IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2012-404-000648
[2013] NZHC 3330

UNDER	Section 266 of the Companies Act 1993
IN THE MATTER	of the liquidation of Capital Hospitality Holdings Limited (in liquidation)
BETWEEN	DAMIEN GRANT and STEVEN KHOV as liquidators of CAPITAL HOSPITALITY HOLDINGS LIMITED (IN LIQUIDATION) Applicants
AND	PRAKASH PANDEY First Respondent
	C P HOTELS LIMITED Second Respondent
	C P INVESTMENTS LIMITED Third Respondent
	C P CARPARKS LIMITED Fourth Respondent
	intituling cont'd ...

Hearing:	23 October and 28 November 2013
Appearances:	B J Norling and A Ho for Applicants R B Hucker for Respondents
Judgment:	12 December 2013

JUDGMENT OF COURTNEY J

This judgment was delivered by Justice Courtney
on 12 December 2013 at 12.30 pm
pursuant to R 11.5 of the High Court Rules.

Registrar / Deputy Registrar

Date.....

C P PROPERTY INVESTMENTS LIMITED
Fifth Respondent

C P ASSET MANAGEMENT LIMITED
Sixth Respondent

J D RAI & SONS LIMITED
Seventh Respondent

ASIA PACIFIC HOTEL INVESTMENTS LIMITED
Eighth Respondent

RAISONS PACIFIC INVESTMENTS LIMITED
Ninth Respondent

BABOO MAHENDRA PRATAP RAI
Tenth Respondent

CAPITAL INVESTMENTS CORPORATION LIMITED
Eleventh Respondent

Introduction

[1] The applicants, Damien Grant and Steven Khov, are the liquidators of Capital Hospitality Holdings Limited (in liquidation) (CHH). They have been hampered in their investigations into CHH's affairs by a lack of records and other documents and are seeking orders under s 266 of the Companies Act 1993 to compel the production of records relating to CHH's affairs and the attendance of two parties with knowledge of its affairs.

[2] One of those whom the liquidators wish to interview is a former CHH director, Baboo Mahendra Pratap Rai, who is the tenth respondent. They also wish to obtain documents held by Mr Rai and by CHH's sole shareholder, Capital Investments Corporation Ltd, (CIC), which is the eleventh respondent and controlled by Mr Rai. They have served s 261 notices on Mr Rai, requiring him to attend for interview, which he has not done. They have served notices on Mr Rai and CIC, requiring them to produce documents relating to CHH's financial affairs. Apart from a small number of documents provided very recently, this request has not been complied with.

[3] The liquidators of CHH are also the liquidators of NZ Properties Holding Ltd (in liquidation). They believe there is a connection between the two companies, including the likelihood that the financial affairs of both companies were managed by the first respondent, Prakash Pandey, who controls the sixth respondent, CP Asset Management Ltd. Prakash Pandey's father, Charles Pandey, controlled NZ Properties (in liquidation) and other companies in the "CP" group, including the second to ninth respondents (other than CP Asset Management). One of the issues the liquidators want to find out about is substantial payments made to the company by the second to ninth respondents.

[4] In August 2012 the liquidators sent Prakash Pandey a notice requiring him to attend an interview with them on the ground that he is a person with knowledge of the affairs of CHH. He has not complied with this request. The liquidators also sent notices under s 261 to the second to ninth respondents requesting explanations as to the purpose of the payments, copies of documents relating to the transactions, copies of documents relating to CHH and any other accounting and financial information

held that relates to CHH. A small amount of documentation has been provided but there has not been substantial compliance with the notices.

[5] The liquidators' application for orders requiring Baboo Rai and Prakash Pandey to make themselves available for interview and for orders requiring Mr Rai and the second to ninth and eleventh respondents to produce books, records or documents relating to the business, accounts or affairs of CHH is opposed by all the respondents on a variety of grounds:

(a) Mr Rai, who is resident overseas, asserts that it would be an inappropriate exercise of the power to make an order that would have the effect of requiring him to return to New Zealand to be examined;

(b) CIC and Mr Rai maintain that documents held within the jurisdiction have been disclosed and, to the extent that documents are held outside the jurisdiction, the Court ought not exercise its discretion to make an order;

(c) Prakash Pandey says that there is no or insufficient evidence of a connection between him and CHH that would justify an order being made.

