



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 SOUTH STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397
FACSIMILE: (302) 739-6179

February 24, 2014

Jon E. Abramczyk, Esquire
Christopher P. Quinn, Esquire
Morris, Nichols, Arsht & Tunnell LLP
1201 North Market Street
Wilmington, DE 19801

Richard M. Beck, Jr., Esquire
Sean M. Brennecke, Esquire
Klehr Harrison Harvey Branzburg LLP
919 North Market Street, Suite 1000
Wilmington, DE 19801

Re: *Caspian Select Credit Master Fund Ltd. v. Key Plastics Corporation*
C.A. No. 8625-VCN
Date Submitted: December 18, 2013

Dear Counsel:

This case involves two investors in a closely-held portfolio company and the plaintiff minority investor's efforts to obtain certain books and records pursuant to 8 *Del. C.* § 220. This post-trial letter opinion concludes that the plaintiff has demonstrated proper purposes and that the defendant portfolio company has not overcome that showing and demonstrated that those purposes are false. Thus, plaintiff is entitled to inspect those books and records that are tailored to meet its

asserted purposes. Because plaintiff has indicated its willingness to work with the defendant to determine the proper scope of the records requested and to execute an appropriate confidentiality agreement, the Court need only decide the limited issue of proper purpose.

I. BACKGROUND

Plaintiff, Caspian Select Credit Master Fund Ltd., a Cayman Islands limited liability company (with its affiliates, “Caspian”), is the sole minority investor in Key Plastics Corporation, a Delaware corporation (“Key Plastics” or the “Company”). Caspian owns approximately 8.5% of the Company’s outstanding shares. The remaining 91.5% of the Company is owned by two related funds, the Wayzata Opportunities Fund II, L.P. (the “Wayzata Opportunities Fund”) and Wayzata Opportunities Fund Offshore II, L.P. (collectively the “Wayzata Funds” or the “Controlling Stockholders”), managed by Wayzata Investment Partners LLC (“Wayzata”).

Key Plastics, along with its affiliate Key Plastics, L.L.C. (“KP LLC”), is a global supplier of automotive components based in Northville, Michigan. Before the Company’s bankruptcy, Caspian, along with other investors and certain Wayzata funds, purchased senior secured notes offered by the Company.

Key Plastics, after becoming insolvent, filed a prepackaged bankruptcy plan under Chapter 11 on December 15, 2008.¹ The senior note holders obtained an option to receive a pro rata share of 65% of the fully diluted equity in the reorganized Company or cash equal to 16% of the face value of their notes. Under the bankruptcy plan, the senior notes of Caspian and Wayzata were converted into equity of the reorganized Key Plastics.²

The Company and its shareholders also executed the Stockholders Agreement³ describing the rights and obligations of the Company and its shareholders after Key Plastics emerged from bankruptcy. The Stockholders Agreement requires the Company to provide its shareholders with annual audited financial statements and certain quarterly financial reports. The agreement also

¹ Pretrial Stip. ¶ II.7.

² *Id.* ¶ II.8.

³ JX 2.

defines the board structure of the Company, which grants Wayzata at least three of the five seats as long as it holds 50% or more of the outstanding shares.⁴

Wayzata agreed to provide additional financing and the Company entered into a term loan facility on February 13, 2009 with Wayzata Opportunities Fund, one of the Controlling Stockholders (the “Wayzata Term Loan”).⁵ Wayzata serves as the administrative agent to the loan. The original terms of the loan provided for borrowings of up to \$25 million with an annual interest rate equal to 11% plus the higher of LIBOR or 4%, which was due to expire in January 2011.

On December 2, 2010, the signatories to the Wayzata Term Loan amended the loan to extend its maturity date to January 31, 2012 and to increase the borrowing amount to \$50 million. On January 19, 2012, they again amended the Wayzata Term Loan to extend its expiration to January 31, 2014. The January 2012 amendment increased the borrowing amount from \$55 million to \$75 million and increased the rate of interest to an annual rate of 16% plus the higher of LIBOR or 4%.⁶ On April 4, 2012, Key Plastics and/or KP LLC entered into a Loan and

⁴ *See id.* at 1-2.

