EFiled: Sep 13 2018 06:00PM EDT
Transaction ID 62451247
Case No. 2018-0677-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

FAIR VALUE INVESTMENTS, INC., Plaintiff, v. DBM GLOBAL INC., Defendant.	)	C.A. No. _____

VERIFIED COMPLAINT PURSUANT TO 8 *DEL. C.* § 220 TO COMPEL INSPECTION OF BOOKS AND RECORDS

Plaintiff Fair Value Investments, Inc. ("Plaintiff"), as and for its Complaint, herein alleges, upon knowledge as to its own actions, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. In this action, Plaintiff seeks to enforce its rights to inspect certain corporate books and records of defendant DBM Global Inc. ("DBM" or the "Company"), a Delaware corporation, pursuant to 8 *Del. C.* § 220 ("Section 220"). Plaintiff seeks to inspect these documents to investigate mismanagement and possible breaches of fiduciary duty by the directors and officers of the Company.

2. As explained in Plaintiff's Section 220 demand—which is attached as Exhibit A hereto (the "Demand") and fully incorporated by reference herein—there is a more than credible basis to infer that the directors of DBM engaged in possible mismanagement or wrongdoing, and/or that they breached their fiduciary duties by permitting misconduct by DBM's controlling stockholder to persist.

3. DBM has refused Plaintiff's Demand. Accordingly, Plaintiff is commencing this proceeding to enforce Plaintiff's Section 220 rights. Plaintiff requests that the Section 220 Demand be deemed proper and enforceable and that DBM be directed to produce immediately copies of all books and records sought by Plaintiff in the Section 220 Demand.

PARTIES

4. Plaintiff Fair Value Investments, Inc. owns shares of DBM and has owned those shares continuously since September 2016.

5. Defendant DBM is a Delaware corporation.

FACTUAL BACKGROUND

6. HC2 Holdings Inc. ("HC2") owns more than 90% of DBM's stock, since December 2014, and has owned a controlling position since purchasing 65% of DBM's stock in May 2014. HC2 has utilized its stockholdings in DBM to unilaterally elect all of DBM's board of directors, the majority of which are also employees of HC2 or DBM.

7. Beginning by at least November 2014, HC2 has acted as if HC2 owned 100% of DBM and without regard to the rights of the non-HC2 minority stockholders of DBM. For example, on November 21, 2014, HC2 disclosed that it had entered into an Indenture with U.S. Bank National Association under which HC2 agreed to restrictions on DBM as well as HC2's wholly-owned subsidiaries to

limit indebtedness to levels set in that Indenture. The effect of the Indenture was to use the financial strength of DBM to permit HC2 to borrow funds for the sole benefit of HC2. At the time the HC2 Indenture was entered into and thereafter, reports of DBM and HC2 have indicated that DBM had opportunities to pursue significant business opportunities that would necessarily be constrained by the restrictions on its ability to borrow due to the HC2 Indenture. HC2 has subsequent to 2014 repeatedly amended the Indenture that continues to restrict DBM's ability to borrow. HC2 has also announced its intention to refinance its existing debt and presumably will continue to use restrictions on DBM's finances to support that refinancing.

8. DBM does not provide conventional reports of related party transactions in its financial statements and has refused to provide any information required to determine whether the directors of DBM assured reasonable consideration for this limit on DBM's actions, or simply accommodated HC2's interests in violation of their fiduciary duty to DBM. It also does not disclose whether the directors of DBM considered if those restrictions on DBM's debt is a violation of 8 *Del. C.* § 122(13) that limits such an arrangement to only subsidiaries that are 100% owned by its parent.

9. HC2 has substantial tax loss carry forward credits that it is able to use to avoid paying taxes on the profits of its subsidiaries by filing consolidated tax

returns that include those subsidiaries such as DBM. To facilitate the use of those tax laws, HC2 has entered into a "tax-sharing agreement" with DBM that requires DBM pay to HC2 the many millions of dollars based on what DBM reports in general, unspecified terms as money it would otherwise be paying in taxes due on the income of DBM. DBM has refused to provide a copy of this agreement, or any information about either the amount of taxes that DBM might be saving as a result of its affiliation with HC2 or the amount of any consideration DBM realizes from the agreement.

