

Cabo Verde Capital's Merger into a Foreign Company Severed Stockholder's Standing to Bring a Books and Records Action in Delaware Chancery Court

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By letter report dated June 8, 2017, Master of Chancery Morgan T. Zurn recommended dismissal of the complaint in *Walker v. Cabo Verde Capital, Inc.*, C.A. No. 11696-MZ (Del. Ch. June 8, 2017), finding that the plaintiff lacked standing to compel inspection of a non-extant Delaware company's books and records. Citing recent developments in Delaware law, the Court held that the plaintiff could not satisfy the "stockholder" prerequisite for filing a Section 220 action because all stockholder interest had been previously extinguished by the company's merger into a foreign corporation.

On October 29, 2015, plaintiff Donald Walker sent a letter to Cabo Verde Capital, Inc.—a Delaware company in which Walker held stock ("Cabo Delaware")—demanding inspection of its books and records pursuant to 8 Del. C. § 220. One week later, on November 6, 2015, Cabo Delaware completed a merger into a Nevada corporation of the same name ("Cabo Nevada"). Upon merging, the Delaware entity ceased to exist.

Four days after the merger, on November 10, 2015, Walker filed this action to compel the inspection of Cabo Delaware's books and records. Cabo Nevada moved to dismiss, arguing Walker lacked standing to bring the action because he was no longer a stockholder of Cabo Delaware at the time of filing.

The Court agreed with the defendant. As recently held by Vice Chancellor Glasscock in [*Weingarten v. Monster Worldwide, Inc.*, C.A. No. 12931-VCG \(Del. Ch. Feb. 27, 2017\)](#), a plaintiff hoping to pursue a Section 220 action must "first establish" that she "is" a stockholder *at the time of filing her complaint*. If a stockholder makes a proper demand under Section 220, but a merger thereafter terminates the stockholder's ownership interest in the company, the now-former stockholder cannot subsequently file a complaint to compel inspection.

Here, because Walker filed his complaint *after* Cabo Delaware ceased to exist—along with all ownership interest therein—the Court concluded that Walker lacked standing to pursue a Section 220 action and his complaint should be dismissed.

[*Walker v. Cabo Verde Capital, Inc.*, C.A. No. 11696-MZ \(Del. Ch. June 8, 2017\)](#)

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