(d) The second to ninth respondents oppose the making of the orders sought against them on the grounds that the notices lack specificity and that the purpose of the application is to obtain a collateral advantage in litigation contemplated by creditors of CHH.

Objection to evidence

[6] At an earlier stage in this proceeding Mr Hucker sought to rely on affidavit evidence of Prakash Pandey filed in other proceedings (CIV 2012-404-4700). When the liquidators objected Mr Hucker filed an affidavit by Prakash Pandey annexing a copy of the affidavit he had filed in the other proceedings. The liquidators filed an affidavit in reply by Mr Grant sworn on 11 October 2013. Mr Hucker objects to this evidence.

[7] Two particular aspects of Mr Grant's affidavit are under challenge. The first is paragraph 2.7 at which Mr Grant replies to Prakash Pandey's assertion in his affidavit sworn in this proceeding on 23 August 2013 that he has no interest in CHH. Mr Grant annexes a copy of an affidavit sworn by Prakash Pandey in still other proceedings, CIV 2006-404-4739. CP Holdings Ltd and CHH were the defendants in that proceeding and in his affidavit Prakash Pandey explained the connection between them. Mr Hucker submitted that since this affidavit was filed in proceedings between different parties to those in the present proceeding it could not be relied on.[1]

[8] I agree that the rules do not allow the affidavit to be relied on.[2] Had the liquidators wished to impugn Prakash Pandey's earlier affidavit they could have requested that he be available for cross-examination so that the prior statement could be put to him. As things currently stand, however, I cannot read exhibit 01 to Mr Grant's affidavit.

[9] The second aspect of Mr Grant's affidavit that is challenged is the annexure of the transcript of an interview with a former CHH director, Ravin Ranchod on 30 August 2012. Mr Hucker objected to the transcript of this interview being admitted on the basis that it was hearsay and not signed by Mr Ranchod and therefore the Court could not be satisfied as to its reliability. Mr Hucker did not suggest any other reason that the statement might be unreliable.

[10] The transcript is a hearsay statement of the kind contemplated by ss 18 and 20 of the Evidence Act 2006. Under s 18 a hearsay statement is admissible if the circumstances relating to the statement provide reasonable assurance that the statement is reliable and either the maker of the statement is unavailable or the Judge considers that undue expense or delay would be caused if the maker of the statement were required as a witness. This provision is subject to s 20, which permits a hearsay statement in an affidavit made for the purpose of supporting or opposing an application in civil proceedings to be admitted if, and to the extent, that the applicable rules of court require or permit a statement of that kind to be made in the affidavit. Rule 9.76 of the High Court Rules sets out the requirements for affidavits

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1 Rule 7.31 High Court Rules.

2 *Westpac Banking Corp v Wayland* HC Auckland CP1151/91, 22 September 1992.

where evidence is given in affidavit form. It applies equally to interlocutory applications by virtue of r 7.29. Relevantly, an affidavit must be confined to matters that would be admissible if given in evidence at trial by the deponent. By this route, one returns to s 18 and for the following reasons I am satisfied that the statement is admissible under s 18.

[11] First, the circumstances in which the hearsay statement was made gives reasonable assurance as to its reliability. The transcript shows the interview as one conducted under oath pursuant to s 261. Mr Norling, Mr Jones and Mr Grant were present. Also present was Mr Rai's solicitor, Mr Parshotam, who attended under protest to jurisdiction. Mr Hucker could have required Mr Grant for cross-examination to test any aspect that concerned him but did not. Mr Parshotam, on whose instructions Mr Hucker appeared for Mr Rai in the jurisdiction hearing before Bell AJ and on the costs review before me, could have given evidence if there was any concern about the reliability of the transcript but did not.

[12] Secondly, I am satisfied that undue expense would have been incurred by requiring an affidavit from Mr Ranchod himself. The liquidators have been put to considerable unnecessary expense already through the respondents' refusal to co-operate and unmeritorious resistance to the s 266 application. Substantial time and expense has clearly gone into addressing the points raised in opposition. In my view it would have caused undue expense to have required the liquidators to provide a separate affidavit that simply repeated or confirmed the statements that Mr Ranchod had already made on oath.

