

STATE OF NORTH CAROLINA  
LENOIR COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
21 CVS 343

ARMISTEAD B. MAUCK and  
LOUISE CHERRY MAUCK,

Plaintiffs,

v.

CHERRY OIL CO., INC.

Defendant,

**ORDER AND JUDGMENT ON  
PLAINTIFFS' SUPPLEMENTAL  
COMPLAINT**

**THIS MATTER** is before the Court on Armistead B. Mauck and Louise Cherry Mauck's (collectively, "the Maucks") request to inspect and copy corporate records from Cherry Oil Co., Inc. ("Cherry Oil") and Cherry Oil's Motion to Dismiss ("Motion to Dismiss," ECF No. 131) pursuant to Rules 12(b)(1) and (6) of the North Carolina Rules of Civil Procedure.

**THE COURT**, having considered the briefs and other submissions of the parties, the arguments of counsel, and all appropriate matters of record, **CONCLUDES** that the Motion to Dismiss should be **DENIED** and that the Maucks' inspection requests are **GRANTED in part** and **DENIED in part**, as set forth below.

**INTRODUCTION**

1. The issue currently before the Court constitutes what appears to be the final installment in this litigation, which has been ongoing since 2021. In a nutshell, the Maucks are minority shareholders of Cherry Oil who have been removed from their prior roles as part of the company's management team and are presently in the

process of having their shares bought out by the company (against their will) pursuant to a “call” provision in a shareholders’ agreement. In this lawsuit, the Maucks asserted numerous claims for relief against the majority shareholders of Cherry Oil—Julius P. “Jay” Cherry, Jr. and his wife Ann B. Cherry (collectively, the “Cherrys”). Following two and a half years of contentious and protracted litigation, the Court ultimately granted summary judgment in favor of the Cherrys as to all claims for monetary relief asserted by the Maucks.

2. Following the Court’s summary judgment ruling, the Maucks filed a Supplemental Complaint seeking to inspect certain corporate documents of Cherry Oil pursuant to their status as shareholders. (Suppl. Compl., ECF No. 128.) The Court must now determine which, if any, of the requested documents the Maucks are entitled to inspect.

### **PROCEDURAL BACKGROUND**

3. The Maucks initiated this lawsuit on 6 May 2021. (Compl., ECF No. 3.)

4. In the interest of brevity, the Court will forgo a discussion of the specific claims the Maucks previously asserted in this litigation and of the Court’s grounds for granting summary judgment as to those claims because those subjects are not directly relevant to the matter presently before the Court. A complete discussion of the factual and legal issues previously addressed by the Court in this case can be found in its Order and Opinion on Defendants’ Motion to Dismiss Second Amended Complaint, *see Mauck v. Cherry Oil Co.*, 2022 NCBC LEXIS 39 (N.C. Super. Ct. May 2, 2022), as well as in the Court’s Order and Opinion on Defendants’ Motion for

Summary Judgment and Motion in the Cause for Court Supervision of Call of Shares, *see Mauck v. Cherry Oil Co.*, 2023 NCBC LEXIS 112 (N.C. Super. Ct. Sept. 15, 2023).

5. On 25 August 2023, the Maucks filed a motion seeking leave to file a third amended complaint for the primary purpose of adding a records inspection claim pursuant to N.C.G.S. § 55-16-04. (ECF No. 108.)

6. The Court entered an Order on 14 November 2023 allowing them to instead file a supplemental complaint against Cherry Oil for purposes of their inspection requests. (“14 November 2023 Order,” ECF No. 125.)

7. Pursuant to that Order, on 4 December 2023, the Maucks filed a Supplemental Complaint in which they asserted an inspection claim under § 55-16-04. (Suppl. Compl. ¶¶ 34–44.)

8. On 18 December 2023, Cherry Oil filed a Motion to Dismiss seeking dismissal of the Supplemental Complaint in its entirety. (Mot. Dismiss.)

9. Following briefing by the parties on all issues relating to the Supplemental Complaint, the Court held a hearing on 12 April 2024.

