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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

PAUL CHOPRA,

Plaintiff and Appellant,

v.

HELIO SOLUTIONS, INC., et al.,

Defendants and Respondents.

H030516

(Santa Clara County
Super. Ct. No. CV062181)

I. INTRODUCTION

Appellant Paul Chopra sought a writ of mandate compelling respondents Helio Solutions, Inc. and its directors to allow him to inspect a large number of corporate records in addition to the corporate records he had already received. He contended that as a minority shareholder he was entitled under Corporations Code section 1601, subdivision (a),¹ to inspect the additional records in order to, among other things, ascertain the present value of the company's stock and to determine whether the directors were acting in the best interests of the minority shareholders.

On appeal, Chopra contends that the trial court erred in denying his petition for writ of mandate on the ground that Chopra had failed to meet his burden to show that his inspection requests were reasonably related to his interests as a shareholder. For reasons

¹ All further statutory references are to the Corporations Code unless otherwise indicated.

that we will explain, we find that sufficient evidence supports the trial court's ruling and therefore we will affirm the order denying Chopra's petition for writ of mandate.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *Chopra's Inspection Requests*

Appellant Chopra is a minority shareholder and former director of Helio Solutions, Inc. (Helio Solutions), a California corporation. In a letter dated April 26, 2005, Chopra requested that he be allowed to inspect and copy certain corporate records of Helio Solutions, including the accounting books and records, the articles of incorporation, and the minutes of proceedings of the shareholders and the board, pursuant to section 1601.² Helio Solutions permitted Chopra and his forensic accountant to inspect these corporate records on May 9, 2005, at Helio Solutions's office.

As memorialized in a letter dated May 26, 2005, from Helio Solutions to Chopra, Chopra subsequently provided Helio Solutions with a list of additional records that he wished to inspect. The grounds for Chopra's second request for inspection were twofold: to evaluate a buyout offer made by Helio Solutions to Chopra and to evaluate the company's financial situation in light of a recent dividend distribution to Chopra. Helio Solutions advised Chopra in the letter dated May 26, 2005, that the buyout offer was off

² Section 1601 provides, "(a) The accounting books and records and minutes of proceedings of the shareholders and the board and committees of the board of any domestic corporation, and of any foreign corporation keeping any such records in this state or having its principal executive office in this state, shall be open to inspection upon the written demand on the corporation of any shareholder or holder of a voting trust certificate at any reasonable time during usual business hours, for a purpose reasonably related to such holder's interests as a shareholder or as the holder of such voting trust certificate. The right of inspection created by this subdivision shall extend to the records of each subsidiary of a corporation subject to this subdivision. [¶] (b) Such inspection by a shareholder or holder of a voting trust certificate may be made in person or by agent or attorney, and the right of inspection includes the right to copy and make extracts. The right of the shareholders to inspect the corporate records may not be limited by the articles or bylaws."

the table, but recognized that the second reason for Chopra's inspection request was reasonably related to Chopra's interests as a shareholder under section 1601. Therefore, Helio Solutions agreed to produce various corporate records, including all year-end financial statements, all audited financial statements, all tax return filings, and the 2004 general ledger with accompanying journals. On June 16, 2005, Helio Solutions sent copies of these records to Chopra.

Thereafter, in a letter dated June 30, 2005, Chopra requested certain financial statements for fiscal year 2004 and an income and balance sheet as of March 31, 2005. Helio Solutions forwarded the copies of the requested records to Chopra on July 18, 2005.