[13] Mr Hucker also submitted that this evidence was not truly reply evidence. For reasons I come to later I consider that it is.

Is the application brought under s 266(1) or 266(2)?

[14] Mr Hucker submitted that the application was plainly based on non-compliance with the s 261 notices and was therefore brought under s 266(1) to enforce the s 261 notices. Mr Norling, however, submitted that the application had a broader base and was brought under s 266(2).

[15] The principal duty of a liquidator is to take possession of, protect, realise and distribute the assets or proceeds of the assets of the company to its creditors in accordance with the Act.[3] Self-evidently, in order to do that, the liquidator must investigate and confirm the extent and value of the company's assets. The liquidator is empowered by s 261 to obtain documents and information for this purpose, including through requiring those with knowledge of the company's affairs to make themselves available for interview.

[16] A liquidator can apply to the Court under s 266(1) to enforce notices issued under s 261. In addition, the Court may make orders under s 266(2) in respect of a person to whom s 261 applies which are different in scope and not dependent on s 261 notices.

[17] The nature and purpose of these powers were described by Megarry J in *Re Rolls Razor Ltd (No 2)* (in relation to powers under the equivalent UK provisions):[4]

> The process ... is needed because of the difficulty in which the liquidator ... is necessarily placed. He usually comes as a stranger to the affairs of the company which has sunk to its financial doom. In that process, it may well be that some of those concerned in the management of the company, and others as well, have been guilty of some misconduct or impropriety which is of relevance to the liquidation. Even those who are wholly innocent of any wrongdoing may have motives for concealing what was done. In any case, there are almost certain to be transactions which are difficult to discover or difficult to understand merely from the books and papers of the company. Accordingly, the legislature has provided this extraordinary process so as to enable the requisite information to be obtained.

[18] Section 261 relevantly provides that:

> **261 Power to obtain documents and information**
>
> (1) A liquidator may, from time to time, by notice in writing, require a director or shareholder of the company or any other person to deliver to the liquidator such books, records, or documents of the company in that person's possession or under that person's control as the liquidator requires.
>
> (2) A liquidator may,[from time to time], by notice in writing require—
>
> (a) A director or former director of the company; or
>
> (b) A shareholder of the company; or

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3 Companies Act 1993 s 253(a).

4 *Re Rolls Razor Ltd (No 2)* [1970] Ch 576 at 591 applied e.g in *Re International Direct Ltd (in liquidation)* HC Wellington CIV-2006-485-2020, 17 November 2006.

(c A person who was involved in the promotion or formation of the company; or

(d) A person who is, or has been, an employee of the company; or

(e) A receiver, accountant, auditor, bank officer, or other person having knowledge of the affairs of the company; or

(f) A person who is acting or who has at any time acted as a solicitor for the company—

to do any of the things specified in subsection (3) of this section.

(3) A person referred to in subsection (2) of this section may be required—

(a) To attend on the liquidator at such reasonable time or times and at such place as may be specified in the notice:

(b) To provide the liquidator with such information about the business, accounts, or affairs of the company as the liquidator requests:

(c) To be examined on oath or affirmation by the liquidator or by a barrister or solicitor acting on behalf of the liquidator on any matter relating to the business, accounts, or affairs of the company:

(d) Assist in the liquidation to the best of the person's ability.

[19] Section 266 relevantly provides that:

266 Powers of Court

(1) The Court may, on the application of the liquidator, order a person who has failed to comply with a requirement of the liquidator under section 261 of this Act to comply with that requirement.

(2) The Court may, on the application of the liquidator, order a person to whom section 261 of this Act applies to—

(a) Attend before the Court and be examined on oath or affirmation by the Court or the liquidator or a barrister or solicitor acting on behalf of the liquidator on any matter relating to the business, accounts, or affairs of the company:

(b) Produce any books, records, or documents relating to the business, accounts, or affairs of the company in that person's possession or under that person's control.

(3) Where a person is examined under subsection (2)(a) of this section,—

(a) The examination must be recorded in writing; and

(b The person examined must sign the record.