10. This matter is now ripe for resolution.

### **FINDINGS OF FACT**

11. Cherry Oil is a family-run propane and refined fuel distribution business serving both residential and commercial customers—including roughly fifteen convenience stores. It also owns a portfolio of associated commercial real estate. (Suppl. Compl. ¶ 1.)

12. Cherry Oil is incorporated under the laws of North Carolina and has its principal place of business in Lenoir County. (Suppl. Compl. ¶ 9.)

13. The Maucks are both shareholders of Cherry Oil. (Suppl. Compl. ¶¶ 6–7.)

14. On or around 3 April 2023, Cherry Oil provided the Maucks with copies of their 2022 federal Schedule K-1 tax forms (the “K-1s”). (Suppl. Compl. ¶ 11.)

15. The K-1s revealed that Cherry Oil had received approximately \$550,000 in grant funds from the State of North Carolina. (Fifth Aff. Armistead B. Mauck (“Armistead Aff.”) ¶ 5, ECF No. 89.) The K-1s further reflected that, as a consequence of this grant, the Maucks had incurred a tax liability of approximately \$120,000. (Armistead Aff. ¶ 5; Suppl. Compl. ¶¶ 11, 13.)

16. Armistead Mauck subsequently made repeated attempts to request copies of Cherry Oil’s 2022 federal tax returns—initially from Cherry Oil and later through its counsel—in an effort to learn more about the basis for their \$120,000 tax liability. However, his efforts were unsuccessful. (Suppl. Compl. ¶ 12.)

17. On 30 June 2023, the Maucks, through counsel, formally demanded that Cherry Oil issue dividends to allow them to pay their tax liabilities. (Suppl. Compl. ¶ 14; ECF No. 105.1.) Two weeks later, Cherry Oil’s attorney responded via a letter denying the demand, citing as a reason—among other things—Cherry Oil’s limited cash position stemming from certain recent expenditures. (Suppl. Compl. ¶ 15.)

18. On 2 August 2023, counsel for the Maucks sent a letter to Cherry Oil requesting copies of twenty-two categories of corporate records. (“First Demand

Letter,” ECF No. 128.1.) The First Demand Letter sought access to records ranging from Cherry Oil’s “bylaws and articles of incorporation, including any amendments,” to an inventory of Cherry Oil’s physical assets that were removed from the company’s offices. (First Demand Letter, at 2–3.)

19. The First Demand Letter stated that the above-referenced documents were being sought for the purpose of enabling the Maucks “to determine (i) the value of their shares in the Company, (ii) whether any improper transactions have occurred, and (iii) any possible mismanagement of the Company or any possible misappropriation, misapplication, or improper use of any property or asset of the Company.” (First Demand Letter, at 1.)

20. On 8 August 2023, counsel for Cherry Oil responded by letter (“First Demand Response,” ECF No. 128.2), agreeing to produce some of the documents sought by the Maucks. Specifically, Cherry Oil agreed to produce—and did produce—copies of its articles of incorporation, by-laws, director and officer lists, and annual report. (Suppl. Compl. ¶¶ 20–21; First Demand Resp., at 1.)

21. However, the First Demand Response stated Cherry Oil’s refusal to provide the remaining records that the Maucks had requested in their First Demand Letter, asserting that (1) the Maucks had not shown a proper basis for inspecting those documents; and (2) the information requested was “beyond the scope of records enumerated in N.C. Gen. Stat. § 55-16-02(b).” (First Demand Resp., at 1.)

22. On 17 August 2023, the Maucks’ counsel sent a second, revised request for records to Cherry Oil’s attorney (the “Second Demand Letter,” ECF No. 128.3).

The Second Demand Letter reiterated the same three purposes for the inspection requests that had been contained in the First Demand Letter and set out a revised list of records for which inspection was being sought. (Second Demand Letter, at 1–3.)

23. On 24 August 2023, counsel for Cherry Oil responded via a letter in which he stated the company’s refusal to provide the records requested in the Second Demand Letter. (ECF No. 105.3, at 1; Suppl. Compl. ¶ 26.)

