

**SHALBHADRA BAFNA, Plaintiff-Appellee,**  
**v.**  
**ECHO VALLEY CONDOMINIUM**  
**ASSOCIATION, Defendant-Appellant.**

**No. 353785**

**Court of Appeals of Michigan**

**October 28, 2021**

UNPUBLISHED

Oakland Circuit Court LC No. 2019-176357-CZ

Before: Gadola, P.J., and Jansen and O'Brien, JJ.

PER CURIAM.

Defendant, Echo Valley Condominium Association, appeals as of right the trial court's order granting summary disposition in part to plaintiff, Shalbhadra Bafna, under MCR 2.116(I)(2). Plaintiff is an owner of a condominium unit in Echo Valley, so plaintiff is a co-owner of defendant. At issue in this case is plaintiff's requests to inspect defendant's records. Defendant denied plaintiff's record-inspection requests because, according to defendant, the requests did not state a proper purpose. This led plaintiff to file a complaint in the trial court in order to compel his record-inspection requests. While plaintiff's record-inspection requests were lengthy and often difficult to follow, his complaint to compel was much clearer. On the basis of statements in plaintiff's complaint, the trial court ordered defendant to let plaintiff inspect records identified in plaintiff's complaint. On appeal, defendant argues that the trial court erred by basing its ruling on plaintiff's complaint rather than his record-inspection requests. We disagree. After reviewing plaintiff's record-inspection requests, along with his subsequent complaint, we conclude that the requests, once clarified, stated a proper purpose. We therefore affirm.

**I. BACKGROUND**

This case arises out of plaintiff's requests to inspect seven records: (1) bills or invoices showing the cost of past litigation; (2) records relating to orders for wrist bands that were given to co-owners to allow them access to the condominium's pool (referred to as "swimming bands" or "swimming pool bands" by the parties); (3) work orders or invoices for bulb replacement done in plaintiff's building; (4) Board minutes from April 2019 until September 2019; (5) records relating

1

to when plaintiff's checks from approximately June 2019 through September 2019 were received by defendant and posted to plaintiff's account; (6) Board minutes for 2018; and (7) financial statements for 2017 and 2018. Plaintiff requested to inspect these records over the course of several months. Defendant's responses to these requests are not included in the following summation because the only relevance of defendant's responses is that they denied plaintiff's requests, which led to this lawsuit.

In a June 13, 2019 email, plaintiff requested records relating to the bulb replacement in his building, but he did not specify a purpose for his request. He also requested information about the new process for "swimming pool bands" because he was not informed about the new process.

In a June 19, 2019 email, plaintiff "refresh[ed]" his June 13 requests. He again stated that he wanted the bulb-replacement invoice, but this time he explained he wanted it "to know cost" and whether it would save money to have the job done by co-owners like plaintiff. He also requested two new records. First, he requested attorney bills for 2018 because he wanted to know "how much the association paid." Second, he requested "2018 annual meet records" but he did not give a reason.

Plaintiff sent another email on June 21, 2019, this time requesting "to inspect records about swimming bands" because the information about the bands in the newsletter "was not

correct," he was unable to contact anyone to clarify the rules for receiving the band, and he wanted to see if he was "being disliked or biased and treated unfairly."

On July 10, 2019, plaintiff sent another email requesting to inspect records. This time plaintiff asked to inspect the "[b]alance sheet for year ending 2018 2017 [sic] for comparative study with or without reviewed/audited." He also requested to know defendant's income for 2018 and 2019, and wanted a "[s]tatement of source and application of fund" for 2018 and 2019.

On July 24, 2019, plaintiff sent a series of questions about how checks for dues were deposited. For instance, plaintiff asked when monthly dues were deposited to the account, how many days between when a check was deposited with the bank and when it got "posted in books," and what was the "last date of payment before fine starts." Plaintiff also requested a "sample copy of check deposited last time," or "if electronically then screen print." Plaintiff did not give a reason for these requests or questions in the July 24 email.

On August 5, plaintiff requested to see board minutes for January 2017 through April 2018 "to see discussion of Board about changing legal consultation." He did not elaborate further.

On August 23, 2019, plaintiff sent an email attempting to clarify which records he sought to inspect and his purpose for inspecting those records. He first stated that he wanted to inspect the invoices for the lightbulbs installed in his building because he wanted to see how much was spent and whether it would be more cost effective to have co-owner volunteers change the bulbs. He also wanted to see whether the contractor who replaced the bulbs "charge[d] for two trips" because the job had to be redone as it was done improperly the first time.

In the same email, plaintiff stated that he wished to inspect the Board minutes for the last three months to see, among other things, whether plaintiff's suggestion for installing LED bulbs was

discussed. He also requested to inspect attorney bills from past litigation because he wanted

2

to see how much defendant spent "going to court." He said that this request was also for "intellectual curiosity."