[20] The application states that it is made pursuant to ss 261-266 but does not specify the provision under which the orders are sought. In particular it does not specifically seek enforcement of the s 261 notices. It merely seeks orders requiring the second to eleventh respondents to produce books, records or documents and an order that the first and tenth respondents attend for interview, citing the giving of s 261 notices as grounds for the application.

[21] The order that is sought requiring the production of documents is couched in the terms provided for in s 266(2)(b) as being one to "produce any books, records, or documents relating to the business, accounts or affairs of the company in that person's possession or under that person's control." (emphasis added). In comparison, s 261(1) is directed towards requiring the recipient of the notice "to deliver the liquidator such books, records or documents of the company in that person's possession or under that person's control." (emphasis added). I cannot infer that the order being sought is one to enforce the s 261 notices served on the second to ninth respondents. It is, in its form and substance, an application under s 266(2).

[22] In comparison, the order requiring the first and tenth respondents to attend for interview is couched in the same language as s 261(3)(c), which empowers the liquidator to require a person "to be examined on oath or affirmation by the liquidator or by a barrister or solicitor acting on behalf of the liquidator ...". The order sought is that "the first and the directors of the eleventh respondents attend the offices of the applicants for an interview to be conducted under oath." Contrast this with the order that may be made under s 266(2), which is one requiring a person to "attend before the Court and be examined on oath or affirmation by the Court or the liquidator or a barrister or solicitor acting on behalf of the liquidator". Because the order sought does not seek to have the first and tenth respondents attend before Court I can only infer that the order being sought was one to enforce the s 261 notice and is therefore brought under s 266(1).

[23] I do not know whether these differences are what the liquidators intended or whether it is a product of imprecise drafting. I have, however, reached the conclusion that, insofar as the application seeks orders for the production of

documents, it is brought under s 266(2) and insofar as it relates to the attendance of the first and tenth respondents for interview, it is brought under s 266(1).

Baboo Rai and Capital Investments Corporation

Interviewing Mr Rai

[24] Companies Office records show Mr Rai as having been appointed a director of CHH in 2006 and still a director at the time of the company's liquidation. He is the sole director and shareholder of CIC, which is CHH's sole share-holder. His address is shown as 58 Stamford Park Road, Mount Roskill. There has been uncertainty as to whether Mr Rai was living in New Zealand last year when the s 261 notices were issued but evidence belatedly offered by the respondents satisfies me that Mr Rai has been out of New Zealand since 2009.

[25] Mr Hucker advanced two arguments. The first was that Mr Rai had not been served with the s 261 notice. Section 261 does not specify a mode of service of notices issued under it. All that is required is that the addressee is "required ... by notice" to either attend for interview or to produce documents. I am satisfied that the liquidators sent notices which were effective to advise Mr Rai of their requirements. They sent a letter dated 16 July 2012 marked "by post" and addressed to Mr Rai at 58 Stamford Park Road advising Mr Rai that they required him to provide information about CHH, including financial statements and documents and that he was required for interview at their offices. There was no response. They sent another letter dated 1 August 2012, marked "by post" and addressed to Mr Rai at 58 Stamford Park Road, Mount Roskill with the same request.

[26] The liquidators received a letter dated 8 August 2012 from Grahame Fong, corporate counsel of C P Group which referred to the correspondence with Mr Rai and to another letter sent to a Mr Sanjay Pratap. In relation to Mr Rai, Mr Fong advised that:

> Mr Rai was the director of Capital Investment Corporation Limited. However Mr Rai is located overseas and from our understanding, he is currently located in India. His contact details are as follows:
>
> 1064 Cucha Natwa

Chandi Chowk

Delhi 110006

India

[27] In early 2013 the liquidators wrote to Mr Rai again. In a letter dated 14 March 2013 marked "by post" and addressed to Mr Rai at 58 Stamford Park Road, Mount Roskill, the liquidators advised again of the requirement that Mr Rai attend their offices for an interview. There was no response.

[28] I enquired of Mr Hucker by what authority C P Group might have obtained and responded to the letters to Mr Rai. He suggested that the letters may have been delivered loose, i.e. without any envelope, to C P Group's offices in Dingwall Building, Queen Street, Auckland and that Mr Fong had done no more than give the typical, helpful response of person who inadvertently received mail addressed to a third party, advising the sender of the addressee's current details. That is completely implausible.