⁵ Pretrial Stip. ¶ II.9.

⁶ *Id.* ¶ II.11.

Security Agreement with CapitalSource Bank which provided for borrowings up to \$10 million with an interest rate calculated monthly based on one-month LIBOR plus 7% (the “CapitalSource Loan”).⁷

Caspian periodically contacted Key Plastics to obtain financial reports until communications ceased in March 2012. Caspian apparently had written off its initial investment in Key Plastics, but it tasked a recently hired analyst, Joshua Lynn, with recovering some value from the investment. Lynn reached out to the Company’s chief financial officer (“CFO”) for a period of time to gather what information he could. Based on these informal communications and information provided pursuant to the Stockholders Agreement, Caspian set a value for its equity stake and proposed a price at which it could be bought out. The Company countered with a price for the minority position that was low enough to end negotiations.

On April 26, 2013, Caspian served a demand letter upon Key Plastics identifying 18 categories of books and records it wished to inspect.⁸ The letter explained Caspian’s reasons for seeking the Company’s books and records:

⁷ *Id.* ¶ II.14.

⁸ *Id.* ¶ II.16.

(i) to investigate waste and mismanagement with respect to the Wayzata Exit Facility and Capital Source Loan; (ii) to investigate whether the controlling shareholders and their affiliates have engaged in self-dealing or other improper transactions; (iii) to secure information concerning the Company, its financial condition, its management and the conduct of its affairs; (iv) to value its stockholdings; and (v) to enable Caspian to communicate with other shareholders of the Company respecting the affairs of the Company.⁹

On May 1, 2013, Key Plastics notified Caspian that it denied the request for two reasons. It asserted, first, that Caspian presented no credible basis for such an investigation and second, that Caspian had not explained how each requested document was necessary and essential for those purposes.¹⁰ On May 13, 2013, Caspian sent a revised demand letter explaining how each of the requested documents related to the purposes it had articulated in its April 26 letter.¹¹ To support its claims of self-dealing, waste and mismanagement, Caspian recited the January 2012 amendment to the Wayzata Term Loan and the Company's decision not to refinance the loan or take other action with respect to it.

⁹ JX 51 at 3.

¹⁰ Pretrial Stip. ¶ II.18; JX 52.

¹¹ Pretrial Stip. ¶ II.20; JX 53.

On May 22, 2013, Key Plastics agreed to allow Caspian to review a limited set of books and records upon the execution of a confidentiality agreement.¹² Caspian did not sign the agreement and instead, on June 5, 2013, initiated this books and records action.¹³

II. CONTENTIONS

Caspian argues it has a proper purpose to investigate waste and mismanagement related to the Wayzata Term Loan. It also contends that it has another proper purpose: to value its holdings.¹⁴ Key Plastics argues that Caspian's asserted purposes were made under false pretenses because Caspian already had the information it needed to investigate Company wrongdoing. It also asserts that

¹² Key Plastics granted Caspian access to (i) the quarterly and annual consolidated statements of income and cash flows, and balance sheets, of the Company and its subsidiaries, (ii) the stock transfer books and record of shareholders of the Company, (iii) the certificate of incorporation and bylaws of the Company, and (iv) the certificate of formation and operating agreement of KP LLC. JX 54.

¹³ Pretrial Stip. ¶¶ II.22-.23.

¹⁴ Key Plastics argues that because it agreed to provide Caspian those books and records relating to its demand to value its stock that this issue is moot. *See* JXs 54, 53. The Court considers the parties' arguments about establishing proper purpose relating to valuation because the books and records have not been exchanged, although the Company's outstanding offer does appear to meet Caspian's demands.

Caspian's true purpose is to use litigation to harass the Company and to force the Controlling Stockholders to buy Caspian's interest.