Plaintiff also requested to inspect records relating to the swimming bands—such as the invoice for the bands, and when and where they were delivered—to see whether "lock/key was better option" in order to reduce cost to co-owners. The email explained that the date of delivery was relevant because there was trouble getting a band to plaintiff, despite him calling the board-designated contact to get his band. He also wanted to review the order date to know whether it was possible to get the bands "before swimming days started[.]"

As stated, at each step along the way, defendant largely denied plaintiff's requests, which led to this lawsuit. Plaintiff filed the instant complaint on September 4, 2019, alleging that he sought to inspect the seven records indicated above, and gave more detailed reasons for wanting to inspect each record.

On January 21, 2020, defendant filed its motion for summary disposition under MCR 2.116(C)(8) and (10). In the motion, defendant argued that, pursuant to MCL 450.2487, plaintiff had to state a proper purpose in order to inspect documents when his inspection request was made. Defendant attached numerous correspondences between plaintiff and defendant, and argued that, based on those correspondences, it was impossible to determine what documents plaintiff was requesting to inspect and for what purpose he was requesting the inspection. Defendant contended that, for this reason, plaintiff's inspection requests were made without a proper purpose, so defendant was justified in denying the requests.

Plaintiff's response to the motion was difficult to follow, but during the course of his

response, plaintiff restated his seven record-inspection requests with the accompanying reason from his complaint, asserted that if defendant read plaintiff's requests "properly" then plaintiff's proper purpose for his inspection requests would be clear, and argued that defendant had the burden to prove that plaintiff's purposes for his requests were improper under MCL 450.2487. He also generally asserted that he was entitled to inspect the records by virtue of MCL 559.157, which did not require him to state a proper purpose.

On April 13, 2020, the trial court issued an opinion and order without oral argument. In its opinion, the trial court repeated the record-inspection requests from plaintiff's complaint and noted that they were difficult to follow, but ultimately concluded that they were "clear enough to inform [defendant] of what records Plaintiff is seeking, and why." In a footnote, the court also pointed out that "Plaintiff's Complaint and response to [defendant's motion for summary disposition were] much clearer" than his record-inspection requests. The trial court ultimately concluded that "plaintiff's requests [were] for specific categories of documents, and all of them relate[d]" to a proper purpose—namely "perceived mismanagement by the Board or the property manager which has a direct effect, primarily financial, on Plaintiff as a co-owner." Though the trial court did not go through each of plaintiff's requests, it did reason that the request related to the "swimming bands" issue, records related to the "light bulb replacement" issue, and documents related to "the receipt of Plaintiff's dues checks" all had a proper purpose. The trial court lastly acknowledged that MCL 559.157 also applied to this case because it dealt with record-inspection requests for condominiums, but declined to decide whether MCL 559.157 controlled because the court concluded that, regardless, plaintiff had stated a proper purpose for all his

3

requests. Accordingly, the trial court denied defendant's motion for summary disposition and

granted summary disposition to plaintiff insofar as he sought to inspect defendant's records. Defendant now appeals that opinion and order as of right.

## II. STANDARD OF REVIEW

Appellate courts review de novo a trial court's grant of summary disposition. *Innovation Ventures v Liquid Mfg*, 499 Mich. 491, 506; 885 N.W.2d 861 (2016). Defendant moved for summary disposition in relevant part under MCR 2.116(C)(8) and (10). In *Maiden v Rozwood*, 461 Mich. 109, 119-120; 597 N.W.2d 817 (1999), our Supreme Court explained the process for reviewing a motion filed under MCR 2.116(C)(8):

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dep't of Corrections*, 439 Mich. 158, 162; 483 N.W.2d 26 (1992). A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 163. When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5).

For a motion under MCR 2.116(C)(10), the *Maiden* Court explained the review as follows:

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered

evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Maiden*, 461 Mich. at 120.]

A genuine issue of material fact exists when, after viewing the evidence in a light most favorable to the nonmoving party, reasonable minds could differ on the issue. *Allison v AEW Capital Mgt, LLP*, 481 Mich. 419, 425; 751 N.W.2d 8 (2008).

The trial court denied defendant's motion for summary disposition and granted summary disposition to plaintiff under MCR 2.116(I)(2). That rule states, "If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." MCR 2.116(I)(2).

4

### III. ANALYSIS

Defendant raises four issues on appeal, only three of which he addresses in the analysis section of his brief.<sup>[1]</sup> This opinion will address defendant's argument that the trial court erred by determining that plaintiff stated a proper purpose under MCL 450.2487 based on statements in his complaint rather than what was stated in his record requests. We conclude that the trial court did not err in examining plaintiff's complaint, along with his initial record requests, in concluding that plaintiff had stated proper purposes for his requests. We further conclude that the trial court did not err when it held that plaintiff had stated a proper purpose under MCL 450.2487 for his record inspection requests. Because plaintiff complied with the more stringent requirements of MCL 450.2487, we need not reach the question whether that provision is in conflict with MCL 559.157, and we decline to do so.

