

EXAMINERS' ANALYSIS OF QUESTION NO. 9

1. Pursuant to 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 . . ."

The statute requires a shareholder 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." *Id.* Under the statute, a "proper purpose" means "a purpose reasonably related to" the person's interest as a shareholder. *Id.* See also *North Oakland County Bd. of Realtors v Realcomp*, 226 Mich App 54, 59 (1997) ("Proper purpose" under the statute is one that is made in good faith, seeks information bearing upon the shareholder's interest, and is not contrary to the corporation's interest.) The statute also 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." MCL 450.1487(2).

The party bearing the burden of proof differs depending upon the type of document sought. Assuming that the shareholder has complied with the form and manner of making a demand to inspect corporate documents, the burden of proof is allocated as follows:

- 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. (MCL 450.1487(3)).
- 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.. *Oakland County Bd. of Realtors* at 57 - 58.

2. 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)).

Sam:

Because the statute allows "any shareholder of record" the right to inspect corporate records, the fact that Sam had only a few shares of stock is irrelevant. The statute contains no minimum amount of stock that must be owned before a shareholder may make a demand for corporate records. Additionally, the fact that he made his demand through his friend is irrelevant, as the statute specifically contemplates making a demand through an agent when authorized by a writing. Sam has demanded a list of shareholders, has complied with the statute concerning the form and manner of the demand, and his demand was accompanied by a written document, permitting Eddie Edwards to act on Sam Smith's behalf.

Thus, the burden of proof will be on WRU to show that Sam's demand was made for an improper purpose or that the records sought are not directly connected with the claimed purpose. Because seeking a shareholder list in order to be nominated to the board of directors is a proper purpose, see *George v International Breweries, Inc*, 1 Mich App 129 (1965), Sam will likely prevail.

Larissa:

Larissa has demanded the design specifications for WRU's newest widget. Because the document sought is neither a stock ledger nor a list of shareholders, the burden is on Larissa to establish that design specifications are sought for a proper purpose and that the documents are directly connected with the stated purpose. Larissa's claim will most likely fail because ensuring that the new widget design is "aesthetically pleasing" is not reasonably related to her interest as a shareholder. This is particularly true considering that Larissa is employed by WRU's competitor, and the information could be used to the

detriment of WRU for the purposes of unfair competition. If the demand is not sought in good faith for the protection of the interests of the corporation nor the stockholders, a stockholder is not entitled to an order compelling the inspection of corporate documents. See *Slay v Polonia Pub Co*, 249 Mich 609, 616. Larissa's claim will likely fail.