

STATE OF MICHIGAN
COURT OF APPEALS

AMANDA HAMMOUD,

Plaintiff-Appellee/Cross-Appellant,

v

ADVENT HOME MEDICAL, INC.,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
February 27, 2018

No. 340502
Oakland Circuit Court
LC No. 2017-159195-CZ

Before: GLEICHER, P.J., and BORRELLO and SWARTZLE, JJ.

PER CURIAM.

The Michigan Business Corporation Act (MBCA), MCL 450.1101 *et seq.*, grants shareholders certain rights to examine corporate books and records. A simple written request suffices to compel the production of some records. MCL 450.1487(1). To review others, a shareholder must advance a proper purpose. MCL 450.1487(2). In this case, we consider whether a corporation may resist disclosure based on the circumstances under which the shareholder acquired her shares.

Plaintiff Amanda Hammoud owns 400 shares of defendant Advent Home Medical, Inc. stock. Advent refused Hammoud's record review request and Hammoud sought a court order compelling production of the material. Advent vigorously resisted, contending that Hammoud gained her shares through fraud, threats, and duress. The circuit court rejected Advent's arguments and ordered disclosure of most of the contested records. The court also denied Advent's request for a protective order and declined Hammoud's attorney fee entreaty.

We affirm most of the circuit court's decisions regarding the extent of the information that must be made available to Hammoud, but reverse the remainder. We also affirm the attorney fee ruling. We remand for further proceedings consistent with this opinion, including reconsideration of whether a protective order is warranted.

I

Carlia Cichon is Advent's president and Hammoud's mother. Advent is a closely held, family-owned corporation. In 2011, Cichon transferred 400 shares of Advent stock to Hammoud, representing 40% of the total shares. Although Cichon and Hammoud bitterly disagree about the reasons for the stock transfer, the *fact* of the transfer is undisputed.

On May 23, 2017, Hammoud sent a letter to Cichon seeking Advent's balance sheet from the end of the preceding fiscal year, "its statement of income for the fiscal year," "and, if prepared by the corporation, its statement of source and application for funds for the fiscal year."¹ Hammoud also sought to inspect Advent's "stock ledger and list of shareholders" as well as "the corporation's accounting records, including its general ledger(s), bank statements, profit and loss statements, balance sheets, tax returns and payroll records." Hammoud described that her interest was "to monitor the financial health of the corporation, especially given recent communications about the corporation's financial position and financial decisions reducing benefits and payments to shareholders and employees." Hammoud additionally asserted that she needed the records "to affirm" her "ownership/shareholder share" and to ensure that Advent was "in compliance with its Articles of Incorporation, By-Laws, and Policies and Procedures." Hammoud referenced a "recent filing with LARA"² purporting to eliminate the corporation's board, on which Hammoud believed she still served.

Advent did not respond to Hammoud's written request. Hammoud filed suit in the Oakland Circuit Court seeking an order compelling Advent to permit an inspection of the materials. Hammoud brought her suit under MCL 450.1487(3), which provides in relevant part: "(3) If the corporation does not permit an inspection within 5 business days after a demand has been received in compliance with subsection (2) . . . the shareholder may apply to the circuit court . . . for an order to compel the inspection."

Advent's answer denied that Hammoud was a shareholder, but also averred that Hammoud procured her shares by fraud and duress. Many paragraphs of the answer detailed the circumstances that led to the mother and daughter's estrangement. The answer also raised 10 affirmative defenses ranging from the statute of limitations to "estoppel and unclean hands" to failure to exercise due diligence.

Hammoud filed a motion to compel Advent to permit the inspection. She attached a notarized transfer of stock certificate verifying her status as a stockholder, and copies of filings with LARA indicating that before 2017 she had been the secretary and treasurer of the corporation. Advent again asserted that the stock transfer was invalid due to duress and fraud.

At the hearing on Hammoud's motion, counsel for Advent insisted that Cichon had transferred the shares to Hammoud only because she had been "pressured and coerced" to do so. Counsel conceded that the corporate documents "state on their face" that Hammoud owned 40% of Advent's shares, but maintained that Hammoud obtained her interest by threatening to deprive Cichon and her husband of visitation with their grandchildren. Further, counsel pressed, Hammoud had "never been treated as a shareholder," and had complained about that fact in a separate lawsuit.

¹ These three records must be made available for inspection on written request by a shareholder; a "proper purpose" for their disclosure is not required. MCL 450.1487(1).

² LARA is the Department of Licensing and Regulatory Affairs.