#### A. MCL 450.2487 AND MCL 559.157

At issue is plaintiff's requests to inspect records of defendant, a nonprofit condominium association. As defendant is both a condominium association and a nonprofit corporation, two possible statutes can apply to plaintiff's record-inspection requests—MCL 559.157 of the Condominium Act, MCL 559.101 *et seq.*, and MCL 450.2487 of the Nonprofit Corporation Act ("NCA"), MCL 450.2101 *et seq.* MCL 559.157(1) states, "The books, records, contracts, and financial statements concerning the administration and operation of the condominium project shall be available for examination by any of the co-owners and their mortgagees at convenient times." And MCL 450.2487(2) provides:

Any shareholder or member of record of a corporation that is organized on a stock or membership basis, in person or by attorney or other agent, may during regular business hours inspect for any proper purpose the corporation's stock ledger, a list of its shareholders or members, and its other books and records, if the shareholder or member gives the corporation written demand describing with reasonable particularity the purpose of the inspection and the records the shareholder or member desires to inspect, and the records sought are directly connected with the purpose. As used in this subsection, "proper purpose" means a purpose that is reasonably related to a person's interest as a shareholder or member.

The trial court concluded that plaintiff, by stating a proper purpose for his document inspection requests, had complied with the more stringent requirements of the NCA, and that it therefore need not resolve whether the NCA is in conflict with the Condominium Act. We agree with the trial court's analysis in this regard.

5

### B. PROPER PURPOSE IN COMPLAINT

Defendant argues that the trial court erred by determining whether plaintiff stated a proper purpose for his record-inspection requests by looking at the allegations in his complaint rather than plaintiff's record-inspection requests themselves. We disagree.

To address this issue, it is necessary to interpret MCL 450.2487. "In reviewing questions of statutory interpretation, we must discern and give effect to the Legislature's intent." *Farris v McKaig*, 324 Mich.App. 349, 353; 920 N.W.2d 377 (2018). "To do so, we begin by examining the most reliable evidence of that intent, the language of the statute itself." *Whitman v City of Burton*, 493 Mich. 303, 311; 831 N.W.2d 223 (2013). If the language of the statute is unambiguous, the statute is enforced as written. *Id.*

MCL 450.2487(2) provides how a shareholder or member must make a record-inspection request. As relevant to this case, MCL 450.2487(2) only requires that a record-inspection request be "written" and delivered "to the corporation at its registered office in this state or at its principal place of business." A complaint could, theoretically, satisfy these requirements.

The trial court did not limit its consideration to what plaintiff stated in his record-inspection requests, and looked also to plaintiff's complaint in concluding that he had complied with MCL 450.2487(2). We have found no case law that directly addresses this question under the NCA. However, the case of *North Oakland Co Bd of Realtors v Realcomp, Inc*, 226 Mich.App. 54; 572 N.W.2d 240 (1997) addresses the question in the context of the parallel provision in the Business Corporation Act ("BCA"). MCL 450.1487. There, this court addressed the question whether the plaintiff corporation had stated a proper purpose for a record inspection request of the defendant business corporation, as required by the BCA. *North Oakland*, 226 Mich.App. at 57. In reversing the trial court's denial of plaintiff's motion for

summary disposition, our court looked to an affidavit plaintiff submitted after the filing of its complaint to conclude that plaintiff had stated a proper purpose for its record inspection requests. *Id.* at 59. The court concluded that while the originally stated reasons "were arguably overbroad and nonspecific, plaintiff subsequently submitted the affidavit of accountant Gustkey, which set forth several specific reasons for the requested inspection . . . . We find plaintiff's purported reasons for seeking § 487 inspection relief to be specific, limited in scope, and reasonably related to its interest as one of defendant's eight shareholders." *Id.* at 59-60.

We see no reason not to extend the same logic and approach this court applied to a nearly identical provision of the BCA to a case brought under the NCA. If a plaintiff seeking records clarifies the purpose of its request in the context of litigation, whether via its complaint or an affidavit it submits in the litigation context, we see no reason the trial court should not consider those subsequent clarifications or reasons, just as it did in this case. To do otherwise would require these litigants to go "back to the drawing board," with plaintiff renewing his original requests, this time with the particularity stated in his complaint, which defendant might then grant or not. We see no reason why the trial court should not have simply resolved the question on the record before it and brought the matter to conclusion.

