



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: March 26, 2008
Decided: March 31, 2008

Edward P. Welch
Robert S. Saunders
Ronald N. Brown, III
Skadden, Arps, Slate, Meagher & Flom LLP
P.O. Box 636
Wilmington, DE 19899

David S. Eagle
Kelly A. Green
Klehr Harrison Harvey Branzburg & Ellers LLP
919 Market Street, Suite 1000
Wilmington, DE 19801

Re: *TravelCenters of America, LLC v. Brog, et al.*
Civil Action No. 3516-CC

Dear Counsel:

In this action, plaintiff TravelCenters of America LLC (“TravelCenters”), a Delaware limited liability company, seeks a declaratory judgment that the notice of intent filed by defendants to present business and to nominate candidates for the TravelCenters board of directors is invalid. TravelCenters determined that the notice did not comply with the LLC’s advance notice bylaw and subsequently filed this action, seeking expedited proceedings. After granting TravelCenters’ motion to expedite, this Court scheduled a one-day trial for April 4, 2008.

On February 15, 2008, approximately two weeks after TravelCenters filed this action, defendants answered the complaint. At that time, two defendants, E² Investment Partners LLC and Locksmith Value Opportunity Fund LP, counterclaimed pursuant to 6 *Del. C.* § 18-305 for access to “any and all” books and records of TravelCenters, including a shareholder list. Presently before me is the motion to dismiss the counterclaim that TravelCenters, the counterclaim-defendant, filed on March 4, 2008. In support of its motion, TravelCenters argues,

first, that demands for books and records inspections are summary proceedings that should not be combined with other actions and, second, that the LLC agreement eliminates the rights of members to inspect books and records to the fullest extent permitted by the Delaware LLC Act. For the reasons described herein, I grant TravelCenters' motion to dismiss the counterclaim without prejudice.

As an initial matter of proper pleading, counterclaim-plaintiffs have failed to allege facts sufficient to state a proper purpose in their counterclaim.¹ This pleading defect alone is sufficient to warrant dismissal of the counterclaim.² Even assuming, however, that a proper purpose had been pleaded, I nevertheless dismiss the counterclaim without prejudice for the additional reasons stated below.

This Court has made it very clear that “as a general rule, this Court will not entertain outside claims or collateral issues within a § 1[8]-305 hearing, but will hear only those matters that pertain to the [member’s] demand to inspect the books.”³ Consolidation of both claims—the books and records claim with the advance bylaw claim—for resolution in one hearing would necessarily expand the books and records proceeding beyond its narrow scope⁴ to encompass the advance bylaw notice issue, which raises questions wholly distinct from those raised by the books and records claim. Counterclaimants have failed to persuade me to depart from the line of cases upholding the general rule that books and records claims should be litigated in distinct proceedings.⁵

¹ Not until their brief in opposition of counterclaimant-defendant’s motion to dismiss do counterclaim-plaintiffs even reference the purpose of their demand for inspection.

² The burden of establishing a proper purpose is on the shareholder. *Helmsman Mgmt. Servs., Inc. v. A & S Consultants, Inc.*, 525 A.2d 160, 164 (Del. Ch. 1987) (discussing demand for inspection of books and records in a section 220 action); *see also Saito v. McKesson HBOC, Inc.*, No. 18553, 2001 WL 818173, at *4 (Del. Ch. July 10, 2001), *aff’d in relevant part*, No. 376, 2001, 2002 WL 1302958 (Del. June 11, 2002) (same). “Because of a lack of reported decisions in the LLC context, the Court may look to cases interpreting similar Delaware statutes concerning corporations and partnerships.” *Somerville S Trust v. USV Partners, LLC.*, No. 19446-NC, 2002 WL 1832830, at *5 n.4 (Del. Ch. Aug. 2, 2002).

³ *Gotham Partners, L.P. v. Hallwood Realty Partners, L.P.*, 714 A.2d 96, 104 (Del. Ch. 1998) (interpreting section 17-305 of the Delaware Revised Uniform Limited Partnership Act).

⁴ *Id.* at 104 (“The discrete inquiry into proper demand and proper reason results in a narrow and focused proceeding. To allow the limited partner to add complex claims of fiduciary or contractual breach of duty would expand the proceeding into a plenary trial and overwhelm the purpose of the special proceeding granted under §17-305.”).

⁵ *See, e.g., id.* at 104; *U.S. Die Casting & Dev. Co. v. Security First Corp.*, 711 A.2d 1220, 1224 (Del. Ch. 1996), *rev’d on other grounds*, 687 A.2d 563 (Del. 1997).

In addition, the unhurried nature of counterclaim-plaintiffs' own actions undercuts their argument that fairness and efficiency demands consolidation of their books and records claim with the upcoming hearing on the validity of the notice. Tracing the brief history of this action, I remain convinced that consolidation of the claims is not warranted here. Counterclaimants sent a letter dated January 7, 2008, to TravelCenters demanding a books and records inspection. When TravelCenters refused by letter dated January 14, 2008, counterclaimants could have filed a claim at that time pursuant to § 18-305. They did not. Instead, counterclaimants waited until they were haled into court when TravelCenters instituted this action on February 1, 2008, and only then filed their counterclaim in mid-February. Even though this Court granted TravelCenters' motion to expedite and TravelCenters moved to dismiss the counterclaim on March 4, 2008, counterclaimants did not even respond to that motion until March 19, 2008, less than three weeks before the expedited trial date. To allow counterclaimants to tag along their inspection rights claim—a claim that this Court has said should be handled on its own in a summary proceeding—with TravelCenters' notice claim will prejudice TravelCenters. For instance, the parties may wish to engage in discovery on the inspection rights claim.⁶ This, however, will not be possible in the short time before the upcoming expedited trial.

Thus, if counterclaimants wish to bring a books and records claim against TravelCenters, they must do so by filing a separate action. TravelCenters' motion to dismiss is hereby granted; the counterclaim is dismissed without prejudice.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and is positioned above the printed name.

William B. Chandler III

WBCIII:mpd

⁶ See, e.g., *McCarthy v. Cablevision Sys. Corp.*, No. 1616-CC, 2007 WL 1309399, at *1 (Del. Ch. Apr. 24, 2007) (“Defendant is entitled to depose the plaintiff in a § 220 proceeding, unless there is evidence of abuse of process, alternative means of equivalent discovery, or improper delay.”); see also *Meltzer v. CNET Networks, Inc.*, No. 3023-CC, 2007 WL 2593065, at *1 (Del. Ch. Sept. 6, 2007).