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COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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Date Decided: July 10, 2013
Date Submitted: June 14, 2013

Kevin Barnes
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Re: *Barnes v. Telestone Technologies Corp.*
Civil Action No. 8513-VCG

Dear Counsel:

The Defendant has moved to dismiss the Plaintiff's Complaint demanding books and records on the grounds that the Plaintiff has failed to comply with the procedural requirements of 8 *Del. C.* § 220. In particular, the Defendant contends that the Plaintiff failed to provide evidence of his beneficial ownership of company stock at the time he sent his inspection demand. The Plaintiff contends that he satisfied his obligation to prove beneficial ownership by submitting a sworn affidavit affirming his status as a company stockholder. The Defendant counters that a sworn statement does not satisfy Section 220's requirement to provide

evidence of stock ownership. I find that the Plaintiff has failed to satisfy the form and manner requirements of §220 and that this action should be dismissed.

A. Background

The Defendant, Telestone Technologies Corp. ("Telestone"), is a Delaware Corporation with headquarters in China.[1] The Plaintiff, Kevin Barnes, is a purported minority stockholder of Telestone and is prosecuting this matter *pro se*. The Plaintiff maintains that he first purchased stock in Telestone on April 12, 2013.[2] On April 15, 2013 he served Telestone with a letter requesting inspection of the company's books and records pursuant to 8 *Del. C.* § 220.[3] Attached to this letter was a sworn affidavit from the Plaintiff affirming that he was a beneficial owner of Telestone stock.[4] The stated purpose for his demand was to assess the value of Telestone common stock in light of the company's April 2, 2013 announcement that it would be unable to file its Annual Report Form 10-K by the required date.[5] On April 23, 2013, the Plaintiff sent Telestone a second letter

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[1] Compl. ¶ 9.
[2] Pl.'s Ans. Br. Ex. G, at 1.
[3] Compl. ¶ 3.
[4] Compl. Ex. A, at 2.
[5] *Id.* Because I find that the Plaintiff failed to comply with the form and manner requirements of Section 220, I am precluded from addressing the question of whether the Plaintiff's stated intent to investigate events that took place before he purchased Telestone stock constitutes a proper

reiterating his request to inspect the company's books and records. Telestone again failed to respond. The Plaintiff initiated this action on April 30, 2013. It was not until the Plaintiff filed his Answering Brief that he provided documentary evidence—in the form of a statement from his broker—of his stock ownership.[6]

B. Analysis

The Defendant has moved to dismiss this action under Court of Chancery Rule 12(b)(6) for failure to state a claim. In considering the Defendant's motion, I assume that the well-pleaded factual allegations in the Complaint are true.[7] I must grant the Motion only if it appears that the Plaintiff has not alleged facts which, if true, would entitle the Plaintiff to relief.[8]

Section 220 provides that:

> Where the stockholder seeks to inspect the corporation's books and records, other than its stock ledger or list of stockholders, such stockholder shall first establish that:
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> (1) Such stockholder is a stockholder;

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purpose. *Cent. Laborers Pension Fund v. News Corp.*, 45 A.3d 139, 145 (Del. 2012) ("[T]he Court of Chancery should not have addressed whether Central Laborers had shown a proper purpose for inspecting News Corp.'s records until that court first decided that Central Laborers had complied with the mandatory statutory procedural standing requirements.").

[6] Pl.'s Ans. Br. Ex. G, at 1.

[7] *In re General Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006).

[8] *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998).

> (2) Such stockholder has complied with this section respecting the form and manner of making demand for inspection of such documents; and
>
> (3) The inspection such stockholder seeks is for a proper purpose.[9]

When the Petitioner is a beneficial owner of the stock, Section 220 also requires that the stockholder's demand for inspection "shall state the person's status as a stockholder [and] *be accompanied by documentary evidence of beneficial ownership of the stock.*"[10]

Here, the Plaintiff concedes that he did not provide a brokerage statement or similar independent proof of beneficial ownership to Telestone before bringing this action. Accordingly, the only remaining question is whether or not the supporting evidence the Plaintiff attached to his letters demanding inspection of Telestone books and records—the Plaintiff's sworn affidavit affirming beneficial ownership—constitutes "documentary evidence of beneficial ownership" under Section 220. I conclude that it does not. In *Central Laborers Pension Fund v. News Corp.*, our Supreme Court held that a stockholder's demand failed to meet the form and manner requirements because the stockholder did not provide

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[9] 8 *Del. C.* § 220(c).
[10] 8 *Del. C.* § 220(b) (emphasis added).

evidence of beneficial ownership.[11] A sworn affidavit that did accompany the demand, attesting that the stockholder was in fact an owner of company stock, was insufficient.[12] The fact that the plaintiff stockholder produced an account statement in response to a motion to dismiss was also insufficient, because "[s]trict adherence to the Section 220 procedural requirements for making an inspection demand protects the right of the corporation to receive and consider a demand in *proper form before litigation is initiated.*"[13]

I see no meaningful distinction between *Central Laborers* and this case. There, as here, a plaintiff failed to comport with the form and manner requirements of Section 220 by not providing documentary evidence of stock ownership at the time the plaintiff made its initial demand to the company. There, as here, subsequent production of documentary evidence cannot cure the original procedural defect. The Plaintiff asks this Court to overlook his noncompliance on the grounds that "an unrepresented litigant should not be punished for his failure to recognize subtle or legal deficiencies in his claims."[14] This decision, however, is

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[11] *Cent. Laborers*, 45 A.3d at 145.
[12] *Id.*
[13] *Id.* at 146 (emphasis in original).
[14] Pl.'s Ans. Br. ¶ 14 (citing *Hughes v. Rowe*, 449 U.S. 5, 15 (1980) (overturning lower courts' decisions shifting fees onto pro se litigant)).

no "punishment." Though this Court may extend *pro se* litigants some leniency when it comes to a matter which is within the Court's discretion, I have no discretion to overlook the form and manner requirements set by statutory enactment of the General Assembly. On the contrary, "the express statutory requirements of § 220 as to the form of a stockholder demand should be strictly followed."[15] Accordingly, the Defendant's Motion to Dismiss is GRANTED. The parties should submit a form of order consistent with this Opinion.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III

[15] *Mattes v. Checkers Drive-In Rests., Inc.*, 2000 WL 1800126, at *1 (Del. Ch. Nov. 15, 2000).