

STATE OF MAINE
Cumberland, SS

BUSINESS AND CONSUMER DOCKET
LOCATION: Portland
DOCKET NO. BCD-CV-17-37

BRIAN J. FOURNIER,)
)
 Plaintiff,)
)
 v.)
)
 FLATS INDUSTRIAL, INC. f/k/a)
 FLATS INDUSTRIAL RAILROAD)
 CORPORATION,)
)
 Defendant,)

**ORDER PARTIALLY GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Based on a one count Complaint filed in May 2017, this matter came before the Court approximately eighteen months later upon the Motion for Summary Judgment filed by Plaintiff Brian Fournier ("Fournier"). In its Memorandum of Law in Opposition, Defendant Flats Industrial Railroad Corporation ("Flats") does not contest Fournier's right under 8 Del. C. § 220 to inspect information and documents responsive to 40 out of 47 specific requests. At oral argument on October 11, 2018, the Court confirmed that despite resisting Fournier's inspection efforts for approximately a year and half, Flats was not contesting 40 out of 47 requests for inspection. Accordingly, the Court ruled from the Bench on the uncontested portion of Fournier's Motion, and issues this Order to memorialize the Court's ruling from the Bench.

As to the uncontested requests for inspection, the Court finds that the undisputed material facts establish as a matter of law that Fournier is a stockholder of Flats, that Fournier complied with all requirements of 8 Del. C. § 220 in making demand to inspect corporate documents, and

that Mr. Fournier made the demand for a proper purpose, specifically to value his ownership interest in Flats.¹

The Court further finds that undisputed material facts establish as a matter of law that the records identified in the affidavit of Fournier's valuation expert, Vanessa Claiborne, as Request Nos. 1-6, 8-26, 28, 30-35, 37-38, and 42-47 (the uncontested 40 requests) are essential and sufficient to valuing Fournier's interest in Flats. The Court, however, takes under further advisement the question whether the records identified in Ms. Claiborne's affidavit as Request Nos. 7, 27, 29, 36, 39, 40 and 41 (the contested 7 requests) are likewise essential and sufficient to valuing Mr. Fournier's interest in Flats.

Accordingly, the Court grants Fournier's motion for summary judgment, in part, and, in part, reserves ruling on that motion. In addition, the Court reserves ruling on Fournier's request for attorney fees and costs. The Court will issue an order addressing the issues on which it has reserved ruling at a later date.

Section 220 provides that the Court in its discretion can prescribe conditions with reference to inspection. 8 Del. C. § 220(c). Having found that Fournier is legally entitled to the documents responsive to Request Nos. 1-6, 8-26, 28, 30-35, 37-38, and 42-47 in Ms. Claiborne's affidavit, and given the unreasonable length of time it has taken Flats to announce it does not contest 40 out of 47 inspection requests, the Court in its discretion further orders as follows:

¹ At oral argument, although not contesting inspection of the 40 requests, Flats' counsel hedged somewhat with regard to proper purpose, saying that Flats had "qualified" the Statement of Material Facts with regard to proper purpose. Defendant's Memorandum of Law in Opposition, however, does not challenge Fournier's proper purpose, and limits its attack to the permissible scope of inspection. Moreover, Flats' attempted "qualification" by questioning whether Fournier's desire to value his shares is bona fide, neither qualifies nor controverts Fournier's proper purpose. It is well established that a stockholder's desire to value his or her shares in a corporation is a proper purpose, regardless of the reasons. *Macklowe v. Planet Hollywood*, 1994 Del. Ch. LEXIS 182, *12-14; *CM & M Group*, 453 A.2d 788, 792-793.

1. Flats shall prepare, ready, assemble, and make available for inspection by Fournier and/or his counsel all records responsive to Request Nos. 1-6, 8-26, 28, 30-35, 37-38, and 42-47 by the close of business on November 1, 2018.
2. The records produced shall be organized in a readily accessible fashion – in particular, the records shall be tabbed to respond to each individual request as numbered in Ms. Claiborne’s affidavit. For example, all records responsive to Request No. 1 shall be organized and tabbed as responsive to Request No. 1.
3. Flats shall take all measures to ensure that it meets the Court’s deadline including retaining additional staff if necessary. No extension of the Court’s deadline shall be permitted except under extraordinary circumstances.
4. After reviewing the records produced by Flats, Fournier, through his counsel or other designated representative, shall inform Flat’s counsel which record he wishes to have copied, including that he wishes all records to be copied. Flats is to make such copies without any further request or delay.
5. Flats shall bear all costs of complying with this Order and shall not pass any costs, including, but not limited to, any copying costs, along to Fournier.
6. The Court will not entertain any further objection from Flats to producing the records responsive to Request Nos. 1-6, 8-26, 28, 30-35, 37-38, and 42-47.
7. Flats may not designate any of the records produced as confidential without Fournier’s consent.
8. Failure to strictly comply with this Order will expose Flats and its officers, managers, and directors personally to being held in contempt by this Court and to the full exercise of this Court’s contempt powers.

Should Flats fail to comply with this Order in any respect, Fournier is directed to notify the Court of that fact promptly, in response to which the Court will promptly schedule a show cause hearing.

The Clerk shall incorporate this Order on the docket by reference pursuant to M.R. Civ. P. 79(a).

SO ORDERED.

Date: Oct. 12, 2018.

/s
Hon. Michael A. Duddy