The circuit court was not persuaded, summarizing, “What do the documents indicate? Because that’s what I have to look at. I have to look at whether or not there is a document that says she owns shares in that company.” Such evidence had been presented, the court found. The court granted Hammoud’s motion and instructed her to file a separate motion addressing attorney fees. The court then entered an “order of mandamus” requiring Advent to make its records available for inspection within 10 days.³

Hammoud, her lawyer, and a certified public accountant showed up at Advent as directed but Advent refused access to some of the records. Hammoud filed a motion to enforce the court’s mandamus order, which the court granted. The court’s order stated in relevant part:

Within 7 days of entry of this order, the parties or their representatives shall meet at Advent where Advent shall print in the presence of plaintiff or her representatives the following: (1) current balance sheet as at the end of the preceding fiscal year, (2) profit & loss statements for 2015-2017, (3) print the general ledger, (4) statement of income for the fiscal year [sic] 2015-2017, (5) payroll records from Jan. 1, 2017 to present, and Advent shall provide a writing from the CPA confirming that tax returns were filed from 2011-2015.

The order further directed that a copy of the 2016 tax returns be provided to Hammoud upon their filing, and that Advent provide Hammoud with copies of its bank statements.

A flurry of other motions also followed the court’s mandamus order, including Advent’s motion for a protective order. The circuit court denied the protective order and again ordered production of most of the information Hammoud sought.

Advent filed a claim of appeal and a motion for peremptory reversal in this Court. We vacated the circuit court’s order and remanded for a determination of “whether [Hammoud] satisfied the statutory prerequisites to inspect defendant’s records pursuant to MCL 450.1487.” Our order instructed, “MCL 450.1487 requires that a shareholder give the corporation a written demand describing the purpose of the inspection, establish a proper purpose for the inspection, and establish that the records sought are directly connected with that purpose.” In all other respects, we denied Advent’s motion. *Hammoud v Advent Home Med, Inc*, unpublished order of the Court of Appeals, entered September 20, 2017 (Docket No. 340190).

³ Whether an order of “mandamus” was appropriate, as opposed to a simple order for production, is a discussion we need not prolong. Historically, caselaw has referred to orders for mandamus in similar situations. See *Slay v Polonia Pub Co*, 249 Mich 609, 610; 229 NW 434 (1930). More recently, in *North Oakland Co Bd of Realtors v Realcomp, Inc*, 226 Mich App 54, 57; 572 NW2d 240 (1997), we used the term “mandamus” in the corporate records context, stating, “Because plaintiff seeks to enforce a right created by statute, we treat plaintiff’s complaint as one for mandamus.” In the interests of clarity and accuracy, we will disregard the parties’ characterization of the order as one for “mandamus,” and instead refer to it as an order for production or inspection.

The parties returned to the circuit court. Hammoud again moved for an order of production. This time, Advent resisted on the ground that Hammoud had not stated a proper purpose for her request. Advent also reprimed that Hammoud's shares were obtained through fraud and duress.

The court's written opinion first addressed the records sought under MCL 450.1487(1). The court ordered that Advent make available "(1) Defendant's balance sheet as at the end of the preceding fiscal year; (2) Defendant's statement of income for the fiscal year; and (3) Defendant's statement of source and application of funds for the fiscal year (if prepared by Defendant)."

The trial court then considered the records sought under § 1487(2). Hammoud failed to identify any purpose for inspecting defendant's "stock ledger [and] list of shareholders," the court ruled, and was not entitled to those records. The court deemed proper Hammoud's stated purpose for inspecting various accounting records: her purported need "to monitor the financial health of the corporation" in light of recent communications regarding the corporation's financial position. But not all of those records were "directly connected with [that] purpose," the court ruled. (Emphasis in original.) The court exempted Advent's payroll records from disclosure and limited Hammoud's inspection to Advent's general ledgers, bank statements, profit and loss statements, balance sheets, and tax returns for fiscal years 2015 and 2016.

The circuit court separately addressed an additional "proper purpose" advanced in Hammoud's letter: to ensure that Advent was in compliance with its Articles of Incorporation, By-Laws and Policies and Procedures. This allegation sufficed under MCL 450.1487(2), the court ruled, because it was "reasonably related to [Hammoud's] interest as a shareholder." However, the trial court concluded that none of the records sought pertaining to the bank statements, profit and loss statements, general ledgers, balance sheets, tax returns and payroll records were "directly connected" with that purpose, immunizing those records from production. (Emphasis in original.)

The court denied Advent's request for a protective order and Hammoud's motion for attorney fees and costs. Advent now appeals as of right, and Hammoud cross-appeals.