6

### C. PLAINTIFF'S RECORD INSPECTION REQUESTS

Initially, we reject defendant's argument that all of plaintiff's record-inspection requests should be denied because plaintiff was difficult to deal with.<sup>[2]</sup> While plaintiff's requests were numerous and longwinded, nothing suggests that they were made in bad faith. To the contrary, the requests all appear to have been made in good faith. There is no reason to exclude plaintiff from exercising his ability to inspect documents in good faith simply because he attempted to exercise that

ability repeatedly and his style of writing was verbose. To do so would be to punish plaintiff for trying to actively engage in the governance of his community. We therefore address each of plaintiff's record-inspection requests at-issue.

In moving for summary disposition, defendant argued that none of plaintiff's requests complied with MCL 450.2487 because none of them stated a proper purpose.<sup>[3]</sup> Defendant attached to its motion correspondence it had with plaintiff in an attempt to show that none of plaintiff's requests stated a proper purpose, and were therefore properly denied. We will analyze plaintiff's requests with reference to his email correspondence with defendant and his subsequent complaint.

MCL 450.2487(2) defines "proper purpose" as "a purpose that is reasonably related to a person's interest as a shareholder or member." In *North Oakland*, this Court recognized that MCL 450.1487 was a codification of "a stockholder's common-law right to inspect corporate records for a proper purpose." *North Oakland*, 226 Mich.App. at 58. "Under the common law, a shareholder stated a proper purpose for an inspection by raising doubts whether corporate affairs had been properly conducted by the directors or management, or by seeking election to the corporate board of directors," but "inspection requests to satisfy idle curiosity or aid a blackmailer were held not to be proper." *Id.* (citations omitted). The *North Oakland* Court then concluded:

Consistent with the common law in this state and the holdings of courts in other jurisdictions with similar statutes, we hold that a proper purpose for inspection of corporate records under § 487 is one that is in good faith, seeks information bearing upon protection of the shareholder's interest and that of other shareholders in the corporation, and is not contrary to the corporation's interests. Although idle curiosity or mere

speculation of mismanagement are insufficient to justify an inspection, we do not believe that the Legislature intended in enacting § 487 to erect a formidable obstacle for shareholders in seeking an inspection of corporate records. [*Id.* at 59 (citations omitted).]

7

While these principles apply to a request made to a for-profit corporation under the BCA, they are useful guideposts when analyzing requests made under the parallel provision of the NCA.

Plaintiff's first request in his complaint to compel asked to inspect "Bills/invoices of cost of past litigation." The documents that defendant attached to its motion for summary disposition showed that plaintiff requested bills/invoices for the cost of past litigation twice—once in a June 19, 2019 email, and the second time in an August 23, 2019 email. In the first email, plaintiff said he wanted the bills because he wanted to know "how much the association paid," and in the second email he said he wanted to see the bills in order to see how much defendant spent "going to court" and for "intellectual curiosity." Plaintiff's complaint added that he wished to inspect records related to the cost of past litigation in order to assess how such costs might be affecting his membership dues.

Plaintiff satisfied his burden of establishing a proper purpose to inspect records related to past litigation costs. As plaintiff's complaint suggested, such costs could affect plaintiff's dues payments and the records might confirm his more generalized concern that the association was mismanaged. The extent and cost of litigation is certainly a reasonable area of inquiry with respect to anyone with a legitimate interest in the affairs of a corporation, such as plaintiff has in this case.

The second request in plaintiff's complaint to compel was for records of the "Swimming bands arrival and invoice." The correspondence that

defendant attached to its dispositive motion demonstrated that—contrary to defendant's assertions—plaintiff indeed stated a proper purpose for inspecting records related to when the swimming bands arrived and the invoice for the swimming bands. In the August 23, 2019 email, plaintiff requested to see the invoice for the bands because he wanted to know whether "lock/key was better option" to reduce cost to co-owners. In the same email, plaintiff stated that he wanted to know the date that the bands were delivered because he had trouble getting the band, and he also wanted to review the order date to know whether it was possible to get the bands "before swimming days started[.]"

Plaintiff, as a co-owner, had an interest in whether defendant was wasting money by changing to a new system for accessing the pool—overpayments by defendant would increase plaintiff's dues. Thus, plaintiff's request for the invoice stated a proper purpose. Similarly, plaintiff as a co-owner had an interest in accessing the amenities that his dues paid for, so knowing when the bands arrived and whether it was possible to get the bands "before swimming days started" was a proper purpose for inspecting records related to when the swimming bands arrived. Accordingly, plaintiff stated a proper purpose for requesting these records, and the trial court correctly ordered defendant to allow this inspection to go forward.<sup>[4]</sup>

8

The third request in plaintiff's complaint to compel was for "Bulbs replacement (in plaintiff's building) work order/invoices." In a June 19, 2019 email, plaintiff requested to see the bulb-replacement invoice because he wanted "to know cost" and whether it would save money to have the job done by co-owners like plaintiff. Later, in the August 23, 2019 email, plaintiff said that he wanted to inspect the bulb-replacement invoices because, again, he wanted to see how much was spent and whether it would be more cost effective to have co-owners volunteer to change the bulbs. In the same email, he explained that he also wanted to see the invoice for his building to see

whether the contractor who replaced the bulbs "charge[d] for two trips" because the job had to be redone as it was done improperly the first time.