[29] The letters did not go to C P Group's offices in the first instance; they went to Mr Rai's address in Mount Roskill. They were marked "by post" and I infer that they were sent by post. Given the relationship between CP Group and Mr Rai (evidenced by Mr Rachod's statement) and the nature of the correspondence I do not accept that C P Group would have volunteered Mr Rai's address in India without authority to do so. I note that, subsequently, an order was made for substituted service of this application on Mr Rai by delivery to the same Dingwall Building address as houses CP Group's offices. In these circumstances, I am satisfied, on balance, that the s 261 notices were brought to Mr Rai's attention, which is sufficient.

[30] Mr Hucker's second argument was that, although there was jurisdiction to make an order under s 266 against a person resident outside the jurisdiction, it was inappropriate to exercise the power to do so because such orders would not be enforceable. He referred to the fact that the Court has no power to compel a person to return to New Zealand for interview (except as provided for in relation to Trans-Tasman matters) and the only basis on which a person can be forcibly required to return to New Zealand is under s 61 of the Extradition Act 1999, which has its own

processes and protections. In particular, there is no mechanism in the Companies Act for the issue of an arrest warrant. Mr Hucker submitted that the proper course for the liquidators was to seek the assistance of the relevant overseas court.

[31] This argument was a very slight variation on the argument Mr Hucker advanced in Mr Rai's unsuccessful challenge to jurisdiction determined by Bell AJ.[5] Before Bell AJ Mr Hucker had submitted that ss 261 and 266 do not apply to persons living outside the jurisdiction.[6] Relying on the decision in *Re Tucker*[7], Mr Hucker argued that there was no general power to require witnesses to attend a New Zealand court to be examined or to produce documents under a subpoena and that the proper course for the liquidators was to seek the assistance of the relevant overseas court. Bell AJ rejected this argument. Referring to *Theophile v Solicitor-General*[8] and *Re Seagull Manufacturing Co Ltd (In Liquidation)*[9] the Associate Judge concluded that as a director of CHH Mr Rai was subject to the duties imposed on directors under the Companies Act even while he was out of New Zealand. He therefore fell within the ambit of both s 261 and s 266 and this Court had jurisdiction to determine the liquidators' application. Bell AJ's decision has not been appealed.

[32] Given the determination of the jurisdictional issue the only question can be what factors the Court should consider in making an order under s 266 in respect of a person residing outside the jurisdiction. However, the only factors that Mr Hucker relied on were the same as those relied on in the jurisdictional argument. I do not accept that those factors are properly raised at this stage. Whilst I could foresee personal circumstances such as illness or mental incapacity resulting in an order being refused none were suggested in this case. Mr Hucker did not identify any personal factors unique to Mr Rai that might be relevant to the exercise of the discretion. I can see no reason that an order should be refused. To the contrary, Mr Rai's close connection with CHH makes the order entirely proper.

Production of documents by Mr Rai and CIC

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5 *Grant v Pandey* [2103] NZHC 2844.
6 At [10].
7 *Re Tucker* [1990] Ch 148 (CA).
8 *Theophile v Solicitor-General* [1950] AC 186)HL).
9 *Re Seagull Manufacturing Co Ltd (in Liquidator)* [1993] Ch 345 (CA).

[33] Mr Rai and CIC also resisted any order requiring them to produce documents relating to the affairs of CHH. Mr Hucker relied on essentially the same argument to assert that no order should be made requiring the production of documents held overseas. He submitted that in light of the "belated but actual" attempt at compliance with the request to produce documents it was now for the liquidator to identify any further documents they required and, if necessary, to seek the assistance of foreign courts to obtain them.

[34] I do not accept these submissions. The only evidence of the "belated but actual" compliance with the request to produce documents comes from an affidavit sworn by one of Mr Hucker's staff, Ms Campbell, who did no more than produce a letter from Mr Hucker dated 26 November 2013 stating that:

> We enclose documents we have been provided in respect of the above company.

