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Case No. 6772-VCG

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

AMALGAMATED BANK, as Trustee of the LongView LargeCap 500 Index Fund and the LongView LargeCap 500 Index VEBA Fund,	)	
Plaintiff,	)	
v.	)	Civil Action No. 6772-VCG
NETAPP, INC.,	)	
Defendant.	)	

MEMORANDUM OPINION

Date Submitted: February 1, 2012
Date Decided: February 6, 2012

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GLASSCOCK, Vice Chancellor

This matter involves a request for books and records under Section 220 of the Delaware General Corporation Law. The Plaintiff owns stock in the Defendant corporation and is also a plaintiff in a California state plenary derivative action, in which it alleges that the defendant directors are liable to the corporation for a breach of their fiduciary duties. In that action, the California Court granted a demurrer[1] to the Plaintiff's amended complaint based on a failure to adequately plead demand futility and granted the Plaintiff leave to file a second amended complaint. The Plaintiff filed this Section 220 action, *then* filed a second amended complaint in California before receiving any of the Defendant's books and records. The Plaintiff, however, continued to pursue its Section 220 action here in Delaware seeking corporate records for a third amendment. Because of the unusual procedural posture of this case, which included statements by the California Court appearing to endorse this action, I ordered certain records produced. The Defendant made production, and the Plaintiff is now before me on a Motion to Compel, arguing that the production was insufficient. The Defendant argues that it has fully complied with production as directed by this Court. I find, however, that the issue is moot because the Plaintiff failed to file a third amended complaint before the Defendant filed, and the parties briefed, a demurrer to the second

[1] According to the parties, a demurrer is the California equivalent to a motion to dismiss. Telephone Conference Mot. Expedite Tr. 11:13-16 (Sept. 28, 2011) [hereinafter "Mot. Exp. Tr. ____"] ; *see also* California Code of Civil Procedure § 430.10(e).

amended complaint in the California action, and because, to the extent the Plaintiff needed expedited action on this motion to compel in order to file a third amended complaint, it failed to seek it. The Defendant's demurrer has been submitted to the California court, which has stated that there will be no amendments to the now-completed briefing and that the second amended complaint will stand or fall with prejudice; therefore, the Plaintiff no longer has a proper purpose.

I. FACTS AND PROCEDURAL POSTURE

A. Parties

Amalgamated Bank, as Trustee of the LongView Funds (the "Plaintiff"), is a NetApp, Inc., stockholder with its executive offices in New York, New York.

NetApp (the "Defendant") is a computer storage business. The majority of its revenue comes from the sale of hardware and software products, but services, product maintenance, and sales of software licenses also constitute a small portion of NetApp's total revenue. NetApp is a Delaware corporation with its principal offices in Sunnyvale, California.

B. Background

On October 13, 2010, the Plaintiff filed a stockholder derivative action (the "California Action") in the Superior Court for the State of California (the

"California Court"). The Plaintiff filed a *Caremark* claim,[2] seeking "to hold the current and former members of [the Defendant's] board responsible for their conscious misconduct in approving and acquiescing [to] systemic wrongdoing."[3] The Plaintiff, however, did not make a books and records demand, pursuant to 8 *Del. C.* § 220 (a "Section 220" action), on the Defendant before filing suit. The Defendant and NetApp's individual director defendants then filed demurrers to the complaint alleging, in part, that the Plaintiff "had not successfully pled demand futility, and that [the] Plaintiff failed to state a claim for breach of fiduciary duty."[4]

On February 3, 2011, the Plaintiff filed its Verified Amended Shareholder Derivative Complaint in the California Court. The Defendant and the Defendant's individual directors once again alleged that the Plaintiff failed to successfully plead demand futility.

Pursuant to California procedure, on July 14, 2011, the California Court provided a tentative ruling granting the Defendant's demurrers.[5]

On July 15, 2011, the California Court held a Case Management Conference at which the Plaintiff told the California Court that it had "pled all the facts that [it had in its] possession" and that it thought that it had "met the standard" to avoid

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[2] *In re Caremark Int'l Inc. Derivative Litig.*, 698 A.2d 959 (Del. Ch. 1996); *see also Guttman v. Huang*, 823 A.2d 492, 505 (Del. Ch. 2003) (explaining that the allegation that the defendants failed to oversee the process by which the company prepared certain statements to ensure reliability and legal compliance was "what may be called, for short, a Caremark claim").
[3] Compl. ¶¶ 27, 29.
[4] *Id.* ¶ 27.
[5] Mot. Exp. Tr. 5:12-18.

