

Hogans v. Hogans Agency, Inc.: A Stockholder's Right to Inspect Corporate Records May Be Conditioned on a Confidentiality Agreement

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Sections 2-512 and 2-513 of the Corporations and Associations Article of the Maryland Code provide stockholders with the right to inspect various corporate documents such as bylaws, books of account, stock ledgers and statements of affairs. In *Hogans v. Hogans Agency, Inc.*, 224 Md. App. 563 (2015), the Court of Special Appeals of Maryland reconciled two prior inconsistent Maryland cases, and held that a corporation may condition these inspection rights on the signing of a confidentiality agreement.

Frank Hogans, Jr. ("**Mr. Hogans**") was a minority stockholder in Hogans Agency, Inc. (the "**Corporation**"), holding approximately 37% of the stock in the Corporation, which was in the insurance and real estate brokerage business. Interestingly enough, Mr. Hogans was contemporaneously the owner of a separate limited liability company that was a direct competitor of the Corporation in the real estate brokerage market.

Mr. Hogans requested inspection of the Corporation's records pursuant to §2-512 and §2-513 of the Corporations and Associations Article. The Corporation responded to his request by providing copies of the bylaws, minutes of the proceedings, the stock ledger, and an accounting to the Corporation's affairs. However, the Corporation conditioned Mr. Hogans's inspection of the books of account on his execution of a confidentiality agreement that prohibited him from disclosing company information to any third party. Instead of signing this agreement, Mr. Hogans filed an action with the Circuit Court for Kent County seeking the right to inspect. After a hearing on the evidence presented by both parties, the circuit court granted the Corporation's motion for summary judgment ordering that Mr. Hogans's inspection

of the company records be preceded by his execution of the confidentiality agreement.

On appeal, the Court of Special Appeals of Maryland identified two leading cases on a stockholder's right to inspection. In *Weinhenmayer v. Bitner*, the Court of Appeals held that the right to inspect company documents is absolute, granted by statute, and does not depend on any circumstances other than the ownership of stock. However, twelve years later in *Wight v. Heublein*, the Court of Appeals caveated this absolute right by explaining that there are certain circumstances in which this inspection may be limited, specifically, when the person seeking the information has improper or unlawful purposes.

In affirming the ruling of the circuit court, the Court of Special Appeals reconciled these two cases and held that a corporation may take reasonable measures in order to protect the corporation against disclosure and misuse of confidential information. In the instant case, the Court of Special Appeals held that because Mr. Hogans was the owner of a competing company, it was reasonable for the Corporation to require the signing of a confidentiality agreement before allowing Mr. Hogans to inspect the books of account.

The implications of this case are significant. Maryland corporations are now afforded the confidence that they may restrict the right to inspect corporate books and records if doing so is reasonably related to preventing the misuse of confidential information. Moving forward, all Maryland corporations should review their inspection policies to ensure the protection of confidential information.

* This Case Review is not to be construed as legal advice. To receive such advice, please consult with one of our attorneys.

