

September 10, 2015

**Maryland Appellate Court Upholds Conditioning Exercise of
Stockholder Inspection Rights on Execution of Confidentiality Agreement**

The Court of Special Appeals of Maryland, our intermediate appellate court, has approved the imposition by a Maryland corporation of a requirement that a stockholder exercising inspection rights under the Maryland General Corporation Law (“MGCL”) first execute a company-prepared confidentiality agreement. *Hogans v. Hogans Agency, Inc.* (Ct. Spec. App. Md. August 28, 2015).

Section 2-513 of the MGCL authorizes the holder of at least five percent of the outstanding shares of any class of the corporation’s stock for at least six months to “inspect and copy” the “books of account” of the corporation. The same right also applies to the corporation’s stock ledger. However, Section 2-513 makes no reference to execution of a confidentiality agreement as a condition to exercise of inspection rights under the statute.

In upholding the company’s requirement that the stockholder, who was also “the owner of a competing company,” sign the confidentiality agreement prepared by the company before inspecting the company’s books and records, the trial court explained: “My ruling is based on a reasonable interpretation of the statute.” Slip op. at 12.

The appellate court, in a well articulated opinion by Judge Patrick Woodward, held that “a trial court may grant a corporation’s request for a stockholder who is a direct competitor of the corporation to sign a confidentiality agreement before inspecting the corporations [*sic*] books of account. Appellant’s actual intent in using the information is irrelevant.” Slip op. at 6.

In explaining its decision, the court adopted my interpretation of Section 2-513:

In his treatise on Maryland corporation law, James J. Hanks, Jr., sought to reconcile the Court [of Appeals]’s rulings in *Weihenmayer* [*v. Bitner*] and *Wight* [*v. Heublein*]:

It is difficult to reconcile the *Weihenmayer* and *Wight* cases. The correct law on this subject is that **a five-percent, six-month stockholder is entitled to inspect the “books of account”** of a Maryland corporation for any purpose related to monitoring or protecting his equity investment in the corporation **but not for any other purpose, such as competing with the corporation.** This rule allows broad access to corporate documents and information, perhaps even in a situation in which the stockholder has an additional purpose not related to his investment. **A corporation may take reasonable measures, such as requiring the requesting stockholder to sign a confidentiality agreement, to protect the**

corporation against disclosure and misuse of confidential documents and information by the stockholder.

James J. Hanks, Jr., Maryland Corporation Law § 7.18 (2014 supp.) (emphasis added).

Slip op. at 11 (emphasis in opinion original).

It is important to note that Section 2-513 applies by its terms only to “stockholders of record.” Also, there is no judicial interpretation of “books of account” in Section 2-513. My view, expressed in *Maryland Corporation Law*, is that “it is likely, especially because of the use of the word ‘account,’ that the term refers only to financial records and not to other corporate records. It is clearly broader than the annual statements of affairs that may be inspected by any stockholder.” Section 7.18 (2014 Supp.).

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As always, my colleagues and I are available at any time to discuss these or other matters of Maryland law.

Jim Hanks

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