Chopra's next request for inspection of Helio Solutions's corporate records was made in a letter dated October 14, 2005. Stating that Helio Solutions had provided only "minimal information," Chopra requested records in the following 15 categories:

- (1) Schedule of accounts payable and received and inventory for December 31, 2003, inventory for December 31, 2004, and the most current information regarding accounts payable and receivable and inventory for 2005;
- (2) Depreciation schedule of fixed assets for December 31, 2003, December 31, 2004, and as of the most current date available for 2005;
- (3) Supporting documents for all balance sheet amounts as of December 31, 2004 and the most current date available for 2005, including bank loans, lines of credit, accrued payroll liabilities, sales tax liabilities, other receivables, loans to officers and owners, significant prepayments or deposits, and equipment lease agreements;
- (4) Copies of business bank statements for each month for 2003, 2004, and the most current date available for 2005;
- (5) Company credit card statements for all business accounts or personal accounts used partly for business purposes for 2003, 2004, and the most current date available for 2005;
- (6) General ledger details from inception, including cash receipts and disbursements;
- (7) Compensation records for all owners from inception to the most current date;
- (8) Pension contributions made on behalf of the owners from inception,

including the annual pension plan investment statements and plan; (9) Contracts and agreements for 2003 to the current date (including life insurance policies for officers and/or stockholders; pension plan and profit sharing plan descriptions and individual account statements; stock purchase or ownership agreements; buy-sell agreements; equipment and building leases; employment and bonus agreements for owners or key employees; covenants not to compete; loan agreements and credit information, listing of patents and propriety assets and related royalty agreements, escrows, deeds, notes or documents connected with any real property in which the company had an interest, agreements relating to the sale or retirement of shares of capital stock, option grants and exercise of stock options; minutes of board of directors and stockholder meetings not yet produced; and each owner's curriculum vitae; (10) Any available budgets or projections for 2004 to the current date; (11) Company brochures and/or marketing information; (12) List of key management personnel with job title; (13) Overview of company position and objectives for each department manager for 2005, including budgets; (14) Information regarding contingencies and lawsuits; and (15) Schedule of revenues and cost of revenues for 2003 and 2004. In the same letter, Chopra also requested the income and balance sheet for the quarter ending June 30, 2005.

Chopra further stated in his letter of October 14, 2005, that the above records were reasonably related to his interests as a shareholder, based on the following allegations. Chopra believed that Helio Solutions had purchased a building without offering the opportunity to the shareholders; that in purchasing the building, certain shareholders had used assets of the corporation to secure a small business loan for their own benefit; that corporate assets were used to break the lease for the previous facility; that the company was planning to issue stock and Chopra needed additional information to assess the effect of such dilution on his own shares; the company had taken no action against employees who took a substantial amount of business with them when they left; the company had

failed to take any action to collect a \$1 million debt owed by Los Angeles County; and the recent dividends paid to shareholders were “paltry.”

In a letter dated October 24, 2005, Helio Solutions responded to Chopra’s October 14, 2005, inspection request by sending him copies of the income and balance sheets for the quarter ending June 30, 2005, the company’s 2004 tax returns, and the audited financial statements for 2004. Helio Solutions found the remainder of Chopra’s inspection requests “baffling” and declined to produce additional documents on the ground that there was no reasonable relation between the documents requested and the stated purpose for the inspection.

B. The Petition for Writ of Mandate

On April 21, 2006, Chopra filed a verified petition for writ of mandate in which he sought a writ compelling Helio Solutions and its directors and officers to produce for inspection the records listed in his October 14, 2005, letter in categories one through nine (as noted in Part A, above). The petition stated that the reasons for Chopra’s inspection requests were those reasons indicated in his October 14, 2005 letter, plus two additional reasons: Chopra wanted to ascertain the present value of his stock and to determine whether the directors were acting in the best interests of the minority shareholders. Chopra’s statements regarding the reasons for his inspection requests (the various allegations of corporate and director wrongdoing) were also detailed in his supporting declaration.

In his points and authorities in support of the petition, Chopra argued that the writ of mandate should issue under Code of Civil Procedure section 1085³ to compel Helio

³ Code of Civil Procedure section 1085 states in pertinent part, “(a) A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person.”

Solutions to comply with his inspection requests because he had a statutory right as a shareholder to inspect the company's records pursuant to sections 1600⁴ and 1601. While Chopra acknowledged that his inspection demand sought information beyond that to which he was entitled by statute, he asserted that he was entitled to the additional information based on his common law right to inspect corporate records reasonably related to his interest as a shareholder of Helio Solutions.