24. After a flurry of filings by the parties, the Court issued its 14 November 2023 Order authorizing the Maucks to file a supplemental complaint “seeking an order allowing them to inspect and copy certain specified records of Cherry Oil.” (14 Nov. 2023 Order, at 5–6.)

25. On 4 December 2023, the Maucks filed their Supplemental Complaint in which they requested an order from the Court requiring Cherry Oil to comply with their inspection requests pursuant to § 55-16-04. (Suppl. Compl. ¶¶ 34–44.)

26. Cherry Oil filed a Motion to Dismiss pursuant to Rules 12(b)(1) and (6) of the North Carolina Rules of Civil Procedure on 18 December 2023 in which they sought dismissal of the Maucks’ Supplemental Complaint in its entirety. (ECF No. 131.)

27. On 5 April 2024, the parties submitted an email to the Court (the “5 April Email”) in which counsel for the Maucks stated that they had agreed to limit their document requests to the following four categories of documents:

[Category 1:] All records regarding the uses of funds received by the Company since 1 January 2022 from the United States Government, the

State of North Carolina, or any other governmental entity, through grant programs or otherwise;

[Category 2:] All tax returns and other correspondence and filings since 1 January 2020 with the United States Internal Revenue Service and/or the North Carolina Department of Revenue, including informational schedules and K-1s for each shareholder of the Company;

[Category 3:] All balance sheets, general ledgers (including annual and YTD detailed trial balance), income/profit and loss statements, and cash flow statements for [Cherry Oil] for the periods beginning 1 January 2020; and

[Category 4:] Current Real Estate Rent Roles [sic] showing terms of leases between [Cherry Oil] and tenants (“rentanniv” excel file).

### **CONCLUSIONS OF LAW**

28. It is appropriate to clarify the scope of the issues currently before the Court. As noted above, Cherry Oil has filed a Motion to Dismiss in which it seeks to have the Supplemental Complaint dismissed in its entirety. However, since that Motion was filed, the parties have jointly requested that in the event that the Court determines the Supplemental Complaint is not subject to dismissal in its entirety, the Court proceed to issue a final order as to each of the categories of documents that the Maucks seek to inspect.

29. The Court agrees that this approach is consistent with principles of judicial economy. Accordingly, in this Order the Court will rule on the Maucks’ ability to inspect each of the categories of documents set out in the 5 April Email.

30. At the outset, the Court finds that Cherry Oil’s argument that the Maucks’ Supplemental Complaint should be categorically dismissed in its entirety on the basis that it was improperly brought lacks merit. Cherry Oil makes two primary

arguments in support of this assertion. First, it contends that by engaging in lengthy litigation with the company over the last few years, the Maucks have already had the opportunity to obtain company documents during discovery. Second, Cherry Oil argues that because the company is in the process of purchasing the Maucks' shares, they have no legitimate need to inspect the company documents they have requested. For the reasons discussed in more detail later in this Order, the Court rejects both of these arguments and concludes that the Motion to Dismiss should be **DENIED**.

31. Having dispensed with Cherry Oil's global Motion to Dismiss, the remainder of this Order addresses the Maucks' entitlement to inspect the four specific categories of documents listed in the 5 April Email.

32. Since Cherry Oil is a North Carolina corporation, "the North Carolina Business Corporation Act (the 'Act')—which is codified at Chapter 55 of the North Carolina General Statutes—applies to this proceeding." *Sharman v. Fortran Corp.*, 2018 NCBC LEXIS 27, at \*\*7 (N.C. Super. Ct. Apr. 2, 2018).

33. N.C.G.S. § 55-16-01 requires a corporation to maintain various types of records. In turn, N.C.G.S. § 55-16-02 grants "qualified shareholders" certain rights to inspect those records provided that they satisfy certain criteria. A qualified shareholder is a "person who has been a shareholder in the corporation for at least six months immediately preceding the shareholder's demand for inspection of records or who holds at least five percent (5%) of the corporation's outstanding shares of any class." N.C.G.S. § 55-16-01.1.



