not Mr. Pradeep Patel and BDO, who Mr. Koya describe as "third parties", can be compelled to make available for inspection whatever documents they have.
46. The question whether they are compellable is a question of law. If they are compellable, the question whether they should be compelled in the particular circumstances of this case - is a matter of discretion for the Court.
47. The argument is raised that, even if they are compellable, the Court should still exercise its discretion against compelling them for following reasons:
 - (i). the application is oppressive.
 - (ii). privilege
 - (iii). *lien*. Patel and BDO are owed fees by TRPL for professional services rendered. The fees are in excess of FJD\$18,000.
 - (iv). Patel/BDO be paid reasonable costs.

WHETHER THE COMMITTEE of INSPECTION HAS LOCUS?

48. Generally, the concept of *locus standi* is used to mean two things. Firstly, is whether a person has sufficient interest in a matter to institute an action. Secondly, is whether that person has capacity to bring an action.
49. All counsel in this case proceed on the common ground that a Col, once formally appointed by the Court under section 563 of the Companies Act, would thus qualify as having *locus standi*.
50. Their main point of contention however, is whether or not, in the particular circumstances of this case, it is at all necessary to apply to Court, on account of various factors.
51. The question I ask is, whether the Col, as a body, *albeit* not a corporate body, does have capacity to institute any form of legal action at all?
52. That depends on whether or not the Col can be recognized as a juridical entity which, in turn, depends on whether the Col has a right in perpetuity in its own name – which in turn, depends on (1) whether it can sue and be sued in its own name and (2) whether or not it can own property in its own name.

53. I then ask the following question – would an order of the Court under section 563 to formally appoint a Col, entitle the Col to sue and be sued in its own name and own property in its own name?
54. I am of the view that the answer to the second part of the question is, that a formal court appointment does not confer upon a Col juridical personality so as to entitle it to own property in its own name.
55. As to the first question, I also answer that in the negative, so that a court appointment does not necessarily entitle a Col to sue and be sued in its own name. I say this for the following reasons:
- (i) a Col is appointed solely to “act with the liquidator” as per section 550.
 - (ii) the role of the Col, as such, is merely to assist the liquidator in the liquidation process.
 - (iii) the fact that the role of the Col is merely to assist is underscored by the fact that the Companies Act makes provision at section 552 for the liquidator or the Official Receiver in some instances, to “assume” the role of the Col in a situation where there has been no Col appointed.
 - (iv) and – even where no liquidator has been appointed in place of the Official Receiver, and where no Col has been appointed, the liquidation may still proceed by an interplay between sections 538 (a), (d) and (e)² read together with section 552³ of the Act.
56. To sum it up, I am of the view that – even if the Col in this case, had been appointed by the Court, that appointment is only to equip it with the authority to “act with the liquidator”, in an *ad hoc* capacity, for the particular liquidation in question. Once that liquidation is completed, the Col simply dissipates. This point adds force to the argument that a Col simply lacks perpetuity in its own name.
57. While there is, no doubt, a legitimate public interest in the appointment of a Col and in the overall administration of justice in any given liquidation in progress, that interest is acknowledged and addressed in the various provisions of the Act which vest the right to institute and control legal proceedings in the liquidator, the Official Receiver, the creditors and the contributories.

² section 538 provides at subsections (a), (d) and (e) as follows:

(a) the Official Receiver must, by virtue of his or her office, become the provisional liquidator and must continue to act as such, until he or she, or another person becomes liquidator and is capable of acting as such;

(d) in a case where a liquidator is not appointed by the Court, the Official Receiver must be the liquidator of the Company;

(e) the Official Receiver must, by virtue of his or her office, be the liquidator during any vacancy;

³ section 552 makes provision for this sort of situation. In its first limb, the section provides:

552. Where, in the case of a winding up, there is no committee of inspection, the Court may, on the application of the liquidator, do any act or thing or give any direction or permission which is, by this Act, authorised or required to be done or given by the committee, provided that, where the Official Receiver is the liquidator, the Official Receiver may do any such act or thing and give any such direction or permission without application to the Court.