Helio Solutions filed a verified answer to the petition for writ of mandate. In the answer, Helio Solutions denied, among other things, that it had refused all of the inspection requests set forth in Chopra's October 14, 2005, letter. Helio Solutions also denied that the purpose for Chopra's inspection requests was reasonably related to his interests as a shareholder. Additionally, the answer asserted several affirmative defenses, including the defense that Chopra was engaged in an unauthorized fishing expedition.

In its points and authorities in opposition to the petition, Helio Solutions argued that the petition for writ of mandate should be denied because Chopra had not established

⁴ In pertinent part, section 1600 provides, "(a) A shareholder or shareholders holding at least 5 percent in the aggregate of the outstanding voting shares of a corporation or who hold at least 1 percent of those voting shares and have filed a Schedule 14A with the United States Securities and Exchange Commission (or in case the corporation is a bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act, have filed a Form F-6 with the appropriate federal bank regulatory agency) shall have an absolute right to do either or both of the following: (1) inspect and copy the record of shareholders' names and addresses and shareholdings during usual business hours upon five business days' prior written demand upon the corporation, or (2) obtain from the transfer agent for the corporation, upon written demand and upon the tender of its usual charges for such a list (the amount of which charges shall be stated to the shareholder by the transfer agent upon request), a list of the shareholders' names and addresses, who are entitled to vote for the election of directors, and their shareholdings, as of the most recent record date for which it has been compiled or as of a date specified by the shareholder subsequent to the date of demand. The list shall be made available on or before the later of five business days after the demand is received or the date specified therein as the date as of which the list is to be compiled. A corporation shall have the responsibility to cause its transfer agent to comply with this subdivision."

that he lacked an adequate legal remedy. Alternatively, Helio Solutions contended that Chopra had failed to meet his burden, under the shareholder's common law right to inspect corporate records, to show that his inspection was sought in connection with his interests as a shareholder, rather than for an unrelated or competitive interest. Helio Solutions asserted that Chopra was engaged in an improper fishing expedition to further his interest as a direct competitor of Helio Solutions, since they were both in the business of reselling Sun Microsystems hardware and software.

Additionally, Helio Solutions argued that the petition was barred by the equitable doctrine of laches, because the petition was filed more than seven months after Chopra's October 14, 2005, inspection request. Helio Solutions also asserted that the doctrine of unclean hands barred the petition, due to Chopra's failure to provide consideration for some of the shares issued to him.

In support of its factual allegations, Helio Solutions submitted the declaration of Paul Condensa, its founding shareholder, in which Condensa stated, among other things, that Chopra had received all of the financial information to which he was entitled as a minority shareholder and the petition was "factually flawed throughout."

C. The Trial Court's Order

On June 14, 2006, the trial court issued its order denying the petition for writ of mandate. The written order included several findings regarding Chopra's purported reasons for his inspection requests.

First, the trial court found that the stated reasons were "extremely vague, speculative, lacking in supporting facts and specifics, and in many instances call for one or more assumptions to be made." Second, Chopra sought information about the activities of certain shareholders rather than the corporation. Third, Chopra failed to present anything, either from him or his forensic accountant, to explain why the thousands of pages of information previously provided to him by Helio Solutions did not address the stated reasons for his inspection requests. The trial court also found that

Chopra was engaged in a fishing expedition in which he sought information to support his unsubstantiated allegations of corporate wrongdoing. The court explained that Chopra “is not pursuing any of his nine stated objectives which might be ‘reasonably related to such holder’s interests as a shareholder’ as he claims, but is, literally, auditing the corporation.”

Based on these findings, the trial court determined that Chopra had not met his burden, under either section 1601 or the common law right of inspection, to show that his inspection requests to Helio Solutions were either made for a proper purpose or reasonably related to his interests as a shareholder. Accordingly, the trial court denied the petition for writ of mandate and awarded costs to Helio Solutions.

