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INSPECTION OF A COMPANY'S MEMBERS' REGISTER FOR A PROPER PURPOSE - TIME IS OF THE ESSENCE

By Nicholas Woolf, Director and Principal of Nicholas Woolf & Co

The Problem

In order to determine who the members of a company registered in England and Wales are it is possible to do so by inspecting the company register. Indeed this is likely to be the only reliable and accepted source of information and can be of considerable importance.

I have advised clients on a number of occasions to seek inspection of a company's register in cases where membership of a company has been an issue and potentially disputed and carried out such inspections. This is essential to establish who the company's registered shareholders are.

The law on the right to inspect at first sight appears very clear. However, there are some grey areas illustrated by the recent case of *Houldsworth Village Management Company Limited v Barton [2019] EWHC 3590 (Ch)* ("Houldsworth Village").

The Court in this case sought to further clarify the law and illustrated that it may be an uphill task for a company to refuse a request for access.

The Law

Any person is entitled, on payment of the prescribed fees, to inspect a company's register of members and index of members and to be provided with a copy of the register (or any part of it), but these rights are subject that person submitting a request that contains certain prescribed information, including the purpose for which the information is to be used. There is no fee for a member (sections 116 and 117, Companies Act 2006 (CA 2006)).

Where a company receives a section 116 request for access, that complies with the Act, it has five working days from receipt of that request to allow inspection and/or provide a copy of the register or, if it believes that the request is not made for a proper purpose, to refer the request to the Court (section 177, CA 2006). Under section 117(3) of the CA 2006, if the Court is satisfied that the inspection or copy is not sought for a proper purpose, the Court must direct the company not to comply with the request by making a "no access order", and it may make a further order regarding the company's costs. If the Court makes a no access order and it appears to the Court that the company is or may be subject to other requests of a similar purpose (whether made by the same person or different persons) it may, direct that the company is not to comply with such a request (section 117(4), CA 2006).

The CA does not define a "proper purpose", the question of what a proper purpose falls to be decided by the Court. In *Houldsworth Village*, Judge Hodge QC approved principles in two earlier Court of Appeal cases and an unreported case called *The Hut Group Limited v Zedra Trust Company (Jersey) Limited*.

The guidance as to the proper purpose test applied to sections 116 and 117 of the CA 2006 are as follows:

1. The criminal penalties imposed by section 118 of CA 2006 emphasise the importance the legislature attached to the right of access to the share register.
2. The expression “proper purpose” in section 117(3) CA 2006 ought to be given its ordinary and natural meaning.
3. The purpose should first be identified. That will normally be described in the request but the Court is not restricted to the purpose in the request. The Court will determine the purpose of the request on the balance of probabilities on the evidence before it.
4. After the purpose is established the Court will consider whether it is proper. The test of whether the purpose is proper is an objective one made by the Court on the basis of the evidence before it and will often depend on the precise facts and circumstances.
5. The Court may have regard to the guidance note issued by the Institute of Chartered Secretaries and Administrators, which might provide useful guidance in a particular case.
6. The test for whether a purpose is proper does not depend on whether it is in the interests of the shareholders. The person (whether a shareholder or not) making the request may have his own interest in making the request.
7. The onus is on the claimant company to satisfy the Court on the balance of probabilities that the request is improper.
8. If the Court is in any doubt it should not make a no access order.
9. It is for the person making the request, rather than the Court, to consider whether access will be of value to that person.

The *Houldsworth Village* case is particularly interesting as Mr Barton, who was a member of a leaseholder owned management company (responsible for the management of residential apartments) made a request to inspect the company’s registered members. He stated that it was to “contact my fellow members with a view to seeking a general meeting of members and proposing resolutions to remove and replace the existing directors and managing agent”. The company opposed the request and sought a declaration under section 117 CA 2006 that Mr Barton did not have a proper purpose in requesting an inspection of the register of members.

It is of note that although Mr Barton did have a particular purpose in requesting an inspection of the register of members he gave an undertaking to the Court confirming the purposes stated above. That factor was particularly persuasive given that an undertaking to the Court has criminal sanctions for its breach.

What makes the case of particular interest is that Mr Barton in another and earlier case had made another request for access in respect of another company. That request had been refused by the company and that Court upheld the refusal. The reason given for the refusal by the Court was that Mr Barton’s purpose in that case was to contact other leaseholders to ask them to support his challenging the service charge and removing the

managing agents. It was held his request was made to further his interest as a leaseholder and not as a member of the company. In that case the Court had further concluded that Mr Barton wished to obtain the information to harass the company and harm its members. Mr Barton had failed to provide proper evidence in that case (*Pandongate House Management Co Ltd v Barton* [2019]).

In the *Houldsworth Village* case, however, Mr Barton's request was upheld, as it was perfectly proper to make a request seeking to remove persons as a director of a company proposing a general meeting and take action to replace or remove the existing directors and managing agent.

Time and Caution

Seeking to bring about the resolution of a change to the board composition is a shareholder's right. The cases also emphasises that it is difficult for a company to resist a request to the members' register. The Court of Appeal has said that it should exercise its discretion to grant a no-access order sparingly and with circumspection.

Advice should be taken by a company as soon as a compliant request is received given the period of only 5 working days to either provide a copy of the register requested or to file an application with the Court in order to determine purpose of the access request. It should be remembered it is the company's legal obligation to proceed to the Court to determine whether access should be denied. Further, it is an offence to refuse inspection or fail to provide a copy of the register, otherwise than in accordance with an order of the Court. In the case of an offence both the company and every officer would be liable to a fine, and for continued contravention, a daily default fine (s118 CA 2006).

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