dismissal.[6] The California Court had already decided to give the Plaintiff 10 days to amend its complaint a *second* time;[7] however, the Plaintiff requested additional time to re-plead and "cure deficiencies pointed out by the court."[8] The Plaintiff informed the California Court that it previously had not pursued a Section 220 demand because it thought that its complaint was sufficient.[9] Then, specifically relying on *King v. Verifone Holdings, Inc.*,[10] the Plaintiff asked for 180 days to pursue a "narrowly tailored" books and records demand.[11] The California Court responded that it was going to adopt its tentative ruling, granting the Defendant's demurrers, but that it was also "going to change the deadline for filing an Amended Complaint from 10 days to 60 days," that is until September 15, 2011.[12]

At this hearing, the California Court also asked why the Plaintiff had not pursued discovery.[13] The Plaintiff explained that "in Delaware you really don't get discovery on the demand futility issue if you file a case."[14] The California Court said that it considered the Plaintiff's books and records demand as a "form of discovery"[15] and reminded the Plaintiff that California procedure provided for

[6] Pl.'s Mot. Summ. J. Reply Br. Ex. D 3:18-19.
[7] Mot. Exp. Tr. 5:12-18.
[8] Pl.'s Mot. Summ. J. Reply Br. Ex. D 3:19-22.
[9] *Id.* Ex. D 3-6:18-11.
[10] 12 A.3d 1140 (Del. 2011).
[11] Pl.'s Mot. Summ. J. Reply Br. Ex. D 4:1-28.
[12] *Id.* Ex. D 7:1-6.
[13] *Id.* Ex. D 6:1-24.
[14] *Id.* Ex. D 6:4-6.
[15] *Id.* Ex. D 6:19-20.

discovery.[16] The Plaintiff asked whether it could avoid the "potential hurdles" of a Section 220 demand by obtaining discovery pursuant to California rules; however, the California Court declined to rule on this issue, telling the Plaintiff that it would have "to take the necessary steps" to pursue discovery in California.[17]

After this conference, on July 19, 2011, the Plaintiff sent the Defendant its Section 220 demand letter.[18] The Defendant rejected the demand, and on August 9, 2011, the Plaintiff filed its Section 220 complaint in this Court.

The Defendant answered the Section 220 complaint on August 30, 2011, and the Plaintiff moved for summary judgment on September 12, 2011. On September 15, 2011, however, the Plaintiff, without receiving any information pursuant to its Section 220 action, filed its Second Verified Amended Shareholder Derivative Complaint in California.[19] The Plaintiff then filed a Motion to Expedite its Section 220 action in this Court on September 26, 2011.[20]

On October 7, 2011, the parties had another case management conference before the California Court.[21] At this conference, the Plaintiff informed the California Court that its Section 220 action continued to proceed here in

[16] *Id.* Ex. D 7:7-12.
[17] *Id.* Ex. D 7:17-27.
[18] Pl.'s Mem. Law Supp. Mot. Summ. J. Ex. E.
[19] Pl.'s Mot. Summ. J. Reply Br. Ex. B.
[20] I held a Telephone Conference on this motion on September 28, 2011.
[21] *Id*. Ex. E.

Delaware.[22] The California Court said: "So that raises the question about the scheduling of the demurrer in this court."[23] The California Court noted that it had two different dates scheduled to hear the next set of demurrers, but, "for a variety of reasons" it was going to "set the demurrer hearing in [the California Action] for the date [it had] reserved on February 24th" and that there would be "no further extensions."[24]

The Defendant told the California Court that "what the Plaintiffs may be planning to do is to file yet another Complaint" and that it assumed "the Court will hear our response to the further seeking of an amendment to the Complaint."[25] The California Court confirmed this request and stated that it thought that the Plaintiff was "trying to get further discovery in some fashion so that [it could] bolster the allegations that are in [its] pleadings."[26] The California Court stated that discovery in California was not stayed while demurrers were pending, but that "at a certain point – and that point may well be February 24th – that by that point the Plaintiffs will have had an extended period of time to make their pleadings as complete as they think they need to be . . ."[27] The California Court concluded that hearing saying: "The bottom line is that the Court intends to get to the bottom of this case