Thereafter, Chopra filed a timely notice of appeal.⁵

III. DISCUSSION

A. The Parties’ Contentions

Chopra contends that the trial court erred in finding that he failed to demonstrate a proper purpose for his inspection requests. He insists that in seeking to value his shares, obtain information about the condition of Helio Solutions, and determine whether the directors were acting in the best interests of minority shareholders, he stated a proper purpose for inspecting corporate records under *Schnabel v. Superior Court* (1993) 5 Cal.4th 704 (*Schnabel*).

Chopra also argues that his inspection requests were reasonably related to these proper purposes, and the trial court erred in ruling otherwise, because the records previously provided by Helio Solutions were not sufficient for his forensic accountant to determine whether his interests “were being protected or what the value of his interest in Helio actually was All of these documents were material to determining the true

⁵ On January 23, 2007, this court denied Helio Solutions’s motion to strike improper matter in appellant’s opening brief.

state of the business, assessing the value of [his] interests, and testing whether [his] interests as a minority shareholder were being protected.”

By way of example, Chopra argued that records such as employee agreements and compensation information were reasonably related to the proper purposes of assessing the current corporate financial situation, valuing the business, and determining whether the business was being properly managed and whether the majority shareholders or directors were improperly diverting corporate funds for their own benefit, as well as assessing whether the shareholders’ interests were being properly protected.

As to the requests for contracts and agreements related to equipment and building leases, Chopra explained that these documents were relevant to a determination of whether the majority shareholders had purchased a building and leased it to Helio Solutions at an excessive rate. Other contracts and agreements such as insurance policies and pension plans were, according to Chopra, material to assessing the “true financial condition” of the company. Chopra also believes that he has reason to question the management of Helio Solutions and whether his interests as a minority shareholder are being protected, based on “the fact that Helio did \$88 million in business and paid a dividend of \$1952.55 to [him].”

Finally, Chopra maintains that he properly requested the documents that his forensic accountant identified as necessary to a valuation of Chopra’s interest in the company and to a determination of whether he was being protected as a minority shareholder.

In response, Helio Solutions argues that the trial court did not err in denying the petition for writ of mandate because Chopra failed to establish that he had a proper purpose for his inspection requests, noting that Chopra’s stated reasons for his inspection requests had changed over time. According to Helio Solutions, Chopra initially stated that his purpose was to evaluate Helio Solutions’s share value in light of a buyout offer and to assess the reasonableness of a dividend distribution. After Helio Solutions

provided the corporate financial records necessary for these assessments, Chopra next stated that further information was needed for the purpose of determining whether his interests were being protected by the majority shareholders, based on a number of allegations of corporate wrongdoing asserted on information and belief.

Helio Solutions also emphasizes that Chopra's repeated references to his forensic accountant's opinions in support of his overly broad inspection requests were not supported by a declaration from the accountant. Finally, Helio Solutions contends that the trial court's denial of the petition on the ground that Chopra was engaged in an unauthorized fishing expedition is correct, based on the ruling in *Private Investors v. Homestake Min. Co.* (1936) 11 Cal.App.2d 488, that the trial court may deny a petition for writ of mandate where the court finds that the inspection requests constitute a fishing expedition.

B. Analysis

We will begin our analysis with a review of the shareholder's right to inspection, enforcement of that right by writ of mandate, and the appropriate standard of review for a trial court order denying a shareholder's petition for writ of mandate.

1. The Shareholder's Right to Inspection

Section 1601, subdivision (a) provides in pertinent part that "[t]he accounting books and records and minutes of proceedings of the shareholders and the board and committees of the board of any domestic corporation . . . shall be open to inspection upon the written demand of the corporation of any shareholder . . . at any reasonable time during usual business hours, for a purpose reasonably related to such holder's interests as a shareholder"

The California Supreme Court has established the scope of the shareholder's right of inspection: " 'a stockholder has an interest in the assets and business of the corporation and . . . inspection [of the books of the corporation] may be necessary or proper for the protection of his interest or for his information as to the condition of the

corporation and the value of his interests therein.’ ” (*Schnabel v. Superior Court, supra*, 5 Cal.4th at pp. 715-716.)