10. According to DBM financial statements, HC2 regularly has caused DBM to advance tens of millions of dollars to HC2 many months prior to when those funds would otherwise have been paid in taxes by DBM. For example, the DBM financial statements report that DBM had been making such advances since 2016 that provided balances of amounts due from HC2 at the end of each quarter from 2016 to the end of 2017 that were consistently near or above the $10 million level, which DBM was required to fund from its interest-bearing bank lines of credit. The DBM financial statements do not provide details or explanations of these related party transactions, and DBM has refused to provide requested records of any agreements or interest provisions for this HC2 use of DBM funds, or of any board determination of reasonable justification for this use of DBM funds.

11. If not reasonably compensated, HC2's use of DBM funds is a violation of the fiduciary duty of the DBM board of directors and of HC2 as a controlling stockholder.

12. In 2018, prior to its scheduled stockholders' meeting, DBM was requested to provide information about the HC2 Indenture and the DBM advancement of funds to HC2. In response, HC2 executed a stockholder consent to first remove all of the members of DBM's board of directors and then to re-elect those same individuals as the directors of DBM, using a provision intended for the absence of incumbent board members to avoid the requirement of a stockholders' meeting. HC2, by its employees who are also directors of DBM utilized that scheme to avoid a DBM stockholder meeting and to avoid having to provide information to the minority stockholders of DBM.

13. The conduct of HC2 as a controlling stockholder of DBM in avoiding a stockholder meeting in 2018 was inequitable conduct that had no proper purpose and violated the controlling stockholder's fiduciary duty to DBM and its minority stockholders. That action was instead taken to avoid disclosures of the conduct of HC2 and of its employees as DBM directors.

14. On August 27, 2018, the Plaintiff delivered the Demand to DBM in accordance with 8 *Del C.* § 220.

15. On September 13, 2018, DBM refused Plaintiff's Demand.

PLAINTIFF'S DEMAND SETS FORTH A PROPER PURPOSE

16. The matters described above and in the Demand provide a credible basis from which possible breaches of fiduciary duty can be inferred. Permitting the use of DBM's assets to secure HC2's debt and the advancement of DBM funds to HC2 without compensation would constitute breaches of fiduciary duty by DBM's board of directors and by HC2 as DBM's controlling stockholder. All of those directors both approved those actions and were aware of those actions that are described DBM's financial statements and in HC2's public SEC filings, but if improper did not prevent that abuse of DBM. The scheme to avoid DBM's 2018 stockholder meeting can be inferred as an attempt to cover up those abuses of DBM. The need to investigate these possible breaches of duty is made stronger by DBM's refusal to provide relevant information that is conventionally required in audited financial statements and other reports to a company's stockholders.

PLAINTIFF'S DEMAND SEEKS DOCUMENTS ESSENTIAL TO ITS PROPER PURPOSE

17. As reflected in the Demand, Plaintiff only seeks inspection of documents essential to is proper purpose in investigating the actions of DBM's directors.

CLAIM FOR RELIEF

18. Plaintiff repeats and incorporates all of the allegations of paragraphs 1 through 17.

19. Plaintiff has no adequate remedy at law.

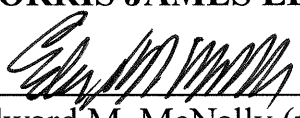
WHEREFORE, Plaintiff prays for the following relief:

A. An Order requiring DBM to permit the inspection and copying of each and every book and record requested by Plaintiff's Demand immediately;

B. An Order directing DBM to pay reasonable attorneys' fees and expenses in connection with Plaintiff's Demand and any related litigation; and

C. Such other relief as this Court deems just and appropriate.

MORRIS JAMES LLP



Edward M. McNally (#614)
Kathleen A. Murphy (#5215)
500 Delaware Avenue, Suite 1500
P. O. Box 2306
Wilmington, DE 19801-1494
302.888.6800
Attorneys for Fair Value Investments, Inc.