At trial, Caspian expressed its willingness to sign an appropriate confidentiality agreement if granted access to the Company's books and records.¹⁵ It also indicated its willingness to work with Key Plastics to attempt to tailor the specific books and records to be provided¹⁶ to meet the requirement that an order granting access to books and records be "circumscribed with rifled precision."¹⁷ Thus, this Court's focus is on whether Caspian's stated purposes are proper and, if so, whether Key Plastics has demonstrated that they are only pretenses.

¹⁵ Trial Tr. 272-73 ("We will abide by a reasonable confidentiality agreement."). Confidentiality agreements are not unusual in such circumstances under Delaware law. *See Disney v. Walt Disney Co.*, 857 A.2d 444, 448 (Del. Ch. 2004) ("In fact, it is often the case that the Court of Chancery will condition its judgment in Section 220 cases on the entry of a reasonable confidentiality order to prevent the dissemination of confidential business information to curiosity seekers." (quotation and citation omitted)).

¹⁶ *See* Trial Tr. 247-49 ("I will endeavor and represent to the Court that I would work with [Defendant's counsel] to narrow those requests down as needed. . . . Those are the general categories I think that we're looking for. . . . If there's a word or two that creates a burden for them, again, I am all ears and happy to negotiate with counsel, and I think we could resolve a fair amount of it.").

¹⁷ *Sec. First Corp. v. U.S. Die Casting & Dev. Co.*, 687 A.2d 563, 570 (Del. 1997).

III. ANALYSIS

A shareholder who has complied with the statutory demand requirements¹⁸ and seeks relief under 8 *Del. C.* § 220 must demonstrate a proper purpose by a preponderance of the evidence.¹⁹ A proper purpose is one which is “reasonably related” to a holder’s “interest as a stockholder.”²⁰ If that proper purpose is the investigation of mismanagement, then the plaintiff must provide evidence from which a credible basis may be found to infer mismanagement.²¹

Caspian’s desire to value its stock is a proper purpose. Caspian, in part because of its demonstrated interest in selling its holdings of Key Plastics, has shown that valuing its interest is a primary purpose. Valuing one’s holdings is a proper purpose.²² Because the analysis of a stockholder’s secondary purpose or

¹⁸ It is undisputed that Caspian is and has been a stockholder of the Company throughout the pertinent period and that it has satisfied the specific demand requirements of 8 *Del. C.* § 220. Pretrial Stip. ¶¶ III.1-.2.

¹⁹ *Seinfeld v. Verizon Commc’ns, Inc.*, 909 A.2d 117, 121 (Del. 2006).

²⁰ 8 *Del. C.* § 220(b).

²¹ *See Seinfeld*, 909 A.2d at 118.

²² *See CM&M Gp. v. Carroll*, 453 A.2d 788, 792 (Del. 1982); *Helmsman Mgmt. Servs., Inc. v. A&S Consultants, Inc.*, 525 A.2d 160, 165 (Del. Ch. 1987). Key Plastics also argues that Caspian’s delay in making its Section 220 demand makes less credible its asserted proper purposes. The evidence indicates that Caspian attempted to gather what information it could about the Company’s financial position until at least November of 2012. Around that time the Company seemingly became less responsive to its calls and communications. *See* Trial Tr. 123-24. Caspian

ulterior motive is unnecessary once a proper primary purpose is established, the Court's analysis is limited to determining whether the alleged secondary purposes are the stockholder's primary purposes and the stated primary purpose is false.

Caspian's other purpose to investigate waste, mismanagement, self-dealing, or other improper transactions is also a proper purpose. Section 220 actions are one of the "tools at hand" to obtain necessary information,²³ and courts have encouraged that use before the filing of derivative suits.²⁴ Caspian has presented evidence supporting a credible basis for its concern about the amended Wayzata Term Loan. It has done so by reference to the increased rate of the amended loan,²⁵ evidence that the interest rate of the CapitalSource Loan was less than half of the rate of the Wayzata Term Loan,²⁶ and evidence of comparable transactions with lower interest rates.²⁷

acted reasonably in attempting to communicate with Key Plastics without threatening litigation and was entitled to favor this path without prejudicing its rights to bring a Section 220 action. Any delay on these facts was not unreasonable or evidence that its asserted primary purposes were not its true purposes.