However, the shareholder’s right of inspection is limited. “ ‘[A]lthough shareholders have some rights to corporate information not available to the general public, shareholder status does not in and of itself entitle an individual to unfettered access to corporate confidences and secrets.’ ” (*Schnabel, supra*, 5 Cal.4th at p.716; *Goldstein v. Lees* (1975) 46 Cal.App.3d 614, 621.) Thus, “the right of inspection does not extend to records not reasonably related to the proper purpose for which it is sought, and a trial court acts within its discretion in limiting such discovery.” (*Schnabel, supra*, 5 Cal.4th at p. 717.)

There is also a common law right to shareholder inspection. “It is settled that at common law a stockholder has the right to inspect the books of the corporation. [Citations.]” (*Hobbs v. Tom Reed Gold Mining Co.* (1913) 164 Cal.497, 501.) The basis for the common law right is similar to the rationale for the statutory right of shareholder inspection under section 1601. “The reasoning on which this [common law] rule is founded is that such inspection may be necessary or proper for the protection of his [or her] interest or for his [or her] information as to the condition of the corporation and the value of his interest therein.” (*Ibid.*)

The shareholder’s right of inspection may be enforced by writ of mandate. (*Hobbs v. Tom Reed Gold Min. Co., supra*, 164 Cal. at p. 499; *Johnson v. Langdon* (1902) 135 Cal. 624, 626.) As this court has noted, under Code of Civil Procedure section 1085 “mandate will sometimes lie against a private person to compel performance of a duty. Most typically, it is available to force the disclosure of records or the performance of similar duties owed to shareholders or other principals by a corporate officer or similar functionary.” (*City of King City v. Community Bank of Central California* (2005) 131 Cal.App.4th 913, 927 .)

An order granting or denying a petition for writ of mandate is appealable despite the absence of a separate formal judgment. (*Wong v. Ohlone College* (2006) 137 Cal.App.4th 1379, 1382, fn.3; *Public Defenders' Organization v. County of Riverside* (2003) 106 Cal.App.4th 1403, 1409.) The standard of review is sufficiency of the evidence. “In reviewing the trial court’s ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial, credible and competent evidence. This limitation, however, does not apply to questions of law where the facts are undisputed. In such cases, as in other instances involving matters of law, the appellate court is not bound by the trial court’s decision but may make its own determination. [Citation.]” (*Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 502; see also *Gilmore v. Emsco Derrick & Equipment Co.* (1937) 22 Cal.App.2d 64, 66 [order granting shareholder’s petition for examination of corporations’ share register]; *Hartman v. Bandini Petroleum Co.* (1930) 107 Cal.App. 659, 661 [order granting petition for writ of mandate compelling inspection of corporate records].)⁶

2. Sufficiency of the Evidence

In the present case, we determine that the trial court’s order denying Chopra’s petition for writ of mandate is supported by sufficient evidence.

As the petitioning shareholder, Chopra had the burden of establishing that Helio Solutions had improperly denied his inspection requests, and therefore a writ of mandate should issue to compel disclosure, because he sought inspection of records reasonably related to a proper purpose. (*Schnabel, supra*, 5 Cal.4th at p. 716.) As we have noted, a

⁶ The parties assert that the applicable standard of review is set forth in *Citizens for Improved Sorrento Access, Inc. v. City of San Diego* (2004) 118 Cal.App.4th 808, 814: “ “[R]eview is limited to an inquiry into whether the action was arbitrary, capricious or entirely lacking in evidentiary support. [Citation.]” [Citation.]” We disagree. That standard of review applies where the writ of mandate issues with respect to an underlying exercise of discretionary legislative power. (*Ibid.*; *United Assn. of Journeymen v. City and County of San Francisco* (1995) 32 Cal.App.4th 751, 759.)

proper purpose is one reasonably related to his interests as a shareholder (§ 1601, subd. (a)) or a request for information regarding the condition of the corporation and the value of his interest in the corporation. (*Schnabel, supra*, 5 Cal.4th at pp. 715-716.)