.....

58. For the sake of completeness, I acknowledge that members of a Col have been recognized to occupy a fiduciary position *vis a vis* the creditors and contributories (see **Re DH International Pty Ltd (in liquidation)(No.2)** [2017] NSWSC 871 at [37]; **Lavrentiads, Lavrentios v Dextra Parties Pte Ltd (in Liquidation) and another matter** [2023] SGHC 131)⁴.
59. This would appear to be the position in Fiji as well. I say this, in consideration of the fact that the process of appointing the Col is initiated at a meeting of the creditors and contributories before a formal application is made to Court to endorse the Col (as per section 550 (1))⁵. I say this also, considering the fact that the Col membership is comprised of creditors and contributories only (or their lawful attorneys) as per section 551⁶.
60. The question I then ask is whether that fiduciary position confers upon a Col standing to institute an action on behalf of the creditors and contributories.
61. The short-answer to this is that, it is every individual member of the Col who occupies a fiduciary position, not the Col as a body.
62. However, even if I am wrong in this, WBPL, as a creditor, clearly has *locus* under section 563 (1). The affidavit of Mr. Prashil Prabhaskh sworn for and on behalf of WBPL annexes the authorities from the remaining creditors who support the application on their behalf⁷. In the final, I am comfortable with treating this as an application by WBPL supported by other creditors.

⁴ [2023] SGHC 131 (accessed on 09 September 2025).

⁵ Section 550 of the Companies Act provides:

550.—(1)When a winding up order has been made by the Court, it must be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the Court for appointing a liquidator in place of the Official Receiver, to determine further whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2)The Court may make any appointment and order required to give effect to any such determination and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of these matters, the Court must decide the difference and make such order thereon as the Court may think fit.

⁶ Section 551 (1) provides:

551.—(1)A committee of inspection appointed in accordance with this Act must consist of creditors and contributories of the Company, or persons holding general powers of attorney from creditors or contributories, in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the Court.

⁷ the Affidavit of Mr. Prabhaskh says at paragraph 2.

I am duly authorized by WBPL and the creditors who form the majority of the Committee of Inspection in this liquidation to swear this affidavit.

WHETHER OR NOT MR. PRADEEP PATEL AND BDO CAN BE COMPELLED TO MAKE AVAILABLE FOR INSPECTION WHATEVER DOCUMENTS THEY HAVE

63. Section 563 (1) of the Act provides that the Court may, at any time after making a winding up order, make an order for the inspection of the books of the company by creditors and contributories, as the court thinks just⁸.
64. Section 555⁹ provides that the Court may, at any time after making a winding up order, require any of the following to pay, deliver, convey, surrender or transfer to the liquidator, with such time as the court directs, any money, property or books in the officer's possession to which the company is entitled:
- (a) a contributory on the list of contributories
 - (b) a trustee
 - (c) a Receiver or Manager
 - (d) a financial institution
 - (e) an agent or officer of the company
65. The application in this case is filed pursuant to section 563. I agree with Mr. Koya's submissions that section 563 does not make it clear as to who can file an application to inspect the books of a company in liquidation, or, for that matter, against whom an application may be made.
66. I do note though that both sections 563 and 555 appear in Part 38 Division 9 of the Act.
67. Having said that, I read section 563 together with section 555. In my view, BDO/Patel are clearly within the contemplation of these provisions as persons who have in their possession, books of TRCL, and from whom a creditor, contributory or liquidator may seek an order for inspection.
68. I say these for the following reasons.
69. Firstly, "books" is defined in very broad terms in section 2 of the Companies Act 2015 as follows:

"Books" includes— (a) a register; (b) **Financial Reports or Financial Records, however compiled, recorded or stored**; (c) a document; and (d) any other record of information

⁸ Section 563 provides:

563.—(1)The Court may, at any time after making a winding up order, make such order for inspection of the Books of the Company by creditors and contributories as the Court thinks just, and any Books of the Company may be inspected by creditors or contributories accordingly, but not further or otherwise.

