

IN THE SUPREME COURT OF GUAM

SKY ENTERPRISE

Plaintiff-Appellant

vs.

KENZO Y. KOBAYASHI

Defendant-Appellee

OPINION

Supreme Court Case No.: CVA02-008

Superior Court Case No.: 1390-00

Cite as: 2003 Guam 5

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Appeal from the Superior Court of Guam
Argued and submitted on February 5, 2003
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice; PETER C. SIGUENZA, JR., Justice Pro Tempore

TYDINGCO-GATEWOOD, J.:

[1] Plaintiff-Appellant Sky Enterprise (“Sky”) appeals a Superior Court order granting Defendant-Appellant Kenzo Y. Kobayashi’s (“Kobayashi”) motion to compel inspection of Sky’s corporate records. Title 18 GCA § 4201 grants shareholders an unlimited right to inspect corporate records at reasonable hours. Kobayashi is a shareholder in Sky. Thus, we affirm the trial court’s order.

I.

[2] Sky is a corporation operating under the business name Guam Veterinary Supply (“GVS”). Kobayashi was the general manager of GVS until May 13, 2000. Kobayashi was also a director and treasurer in Sky from December 27, 1995 until his termination on May 13, 2000. One month after leaving his position at Sky, Kobayashi founded Aozora, Inc., the only direct competitor of GVS. Kobayashi is currently the president of Aozora, and he continues to hold a one-third share of stock in Sky.

[3] On August 18, 2000, Sky filed a complaint against Kobayashi, alleging claims of conversion, embezzlement, fraud, and breach of fiduciary duty. Kobayashi counterclaimed, alleging that Sky failed to pay Kobayashi his share of the dividends beginning in May 2000 and that Sky refused to allow Kobayashi to inspect its books and records.

[4] On December 28, 2000, Kobayashi filed a Motion to Compel Plaintiff to Permit Inspection of Corporate Books and Records. In the motion, Kobayashi requested that he be allowed to inspect and copy corporate books and records and to bring an accountant with him to the inspection. The trial court issued an order granting Kobayashi’s motion to compel inspection but denying his request that he be

allowed to copy the records. The order was silent as to whether Kobayashi would be permitted to bring an accountant to the inspection.

[5] Sky filed a notice of interlocutory appeal on April 19, 2002. This court issued an order agreeing to hear Sky's appeal on May 16, 2002. Kobayashi then filed a notice of cross-appeal on May 23, 2002. On December 3, 2002, this court filed an opinion, *Sky Enterprise v. Kobayashi*, 2002 Guam 24, addressing jurisdictional issues involved in the appeal and cross appeal, wherein this court agreed to hear the appeal but dismissed the cross appeal for lack of jurisdiction. We now issue this opinion addressing the merits of the appeal.

II.

[6] This court may assert jurisdiction over interlocutory appeals. Title 7 GCA § 3108(b) (1994).

III.

[7] Sky appeals from a trial court order granting Kobayashi's motion to compel inspection of Sky's corporate books and records. The trial court based its ruling on Kobayashi's right as a shareholder to inspect corporate records under Title 18 GCA § 4201, and not on any rights that Kobayashi may have to production and examination of Sky's records as a litigant. *See Hillman v. Douglas Eng'g Co.*, 702 So. 2d 156, 159 (Ala. Civ. App. 1997) ("These two sets of rights are fundamentally different, and the powers of a trial court to limit examination of corporate records are correspondingly different."). Thus, the issue here turns on the proper interpretation of section 4201. "Issues of statutory interpretation are reviewed *de novo*." *Yamashita v. Gutierrez*, 2002 Guam 6, ¶ 8.

