



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

**CAUSE NO FSD 108 of 2022 (IKJ)**

**IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)**

**AND IN THE MATTER OF GLOBAL CORD BLOOD CORPORATION (IN PROVISIONAL  
LIQUIDATION)**

**IN CHAMBERS**

**Before:** The Hon. Justice Kawaley

**Heard:** On the papers

**Ruling delivered:** 11 October 2023

**CASE MANAGEMENT RULING**

**Introduction and Summary**

1. The Petition in this case presented on or about 3 May 2022 seeks a just and equitable winding-up of the Company against a background of the Petitioner attempting to remove the Company's management. On 22 September 2022, I appointed Margot MacInnis and John Royle of Grant Thornton Specialist Services (Cayman) Limited as Joint Provisional Liquidators of the Company ("JPLs").

2. Walkers, the attorneys for three former directors, requested to inspect the Court file by emails dated 5 and 6 October 2023. By email sent on Saturday 7 October 2023 at 4:44a.m., the Registrar invited counsel for the Petitioner and the JPLs to communicate any objections. The Petitioner's initial objections were received on 9 October 2023 and the Registrar based on my initial views granted the requested access. When Forbes Hare renewed their objection on 10 October 2023, the Registrar reversed her initial decision and the parties were notified that I would provide a formal ruling on the matter.
3. Forbes Hare, attorneys for the Petitioners, dispute the former directors' entitlement to inspect the file at the present time on the grounds that the Company is not yet in liquidation and the right to inspect only temporally applies once a winding-up order has been made. The JPLs initially took no position. The FSD Registrar referred the dispute to me for informal determination.
4. Of the Court's own motion, I decide on the papers that the former directors are entitled to inspect the file. The reasons for this decision are set out below.

#### **The Companies Winding Up Rules (2023 Revision) ("CWR")**

5. It is common ground that the relevant rule is the following:

***“Rights of access to the Court File (O.26, r.4)***

*4. (1) The following persons shall have the right to inspect the Court file in respect of a liquidation proceeding and take copies of filed documents —*

*(a) the liquidator;*

*(b) any former liquidator or controller of the company;*

*(c) any person who was a director or professional service provider of the company immediately before the commencement of the liquidation;*

*(d) the Authority, in the case of a company which carried on a regulated business; and*

*(e) any person stating themselves in writing to be a creditor or contributory of the company.*

*(2) The right of inspection conferred upon a person under this Rule may be exercised on that person's behalf by an attorney or other person properly authorised to act for that person.*

*(3) Any other person may inspect the Court file by special leave of the Court.*

*(4) The right of inspection conferred by this Rule is not exercisable in respect of any documents (except the petition and Court orders) or parts of any documents which the Court has directed to be sealed pursuant to Order 23, rule 6.*

*(5) If, in the case of a person applying to inspect the Court file, the Registrar is not satisfied as to the propriety of the application, the Registrar may refuse to allow it, in which case such person may then apply forthwith and ex parte to a Judge who may refuse the inspection, allow it or allow it on such terms as the Judge thinks fit.* [Emphasis added]

### **Merits of inspection request**

6. In my judgment where a dispute about access to the file arises, the assigned Judge may properly adjudicate the dispute of the Court's own motion under the inherent jurisdiction without requiring the applicant to make a formal application under CWR Order 26 rule 4(5). It will be a question of judgment in every case whether the access dispute is sufficiently substantial to require a formal hearing with fulsome submissions. In the present case it is obvious that it would be wasteful in terms of time and costs to launch upon a more fulsome inquiry. The objection raised by the Petitioner's counsel, and not apparently supported by the JPLs, is akin to footballer making an instinctive appeal for a decision in his or her favour when it is objectively obvious to reasonable bystanders that the decision ought to go the other way.
7. The inspection right invoked may be exercised in relation to a "liquidation proceeding". The Petitioner's counsel submit:

“Our client’s position is that the former directors do not, at this time, fall within the scope of CWR Order 26, rule 4(1) (c) because the Company is not in liquidation. CWR Order 26, rule 4(1) (c) imposes a temporal limitation on the right of access and applies to those persons who were directors **immediately prior to the commencement of the liquidation** (not to those directors immediately prior to the commencement of the liquidation proceeding). Under Cayman Islands law, the commencement of the liquidation/the winding up is a distinct concept (see section 100 of the Companies Act (2023 Revision)) and in this instance would be deemed to be the date of the presentation of the petition if the Company were ever made the subject of a winding up order.

