



COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE

SAM GLASSCOCK  
MASTER IN CHANCERY

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November 18, 2005

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*Re: Sutherland v. Dardanelle Timber Co., Inc.*  
*C.A. No. 671-N*

Dear Counsel:

This matter involves a demand for certain records of Dardanelle Timber Co., Inc. ("Dardanelle"), brought by shareholder/trustee/plaintiff Martha S. Sutherland ("Martha") under 8 *Del. C.* § 220. Dardanelle is a closely held Delaware corporation owned by the widow and descendants of Dwight Sutherland, Sr., through various trusts. By virtue of the fact that he is the trustee of the trust containing the voting stock of Dardanelle Timber, Perry Sutherland ("Perry"), Martha's brother, controls Dardanelle. Perry is also CEO of Dardanelle. Martha also seeks records under § 220 of

Sutherland Lumber-Southwest, Inc. (“Southwest”), a wholly-owned subsidiary of Dardanelle also controlled by Perry. The facts of this matter are set out in my bench draft report of August 31, 2005. In that report, I found that Perry and his brother Todd are board members, and constitute the majority of the boards of, Dardanelle and Southwest.<sup>1</sup> As controlling directors (and in Perry’s case as a shareholder with control over the corporations), Perry and Todd employed themselves as corporate executives and set their own salaries and perquisites. Based on this self-dealing, I found that Martha had stated a proper purpose for inspecting the books and records of Dardanelle and Sutherland insofar as she sought records to investigate the self-dealing. I directed the parties to prepare a form of order to effectuate the bench draft report, but the parties were unable to agree on the proper form of order. Consequently, the parties asked for clarification of my bench draft report. This letter is a response to the request for clarification, and this letter together with my bench draft report shall

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<sup>1</sup>Both corporations have three-member boards. Martha was a director of Southwest until February, 2004, when she was removed by Perry.

constitute my final report for purposes of exceptions. All exceptions to my report are preserved for presentation to the Chancellor.

The request for clarification involves the scope of my bench report: that is, given the proper purpose which I found after trial, which of the categories of documents requested must be produced, and from what time period must those documents be produced? With regard to the latter issue, Perry has been in voting control of Dardanelle and Southwest since his father's death, at which time he became trustee of the voting trust. Using that control, Perry ensured that he and Todd remained, or became, a majority of the directors of both Southwest and Dardanelle. It is clear that during the time period after the elder Mr. Sutherland's death in 2003, Perry and Todd were on both sides of their employment contracts and a reasonable probability exists that actionable self-dealing took place.

The plaintiff seeks to go back to capture records relating to Perry and Todd's compensation from a time, seven years ago, when Mr. Sutherland was still alive. The plaintiff makes two arguments why it is appropriate for her to have access to records before Mr. Sutherland's death, arguments that

tend to be mutually exclusive. First, Martha argues that is important to have records from the time before Perry obtained voting control as a baseline against which to measure post-control benefits and perquisites. Second, Martha argues (with some corroboration in the evidence) that Perry had effective control of the corporations for a number of years before his father died.

I am mindful of the conflicting dictates of the case law concerning the proper scope of records available under § 220. On the one hand, our Supreme Court has made clear that the scope of the right to inspect under § 220 is narrower than discovery available in litigation, and that in any event § 220 does not permit a plaintiff to troll through the corporate records in the hopes that a catch worth keeping will be ensnared. *See e.g., Security First Corp. v. U.S. Die Casting & Dev. Co.*, Del. Supr., 687 A.2d 563, 570 (1997). On the other hand, this Court has repeatedly urged plaintiffs to use the 220 action as a precursor to a corporate suit, to allow such suits to be more focused and specific in their complaints. It seems to me that it is reasonable, given the purposes of § 220 and the rationales stated by the plaintiff, to

allow access to documents relating to the enjoyment of salary and benefits by Perry and Todd for the period commencing one full fiscal year before the death of Mr. Sutherland, Sr., and I find that to be the proper temporal scope of the right to inspection under § 220 here.

With respect to the scope of the issues for which a proper purpose has been established, the plaintiff has demonstrated a proper purpose to inspect all documents which relate to the salary and benefits and perquisites received by Perry or Todd, at the expense of Dardanelle or Southwest, whether pursuant to a written contract of employment, an oral contract of employment, or otherwise, and to have the financial statements of the corporations to put this compensation in context. This includes all documents relating to the use by Perry or Todd or their immediate families, for personal purposes, of any aircraft owned or leased by Southwest or Dardanelle including documents relating to the tax ramifications of such use to the corporations involved; documents relating to the expense accounts and to expense reimbursement records for Dardanelle or Southwest concerning Perry or Todd; documents relating to expenditures of money or services by

Southwest or Dardanelle pertaining to Choctaw Racing Stables; documents relating to any loans from Dardanelle or Southwest to Perry, Todd, their immediate family members or entities in which they have an ownership interest; documents relating to expenditures by Dardanelle or Southwest for the use of the Maysville Training Center on behalf of Perry, Todd or their immediate families; copies of financial statements for Dardanelle and Southwest for the period in question; documents relating to all remuneration in cash or kind paid by Dardanelle or Southwest to Perry or Todd; documents relating to the sale of assets by Dardanelle or Southwest to Perry or Todd, as well as documents relating to any transactions between those companies and Perry or Todd.

The categories above track the language of the plaintiff's initial demand letter, narrowed to the documents that I find sufficient to fulfill the purpose demonstrated at trial. I do not mean the language I have stated above to be necessarily that which must constitute the final order in this matter, and I am willing upon the request of the parties to meet with them to craft a final order that fulfills the purpose demonstrated at trial.

The plaintiff argues that the broader categories stated in her original demand letter should be retained, because any narrowing of the production to those documents relating to self-dealing (rather than broad categories from which documents relating to self-dealing may be winnowed) allows the defendants to manipulate which documents shall be produced. To the extent production of documents or examination of documents is limited at all, however, the process necessarily depends on the good faith of the parties, and their Delaware attorneys, who are operating as officers of the Court. I have no reason to doubt the good faith of the parties and their attorneys here.

This letter and my bench decision constitute my final report in this matter, and the exception period shall commence as of today's date.

Sincerely,

*/s/ Sam Glasscock*  
Master in Chancery

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