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**SHAREHOLDER BUY-OUTS UNDER  
SECTION 2000 OF THE  
CORPORATIONS CODE**

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# 50 Years of Animosity

- The Majority and Minority have developed great animosity towards each other and have, for some fifty years, struggled over the Majority's: unfair and disproportionate distribution of corporate benefits; secret operation of the Corporation without the knowledge or oversight of the board of directors as a whole; denying Minority Directors access to Company information; conflicts of interest; self-dealing and other malfeasance and incompetent management.

# The Sins of the Majority

- The Majority has for many years **mismanaged** the Company, **abused** its authority, **acted persistently unfairly** toward the Minority and misapplied or wasted Company assets by: distributing the benefits of share ownership almost exclusively to the Majority; **denying** employment to family members not of or related to the Majority Group; managing OCN **in bad faith**, to the detriment of the Minority's proportionate interest; discriminating against women in the Minority; **operating OCN in secret**, without the knowledge or input of the board of directors, effectively preventing Minority Directors from involvement in the management of the Corporation's business or affairs, the exercise of its corporate powers, policy making, management, oversight or control; denying Minority Directors and shareholders access to corporate books, records and documents; denying Minority Directors and shareholders access to material financial, operational and transactional information concerning OCN; mismanaging the Corporation including failing to institute sufficient accounting controls; violating provisions of the Corporations Code including, but not limited to §§ 300, 307, 309, 310, 315, 1601 and 1602; violating the Corporation's bylaws; committing self-dealing, embezzlement and other malfeasance; providing secret, interest free, loans, salary increases and other benefits to corporate officers; entering into secret transactions, by which corporate assets were sold or traded for the individual benefit of a corporate officer or director, to the **detriment** of the Corporation and the Minority; **concealing** unauthorized benefits and transactions by manipulating financial statements; retaliating against the Minority for dissent and/or disclosure of irregularities; failing to institute necessary accounting reforms and controls to prevent embezzlement and conversion of corporate assets; mismanaging the Corporation by allowing income and profit to decline while causing debt, overhead and operational losses to increase; mismanaging the Corporation and thus harming the Minority disproportionately by selling corporate assets, including irreplaceable real property assets, to pay increasing debt; eliminating reforms in sales, production, storage, transportation and other areas instituted by the Minority during their brief tenure in control of the Corporation; entering into material real property transactions, corporate borrowing, acquisitions and other business transactions without disclosure to the board of directors; **and preventing members of the Minority - including, specifically, David, a CPA with special expertise in closely held companies of a size and type similar to OCN - from contributing their professional skills and knowledge to the management of the Corporation.**

# Procedural History

- Case filed 8/06 (Valuation Date)
- Discovery and motion practice
- Section 2000 Election 6/07
- Valuation completed in 10/08
- Court confirms appraisers' report and valuation 12/08
- Appeal process over 1/09
- Corporation files Bankruptcy 2/09

# Section 2000

(a) ... in any suit for involuntary dissolution ... the corporation or, if it does not elect to purchase, the holders of 50 percent or more of the voting power of the corporation (the "purchasing parties") may avoid the dissolution of the corporation and the appointment of any receiver by purchasing for cash the shares owned by the plaintiffs or by the shareholders so initiating the proceeding (the "moving parties") at their fair value. **The fair value shall be determined on the basis of the liquidation value as of the valuation date but taking into account the possibility, if any, of sale of the entire business as a going concern in a liquidation. . . .**

# What does Section 2000(a) Really Mean?

“The objective ... is to find a fair value for the shares of the parties seeking dissolution and to award ... **the liquidation value they would have received had their dissolution action been allowed to proceed to a successful conclusion.**” Trahan v. Trahan, 99 Cal. App. 4th 62, 75 (2002). (Emphasis added.)

“... the object of the appraisal proceedings below should essentially have been **to award plaintiffs what they would have received had their involuntary dissolution action been allowed to proceed to a successful conclusion.**” Brown v. Allied Corrugated Box Co., 91 Cal. App. 3d 477, 489 (1979). (Emphasis added.)

