

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

David C. Marks,	:	June Term, 2003
Plaintiff,	:	
v.	:	No. 003618
	:	
E. Franks Hopkins, Inc., Stephen L.	:	Commerce Program
Marmar, Hugh G. Buckley, Jr.,	:	
Albert A. Pappas,	:	Control Number: 030744
Defendants.	:	

ORDER

AND NOW, this 21st day of July, 2004, upon consideration of Plaintiff David C. Marks' Motion for Summary Judgment, Defendant's response in opposition, Memoranda, all matters of record and in accord with the contemporaneous Memorandum Opinion filed of record, it hereby is **ORDERED** and **DECREED** that Plaintiff's Motion for Summary Judgment is **GRANTED**. Defendant is Ordered to produce within ten days from the date of this Order the following records in accordance with 15 Pa. C. S. § 1508:

1. Corporate Tax Returns for the years 1999 through 2002;
2. A list of the value of compensation paid to each shareholders in salaries, bonuses, dividends and bonuses for the years 1999, 2000, 2001 and 2002;
3. All minutes of the proceedings of the corporation for the year 1999 through the present;
4. Any and all Shareholder Agreements or Agreements governing the Shareholders' rights, responsibilities and obligations with regard to Hopkins.

All such inspections shall be made during the usual hours of business of said corporation and any copies or extracts made there from shall be at the expense of plaintiff.

BY THE COURT,

C. DARNELL JONES, II, J.

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MEMORANDUM OPINION

JONES, J......

Presently before the court is Plaintiff David C. Marks’ Motion for Summary Judgment. For the reasons that follow, Plaintiff’s Motion for Summary Judgment is Granted.

BACKGROUND

This matter arises from David C. Mark’s (“Marks”) request to examine E. Franks Hopkins, Inc.’s corporate books and records pursuant to 15 Pa. C.S. § 1508. Hopkins is a retail and wholesale seafood business which sells and distributes seafood. Compl. ¶ 9. Marks is a shareholder of Hopkins, owning ten percent of the total issued and outstanding shares of Hopkins. Id. ¶ 10. Stephen L. Marmar, Hugh G. Buckley, Jr. and Albert Pappas, are the owners and officers of Hopkins and own issued and outstanding shares of Hopkins. Id. ¶ 11-14.

On April 17, 2003, plaintiff was informed that the majority shareholders in Hopkins made a decision to discontinue plaintiff’s employment with Hopkins. Id. ¶ 16. As a result, attempts to negotiate the value of plaintiff’s shares were made by the parties.

According to plaintiff in order to properly evaluate the initial offer to purchase, plaintiff, via counsel, forwarded a letter to the majority shareholders requesting information to permit plaintiff to properly evaluate the offer to purchase shares. *Id.* ¶ 22. Hopkins failed to provide the requested information and this lawsuit ensued.

Plaintiff's complaint in this matter asserts a cause of action under 15 Pa. C. S. A. § 1508. Since the filing of the complaint, the court decided two sets of preliminary objections filed by the parties¹, discovery motions as well as a motion for summary judgment filed by the plaintiff seeking the same relief requested herein. With respect to the motion for summary judgment, on December 18, 2003, the court denied the motion for summary judgment finding plaintiff's motion premature since the parties had not engaged in discovery to determine whether the inspection requested by plaintiff is for a proper purpose as set forth in 15 P.S. § 1508. The parties engaged in discovery and plaintiff has now renewed his motion for summary judgment.²

DISCUSSION

I. Legal Standard

A proper grant of summary judgment depends upon an evidentiary record that either (1) shows the material facts are undisputed or (2) contains insufficient evidence of facts to make out a prima facie cause of action or defense. Destefano & Associates, Inc. v. Cohen, 2002 WL 1472340,* 2 (Pa. Com. Pl. 2002) (Herron). Under Pa. R.C. P. 1035.2(2), if a defendant is the moving party, he may make the showing necessary to support the entry of summary judgment by pointing to evidence which indicates that the

¹ As a result of preliminary objections filed by defendants, the court dismissed the individuals named as defendants in this action.

² Defendant suggests that this court should once again deny plaintiff's motion for summary judgment as premature. After reviewing the evidence presented, the court believes that sufficient evidence exists to consider plaintiff's motion.

plaintiff is unable to satisfy an element of his cause of action. Id. The nonmoving party must adduce sufficient evidence on an issue essential to its case and on which it bears the burden of proof such that a jury could return a verdict favorable to the non-moving party. Id. When the plaintiff is the moving party, “summary judgment is proper when if the evidence, viewed favorably to the plaintiff, would justify recovery under the theory he has pled.” Id. (quoting Horne v. Haladay, 728 A.2d 954, 955 (Pa. Super. 1999); citing Pa. R. Civ. P. 1035.2). Summary judgment may only be granted in cases where it is “clear and free from doubt that the moving party is entitled to judgment as a matter of law.” Id.

