IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MADISON REAL ESTATE IMMOBILIEN-ANLAGEGESELLSCHAFT BESCHRANKT HAFTENDE KG,	)	
Plaintiff,	)	
v.	)	Civil Action No. 2863-VCP
KANAM USA XIX LIMITED PARTNERSHIP and KANAM USA MANAGEMENT XIX LIMITED PARTNERSHIP,	)	
Defendants.	)	

MEMORANDUM OPINION

Submitted: December 6, 2007
Decided: May 1, 2008

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PARSONS, Vice Chancellor.

This is a books and records action brought by a limited partner against the general partner of a limited partnership. Plaintiff, the limited partner, as part of its business model, makes initial investments in partnerships and then makes tender offers for additional interests in them. Before Plaintiff purchased any interest in the partnership at issue, it considered the partnership an attractive tender offer candidate. Shortly after purchasing an interest in it, Plaintiff completed an analysis of the partnership, producing models that priced a potential tender offer. A few months later, Plaintiff made several written books and records demands on the partnership. After Defendant, the general partner, did not respond, Plaintiff filed this action, seeking to compel access to certain partnership books and records. In the Complaint, Plaintiff alleges that Defendant, in failing to make available the requested information, violated the Delaware Revised Uniform Limited Partnership Act[1] and the partnership agreement. Plaintiff's Complaint also seeks damages, including costs and attorneys fees.

The Court conducted a trial of this action, and the parties presented post-trial briefs and oral argument. This memorandum opinion reflects the Court's post-trial findings of fact and conclusions of law. For the reasons stated, I deny Plaintiff's requests.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff, Madison Real Estate Immobilien-Anlagegesellschaft Beschrankt Haftende KG ("Madison"), is an entity organized under the laws of the Federal Republic

[1] 6 *Del. C.* §§ 17-101 – 17-1111.

of Germany.[2] Madison is an "acquisition vehicle" that has no employees, has partners that are all Delaware limited liability companies, and is affiliated with Madison International Realty, an organization managed and controlled by Ronald M. Dickerman, the President of Madison.[3] Madison is a limited partner of Defendant KanAm USA XIX Limited Partnership (the "Partnership" or "KanAm XIX").[4]

Defendant KanAm XIX is a Delaware limited partnership.[5] Defendant KanAm USA Management XIX Limited Partnership (the "General Partner" or "KanAm") is the General Partner of the Partnership.[6] The overwhelming majority of KanAm XIX investors are German residents or German nationals.[7] The Partnership indirectly invests through other partnerships in two shopping malls developed by The Mills Corporation. The malls are Arundel Mills and Discover Mills (the "Properties").[8]

The Partnership is subject to the Amended and Restated Agreement of Limited Partnership KanAm USA XIX Limited Partnership, dated July 1, 1999 (the "Partnership

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2 Pretrial Stip. ("PT Stip.") ¶ 2.1.

3 *Id.* ¶ 2.2.

4 *Id.* ¶ 1.

5 *Id.* ¶ 2.5.

6 *Id.* ¶ 2.4.

7 Trial Transcript ("T. Tr.") at 96 (Thomas Kent Hammond, Vice President of General Partner KanAm.

8 PT Stip. ¶ 2.6.

Agreement" or "Agreement").[9] The Partnership Agreement sets out the rights and obligations of the limited partners and the General Partner. Section 10(a) of the Agreement, entitled "Books of Account," provides limited partners with a right to inspect the Partnership's books of account. Section 10(a) provides:

> The General Partner shall cause complete and accurate *books of account* to be kept for the Partnership, which shall be available for examination by the Partners during normal business hours. The fiscal year of the Partnership shall be the calendar year and the *books of account* shall be closed as of the end of each year.[10]

The Partnership Agreement also contains a choice of law provision which specifies that Delaware law governs its interpretation and enforcement and that the Delaware Revised Uniform Limited Partnership Act ("DRULPA") governs any provisions not covered by the Agreement.[11]

The DRULPA addresses the right of a limited partner to obtain books and records regarding the partnership. Specifically, Section 17-305 provides that a limited partner may obtain access to books and records of a limited partnership upon a reasonable demand for any purpose reasonably related to the limited partner's interest as a limited partner.

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9 Joint Tr. Ex. ("Tr. Ex.") 3, the Partnership Agreement.

10 *Id.* § 10(a) (emphasis added).

11 *Id.* § 15(d).

Madison, as part of its business model, makes initial investments in partnerships and then makes tender offers. Indeed, Madison often makes tender offers.[12] Since 1996, Madison and its principals have acquired in excess of $300 million of real estate ownership interests.[13]

Starting in November 2005, Madison began to consider purchasing an interest in one or more KanAm partnerships.[14] Madison's interest arose from, among other things, published reports of financial accounting problems and related investigations involving Mills.[15] Madison believed such reports might induce limited partners in KanAm partnerships to consider selling their interests at a discount.

An email among Madison employees, dated October 20, 2006, confirms that Madison considered KanAm XIX a tender offer candidate approximately a month before Madison acquired an interest in the Partnership.[16] The email begins with background information regarding KanAm XIX. For example, referring to the Partnership as a

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12 Post-Trial Argument Transcript ("PT Tr.") at 12.

13 T. Tr. at 37-38 (Dickerman); Tr. Ex. 37, Madison International Realty Website (June 20, 2007).

14 Tr. Ex. 24, Email Chain between Dickerman, McPhail, and Siefert (discussing the availability of KanAm tickets, closed end fund shares, in early November 2005); Tr. Ex. 16, Dickerman Dep., at 61 (testifying that Madison first considered a potential investment in a KanAm partnership sometime during 2005 or 2006).

15 *See* Tr. Ex. 28, Ryan Chittum, *Mills Keeps Its Investors Waiting --- REIT's Future Gets Cloudier After Latest Filing Delay*, THE WALL STREET JOURNAL, Sept. 20, 2006, at A25; Tr. Ex. 27, Email from Dickerman to Siefert and cc'd to McPhail; Dickerman Dep. at 64-67, 80-81.

16 Tr. Ex. 45, Email from McPhail to Pierson; *see* T. Tr. at 55-56.

"fund," the email notes that: KanAm XIX is a Delaware limited partnership founded in 2000; the fund owns joint venture interests in Mills Corporation shopping centers; the fund's assets are performing well; and the fund's equity totals $102 million. The email next characterizes KanAm XIX as a potential tender offer candidate. Specifically, the email states: "We [Madison] also believe that the financial problems at Mills Corp ha[ve] created some psychic distress with the fund's German LP's. The combination of the fund's size, age, and distress with the JV Partner [Mills] make this fund an attractive tender candidate."[17]

On November 30, 2006, Madison purchased an interest in KanAm for $30,000.[18] In early January 2007, two months before Madison made its books and records demand, Madison completed an analysis, or what it calls an "underwriting," of KanAm XIX. In a chain of emails dated January 5 and January 6, 2007, Dickerman wrote McPhail, a Madison employee, asking, "Where do we stand on the underwriting on the above [the email's subject line is KanAm XIX]." McPhail responded that the information was scant, but that "[t]he models [were] coming out around 80/." Dickerman replied, "Great. 80% may be good enough on Kan Am." Dickerman testified that the 80 percent referred to the percent of nominal capital that Madison would offer to acquire the closed end fund shares. Stated another way, in early January 2007, Madison contemplated offering

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17 Tr. Ex. 45.

