

IN RE: APPLICATION BY NONPROFIT CORPORATION MANAGER [Robert Heist] TO COMPEL INSPECTION OF CORPORATE INFORMATION	: IN THE COURT OF COMMON PLEAS
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IN RE:	
MILTON HERSHEY SCHOOL	: DAUPHIN COUNTY, PENNSYLVANIA
	:
AND	: ORPHANS' COURT DIVISION
	:
	:
HERSHEY TRUST COMPANY, TRUSTEE OF THE MILTON HERSHEY SCHOOL TRUST	: NO. 712 of Year 1963

September 28, 2021

MEMORANDUM

Before the Court is Respondent Milton Hershey School’s Motion for Summary Judgment, seeking to dismiss Petitioner Robert Heist’s Petition to Compel Inspection of Corporate Information. Upon consideration of the Motion, Answer, the parties’ briefs, oral argument and the filing of post-argument supplemental documents, this Court **GRANTS** the Motion on the grounds that Petitioner has not demonstrated, on the face of the record, that he complied with applicable corporate law in requesting corporate information.

The Nonprofit Corporation Law creates a scheme for the maintenance of a corporation’s records as well as the corresponding rights of members and directors of the corporation to obtain access thereto, as follows:

- (a) Required records. -- ... The corporation shall also keep appropriate, complete and accurate books or records of account. The records provided for in this subsection shall be kept at any of the following locations:
 - (1) the registered office of the corporation in this Commonwealth;
 - (2) the principal place of business wherever situated; or
 - (3) any actual business office of the corporation.

- (b) Right of inspection by a member. -- **Every member shall**, upon written verified demand stating the purpose thereof, **have a right to examine, in person or by agent**

or attorney, during the usual hours for business for any proper purpose, the membership register, books and records of account, and records of the proceedings of the members, directors and any other body, and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to the interest of the person as a member. ...

(c) Proceedings for the enforcement of inspection by a member. -- If the corporation, or an officer or agent thereof, **refuses to permit an inspection sought by a member or attorney or other agent acting for the member pursuant to subsection (b) or does not reply to the demand within five business days after the demand has been made, the member may apply to the court for an order to compel the inspection.** The court shall determine whether or not the person seeking inspection is entitled to the inspection sought. The court may summarily order the corporation to permit the member to inspect the membership register and the other books and records of the corporation and to make copies or extracts therefrom; ... **Where the member seeks to inspect the books and records of the corporation, other than its membership register or list of members, he shall first establish:**

- (1) that he has complied with the provisions of this section respecting the form and manner of making demand for inspection of such document; and**
- (2) that the inspection he seeks is for a proper purpose.**

...

15 Pa.C.S.A. § 5508 (emphasis added).

A director's rights and remedies with respect to accessing corporate books and records are defined in §5512(a) and the conditions predicate to a director's action for judicial relief are set forth in §5512(b), as follows:

(a) General rule. -- To the extent reasonably related to the performance of the duties of the director, including those arising from service as a member of a committee of the board of directors, a director of a nonprofit corporation is entitled:

(1) in person or by any attorney or other agent, at any reasonable time, to inspect and copy corporate books, records and documents and, in addition, to inspect, and receive information regarding, the assets, liabilities and operations of the corporation ...

(2) to demand that the corporation exercise whatever rights it may have to obtain information regarding any other subsidiaries of the corporation.

(b) Proceedings for the enforcement of inspection by a director. -- If the corporation, or an officer or agent thereof, refuses to permit an inspection or obtain or provide

information sought by a director ... pursuant to subsection (a) or does not reply to the request within two business days after the request has been made, the director may apply to the court for an order to compel the inspection or the obtaining or providing of the information. The court shall summarily order the corporation to permit the requested inspection or to obtain the information unless the corporation establishes that the information to be obtained by the exercise of the right is not reasonably related to the performance of the duties of the director or that the director ... is likely to use the information in a manner that would violate the duty of the director to the corporation. ...

15 Pa.C.S.A. § 5512 (Informational rights of a director).

Thus, under this scheme for access to corporate records, a nonprofit corporation must keep its books and records at one of three legally designated locations (registered office, principal place of business or actual business office). It is not disputed that the location of the Respondent's books and records are located on and accessible from the School's campus in Hershey, Derry Township, Dauphin County, Pennsylvania.

Furthermore, a director is entitled to have a right to examine, in person, during the usual hours for business, corporate information reasonably related to the director's duties. A director's primary right to access corporate information is the right to inspect and copy books, records, and documents where they are legally required to be maintained. This Court agrees with Respondent's interpretation of this law, which is that since the corporation is required by law to keep its records in one of three permitted locations, the documents can only be inspected where they are kept. As such, this Court finds that under the statutory scheme, a corporation has no affirmative obligation to move or send its books and records and other documents elsewhere for the convenience of a director; nor is the corporation obligated to identify, search for, organize, format or make copies for the director.

Finally, a director may obtain an order to compel compliance if the corporation refuses a request to permit inspection or to provide information, or does not reply to such a request within two business days. A director is not entitled to an order to compel if the information sought is not reasonably related to the performance of the director's duties or if the director is likely to misuse the information in violation of a duty to the corporation.

Petitioner has not adequately alleged or shown, as a predicate requirement to obtaining relief under the law, that he requested the opportunity to inspect corporate records at the Respondent's location at a reasonable time and/or that Respondent ever denied him access to such corporate information properly demanded.

This Court agrees with Respondent that Petitioner's formal request for information on March 24, 2021 was not a proper "demand for inspection" as set forth under Sections 5508 and 5512, inasmuch as it did not seek or request to inspect documents at Respondent's location at a reasonable time. Instead, Petitioner's request improperly demanded that Respondent examine its books and records in order to select, copy, and send to Petitioner numerous items, at the Respondent's expense. This Court also finds that Respondent adequately responded to the formal request within two business days as required under Section 5512.

Given that this Court finds that Petitioner did not make out a prima facie claim in his Motion to Compel under Sections 5508 and 5512 for the corporate information sought, this Court does not reach the issue of whether some or all of the corporate information sought is reasonably related to Petitioner's performance of his duties as a director.¹

Accordingly, this Court directs as follows:

¹ This Court notes that it grants the Motion without prejudice to Petitioner filing a future petition to compel, if appropriate, should he be denied access to properly requested corporate information.

ORDER

AND NOW, this 28th day of September 2021, this Court **GRANTS** the Summary Judgment Motion filed by Respondent Milton Hershey School and dismisses Petitioner Robert Heist's Petition to Compel Inspection of Corporate Information, for the reason set forth above.

BY THE COURT:

John J. McNally, III, Judge

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FILED

SEP 28 2021

**JEAN MARFIZO KING
REGISTER OF WILLS AND
CLERK OF THE ORPHANS' COURT**