

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

ABIGAIL M. LEGROW
MASTER IN CHANCERY

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 11400
WILMINGTON, DE 19801-3734

Final Report: October 13, 2014
Submitted: September 19, 2014

R. Karl Hill, Esquire
Seitz, Van Ogtrop & Green
222 Delaware Avenue, Suite 1500
P.O. Box 68
Wilmington, DE 19899

Patricia L. Enerio, Esquire
Dawn Kurtz Crompton, Esquire
Proctor Heyman LLP
300 Delaware Avenue, Suite 200
Wilmington, DE 19801

Steven M. Oster, Esquire
Oster Law Firm
1850 M Street, N.W., Suite 280
Washington, DC 20036

David A. McCarthy, Esquire
Wilson Sonsini Goodrich & Rosati P.C.
650 Page Mill Road
Palo Alto, CA 94304

Re: *Richard Grimm v. Stem, Inc.*
C.A. No. 9315-ML

Dear Counsel:

The plaintiff, Richard Grimm (“Mr. Grimm”), filed a limited exception to a draft oral report I issued in this books and records proceeding under 8 *Del. C.* § 220. In a nutshell, Mr. Grimm argues that he is entitled to an order of this Court finding that the stated purpose in the Demand was proper. Mr. Grimm contends the relief he seeks is warranted because the company permitted the Court to resolve Mr. Grimm’s motion for summary judgment under an assumption that the stated purpose was proper. For the reasons that follow, I decline to revise my draft report.

A brief background may be helpful. On December 31, 2013, Mr. Grimm made a demand (the “Demand”) to inspect certain books and records of Stem, Inc (“Stem”). The

stated purposes for the inspection were to (1) obtain information regarding the 2013 Series B Preferred Stock and Warrant Financing (the “Financing”), (2) obtain “information necessary to an election to participate in the Rights Offering component of the Financing,” and (3) obtain information to permit Mr. Grimm to “plead particularized facts should [he] elect to pursue litigation against [Stem] or any of its officers or board members in connection with the Financing.” In response to the Demand, Stem indicated it was willing to provide some books and records to Mr. Grimm, subject to Mr. Grimm executing a confidentiality order. The parties were unable to reach a negotiated resolution and this action followed.

Mr. Grimm filed a motion for summary judgment on June 5, 2014, arguing that he stated a proper purpose in the Demand¹ and that he therefore was entitled to inspect all the demanded books and records. In response to that motion, Stem indicated that – although it did not agree that Mr. Grimm stated a proper purpose in the Demand, particularly with regard to investigating possible mismanagement or wrongdoing – the company elected not to dispute the stated purpose as a basis to deny summary judgment. In other words, Stem stipulated for purposes of summary judgment that Mr. Grimm’s purpose was proper, and asked the Court to determine what books and records Mr.

¹ After making the demand, but before moving for summary judgment, Mr. Grimm elected to participate in the rights offering and therefore concedes that his second stated purpose is moot.

Grimm was entitled to inspect to satisfy his stated purposes. Stem indicated, however, that it would dispute Mr. Grimm's purposes if the case went to trial.²

During oral argument, Mr. Grimm articulated a new purpose for inspection: valuation of his stock in Stem.³ Mr. Grimm also scaled back – and at times revised wholesale – the categories of books and records he demanded. At the conclusion of argument, I issued an oral draft report recommending that the Court grant in part and deny in part Mr. Grimm's motion for summary judgment. Specifically, I recommended that the Court grant summary judgment in favor of Mr. Grimm as to several of the categories in the demand, although I recommended that the Court order a more narrow inspection than what initially was demanded in certain categories.

Neither side took exception to the scope of the inspection I recommended in the draft report. Mr. Grimm, however, took exception to the draft report to the extent it assumed his stated purposes were proper without recommending that the Court enter summary judgment in Mr. Grimm's favor on that issue. Mr. Grimm contends that, should he “need to make a subsequent Section 220 demand on Stem for the same purpose, Stem should be collaterally estopped from relitigating this issue.”⁴

² Def.'s Opp. to Mot. for Summ. J. at 4 n.2 (“[f]or efficiency reasons, Stem does not wish to litigate plaintiff's stated purposes, at this stage of the proceedings, as a basis for denying plaintiff access to documents. ... Stem reserves the right to contest Plaintiff's stated purposes at trial – if we get there.”)

³ Because this purpose was not stated in the Demand, I declined to consider it in resolving Mr. Grimm's summary judgment motion.

⁴ Pl.'s Memo. in Supp. of his Exception to Master's Draft Report at 1-2.

The parties point to no case directly on point, and my own independent research has not uncovered any controlling or persuasive authority pertaining to this odd request. To be frank, the efficiency of Mr. Grimm's exception escapes me. Where stockholders in Section 220 actions usually complain that the defendant company litigated unnecessarily simply to drive up the costs and delay the inspection, Mr. Grimm has chosen to delay his inspection by attempting to turn Stem's decision not to litigate the issue of proper purpose into a procedural victory that might support a hypothetical future demand stating the same purpose. Stem agreed to allow the Court to decide on summary judgment the scope of the inspection to which Mr. Grimm was entitled, without requiring the parties to spend additional time and resources litigating the issue of proper purpose. Granting the relief Mr. Grimm seeks would encourage the opposite, forcing parties to fight over any possible issue in a summary proceeding for fear that the failure to do so might have preclusive effect in a separate action. Because Mr. Grimm has not demonstrated that he is entitled to the order he seeks, and because revising my draft report on that issue would serve no salutary purpose, I adopt my draft report as my final report. Exceptions may be taken in accordance with Rule 144.

Sincerely,

/s/ Abigail M. LeGrow
Master in Chancery