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Re: *DFG Wine Company, LLC v. Eight Estates Wine Holdings, LLC*
C.A. No. 6110-VCN
Date Submitted: April 15, 2011

Dear Counsel:

In this action, Plaintiff DFG Wine Company, LLC ("DFG") seeks to inspect certain books and records of Defendant Eight Estates Wine Holdings, LLC ("Eight Estates") under both 6 *Del. C.* § 18-305 and § 9.2 of Eight Estates' limited liability company agreement.

My purpose today is to resolve those discovery issues remaining from Friday's teleconference. The issues were framed initially by Ms. Butcher's letter of April 12, 2011, and have since been narrowed.

1. Eight Estates' primary—if not virtually sole—asset is Ascentia Wine Estates, LLC ("Ascentia"), which is a wholly-owned subsidiary of Eight Estates and the operating entity. DFG suspects that some of the records which it seeks are held by Ascentia. It wants to know, first, if the records exist and, second, the location of the records. Eight Estates contends that Ascentia records are not subject to this proceeding. Without resolving the merits of the dispute between the parties as to the proper scope of this books and records action, it would facilitate trial if the existence and location of the records were known.[1] Accordingly, the Court grants DFG's application with respect to this narrow question.[2]

2. DFG is involved in a related arbitration regarding Ascentia. Substantial discovery has been provided in the arbitration forum. Eight Estates has responded to some of DFG's discovery requests in this action by directing DFG to a collection of

[1] If certain records do not exist, debating whether they should be produced would seem to serve no purpose. The location of the records—at least arguably—might shed some limited light over which entity—Eight Estates or Ascentia—controls.

[2] DFG also asks that Eight Estates be required to reveal the manner in which the records, if they exist, are organized and stored. That aspect of DFG's application is denied. How the records are organized and stored is not likely to have any significance for the merits of DFG's claim. If it should become important during inspection of the records, then, assuming that DFG prevails in whole or in part, any problems arising from the manner in which the records are maintained can be addressed at that time.

documents from the arbitration proceeding, without specifying which particular documents are responsive to which particular discovery request. It points out that the documents at issue are all DFG documents and were all produced by DFG. It takes the position that DFG is seeking information that would more properly be provided at the time the pretrial order is prepared—the documents upon which Eight Estates intends to rely at trial. As a general matter, responding to discovery requests with a blanket reference to a substantial set of documents is insufficient. In this summary proceeding, however, requiring Eight Estates to parse the documents that DFG produced is an unwarranted burden. If these were not DFG-produced documents, then a different perspective might well be appropriate. Efficiency must—or perhaps, should—be the measure of discovery in summary proceeding, and efficiency, under these circumstances, is best achieved, along with fairness, by not requiring the particularization sought by DFG.[3] Accordingly, this aspect of the relief which DFG has sought is denied.

[3] *See, e.g.*, *Khanna v. Covad Commc'ns Group, Inc.*, 2004 WL 187274, at *8 n.33 (Del. Ch. Jan. 23, 2004) ("Indeed, if [a books and records action] afforded a shareholder the full panoply of discovery rights, the goal of avoiding the costs and burdens of unnecessary discovery reflected in the policy of staying discovery while derivative and class actions are tested by motions to dismiss would be frustrated.").

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K