18 Tr. Ex. 32, Transfer Agreement; Dickerman Dep. at 72-73.

current KanAm XIX limited partners a price of 80 percent of their nominal capital, in an effort to purchase the shares at a discount.[19]

Additionally, Dickerman admitted at trial that Madison made the inspection demand both to determine whether to acquire additional shares and to value its own existing interest. "[T]he most important purpose was making a determination as to whether we would buy additional interest. I would say [the] second purpose would have been to create more certainty with regard to the value of what we had already bought."[20] Moreover, at post-trial argument, Madison conceded that valuing KanAm XIX as a whole in anticipation of making a tender offer has always been Madison's chief purpose in making its inspection demand.[21]

Soon after purchasing its interest in the Partnership, Madison sought to obtain detailed information concerning the Properties. Consistent with its purpose of developing a tender offer, in a letter dated March 2, 2007, Madison requested from the General Partner the following detailed information:

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[19] Dickerman Dep. at 94-97.

[20] T. Tr. at 17. In his deposition, Dickerman testified that one of the purposes of making small investments in other entities was "to receive management reports and typical financial statements that are issued by closed end funds or limited partnerships" to evaluate whether to make a larger investment in the fund. Dickerman Dep. at 58-60.

[21] PT Tr. at 11-12 ("Your Honor, from the beginning of this litigation, Madison has never tried to hide the ball - - that is, it's never tried to hide its interest in making a tender offer. That has always been Madison's chief purpose in making its inspection demand.").

Madison continues to maintain that it also was interested in valuing its existing investment. *Id.* at 12.

1. All information relating to square footages of anchor tenants of Arundel Mills and Discover Mills (the "Properties").

2. All information relating to rent per square footage of anchor tenants of the Properties including contractual rent escalations and percentage sales rent.

3. All information relating to lease terms and lease extension options for anchor tenants of the Properties.

4. The average remaining lease term and average rent per square foot for in-line tenants of the Properties.

5. The average sales per square foot for each Property for 2005, 2004 and 2003.

6. The terms and conditions of the Property debt including interest rate, maturity date, outstanding balance, and amortization schedule.

7. Property level financial statements for 2005 and 2006.[22]

Madison received no response to the March 2 letter request. On March 13, 2007, Madison sent another letter to the General Partner reiterating its request, but once again, the General Partner did not respond.[23]

On March 22, 2007, Madison sent a third letter to the General Partner, which restated its list of requested books and records as follows: "1. Information relating to square footage, rent and lease terms of the anchor tenants of Arundel Mills and Discover Mills (the "Properties"). 2. The average sales per square foot for the Properties. 3. The primary terms of the Property debt and the Property level financial statements."[24] This

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[22] Tr. Ex. 5.

[23] Tr. Ex. 48.

[24] Tr. Ex. 49.

letter apparently crossed in the mail with a letter Madison received from the General Partner's counsel, dated March 20. By that letter, the General Partner informed Madison it would not produce the information requested on the bases, among others, that it was proprietary, confidential, and in the nature of trade secrets.[25] The General Partner asserted that because the Partnership is a co-general partner in related entities with an affiliate of a publicly-traded company, it has a fiduciary obligation and an obligation under SEC Regulation FD to keep the information confidential. The General Partner further claimed that certain agreements with third parties required it to keep the requested information confidential.[26]

By letter dated March 28, 2007 (the "Demand"), Madison disagreed with the General Partner's position and reiterated its request for information.[27] In the Demand, Madison again revised its inspection request, and sought the following books and records from the Partnership:

> 1. Rent rolls for the Properties featuring square footages, expiration dates, rents, extension options, and escalations ["Rent Rolls"].
>
> 2. The terms and conditions of the Property debt including interest rate, maturity date, outstanding balance, and amortization schedule and date pre-payable without penalty ["Property Debt Information"].

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25 Tr. Ex. 50.

26 *Id.*

27 Tr. Ex. 51.

> 3. Copies of any and all agreements the Partnership has entered into with Mills Corporation that expressly prohibit the disclosure of the information requested.[28]

After KanAm refused to furnish any materials in response to the Demand, Madison commenced this action on April 5, 2007, seeking to compel access to the requested information. In its Complaint, Madison stated its purpose for the Demand was to properly value its investment in the Partnership.[29] The Complaint further alleges that by refusing to make available the requested books and records, KanAm breached both the DRULPA and Section 10 of the Partnership Agreement, and seeks damages, including costs and attorneys fees.

In discovery, KanAm provided Madison with materials responsive to Item No. 3 in the Demand.[30] Therefore, only Items Nos. 1 and 2, the Rent Rolls and the Property Debt Information (collectively, the "Requested Information"), remain at issue.[31] Trial was held on July 26, 2007. After extensive briefing, the Court also heard post-trial argument.[32]

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28 *Id.* at 1-2.

29 Compl. ¶ 13.

30 PT Stip. ¶ 2.8.

31 KanAm admits that the Requested Information exists and is within its possession, control, or custody. PT Stip. ¶ 2.9.

32 In connection with the argument, Defendants presented two motions to supplement. The first motion concerned a supplemental affidavit of Hammond. Madison did not oppose that motion, and I granted it at post-trial argument. *See* PT Tr. at 17. Madison did oppose, however, the second motion to supplement, concerning an unaudited financial statement for fiscal year 2006 and the KanAm

II. ANALYSIS

Preliminarily, I note that Madison asserts two independent claims – one based on the DRULPA and the other on the Partnership Agreement.[33] I examine those claims separately and in that order.

A. Madison's DRULPA Claim

Count I of the Complaint asserts a claim for breach of § 17-305 of the DRULPA.[34] The parties dispute whether Madison has a proper purpose for inspecting the books and

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XIX annual report for fiscal year 2006. For the reasons stated on the record at the argument, I also granted the second motion to supplement. *See id.* at 60-62.

[33] The statutory and contract claims could have been interdependent, if the contract had specifically invoked § 17-305, but Section 10(a) does not mention § 17-305. In any event, a partnership agreement can create a contractual inspection right "in addition to and separate from" the statutory inspection right. *Bond Purchase, L.L.C. v. Patriot Tax Credit Props., L.P.*, 746 A.2d 842, 853 (Del. Ch. 1999).