II. Plaintiff Has Satisfied the Requirement of a Proper Purpose.

Marks seeks to compel an inspection of Hopkins’ corporate records. The right of a shareholder in a corporation to inspect corporate records has long been established in Pennsylvania common law. Simms v. Exter Architectural Products, Inc., 868 F. Supp. 668, 674 (M.D. Pa. 1994)(citing Zerbey v. J.H. Zerby Newspapers, 385 Pa. Super. 109, 560 A.2d 191 (Pa. Super.1989); Klein v. Scranton Life Ins. Co., 139 Pa. Super. 369, 11 A.2d 770 (1940)). This right is now codified at 15 Pa. C. S. § 1508 (B) which provides:

“Every shareholder shall, upon written verified demand stating the purpose thereof, have a right to examine, in person or by agent or attorney, during the usual hours for business for any proper purpose, the share register, books or records of account, and records of the proceedings of the shareholders and directors, and to make copies or extracts there from. A proper purpose shall mean a purpose reasonably related to the interest of the person as a shareholder...”

Authority to institute a legal proceeding to enforce this right of inspection is conferred upon a shareholder (or attorney or agent acting on behalf of a shareholder) in § 1508 (c). Tyler v. O’Neill, 994 F. Supp. 603, 608 (E.D.Pa. 1998). Prior to instituting such a proceeding, the shareholder first must establish that the purpose for which inspection is sought is proper and that he or she has complied with the requirements in §

1508 (b) for making an inspection demand. Id. Thereafter, the burden of proving that the inspection was for an improper purpose falls on the corporation. Id. (citing 15 Pa. C.S. § 1508 (c); Goldman v. Trans-United Industries, Inc., 404 Pa. 288, 171 A.2d 788 (Pa. 1961)).

In the case at bar, it is undisputed that plaintiff did make a written demand under oath for the right to examine various documents and records of Hopkins. The central dispute is whether plaintiff has set forth a “proper purpose” within the meaning and intent of the statute. Proper purpose is defined by the statute as “a purpose reasonably related to such person’s interest as a shareholder.” 15 Pa. C.S. § 1508 (B). Plaintiff alleges that by letter from his attorney to Hopkin’s counsel dated May 23, 2003, he made a demand for corporate tax records for the years 1999 through 2002, a list of the value of compensation paid to each of the shareholder’s in salaries, bonuses, dividends and bonuses for the years 1999, 2000, 2001 and 2002, and all minutes of the proceeding of the corporation for the year 1999 through the present. That letter recited the purpose for the inspection as being “...to properly evaluate your client’s offer”. (Exhibit “G” to Plaintiff’s Motion for Summary Judgment”). The complaint also alleges that the purpose for the inspection is “to permit proper evaluation of the Offer to Purchase Shares”. (Plaintiff’s complaint p. 22, 25). In essence, plaintiff’s demand for inspection is to determine the value of his shares in light of the initial offer made by defendants to buy plaintiff’s shares from the company.³

³ In response to plaintiff’s motion for summary judgment, defendants maintain that the plaintiff’s characterization of the handwritten note, attached to plaintiff’s motion for summary judgment as Exhibit D, is not an offer to settle but rather the initiation of negotiation proceedings. Whether Exhibit B is an offer to settle or an attempt to initiate negotiation is not before the court. Rather, the issue before this court is whether plaintiff has demonstrated a proper purpose under 15 Pa. C.S. § 1508 (B) to inspect the documents requested.

The burden of showing that plaintiff's purpose is improper falls on the corporation. Aside from defendant's claim that no offer to settle was made by defendant and that Exhibit B solely represents an initiation of negotiation to buy plaintiff's shares, there has been no evidence offered by Hopkins to indicate that plaintiff's request to inspect the records was for an improper purpose. Indeed, the evidence demonstrates that plaintiff continues to remain a shareholder in Hopkins (Exhibit "A" to Plaintiff's Motion for Summary Judgment, Pappas dep. p. 26; Exhibit "B" to Plaintiff's Motion for Summary Judgment, Marmer dep. p. 26, Exhibit "C" to Plaintiff's Motion for Summary Judgment p. 11), that plaintiff was asking for information to determine the value of Hopkins (Exhibit "A" p. 120, Exhibit "C" p. 10), and that Buckley, a ten percent shareholder in the Hopkins, would not be able to value his ten percent interest in Hopkins without having access to the documents plaintiff seeks. (Exhibit "C" p. 15-16).

After careful consideration of the surrounding circumstances of plaintiff's document inspection request as well as the absence of any evidence to suggest an improper purpose on the part of plaintiff's request, this court finds that plaintiff's request to examine records to determine the value of his shares is a proper purpose. Seeking to determine the value of one's shares is a purpose which is reasonably related to plaintiff's interest as a shareholder. See Friedman v. Altoona Pipe and Steel Supply Company, 460 F.2d 1212 (3rd Cir. 1972)(examination of corporate records to determine the value of shareholder's ownership interest constituted a proper basis for granting her relief under the statute).

CONCLUSION

For the forgoing reasons, Plaintiff's Motion for Summary Judgment is Granted. Defendant is directed to make the following books and records available for inspection within ten days of this Order: corporate Tax Returns for the years 1999 through 2002; a list of the value of compensation paid to each shareholders in salaries, bonuses, dividends and bonuses for the years 1999, 2000, 2001 and 2002; all minutes of the proceeding of the corporation for the year 1999 through the present; any and all Shareholder Agreements or Agreements governing the Shareholders' rights, responsibilities and obligations with regard to Hopkins.

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BY THE COURT,

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