(2)Nothing in this section must be taken as excluding or restricting any statutory rights of any department of the Government or of any officer of the Government or of any person acting under the authority of any such department or officer.

⁹ Section 555 provides:

The Court may, at any time after making a winding up order, require any contributory for the time being on the list of contributories and any trustee, Receiver or Manager, Financial institution, agent or Officer of the Company to pay, deliver, convey, surrender or transfer, or within such time as the Court directs, to the liquidator any money, Property or Books in the Officer's possession to which the Company is prima facie entitled.

70. From the above definition, I then turn to consider the definition of "*Financial Reports or Financial Records*", "*Financial Reports*" is not defined in section 2.
71. "*Financial Records*" however is defined in section 2 as:
- "Financial Records" includes— (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; (b) documents of prime entry; and (c) working papers and other documents needed to explain— (i) the methods by which Financial Statements are made up; and (ii) adjustments to be made in preparing Financial Statements;
72. "*Financial Statements*" is also defined in section 2, but which I will not delve into.
73. Section 388 sets up a framework which prescribes different levels of obligations for financial reporting based on the size of the company.
74. I then note that section 386 of the Act deals with a company's obligation to keep financial records.
75. Notably, section 386 (1)(a)(i) to (iii) imposes a duty on every company to keep written financial records which are correct and which explain all transactions including but not limited to those listed therein.
76. Section 386 (1)(b) then states that these records must be kept so as to:
-enable true and fair Financial Statements to be prepared and audited.
77. Section 386 (3) provides that the Financial Records:
-must be kept at the Registered Office of the Company or Managed Investment Scheme or, at such other place in Fiji as the Directors think fit, and shall, at all times, be open to inspection by the Directors
78. Secondly, having noted all the above, I then turn to consider that, as Chartered Accountants, Patel and BDO were indeed involved in the preparation of the Financial Reports and Statements for and on behalf of TRPL.
79. Thirdly, I take also into account that Patel/BDO have, previously, supplied some of these very documents to the Official Receiver on request.
80. Taking all the above into account, I conclude that Patel/BDO are compellable. Having found that, the question which then arises is whether or not this court should exercise its discretion and make an Order for inspection against them.

DISCRETION

81. As it is in every case where a discretion is invoked, there is a balancing exercise which this court must carry out between competing interests.

82. In Walker v Angus, Knowles, Kitson & Smith [2018] NZHC 2354, the New Zealand High Court identified the two competing interests as such at paragraph [45]:

... the Court is required to balance the need to enable a liquidator to obtain information to investigate the affairs of the company against the effect of an order on the party being compelled to produce the documents. It is for the liquidator to satisfy the Court that after balancing all relevant factors there is a proper case for requiring the production of documents.

83. Having established that foundation, the Court then proceeded to identify two distinct approaches to the exercise of the discretion.

84. The first approach is premised on the question: *whether the liquidator's application represents a genuine investigative step taken bona fide with a view to reaching an informed decision*,

85. The second entails an inquiry as to: *whether the order is necessary to put the liquidator in the same position of the directors, so far as knowledge of the company's affairs is concerned*¹⁰.

86. The court then went on to cite a case authority which acknowledges that both approaches work well together and actually overlap¹¹.

87. At paragraph [47], the Court elaborated on the balancing act required when exercising the discretion. It then emphasized the need to ensure that information sought be "*referable to a line of inquiry which will benefit the company in liquidation*" and yet "*should not lead to oppressive consequences*";

[47] There is a public interest for liquidators to obtain information expeditiously and with as little expense as possible. However, requirements for the production of information should not lead to oppressive consequences. The information being sought will need to be preferable to a line of inquiry which will benefit the company in liquidation.