Like his request related to the swimming bands, plaintiff's request for the bulb-replacement invoice stated a proper purpose. Plaintiff, as a dues-paying co-owner, has an interest in whether defendant is overpaying for services, such as paying contractors twice to do one job. Plaintiff also has an interest in knowing how cost-effective it would be to have co-owners simply change bulbs when needed instead of paying a contractor to do it. Accordingly, plaintiff stated a proper purpose for requesting these records, and the trial court correctly ordered defendant to allow this inspection to go forward.

Plaintiff's fourth request in his complaint to compel was for "Board minutes" from April 2019 to when his complaint was filed (September 2019). In the August 23, 2019 email, plaintiff stated that he wished to inspect the Board minutes going back until April to see whether any of plaintiff's cost-savings suggestions were discussed, such as his suggestion for installing LED bulbs. He also wanted to see if his concerns related to the swimming bands had been addressed.

Plaintiff's August 23 email stated a proper purpose for this request. Plaintiff sought to inspect the Board minutes to see whether his cost-saving suggestions were discussed. Again, plaintiff as a dues-paying co-owner has a financial interest in how much defendant pays for certain things, so he has a legitimate interest in knowing whether defendant is considering cost-saving measures. Plaintiff's request to view the Board minutes to determine whether the Board had considered plaintiff's suggestions sought "information bearing upon protection of [plaintiff's] interest and that of other [co-owners]" and was not contrary to defendant's interests, *id.*, so the request had a proper purpose. Accordingly, the trial court correctly ordered defendant to allow plaintiff's inspection of the Board minutes from April 2019 to September 2019 to go forward. Additionally, we can perceive

no legitimate reason why any corporation would find it permissible to withhold its corporate Board meeting minutes from one of its shareholders/members.

9

Plaintiff's fifth request in his complaint to compel asked for "Recent request of knowing, arrival of Plaintiffs [sic] check" for the last three months. There is no record-inspection request in the lower court record for the last three months of when plaintiff's dues were posted to his account or for the dates that plaintiff's last three dues checks arrived. The only email that plaintiff sent that related to dues checks was his July 24, 2019 email, but that email listed only a series of questions. However, plaintiff's complaint clarified that he wished to know when his dues check was received and then "posted in account last 3 months" (e.g., negotiated/deposited) "to avoid penalty as happened in past by wrong entry of plaintiff's checks to other account and got note for short of dues." Plaintiff's complaint makes it clear that he sought this information to determine why he was financially penalized for a late dues payment, when he alleged that this occurred because defendant had deposited his checks in the wrong account. Plaintiff's surmise may be incorrect, but this does not make his request illegitimate. He sought this information in the belief that he had been improperly assessed a late penalty. Plaintiff's complaint therefore stated a proper purpose for this records request.

Plaintiff's sixth record-inspection request was to review "Board minutes of 2018." His complaint states that he wished to inspect these records "to see board approved legal consultation charges to plaintiff . . . ." We conclude that this request was proper for the same reasons we have concluded that plaintiff's other requests for Board meeting minutes and records related to legal fees were proper. It is difficult to understand on what basis defendant would withhold the minutes of its Board meetings from one of its shareholders/members, regardless of plaintiff's burden to establish a proper purpose in requesting these records.

Plaintiff's seventh and final record-inspection request in his complaint to compel was for "Financial statement of 2018 and 2017." Under MCL 450.2487(1), "If requested in writing by a shareholder or member, a corporation shall mail to the shareholder or member its balance sheet as at the end of the preceding fiscal year; its statement of income for that fiscal year; and, if prepared by the corporation, its statement of source and application of funds for that fiscal year." This provision of the Act does not require that plaintiff state a proper purpose for the request. What is described with particularity in the statute (balance sheet, statement of income, source and application of funds for a particular fiscal year) can more broadly be described as a "financial statement." By requesting defendant's financial statements for 2017 and 2018, plaintiff can be understood to have made a request for the records delineated in MCL 450.2487(1), which does not require plaintiff to state a proper purpose. Therefore, the trial court did not err in granting plaintiff summary disposition concerning this request.

#### IV. CONCLUSION

Affirmed. We do not retain jurisdiction. Plaintiff may tax costs pursuant to MCR 7.219, having prevailed in full.

