

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BRIAN EDENFIELD,	:	No. 21-00041
Petitioner	:	
vs.	:	CIVIL ACTION – LAW
	:	
ECM ENERGY SERVICES, INC.,	:	
a corporation, ADTRAK 360, LLC,	:	
WILLIAM H. HIGGINS, HARRY A. WAHL,	:	
and DAVID PFLEEGOR,	:	
Respondents	:	

OPINION AND ORDER

AND NOW, following argument and briefing on the Petition of Brian Edenfield for Further and Compelled Production of Corporate Books and Records, the Court hereby issues the following OPINION and ORDER.

BACKGROUND

The background of this case is discussed in detail in this Court’s March 16, 2021 Order. To summarize, Petitioner filed a Petition to Compel Statutory Inspection and Examination of Corporate Books and Records on January 15, 2021, averring that as a minority shareholder of the two corporate defendants he repeatedly requested certain corporate records but, after inordinate delay, was provided only a fraction of the records to which he was entitled. By Order dated March 16, 2021, this Court denied the March 16, 2021 Petition with regard to ECM Energy Services, Inc. (“ECM”) because Petitioner was no longer a shareholder of ECM when he served that company and the individual defendants with a formal request for corporate books and records. In that same Order, the Court granted the request as to AdTrak 360, LLC (“AdTrak”) “limited to those books and records located within Pennsylvania.”

On August 27, 2021, Petitioner filed the instant Petition for Further and Compelled Production of Corporate Books and Records (the "Petition"). The Petition indicated that following this Court's March 16, 2021 Order, AdTrak "produced some information, but it is woefully inadequate in terms of compliance with the information that must be available to a corporation of this type." Petitioner contends that AdTrak produced a total of 75 pages, only 3 of which "had anything to do with any meaningful information."

On September 15, 2021, AdTrak responded that it fully complied with the Court's March 16, 2021 Order, and specifically that "[t]here are simply no other responsive documents to produce that are in Pennsylvania."

The Court held argument on the Petition on October 26, 2021 and subsequently issued an Order providing the parties with 60 days of discovery "by oral deposition, written interrogatory, or request for admission/production of documents" limited in scope to "identifying the existence, location, and type (i.e. physical or electronic) of any 'share register, books and records of account, and records of the proceedings of the incorporators, shareholders and directors' of Respondent AdTrak 360, LLC, as well as whether and when any such responsive books or records were relocated."

Following this limited period of discovery, the Court again heard argument on January 12, 2022. At that time, the Court 1) ordered the parties to provide all existing discovery to the Court by the end of the week; 2) provided the parties an additional 30 days to subpoena documents from Emert & Associates PC and depose Beau

Vincenzes; and 3) directed the parties to provide all additional discovery, proposed findings of fact, and conclusions of law to the Court by February 25, 2022.

The Court has reviewed the discovery, proposed findings of fact, and proposed conclusions of law provided by the parties, and this case is ripe for resolution.

ANALYSIS

A. Petitioner's Proposed Findings of Fact and Conclusions of Law

Petitioner avers that “[t]he majority of AdTrak’s financial documents, records and data... are stored in QuickBooks, a cloud-based electronic financial data management system, which can be accessed from anywhere in the world.”

Petitioner suggests that AdTrak’s cloud-based documents have been accessed via QuickBooks by Pennsylvania residents on at least two occasions: 1) sometime between March 16, 2021 and May 4, 2021 by ECM’s CEO Michael Caseman (“Caseman”); and 2) as recently as April 2021 by Beau Vincenzes (“Vincenzes”), an associate of Emert & Associates, an accounting firm that performed work for AdTrak until April 2021. Petitioner notes that Vincenzes testified at his deposition that his passcode to access AdTrak’s records through QuickBooks allowed him access without limitation. Thus, Petitioner proposes, at least two Pennsylvania Residents could have accessed QuickBooks in Pennsylvania following this Court’s March 16, 2021 Order, and Caseman in fact did so to generate the three relevant pages AdTrak produced in response to that Order. Although “QuickBooks access to AdTrak

records is controlled by Respondent William Higgins¹ from his residence in Texas, where Mr. Higgins has the proper identification and password,” Petitioner contends that the evidence clearly establishes that Higgins “provide[d]... the identification and passwords... [to] Caseman and Vincenzes, [who] were in possession of the identification and passwords... prior to and following the date of this Court’s March 16, 2021 Order.”

Petitioner asks this Court to find that “corporate records that are stored electronically and are accessible in Pennsylvania are subject to 15 Pa. C.S. § 1508” and are thus accessible to shareholders, such as Petitioner here. The essence of this request is that “[i]n today’s business world... data is often stored in electronic ‘cloud’ format and is not physically located anywhere”; Petitioner argues that an interpretation of § 1508 that contemplated only the physical location of hard copies “would be inconsistent with the legislative intent” underlying that provision.

