

Shareholder Inspection Rights and “Proper Purpose” in a Social Entrepreneurship Context

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State shareholder inspection statutes, including Virginia’s, grant shareholders the right to inspect certain company documents if the shareholder is acting for a “proper purpose.”¹ In *State ex rel. Pillsbury v. Honeywell, Inc.*, the Minnesota Supreme Court construed the Delaware shareholder inspection statute to only allow inspection if the shareholder’s purpose is related to her investment return.² In other words, the shareholder may only access certain corporate documents with the goal of increasing corporate profitability and stock price.

However, many companies today are set up as so-called “social entrepreneurs”—a term coined by the Virginia-based organization Ashoka³ that refers to companies who envision both profit and social welfare as end goals.⁴ How will courts determine “proper purpose” for a shareholder seeking to audit the social rather than monetary aspects of a social entrepreneurship’s projects? Under *Honeywell*, it seems that our shareholder may be precluded from access to corporate records, even though she is attempting to further well-defined company goals.

The leading Virginia case on the subject, *Retail Prop. Investors v. Skeens*, equates “proper purpose” with a shareholder’s desire to “protect his interests” without “adversely affect[ing] the corporation’s interests.”⁵ It seems that a social entrepreneurship shareholder has an “interest” in her investment maximizing social capital return in the same way that a profit-driven shareholder has an interest in her investment maximizing monetary capital return. However, a social entrepreneurship’s “bottom-line” seems much more difficult to normalize than the traditional red and black of a company’s balance sheet. Who is to say whether helping Bangladesh citizens access credit markets builds social capital more effectively than providing direct food and job-placement assistance?

In *Skeen*, the court denied a shareholder’s request to obtain a shareholder list for the purpose of pursuing a class-action lawsuit against the corporation—a goal the court found

¹ See, e.g., VA. CODE ANN. §13.1-771(D) (2010) (“A shareholder may inspect and copy the records identified . . . for a proper purpose.”).

² *State ex rel. Pillsbury v. Honeywell, Inc.*, 191 N.W.2d 406, 410 (Minn. 1971) (concluding that a “‘proper purpose’ contemplates concern with investment return . . .”).

³ *What is a Social Entrepreneur*, ASHOKA, http://www.ashoka.org/social_entrepreneur (last visited Jan. 31, 2012).

⁴ See generally Dana Reiser, For-Profit Philanthropy, (Brooklyn Law Sch. Legal Studies Research Papers Accepted Paper Series, Research Paper no. 124, 2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1295419.

⁵ *Retail Prop. Investors v. Skeens*, 252 Va. 36, 41 (Va. 1996) (holding, under Va. Code § 13.1-771, that a shareholder must seek “to protect his rights as a shareholder” and “not adversely affect the corporation’s interests.”).

inimical to corporate interests.⁶ This analysis suggests that a shareholder has a “proper purpose” to inspect documents if a mutual alignment of corporate-stockholder interests exists. In a social entrepreneurship, this mutual alignment will occur if (a) some well-defined corporate goal exists and (b) the shareholder seeks to better achieve that goal. For example, if the entrepreneurship has a goal of finding jobs for underprivileged Americans, then a shareholder should be permitted to inspect corporate records for evidence that their networking protocols are inefficient in an effort to suggest improvements through a proxy action.

Even if Virginia courts were to adopt a stricter *Honeywell*-style profit requirement on shareholder purpose, our shareholder may still be able to access the corporate books. The efficient capital-market hypothesis states that all relevant and accessible information will be included in the stock’s market price. Presumably, investors in corporate entrepreneurs buy stock not only for monetary profit, but also to invest in beneficial social capital. Therefore, an entrepreneurship’s social good should be built into its stock price. As such, any efforts to improve that social good are directly tied to stock price and thus “contemplate . . . investment return”—satisfying both *Honeywell* and *Skeens*.

⁶ *Id.* at 41.