¹⁰ The two approaches identified by the New Zealand High Court:

[45] As identified by Associate Judge Abbot in *Official Assignee v Grant Thornton*, two approaches to the exercise of the Court's discretion have been recognised. The first is for the Court to assess whether the liquidator's application represents a genuine investigative step taken bona fide with a view to reaching an informed decision. The second is to consider whether the order is necessary to put the liquidator in the same position of the directors, so far as knowledge of the company's affairs is concerned.

¹¹ at paragraph [46], the Court cited the following passage of Heath J in Carrow Holdings Ltd (in liquidation) v Sadig.
Heath J:

In reality, both approaches work together. It is equally important for the liquidator to reconstitute knowledge of directors of the company as it is for him or her to make informed decisions about what steps to take for the benefit of creditors. In that context, it must be remembered that a liquidator usually has limited funds with which to work and it is in the public interest that he or she ascertains relevant information with as little expense as possible and in the most expeditious manner.

When would it not be proper to require a person to produce information?

88. At paragraphs [47] to [48]¹², the New Zealand High Court identified certain factors which ought to be considered when assessing whether it would be improper to require a respondent to produce documents:
- (a) the reasonable expectation of privacy of financial information and the relationship of the person with the company,
 - (b) whether the liquidator is considering proceedings against the person from whom information is being sought.

Onus

89. The onus is thus, on the party seeking production of documents to convince the court that, after balancing all relevant factors, this would be a proper case for the Court to order the other party to produce the documents sought.
90. In **British & Commonwealth Holdings Plc (Joint Administrators) v Spicer and Oppenheim (a Firm)**[1993] AC 426, (1992) 4 All ER 876 (HL) at 439 which the New Zealand High Court cited at paragraph [48], the House of Lords said that:

A proper case is one where the administrator reasonably requires to see the documents to carry out his functions and the production does not impose an unnecessary and unreasonable burden on the person required to produce them in the light of the administrator's requirement.

91. When would production be unnecessary and unreasonable? The House of Lords in **Oppenheim** (supra) warned that while "inconvenience" and "vulnerability to potential claims are relevant in the balancing process, they are not decisive in determining whether an application is "unreasonable" :

An application is not necessarily unreasonable because it is inconvenient for the addressee of the application or causes him a lot of work or may make him vulnerable to future claims or is addressed to a person who is not an officer or employee of or a contractor with the company in administration, but all these will be relevant factors, together no doubt with many others.

¹² The NZ High Court said:

[48] When assessing the effect on a person required to produce records or documents relating to the business affairs of the company, other considerations are the reasonable expectation of privacy of financial information and the relationship of the person with the company. The more distant the person from the company, the more onerous the obligation will likely be viewed.

[49] While more relevant to applications to examine persons on oath or affirmation under s 266(2)(a), care is required to ensure the mandatory provision of documentary evidence, which in most circumstances would be unobjectionable, is not oppressive, such as where the liquidator is considering proceedings against the person from whom the information is sought.

[49] The power is to be exercised after careful balancing of the relevant factors. The Court is required to take into account the reasonable requirements of the liquidator to carry out his or her task, as well as the need to avoid the making of an order which will result in wholly unreasonable, unnecessary, or oppressive consequences for the person obliged to comply.

92. As stated above, for Mr. Patel/BDO, it is submitted that this application is not a proper case because:

- (i) the documents are "privilege".
- (ii) BDO has a *lien* over the documents for owed fees which is about \$18,000.
- (iii) BDO is waiting on the Official Receiver to confirm that they would be paid their costs for providing the documents.

Privilege

93. Mr. Narayan cites the English case of Parry-Jones v The Law Society and Others [1967] EWCA Civ J1115-2 which distinguished two types of privilege.

