SUPREME COURT OF KANSAS

# Arctic Financial Corporation v. OTR Express, Inc., 272 Kan. 1326

38 P.3d 701 (2002) · No. No. 87,278 · Decided January 25, 2002

## SUMMARY

The Kansas Supreme Court addressed a shareholder's demand to inspect corporate books and records under K.S.A. 17-6510. The court held that investigating possible mismanagement may constitute a proper purpose and that the shareholder was entitled to an evidentiary determination based on the submitted evidence rather than summary judgment limited to the demand's four corners. The court reversed and remanded for consideration of whether the shareholder proved a proper purpose and, if so, for a determination of the appropriate scope of inspection.

## CASE DETAILS

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| COURT | Supreme Court of Kansas |
| WRITING FOR THE COURT | J. Patrick Brazil, Chief Judge Retired, assigned; Brazil, J.; Davis, J., not participating |
| JURISDICTION | Kansas |
| DECIDED | January 25, 2002 |
| DOCKET | No. 87,278 |
| DISPOSITION | reversed_and_remanded |
| PROCEDURAL POSTURE | Shareholder brought an action under K.S.A. 17-6510 to compel inspection of corporate books and records. The district court granted OTR Express summary judgment, concluding that Arctic had failed to establish a proper purpose. Arctic appealed. |
| STANDARD OF REVIEW | Summary judgment is reviewed under the same standard applied by the trial court: judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions, and affidavits show no genuine issue of material fact and the moving party is entitled to judgment as a matter of law; facts and reasonable inferences are resolved in favor of the nonmoving party. The appellate court must deny summary judgment when reasonable minds could differ. |
| PRECEDENTIAL VALUE | Published Kansas Supreme Court opinion; precedential. |
| PARTIES | Arctic Financial Corporation v. OTR Express, Inc. |

## TOPICS

corporate law | summary judgment | statutory interpretation | commercial litigation | civil procedure

## PRACTICE AREAS

corporate law | commercial litigation | civil procedure

## QUESTIONS PRESENTED

1. Whether Arctic stated a proper purpose under K.S.A. 17-6510 for inspecting OTR's corporate books and records.
2. Whether the district court improperly limited its analysis to the face of Arctic's inspection demand and excluded Arctic's affidavit and deposition evidence.
3. Whether the district court applied an improperly heightened evidentiary burden to Arctic's request to investigate possible mismanagement.
4. Whether summary judgment was proper when Arctic presented evidence that could establish a proper purpose for inspection.

## HOLDINGS

1. Investigation of possible mismanagement is a proper purpose reasonably related to a shareholder's interest under K.S.A. 17-6510, and a shareholder need not prove that actual wrongdoing occurred.
2. In determining whether a shareholder has established a proper purpose, the district court may consider evidence beyond the face of the written demand, including affidavits, deposition testimony, trial testimony, and other record evidence.
3. A shareholder seeking inspection to investigate possible mismanagement is subject to the normal preponderance-of-the-evidence burden, not a heightened or greater-than-normal evidentiary burden.
4. Summary judgment for OTR was improper because the district court failed to consider Arctic's affidavit and deposition testimony and applied an incorrect evidentiary standard.

## KEY QUOTATIONS

> *"Following Delaware law, mismanagement constitutes a proper purpose under K.S.A. 17-6510, entitling Arctic to an evidentiary hearing to show by a preponderance of the evidence, not mismanagement, but the possibility of mismanagement."* (272 Kan. at 1330)

> *"The Thomas & Betts II court disapproved of that language in Thomas & Betts I: "The Court of Chancery incorrectly articulated the governing legal standard.""* (272 Kan. at 1333)

> *"We reverse and remand with directions that the district court consider Arctic's evidence and determine if Arctic has demonstrated, by a preponderance of the evidence, a proper purpose to justify its inspection of the books and records."* (272 Kan. at 1334)

## FACTUAL BACKGROUND

Arctic Financial Corporation, a New Jersey corporation and shareholder of Kansas corporation OTR Express, demanded inspection of OTR's bylaws, stock register, shareholder list, corporate records, and other books and records. Arctic stated that it wanted to evaluate management's effectiveness, investigate turmoil in OTR's management, and determine whether large shareholder voting blocks were hindering effective management. OTR had provided Arctic access to its stock ledger but opposed the broader inspection, and the district court granted OTR summary judgment without specifically addressing Arctic's affidavit and deposition evidence.

### PROCEDURAL HISTORY

Arctic served OTR with a written demand to inspect corporate records, stating that it sought to investigate management effectiveness, turmoil in OTR's management, and potentially obstructive shareholder voting blocks. After OTR refused or disputed the requested inspection, Arctic petitioned the district court for an order compelling inspection. The district court granted OTR summary judgment on April 24, 2001, and the Kansas Supreme Court reversed and remanded for consideration of Arctic's evidentiary submissions.

### DISPOSITION

reversed_and_remanded

### REMAND INSTRUCTIONS

The district court must consider Arctic's affidavit, deposition testimony, and other evidence and determine whether Arctic has demonstrated by a preponderance of the evidence a proper purpose justifying inspection of OTR's books and records. If Arctic establishes a proper purpose, the district court may exercise its discretion to limit the inspection carefully so that it corresponds to the established purpose.

### CASES CITED

- Arnaud v. Stockgrowers Bank, 268 Kan. 163, 165, 992 P.2d 216 (1999)
- Security First v. U.S. Die Casting & Development, 687 A.2d 563 (Del. 1997)
- Thomas & Betts Corp. v. Leviton Mfg. Co., Inc., 685 A.2d 702 (Del. Ch. 1995)
- Thomas & Betts Corp. v. Leviton Mfg. Co., Inc., 681 A.2d 1026 (Del. 1996)
- Bergstrom v. Noah, 266 Kan. 847, 871-72, 974 P.2d 531 (1999)