Michael F. Gadola, Kathleen Jansen

10

O'Brien, J. (dissenting)

The majority concludes that when a member of a nonprofit corporation files a complaint to compel the inspection of records<sup>[1]</sup> of the corporation under MCL 450.2487 of the Nonprofit Corporation Act, MCL 450.2103 *et seq.*, court review of whether the member-plaintiff stated a proper purpose for his or her records-inspection request<sup>[2]</sup> considers not only the request, but any documents that the member filed in support of his or her litigation, such as the complaint to compel. I disagree, and would hold that court review of whether a member-plaintiff

stated a proper purpose for his or her records-inspection request should be limited to the request itself. This approach is supported by statute and, in my opinion, is more sensible. When a corporation rejects a member's record-inspection request, it considers only what is in front of it—the member's request. It makes little sense to permit a court to conclude that the corporation-defendant should have granted the member-plaintiff's record-inspection request on the basis of information that the corporation-defendant did not possess at the time it denied the request. Even more concerning, allowing a

1

member-plaintiff to supplement an otherwise deficient record-inspection request after litigation begins may leave a corporation-defendant on the hook for the member-plaintiffs costs, including attorney fees, even if the corporation-defendant's decision to reject the request was proper at the time it was made.

Here, the trial court did not limit its review to whether plaintiff, a member of defendant, stated a proper purpose for his record-inspection requests to plaintiffs requests themselves. Instead, the court concluded that, regardless whether plaintiff stated a proper purpose for inspecting the records in his record-inspection requests, plaintiffs complaint to compel stated a proper purpose for inspection. I would conclude that this was error, and would accordingly vacate the trial court's order and remand for the court to determine whether plaintiff stated a proper purpose for his record-inspection requests in the requests themselves. I therefore respectfully dissent from the majority's decision to affirm.

#### I. THE MAJORITY'S RELIANCE ON NORTH OAKLAND

The majority concludes that court review of whether a plaintiff stated a proper purpose for a record-inspection request need not be limited to the request itself in light of this Court's opinion addressing a different, though substantially similar, statute in *North Oakland Co Bd of*

*Realtors v Realcomp, Inc*, 226 Mich.App. 54; 572 N.W.2d 240 (1997). The majority is correct that in *North Oakland*, this Court concluded that the plaintiff stated a proper purpose for its requests on the basis of an affidavit submitted after the "plaintiffs original demand letter dated November 1, 1994[.]" *Id.* at 242-243. However, this Court in *North Oakland* did not address the question raised by defendant in this case—whether it is proper for a court to consider statements made after the start of litigation (such as allegations in a complaint to compel inspection) when determining whether a member stated a proper purpose for his or her record-inspection request. Instead, the *North Oakland* Court simply assumed that doing so was proper. Our Supreme Court recently reiterated "that a point of law 'assumed without consideration is of course not decided.'" *Rott v Rott*, \_\_\_ Mich \_\_\_, \_\_\_ n 3; \_\_\_ N.W.2d \_\_\_ (Docket No. 161051); slip op at 10 n 3, quoting *Allen v Duffy*, 43 Mich. 1, 11; 4 N.W. 427 (1880). Because the *North Oakland* Court "assumed without consideration" the issue raised by defendant in this case, I would not consider *North Oakland* as having any precedential value with respect to the issue. See *id.* See also *People v Douglas (On Remand)*, 191 Mich.App. 660, 662; 478 N.W.2d 737 (1991) ("[Defendant's reliance on *People v Phelon*, 173 Mich.App. 157; 433 N.W.2d 384 (1988), is misplaced, because in *Phelon* a panel of this Court assumed, but did not decide, that the sentencing guidelines applied to safe breaking. *Phelon* has no precedential value with respect to the issue before us.").

#### II. MCL 450.2487

I believe that a proper resolution of whether a court can consider allegations in a complaint to compel inspection when determining whether a member-plaintiff stated a proper purpose for his or her record-inspection request requires interpreting the relevant statute—MCL 450.2487. "In reviewing questions of statutory interpretation, we must discern and give effect to the Legislature's intent." *Farris v McKaig*, 324 Mich.App. 349, 353; 920 N.W.2d 377 (2018). "To do so, we begin by examining the most reliable

evidence of that intent, the language of the statute itself." *Whitman v City of Burton*, 493 Mich. 303, 311; 831 N.W.2d 223 (2013). If the language of the statute is unambiguous, the statute is enforced as written. *Id.*

2

MCL 450.2487(2) provides how a shareholder or member must make a record-inspection request, stating in relevant part:

Any shareholder or member of record of a corporation that is organized on a stock or membership basis, in person or by attorney or other agent, may during regular business hours inspect for any proper purpose the corporation's stock ledger, a list of its shareholders or members, and its other books and records, if the shareholder or member gives the corporation written demand describing with reasonable particularity the purpose of the inspection and the records the shareholder or member desires to inspect, and the records sought are directly connected with the purpose. . . . A shareholder or member must deliver a demand under this subsection to the corporation at its registered office in this state or at its principal place of business.