The trial court found that Chopra had neither stated a proper purpose nor shown how his numerous and broad inspection requests were reasonably related to his interests as a shareholder. Assuming that Chopra stated a proper purpose because he ostensibly sought information regarding the financial condition of Helio Solutions and the value of his shares, the question is whether the evidence was sufficient to support the trial court's finding that the records sought were not reasonably related to his interests as a shareholder.

The decision in *Schnabel, supra*, 5 Cal.4th 704, is instructive with regard to a determination of whether an inspection request is reasonably related to a proper purpose. *Schnabel* involved a marital dissolution action in which the husband was employed by and owned 30 percent of the stock of a close corporation. The stock owned by the husband was community property. The wife retained a certified public accountant to appraise the corporations' value and ascertain her husband's remuneration and benefits. (*Id.* at pp. 708-709.) She subpoenaed a broad range of corporate records for this purpose. The corporation produced only its profit and loss and financial statements and the records relating to the husband personally, and moved to quash the subpoena for the remainder of the requested information on the ground that the remainder of the information sought was irrelevant and confidential. When the trial court denied the motion to quash, the corporation sought writ relief. (*Id.* at pp. 709-710.)

The California Supreme Court affirmed the trial court's order, finding that the wife had stated a proper purpose--to ascertain the value of the stock and the community's and the husband's financial status in a marital dissolution action--and the records sought were related to that purpose. Specifically, the court found that "all requested documents were relevant to the corporation's value and the parties' financial status. The

uncontroverted declaration of [the wife's] accountant detailed the reasons why each requested item of information was necessary to independently verify the information already produced. The requests were generally for specified limited time periods.” (*Schnabel, supra*, 5 Cal.4th at p. 717.)

Thus, in *Schnabel*, where the company did not fully comply with the shareholder's inspection request on the ground that the remainder of the records sought was irrelevant, the shareholder provided a declaration from her accountant explaining why each requested item was necessary. In contrast, while Chopra similarly asserts that Helio Solutions has improperly refused to comply with all of his inspection requests on the ground that the remainder of the information sought is irrelevant, he has not provided a declaration from his forensic accountant explaining why each item is necessary in addition to the records previously produced.

Moreover, we note that during the hearing on Chopra's petition the trial court repeatedly asked Chopra's attorney to explain how the records sought were reasonably related to his stated purposes. As illustrated by the following colloquy, Chopra's attorney offered only conclusory assertions regarding the relationship between the records and Chopra's ostensible purposes:

“THE COURT: . . . You raised several reasons for making these requests. My question was, are the answers to all of your concerns or any of your concerns addressed or can be found in the information that you were previously provided?

“[COUNSEL]: The answer—the short answer is absolutely no.

“[THE COURT]: Why not?

[COUNSEL]: We did have the P&L [profit and loss statement], we had the balance sheet, we had the income statement, but in categorizations. Then through further negotiations, counsel conceded to give me the general ledger, but the general ledger was worthless because all it was [was] an array of figures without any differentiation. There's no way on God's earth that we would be able to analyze or determine how--what--it's

like saying, here's a printout on a printing--on a cash register, if you will, without any-- without any details to support that."

Thus, Chopra's attempt to explain why the records sought in categories one through nine of his October 14, 2005, inspection request (such as all contracts and agreements from 2003 to date) was obviously insufficient to meet his burden, under either section 1601 or the common law right of shareholder inspection, to show that the records sought were reasonably related to his stated purposes. At no point, either in his petition or during argument, did Chopra articulate a specific reason to support a claim that any particular record or piece of information was necessary for his forensic accountant's analysis of Helio Solutions's condition.

For these reasons, we conclude that the trial court properly determined that Chopra had not met his burden as a shareholder and properly denied the petition for a writ of mandate compelling Helio Solutions to produce the additional records he requested.

IV. DISPOSITION

The order of June 14, 2006, denying issuance of a peremptory writ of mandate is affirmed. Costs on appeal are awarded to respondent Helio Solutions, Inc.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

DUFFY, J.