[22] *Id*. Ex. E 2:26-3:10.
[23] *Id*. Ex. E 3:17-18.
[24] *Id*. Ex. E 3:20-24.
[25] *Id*. Ex. E 5:1-4.
[26] *Id*. Ex. E 5:5-9.
[27] *Id*. Ex. E 5:13-17.

as quickly as possible. And either the case will be moved forward to go to trial or the demurrer will be sustained without leave to amend. That's the bottom line."[28] As a result of this schedule, the California Court also said that February 1, 2012, would "be the deadline for the filing of all papers."[29] That meant "any reply briefs on the demurrers would be due on [February 1, 2012], and the parties [would] use the [California code] to work backwards" for the other applicable briefing dates.[30]

On November 16, 2011, I held a trial regarding the Plaintiff's Section 220 action. For the reasons explained below, I found from the bench that the Plaintiff had a proper purpose for its books and records demand.

After the trial in this Court, a dispute arose between the parties over the scope of material to be produced, and on December 5, 2011, I held a teleconference instructing the parties on the universe of documents that needed to be made available. As a result, on December 7, 2011, the Defendant produced 286 heavily redacted pages of documents.[31]

Thirteen days later, on December 20, 2011, the Plaintiff filed a motion requesting to be allowed to file a motion to compel documents under seal. This motion was granted on January 3, 2012. On January 4, 2012, the Plaintiff filed its Motion to Compel Documents, and the parties stipulated to a briefing schedule.

[28] *Id*. Ex. E 5:22-25.
[29] *Id*. Ex. E 3:28-4:1.
[30] *Id*. Ex. E 4:2-4.
[31] Pl.'s Mot. Compel Exs. E, F.

On January 13, 2012, the Defendant filed its answer to the Motion to Compel, and on January 23, 2012, the Plaintiff filed its reply to the Motion to Compel. I scheduled a teleconference for argument on the Motion for February 1, 2012.

Meanwhile, the clock in the California Action was still ticking. On January 9, 2012, in response to the Plaintiff's Second Verified Amended Shareholder Derivative Complaint, the Defendant filed its demurrers in the California Action, and on February 1, 2012, pursuant to the California Court's order, the reply briefs on the demurrers were due.[32]

C. Section 220 Standard

Under Section 220, a stockholder has a statutory right to inspect corporate books and records; however, this right is a qualified right.[33] In seeking inspection, a stockholder must have a proper purpose, meaning a purpose that is reasonably related to the person's status as a stockholder.[34] If the purpose of the Section 220 action is to seek information necessary to meet the pleading requirements in a substantive action, the Plaintiff should, for purposes of economy, and consistent with the requirements of Rule 11,[35] bring the Section 220 action before filing the substantive action.[36] Seeking books and records to amend an already filed

[32] Oral Arg. Mot. Compel Tr. 17:1-10 (February 1, 2012).
[33] 8 *Del. C.* § 220; *see Highland Select Equity Fund, Inc. v. Motient Corp.*, 906 A.2d 156, 164-65 (Del. Ch. 2006).
[34] 8 *Del. C.* § 220.
[35] Ct. Ch. Rule 11
[36] *King*, 12 A.3d at 1150-51.

shareholder complaint, however, in limited cases, can be a proper purpose, as discussed below.[37]

D. King v. Verifone Holdings, Inc.

The Supreme Court in *King* addressed whether seeking books and records to amend a dismissed stockholder complaint could constitute a proper purpose.[38] In *King*, the plaintiff-stockholder brought suit in a California federal court without first seeking the corporation's books and records.[39] That Court granted the defendant's motion to dismiss the suit because of the plaintiff-stockholder's failure "to allege particularized facts that would excuse a pre-suit demand;" however, that Court gave the plaintiff leave to amend to see if it could develop sufficient evidence via a Section 220 demand.[40] This Court dismissed the resulting Section 220 action, holding that a stockholder-plaintiff who brought a derivative suit, without first seeking a corporation's books and records, was (in the formulation of our Supreme Court) "for that reason alone, legally precluded from prosecuting a later-filed Section 220 proceeding."[41] The stockholder-plaintiff appealed and our Supreme Court reversed this Court's decision.[42]

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[37] *See id.* at 1146-48; *see also Central Laborers Pension Fund v. News Corp.*, 2011 WL 6224538, at *2 (Del. Ch. Nov. 30, 2011).
[38] 12 A.3d 1140 (Del. 2011).
[39] *Id.* at 1142-44.
[40] *Id.* at 1142.
[41] *Id.* at 1141.
[42] *Id.* at 1152.