Full employment for lawyers, accountants, appraisers and other valuation “experts”?

# Section 2000

(b) If the purchasing parties (1) elect to purchase the shares owned by the moving parties, and (2) are unable to agree with the moving parties upon the fair value of such shares, and (3) give bond with sufficient security to pay the estimated reasonable expenses (including attorneys' fees) of the moving parties . . . , **the court upon application of the purchasing parties, . . . shall stay the winding up and dissolution proceeding** and shall proceed to ascertain and fix the fair value of the shares owned by the moving parties.

# Section 2000

(c) The court shall appoint three disinterested appraisers to appraise the fair value of the shares owned by the moving parties, and shall make an order referring the matter to the appraisers ... . **The order shall prescribe the time and manner of producing evidence, if evidence is required. The award of the appraisers or of a majority of them, when confirmed by the court, shall be final and conclusive upon all parties.** The court shall enter a decree which shall provide in the alternative for winding up and dissolution of the corporation unless payment is made for the shares within the time specified by the decree. ... **Any shareholder aggrieved by the action of the court may appeal therefrom.**

# Section 2000

(d) If the purchasing parties desire to prevent the winding up and dissolution, they shall pay to the moving parties the value of their shares ascertained and decreed within the time specified pursuant to this section, or, in case of an appeal, as fixed on appeal.

(f) For the purposes of this section, the valuation date shall be . . . in the case of a suit for involuntary dissolution under Section 1800, the date upon which that action was commenced, . . . . **However, in either case the court may, upon the hearing of a motion by any party, and for good cause shown, designate some other date as the valuation date.**

# The Major Cases

- *Trahan v. Trahan*, 99 Cal. App. 4th 62 (2002) (dissident shareholders must be paid substantially the same price for their shares that they would have gotten had the corporation in fact been dissolved and its assets liquidated)
- *Mart v. Severson*, 95 Cal. App. 4th 521 (2002) (higher of sale as a going concern value or piecemeal liquidation must be used)
- *Ronald v. 4-C's Electronic Packaging, Inc.*, 168 Cal.App.3d 290, 303 (1985) (Section 2000 election can be made at any time)

# The Major Cases - continued

- *Abrams v. Abrams-Rubaloff & Associates, Inc.*, 114 Cal. App. 3d 240 (1980) (tax effects not to be considered; no interest payable on fair value)
- *Brown v. Allied Corrugated Box Company, Inc.*, 91 Cal. App. 3d 477 (1979) (no discount for lack of control)

# Most Recent Cases

- *Veyna v. Orange County Nursery*, 170 Cal.App.4<sup>th</sup> 476 (2009), *review denied* 2009 Cal. LEXIS 785 (2009) (must seek stay from trial court before seeking stay from Court of Appeal and to get the stay from the trial court you must deposit the price or bond it)
- *Cotton v. Expo Power Systems*, 170 Cal.App.4<sup>th</sup> 1371 (2009) (value of shareholder derivative claims must be taken into account in appraisal)

# Problem Areas - Practical

- Timing of election; valuation date
- Selecting appraisers
- Managing appraisal process
- Use of sub-appraisers
- Meetings and production of information
- Challenging process while ongoing

# Problem Areas - Legal

- Is there a time limit on election?
- Can the tax effects of liquidation be considered?
- (“Rubaloff next argues that the appraisers and the trial court erred in not deducting taxes in determining the fair value of Abrams' shares. However, if Rubaloff elects to purchase Abrams' stock only Abrams will suffer tax consequences as a result. We therefore disagree with Rubaloff's claim that the alleged taxes on the corporation's assets in the event of an actual liquidation should reduce the fair value of Abrams' shares in the section 2000 proceeding”. *Abrams v. Abrams-Rubaloff & Associates, Inc.*, at 250 )
- Is interest payable on the value determined?
- How do you treat theoretical costs of sale of assets?

# The Appeal Process

- Any aggrieved shareholder can appeal. What if the corporation is the purchasing party?
- Sought stay to contest value determination.
- Court in *Veyna* held that (a) you first have to seek stay from trial court and (b) to get that stay, you must pay/post the amount awarded.