34. It is undisputed that (1) the Maucks have both been shareholders of Cherry Oil for at least six months immediately preceding both their First and Second Demand Letters; and (2) the Maucks each own 17% of the outstanding shares of Cherry Oil. (Suppl. Compl. ¶¶ 6–7.) Accordingly, the Court concludes that the Maucks are “qualified shareholders” under § 55-16-01.1.<sup>1</sup>

35. “The Act grants qualified shareholders rights of inspection in two separate and distinct categories. [N.C.G.S.] § 55-16-02(a) grants what are generally referred to as ‘*absolute rights*’ of inspection, and section 55-16-02(b) grants what are generally described as ‘*qualified rights*’ of inspection.” *Sharman*, 2018 NCBC LEXIS 27, at \*\*8 (emphasis added) (cleaned up).

36. The absolute rights guaranteed to qualified shareholders under § 55-16-02(a) include the ability “to inspect and copy, during regular business hours at the corporation’s principal office”—and upon timely written notice—a corporation’s current articles of incorporation, bylaws, written communications to shareholders within the preceding three years, lists of names and business addresses of current directors and officers, and most recent annual report. N.C.G.S. §§ 55-16-01, -02(a).

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<sup>1</sup> As noted above, Cherry Oil’s board of directors has voted to invoke a call provision in the company’s shareholders’ agreement that would result in Cherry Oil purchasing the Maucks’ shares. Pursuant to the terms of the call provision, the process for determining the value of the Maucks’ shares is being determined by three appraisers selected by the parties. Although the Maucks will cease to be shareholders of Cherry Oil once that process is finally completed and their shares are actually purchased by the company, they retain their status as shareholders until those events actually occur. As such, they currently enjoy the same rights as any other shareholder (except as expressly provided for in the call provision with regard to their voting rights).

37. N.C.G.S. § 55-16-02(b), in turn, provides qualified shareholders with a qualified right to inspect other enumerated types of company documents during regular business hours at a reasonable location specified by the corporation and upon timely written notice. The documents encompassed by § 55-16-02(b) include the following:

- (1) Records of any final action taken with or without a meeting by the board of directors, or by a committee of the board of directors while acting in place of the board of directors on behalf of the corporation maintained in accordance with [N.C.G.S. §] 55-16-01(a).
- (2) Accounting records of the corporation.
- (3) The record of shareholders maintained in accordance with [N.C.G.S. §] 55-16-01(c).
- (4) The financial statements of the corporation maintained in accordance with [N.C.G.S. §] 55-16-01(b).

N.C.G.S. § 55-16-02(b).

38. The inspection rights provided for under § 55-16-02(b) are deemed to be *qualified* because they are contingent upon that shareholder's compliance with the following conditions set forth under N.C.G.S. § 55-16-02(c):

- (1) The qualified shareholder's demand is made in good faith and for a proper purpose.
- (2) The qualified shareholder describes with reasonable particularity the qualified shareholder's purpose and the records the qualified shareholder desires to inspect.
- (3) The records are directly connected with the qualified shareholder's purpose.

N.C.G.S. § 55-16-02(c).

39. In order to be entitled to inspect the four categories of documents at issue, the Maucks must show that the requirements of § 55-16-02(b) and (c) have been satisfied.

40. Cherry Oil makes two primary arguments as to why the Maucks' inspection requests should be denied. First, it contends that the Maucks lack a proper purpose for their requests. Second, it asserts that at least some of the specific records for which inspection is sought do not fall within the categories of documents subject to inspection under § 55-16-01 and § 55-16-02. (Br. Supp. Def.'s Mot. Dismiss Suppl. Compl., at 5–8, ECF No. 132.) The Court will address each argument in turn.

#### **A. Proper Purpose**

41. As previously discussed, the Maucks' First and Second Demand Letters alleged three purposes for their inspection requests: (1) to determine the value of the Maucks' shares in Cherry Oil; (2) to ascertain whether any improper transactions occurred giving rise to their unanticipated \$120,000 tax liability; and (3) to determine whether any of Cherry Oil's property or assets were mismanaged, misappropriated, misapplied, or otherwise improperly used.