Petitioner notes that “[t]he commentary to... § 1508 provides that ‘[t]he former last sentence of [§ 1508(a)] which provided that ‘Any books, minutes or other records may be in written form or any other form capable of being converted into written form within a reasonable time’ was deleted by [the legislature] as duplicative of 15 Pa. C.S. § 107.” That section, titled “Form of records,” reads as follows:

“(a) General rule.—Information maintained by a corporation or other association in the regular course of its business, including shareholder or membership records, books of account and minute books, may be kept in record form.

¹ “Higgins.”

(b) Meaning of 'written'.—References in [Title 15, governing corporations and unincorporated associations] to a document in writing or to a written provision of an agreement or other document shall be deemed to include and be satisfied by a document or provision of an agreement or document in record form.”

Petitioner urges this Court to conclude that “[w]hile Respondent chose to limit what was produced” in response to the March 16, 2021 Order, “that was not because [the records] could not be accessed in Pennsylvania, but because it arbitrarily felt that it was not ‘comfortable with providing [Petitioner] access to QuickBooks for a fishing expedition for something that I had no clue what he was going to be doing.’”² Ultimately, Petitioner contends that Respondent’s choice not to produce documents was not due to their location outside of Pennsylvania but solely to their objection to Petitioner having the documents, which is improper in light of § 1508’s command that a shareholder has a right to inspection for any “purpose reasonably related to the interest of the person as a shareholder.”

B. Respondents’ Proposed Findings of Fact and Conclusions of Law

Respondents first recount the history of AdTrak and its corporate records, indicating:

- “In August 2017, many of the corporate documents, which were stored in electronic and physical form at [Higgins’s] Texas residence, were destroyed in a flood...”;
- “On or about February 16, 2018, AdTrak’s bank account with BB&T was closed”;
- Two days later, “AdTrak closed its operations because its expenses exceeded its profit, and it was no longer sustainable”, and has not engaged in business since; and

² Petitioner quotes the Deposition of Higgins.

- In February or March of 2018, “physical and electronic records located at AdTrak’s Pennsylvania offices were destroyed and/or discarded,” and “AdTrak hired a company to properly wipe information from and dispose of its electronic equipment.”

Thus, Respondents argue, “AdTrak has not maintained any physical records – electronic or otherwise – in Pennsylvania since approximately February or March of 2018,” years before Petitioner’s request for corporate books and records.

Respondents contend that for this reason “the final operative question for this Court is whether none, some, or all of AdTrak’s QuickBooks Online data is located within Pennsylvania for the sake of a shareholder’s books and records request,” and argue that “little, if any, data from QuickBooks Online should be considered to be located within Pennsylvania.”

Regarding Caseman’s access of AdTrak’s records through QuickBooks, Respondents aver that his limited access in Pennsylvania “was to comply with the Court’s orders and to assist in providing Respondents’ counsel with the necessary documents to turn over to Petitioner’s counsel”; Respondents argue that such limited access “should not render the entirety of the QuickBooks data to be within Pennsylvania.”

Regarding Vincenzes’s access, Respondents note that although there were no “physical or oral limitations on what Emert & Associates” – and thus Vincenzes – “could access in QuickBooks, it would have been outside the scope of its employment” to access all but the small amount of data necessary to complete the task of preparing its 2019 tax returns. Respondents contend that Emert &

Associates' only access of their records in Pennsylvania via QuickBooks following the service of Petitioner's request in October 2020 "was the accessing and printing of AdTrak's balance sheet as of December 31, 2020 on February 28, 2021."

Ultimately, Respondents argue that "[s]imply because Emert & Associates could in theory obtain pre-2018 data remotely does not mean the data is actually located within Pennsylvania, especially where Emert & Associates' policy and practice is to not retain client information for more than three years." Respondents conclude by noting that "AdTrak is a Delaware limited liability company that has not existed in Pennsylvania since February 18, 2018" and arguing that "thus, its financial data from earlier than 2018 should not forever exist 'within Pennsylvania' simply because a person or entity could, hypothetically, generate that specific data within the Commonwealth."

B. Analysis

Although the additional factual discovery is helpful to the Court's understanding of the issues implicated here, the parties' dispute is not a factual one, as evidenced by their agreement concerning most of the operative facts. Rather, the dispute between the parties is a question of law: are electronic records stored "in the cloud," without an established physical location in Pennsylvania,³ "located within

³ Although neither party has raised the issue, an argument can be made that the electronic records are located where QuickBooks maintains its physical data servers. However, that location is unknown, and neither party has raised that argument. Therefore, the Court will not address it further.

Pennsylvania” for the purposes of Title 15 solely by virtue of being theoretically accessible from Pennsylvania?

The animating principle behind this question is not location for geography’s sake, but is rather the issue of jurisdiction. Over seventy years ago, the Supreme Court of Pennsylvania recognized the well-established rule “that a court will entertain jurisdiction of an action to compel an inspection of the corporate books of a foreign corporation and will require an officer having custody thereof to permit a proper person to examine and copy the same *where such books are within the jurisdiction*.”⁴ For this reason, “a court will not take jurisdiction for the purpose of regulating or interfering with the internal management or affairs of a foreign corporation [but] the granting of a right to inspect a foreign corporation’s books and records, which are within the jurisdiction, does not so offend.”⁵

Here, AdTrak has not maintained any physical records in Pennsylvania for years. Since the destruction or removal of all physical records from Pennsylvania, AdTrak has provided two people in Pennsylvania with the required credentials to access its records on QuickBooks. These people had the theoretical ability to access the entirety of AdTrak’s QuickBooks records but did not in fact do so; in the case of Vincenzes, such access would have been outside of the scope of the contract between AdTrak and Emert & Associates.