²³ *Seinfeld*, 909 A.2d at 120 (quotation and citations omitted).

²⁴ *Sec. First Corp. v. U.S. Die Casting & Dev. Co.*, 687 A.2d 563, 567 n.3 (Del. 1997).

²⁵ Pretrial Stip. ¶ II.11.

²⁶ *Id.* ¶ II.14.

²⁷ Whether the comparables offered by Caspian were representative because the loans were made to public companies was a topic of debate at trial. For the purposes of a books and records action,

Key Plastics asserts that Caspian's evidence of mismanagement does not support a credible basis to infer wrongdoing. However, the Court concludes otherwise. The Company argues that the interest rate provided under the Wayzata Term Loan was fair, given the Company's status as a private company that recently emerged from bankruptcy. It explains that the interest rate on a loan may vary based on the quality of the assets securing the Wayzata Term Loan, the CapitalSource Loan, and the comparable loans. The Company may be correct that the loans are fair or are otherwise justified. However, the Company's arguments are attempts to engage in a merits defense, which the Court looks upon with disfavor in a Section 220 action.²⁸ The evidence asserted is sufficient to demonstrate a credible basis; a stockholder need not prove actual wrongdoing as a Section 220 action is not a full trial on the merits.

After a plaintiff demonstrates a proper purpose, a defendant may attempt to show that the demand is, instead, for an improper purpose or that the stated purpose is not the stockholder's actual purpose. However, a defendant may not rebut a

the full merits need not be litigated and Caspian's examples were adequate to support a credible basis to question the Wayzata Term Loan.

²⁸ See *Norman v. US MobilComm, Inc.*, 2006 WL 1229115, at *5 (Del. Ch. Apr. 28, 2006).

proper purpose solely by demonstrating that a secondary improper purpose or additional ulterior motive also exists.²⁹ The defendant must demonstrate that the plaintiff's stated purpose was offered under false pretenses and thus the primary purpose is improper.³⁰

Key Plastics has not shown that Caspian's desire to value its holdings was not one of Caspian's primary purposes.³¹ To counter Caspian's evidence, Key Plastics primarily relies on a series of internal Caspian emails which, it contends, prove that Caspian's purpose was to engage in a harassment campaign in order to force a buyout of its minority stake.³² The Company's argument that Caspian's true

²⁹ See *Helmsman Mgmt. Servs., Inc. v. A&S Consultants, Inc.*, 525 A.2d 160, 164 (Del. Ch. 1987). Such secondary purpose or ulterior motive may also be considered in determining the scope of the books and records to which the plaintiff stockholder is entitled.

³⁰ *Pershing Square, L.P. v. Ceridian Corp.*, 923 A.2d 810, 817 (Del. Ch. 2007).

³¹ Delaware courts have denied access to a corporate defendant's books and records where factually appropriate. See, e.g., *Pershing Square*, 923 A.2d at 819 (finding the shareholder's actual purpose was to find a legal vehicle by which it could publicly broadcast improperly obtained confidential information); *Highland Select Equity Fund, L.P. v. Motient Corp.*, 906 A.2d 156, 167 (Del. Ch. 2006), *aff'd sub nom.*, *Highland Equity Fund, L.P. v. Motient Corp.*, 922 A.2d 415 (Del. 2007) (finding the shareholder maintained its Section 220 action because it "derived utility from the demand itself as a rhetorical platform" and had all the information it needed for its asserted purpose). Key Plastics has not made a similarly compelling showing that Caspian's stated purposes are not its primary purposes.