##### **i. Value of Shares in the Company**

42. "One of the reasons most commonly alleged by stockholders seeking to inspect the corporation's books and records is a desire to determine the value of their stock in the corporation, and, where the stockholder is proceeding in good faith, it appears that an inspection will readily be granted for this purpose." *Cooke v. Outland*, 265 N.C. 601, 611–12 (1965); *see also Beam v. Beam Rest Home, Inc.*, 2014

NCBC LEXIS 45, at \*\*10 (N.C. Super. Ct. Sept. 25, 2014) (“A primary purpose of the shareholder and director inspection statutes is to permit a shareholder and a director to become adequately informed about . . . the shareholder’s investment in the corporation[.]”).

43. Cherry Oil’s only argument in response is its assertion that a records inspection by the Maucks would be “superfluous” given the ongoing appraisal process that is currently taking place pursuant to the company’s exercise of the call provision in the shareholders’ agreement. (Reply Br. Supp. Def.’s Mot. Dismiss Suppl. Compl., at 5, ECF No. 148.)

44. However, this argument finds no support in North Carolina law. Neither Cherry Oil’s briefs nor the Courts’ own research has disclosed any cases suggesting that an exception along these lines actually exists.

45. The Court is aware of no legal basis for finding that the Maucks lack the ability to inspect company documents for the purpose of determining the value of their shares in Cherry Oil simply because of the ongoing appraisal process in connection with the company’s exercise of the call provision.

**ii. Improper Transactions/Possible Mismanagement**

46. The issue of whether the two remaining purposes asserted by the Maucks are “proper” purposes under § 55-16-02(c) is more nuanced.

47. On the one hand, prior North Carolina decisions have held that ascertaining the existence of improper transactions or corporate mismanagement of

a company can constitute proper purposes for a shareholder's inspection request. *See Sharman*, 2018 NCBC LEXIS 27, at \*\*15.

48. On the other hand, however, our courts have also made clear that the mere recitation of such a purpose cannot be used to justify a "fishing expedition." *See Cooke*, 265 N.C. at 611 (holding that a plaintiff's right of inspection "for any proper purpose" under former N.C.G.S. § 55-38(b) did "not give him an absolute right of inspection and examination for a mere fishing expedition[.]"); *Carter v. Wilson Constr. Co.*, 83 N.C. App. 61, 64 (1986) ("N.C. Gen. Stat. § 55-38(b) does not give a qualified shareholder an absolute right of inspection and examination for a mere fishing expedition[.]").

49. As previously discussed, the Maucks' inspection demands were prompted by their receipt of K-1s reflecting a \$120,000 tax liability. At the hearing, the Maucks acknowledged that the K-1s reflected that this \$120,000 tax liability was based on Cherry Oil's receipt of a grant from the State of North Carolina. Nevertheless, the Court finds that their desire to ensure that their tax liability was calculated properly as a result of the grant constitutes a proper purpose.

50. However, based on the unique circumstances of this case (namely, the past three years of litigation between the parties), the Court reaches a different conclusion with respect to the Maucks' assertion of a general desire to ferret out evidence of possible corporate mismanagement as an additional "proper" purpose.

51. The Court cannot turn a blind eye to the fact that in the prior incarnation of this lawsuit, the Maucks have spent the last few years engaged in

extensive discovery intended to show wrongdoing by the Cherrys in connection with their management of Cherry Oil and the fact that no evidence of such wrongdoing was shown.

52. Accordingly, the Court concludes that the Maucks have shown two proper purposes for their inspection requests—that is, their desire to (1) determine the value of their shares in Cherry Oil; and (2) confirm that their tax liability was properly computed.