Dated: September 13, 2018

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

FAIR VALUE INVESTMENTS, INC.,	)	
	)	
Plaintiff,	)	
v.	)	C.A. No. 2018-0677
	)	
DBM GLOBAL INC.,	)	
	)	
Defendant.	)	
	)	

EXHIBIT A TO
VERIFIED COMPLAINT PURSUANT TO 8 *DEL. C.* § 220
TO COMPEL INSPECTION OF BOOKS AND RECORDS

FAIR VALUE INVESTMENTS
INCORPORATED

575 MADISON AVENUE – 10TH FLOOR, NEW YORK, NEW YORK 10022
TELEPHONE: (212) 605-0335

August 27, 2018

By email

Mr. Scott D. Sherman
Vice President & General Counsel
DBM Global Inc.
3020 East Camelback Road, Suite 100
Phoenix, Arizona 85016

Re: Demand to Inspect Books and Records Pursuant to Section 220 of the General Corporation Law of the State of Delaware

Dear Mr. Sherman:

As your records will show, Fair Value Investments, Incorporated ("FVI") continues to be a stockholder of DBM Global Inc. (the "Company").

Considering the records that the Company has provided in response to FVI's previous demands pursuant to Section 220 of the General Corporation Law of the State of Delaware ("DGCL 220") as well as the Company's refusals to provide other records, FVI is now compelled to determine whether actions should be taken to recover damages or to prevent future damages resulting from failures of the members of the Company's board of directors ("Directors") to properly perform their duties. These concerns are heightened by the fact that all of the Directors have been appointed by the Company's controlling stockholder, HC2 Holdings, Inc. ("HC2"), and particularly by HC2's extraordinary procedure this year to make such appointments by HC2 acting alone, without a vote of all stockholders or a meeting at which minority stockholders could have asked questions. Specifically, FVI must investigate the following issues:

A. ***Did the Directors responsibly secure appropriate consideration for the Company's acceptance of restrictions on the use of its assets and on its access to capital for the benefit of HC2, to support HC2's own debt obligations?*** In its initial November 21, 2014 disclosure of an "Indenture, dated as of November 20, 2014, by and among HC2 Holdings, Inc., the guarantors party thereto and U.S. Bank National Association" ("Indenture"), HC2 publicly reported that the agreement included "covenants limiting, among other things, the ability of [the Company, specifically and as a "Restricted Subsidiary"] …to incur additional indebtedness; create liens; engage in sale-leaseback transactions; pay dividends or make distributions in respect of capital stock; make certain restricted payments; sell assets; engage in transactions with affiliates; or consolidate or merge with, or sell substantially all of its assets to, another person." Nothing has been found in the records provided to FVI in response to past demands, or in the public records of HC2, reporting any consideration at all, or any determination that no consideration was justified, for the Company's acceptance of such restrictive covenants.

B. ***Did the Directors responsibly secure appropriate consideration for the reported "tax-sharing agreement" pursuant to which the Company transfers significant amounts of cash to HC2?*** Nothing could be found in the records provided by the Company about (i) the specific contract terms for the payments by the Company to HC2, (ii) the amounts of tax liabilities that would otherwise be incurred by the Company, or (iii) any consideration of transfer pricing for this "sharing" arrangement.

C. ***Did the Directors responsibly provide for reasonable consideration in relation to the Company's advances of "tax-sharing" payments, reported in financial statements as amounts "Due from affiliate," in advance of the time when taxes would be payable?*** In addition to questions about the justification of "tax-sharing" payments, there are more obvious questions about a justification for advancing funds before the taxes would be payable. Based on the limited information provided in the Company's annual and quarterly financial statements, it appears that the amounts of such advances are consistently maintained in substantial amounts that require the Company's incurring interest bearing debt, but there are no reports of HC2 paying interest or otherwise reimbursing or compensating the Company for the use of its borrowed funds.

For the purpose of investigating these questions and the possible need for remedial action, FVI acts again now as a stockholder pursuant to DGCL 220 to demand the following books and records, noting that what is now specified includes previously demanded records that the Company has improperly refused to produce:

(1) records of the Company's board of directors ("Board") and its members ("Directors") since January 1, 2014 relating to Board policies or practices for reviewing and reporting on proposed or concluded exchanges of services or assets between the Company and HC2 or its affiliates, including employees or agents of such affiliates ("Related Party Transactions");

(2) records of the Board and any Directors relating to reviews of proposed or concluded Related Party Transactions since January 1, 2014;

(3) records of the Board and any Directors relating to determinations of transfer pricing for any proposed or concluded Related Party Transactions since January 1, 2014;