A partnership agreement can also expressly restrict the statutory right of access by specifying what constitutes "books and records." *Madison Ave. Inv. Partners, LLC v. Am. First Real Estate Inv. Partners, L.P.*, 806 A.2d 165, 172 n.10 (Del. Ch. 2002). Section 17-305(f) provides: "The rights of a limited partner to obtain information as provided in this section may be restricted in an original partnership agreement or in any subsequent amendment approved or adopted by all of the partners and in compliance with any applicable requirements of the partnership agreement. The provisions of this subsection shall not be construed to limit the ability to impose restrictions on the rights of a limited partner to obtain information by any other means permitted under this section." 6 *Del. C.* § 17-305(f). The stated purpose for adding this subsection was "to permit a partnership agreement to further restrict the rights of a limited partner to obtain information." 73 Del. Laws, c. 73, § 20 (2001).

Nevertheless, "[t]here can be no waiver of a statutory inspection right unless that waiver is clearly and affirmatively expressed in the relevant document." *Kortum v. Webasto Sunroofs, Inc.*, 769 A.2d 113, 125 (Del. Ch. 2000).

[34] 6 *Del. C.* § 17-305.

records it seeks, and whether KanAm can withhold the Requested Information under § 17-305(b). Madison argues it is entitled to the Requested Information upon a written request that states any purpose reasonably related to its interest as a limited partner. Madison avers it has two proper purposes: (1) valuing the Partnership as a whole in anticipation of making a tender offer; and (2) valuing its existing investment. Additionally, Madison disputes KanAm's § 17-305(b) defenses to disclosing the Requested Information. Therefore, according to Madison, KanAm breached the DRULPA when it wrongfully failed to make the requested books and records available.

KanAm responds that Madison's primary purpose for seeking the Requested Information is to develop a tender offer. According to KanAm, the record reveals that Madison's interest in pricing a tender offer is the interest of a stranger, and not a proper purpose reasonably related to its interest as a limited partner. KanAm also claims the right to withhold the Requested Information under § 17-305(b), because: (1) KanAm is required by agreement with a third party to keep the Requested Information confidential; (2) the Requested Information is confidential, proprietary, and in the nature of trade secrets; and (3) KanAm has a good faith belief that disclosure of the information is not in the best interests of, and would damage the Partnership.

To resolve this controversy, I first examine the propriety of Madison's purpose for seeking inspection of the Partnership's books and records. By statute, a limited partner has the right to inspect partnership books and records for any purpose that is "reasonably

related to the limited partner's interest as a limited partner."[35] In determining whether a purpose is reasonably related to the limited partner's interest under § 17-305, the Court of Chancery will consider whether that purpose is "proper" within the meaning of 8 *Del. C.* § 220, the corporate analog to § 17-305.[36] Plaintiff bears the burden of proving a proper purpose. Moreover, because a limited partner often has more than one purpose, the "*primary* purpose must be proper; any *secondary* purpose, whether proper or not, is irrelevant."[37]

1. The *Madison I* and *BBC Acquisition* decisions

In their arguments as to the propriety of Madison's purpose, the parties primarily rely upon two cases: *Madison Ave. Inv. Partners, LLC v. Am. First Real Estate Inv.*

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35 *See* 6 *Del. C.* § 17-305. Section 17-305 provides, in relevant part:

> (a) Each limited partner has the right, subject to such reasonable standards (including standards governing what information and documents are to be furnished, at what time and location and at whose expense) as may be set forth in the partnership agreement or otherwise established by the general partners, to obtain from the general partners from time to time upon reasonable demand for any purpose reasonably related to the limited partner's interest as a limited partner:
>
> (1) True and full information regarding the status of the business and financial condition of the limited partnership; . . .
>
> (6) Other information regarding the affairs of the limited partnership as is just and reasonable.

36 *See Forsythe v. CIBC Empl. Private Equity Fund*, 2005 WL 1653963, at *4 (Del. Ch. July 7, 2005).

37 *BBC Acq. Corp. v. Durr-Fillauer Med., Inc.*, 623 A.2d 85, 88 (Del. Ch. 1992); *see also Madison Ave.*, 806 A.2d at 174 ("once an acceptable primary purpose is established, any secondary purpose or even ulterior motive is irrelevant.").

Partners, L.P.[38] (*Madison I*) and *BBC Acquisition Corp. v. Durr-Fillauer Medical, Inc.*[39] Madison analogizes this case to the factual scenario in *Madison I*. KanAm disagrees and points to *BBC Acquisition* as more instructive. Although the factual circumstances of this case rest on a fall line between *Madison I* and *BBC Acquisition*, I find they more closely resemble the facts in *BBC Acquisition*.

In *Madison I*, plaintiffs, two limited partners, purchased units in three limited partnerships (the "Partnerships"). After acquiring their interest, plaintiffs made several attempts to sell their units to the general partner, always demanding a premium to the market price. Plaintiffs also demanded that the Partnerships be liquidated. Later, plaintiffs began making books and records requests. Each request stated that plaintiffs' purpose for seeking access to the specified books and records was to properly value their investment.[40] In response, the Partnerships disclosed some information, but plaintiffs considered it inadequate. Plaintiffs then filed an action to compel access to documents alleging breaches of the DRULPA, the partnership agreement, and fiduciary duties. As part of its inquiry, the Court examined whether plaintiffs stated a proper purpose for their books and records request.

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[38] 806 A.2d 165 (Del. Ch. 2002).

[39] 623 A.2d 85 (Del. Ch. 1992).

[40] *Madison I*, 806 A.2d at 169.

In determining that issue in *Madison I*, Vice Chancellor Lamb analyzed whether the plaintiffs' purpose was reasonably related to their interest as a limited partner.[41] The Court noted that valuation of one's investment is a proper purpose.[42] Further, once an acceptable primary purpose is established, secondary purposes or ulterior motives are irrelevant. In *Madison I*, the Partnerships did not dispute the propriety of plaintiffs' valuation purpose, but rather alleged five grounds on which they contended plaintiffs misstated their true purpose.[43]

Plaintiff Madison in this case relies on several of the disputed grounds raised in *Madison I*. Specifically, Madison relies on *Madison I* for the proposition that inspecting a limited partnership's books and records for either of the following purposes is proper: (1) considering whether to acquire additional units of a limited partnership;[44] or (2) valuing a partnership as a whole.[45] Madison also contends that both purposes are proper even where the limited partner requester is in the business of making tender offers, when

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41 *Id.* at 174.

42 *Id.*; s*ee also Holman v. Nw. Broad., L.P.*, 2007 WL 1074770, at *2 (Del. Ch. Mar. 29, 2007) (citing *CM & M Group, Inc. v. Carrol*, 453 A.2d 788, 792 (Del. 1982)).

