

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BRIAN EDENFIELD,
Petitioner,

vs.

ECM ENERGY SERVICES, INC., A CORPORATION,
ADTRAK 360, LLC, WILLIAM H. HIGGINS,
HARRY A. WAHL, AND DAVID PFLEEGOR,
Respondents.

: NO. 21-0041
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:
: CIVIL ACTION - LAW
:
:
: *Pet. to Compel Insp. of*
: *Corp. Books & Records*

ORDER

AND NOW, following argument held February 19, 2021 on Petitioner Brian Edenfield’s Petition to Compel Statutory Inspection and Examination of Corporate Books and Records, the Court hereby issues the following ORDER.

Petitioner Brian Edenfield (“Petitioner”) initiated this action on January 15, 2021 by filing the Petition to Compel Statutory Inspection and Examination of Corporate Books and Records (“Petition”). Within the Petition, Petitioner avers that he is a resident of Mooresville, North Carolina. He identifies Respondent ECM Energy Services, Inc. (“ECM”) as a corporation incorporated in Delaware, with a principal place of business at 1000 Commerce Park Drive, Williamsport, Pennsylvania 17701. He identifies Respondent AdTrak LLC (“AdTrak”) as a limited liability company incorporated in Delaware, with a principal place of business at 1000 Commerce Park Drive, Suite 301, Williamsport, Pennsylvania 17701.

As per the Petition, in June of 2012, Petitioner acquired a 20% membership interest in AdTrak. In June of 2012, Petitioner also acquired 237,526 shares of ECM. After acquiring an ownership interest in AdTrak and ECM, Petitioner continuously made requests to review AdTrak and ECM’s financial records. While Petitioner was promised these records, the requests were not honored until August of 2020, when Petitioner received only a few of the documents he had requested, limited to portions of tax return records and K-1 schedules for AdTrak. The records that were produced purportedly reveal discrepancies between Petitioner’s contractual rights and benefits

as a shareholder with preferred payback and loss allocation, and the actual benefits he received.

On October 15, 2020, Petitioner, through counsel, made a written verified demand on the above-captioned Respondents to produce AdTrak and ECM's corporate books and records, in accordance with 15 Pa.C.S. § 1508(b).¹ However, to date Respondents have not responded to this demand, prompting Petitioner to file the foregoing Petition.² Respondents jointly filed a Response in Opposition and Memorandum of Law in Opposition to the Petition on February 5, 2021. The Court held argument on the Petition on February 19, 2021.

The first issue is whether 15 Pa.C.S. § 1508(b) would apply to ECM, as Petitioner concededly no longer owned any ECM stock at the time he served the verified demand upon ECM. Section 1508(b) provides that, “[e]very shareholder shall, upon written verified demand stating the purpose thereof, have a right to examine. . .the share register, books and records of account, and records of the proceedings of the incorporators, shareholders and directors and to make copies or extracts therefrom.” Petitioner’s counsel contended at argument that the “shareholder” identified within this section is not qualified as a current shareholder and argued that the statute should be read broadly to effectuate the legislature’s intent in ensuring corporate transparency. However, while section 1508(b) does not expressly state that shareholders are limited to current shareholders, the Court finds this to be the natural reading of the provision. “Where the language of a statute is clear and unambiguous, a court may not, under the guise of construction, add matters the legislature saw fit not

¹ 15 Pa.C.S. § 1508(b) (“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 and records of account, and records of the proceedings of the incorporators, shareholders and directors and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to the interest of the person as a shareholder.”).

² See 15 Pa.C.S. § 1508(c) (“If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a shareholder or attorney or other agent acting for the shareholder pursuant to subsection (b) or does not reply to the demand within five business days after the demand has been made, the shareholder may apply to the court for an order to compel the inspection. The court shall determine whether or not the person seeking inspection is entitled to the inspection sought.”).

to include at the time.”³ Further, the Pennsylvania Business Corporation Law defines a shareholder as “[a] record holder or record owner of shares of a corporation, including a subscriber to shares.”⁴ Petitioner is not a record holder of shares in ECM, and was not at the time he served the verified demand. Therefore, he is not a shareholder as provided for in section 1508(b) and lacks standing to enforce the statute against ECM.

Petitioner did remain a 17% shareholder in AdTrak stock at the time of serving the verified demand. While AdTrak is a Delaware corporation, it is well established that Pennsylvania courts have jurisdiction to enforce the inspection of books and records of foreign corporations doing business in Pennsylvania when those books and records are located within Pennsylvania.⁵ Nonetheless, Respondents assert that this Court lacks jurisdiction over the foregoing matter due to the AdTrak Operating Agreement, which Petitioner signed in July of 2013.⁶ Provision 14.13 of the AdTrak Operating Agreement, titled Consent to Jurisdiction, provides:

ANY AND ALL SUITS, LEGAL ACTION OR PROCEEDINGS ARISING OUT OF THIS AGREEMENT SHALL BE BROUGHT IN THE FEDERAL OR STATE COURTS OF THE STATE OF DELAWARE AND EACH MEMBER HEREBY SUBMITS TO AND ACCEPTS THE EXCLUSIVE JURISDICTION OF SUCH COURTS FOR THE PURPOSE OF SUCH SUITS, LEGAL ACTIONS OR PROCEEDINGS.