As relevant to this case, MCL 450.2487(2) only requires that a record-inspection request be "written" and delivered "to the corporation at its registered office in this state or at its principal place of business." As recognized by the majority, a complaint could theoretically satisfy these requirements. And if a complaint to compel can serve as a record-inspection request, then defendant's argument that the trial court erred by considering plaintiff's complaint to compel— and not just his record-inspection requests—would fail because there would be no statutory basis to distinguish the two.

However, reading the rest of MCL 450.2487 forecloses any conclusion that a complaint to compel can serve as a record-inspection request. It is well established that "[w]hen considering the correct interpretation [of a statute], the statute must be read as a whole." *Michigan Properties, LLC v Meridian Twp*, 491 Mich. 518, 528; 817 N.W.2d 548 (2012). MCL 450.2487(3) provides the process for how a member can compel a corporation to allow the member to inspect records after the member submits a record-inspection request. Namely, MCL 450.2487(3) establishes that a member whose record-inspection request was not reasonably complied with can file a complaint to compel inspection, stating in relevant part:

If a corporation does not permit an inspection required under subsection (2) within 5 business days after a demand is received under subsection (2), or imposes unreasonable conditions on the inspection, the shareholder or member may apply to the circuit court for the county in which the principal place of business or registered office of the corporation is located for an order to compel the inspection. [MCL 450.2487(3).]

MCL 450.2487(3) makes clear that a complaint to compel inspection cannot serve as the record-inspection request. The complaint to compel can only be filed *after* a corporation either does not permit the inspection within five business days or imposes unreasonable conditions on the inspection. Clearly then, the record-inspection request must be submitted before the complaint to compel is filed. If not, then the conditions precedent required under MCL 450.2487(3) for filing a complaint to compel could not have been satisfied. Thus, a complaint to compel is distinct from, and cannot serve as, a record-inspection request.

3

The question then becomes whether a court is required to limit its review of whether a member-plaintiff stated a proper purpose in his or her record-inspection request, or if a court can consider litigation filings, like a complaint to compel inspection, to make that determination. MCL 450.2487(3) provides the basis on which a plaintiff-member may be entitled to relief, and as relevant to this case states:

If the shareholder or member seeks to inspect the books and records other than its stock ledger or list of shareholders or members, the shareholder or member must establish that the shareholder or member has complied with this section concerning the form and manner of making demand for inspection of the documents, that the inspection is for a proper purpose, and that the documents sought are directly connected with the purpose.

Subsection (2) provides "the form and manner of making demand for inspection" when it states, as pertinent to this case, that the demand must describe "with reasonable particularity the purpose of the inspection . . . ." MCL 450.2487(2). MCL 450.2487(3)'s requirement that the member must establish that he or she complied with subsection (2) in order to prevail in an action to compel inspection, combined with MCL 450.2487(2)'s requirement that a request describe "with reasonable particularity the purpose of the inspection," leads me to conclude that a court is limited to reviewing the record-inspection request when determining whether a proper purpose was stated. The subsequent determination required under MCL 450.2487(3)—"that the inspection is for a proper purpose"—is an evaluation of the purpose that was stated "with reasonable particularity" in the record-inspection request. Accordingly, I would conclude that court review of whether a member-plaintiff stated a proper purpose for inspecting records is limited to the record-inspection request itself.

Besides this conclusion finding support in the statute, it is, in my opinion, the most reasonable approach, particularly in light of MCL 450.2487(5), which states:

If the court orders inspection of the records demanded under subsection (3) or (4), it shall also order the corporation to pay the shareholder's, member's, or director's costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it failed to permit the inspection in good faith because it had a reasonable basis to doubt the right of the shareholder, member, or director to inspect the records demanded.

Under this subsection, if a member-plaintiff prevails in an action to compel inspection, a corporation-defendant is *required* to pay the member-plaintiff's costs, including attorney fees, unless the corporation-defendant can prove that it is entitled to the exception in the statute.

Under my proposed interpretation of MCL 450.2487, subsection (5) makes sense. A member-plaintiff would submit a record-inspection request with a stated purpose that the member-plaintiff believes to be proper; if the corporation-defendant rejects the request for failing to state a proper purpose, the member-plaintiff pursues an action in circuit court, submitting the same request to the court for review; the court then determines whether the corporation-defendant was correct in denying the request. If the corporation-defendant was wrong in denying the request, the member-plaintiff would be entitled to attorney fees absent a showing by the corporation-defendant

4

that "it failed to permit the inspection in good faith because it had a reasonable basis to doubt the right of the shareholder, member, or director

to inspect the records demanded." MCL 450.2487(5).