43 *Madison I*, 806 A.2d at 174.

44 Pl.'s Opening Br. ("POB") at 18; Pl.'s Reply Br. ("PRB") at 10.

45 PRB at 10 (arguing that this is especially true when "the valuation of KanAm XIX as a whole is inextricably tied to the valuation of Madison's existing investment"); PT Tr. at 13.

the record indicates that the limited partner has not launched a tender offer or formed an intention to do so.[46]

In *Madison I*, Vice Chancellor Lamb first confirmed that considering whether to acquire additional units of a limited partnership is a proper purpose.[47] Second, the Court held that a limited partner properly may seek information that relates to valuing the partnership as a whole.[48] Third, the Court addressed the Partnerships' concerns that plaintiffs, who were in the business of making tender offers but had not stated their intent regarding a tender offer for the Partnerships, were hiding their true purpose. The Court dismissed these concerns, because plaintiffs insisted they had "made no decision to launch any tender offer, and there is nothing in the record to prove otherwise."[49] Therefore, the fact that a limited partner is in the business of making tender offers does not necessarily make its stated purpose of valuing its investment improper.

The decision in *Madison I* is also instructive as to Madison's and KanAm's conflicting arguments about the size of Madison's investment in the Partnership. In

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[46] PT Tr. at 14. Madison argues that in *Madison I*, as in this case, the evidence showed the plaintiffs were in the business of making tender offers, but did not make clear whether plaintiffs actually intended to launch a tender offer.

[47] *See Madison I*, 806 A.2d at 174-75.

[48] *See id.* at 179. The Court granted plaintiffs access to some property-specific information on the basis that withholding it would make it difficult for plaintiffs "to value the partnership as a whole." *Id.* At the same time, the Court in *Madison I* denied plaintiffs' request for access to mortgages, loans, notes, and debt agreements because such information was not reasonably necessary to value the investment where the stated purpose was making calculations in the event of liquidation. *See id.* at 178.

[49] *See id.* at 175 n.23.

Madison I, the Court held the size of an investment is irrelevant to the propriety of a limited partner's purpose under § 17-305. Determining the value of one's interest is a proper purpose and "the only reason one would do so is to decide whether to buy, sell or hold units"; hence, the right to inspect documents is not conditioned on any minimum investment threshold.[50]

The other pertinent case is *BBC Acquisition*. KanAm cites *BBC Acquisition* for the proposition that demanding books and records for the purpose of making a tender offer is not proper. In *BBC Acquisition*, Bergen Brunswig Corporation ("Bergen") learned that another company had made a bid to acquire Durr-Fillauer Medical, Inc. ("Durr"), a company in the same business as Bergen.[51] In response, Bergen decided to launch a competing bid. Among other actions, Bergen formed a wholly-owned subsidiary, BBC Acquisition Corp. ("BBC"), to implement its bid to acquire Durr. After BBC acquired 100 shares of Durr, Bergen, through BBC, made a cash tender offer for all of Durr's outstanding shares (the "Tender Offer"). Next, Bergen and BBC sued Durr's board of directors in the Court of Chancery, claiming they breached their fiduciary duty by refusing to deal with Bergen and preferentially dealing with the competing bidder. Then, Bergen, through BBC, made a § 220 demand to inspect Durr's shareholder list and specified books and records. BBC's stated purposes for the demand included enabling

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50 *See id.* at 175-76 (citing Donald J. Wolfe, Jr. & Michael A. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery* § 8-6[a], at 8-56 (2001) (referring to 8 *Del. C.* § 220)).

51 *BBC Acquisition*, 623 A.2d at 87.

BBC to evaluate its own Durr shares, the Tender Offer, and the competing bid. Durr never formally responded to the demand, and BBC filed a books and records action.[52]

Then-Vice Chancellor, now Justice Jacobs in *BBC Acquisition* recognized that a stockholder often may have more than one purpose for demanding books and records, and that the proper purpose requirement has been construed to mean that "the shareholder's *primary* purpose must be proper; any *secondary* purpose, whether proper or not, is irrelevant."[53] In examining the propriety of BBC's stated purposes, the Court concluded that BBC placed the heaviest, if not exclusive, emphasis on two of them: (1) valuing its existing investment in Durr, and (2) communicating with other Durr stockholders about the Tender Offer or a possible solicitation of proxies or consents regarding a Durr shareholders' meeting proposed to approve the competing bid transaction.[54] Durr challenged the propriety of BBC's purpose under § 220, arguing BBC's true (and primary) purpose was to determine whether to reprice or restructure the Tender Offer.[55]

Then-Vice Chancellor Jacobs found that BBC had one primary purpose for its demand, "to place a value on Durr so that BBC [could] consider whether to increase its

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52 *Id.*

53 *Id.* at 88.

54 *Id.* at 90.

55 *Id.* at 89.

offering price and, if so, by how much."[56] Further, the Court concluded, as a matter of law, that BBC's primary purpose was not reasonably related to its interest as a shareholder and therefore was not a "proper purpose" with the meaning of § 220.[57]

The Court in *BBC Acquisition* held a "fatally unbridgeable" distinction existed between: "valuing a stockholder's interest in the corporation [which] is a proper purpose" and "[v]aluing the corporation for the sole purpose of acquiring it, unrelated and without regard to the acquiror's particular and pre-existing investment in the corporation, [which] is not."[58] An investor may inspect books and records "to value his investment in order to determine how to protect or preserve it, *viz.*, whether to sell his shares, buy more shares (or possibly seek control), or take some other course of action."[59] In such circumstances, the petitioning investor's interest in valuing his investment, regardless of size, is of real significance to him. The Court found, however, that BBC was not seeking to value its Durr shares. Rather, those shares merely provided a legal vehicle for BBC to value Durr as a whole for purposes of the Tender Offer. The Court observed: "BBC's nominal stock interest is not what this inspection dispute is about," and found that "BBC's characterization of its purpose as being one of valuing its interest in Durr

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56 *Id.* at 90. The Court characterized BBC's other stated purposes as secondary and subordinate.

57 *Id.* at 91.

58 *BBC Acquisition*, 623 A.2d at 91; *accord Golden Cycle, LLC v. Global Motorsport Group, Inc.*, 1998 WL 326680, at *2 (Del. Ch. June 18, 1998).