In *King*, the Supreme Court examined five cases where a stockholder-plaintiff filed a derivative action before pursuing a Section 220 action. In three of those cases a Section 220 action was permitted to go forward despite an earlier-filed derivative action.[43] The *King* Court highlighted that in each case, the derivative action was dismissed by the plenary court without prejudice or with leave to amend.[44] Additionally, the *King* Court noted that in each case the plenary court either advised or suggested that the stockholder-plaintiffs make use of Section 220 in order to successfully plead demand futility in the plenary action.[45] In the two other cases examined in *King*, the stockholder-plaintiff was not allowed to go forward with its Section 220 action.[46] In one case the derivative complaint was still pending without leave to amend and in the other the derivative complaint had been dismissed without prejudice, but without leave to amend.[47]

In *King*, the Court found that the two cases where the stockholder-plaintiffs were prohibited from going forward were inapposite because the stockholder-plaintiff in *King* "was specifically granted leave to amend his

[43] *Id.* at 1146-48 (citing *In re Walt Disney Co. Derivative Litig.*, 731 A.2d 343 (Del. Ch. 1998); *Saito v. McKesson HBOC, Inc.*, 2001 WL 818173 (Del. Ch. July 10, 2001); and *Melzer v. CNET Networks Inc.*, 934 A.2d 912 (Del. Ch. 2007)).
[44] *Id.* at 1146-48.
[45] *Id.*
[46] *Id.* at 1148-50 (citing *Beisman v. PMC-Sierra, Inc.*, 2009 WL 483321 (Del. Ch. Feb. 26, 2009) and *West Coast Management & Capital, LLC v. Carrier Access Corp.*, 914 A.2d 636 (Del. Ch. 2006)).
[47] *Id.*

dismissed complaint."[48] In fact, in *King*, "in granting leave to amend the complaint, the California Federal Court *suggested* that [the stockholder-plaintiff] first engage in further investigation to assert additional particularized facts by filing a Section 220 action in Delaware."[49] Additionally, the *King* Court noted that a "rule that would automatically bar a stockholder-plaintiff from bringing a Section 220 action *solely* because that plaintiff previously filed a plenary derivative suit" was "unsupported by the text of, and the policy underlying, Section 220."[50] As a result, the *King* Court found that the stockholder-plaintiff had a proper purpose in bringing its Section 220 action.[51]

E. The November 16, 2011, Trial

I held a trial addressing the Plaintiff's Section 220 action on November 16, 2011. The issue before me, in part, was whether or not the Plaintiff had leave to amend in the California Action, and therefore had a proper purpose in pursuing its Section 220 action under the doctrine announced in *King*.[52] While the Plaintiff had satisfied the technical requirements of Section 220, the parties disputed whether the Plaintiff had a proper purpose.[53] The Plaintiff argued that the California Court

[48] *Id.* at 1150.
[49] *Id.* at 1143 (internal quotation marks removed).
[50] *Id.* at 1151.
[51] *Id.* at 1150.
[52] Oral Arg. Cross Mots. Summ. J. Tr. 46:9-47:2 (Nov. 16, 2011).
[53] *Id.* at 46:9-13.

anticipated a further amendment to the complaint.[54] The Plaintiff quoted the California Court, as noted above, which said that by some point in the demurrer process, the Plaintiffs would have "had an extended period of time to conduct whatever discovery they need to conduct to make their pleadings as complete as they think they need to be." The Plaintiff stated that "I also think that [the California judge] wants to give us – although he has us on a very short chain, a very short leash – that he wants to give us this opportunity, and that's why he entertained a February 24th hearing date rather than a November hearing date."[55] Later in the hearing, the Plaintiff clarified this statement, saying that: "time is of the essence to us, as you can imagine, with a February hearing date. *That means the demurrer will be filed by mid-January the way the timing works out.* So we're on a pretty short leash."[56]

After examining the California Court's commentary and the Plaintiff's representations, I found that the California Court contemplated a further amendment to the pleadings. The record is clear, from the transcripts of both the July 2011 and October 2011 California case management conferences, that the California Court was aware of the Section 220 action in this Court. Though the California Court never explicitly suggested or advised that the Plaintiff pursue a

[54] *Id.* at 14:13-18; 15:4-10.
[55] *Id.* at 15:10-16.
[56] *Id.* at 33:23-34:3.