### **B. Right to Inspect Documents Under § 55-16-02**

53. Having determined that two of the Maucks’ stated purposes for inspecting Cherry Oil’s records qualify as “proper” under § 55-16-02(c)(1), the Court must now assess whether the specific categories of documents sought by the Maucks are directly connected to those purposes pursuant to § 55-16-02(c)(3). Additionally, the Court must determine whether the four categories of records that they seek to inspect are stated with “reasonable particularity” and are otherwise subject to inspection under § 55-16-02(b). *See Technik v. WinWholesale, Inc.*, 2012 NCBC LEXIS 5, at \*\*7 (N.C. Super. Ct. Jan. 13, 2012) (“A shareholder is entitled to inspect and copy records of a corporation when the shareholder makes a written demand . . . describing with reasonable particularity the records he desires to inspect, and . . . the requested records are directly connected to the stated purpose for inspection.”) (citing N.C.G.S. § 55-16-02(c)).<sup>2</sup>

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<sup>2</sup> The Court notes that Cherry Oil has not expressly argued that the Maucks’ requests fail to satisfy the “reasonable particularity” prong.

54. At the 12 April hearing, the Maucks' counsel made clear that the provisions of § 55-16-02 upon which they rely in seeking to inspect the above-described four categories of documents are § 55-16-02(b)(2) and (4), which provide for the inspection of a company's "accounting records" and "financial statements."

55. This Court has previously stated that "accounting records . . . are generally defined as the formal journals and ledgers, and the vouchers, invoices, correspondence, contracts, and other sources or support for such records[.]" *Sharman*, 2018 NCBC LEXIS 27, at \*\*23 (cleaned up).

56. Similarly, "financial statements" are likewise undefined in the Act. However, the Court notes that the Official Commentary to § 16.01(b) of the Model Business Corporation Act states, in pertinent part, as follows:

The financial statements to be maintained under section 16.01(b) are those that the corporation prepares in the operation of its business, including in response to third party requirements. The form of the financial statements prepared by a corporation depends to some extent on the nature and complexity of the corporation's business and third party requirements such as those governing the preparation and filing of tax returns with applicable tax authorities.

Model Bus. Corp. Act § 16.01 Official Comment 3.

57. The Court will now analyze the Maucks' entitlement to inspect each of the four categories of documents at issue.<sup>3</sup>

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<sup>3</sup> The Court deems it appropriate to analyze these four categories in an order different from the one utilized by counsel in their 5 April Email.

**i. Category 3**

58. Category 3 essentially consists of Cherry Oil’s accounting records and financial statements. Specifically, this third request encompasses: “[a]ll balance sheets, general ledgers (including annual and YTD detailed trial balance), income/profit and loss statements, and cash flow statements for [Cherry Oil] for the periods beginning 1 January 2020[.]” (5 April Email.)

59. The Court is satisfied that the documents encompassed by Category 3 of the Maucks’ inspection requests are both subject to inspection under § 55-16-02(b)(2) and (4) and also directly connected to the proper purposes that they have articulated as set forth above.<sup>4</sup>

60. There is, however, one caveat to this determination: Category 3 seeks the inspection of these documents dating back to *1 January 2020*. The Court finds that this period of time is too long.<sup>5</sup>

61. N.C.G.S. § 55-16-01(b) requires corporations such as Cherry Oil to maintain their financial statements “for its last three fiscal years.” N.C.G.S. § 55-16-01(b). The Court views the three-year time limit set out in this statutory provision as legislative support for a three-year “look-back” period with regard to inspection rights under § 55-16-02(b)(2) and (4). *See Sharman*, 2018 NCBC LEXIS 27, at \*\*22

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<sup>4</sup> At the 12 April Hearing, counsel for Cherry Oil conceded that Cherry Oil’s accounting records would likely be relevant to the stated purpose of allowing the Maucks to determine the value of their shares.

<sup>5</sup> At the 12 April hearing, counsel for the Maucks conceded that the selection of this date was somewhat arbitrary.



("The Qualified Plaintiffs' demand . . . to obtain financial statements for periods beyond the past three years is contrary to applicable law.").

