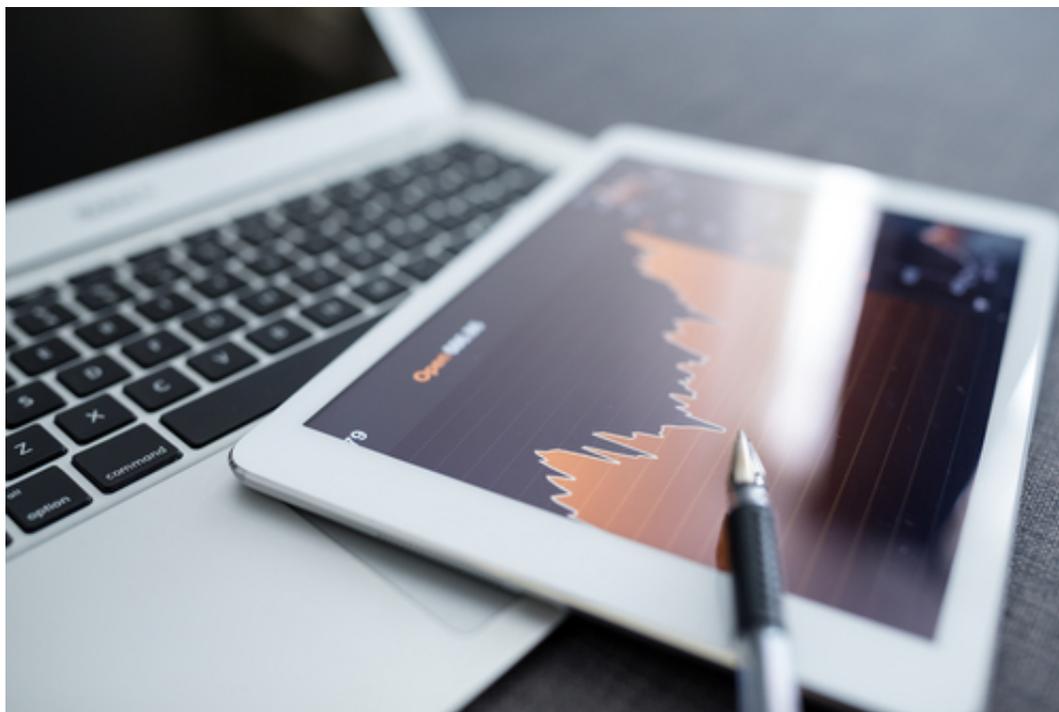


Good faith & Proper Purpose: The right of a shareholder to inspect the books and records of a company

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Date : 11 April 2017



The recent Full Federal Court of Australia decision in *Mesa Minerals Limited v Mighty River International Limited* [2016] FCAFC 16 sets out the legal principles in respect of the rights of shareholders to inspect the books and records of a company pursuant to section 247A of the *Corporations Act 2001* (Cth).

The section provides that the “*Court may only make the order if it is satisfied that the applicant is acting in good faith and that the inspection is to be made for a proper purpose*”.

Facts

Mighty River International Limited (Mighty River) is a minority shareholder of Mesa Minerals Limited (Mesa). The majority shareholder of Mesa is its parent company Minerals Resources Limited (MRL). At first instance, Mighty River applied to the Court for access to the books and records of Mesa in respect of Mesa granting third parties, including MRL, access to its stockyard and ore loader at its port in Port Hedland. Mighty River wished to ensure that the terms upon which access to Mesa’s assets to third parties had been provided was “fair and reasonable” and in the interest

of Mesa's shareholders. Mesa opposed the application however was unsuccessful.

Mesa appealed the decision to the Full Court on similar grounds to its primary opposition, being that Mighty River's application was not made in good faith and for a proper purpose as it was actually made to "*force the purchase of its minority shareholding in Mesa*" and to enable it to "*act as a de factor director involving itself in the company's management*".

Findings of the Court

In dismissing Mesa's appeal the Court endorsed the following summary of principles relating to shareholders inspecting the books and records of a company in good faith and for a proper purpose:

1. The onus of proof is on the applicant seeking inspection;
2. Good faith and proper purpose must be proved objectively;
3. The phrase "*proper purpose*" means a purpose connected with the proper exercise of the rights of a shareholder as shareholder and not, for example, as a litigant in proceedings against the company or as a bidder under a takeover scheme;
4. An applicant who has a significant holding and who has been a shareholder for "*some considerable time*" will more easily discharge the onus than one who has recently acquired a token holding;
5. It is not necessary that the applicant show that its interests are different to those of other shareholders;
6. Nor is it necessary that the applicant have sufficient evidence to bring or make out an action (*Praetorin Pty Ltd v TZ Ltd* [2009] NSWSC 1237); it is enough that the issue raised by the applicant is "*substantive and not fanciful*", not "*artificial, specious or contrived*";
7. Pursuing a reasonable suspicion of breach of duty is a proper purpose;
8. Provided that the applicant's primary or dominant purpose is a proper one, it is not to the point that an inspection might benefit the applicant for some other purpose;
9. Applicants do not necessarily lack a proper purpose merely because they are hostile to other directors.

The above principles set out that while an applicant may receive an ancillary benefit of being granted access to the books and records of a company, if the application is objectively made in good faith and for a proper purpose the court should exercise its discretion in granting the application.