94. He submits that a distinction is made between privilege which is attached to judicial or quasi-judicial proceedings, and, on the other hand, privilege which arises out of a duty of confidence which certain professions have with their clients (e.g. solicitor-client, Accountants duty of confidence, doctor-patient, banker and customer etc). The latter privilege emanates from a contractual relationship and is always subject to the professional's duty to obey the law of the land.

95. I agree with that submission. Whatever privilege Patel/BDO may have is subject to the relevant provisions in the Companies Act in favor of disclosure.

Lien

96. Mr. Koya submits that TRPL is indebted to BDO/Patel in the amount of FJD \$18,000.00 for professional accounting services previously rendered. In light of this outstanding liability, BDO/Patel assert their entitlement to exercise a *lien* over all relevant documents in its possession.

97. Mr. Narayan argues that if BDO/Patel are really owed that debt, then they ought to just release the books in their possession for inspection in order to enable the liquidation to proceed further, and then file their proof of debt like every other unsecured creditor.

98. There is some case law around the common law world, based on their respective legislative provisions, that the production of documents even by a Court Order will not extinguish a *lien* held by the person who produced the document.

99. This position appears to apply also in Fiji by virtue of section 565 (4) of the Companies Act which provides as follows:

(4) The Court may require the person (known or suspected to have in [his or her] possession any Property of the Company or supposed to be indebted to the Company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, Affairs or Property of the Company¹³) to produce any Books in the Officer's custody or power relating to the Company, but, where the person claims **any lien on Books produced by the person, the production must be without prejudice to that lien**, and the Court must have jurisdiction, in the winding up, to determine all questions relating to that *lien*.

100. However, there is also some authority that, accountant surrenders his right to assert a *lien* over particular documents, at the point when he or she lodges a proof of debt, and where the documents were required by the liquidator after the accountant had lodged his or her proof of debt (see **In Re International Tyre Co Pty Ltd (in liq)** (1979 4 ACLR 553).

101. In **DTC (CNC) Ltd v Gary Sargeant & Co** [1996] 2 All ER 369, it was held, based on the relevant provisions then applicable in the English Companies Act¹⁴, that a *lien* cannot be asserted over accounting records. This is because of provisions in the English Act¹⁵ which require accounting records to be kept at the company's registered office, or at such other place as the directors think fit, and must at all times be open to inspection by the company's officers.

102. As noted above at paragraph 76, Fiji has section 386 (3) of the Companies Act 2015 which has the same record-keeping provision.

103. In addition to the above, it would appear to me to be common sense, given the very nature of the *lien* as a security "device", that any right of *lien* which Patel/BDO might claim, should be assertable only (i) in relation to documents over which they did perform work for TRCL; and (2) over which work they remain unpaid by TRCL.

Waiting on Official Receiver to Confirm their Costs

104. Mr. Koya argued that Patel/BDO are entitled to be paid costs for the time they will spend digging up the books and records from their archives, should the court order them to do so. He said his clients had communicated about this in the past to the Official Receiver who has not responded.

105. They had waited all these years for the Official Receiver to confirm an arrangement regarding their costs, before they oblige with the request.

106. Mr. Narayan submits that one cannot withhold information on the basis that one requires advance payment or any payment at all and that is not a valid ground to withhold disclosure.

¹³ as per section 565 (1).

¹⁴ section 221 of the English Companies Act 1985 (duplicated in section 386 of the Companies Act 2006).

¹⁵ section 388(1) of the 2006 Act (section 222(1) of the 1985 Act).