59 *BBC Acquisition*, 623 A.2d at 91.

obscures what truly is going on here."[60] Rather, the Court held BBC's purpose related to its status as a bidder for Durr, not as a Durr stockholder. "Section 220 is intended to serve shareholders whose need for inspection is truly related to their stock interest. BBC [was] not such a stockholder."[61]

2. Has Madison stated a proper purpose in this case?

Madison has two stated purposes for seeking the Requested Information: (1) to develop a valuation model for valuing the Partnership as a whole in anticipation of making a tender offer; and (2) to value its existing investment.[62] In determining whether Madison had a proper purpose, a critical issue is whether Madison's primary purpose was to value a tender offer or to value its existing interest in KanAm XIX. As then-Vice Chancellor Jacobs observed in another case:

> The issue of whether a concept so elusive as purpose or motive is "primary" or "secondary," involves a judgment that necessarily is qualitative, not mathematical. Specifically, where a stockholder who seeks inspection of corporate books and records has two purposes, one stockholder-related and the other not, the critical inquiry is whether the stockholder-related purpose predominates over the ulterior purpose.[63]

Here, the evidence establishes, and I find as fact, that Madison's primary purpose was to determine whether or not to make a tender offer and if so on what terms. This case,

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60 *Id.*

61 *Id.* at 91-92.

62 T. Tr. at 16-17 (Dickerman); POB at 17.

63 *Helmsman Mgmt. Servs., Inc. v. A & S Consultants, Inc.*, 525 A.2d 160, 166-67 (Del. Ch. 1987); *see also Sutherland v. Dardanelle Timber Co.*, 2006 WL 1451531, at * 9 (Del. Ch. May 16, 2006).

therefore, falls somewhere on the spectrum between *Madison I*, where no tender offer decision had been made, and *BBC Acquisition*, where a tender offer had been made and the investor sought books and records to assist it in deciding whether to reprice, restructure, or walk away from the tender offer.

I find the facts of this case more closely resemble *BBC Acquisition*. Madison, as part of its business model, makes initial investments in partnerships as a prelude to making tender offers. As the Court held in *Madison I*, being in the business of making tender offers alone is not sufficient to discredit an investor's claim that he is seeking books and records to value his investment, especially when the investor insists that it has made no decision to launch a tender offer and there is nothing in the record to prove otherwise. Here, however, the evidence suggests that Madison is seeking the books and records of Kan Am XIX for the primary purpose of making a tender offer, which is not a proper purpose under *BBC Acquisition*.

Before purchasing any interest in KanAm XIX, Madison considered KanAm XIX an attractive tender offer candidate. After Madison purchased a limited partner interest in the Partnership, but two months before it made the books and records request, Madison completed an underwriting of the Partnership to model a potential tender offer. Based on the resulting model, Madison contemplated a tender offer at a price of 80 percent of the limited partners' nominal capital, which Dickerman characterized as likely "good enough." Only then did Madison demand the Requested Information from the Partnership. Significantly, too, Madison has conceded that its chief purpose in making

the inspection request was to value KanAm XIX as a whole in anticipation of making a tender offer.

Similar to BBC in *BBC Acquisition*, Madison's status in valuing a potential tender offer is that of a bidder contemplating or refining the price of its opening bid, not that of a limited partner valuing its interest in a partnership. Therefore, I conclude that Madison's primary purpose, determining whether or not to make a tender offer and if so on what terms, is not reasonably related to its interest as a limited partner and, consequently, is not a "proper purpose" within the meaning of 6 *Del. C.* § 17-305.

In reaching this conclusion, I find, as the Court did in *BBC Acquisition*,[64] that Plaintiff Madison's relatively small interest in Kanam XIX of $30,000 is not what this inspection dispute is about. The Rent Rolls and Property Debt Information for the two shopping centers in which the Partnership owns an interest are not necessary for Madison to value its interest or to determine how to protect or preserve it. Indeed, as discussed *infra* in connection with Madison's breach of contract claim, limited partners do have access under the Partnership Agreement to extensive financial information regarding Kanam XIX from which they can value their interests. The more detailed information Madison seeks in this action, however, relates to its interest in valuing the Partnership as a whole. As in *BBC Acquisition*, Madison's primary purpose is to "[v]alu[e] the [Partnership] for the sole purpose of acquiring it, unrelated and without regard to [its]

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[64] 623 A.2d at 91.

particular and pre-existing investment in the [Partnership]." That purpose is not reasonably related to Madison's interest in KanAm XIX as a limited partner.[65]

The Requested Information Madison seeks effectively equates to the type of information a bidder might gain access to through negotiations with the target company's management or directors. A company might make such information available in connection with a potential acquiror's due diligence, for example. In deciding whether or not to make information of that nature available to a bidder, the directors would be constrained by their fiduciary and other duties to the company and its shareholders. A shareholder and, perhaps, a bidder who like Madison owns shares in the target, might be able to challenge a decision by the board to deny access to information to a particular bidder in a plenary action for breach of fiduciary duty. In fact, such a situation existed in the *BBC Acquisition* case.[66] In the case of a tender offer for a limited partnership, that procedure represents a reasonable mechanism for resolving any informational disputes between the bidder and the target partnership. Affording a stockholder seriously interested in exploring the possibility of a tender offer a statutory right under § 17-305 to obtain comprehensive, detailed information not publicly available about the partnerships' principal assets presumably would provide a significant benefit to that entity as a bidder. Whether it also would serve the interests of the limited partners is questionable. Thus,

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65 *See id.*

66 *Id.* at 87 n.2, 91.

consistent with the ruling in the *BBC Acquisition* case, I hold that Madison failed to state a proper purpose for its books and records demand.

3. KanAm's defenses under 6 *Del. C.* § 17-305(b)

Having concluded that Madison does not have a proper purpose for inspecting the Requested Information, I need not address the additional defenses KanAm raised under § 17-305(b) in detail. Because § 17-305(b) provides an alternative ground for denying access to the documents Madison seeks, however, a brief discussion is in order.

Section 17-305(b) provides, in part, that "A general partner shall have the right to keep confidential from limited partners . . . any information which the limited partnership is required by law or by agreement with a third party to keep confidential." Defendants contend the Requested Information is provided to KanAm by Mills (now Simon) subject to an agreement to keep the information confidential. This agreement is evidenced by several documents provided to Madison in discovery, as well as an allegedly consistent course of conduct about which KanAm's Hammond testified.

Section 17-305(b) further provides that "A general partner shall have the right to keep confidential from limited partners . . . any information which the general partner *reasonably believes to be in the nature of trade secrets* . . . ."[67] Madison argues that the Requested Information is not a trade secret.[68] Yet, whether it actually *does* constitute a trade secret is a different question than whether there is a *reasonable basis* for believing

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[67] 6 *Del. C.* § 17-305(b) (emphasis added).

[68] S*ee* POB at 24-25.

it to be in the nature of trade secrets.[69] Defendants assert there is such a basis and that it also supports their withholding of the Requested Information.[70]

Madison responds that the Requested Information is not confidential. In particular, Madison argues the confidentiality legend upon which KanAm relies does not prove the Rent Rolls are confidential, and that a German Prospectus KanAm distributed regarding another partnership shows it has made public the same type information Madison seeks here. Further, according to Madison, no third party agreement prohibits Defendants from disclosing the Requested Information.