*In summary, our client’s objection is based on the fact that no liquidation (as distinct from liquidation proceeding) has commenced. If it had been intended to extend access to those persons who were directors immediately prior to the commencement of the winding up proceedings, then it would be expected that the CWR would have been drafted to address this point e.g., those persons who were directors immediately prior to the commencement of the liquidation proceeding. Order 26, rule 4(1) (c) is not drafted in this way. Instead, it is limited in scope and grants access to former directors only where a liquidation has commenced.”*

8. At first blush, this seems like an improbable construction to place on this file inspection rule. Admittedly the Petitioner’s counsel did cleverly seek to draw support from the statutory definition (under the Companies Act (2023 Revision), section 100) of the date when “*the winding up of the company is deemed to...commence...*” This is a false analogy, however, because:
  - (a) CWR Order 26 rule 4 (1) (c) does not use the same term used in section 100 of the Act at all. Instead it uses a different term, “commencement of the liquidation”;
  - (b) the governing opening words of rule 26(1) make it clear that the right of inspection conferred by the rule is conferred in relation to a “*liquidation proceeding*”;
  - (c) “*liquidation proceeding*” is the term which describes the scope of the inspection right itself. The term in rule 4 (1) (c) is immaterial in this respect.
9. The relevant question is what does the term “*liquidation proceeding*” mean? In the absence of a statutory definition within the relevant rule, the words ought properly to be construed according

to their natural and ordinary meaning taking into account the wider context of the CWR and the purpose of Order 26 rule 4. In my judgment the following conclusions may confidently be reached:

- (a) the natural and ordinary meaning of “*liquidation proceeding*” suggests a proceeding at any stage relating to the liquidation of a company;
- (b) CWR Order 24 rule 4 states: “(2) *The Registrar shall not permit the creation of more than one Court file (or the allocation of more than one cause number) in respect of a liquidation proceeding or company in liquidation*”. It would be inconsistent with this approach for inspection rights only to be exercisable if and after a winding-up order is actually made;
- (c) CWR Order 24 rule 5 provides: “*Every order made in a liquidation proceeding, whether made in open court or in chambers, shall be placed on the Register of Judgments maintained by the Registrar under GCR Order 63, rule 7 and shall be open to public inspection upon payment of the prescribed fee.*” There is no basis for inferring that this inspection right only arises in relation to orders made after the commencement a winding-up;
- (d) CWR Order 24 rule 7 is in Part II of the CWR (“***COSTS IN LIQUIDATION PROCEEDINGS*liquidation proceedings” as including “*any application to Court made in a proceeding commenced under Part V of the Law*”. It is well recognised that the CWR costs regime applies to the pre-winding-up stage of a liquidation proceeding. It would be inconsistent with the costs regime for inspection rights not to apply to the petition phase of liquidation or winding-up proceedings;**
- (e) the general character of winding-up proceedings as collective or representative proceedings suggests that the purpose of conferring positive inspection rights on parties interested in the proceedings (whether as contributories, creditor, former directors or otherwise) is to facilitate the exercise of interested parties’ fair hearing rights. It would be inconsistent with such fundamental rights to limit inspection rights to the winding-up phase of a liquidation proceeding alone, and to exclude their operation when the Court is at the stage of deciding how the petition should be adjudicated;

(f) inspection rights are not absolute in any event. CWR Order 26 rule 4 further provides:

*“(4) The right of inspection conferred by this Rule is not exercisable in respect of any documents (except the petition and Court orders) or parts of any documents which the Court has directed to be sealed pursuant to Order 23, rule 6.”*

### Conclusion

10. It is not disputed that the former directors fall within the category of persons eligible to inspect the file under Order 26 rule 4(c). I firmly reject the assertion that the inspection rights conferred by CWR Order 26 rule 4 only operate after a winding-up order has been made.
11. The former directors represented by Walkers are accordingly entitled to inspect the file.



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**THE HONOURABLE MR JUSTICE IAN RC KAWALEY**  
**JUDGE OF THE GRAND COURT**