62. Accordingly, the Maucks' request for inspection of the documents set out in Category 3 for the last three fiscal years is **GRANTED**, and Cherry Oil shall make its financial statements and accounting records for the past three fiscal years available for inspection by the Maucks. However, the Maucks' request under Category 3 is **DENIED** as to all such documents for periods beyond the past three fiscal years.

**ii. Category 1**

63. In Category 1, the Maucks seek to inspect "[a]ll records regarding the uses of funds received by the Company since 1 January 2022 from the United States Government, the State of North Carolina, or any other governmental entity, through grant programs or otherwise[.]" (5 April Email.)

64. However, Category 1 does not describe documents that are expressly listed under § 55-16-02(b). Therefore, this request is **DENIED**. *See Sharman*, 2018 NCBC LEXIS 27, at \*\*27 ("While this Request is set forth with particularity, the Request does not seek records that a qualified shareholder has a right to inspect and copy under sections 55-16-02(a) or (b).").<sup>6</sup>

**iii. Category 2**

65. Category 2 seeks inspection of "[a]ll tax returns and other correspondence and filings since 1 January 2020 with the United States Internal

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<sup>6</sup> However, to the extent that any of the documents encompassed by Category 1 are contained in Cherry Oil's accounting records, the Maucks shall be entitled to inspect them.

Revenue Service and/or the North Carolina Department of Revenue, including informational schedules and K-1s for each shareholder of the Company[.]” (5 April Email.)

66. Neither the parties’ briefs nor the Court’s own research has disclosed any North Carolina caselaw addressing whether a company’s tax returns (and associated documents) are subject to inspection by qualified shareholders pursuant to § 55-16-02(b). However, tax returns are not expressly listed in § 55-16-02(b).

67. Although—as noted above—our courts have given a broad definition to the term “accounting records,” the Court believes that stretching that definition to include tax returns would be a bridge too far. While accounting records are routinely used to prepare a corporation’s tax returns, the Court is unpersuaded that the tax returns themselves can be shoehorned into the definition of accounting records.

68. To the extent that the Maucks are also contending that tax returns fall within the definition of financial statements, the Court rejects this argument as well. Subpart (a)(2) of N.C.G.S. § 57D-3-04—the statute governing a member’s right to inspect documents from a limited liability company—serves as an apt example of the General Assembly’s differentiation between tax returns and financial statements.

(a) Subject to the other provisions of this section, each member may inspect and copy or otherwise obtain from the LLC any of the following:

...

(2) *Either*, as the LLC may elect, (i) a copy of any federal, state, or local *income tax returns* of the LLC, including any amendments and supplements made to those returns, filed with taxing authorities . . . or (ii) *financial statements* of the LLC[.]

N.C.G.S. § 57D-3-04(a)(2) (emphasis added).

69. Had the General Assembly intended for qualified shareholders to be entitled to inspect the corporation's tax returns just as LLC members are authorized to inspect those of an LLC, it could easily have expressly provided for such a result in § 55-16-02, but it did not do so.<sup>7</sup>

70. Accordingly, the Maucks' request to inspect Cherry Oil's tax returns and the associated documents referenced in Category 2 is **DENIED**.

**iv. Category 4**

71. Finally, in Category 4 the Maucks seek to inspect "[c]urrent Real Estate Rent Roles [sic] showing terms of leases between [Cherry Oil] and tenants ('rentanniv' excel file)." (5 April Email)

72. "A 'rent roll' is a list of tenants and the amount of rent each tenant pays." *Daniel v. Gullzar*, No. COA09-1644, 2010 N.C. App. LEXIS 1469, \*3 n.1 (N.C. App. Aug. 3, 2010).

73. Once again, such lists are not contained among the categories of documents for which inspection is permitted to a qualified shareholder under § 55-16-02(b). Accordingly, the Maucks' request to inspect the documents included under Category 4 is **DENIED**.<sup>8</sup>

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<sup>7</sup> Of course, it goes without saying that in the event the General Assembly decides to broaden the inspection rights of corporate shareholders in this regard, our Legislature is free to do so any time it desires by amending the statute.