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[69] I find unpersuasive Defendants' contention that this aspect of § 17-305(b) does not apply because KanAm's Hammond could not define precisely the legal terms of art "confidential," "proprietary," and "trade secrets" and distinguish among them. In deposition Hammond testified that he understands that "trade secret[s], proprietary, and confidential . . . all mean the same thing." Tr. Ex. 15, Hammond Dep. at 60. In Hammond's words, the Requested Information is "not disclosed to the public, nor to [KanAm's] stockholders . . . for a variety of business reasons, including concerns for competitive reasons, [Regulation] FD reasons, [and] for concerns about relationships with tenants." *Id.* at 24-25; *see also id.* at 26, 28, 60. Fairly viewed, Hammond's testimony supports KanAm's argument that it reasonably believes the Rent Rolls and Property Debt Information to be in the nature of trade secrets.

[70] The Partnership invokes yet another portion of § 17-305(b) which provides that, "[a] general partner shall have the right to keep confidential from limited partners . . . any information the disclosure of which the general partner in good faith believes is not in the best interest of the limited partnership or could damage the limited partnership or its business . . . ." According to Defendants, the unrebutted trial evidence established that disclosure of the Requested Information is not in the best interest of the limited partnership or could damage the limited partnership or its business in several ways. Based on my determination that Madison lacks a proper purpose for its request under § 17-305 and that the Partnership's first two arguments under § 17-305(b) also support denial of Madison's request for the Requested Information, I consider it unnecessary to address the Partnership's further argument that Madison's request is "not in the best interest of" the Partnership or "could damage" it or its business.

Having considered the evidence adduced at trial and the arguments of the parties, I find that KanAm has shown the Partnership is required by an oral agreement with Mills (now Simon) and by virtue of KanAm's written agreement with Mills to keep the Requested Information confidential. The Requested Information is not publicly disclosed by Mills or Simon, and has not been disclosed for at least the past seven years.[71] Additionally, measures are employed to ensure the confidentiality of the Requested Information. For example, the Rent Rolls contain confidentiality legends;[72] the Rent Rolls and other detailed, mall-specific and tenant-specific information are provided to KanAm through a secure, password protected data portal;[73] and Mills verbally informed KanAm employees that information such as the Rent Rolls were proprietary and should be kept confidential.[74]

I also conclude that KanAm satisfies the second part of § 17-305(b) on which it relies. Specifically, KanAm has shown that, in its capacity as the General Partner of the Partnership, it reasonably believes the Requested Information to be in the nature of trade secrets.[75] As previously mentioned, Mills (now Simon) expressed to KanAm its belief

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71 T. Tr. at 86-87 (Hammond).

72 Tr. Ex. 12, Redacted 2003-2006 Rent Rolls with Confidentiality Legend (Jan. 1, 2003 – Aug. 31, 2006); Tr. Ex. 13, Redacted 2003-2006 Rent Rolls with Confidentiality Legend (May 1, 2005 – Mar. 1, 2007); T. Tr. at 89 (Hammond).

73 T. Tr. at 89-90 (Hammond); Tr. Ex. 14, Letter from James M. Barkley, Esq., General Counsel of Simon (June 27, 2007).

74 T. Tr. at 89 (Hammond).

75 Under the Delaware Uniform Trade Secrets Act, a "trade secret" is defined as follows:

that information, such as the Requested Information, was proprietary and confidential, and the Rent Rolls bear a confidentiality legend. Although Madison hoped to gather information such as the Rent Rolls, it was not able to obtain such specific information from publicly available sources.[76] Additionally, if property-specific information became public, for example the Rent Rolls, tenants could use that information against Mills in lease renewal negotiations.[77] Thus, KanAm established that it reasonably believed the Requested Information was in the nature of a trade secret.

Lastly, Madison's reliance on a 1999 KanAm XIX Prospectus in German involving different mall properties to prove the Requested Information is not confidential or a trade secret is misplaced. Any previous disclosures were made many years ago, and KanAm changed its policy in 2000. Further, KanAm contends the previous disclosures were to government agencies, such as the SEC, in connection with investigations related to Mills and were subject to confidentiality provisions.

> "Trade secret" shall mean information . . . that:
>
> a. Derives independent economic value, actual or potential, from not being generally know to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
>
> b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

6 *Del. C.* § 2001(4).

[76] T. Tr. at 18, 22 (Dickerman).

[77] *Id.* at 94-95 (Hammond). If a tenant discovered that a neighboring tenant paid less per square foot, the tenant could reasonably be expected to demand the lower lease terms, disadvantaging Mills (now Simon).

Thus, § 17-305(b) provides an alternative and independent basis for denying Madison's statutory demand for the Requested Information.

B. Breach of Contract

Count II of the Complaint asserts a claim for breach of contract. Madison contends that § 10(a) of the Partnership Agreement provides the right to inspect the Requested Information. This claim turns on the construction of Section 10(a). Inspection provisions typically include the term "books and records," but Section 10(a) requires the Partnership to make available for examination its "books of account," a more nebulous term. Madison asserts that "books of account" is ambiguous. Specifically, Madison avers the Partnership Agreement does not define the term "books of account"; it does not have a commonly understood meaning; and the parties cite to different reliable, legal authorities that give multiple meanings to the term. Madison further urges this Court to apply the doctrine of *contra proferentem* and construe the ambiguous term "books of account" against KanAm, the drafter of the Agreement. In addition, Madison argues that under settled Delaware decisional law, KanAm's lack of precision when drafting the Partnership Agreement requires that Section 10(a) be interpreted expansively and in favor of the party seeking inspection. Therefore, according to Madison, Section 10(a) gives it the right to inspect the Requested Information, and KanAm breached the Partnership Agreement when it failed to make that information available.

KanAm denies that § 10(a) of the Agreement authorizes Madison to inspect the Requested Information. Also focusing on the term "books of account," KanAm argues that it is unambiguous and does not encompass the Requested Information. KanAm

differentiates "books of account" from the term "books and records," and describes "books of account" as a less expansive term. To support its construction of "books of account" in the Partnership Agreement, KanAm points to the second sentence of Section 10(a), which provides that the "books of account" shall be closed as of the end of each fiscal year. Based on the contract and applicable legal authority, KanAm construes the term "books of account," as used in the Agreement, to encompass only a limited range of financial documents, such as the general ledger and the financial statements derived from it, *e.g.*, the balance sheet, not the Requested Information.[78]

Because KanAm denies the term "books of account" is ambiguous, it contends the doctrine of *contra proferentem* does not apply.[79] Further, because KanAm avers that Section 10(a) was drafted with precision, it dismisses as inapposite any case law expansively interpreting imprecise language. As a separate defense to the contract claim, KanAm also argues that, even if the Partnership Agreement created a right to the Requested Information, Madison's claim should be denied for lack of a proper purpose.