³² See, e.g., JXs 20 ("My campaign of polite weekly stalking yielded some return on Key Plastics."), 32 (outline explaining strategy to liquidate Caspian's investment in the Company which culminated with "Proceed with legal action is there's no 'easy' deal to be had."), 33 (email

purpose is a buyout of its minority stake is not inconsistent with Caspian's asserted purpose of valuing its stock.³³ Once such a finding is made, the existence of possible secondary purposes or ulterior motives cannot overcome that finding.³⁴

Furthermore, Key Plastics has not shown that Caspian's stated purpose to investigate managerial wrongdoing is false or a pretense. Caspian's concerns, based upon what appear to be more or less reasonable comparables and evidence that Key Plastics obtained the CapitalSource Loan at a significantly lower interest rate, permit it to exercise its statutory right to request books and records.

Key Plastics next contends that Caspian already possesses all of the information necessary to investigate managerial misconduct. Key Plastics claims that Lynn gathered information from the CFO of Key Plastics for some period of time, received information pursuant to its information rights under the Shareholders Agreement, and concluded, prior to the Section 220 request, that the Wayzata Term

with subject line titled "reminder to harass Wayzata on key plastics"), 46 ("I think it's time to start the Wayzata Harassment Program back up.").

³³ See Lynn Dep. 39-42; Keenan Dep. 46-49.

³⁴ Furthermore, Caspian's decisions to identify a problem, to attempt to broker a settlement, and to take reasonable steps to avoid litigation were not unjustified. That the parties could not reach a solution on their own should not undermine Caspian's ability to later assert its rights.

Loan was an act of mismanagement.³⁵ Thus, it argues that *Highland Select* mandates that a books and records action be rejected if a shareholder already possesses the information he sought through the books and records action.

However, *Highland* is distinguishable because the holding in that case was based on a variety of facts leading the court to conclude that the request was an abuse of the Section 220 process and that the purpose “verge[d] on being a ruse.”³⁶ *Highland* is also distinguishable because the dispute there took place in the context of a proxy contest.³⁷ Caspian may have certain secondary or ulterior motives here, but its primary motives are valid and supported by appropriate evidence and therefore do not “verge on being ruses.” Finally, even if Caspian possesses certain information about the Wayzata Term Loan to place it on notice of potential

³⁵ See Lynn Dep. 72 (in which Lynn states that “we . . . thought that, given the fact that the company had engaged in what we viewed as a hugely inappropriate and extremely troubling transaction that involved obvious self-dealing . . . , upon making a fair offer for our equity, that they may want to accept that offer or an offer in the range of that offer so as to avoid . . . further focus on a behavior that we viewed as being extremely inappropriate on their part”), 115 (in which Lynn describes the loan as “usurious”).

³⁶ *Highland Select*, 906 A.2d at 167 (“These facts describe a remarkable confluence of events that amount to an abuse of the Section 220 process, designed for some purpose other than to exercise Highland Select’s legitimate rights as a stockholder.”).

³⁷ *Id.* at 164 (“[T]he potential for abuse is very much alive when the Section 220 demand is made—as this one is—in the context of an impending or ongoing proxy contest.”).

wrongdoing, it does not follow that such information is necessarily complete or that it otherwise limits Caspian's inspection rights.

Here, Caspian has produced credible evidence supporting its concerns that the Controlling Stockholders may have engaged in wrongdoing. Caspian may utilize the "tools at hand" to further investigate.

IV. CONCLUSION

For the reasons stated above, Caspian has demonstrated proper purposes for this books and records action: to investigate waste, mismanagement, and self-dealing and to gather information about the Company's financial position to value its stock. Caspian has indicated its optimism that it can work with Key Plastics to narrow its books and records request pursuant to these purposes and its willingness to comply with a reasonable confidentiality agreement. Should the parties find themselves unable to reach agreement, they may request the Court to address both topics.

Therefore, judgment shall be entered in favor of Caspian. Counsel shall confer to define the appropriate books and records to be inspected and to execute a reasonable confidentiality agreement, as discussed at trial.

Caspian Select Credit Master Fund Ltd. v. Key Plastics Corporation

C.A. No. 8625-VCN

February 24, 2014

Page 16

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap

cc: Register in Chancery-K