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**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
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GEORGETOWN, DELAWARE 19947

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Re: *Huff Fund Inv. P'ship v. CKx Inc.*,
Civil Action No. 6844-VCG

Dear Counsel:

The following is my decision on the Petitioners' Motion to Enforce Subpoena Issued to Fox Broadcasting Company ("Fox"), a non-party. In the above-captioned action, the Petitioners seek appraisal of their shares in CKx, Inc. ("CKx"), under Section 262 of the Delaware General Corporation Law.¹ CKx was acquired by an affiliate of Apollo Global Management, LLC ("Apollo"), through a

¹ 8 *Del. C.* § 262.

tender offer and merger on June 21, 2011 (the “Merger”). Fox is not a party to this litigation and was not involved in the Merger. Fox’s connection is that it has an existing agreement with a subsidiary of CKx, 19TV Limited (“19TV”), for the right to broadcast the *American Idol* television program, which provided substantial revenues to CKx before the Merger. The Petitioners have moved for an order compelling Fox to produce deposition testimony as well as several categories of documents relating to *American Idol*, Fox’s contracts and contract negotiations with 19TV and FremantleMedia North American (“Fremantle”),² and the Merger. For the reasons below, the Petitioners’ motion is denied except as to the categories of documents and deposition testimony that Fox has agreed to produce.

Of the ten broad categories of documents requested by the Petitioners,³ the request contested most hotly by the parties would require Fox to produce documents relating to Fox’s internal valuation and financial information regarding its negotiations with CKx in connection with an agreement to broadcast *American Idol* (the “Contract”). Fox asserts that this information is of minimal relevance to an objective valuation of CKx’s stock given that the parties already know the actual, negotiated Contract price, as the Contract was executed in January 2012. Fox contends that the internal information is highly confidential and that its disclosure would harm Fox, outweighing whatever minimal relevance the

² Fremantle, along with CKx, owns proprietary rights in *American Idol*.

³ The Petitioners’ identified deposition topics largely mirror the document request categories.

information might have. Fox also contends that the requested information is overly broad and that its production would impose a significant expense on Fox, a burden particularly unjustifiable given Fox's non-party status. The Petitioners argue that the amount Fox was subjectively willing to pay for *American Idol* broadcast rights—regardless of the fact that CKx would not and could not have known that information during negotiations—is relevant to a valuation of CKx, as *American Idol* provided CKx with its largest source of revenue. The Petitioners contend that Fox's confidentiality concerns can be addressed with a modification to the existing confidentiality order in this case. The Petitioners further assert that the potential burden on Fox is justifiable given that the requested information cannot be obtained from any other source.

Parties may seek discovery of any non-privileged, relevant matter, as well as information reasonably calculated to lead to the discovery of admissible evidence.⁴ Because the only litigable issue in an appraisal action is the value of the petitioner's shares on the date of the merger, discovery in an appraisal action must seek or be reasonably likely to lead to evidence relevant to that issue.⁵ Court of Chancery Rule 26(b)(1) provides another limitation by allowing the court to

⁴ Ch. Ct. R. 26(b)(1).

⁵ *In re Lane v. Cancer Treatment Ctrs. of Am., Inc.*, 1994 WL 263558, at *2 (Del. Ch. May 25, 1994); *Kaye v. Pantone*, 1981 WL 15072, at *1 (Del. Ch. Oct. 6, 1981).

disallow discovery that is unduly burdensome.⁶ Additionally, if a subpoena seeks the disclosure of confidential commercial information, this Court may quash or modify the subpoena or require the party seeking enforcement of the subpoena to demonstrate a “substantial need” for the confidential information.⁷ “Application of the discovery rules is subject to the exercise of this Court’s sound discretion.”⁸

I find that there is some marginal relevance in the value Fox assigned to the Contract. The ultimate question in this action is the value of the Petitioners’ shares on the date of the Merger, and that value is dependent in part on the value of CKx’s rights in *American Idol*. CKx’s and Fox’s subjective valuations—i.e., how much Fox was willing to pay and how much CKx was willing to receive—would seem to establish a range within which an objective valuation might be located.

Weighing against the disclosure of Fox’s internal commercial information, however, in addition to the substantial expense Fox contends it would incur in production, is the potential harm the disclosure of that information would cause to Fox. Fox would be severely disadvantaged in future negotiations with CKx over *American Idol* broadcast rights if CKx were to learn precisely how Fox valued those rights in the past. Moreover, the ability of a confidentiality order to prevent such harm is doubtful. CKx would have difficulty responding to the Petitioners’

⁶ Ch. Ct. R. 26(b)(1); 45(c).

⁷ *Id.* R. 45(c)(B)(i).

⁸ *In re Lane*, 1994 WL 263558, at *2 (citing *Mann v. Oppenheimer & Co.*, 517 A.2d 1056, 1061 (Del. 1986)).

arguments and characterizations regarding Fox’s valuations and internal information without access to the information itself. Fox is not a party here, and its ability to monitor compliance with a confidentiality order is limited. Further, the Court would be limited in its ability to use the Fox information in its ultimate opinion in this case. I have serious doubts as to whether I could rely to any extent on the confidential Fox information yet also produce a written decision that both protected the information and was satisfactory for appellate review. All of these considerations are compounded by the fact that superior information already exists regarding the objective value of CKx’s rights in *American Idol*—the actual agreement CKx reached with Fox in January 2012. This agreement is significantly more probative and less speculative of the “operative reality” of CKx than internal Fox valuations that CKx had no way of knowing during negotiations.⁹ I find that the marginal relevance of the internal Fox information is outweighed by the potential harm the disclosure of that information would cause Fox and the presence of non-confidential, more probative information already in the record.

The Petitioners’ subpoena also seeks additional categories of information relating to other contracts Fox considers “similar” to the *American Idol* Contract,

⁹ See *Gearreald v. Just Care, Inc.*, 2012 WL 1569818, at *5 (Del. Ch. Apr. 30, 2012) (“In an appraisal proceeding, the corporation must be valued as a going concern based upon the “operative reality” of the company as of the time of the merger. The Court should consider all factors known or knowable as of the [m]erger [d]ate that relate to the future prospects of the [c]ompan[y], but should avoid including speculative costs or revenues.” (internal quotation marks and footnote omitted)).

documents showing how Fox “classifies” the Contract internally, documents concerning the “ranking” of the Contract within Fox’s program offerings, documents concerning any additional transactions between Fox and CKx, documents from “any source” concerning any valuation of CKx or any of its assets or interests, and any documents concerning discussions of a CKx competitor.¹⁰ At oral argument, Fox contended that the Petitioners had not adequately responded to Fox’s objections to these requests, numbered 3, 4, 5, 7, 8, and 10 in the subpoena, and that the Court should deny the requests due to abandonment. The Petitioners did not object to Fox’s request, and so I deny these requests for production.

Requests for deposition testimony that correspond to the document requests at issue in the Petitioners’ motion are also denied.

IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III

¹⁰ See Subpoena Duces Tecum and Ad Testificandum Directed to Fox Broadcasting Company, sched. A, at 7–9.