[35] There was no explanation as to the source or nature of the documents. The affidavit was filed the day before the hearing so the liquidators had no opportunity to address the issue. I am advised by Mr Norling that the documents provided represent an inadequate effort at compliance with the liquidators' requests and it is to be expected that many more documents exist. In these circumstances it is clear that an order should be made.

[36] Insofar as documents may be held overseas, the arguments advanced as to why it would be inappropriate to make an order were the same as those I have already canvassed in relation to Mr Rai's position and are not at all convincing.

Application requiring Prakash Pandey to attend interview

[37] The liquidators gave Prakash Pandey notice under s 261(2)(e) requiring him to attend an interview with them as a person with knowledge of the companies' affairs. Since I am treating the current application as one made under s 266(1), the only issue can be whether Prakash Pandey is a person to whom s 261(2) applies. In order to obtain an order for s 266(1) based on failure to comply with a notice given under s 261(2)(e) the liquidators must show some connection between Prakash Pandey and the affairs of CHH.

[38] The application is opposed on the grounds that the evidence is insufficient to show the requisite connection between Prakash Pandey and CHH. But I am satisfied on the evidence that such a connection does exist. First, Prakash Pandey is the sole director and shareholder of CP Asset Management Ltd[10] which, according to Mr Ranchod undertook the day-to-day and financial management of CHH. Mr Ranchod explained that CHH had no employees of its own and that it was Prakash Pandey who was the person responsible for its management. Mr Ranchod said further that CHH did not have board meetings as such but that he did have meetings with Prakash Pandey, most of which concerned requests for the shareholders of CHH to put further funds into the company. At these meetings, Prakash Pandey provided Mr Ranchod with information and documents. However, when Mr Ranchod sold his shareholding he gave all the documentation back to the C P Group.

[39] Secondly, Prakash Pandey completed a proof of debt form submitted to the liquidators on behalf of CP Asset Management. The schedule attached to the form showed $78,996.75 that CP Asset Management had paid on behalf of CHH.

[40] Thirdly, in an affidavit that Prakash Pandey swore on 27 September 2013 in opposition to this application he stated that he is the chief financial officer and in-house accountant for the second to ninth respondents. That being so, I am satisfied that he will have knowledge about the substantial payments made by the second to ninth respondents to CHH.

[41] In these circumstances I am satisfied that Prakash Pandey is a person with knowledge of the affairs of CHH for the purposes of s 261(2)(e). I do not give any weight to the complaint that the s 261 notice sent to Prakash Pandey was too broad. I accept Mr Norling's point that Mr Pandey is being required for interview about matters relating to CHH of which he has knowledge. That is sufficient for Mr Pandey to know the parameters of the interview.

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[10] Jones affidavit 13 May 2013 exhibited relevant Companies Office records.

Production of documents held by second to ninth respondents

Sufficient evidence to support the application?

[42] I have found that the application for production of documents by the second to ninth respondents is brought under s 266(2). Mr Hucker submitted that the requisite evidential foundation was absent because the liquidators had relied only on the s 261 notices they had sent. He relied on the approach taken in *Official Assignee v Grant Thornton*[11] in which Abbott AJ considered the power under s 266(2) to order the production of documents other than those belonging to the company in liquidation. In that case, the Official Assignee filed evidence outlining the nature of the investigation being undertaken. Mr Hucker submitted that an application under s 266(2) should be supported by evidence of that kind. Instead, the application relied virtually entirely on the s 261 notices themselves.

[43] It is quite true that the evidence the liquidators have provided in this case is directed towards the s 261 notices. A more focused approach would undoubtedly have resulted in a more extensive explanation of the investigation. However, whether the evidence is sufficient is a question of fact in each case. In this case, there is sufficient evidence for me to be satisfied that there is a connection between CHH and the second to ninth respondents arising from the involvement of Charles Pandey and his son Prakash Pandey that justifies an order being made.

[44] The starting point is the fact that all the notices make it very clear that the liquidators' interest lies in the payments made by the respondents to CHH during the two years prior to its liquidation. It is implicit in the enquiry that the liquidators wanted to know what the respondents got in return for their payments. It is of also some significance that the initial response from the respondents impliedly confirmed a connection between CHH and the respondents; Mr Jones' affidavit sworn 13 May 2012 in support of the application annexes a letter from CP Holdings Ltd dated 8 August 2012, in which Mr Fong, the group's corporate counsel, confirms that the documents being sought will be provided and that "[w]e will further provide you with any other information relating to transactions the companies may have been involved with [CHH] that is available to us at the best of our knowledge."