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[78] "Books of account" has "a fairly narrow definition; and it refers to the general ledger and the financial statements that would result from such a general ledger, such as income statement, a balance sheet, statement of cash flows, maybe a statement – or statement of partners' equity." T. Tr. at 80 (Hammond).

[79] At argument, KanAm further contended that Madison, a sophisticated business entity, was aware of the Partnership Agreement's language before purchasing its interest in the Partnership. Thus, KanAm would charge Madison with actual or constructive knowledge that "books of account" is a different, narrower term than "books and records." PT Tr. at 39-40.

1. Do the books of account referred to in Section 10(a) include the Requested Information?

Limited partnership agreements are contracts the courts construe like any other contract.[80] Under Delaware law, contract construction is a question of law.[81] When interpreting a contact, the court strives to determine the parties' shared intent, "looking first at the relevant document, read as a whole, in order to divine that intent."[82] As part of that review, the court interprets the words "using their common or ordinary meaning, unless the contract clearly shows that the parties' intent was otherwise."[83] If the contractual language is "clear and unambiguous," the ordinary meaning of the language generally will establish the parties' intent.[84] A contract is ambiguous, however, when the language "in controversy [is] reasonably or fairly susceptible of different interpretations

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80 *See Arbor Place*, 2002 WL 205681, at *3. The court in *Arbor Place* cited *Elf Atochem N. Am., Inc. v. Jaffari*, 727 A.2d 286, 290-91 (Del. 1999), for the proposition that: "'The policy of freedom to contract underlies both the [LLC] Act and the LP Act. . . . The basic approach of the [LLC] Act is to provide members with broad discretion in drafting the Agreement and to furnish default provisions when the members' agreement is silent.'" *Id.*

81 *Rhone-Poulenc Basic Chems. Co. v. Amer. Motorists Ins. Co.*, 616 A.2d 1192, 1195 (Del. 1992).

82 *Matulich v. Aegis Comm'ns Group, Inc.*, 2007 WL 1662667, at *4 (Del. Ch. May 31, 2007) (citing *Kaiser Aluminum Corp. v. Matheson*, 681 A.2d 392, 395 (Del. 1996)); *Brandywine River Prop., Inc. v. Maffet*, 2007 WL 4327780, at *3 (Del. Ch. Dec. 5, 2007).

83 *Cove on Herring Creek Homeowners' Ass'n v. Riggs*, 2005 WL 1252399, at *1 (Del. Ch. May 19, 2005) (quoting *Paxson Commc'ns Corp. v. NBC Universal, Inc.*, 2005 WL 1038997, at *9 (Del. Ch. Apr. 29, 2005)).

84 *Brandywine River*, 2007 WL 4327780, at *3.

or may have two or more different meanings."[85] Under the doctrine of *contra proferentem*, ambiguities in a contract will be resolved against the drafter.[86]

Section 10(a), the inspection provision of the Partnership Agreement, provides: "The General Partner shall cause complete and accurate *books of account* to be kept for the Partnership, which shall be available for examination by the Partners during normal business hours."[87] The Agreement's inspection provision does not include the more common and broader term "books and records." Although the Agreement does not define "books of account," the second sentence of Section 10(a) offers guidance as to the meaning of the term: "The fiscal year of the Partnership shall be the calendar year and the *books of account* shall be closed as of the end of each year."[88] This language suggests the term "books of account" encompasses documents that KanAm creates, controls, and closes out at the end of each fiscal year.

The parties dispute whether the term "books of account" in § 10(a) is ambiguous. Madison construes books of account to include the Requested Information, *i.e.*, the Rent Rolls and the Property Debt Information, because it is an undefined term that is sometimes used broadly and any ambiguity due to imprecision in the Partnership

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85 *Rhone-Poulenc*, 616 A.2d at 1196. Ambiguity does not exist simply because the parties do not agree on a contract's proper construction. *United Rentals, Inc. v. Ram Holdings, Inc.*, 2007 WL 4496338, at *15 (Del. Ch. Dec. 21, 2007).

86 *See Twin City Fire Ins. Co. v. Delaware Racing Ass'n*, 840 A.2d 624, 630 (Del. 2003); *Bond Purchase, L.L.C. v. Patriot Tax Credit Props., L.P.*, 1999 WL 669358, at *3 (Del. Ch. Aug. 16, 1999).

87 The Partnership Agreement § 10(a) (emphasis added).

88 *Id.* (emphasis added).

Agreement should be resolved against the drafter, KanAm. In support of its claim of ambiguity, Madison notes that the parties relied on different, respected legal authorities to define "books of account," which provided multiple meanings. Specifically, KanAm relied on Black's Law Dictionary, which defines "books of account" as "[r]ecords of original entry maintained in the usual course of business by a shopkeeper, trader, or other businessperson."[89] In contrast, Madison cited American Jurisprudence, which referred to "books of account" in the context of federal tax enforcement, as including a taxpayer's books and records.[90] Madison argues this evidence shows that "books of account" is reasonably susceptible to different interpretations and therefore is ambiguous.

As between the two definitions proffered by the parties, I find that only the Black's Law Dictionary definition is reasonable in the context of the Partnership Agreement. Construing "books of account" in § 10(a) to mean "[r]ecords of original entry maintained in the usual course of business by a shopkeeper, trader, or other businessperson" would comport, for example, with the statement in § 10(a) that the "books of account shall be closed at the end of each year." In contrast, Madison's definition from American Jurisprudence is open-ended and essentially would equate the meaning of "books of account" with "books and records." Madison's definition presumably would include the Rent Rolls for each of the two Properties at issue and the

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89 BLACK'S LAW DICTIONARY 1412 (8th ed. 2004). Madison actually cited the sixth edition; the eighth edition is the most current and contains the same definition as the sixth.

90 35 AM. JUR. 2D FEDERAL TAX ENFORCEMENT § 72.

detailed Property Debt Information. Thus, contrary to the second sentence of § 10(a), construing "books of account" to include all "books and records" would mean that it could encompass documents that KanAm did not originate, control, or close out at the end of the year. The Rent Rolls for the Properties, featuring square footages, rents, and extension options, and the Property Debt Information, such as debt terms and conditions including maturity dates, outstanding balances, and amortization schedules, originate with and are controlled by Mills or Simon and are not closed at the end of each year by KanAm. Rather, KanAm receives them from Mills.