(4) records of any reviews or reports of the Company's independent auditors of Related Party Transactions since January 1, 2014, including the auditors' determinations that the Company's financial statements did not require notes reporting details of relationships (a) between the Company and its affiliates or (b) between the Company or its affiliates and any of the Company's Directors;

(5) if not included in responses to the records specified above, records of all Board, Director and independent auditor reviews of HC2's agreement to impose restrictions on the Company's assets and capital access in provisions applicable specifically to the Company and as a "Restricted Subsidiary" in HC2's 2014 Indenture, as amended, and of any consideration received by the Company in relation to that agreement;

(6) if not included in responses to the records specified above, records of all Board, Director and Company officers relating to reviews of corporate opportunities that were presented for consideration since January 1, 2014, and of limitations of the Company's ability to exploit such corporate opportunities imposed by the Indenture;

(7) a copy of the "tax-sharing agreement" referenced in Note 7 of the DBM Global Inc. and Subsidiaries Consolidated Financial Statements for the Years Ended December 30, 2017 and December 31, 2016 issued by BDO USA, LLP as the Company's independent auditors, ("2017 Audit Report");

(8) records of the Board and its individual Directors concerning their review and approval of the tax-sharing agreement with HC2;

(9) if not included in responses to the records specified above, records of all Board, Director and independent auditor reviews of the provisions of the tax-sharing agreement, including any consideration received by the Company in relation to it;

(10) records of the Board and its individual Directors concerning their review and approval of the Company's "advances" of funds to HC2 and amounts "Due from affiliate" as presented in the 2017 Audit Report and earlier financial reports;

(11) records of any consideration received by the Company for its reported "advances" of funds to HC2;

(12) records of the Board and its Directors of any review of the Company's costs of debt incurred for the amounts of its "advances" that were "Due from affiliate;"

(13) all communications since January 1, 2018, to or from any Company officers, employees or Directors concerning plans for an annual meeting of stockholders in 2018, including any consideration of alternatives to conducting such a meeting and the reasons for considering such alternatives; and

(14) all communications since January 1, 2018, to or from any Company officers, employees or Directors concerning HC2's actions to appoint Directors and to not convene an annual meeting of stockholders, as reported in the Company's June 11, 2018 Notice of Stockholder Action by Written Consent in Lieu of a Meeting ("Notice").

The primary purpose of these demands is, as indicated above, to determine whether the protection of FVI's stockholder interests may require any actions against Directors for breaches of their duties of care or loyalty, against HC2 for its breaches of a controlling stockholder's fiduciary duties to the Company and its minority stockholders, or for any other remedial action. These demands, elements of which have been previously presented by FVI, may of course also be relevant to some of the purposes stated in relation to those earlier demands. FVI does not demand the records for any purpose other than those related to its stockholder's interests as a stockholder, and the information is not sought for a purpose which is in the interest of a business other than that of the Company.

As indicated in previous demands, it is assumed that some of the demanded records may include confidential information, and that such information may therefore be provided subject to a confidentiality agreement. I will be pleased to execute an amendment of the existing January 26, 2018 Agreement Regarding Confidentiality of Books and Records to include any such confidential records as additions to that Agreement's Exhibit.

To the extent that the Company wishes to present any objections to these demands, or to press its generally stated objections to previous demands, I respectfully ask that you present your explanations of any such objections with supporting citations within the required five days to FVI's legal counsel, Edward M. McNally of Morris James LLP, who can be reached by email at emcnally@morrisjames.com or by telephone at 302-888-6880. You may of course continue to communicate with me by email at gl@shareholderforum.com or by telephone at 212-605-0335 to arrange for delivery of the demanded records.

The undersigned affirms and states under penalty of perjury of the laws of the State of New York that the statements set forth in this letter are true and correct to the best of my knowledge, information and belief.

Sincerely yours,
FAIR VALUE INVESTMENTS, INCORPORATED

Gary Lutin, Chairman

cc: Steven T. Margolin, Esquire
Edward M. McNally, Esquire

STATE OF NEW YORK
COUNTY OF NEW YORK

Sworn to and subscribed before me on this 27th day of August, 2018.

MAHAMOUD JABBI
Notary Public - State of New York
NO. 01JA6363833
Qualified in Bronx County
My Commission Expires Aug 28, 2021

8/27/18