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[11] *Official Assignee v Grant Thornton* [2012] NZHC 2145.

[45] However, Prakash Pandey's affidavit of 23 August 2013 sought to distance the group from CHH, not through correcting the impression given by Mr Fong, but by dealing with a question that had not in fact been raised. Prakash Pandey went to some trouble to show that neither he nor his parents had any interest in CHH. But he failed to address the issue that was clearly raised in the notices and confirmed by Mr Fong's letter, namely that there had been significant dealings between CHH and the second to ninth respondents.

[46] In these circumstances there can be no objection to the transcript of Mr Ranchod's interview being adduced as evidence in reply, even though it could (and ideally would) have been adduced at the outset. Mr Ranchod's interview makes it absolutely clear that there was a very significant connection between CHH and the second to ninth respondents. CHH bought motels from the CP Group and eventually sold them back in about 2009 when the losses became too much.

Are the categories of documents sought too broad?

[47] The documents that are sought are "any books, records or documents relating to the business, accounts or affairs of Capital Hospitality" in possession or control or under control of the second to ninth respondents. Mr Hucker submitted that the category of documents was not sufficiently particular. I do not agree. It is evident that there have been transactions between the second to ninth respondents and CHH. It also seems, on Mr Ranchod's evidence, that at least one of the second to ninth respondents (C P Asset Management Ltd) took possession of a substantial number of CHH documents from Mr Ranchod. Due to the lack of cooperation from Mr Rai and the lack of documents, it is not feasible to expect a greater level of particularisation from the liquidators. The second to ninth respondents themselves will know the nature and extent of the documents they hold that relate to CHH. If, in truth, the documents they hold are so extensive that an order requiring them to produce all of the documents is oppressive then they could apply for a variation of the order, with evidence to support that assertion. On the evidence currently available, however, I do not think that there will be any undue prejudice to the second to ninth respondents in making the order sought.

Are the liquidators seeking a collateral advantage?

[48] The proceedings brought in CIV-2006-404-4739 were proceedings brought by the lessee of a motel initially owned by CHH and subsequently by NZ Property (formerly known as C P Holdings Ltd). Riverside obtained a substantial award of damages against NZ Properties. Riverside, through its directors Mr and Mrs Lawrence, have sought to secure payment of the damages award, including payment by Prakash Pandey and Charles Pandey personally.

[49] Mr Hucker submitted that, in making the application for production of documents the liquidators are also seeking to pressure Prakash Pandey and Charles Pandey into making a settlement offer or alternatively to support the claim by Riverside. Prakash Pandey makes these assertions in his affidavit in reply 27 September 2013. Mr Grant responded to it by denying ever having made claims to the media or to creditors that he intended to take proceedings personally against Prakash Pandey and that it would be premature to consider doing so until the books and records of CHH have been made available to the liquidators.

[50] There is no basis on which I could properly conclude that the liquidators are motivated by anything other than seeking sufficient information to make sense of CHH's affairs.

Result

[51] I make orders under s 266(1) that:

(a) Prakash Pandey attend at the offices of the liquidators on a date to be advised by the liquidators for an interview to be conducted under oath;

(b) Baboo Rai attend at the offices of the liquidators on a date to be advised by the liquidators for an interview to be conducted under oath.

[52] I make orders under s 266(2) that:

(a) Within four weeks Baboo Rai produces to the liquidators any books, records or documents relating to the business, accounts or affairs of CHH in his possession or under his control;

(b) Within four weeks the second to ninth respondents produce to the liquidators any books, records or documents relating to the business, accounts or affairs of CHH in their possession or under their control;

(c) Within four weeks the eleventh respondent produces to the liquidators any books, records or documents relating to the business, accounts or affairs of CHH in its possession or under its control.

[53] There are to be costs against the respondents. Counsel can address that issue by memoranda filed on behalf of the liquidators by 20 January 2014 and on behalf of the respondents by 27 January 2014. The liquidators may reply by 3 February 2014.

P Courtney J