⁴ *Kahn v. American Cone & Pretzel Co.*, 74 A.2d 160, 163 (Pa. 1950) (emphasis in original).

⁵ *Id.*

The fact that the documents are in theory accessible within Pennsylvania, should Higgins provide a person within the Commonwealth with the password, is clearly insufficient by itself to put the documents within the Court's jurisdiction and render them "located within Pennsylvania" for the purposes of Title 15. If this were sufficient, then any of the Commonwealth's Courts of Common Pleas would have jurisdiction to compel *any* business organization – no matter where it is domiciled or whether it conducts business in Pennsylvania – to turn over all its "share register, books and records of account, and records of the proceedings of the incorporators, shareholders and directors" so long as these records are theoretically accessible from within the Commonwealth. This would obviously conflict with the principle that Pennsylvania Courts should not and will not "take jurisdiction for the purpose of regulating or interfering with" foreign corporations.

Here, there are two additional factors beyond the theoretical accessibility of the documents in Pennsylvania. The first is that AdTrak *did* maintain a principal place of business in Pennsylvania, and did keep copies of the physical records in Pennsylvania, until approximately four years ago. The second is that AdTrak recently authorized the access of at least some of these records within the Commonwealth. The question is whether these two additional facts are sufficient to justify the Court in exercising jurisdiction over AdTrak and compelling it to allow the inspection of the documents stored electronically.

The Court concludes that all of these facts together are not sufficient to give this Court jurisdiction, and therefore the Court must deny Petitioner's Petition for

Further and Compelled Production of Corporate Books and Records. Prior to the advent of electronic recordkeeping, the relevant question was whether the physical documents sought by the petitioner were located within this Commonwealth's borders.⁶ If they were, a court could compel the corporation to deliver them to the petitioner. If they were not, the court was powerless to order a corporation to cross state lines, retrieve documents physically kept in another state, and bring them back across state lines to the petitioner in Pennsylvania. Before the advent of electronic recordkeeping, a foreign corporation that previously conducted business in Pennsylvania but had since left along with all of its records by the time the petitioner filed the request for documents would not have had "books... within the jurisdiction," and thus the Court would have been powerless to order their production. This conclusion would hold even if that corporation mailed a small portion of its record to a person in Pennsylvania for a limited business purpose, because the relevant issues was not whether the corporation had *any* connection to Pennsylvania but whether it kept its books and records in Pennsylvania (or was required to do so).⁷ Such an act would subject the documents now located within Pennsylvania to disclosure, as they would now be "within the jurisdiction." The remainder of the foreign corporation's books and records, however, would remain foreign to the jurisdiction of the Pennsylvania courts.

⁶ See *Kahn*, 74 A.2d at 162.

⁷ See *MacNeal v. I.C.O.A., Inc.*, 555 A.2d 916, 917-18.

There is no doubt that the advent of electronic recordkeeping changed the necessary calculus of shareholders' rights to inspect corporate records, inasmuch as it is possible that a corporation's records will have *no* physical location and can be remotely accessed from anywhere. Ultimately, though, physical location is a proxy for the truly essential legal requirement: jurisdiction. A corporation that is incorporated in Pennsylvania, or a foreign corporation that keeps its principal place of business in Pennsylvania, will very likely be unable to resist a shareholder's request to inspect its documents even if they are stored "in the cloud." This is because, to the extent these businesses have voluntarily availed themselves of the benefits of doing business in Pennsylvania, a court order compelling them to provide their records for inspection will not offend concepts of jurisdiction. It will not require the court to reach outside of the Commonwealth to regulate "the internal management or affairs of a foreign business." Here, AdTrak has only conducted sparse business in Pennsylvania over the past four years, and only a small portion of its records have been accessed and utilized in the Commonwealth. Petitioner has been provided those records. In order to compel AdTrak to submit its remaining corporate records to Petitioner for inspection, the Court will need to reach into another state – be it Texas, where Higgins resides; Delaware, where AdTrak is incorporated; or some other state where QuickBooks locates its "cloud" servers – to cause AdTrak to take action. Guided by the principles discussed above, the Court declines to do so. Petitioner may have the ability to compel the disclosure of those records in Texas, Delaware, or


some other state – but on the facts presented here, he does not have the ability to do so in Pennsylvania.

ORDER

For the foregoing reasons, the Court DENIES the Petition of Brian Edenfield for Further and Compelled Production of Corporate Books and Records. Because this Order disposes of all remaining claims and parties in this action, it is a final order under Pa. R.A.P. 341(b)(1) and may be immediately appealed as of right.

IT IS SO ORDERED this 27th day of June 2022.

By the Court,



Eric R. Linhardt, Judge

ERL/jcr

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