107. This issue was dealt with by the New Zealand High Court in Walker v Angus (supra) at paragraphs [116] to [124] where the Court observed the following:
- (a) the jurisdiction of the Court to order costs to cover expenses in compiling and producing information and documents is unclear.
 - (b) while there are provisions in the New Zealand Act which authorize the liquidator to provide reasonable remuneration cover the expenses of a limited category of persons who oblige to his requirements, it is questionable as to whether the court may order the same where compliance is in relation to a Court Order, especially, where the Order is directed at persons such as directors, shareholders and officers who have relevant documents and information in their possession.
108. After considering various provisions in the New Zealand Act, the Court declined to grant costs, seemingly, guided by the overall public interest that the liquidator be able to access all the documents and information to advance the liquidation – with as little expense as possible.
109. I am mindful that this application is not being pursued by a liquidator or by the Official Receiver in this case before me.
110. However, I am inclined to find that the same public policy should be applied here against awarding any costs to Patel/BDO given that the Official Receiver has not taken an active role in these proceedings, when it should have, and given Mr. Prabhaskar's role as chair of the Col (notwithstanding that it may lack standing to institute proceedings).
111. On the latter point, suffice it to say that, absent a formal court appointment, the Col, is just part of the wider body of creditors and contributories whose collective interest informs the wider public interest which underlies the liquidation process. While the Col may yet, not be in a position to fully assume the role or perform any function assigned to it under the Companies Act, its members simply continue as part of the wider body of creditors and contributories with a genuine interest at stake.

What if they do not have the documents?

112. Mr. Narayan submits that the seven-year rule relating to the keeping of companies records, ought to be borne in mind. He argues that there are specific provisions which require a company to maintain records up to three years after deregistration of the company. This is because, at times, liquidation may last a very long time, depending on the size of the company and the nature and complexity of its business.
113. In this case, liquidation is still on foot. Deregistration will only happen following the completion of liquidation.
114. Section 504(1)(a) and (2) of the Act provide:

- 504.—(1) When a Company has been wound up and is about to be Deregistered, the Books of the Company and of the liquidators may be disposed of as follows—
- (a) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs;
 - (b)

(c)

(2) Subject to the other provisions of this section, after 3 years from the Deregistration of the Company, no responsibility shall rest on the Company, the liquidators, or any person to whom the custody of the Books of the Company has been committed, by reason of any Books of the Company not being forthcoming to any person claiming to be interested therein

115. In **Walker v Angus** (supra), the Court dealt with a similar resistance to a production order in paragraphs [82] to [84]. In paragraph [84], the Court said that any order for production would be subject to the qualification of the respondent's inability to provide that information. If the documents are in the respondent's possession or control, then they would have to be made available.
116. I adopt the same reasoning, subject of course to the duty to keep records in section 504 (1)(a) and (2).

Gokal's position – they have supplied all the documents to the Official Receiver?

117. In the affidavit of Mr. Rakesh Gokal sworn on 08 January 2025, he deposes that a Mr. Bharat Gokal did supply all the documents requested by the Col on 10 August or June 2021 (unclear writing). He then annexes some delivery dockets (Annexure A). One of these dockets bears the signature of a Ms. Shabeena Sahib of the Official Receiver's Office acknowledging receipt. The other is acknowledged by a Ms. Naomi Baleilevuka.
118. Notably, Gokal's affidavit does not deny the existence of all the documents requested. All it says is that the documents have all been supplied as requested. This is established by the delivery dockets.
119. The affidavit in reply filed by the applicants highlights that:
- (a) the documents were incomplete and that there was very limited information;
 - (b) the solvency statements were illegible;
 - (c) the financial statements from the year 2020 were unaudited and unsigned;
 - (d) they (statements) were not a full statement and that there are notes missing;
 - (e) the 2019 financial statements were unaudited and unsigned with some missing information;
 - (f) the financial statements for 2017 and 2018 were unaudited.
120. These documents, along with others, are being sought by the applicants in this case.
121. Mr. Singh highlights that the Official Receiver has not filed an affidavit to confirm what documents they received through Ms. Sahib and Ms. Baleilevuka. He argues that, because the documents have been delivered to the Office of the Official Receiver, the request should be made to the Official Receiver to provide them. The directors of the company have been dealing and liaising with the Official Receiver since 2020 and have provided all the documents on request. The Official Receiver has not sworn an affidavit to identify if any document has been withheld, or that what was provided to the office was incomplete, or, that there is a discrepancy.

