

### EXAMINERS' ANALYSIS OF QUESTION NO. 3

#### General Statutory requirements:

MCL 450.1487(2) provides that "[a]ny shareholder of record, in person or by attorney or other agent, shall have the right during the usual hours of business to inspect for any proper purpose the corporation's stock ledger, a list of its shareholders, and its other books and records," provided that "the shareholder gives the corporation written demand describing with reasonable particularity his or her purpose and the records he or she desires to inspect, and the records sought are directly connected with the purpose." (Emphasis added.)

A "proper purpose," for the purposes of the statute, is "a purpose reasonably related to such person's interest as a shareholder." The demand is required to be delivered to the corporation at its registered office in Michigan or at its principal place of business. Where a shareholder exercises his or her rights via an attorney or other agent, "the demand shall be accompanied by a power of attorney or other writing which authorizes the attorney or other agent to act on behalf of the shareholder." MCL 450.1487(2). (Emphasis added.)

If the corporation does not permit an inspection within 5 business days after a proper demand has been received, or if the corporation imposes unreasonable conditions upon the inspection, the shareholder may apply to the county circuit court in which the principal place of business or registered office of the corporation is located to seek a court order to compel the inspection. MCL 450.1487(3).

The burden of proof depends upon the type of document sought. If the shareholder seeks to inspect the stock ledger or list of shareholders and has established compliance with the statutory requirements, 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. MCL 450.1487(3).

If the shareholder seeks records other than the stock ledger or list of shareholders, he or she is also required to establish compliance with the statutory requirements. The burden then lies with the shareholder to establish that the inspection is for a proper purpose and that the documents are directly connected with the proper purpose. MCL 450.1487(3).

"The right to inspect records" includes the right to copy records and, if reasonable, the right to require the corporation to supply copies. However, the corporation "may require the shareholder to pay a reasonable charge, covering the costs of labor and material, for copies of the documents provided to the shareholder." MCL 450.1487(6).

**Vicky's claim:**

It is debatable whether Vicky will prevail in her attempt to compel MMC to provide the records sought because she may not have complied with the statutory requirements. Vicky's demand precisely described the record she desired to inspect (MMC's stock ledger) and the purpose for the demand (to solicit other shareholders in order to buy additional shares of MMC stock). The stock ledger is likely to be deemed to be directly connected with the stated purpose. Vicky's purpose is likely to be deemed a proper purpose, as it is reasonably related to her interest as a shareholder. See *North Oakland County Bd of Realtors v Realcomp, Inc*, 226 Mich App 54, 59 (1997) (a proper purpose "under § 487 is one that is in good faith, seeks information bearing upon protection of the shareholder's interest and that of other shareholders in the corporation, and is not contrary to the corporation's interests.")

The more debatable point is whether Vicky's designation of Corts as her agent satisfied Michigan law. Vicky's demand letter indicated that her agent, Carl Corts, was to inspect MMC's stock ledger. In other words, both the demand and the appointment were in the same document. The statute provides that "[i]n every instance where an attorney or other agent shall be the person who seeks to inspect, the demand shall be accompanied by a power of attorney or other writing which authorizes the attorney or other agent to act on behalf of the shareholder." It can be argued that because Vicky failed to submit separate documents—a demand "accompanied by" a document authorizing the agent—she cannot establish that she complied with the statute regarding the form and manner of making a demand for the inspection of the documents and therefore the corporation's obligation to show the demand was made for an improper purpose or that the records sought are not directly connected with the shareholder's stated purpose does not arise.

However, an applicant can also reasonably argue that Vicky complied with the statute because she made a demand and authorized in writing (and at the same time) Corts to be her agent. Thus, the demand was "accompanied by," though not separate from, the written authorization for Corts to act for Vicky. Under this understanding of "accompanied by," Vicky did satisfy the statute and the burden was on MMC to show the demand

was made for an improper purpose or that the records sought are not directly connected with the shareholder's stated purpose.

The important aspect of this part of the question is for the applicant to recognize that Michigan law requires a demand and a written power of attorney or other authorization for Courts to act for Vicky, and that the answer to the question discusses the burden of proof issue.

**Paul's claim:**

Whether Paul is likely to prevail is dependent upon whether the \$150 "labor and material" charge is determined to be reasonable.

The statute provides that a shareholder may apply to the circuit court of the county in which the principal place of business or registered office of the corporation is located for an order to compel the inspection if, relevant to this question, the corporation "imposes unreasonable conditions upon the inspection."

Here, Paul's demand wanted MMC to provide copies of particular financial records. Paul's "right to inspect records" includes, if reasonable, the right to require the corporation to supply copies. MMC takes no issue with the substance or purpose of Paul's demand, nor does it claim that it is unreasonable to require MMC to supply copies of the material sought. MMC simply required Paul to pay a \$150 "labor and material" charge before the materials were provided. Section 1487(6) provides that MMC "may require the shareholder to pay a reasonable charge, covering the costs of labor and material, for copies of the documents provided to the shareholder."

If the \$150 fee is determined to be a reasonable charge that covers the cost of labor and material, MMC will prevail, and Paul will not be able to obtain the financial records until the fee has been paid.