

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: September 5, 2007

Decided: September 6, 2007

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Re: *Meltzer, et al. v. CNET Networks, Inc.*
Civil Action No. 3023-CC

In this action seeking inspection of books and records under 8 *Del. C.* § 220, defendant CNET Networks has moved to compel discovery responses by plaintiffs under Rule 37. Specifically, CNET first wants plaintiffs to produce a solicitation letter sent to plaintiffs by their counsel and, secondly, wants information regarding the credible basis for plaintiffs' belief that there was wrongdoing (*i.e.*, alleged backdating of stock option grants) at CNET. Plaintiffs, as I understand their arguments, contend that the solicitation letter is irrelevant and that CNET is seeking privileged information in its questioning regarding plaintiffs' purpose for this § 220 action.

Under Rule 26(b)(1) of the Court of Chancery, a party may obtain discovery of any matter relevant to a claim or defense in the pending action. The information sought need not be admissible itself so long as it is reasonably calculated to lead to the discovery of admissible evidence. There are few issues implicated in a § 220 proceeding. The plaintiff bears the burden of proving (1) that he is a stockholder, (2) that he has a proper purpose for his inquiry, and (3) that this proper purpose is reasonably related to his status as a stockholder.

CNET's motion to compel production of the solicitation letter is granted because that letter is relevant to the issues of whether plaintiffs have a proper purpose for bringing this suit and whether this purpose is reasonably related to their status as stockholders. Many purposes—from valuing one's stock to investigating waste—have been held to be proper, but a court of equity will not permit a books and records inspection where the plaintiff's purpose is vexatious or otherwise in bad faith.¹ First, CNET's request for the solicitation letter is reasonably calculated to lead to the discovery of evidence that could show the plaintiffs were lured into this suit in bad faith and the solicitation letter is therefore relevant. Second, to the extent plaintiffs' only purpose is to bring a derivative suit alleging a breach of fiduciary duties for backdating from the late 1990s through the early part of this decade, CNET may wish to challenge this purpose as not reasonably related to their status as stockholders. Although the Supreme Court in *Saito v. McKesson HBOC, Inc.* found that a court may not “deprive a stockholder of necessary documents solely because the documents . . . predate the stockholder's first investment in the corporation,”² if plaintiffs *only* purpose is to investigate a claim which they have no standing to assert, the books and records inspection is *not* reasonably related to plaintiffs' status as stockholders. Assuming, for the sake of argument, that the solicitation letter informed plaintiffs of a potential backdating claim and encouraged them to purchase shares in order to bring such a claim, this case presents a situation analogous to the one Vice Chancellor Lamb recently faced in *Polygon Global Opportunities Master Fund v. West Corporation*.³ There, a hedge fund learned of the West Corporation's proposed recapitalization plan and sensed an arbitrage opportunity. It purchased shares and then sought additional information under § 220. Vice Chancellor Lamb denied the Fund its inspection rights as a contravention of Delaware's strong public policy against purchasing grievances. CNET's request for the solicitation letter, therefore, is reasonably calculated to uncover potentially relevant evidence.

For similar reasons, CNET must also be permitted to ask plaintiffs questions about their purpose for bringing this action. The desire to investigate potential wrongdoing is indeed a proper purpose, but—as the Supreme Court noted last year in *Seinfeld v. Verizon Communications*—the plaintiffs “must present some evidence to suggest a credible basis from which a court can infer that

¹ Cf. DONALD J. WOLFE & MICHAEL A. PITTENGER, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY § 8-6[e][1] (2006) (noting that a § 220 demand for a stocklist was denied where plaintiff's purpose was merely to “harass the corporation”).

² 806 A.2d 113, 115 (Del. 2002).

³ C.A. No. 2313-N, 2006 LEXIS 179 (Del. Ch. 2006).

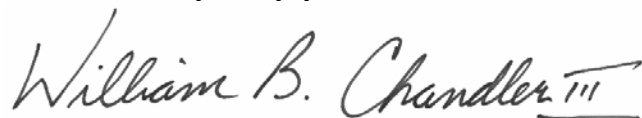
mismanagement, waste, or wrongdoing may have occurred.”⁴ When questioned on why they were seeking CNET’s books and records, plaintiffs were instructed not to answer on grounds of privilege. As I noted earlier, a plaintiff does not have much to demonstrate in a § 220 action, but he must indeed show that he has a proper purpose. The plaintiffs’ purpose, therefore, is indisputably “at issue,” and under the Supreme Court’s decision in *Tackett v. State Farm Fire and Casualty Insurance*⁵ the attorney-client privilege is implicitly waived. There, the Court held that a litigant may not “make bare, factual allegations, the veracity of which are central to resolution of the parties’ dispute, and then assert the attorney-client privilege as a barrier to prevent a full understanding of the facts disclosed.”⁶

Because the request for the solicitation letter is reasonably calculated to lead to evidence potentially relevant to two elements of plaintiffs’ claim and because plaintiffs’ purpose in bringing this suit is unquestionably “central to the resolution” of this action, CNET’s motion to compel discovery is GRANTED.

In light of this ruling, and the time needed to comply with it, I will cancel the trial scheduled for September 18, 2007. The next earliest date available on the Court’s calendar for a rescheduled trial is Wednesday, November 14, 2007. Trial is therefore set for November 14, to commence at 10:00 a.m. in Georgetown.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and includes a horizontal line under the name.

William B. Chandler III

WBCIII:meg

⁴ 909 A.2d 117, 118 (Del. 2006).

⁵ 653 A.2d 254 (Del. 1995).

⁶ *Id.* at 259–60.