<sup>8</sup> As a practical matter, however, some of the information described in Category 4 may likewise be contained in Cherry Oil's accounting records, which—as discussed above—the Maucks are entitled to inspect.

### C. Costs and Fees

74. The Maucks also seek the recovery of costs and expenses—including their reasonable attorneys’ fees—incurred in connection with this phase of the litigation.

75. N.C.G.S. § 55-16-04(c) states, in pertinent part, as follows:

If the court orders inspection and copying of the records demanded, it . . . shall also order the corporation to pay the qualified shareholder’s costs, including reasonable attorneys’ fees, incurred to obtain the order unless the corporation establishes that it refused inspection in good faith due to any of the following:

- (1) The corporation had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.
- (2) The corporation required reasonable restrictions on the confidentiality, use, or distribution of the records demanded to which the demanding qualified shareholder had been unwilling to agree.

N.C.G.S. § 55-16-04(c).

76. This Court has previously held that “[a] good faith refusal of a shareholder’s inspection demand normally will involve reasonable doubt whether the shareholder had the necessary good faith and proper purpose or whether the records demanded are directly connected to the shareholder’s purpose.” *Sharman*, 2018 NCBC LEXIS 27, at \*\*27 (cleaned up).

77. Cherry Oil’s assertion that it had a reasonable basis for declining the Maucks’ inspection requests in their entirety mirrors its arguments (as discussed above) as to why it does not believe that the Maucks have shown a proper purpose for these requests—namely, the Maucks’ opportunity to request corporate documents during discovery in the prior incarnation of this litigation and the pendency of the

appraisal process for valuing their shares. But the Court has rejected these arguments and does not find them to be reasonable.

78. Although, as discussed above, the Court finds that Cherry Oil was not only justified, but also legally correct, in refusing to allow the Maucks to inspect certain categories of the requested documents, the Court nevertheless determines that Cherry Oil has failed to make documents available for inspection in response to other significant portions of their requests (namely, the requests for the company's financial statements and accounting records for the last three fiscal years) without a reasonable basis for doubt as to the Maucks' right to inspect them. The Court therefore concludes that Cherry Oil should pay the Maucks the costs and fees, including attorneys' fees, that they have incurred in seeking these documents for which they have successfully obtained an order for inspection and copying.

### CONCLUSION

79. **THEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** as follows:

- a. Cherry Oil's Motion to Dismiss is **DENIED**;
- b. The Maucks' inspection requests are **GRANTED in part and DENIED in part** as set forth above;
- c. No later than **28 June 2024**, Cherry Oil shall make available to the Maucks for inspection and copying all of its financial statements and accounting records (as defined herein) for the past three fiscal years;

- d. Cherry Oil is further **ORDERED** to file a statement with the Court no later than **28 June 2024** certifying that it has fully complied with this Order;
- e. Cherry Oil is hereby **ORDERED** to pay the Maucks' reasonable costs and fees, including attorneys' fees, incurred in obtaining the relief set forth herein. The Maucks shall file their request for costs and fees, including any affidavits and supporting materials, no later than **28 June 2024**. The request shall include:
  - i. the total amount of attorneys' fees and costs incurred in obtaining the relief awarded;
  - ii. the identification of each attorney performing the work for which the Maucks seek fees and costs;
  - iii. the hourly rates for each attorney performing the work for which the Maucks seek fees and costs;
  - iv. the specific tasks the attorneys performed for which fees are sought; and
  - v. the amount of time the attorneys spent in performing these tasks;
- f. Cherry Oil shall file any opposition to the Maucks' request for costs and fees, including any affidavits and supporting materials, no later than **12 July 2024**;
- g. The parties' briefs on this issue shall comply with Business Court Rule 7.8; and
- h. The Court will determine at a later date whether a hearing is necessary on the Maucks' request for costs and fees.

**SO ORDERED**, this the 14th day of June, 2024.

/s/ Mark A. Davis  
Mark A. Davis  
Special Superior Court Judge  
for Complex Business Cases