Provision 14.21 of the Operating Agreement, titled Governing Law, further provides: “This Agreement and the rights of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of Delaware applicable to agreements made and to the performance wholly within that jurisdiction.” However, Petitioner argues and the Court agrees that these provisions are not applicable

³ *Com. v. Tarbert*, 535 A.2d 1035, 1044 (Pa. 1987) (citations omitted).

⁴ 15 Pa.C.S. § 1103(a).

⁵ See *Kahn v. Am. Cone & Pretzel Co.*, 74 A.2d 160, 162-63 (Pa. 1950).

⁶ The “Amended and Restated Limited Liability Company Agreement of AdTrak 360, LLC” is attached as Exhibit A to Respondent’s Response in Opposition to the Petition.

because the forgoing action does not arise out of the Agreement, but rather is an action arising from statutory protections afforded to all shareholders.⁷

Respondents further assert that AdTrak is not a corporation, but a limited liability company, and is therefore not subject to books and records requests under section 1508 of the Pennsylvania Business Corporation Law. However, under 15 Pa.C.S. § 8102, corporations, partnerships, and limited liability companies are treated as interchangeable under Pennsylvania law, “subject to any restrictions on a specific line of business made applicable by section 103”⁸ or by other limited exceptions.⁹ As Respondents have not cited and the Court is unaware of any provision of Pennsylvania law providing a separate standard for a shareholder’s right of inspection upon a limited liability company, the Court finds that section 1508 will apply equally to limited liability companies as to corporations.

⁷ In *Marks v. E. Franks Hopkins, Inc.*, No. 003618 JUNETERM 2003, 2003 WL 22386805, at *2-3 (Phila. Cty. Sept. 29, 2003), the Philadelphia County Court of Common Pleas held that a provision of the parties’ Shareholders Agreement requiring that any disputes arising from the Agreement be subject to mandatory arbitration would not divest the trial court of jurisdiction over an appeal filed pursuant to 15 Pa.C.S. § 1508. The Court reasoned that section 1508(b), and not the Agreement, governed the right of the shareholder to serve a verified demand for inspection of records, and section 1508(c) the right to appeal the denial or non-action on a demand. The Northampton County Court of Common Pleas cited the *Marks* decision to reach the same conclusion in *Mohan v. Easton Imaging Assocs.*, No. C0048CV2002005746, 2003 WL 25424600 (North. Cty. Dec. 02, 2003), holding that “disputes relating to issues under statutory authority, rather than solely within the text of an agreement, can lie outside an arbitration clause.” The Pennsylvania Middle District Court in *Brooks v. JCS Logistics, Inc.*, No. 3:18-CV-0097, 2018 WL 3494799, at *3 (M.D. Pa. July 20, 2018), held that the plaintiff’s claim for inspection of corporate books and records under 15 Pa.C.S. § 1508 would not be subject to the forum selection clause in the parties’ Buy-Sell Agreement, reasoning, “[p]laintiff’s claim under § 1508 of the Business Corporation Law does not involve the Buy-Sell Agreement. Rather, that claim is based on protections for shareholders provided by Pennsylvania statutory law.” While these cases are not precedential, the Court finds their reasoning persuasive.

⁸ 15 Pa.C.S. § 8102(a).

⁹ See e.g., *Mortimer v. McCool*, No. 3583 EDA 2018, 2019 WL 6769733, at *6 n.8 (Pa. Super. Dec. 12, 2019) (citing section 8102 in support of its determination that the doctrine of piercing the corporate veil applies not only to corporate entities, but also to limited liability companies); *The Herrick Grp. & Assocs. LLC v. K.J.T., L.P.*, No. CIV.A 07-0628, 2009 WL 2596503, at *2 (E.D. Pa. Aug. 20, 2009) (citing section 8102 for the proposition that, just as Pennsylvania courts have held that the law of the state of incorporation determines a foreign corporation’s capacity to sue or be sued in Pennsylvania, the same would apply to a limited liability company); *Dague v. Huddler*, No. CIV.A. 07-5539, 2008 WL 4444266, at *3 (E.D. Pa. Oct. 2, 2008) (citing section 8102 and holding that the penalty under 15 Pa.C.S. § 4141 for corporations doing business in Pennsylvania without a certificate of authority would apply to defendant, a limited liability company).

Respondent's final argument is that Petitioner's demand is premature as provided for by the Delaware LLC Act.¹⁰ However, having found that Pennsylvania law will be controlling in this matter, the Court finds this argument unavailing.

Pursuant to the forgoing, Petitioner Brian Edenfield's Petition to Compel Statutory Inspection and Examination of Corporate Books and Records is DENIED as to Respondent ECM Energy Services, Inc. and GRANTED as to Respondent AdTrak LLC, limited to those books and records located within Pennsylvania. As Respondents have raised no objection to the form or content of Petitioner's demand, AdTrak shall have sixty (60) days from the date of this Order to provide, in full, the materials requested in the verified demand.

IT IS SO ORDERED this 16th day of March 2021.

BY THE COURT,

Eric R. Linhardt, Judge

cc: J. David Smith, Esquire, *McCormick Law Firm*
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¹⁰ See 6 Del. C. § 18-305(g) ("The rights of a member or manager to obtain information as provided in this [Act] may be restricted in an original limited liability company agreement or in any subsequent amendment approved or adopted by all of the members[.]").