

EXAMINER'S ANALYSIS OF QUESTION NO. 10

Under MCL 450.1487(2), "[a]ny shareholder of record, in person or by attorney or other agent, shall have the *right*" to inspect "for any proper purpose the corporation's stock ledger, a list of its shareholders, and its other books and records."

Under the statute, a shareholder is required to give the corporation a written demand, "describing with reasonable particularity" the shareholder's purpose, the records sought, and that "the records sought are directly connected with the purpose." A "proper purpose" under the statute is defined as "a purpose reasonably related to such person's interest as a shareholder."

The party bearing the burden of proof changes depending upon the type of documents sought by the shareholder. Assuming that the written demand requirements have otherwise been met:

- If the shareholder seeks to inspect the stock ledger or list of shareholders, the burden of proof is on the *corporation* to show that the demand was made for an improper purpose or that the records sought are not directly connected with the shareholder's stated purpose.
- If the shareholder seeks records *other than* the stock ledger or list of shareholders, the burden is on *the shareholder* to establish that the inspection is for a proper purpose and that the documents are directly connected with the stated purpose.

The court has the discretion to permit the shareholder to inspect corporate books and records "on conditions and with limitations as the court may prescribe and may award other or further relief as the court may consider just and proper." MCL 450.1487(3).

Al Albert

Al has demanded a list of MMCC's suppliers and prices. Because the information sought is neither a stock ledger nor a list of shareholders, the burden is on Al to establish that the inspection is for a proper purpose and that the documents are directly connected with the stated purpose. Here, Al's claim will likely fail. A proper purpose for seeking corporate records is one that is in good faith, seeks information bearing upon protection of shareholder interests, and is not contrary to the corporation's

interests. The Legislature did not intend to erect a formidable obstacle for shareholders. *North Oakland Co Bd of Realtors v Realcomp, Inc*, 226 Mich App 54, 58-59 (1997), citing *Slay v Polonia Publishing Co*, 249 Mich 609, 613 (1930). The facts strongly suggest that Al's request did not have a proper purpose. For one, it seems it was more an attempt to find out what competitive prices were in the cookie industry that he was just entering, and releasing such information to a prospective competitor was not in MMCC's interests. Thus, Al will likely not be entitled to inspect the corporate documents.

Bob Bennett

Because Bob seeks a list of all MMCC shareholders, the burden would be on MMCC to show that Bob's demand was made for an *improper purpose* or that the records sought are not directly connected with Bob's stated purpose.

Here, it is irrelevant that Bob's attorney, rather than Bob himself made the demand. MCL 450.1487(2) specifically contemplates that a demand is permissible through "an attorney or other agent" so long as the demand is "accompanied by a power of attorney or other writing which authorizes the attorney or other agent to act on behalf of the shareholder." Here, the facts specifically indicate that the demand was accompanied by a power of attorney. Therefore, the demand cannot be invalidated on the basis that it was presented by an attorney.

The fact that Bob seeks a list of shareholders in order to enter voting agreements will in all likelihood be deemed a "proper purpose." Voting agreements are permitted and "specifically enforceable" according to Michigan law (MCL 450.1461), so the fact that MMCC wishes to discourage them is irrelevant. Moreover, the record sought — a list of the shareholders — is directly connected with Bob's stated purpose. Therefore, Bob will be entitled to inspect the corporate documents.