II

Advent first contends that Hammoud is not entitled to inspect any of its records because she failed to demonstrate that she is a shareholder. Although conceding the authenticity of the shareholder documents, Advent contends that Hammoud obtained her stock fraudulently and was never really treated as a shareholder. An evidentiary hearing on this question was necessary, Advent insisted, and discovery should have been permitted.

These arguments have no merit.

MCL 450.1487 establishes the right of a shareholder to obtain corporate records. Subsection (1) states:

Upon written request of a shareholder, a corporation shall mail to the shareholder its balance sheet as at the end of the preceding fiscal year; its statement of income

for the fiscal year; and, if prepared by the corporation, its statement of source and application of funds for the fiscal year. [MCL 450.1487(1).]

Subsection (2) provides in relevant part:

(2) Any 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, if 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. [MCL 450.1487(2).]

Two other statutes also inform our analysis. MCL 450.1491a(b) defines a "shareholder" as "a record or beneficial owner of shares and includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the owner's behalf." Similarly, MCL 450.1109(2) defines as "shareholder" as "a person that holds units of proprietary interest in a corporation and is considered to be synonymous with 'member' in a nonstock corporation."

In support of her motion for production of the corporate documents, Hammoud submitted a notarized transfer of stock certificate confirming that she owned 400 shares of Advent stock, and two certificates of partnership and shareholder status signed by Hammoud and Cichon. The later of the two certificates states that Hammoud "has established 40% share holder [sic] partnership of [defendant]," to be effective "immediately on April 25, 2016 and supersed[ing] any previous contract and/or agreement." Advent did not challenge the authenticity of these documents. It did not allege that the documents were forgeries or that they were altered in any fashion. Nor did Advent present any evidence contradicting that Hammoud owned the shares. Accordingly, Hammoud's evidence established that she was an Advent shareholder for the purpose of her record request.

Advent's fraud-related defenses to Hammoud's records request are simply irrelevant. The statute at issue, MCL 450.1487, is unambiguous: a "shareholder" has a right to inspect corporate books if certain prerequisites are met. Hammoud easily satisfied the definition of a shareholder; she presented documents verifying that status. Advent produced no evidence to the contrary. How or why Hammoud became a shareholder is not probative of whether she is, in fact, a shareholder. Nor does such evidence create a material issue in an action brought to enforce shareholder rights under MCL 450.1487.

Advent contends that *Mazur v Blendea*, 413 Mich 540; 321 NW2d 376 (1982), supports that "a stock certificate alone is not dispositive on the issue of whether an individual is a shareholder." We find nothing in *Mazur* pertinent to this case. *Mazur* was a derivative action; the plaintiff's complaint charged corporate mismanagement. *Id.* at 542-543. The history of the corporations under scrutiny was "complex," involving several predecessor corporations and multiple changes in the corporate structure. *Id.* at 541-542. Untangling a web of transactions was necessary to sort out whether the plaintiff was a shareholder because the plaintiff's claim to that status rested on equity and circumstantial evidence rather than an actual stock certificate. *Id.* at 543-544. This case is a direct action, rather than a derivative one. A stock certificate

verifying ownership was presented to the circuit court without challenge to its authenticity. *Mazur* does not support that in a direct action for records, shareholder status may be placed in issue by an allegation that a shareholder fraudulently obtained her shares.

Because Advent has not created a fact question regarding Hammoud's ownership of Advent shares, the circuit court correctly refused to consider any evidence of the circumstances surrounding their acquisition.

III

We turn to the more complicated question: whether the circuit court correctly concluded that certain corporate records were subject to inspection, while others were not.

The easiest items to dispense with are Advent's balance sheet as at the end of the preceding fiscal year, its statement of income for the fiscal year, and, if prepared, its statement of source and application of funds for the fiscal year. MCL 450.1487(1) provides that a corporation must provide this information "[u]pon written request of a shareholder." Given that Hammoud was a shareholder when she sent her written request, she satisfied this subsection of the act. We affirm the circuit court's ruling that these records must be produced for inspection.

Whether Hammoud is entitled to inspect the rest of the records she sought depends on whether she advanced a "proper purpose" for her inquiry. MCL 450.1487(2) broadly defines that term "proper purpose" as "a purpose reasonably related to such person's interest as a shareholder." This Court has explained:

Under the common law, a shareholder stated a proper purpose for an inspection by raising doubts whether corporate affairs had been properly conducted by the directors or management, or by seeking election to the corporate board of directors. On the other hand, inspection requests to satisfy idle curiosity or aid a blackmailer were held not to be proper.