Section 220 action, in its July 2011 Conference the California Court did extend the time in which the Plaintiff could amend its pleadings based on the Plaintiff's argument that corporate records supporting its position were available via a Section 220 action under the *King* doctrine. Also, as noted above, at the October 2011 case management conference, the California Court, referring to the pending Section 220 action, said that it felt that "the [Plaintiff was] trying to get further discovery in some fashion" in order to bolster its pleadings.[57] The California Court then chose to hear the next set of demurrers in February 2012 rather than an earlier date.[58] Finally, the California Court stated that "at a certain point, the Plaintiffs will have had an extended period of time to conduct whatever discovery they need to conduct *to make their pleadings* as *complete* as they think they need to be and that that point may well be February 24th," the date it had scheduled for a hearing on the demurrer that the Plaintiff was to file.[59]

At trial the Plaintiff represented to me that while it had filed for discovery in the California Action, the Section 220 action was the only way for it to obtain the books and records it needed to successfully amend its complaint. The Plaintiff argued that in order to acquire the documents it needed, the Plaintiff would have to

[57] Pl.'s Mot. Summ. J. Reply Br. Ex. E 5:6-9.
[58] *Id.* Ex. E 3:20-24.
[59] Oral Arg. Cross Mots. Summ. J. Tr. 51:8-15 (internal quotation marks removed); *see also* Pl.'s Mot. Summ. J. Reply Br. Ex. E 5:13-17.

go through a lengthy motion practice,[60] and that the California Court had "not stated whether or not it [would] permit the Plaintiff discovery or not."[61] The Plaintiff represented that the Section 220 action was, practically, the only way for it to obtain the documents it needed[62] and that it had "tried to get [my] attention by the motion to expedite."[63]

Based on the California Court's directives and the Plaintiff's representations, I gave the Plaintiff the benefit of the doubt that the California Court had implicitly encouraged the Plaintiff to pursue a Section 220 action here in Delaware and that the California Court anticipated that Plaintiff would amend its pleadings a third time. I concluded that based on the record the California Court did "contemplate a further amendment and [was] aware that the Section 220 action [was] still going on in Delaware."[64]

As a result, I found that the Plaintiff's purpose in bringing the Section 220 action was "to obtain records to assist it in meeting its pleading requirements in [the California action]."[65] I ruled that, "[t]herefore, the Plaintiff's Section 220 is properly limited to the information that will enable [the] Plaintiff to amend its

[60] Oral Arg. Cross Mots. Summ. J. Tr. at 17:2-21.
[61] *Id.* at 18:4-22.
[62] *Id.* at 17:22-19:21.
[63] *Id.* at 19:3-4.
[64] *Id.* at 51:4-7.
[65] *Id.* at 47:21-23.

complaint so that it can successfully plead demand futility and overcome the California demurrers."[66]

F. Allegations

In the Plaintiff's Motion to Compel, it argues that the Defendant's production of books and records was insufficient in a variety of ways. The Defendant opposes the Motion to Compel, denying that its production was incomplete and arguing that the Plaintiff's stated purpose for needing NetApp's books and records is now moot. The Defendant alleges that the Plaintiff now no longer has a proper purpose because it "failed to amend its complaint before the deadline set by the [California Court.]"[67] As noted above, the Defendant stated that "the [California Action's] briefing schedule set January 9, 2012, as the deadline for the defendants to file their demurrers to [the Plaintiff's] most recent complaint as of that date – and the defendants have done so."[68] The Defendant also reiterated at Oral Argument held on February 1, 2012, that the final reply briefs in the California Action were due that very same day.[69]

The Plaintiff argues that "it fully intends, and has the right, *to seek to* further amend its complaint in the shareholder derivative matter."[70] The Plaintiff alleges

[66] *Id.* at 53:7-11.
[67] Def.'s Br. Opp'n Pl.'s Mot. Compel at 9.
[68] *Id.* at 10.
[69] Oral Arg. Mot. Compel Tr. 17:1-10.
[70] Pl.'s Rep. Br. Further Supp. Mot. Compel Def.'s Produc. Docs. at 4 (emphasis added).

that "[t]here is nothing under California law or under the procedural history of the related Shareholder Derivative Action *that precludes [the Plaintiff] from seeking leave* to further amend its complaint."[71] The Plaintiff contends that it may "seek to further amend its complaint until and unless the California court dismisses the Shareholder Derivative Action with prejudice"[72] and that "[t]he mere filing of [d]efendants' demurrers in the Shareholder Derivative Action – consistent with the briefing schedule which was set in October 2011 – does nothing to change the procedural posture of this case."[73] As discussed below, however, it does bear on the application of the holding in *King*. As a cat may look at a king, so a litigant may seek to amend its pleadings. The fact that it may do so does not convert Section 220 into an ongoing discovery tool.

