

Larkin, et. al. v. Della Ratta

In *Larkin, et al. v. Della Ratta*, et a., 2005 WL 914372 (Md. Cir. Ct.), the Court was required to determine the “fair value” of certain partnership interests in East Park, pursuant to Md. Code Ann., Corps. & Ass’ns §10-604 (1999 Repl. Vol. & 2005 Supp.).

The Court was tasked with determining (i) the value of the partnership; and (ii) the “fair value” of the withdrawing partners’ interests therein. Because East Park had only one asset, a shopping center property, the Court first had to determine its value. Citing *Bern-Shaw Ltd. Partnership v. Mayor of Baltimore*, 377 Md. 277, 302-03 (2003), the Court stated that the value of the property was to be determined according to the price that a willing seller and willing buyer, without compulsion, would agree upon for the property in the open market. To establish property value, the Court reviewed evidence presented by the Plaintiffs consisting of an appraisal of the property by an experienced appraiser. The Court found credible the appraiser’s use of the income approach to valuation, which consisted of a reconciliation of direct capitalization, discounted cash flow and sales comparison methods to reach a fair market value of the property as \$19,500,000.00. The Defendants argued that the appraiser had inflated the calculated property value, relying for support on the property tax assessment set by the State Department of Assessments and Taxation at \$17,668,600.00. However, the Court cited *Graverstine v. Graverstine*, 58 Md. App. 158, 172 (1984), for the general rule that “the value of property cannot be proven by assessments made for tax purposes.” Thus, the Court (i) concluded that the fair market value of the property was \$19,500,000.00; and (ii) accepted a net entity value of \$14,643,606.00, calculated by Plaintiffs’ expert using the \$19,500,000 property value calculated by the Plaintiffs’ appraiser.

The ultimate task before the Court was the determination of the “fair value” of the Plaintiffs’ interests in East Park pursuant to Maryland Revised Uniform Limited Partnership Act (“MRUPA”) §10-604. Section 10-604 provides that on withdrawal (i) any withdrawing partner is entitled to receive any distribution to which that partner is entitled under the partnership agreement; and (ii) if not otherwise provided in the partnership agreement, the partner is entitled to receive the fair value of the partner’s partnership interest in the partnership as of the date of withdrawal, based on the partner’s right to share in distributions from the partnership. However, there is no definition of “fair value” in Maryland’s partnership statutes or anywhere else in the Maryland code. First looking to the statutory language to determine legislative intent, the Court stated that the meaning of “fair value” still was unclear. What was clear to the Court, however, was a difference in the meanings of “fair value” and “fair market value.” The Court opined that if the legislature had intended “fair value” to mean “fair market value,” it would have used that term. Without a clear definition of “fair value” in §10-604 or elsewhere in the MRUPA or partnership case law, the Court presumed it to have the meaning it held under similar statutes.

Accordingly, the Court looked toward the Dissenting Shareholder Statute, Md. Code Ann. Corps & Ass’ns §3-202 (Repl. Vol. 1999 & Supp. 2005), which relates to valuation of the interests of shareholders who withdraw from a corporation that has

engaged in a merger contrary to the minority shareholders' wishes. Under that statute, a dissenting shareholder has the right to demand and receive payment of the "fair value" of his or her stock. It prevents minority shareholders from being forced to sell at unfairly low values while allowing the majority to proceed as it desired. Citing to cases from other states, the Court noted that "fair value," in the shareholder context, required that the dissenting shareholder be paid for his or her proportionate interest in a going concern, that value determination being made by taking the going concern value of the corporation as a whole rather than the value of the individual shares. Plaintiffs relied on *Warren v. Baltimore Transit Co.*, 220 Md. 478 (1959), for this basic premise. The Defendants, on the other hand, attempted to rely on *Warren* for their argument that fair value would be tantamount to liquidation value if the Court took the value of the entity and prorated it among the withdrawing partners. However, the Court opined that "liquidation" generally implied a sale of assets at less than if they were sold as a going concern and rejected the Defendants' argument, also pointing out that, although another type of business may have lost value when it ceased to operate, East Park had no value other than its underlying assets. Accordingly, the Court held, there was no difference in this case between liquidation value of the partnership and going concern value because the value under either method would have been that of the shopping center property.

In order to further construct the full meaning of §10-604, the Court also undertook an analysis of §9A-701 of Maryland's Revised Uniform Partnership Act, codified at Md. Code Ann. Corps & Ass'ns §9A-701 (Repl. Vol. 1999). Like §10-604 and the Dissenting Shareholder Statute, the Court noted the purpose of §9A-701 was to indemnify withdrawing partners. In that provision, "buyout price" was defined as the amount distributable to a withdrawing partner if, on the withdrawal date, the assets of the partnership were sold at the greater of liquidation value or the value of the business as a going concern if it were to continue without that partner. Thus, according to the Court, the goal of both §9A-701 and the Dissenting Shareholder Statute were similar to that of §10-604 in that they provide for cashing out the interests of dissenting interest holders.

Finally, the Court addressed the Defendants' argument that the withdrawing partners' interests should reflect discounts for their minority status and lack of marketability. Minority discounts adjust for the seller's lack of control in the management of the entity being withdrawn from, and is based on the assumption that a purchaser would pay less for such an interest than for interests with a voice in management decisions. The Court favored the Plaintiffs' assertion that a distribution under §10-604 was not an open market transaction where minority discounts may be relevant, and noted that most courts have determined that neither minority nor marketability discounts are applicable in dissenting shareholder cases. It cited decisions from other state courts opining that if minority shareholders were not given the full proportionate value of their shares, it would be akin to imposing a penalty on them for lack of control and unfairly enriching majority shareholders. Further, the Court agreed with the holdings in other cases that minority discounts generally should not be applied when interests are sold to another shareholder or to the corporation, those types of sales being distinguishable from one in the open market. The Court opined that under the MRUPA minority discounts were similarly inapplicable in determining buyout prices.

Based on a review of authorities rejecting minority and marketability discounts in the dissenting shareholder context, the Court came to the conclusion that they had no application in a §10-604 valuation analysis. Although denying the Plaintiffs' request for prejudgment interest, the Court ultimately came to a determination of the fair value of the Plaintiffs' interests in East Park using the valuation methods urged by the Plaintiffs and opposed by the Defendants.