122. Annexure 7 of Mr. Prabhash's affidavit, is a transcript of a voice recording of a meeting held on 15 December, 2023. The transcript says:

Naomi mentions the need for appointments and suggest scheduling for the following week.

Plans are to be made to send a formal email request and potentially arrange a meeting with BDO.

Discussion about accessing documents stored in the top office and the need for an inventory list.

123. Mr. Singh argues that this is evidence that the documents were delivered.

CONCLUSIONS

124. I am of the view that the Col does not have legal capacity to institute these proceedings for reasons I have stated above. However, Mr. Prabhash and WBPL, do have *locus* by virtue of WBPL's position as a creditor and Mr. Prabhash's position as a director of WBPL.
125. I am of the view that Mr. Patel/BDO are compellable. They do not deny that, as chartered accountants, they have previously handled the books of TRPL, nor do they deny that these books are in their possession or control.
126. Whatever privilege that Patel/BDO may claim, is subject to their duty to comply with the requirements of the Companies Act 2015. The law, as I have said, requires them to disclose all the relevant books and records in their possession and control, in furtherance of the liquidation process.
127. Whether or not Patel/BDO wishes to file a proof of debt with regards to the fees of \$18,000-00 which is allegedly owed to them by TRPL on account of professional services previously rendered, is a decision for them to make. There is a tenable argument that they risk forfeiting their right of *lien* once they lodge a proof of debt.
128. There is also a tenable argument that they lose their right of *lien* in any event, on account of the effect of section 386 (3) of the Companies Act.
129. In any event, even if Patel/BDO does not file a proof of debt, and even if it were to thereby effectively retain its right of *lien*, it must still supply all the books of the company in its possession, as required by law, without prejudice to its right of *lien*.
130. To the best of my knowledge, this means that the documents over which Patel/BDO maintain a *lien* will have to be produced, if ordered so by this Court, and returned to Patel/BDO following production. This ensures that the *lien* is preserved without obstructing the liquidation process over which there is a legitimate public interest.
131. I am also of the view that Patel/BDO may only claim a right of *lien* over those particular books of TRPL which they produced, and for which they have not been paid. It does not extend to

books produced by Patel/BDO for TRPL for which Patel/BDO have been paid, nor does it extend to any other TRPL documents produced by any other party and which is merely held in Patel's/BDO's possession. The *lien* is not *carte blanche* authority to withhold all books. It is only enforceable in respect of unpaid fees tied to particular documents produced by Patel/BDO and which are still in their possession.

132. I acknowledge that Patel/BDO may have to endure some inconvenience in having to dig up their archives for the books. However, "*inconvenience in having to collate this information...does not of itself make the requirement unreasonable*" (**Walker v Angus** (supra at [75]); **Official Assignee v Grant Thornton** [2012] NZHC 2145 at [9]).
133. There is a public interest that a liquidator should be able to gather all the information he requires with no or the least expenses possible. While the application in this case is not being pursued by a liquidator or the Official Receiver, I am inclined to apply the same rationale here for the reasons already stated.
134. With regards to the directors of the company, I am of the view that an affidavit of the Official Receiver ought to be filed to set out exactly what documents they have received and what further documents they need before an Order can be made.

ORDERS

135. I grant the following orders:
- (i) Mr. Pradeep Patel, a partner of BDO Accountants, is to make available for inspection within sixty (60) days all the documents listed in the Summons and which are summarised in paragraph 11 above.
 - (ii) that the Official Receiver is to file an Affidavit in fourteen (14) days to set out in detail what documents he has received and what more he requires from the directors of TRPL.
 - (iii) this case is adjourned to 25 September for mention and for further directions.



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Anare Tuilevuka
JUDGE
10 September 2025