Fitzgerald Knaier Attorneys Win Important Appellate Victory for California Shareholders

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In a significant win for California shareholders, the California Court of Appeal recently upheld California law's broad shareholder inspection rights, despite a Delaware corporation's forum selection bylaw that would send those shareholders to a less shareholder-friendly jurisdiction. The case is *David Salamon v. Orchid Global, Inc,* No. A173959 (Cal. Ct. App. July 31, 2026), and the appellate opinion is available at A173959.PDF. Attorneys Keith Cochran and Kyle Hoffman of Fitzgerald Knaier LLP represented the plaintiff David Salamon, who succeeded in overturning a trial court order that required him to litigate a dispute over his shareholder inspection demands in the Delaware Chancery Court.

The case arose after Orchid Global, Inc. – a Delaware corporation – offered to repurchase shares held by Salamon, a minority stockholder who owned approximately 11.11% of the company. As a 5%+ shareholder who sought records to evaluate the repurchase offer and assess the value of his shares, Salamon demanded inspection of Orchid's books and records under California Corporations Code sections 1600 and 1601. Section 1600 provides 5%+ shareholders an "absolute right" to shareholder lists, and section 1601 provides rights to inspect a wide range of corporate records for "a purpose reasonably related to the holder's interests as a shareholder."

Orchid rejected Salamon's inspection demands by invoking the forum selection clause of Orchid's bylaws, which stated that matters pertaining to the corporation's "internal affairs" must be litigated in Delaware – where the more restrictive Delaware General Corporation Law section 220 would apply to Salamon's requests.

Salamon filed an action in California Superior Court seeking to enforce his inspection rights under California law, and Orchid filed a declaratory relief action in the Delaware Chancery Court, seeking declarations that Delaware law rather than California law governed Salaman's rights to inspect Orchid's books and records, and that Orchid was not required to comply with the inspection requirements under California Corporations Code sections 1600 and 1601. Orchid then moved to stay the California action, arguing that its forum-selection bylaw required inspection disputes to proceed in the Delaware courts. The trial court agreed with Orchid, and stayed the California action. Salamon appealed, and obtained reversal of the trial court's order.

In the Court of Appeal's opinion (authored by Justice Richman), the court held that Salamon's inspection demands did involve Orchid's "internal affairs" under Delaware law, such that the forum selection clause of Orchid's bylaws covered Salamon's inspection demands. However, the court went on to hold that California public policy – as embodied in the Corporations Code's inspection statutes – prohibited limitation of Salamon's inspection rights through the corporation's bylaws. Shareholder inspection rights are broader under California's Corporations Code than under Delaware's recently amended General Corporation Law section 220. In addition, California law allows shareholders to recover their attorney's fees in an action to enforce those rights, but Delaware law does not. Because forcing Salamon to litigate his rights in Delaware under Delaware law would limit the shareholder inspection rights and remedy under California's statutes, the forum selection provision in Orchid's bylaws was held unenforceable. As the court wrote, "the forum selection clause [of Orchid's bylaws] covered [Salamon's] claims under sections 1600 and 1601," but under the law and the circumstances of Salamon's case, "the clause was unenforceable as against public policy."

This was a case of first impression in the California Court of Appeal, and it sets an important precedent for shareholder inspection demands by California shareholders owning stock in corporations with offices or records in California, but incorporated in other, less shareholder-friendly states. Those out-of-state corporations may not lawfully use non-California forum selection clauses to avoid their disclosure obligations when a California shareholder demands inspection of corporate records under the California Corporation Code's shareholder inspection statutes. As recognized in the court's opinion, the California legislature enacted a strong policy favoring shareholder access to corporate records, and the legislature made clear through the statute that corporations with offices or records in California may not use bylaws to restrict those rights.

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