Consistent with the common law in this state and the holdings of courts in other jurisdictions with similar statutes, we hold that a proper purpose for inspection of corporate records 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. Although idle curiosity or mere speculation of mismanagement are insufficient to justify an inspection, we do not believe that the Legislature intended in enacting § 487 to erect a formidable obstacle for shareholders in seeking an inspection of corporate records. [*North Oakland Co Bd of Realtors*, 226 Mich App at 58-59 (citations omitted).]

The distilled version is: a shareholder who has a genuine, good faith interest in the corporation's welfare or her own as a shareholder is entitled to inspect those corporate books that bear on her concerns. Hammoud's letter satisfied that standard.

Hammoud's requests under subsection (2) fall within two conceptual baskets: shareholder records (the stock ledger, list of shareholders, payments to shareholders, notices to shareholders

of meetings, and minutes) and accounting records (general ledgers, bank statements, profit and loss statements, balance sheets, tax returns, and payroll records). Although her letter was not particularly well drafted, it does identify three purposes for her interest: “to monitor the financial health of the corporation, especially given recent communications about the corporation’s financial position and financial decisions reducing benefits and payments to shareholders and employees,” “to affirm my ownership/shareholder share,” and “to ensure that the corporation is in compliance with its Articles of Incorporation, By-Laws, and Policies and Procedures, especially given the recent filing with LARA, which claims that the corporation’s board was eliminated pursuant to MCL 450.1488 and purports to have removed me from the Board without notice.”

The circuit court ruled that Hammoud was not entitled to inspect “the corporation’s stock ledger, a list of its shareholders, and its other books and records” because she failed to “identify any purpose for desiring to inspect said records.” (Emphasis in original.) We acknowledge that in the paragraph in which Hammoud set forth this particular request, she did not identify a purpose for seeking these specific records. She expressed the three purposes recited above in the next paragraph. One of those purposes—protection of her shareholder interest given the corporation’s recent LARA filings—satisfies the statutory standard (“a purpose reasonably related to such person’s interest as a shareholder”). In other words, Hammoud’s interest in the shareholder materials qualifies as “proper” under § 1487(2). Because the shareholder materials she sought fall within that proper purpose, the trial court erred by refusing to order their disclosure.

The circuit court granted Hammoud’s request to inspect most of the accounting records, but limited the inspection to the fiscal years of 2015 and 2016, and denied access to the payroll records. The court found Hammoud’s interest in monitoring Advent’s financial health to be a proper purpose for disclosure of the accounting records, because it reasonably related to her interest as a shareholder. We agree with this analysis. However, we are unable to discern any logical basis for excluding the 2017 financial records from the court’s order. The more current records, like the records from 2015 and 2016, supply information directly related to a proper purpose. The circuit court did not explain, and we cannot understand, why more recent financial information is irrelevant to the purpose of evaluating the Advent’s financial health. We reverse this aspect of the circuit court’s ruling.

Similarly, we are unable to discern a rational basis for excluding the payroll records from Hammoud’s inspection. Whether a corporation has consistently met its payroll obligations relates to the corporation’s financial health. This suffices under § 1487. We therefore reverse this aspect of the circuit court’s order.

In summary, Hammoud supplied a “proper purpose” for all the records she requested.

IV

Advent next contends that the circuit court abused its discretion by failing to order that any records disclosed be subject to a protective order. The circuit court entertained extensive argument on this question, but its ruling was simply: “The court is denying your request for a protective order[.]” Given the brevity of this ruling, we are unable to determine why the court

exercised its discretion as it did. On remand, we instruct the trial court to reconsider the need for a protective order, and to articulate its reasons for granting or denying Advent's request.

V

Finally, we reject Hammoud's request that we reverse the circuit court's attorney fee ruling. The circuit court found "that [Advent] failed to permit inspection of the subject corporate records in good faith having a reasonable basis to doubt the right of Plaintiff to inspect all of the records demanded by her." The circuit court's conclusion that Hammoud had not adequately supported some of her requests with a proper purpose supports this conclusion. Although MCL 450.1487(3) expresses that a court "shall" order reasonable fees and costs if a court orders disclosure of contested records, MCL 450.1487(5) provides an exception: "good faith because it had a reasonable basis to doubt the right of the shareholder or director to inspect the records demanded." Although we disagree with some of the circuit court's "proper purpose" ruling, the court did not abuse its discretion by resting its attorney fee ruling on Advent's good faith.

We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher

/s/ Stephen L. Borrello

/s/ Brock A. Swartzle