

Chancery Court Limits Access to Books and Records Based on Stockholder's Failure to State Purpose in Section 220 Demand

Article By:

Taylor B. Bartholomew

James S. Bruce

In *KT4 Partners LLC v. Palantir Technologies, Inc.*, C.A. No. 2017-0177-JRS (Del. Ch. Feb. 22, 2018), in a post-trial ruling, the Delaware Court of Chancery granted a stockholder limited rights to inspect a corporation's books and records related to the stated purpose of investigating possible wrongdoing, but the Court denied the stockholder's request to obtain other books and records related to the purpose of valuing its shares because its initial demand did not explicitly state a valuation purpose.

In 2003, Marc Abramowitz ("Abramowitz") invested in Palantir Technologies, Inc. ("Palantir") through his investment vehicle KT4 Partners LLC ("KT4"). Abramowitz initially had a close relationship with Palantir and its CEO Alexander Karp ("Karp"). In connection with KT4's investment, in June 2006, the parties entered into, among other things, an Investors' Rights Agreement (as further amended, the "IRA"). In the summer of 2015, Karp accused Abramowitz of stealing Palantir's intellectual property. In July 2015, certain investors (excluding KT4) and Palantir entered into an amended and restated IRA requiring stockholders to own a larger number of shares in Palantir to qualify for a right of first offer (the "ROFO") under the IRA. On August 16, 2016, KT4 sent Palantir an information request pursuant to the IRA. Palantir informed KT4 that it would review KT4's request, but did not respond to KT4 again. The IRA was then further amended in September 2016 to again increase the threshold of stock holdings required for a stockholder to qualify for the ROFO and to also restrict stockholders' contractual rights to request information from Palantir. Based on the September amendments to the IRA, KT4 no longer qualified under the IRA to request information from Palantir. On September 20, 2016, KT4 sent a books and records demand to Palantir pursuant to Section 220 of the Delaware General Corporation Law, seeking to obtain certain books and records to investigate potential wrongdoing at Palantir (the "Demand"). The Demand did not identify valuation as a purpose although it did request financial statements and internal valuations. Palantir rejected the Demand. Six months later, KT4 filed its complaint, seeking to inspect books and records of Palantir for the purposes of investigating potential wrongdoing and to value its investment in Palantir.

Following trial, the Court denied KT4 access to documents premised on KT4's asserted purpose of

valuing its shares in Palantir because KT4 failed to explicitly identify valuation as a purpose in the Demand. Section 220 provides that “any stockholder . . . shall, upon written demand under oath stating the purpose thereof, have the right . . . to inspect for any proper purpose . . . the corporation’s stock ledger, a list of its stockholders, and its other books and records” The Court noted that Delaware courts require strict adherence to the Section 220 inspection demand procedural requirements and that any such demand must be in proper form before litigation has been initiated. The Court refused to infer a valuation purpose from KT4’s request for financial statements and internal valuations, and it found that KT4’s failure to state a valuation purpose in the Demand was not “cured” by KT4’s inclusion of the valuation purpose in its complaint. Describing KT4’s failure to state a valuation purpose in the Demand as a “glaring defect,” the Court denied its request to books and records based on this purpose.

The Court did find, however, that KT4 stated in the Demand a proper purpose of investigating potential wrongdoing and further demonstrated a credible basis from which the Court could infer that wrongdoing may have occurred. The Court found justification for limited investigation into (i) Palantir’s failure to hold annual stockholder meetings, (ii) Palantir’s amendments to the IRA in September 2016, and (iii) Palantir’s compliance with, among other things, the IRA. With regard to Palantir’s failure to hold annual meetings, the Court found this “problematic” even though Palantir indicated that its stockholders elected to act by written consent. The Court noted that stockholders are entitled to information about their investment and that, especially in privately held companies where no public filings are available, a corporation normally shares information about its operations and performance at annual meetings. The Court indicated that the failure to hold meetings raised questions as to whether the stockholders were provided with “the kind of basic information they could expect to receive from Palantir at an annual stockholder meeting,” and found that KT4 demonstrated a credible basis to suspect wrongdoing as to Palantir’s failure to hold annual stockholder meetings. With respect to the 2016 IRA amendments, the Court found that there was a sufficient basis to suspect wrongdoing because, in effecting such amendments, Palantir stripped KT4’s contractual information rights after KT4 sought to exercise those rights. Finally, with regard to Palantir’s compliance with the IRA, the Court found that, prior to the September 2016 amendments to the IRA, the IRA obligated Palantir to give KT4 notice of, and the opportunity to exercise the ROFO on, subsequent rounds of financing and that KT4 had demonstrated a credible basis for investigating Palantir’s compliance therewith.

The Court denied KT4 access to certain other books and records for purposes of investigation into certain other allegations of wrongdoing (including with respect to Karp’s compensation as CEO and Palantir’s alleged interference with KT4’s attempted sale of its stock to a third-party). The Court found in these instances that further investigation was either not supported by credible allegations of wrongdoing or was not related to KT4’s interest as a stockholder. The Court noted that Section 220 permits a stockholder to inspect a corporation’s books and records for any proper purpose but that each category of the books and records requested must be essential to fulfill the stated purpose. Accordingly, the Court ordered that KT4 be granted inspection rights but limited the inspection to those documents essential to KT4’s stated purpose of investigating potential wrongdoing with respect to (i) Palantir’s failure to hold annual stockholder meetings, (ii) Palantir’s amendments to the IRA in September 2016, and (iii) Palantir’s compliance with, among other things, the IRA. The Court also confirmed that it is customary for a final order under Section 220 to be conditioned upon a reasonable confidentiality agreement and directed the parties to negotiate one.

[KT4 Partners LLC v. Palantir Technologies, Inc., C.A. No. 2017-0177-JRS \(Del. Ch. Feb. 22, 2018\)](#)

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