In contrast, under the majority's interpretation, the member-plaintiff can submit an inspection request to the corporation-defendant, and if the corporation-defendant denies the request for failing to state a proper purpose, the member-plaintiff can file an action in circuit court, and in so doing supplement new reasons for the requests. If the court then determines that those supplemented reasons state a proper purpose irrespective of the reasons given in the initial record-inspection request, the corporation-defendant owes the member-plaintiffs costs, including attorney fees, unless it can convince the court that it meets the exception in MCL 450.2487(5). In other words, the corporation-defendant would have the burden of proving that it meets the exception in MCL 450.2487(5), even if the corporation-defendant did not improperly reject the record-inspection request. Such a situation could be avoided if the statute was read as I believe it should be—as requiring a court to limit its review of whether a member-plaintiff stated a proper purpose for his or her record-inspection request to the request itself.

On a final note, the majority disfavors this approach because the member-plaintiff would have to go "back to the drawing board" and renew his or her request rather than having it resolved by the court immediately. But going "back to the drawing board" means that the member-plaintiff would only have to wait 5 days before renewing his or her complaint in circuit court, as that is how much time a corporation-defendant would have to respond to the request. See MCL 450.2487(3). In those five days, the corporation-defendant would have the opportunity to decide whether any of the member-plaintiffs newly stated reasons for the request state a proper purpose in the first instance, rather than giving that initial determination to a court. Further, while the majority is correct that a corporation-defendant could still deny a member-plaintiffs record-inspection request, the statute has a deterrence mechanism to ensure that a

corporation-defendant does not act in bad faith to deny a renewed request that states a proper purpose—the mandatory attorney fees in MCL 450.2487(5).

### III. APPLICATION

In this case, the trial court clearly did not limit its considerations to what plaintiff stated in his record-inspection requests. The trial court only recited plaintiff's complaint,<sup>[3]</sup> and in discussing how plaintiff stated a proper purpose for his requests, the trial court never identified a request that plaintiff made to defendant that recited a proper purpose before plaintiff filed his complaint to

5

compel. I would therefore remand for the trial court to determine whether plaintiff stated a proper purpose in his record-inspection requests themselves.<sup>[4]</sup>

6

-----

Notes:

[1] Defendant states as a question presented, "Did the trial court err in opining that no proper purpose to inspect records is required when making a request to inspect under a nonprofit condominium association per MCL 559.157 of the Condominium Act?" but then does not address this issue in its analysis. We accordingly consider this issue abandoned. See *Mitcham v City of Detroit*, 355 Mich. 182, 203; 94 N.W.2d 388 (1959) ("Failure to brief a question on appeal is tantamount to abandoning it.").

[2] We acknowledge that defendant, at times, characterizes plaintiff's behavior as harassment, and note that, if true, defendant has remedies available to respond to such conduct. Contrary to defendant's apparent assertions, however, denying plaintiff's record-inspection requests is not one of those remedies.

[3] Defendant did not argue that plaintiff's requests failed to comply with MCL 450.2487(2)'s other requirements, so this opinion does not address that.

[4] On appeal, defendant argues that plaintiff had no interest in these records because the information in the records "will not empower him to do anything beyond complain," and plaintiff's remedy is instead to vote for a new board. This argument is unpersuasive for multiple reasons. First, it adds a requirement to record-inspection requests—that the information obtained in the request be actionable (such that the person seeking the information must be able to do more than "complain"). There is no such requirement apparent from the text of MCL 450.2487, and defendant points to no authority for this Court to conclude that such a requirement exists. Second, the argument puts the cart before the horse—a co-owner seeking records does not necessarily want to replace Board members and could merely want to inspect records for a proper purpose, so voting for new Board members is not a solution.

Defendant also argues that plaintiff should not be able to view the records because decisions about "condominium projects"—such as decisions about the swimming bands—are "within the sole control of the Board." It is unclear, however, why defendant believes that this insulates the records from inspection by co-owners.

[1] This opinion uses the term "complaint to compel" to refer to the complaint that a member of a nonprofit corporation must file in circuit court under MCL 450.2487(3) to compel a nonprofit corporation to grant the member's request to inspect records that the corporation previously denied.

[2] This opinion uses the term "record-inspection request" to refer to a request to inspect a nonprofit corporation's records pursuant to MCL 450.2487(2).

[3] This was proper to the extent that the trial court was considering whether defendant was entitled to summary disposition under MCR

2.116(C)(8). However, the trial court ultimately granted summary disposition to plaintiff, which, in my opinion, plaintiff would only be entitled to if he had made a proper record-inspection request before filing his complaint to compel.

[4] The trial court, like the majority, declined to decide whether MCL 559.157 of the Condominium Act, MCL 559.101 *et seq.* controlled over MCL 450.2487 because the lower court, like the majority, concluded that plaintiff satisfied the more stringent requirements of MCL 450.2487. I offer no opinion on whether MCL 559.157 should control this matter, and would leave that for the trial court to decide on remand.

-----