[8] The trial court found that because Kobayashi is a shareholder in Sky, he is entitled to inspect Sky's records under section 4201¹. Section 4201 is the codification of the common law right of shareholders to inspect corporate records. At common law, the right was limited to instances where the request for inspection was made in good faith and for a specific purpose germane to the shareholder's interest and not harmful to the interests of the corporation. *See MMI Invs., LLC v. Eastern Co.*, 701 A.2d 50 (Conn. Super. Ct. 1996); *Advance Concrete Form, Inc. v. Accuform, Inc.*, 462 N.W.2d 271, 276 (Wis. Ct. App. 1990). Although the common law right was limited to inspections for proper purposes, "[t]here was such powerful resistance by corporate officers to allowing minority stockholders this right and such strong feeling for its preservation that the common law qualifications, reasonable as they appeared, were wiped out by statute in many states and the right made absolute." *Crouse v. Rogers Park Apartments*, 99 N.E.2d 404, 405-06 (Ill. App. Ct. 1951). Guam's inspection statute likewise contains no restrictions except that inspections take place during "reasonable hours." 18 GCA § 4201.

[9] After initially granting unlimited inspection rights to shareholders, a majority of jurisdictions amended their inspection right statutes to restore the common law limitations. *See, e.g. Crouse*, 99 N.E.2d at 405-06; *Most v. First Nat'l Bank of San Diego* 54 Cal. Rptr. 669, 672 (Ct. App. 1966); *MMI Invs.*, 701 A.2d at 55; *Wolozyn v. Begarek*, 378 P.2d 1007, 1010 (Okla. 1963); *Advance Concrete, Inc.* 462

¹ Title 18 GCA § 4201 provides in full:

All business corporations shall keep and carefully preserve a record of all business transactions, and a minutes [sic] of all meetings of directors, members, or stockholders, in which shall be set forth in detail the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. On the demand of any director, member, or stockholder, the time when any director, member, or stockholder left the meeting must be noted on the minutes, and on a similar demand, the yeas and nays must be taken on any motion or proposition and a record thereof carefully made. The protest of any director, member, or stockholder on any action or proposed action must be recorded in full on his demand.

The record of all business transactions of the corporation and the minutes of any meeting shall be open to the inspection of any director, member, or stockholder of the corporation at reasonable hours.

Title 18 GCA 4201 (1992) (emphasis added).

N.W.2d at 276. The law on Guam, however, remains unchanged. Section 4201 provides that corporate records “shall be open to the inspection of any director, member, or stockholder of the corporation at reasonable hours.” 18 GCA § 4201. No other limitation is imposed.

[10] Sky acknowledges that section 4201 appears to grant shareholders an unlimited inspection right. Nevertheless, Sky argues that this court should imply a restriction when a shareholder seeks to inspect corporate records under circumstances that evidence intent to harm the corporation. Sky alleges that such circumstances are present here because Kobayashi is the president of Sky’s only competitor and will gain access to valuable trade secrets if the inspection is allowed.

[11] When the language of a statute is unambiguous, the analysis stops there. *Topasna v. Superior Court*, 1996 Guam 5, ¶ 9. If the legislature intended to provide corporations with the protections available at common law, it would have written those protections into the statute. *See Castro v. Peck*, 1998 Guam 2, ¶¶ 15-16 (refusing to read into a statute “a provision which the Legislature could have provided, but did not”). As we have previously held, “it is not this court’s function to legislate those protections by implication.” *Paulino v. Biscoe*, 2000 Guam 13 ¶ 28 (referring to the absence in Guam law of certain protections extended to mortgagors in California and declining to grant those protections not provided for by statute “[u]nless and until the Guam Legislature sees fit to provide [them]”); *see also Bank of Guam v. Reidy*, 2001 Guam 14, ¶ 22 (“[J]udicial legislation ... is clearly not the prerogative of the courts.”); *People v. Villapando*, 1999 Guam 31, ¶ 54 (“[I]t is within the purview of the Legislature to make statutory changes to an ill-conceived statutory scheme.”); *People v. Palomo*, 1998 Guam 12, ¶ 17 (“Although a harsh result may occur, the problem exists not within the judicial system, but instead with the Legislature where the sole remedy lies in the amendment or repeal of [the statute in question].”). We will not create an exception in a statute where none exists.

IV.

[12] Kobayashi continues to be a shareholder in Sky. The inspection right statute grants shareholders an essentially unlimited right to inspect corporate books and records. Thus, Kobayashi is entitled to inspect Sky's records at reasonable times. Accordingly, the trial court's order is **AFFIRMED**.