II. ANALYSIS

The Plaintiff's proper purpose for seeking the Defendant's books and records, formerly established, is now moot. As stated above, the Plaintiff's proper purpose for seeking the Defendant's books and records was to amend its complaint in the California action so that it could plead facts sufficient to overcome the Defendant's demurrers.

[71] *Id.* at 4.
[72] *Id.* at 5.
[73] *Id.* at 5 n.4.

If, as seems apparent from the California transcripts quoted above, there was a window of time in which the California Court indicated that it would permit the Plaintiff to amend its complaint, that window is now closed. The California Court has made it clear that on February 24, 2012, either the Defendant's demurrers will be sustained and the Plaintiff's claims dismissed with prejudice, or the Plaintiff will have pled facts sufficient to overcome the Defendant's demurrers and that case will go to trial. The Plaintiff was aware that the Defendant's demurrers in the California Action, in response to Second Verified Amended Shareholder Derivative Complaint, were due by January 9, 2012, and that briefing on the demurrers would be complete and the matter submitted to the California Court by February 1, 2012. As the Plaintiff told this Court, the Plaintiff was on a "very short leash"[74] and "time was of the essence."[75] Having received the Defendant's production in this action on December 7, 2011, however, the Plaintiff neither amended its complaint nor sought expedited resolution of a motion to compel further production. The Defendant accordingly, filed its demurrers to the second amended complaint. The Plaintiff's current contention that, despite being on this "very short chain,"[76] the California Court may allow it to amend its pleadings a

[74] Oral Arg. Cross Mots. Summ. J. Tr. 15:10-16.
[75] *Id*. at 33:23-34:3.
[76] *Id*. at 15:10-16.

third time, after the demurrers have been fully briefed, but before the upcoming hearing, is unconvincing. In any event, it is irrelevant.

The Plaintiff's continued reliance on *King* is misplaced. The Plaintiff alleges that there is nothing in California law that prevents it from *seeking to amend* its pleadings before the case is dismissed; therefore, based on *King*, I should compel the Defendant to produce certain documents.[77] *King*, however, does not stand for the proposition that because a plaintiff has a *right to seek to amend* its complaint, a plaintiff has a proper purpose to demand corporate records.[78] *King* stands for the limited proposition that when a plaintiff has been *granted leave to amend* its complaint a plaintiff may have a proper purpose for demanding such records.[79] When that leave to amend no longer exists, a plaintiff's proper purpose is extinguished. Because there is no indication that the Plaintiff now has leave to amend its pleadings in the California Action, I find that the Plaintiff no longer has a proper purpose in seeking the Defendant's books and records.

CONCLUSION

[77] Pl.'s Reply Br. Further Supp. Mot. Compel Def.'s Produc. Docs. at 5.
[78] *See generally King*, 12 A.3d at 1145-50.
[79] *See generally id.* at 1145-50; *see also Central Laborers Pension Fund*, 2011 WL 6224538, at *2 ("In short, once the derivative action is filed, and until the judicial processing of the dismissal motion reaches the point where a recasting of the allegations has been authorized, the stockholder may not, as a general matter, demonstrate a proper purpose for invoking Section 220.").

Properly, a books and records examination is pursued, if necessary, before filing a complaint. [80] This action is a prime example of the inefficiency of proceeding in reverse order, in two jurisdictions. *King* makes it clear that, where a court has dismissed an action with leave to replead, permitting the party to seek records under Section 220, the statute provides a right to so proceed.[81] Nothing in *King* or Section 220, however, permits a books and records examination to become a device for parallel discovery to be pursued in two jurisdictions,[82] nor does the theoretical possibility of leave to amend a pleading convert the desire for such discovery into a proper purpose.

Accordingly, the Plaintiff's Motion to Compel is denied.

IT IS SO ORDERED.

[80] *King*, 12 A.3d at 1150 ("We caution that filing a plenary derivative action without having first resorted to the inspection process afforded by 8 *Del. C.* § 220 may well prove imprudent and cost-ineffective.").
[81] *Id*. at 1150-51.
[82] *See Beisman*, 2009 WL 483321(Section 220 may not be employed to circumvent discovery procedure in plenary court action).