Furthermore, the passage from American Jurisprudence on which Madison relies involves a different context that is not apposite here. The statement that, "The term "books of account" refers to the taxpayer's books and records …," appears as part of a discussion of who and what can be examined consistent with the audit and examination procedures applicable to federal tax enforcement. The quoted section relates to 26 U.S.C. § 7605(b), which states in relevant part: "Restrictions on examination of taxpayer. No taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year," subject to certain specified exceptions. These statements appear to apply to both individual and corporate taxpayers. Especially with regard to individual taxpayers, it is understandable that one might equate books of account with books and records. Section 10(a) of the Partnership Agreement, on the other hand, has a much narrower focus; it relates to KanAm XIX's books of account, which are to be "closed as of the end of each year." Thus, I conclude that KanAm's definition of "books of account" from Black's Law

Dictionary is reasonable in the circumstances of this case, but that Madison's proposed definition is overly broad and, therefore, unreasonable.[91] In that sense, I reject Madison's contention that the term "books of account" in § 10(a) is ambiguous.[92] I also hold that the Requested Information falls outside the scope of the books of account referred to in § 10(a).[93]

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[91] This determination is not inconsistent with the decision in *Arbor Place, L.P. v. Encore Opportunity Fund, L.L.C.*, 2002 WL 205681 (Del. Ch. Jan. 29, 2002). There, Chancellor Chandler concluded that "books of account" is a less expansive term than "books and records," and implied that "books of account" does not have a commonly understood meaning. In *Arbor Place*, the parties disputed whether an inspection provision in an LLC agreement encompassed "books and records" or "books of account." The provision was labeled "Books and Records" and repeatedly referred to "books and records." The first sentence of the provision, however, referenced "books of account." In construing the agreement, Chancellor Chandler observed that "books of account" means something less expansive than "books and records." Further, the Chancellor reasoned that "records," under ordinary contract interpretation, has an independent meaning from "books." He emphasized that "[t]his is particularly so when the phrase used, 'books and records,' has a common and well-understood definition." *Arbor Place*, 2002 WL 205681, at *3. The Court did not characterize the term "books of account" that way, inviting the negative inference that "books of account" does not have a common and well-understood definition, and therefore may be ambiguous, if left undefined. Nothing in the *Arbor Place* opinion, however, supports equating "books of account" to "books and records," as Madison urges.

[92] Conceivably, "books of account" reasonably could be construed to have an even narrower meaning than the general ledger and financial statements derived from it. In that case, the term still might be ambiguous, but it would not support Madison's demand for the Requested Information, because neither of the two potential interpretations would be broad enough to include the Rent Rolls and Property Debt Information.

[93] Having determined that Madison is not entitled to the Requested Information, I note that § 10(a) might entitle Madison to more information than KanAm voluntarily has provided in response to Madison's Demand. For example, in the motions to supplement, KanAm provided KanAm XIX's financial statement and its Annual Report for fiscal year 2006. As previously noted, under § 10(a) of the

2. KanAm's improper purpose defense to the breach of contract claim

KanAm further argues that, even if the Partnership Agreement created a right to the Requested Information, which it does not, Madison's contractual claim should be denied for lack of a proper purpose. According to KanAm, there is an implied improper purpose defense to a contract claim where the "'partner seeking access is doing so for a purpose personal to that partner and adverse to the interests of the partnership considered jointly.'"[94] Madison responds that the Partnership Agreement does not condition the inspection right on the existence of a proper purpose and this Court should not engraft such a requirement onto the Agreement. Additionally, Madison disputes the applicability of the implied improper purpose defense, contending that it requires proof that the limited partner's purpose would actually harm the partnership. Madison argues that the Court should reject KanAm's improper purpose defense because KanAm failed to satisfy its burden of proving that disclosure of the Requested Information pursuant to Madison's contractual right would actually harm the Partnership as a whole.

Partnership Agreement, Madison is entitled to examine the "books of account" of the Partnership, which KanAm has admitted include the general ledger and the related financial statements, such as the Partnership's income statement, balance sheet, and statement of cash flows. Because the parties do not dispute that "books of account" cover those documents, Madison presumably would be entitled to inspect that information under the Partnership Agreement.

94 Defs.' Ans. Br. at 34-35 (quoting *Bond Purchase*, 746 A.2d at 857).

Under Delaware law, unless a contract imposes a "proper purpose" requirement on an inspection right, a court should not read in such a requirement.[95] Here, the Partnership Agreement does not impose a proper purpose requirement on a limited partner's inspection right. Therefore, Madison generally need not state a proper purpose to enforce its contractual inspection right.

Under the "improper purpose defense," however, a court may deny a partner's request for access to a partnership's records when:

> (i) neither the explicit contractual provision in a partnership agreement nor statutory language negate the notion that a partner must have a proper purpose and (ii) the partner denying another partner access to partnership business records can show that the partner seeking access is doing so for a purpose personal to that partner and adverse to the interests of the partnership considered jointly.[96]

Further, "when [the improper purpose] defense can be implied, inspection relief may be denied if the partnership can demonstrate that the plaintiff's purpose . . . (b) would actually harm the value of the joint investment."[97]

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95 *See In re Paine Webber Ltd. P'ship*, 1996 WL 535403, at *7 (Del. Ch. Sept. 17, 1996) (discussing *Schwartzberg v. CRITEF Assocs. Ltd. P'ship*, 685 A.2d 365 (Del. Ch. 1996)).

96 *Bond Purchase, L.L.C. v. Patriot Tax Credit Props., L.P.*, 746 A.2d 842, 857 (Del. Ch. 1992). To date, the improper purpose defense appears to have arisen primarily in the context of requests for lists of limited partners or similar lists of investors. *See id.* at 858; *In re Paine Webber*, 1996 WL 535403, at *6-8. Here, the dispute regarding the Requested Information concerns Rent Rolls and underlying Property Debt Information, not a limited partner list. I assume, without deciding, the improper purpose defense also would apply to a request for such documents.

97 *In re Paine Webber*, 1996 WL 535403, at *7.

In this case, KanAm presented evidence that disclosure of detailed information regarding the individual Properties, such as the Rent Rolls, potentially could harm the Partnership. Hence, there might also be an issue of improper purpose, even if the Requested Information could be inspected under § 10(a). Having concluded § 10(a) does not apply to that information, I do not need to rule on KanAm's improper purpose defense. I note, however, that there was no evidence that disclosure to Madison of information within the scope of § 10(a), such as the Partnership's financial statements, actually would harm the Partnership as a whole. Therefore, the implied improper purpose defense probably would not defeat a request for KanAm's books of account, as I have construed that term.

III. CONCLUSION

For the reasons stated, I hold that Madison is not entitled to the Requested Information and did not breach either the DRULPA or the Partnership Agreement. Thus, the claims in Madison's Complaint are dismissed with prejudice. No party has demonstrated an entitlement to an award of attorneys' fees.

IT IS SO ORDERED.