



KLEIN LIEBMAN & GRESEN, LLC

BUSINESS VALUATION · FORENSIC ACCOUNTING · LITIGATION SUPPORT · CONSULTING

SEPTEMBER NEWSLETTER

CORPORATE CASE OF INTEREST

CONGEL v. MALFITANO (App Div. 2nd Dep't)

The parties were partners in the Poughkeepsie Galleria Company Partnership, whose purpose was to own and operate the Poughkeepsie Galleria Shopping Center. The defendant was a general partner who owned a 3.08% interest in the partnership. On November 24, 2006, the defendant-partner sent notice to his fellow partners that he had unilaterally elected to dissolve the partnership after a "fundamental breakdown in the relationship" between the partners.

At issue is whether a minority discount was applicable to the "value" to be paid out to the defendant-partner who wrongfully caused the dissolution of the partnership pursuant to Partnership Law §69(2)(C)(II). Here, the Court holds that a minority discount is applicable.

At trial, the plaintiff's expert testified that a 66% minority discount should be applicable to reflect the lack of control that a minority owner has in the operations of the partnership, the comparable sales prices of similar interests, and the effect of certain provisions of the partnership agreement restricting the rights of minority owners. Here, the case does not involve the determination of "fair value" of a dissenting shareholders shares pursuant to Business Corporation Law §623 and §1118, but rather, involves the determination of the "value" of the shares of a partner who wrongfully caused the dissolution of the partnership pursuant to Partnership Law §69(2)(C)(II). The court reasoned that the partnership remains a going concern, and the defendant has no right to compel a liquidation sale of the partnership's shopping mall and receive and proportionate share of the liquidation value of that asset. Furthermore, a minority discount is applicable to account for the defendant's lack of control in the partnership as a going concern.

[LINK TO DECISION](#)

MATRIMONIAL CASES OF INTEREST

TAYLOR v. TAYLOR (App Div. 2nd Dep't)

The Supreme Court's judgment was appealed by plaintiff after only awarding the plaintiff 5% of the value of the defendant's enhanced earnings capacity. Here, the Appellate Court affirmed the decision of the Supreme Court because "the plaintiff's contributions to the defendant's acquisition of her degree and advanced

certification were minimal."

[LINK TO DECISION](#)

SCARAMUCCI v. SCARAMUCCI (App Div. 2nd Dep't)

Plaintiff appeals pursuant to a Supreme Court's judgment determining that defendant had an enhanced earnings capacity of \$75,000 and limiting the plaintiff's share of defendant's enhanced earnings to 15% of those earnings. Upon review, the Appellate Court found that the Supreme Court providently exercised its discretion.

[LINK TO DECISION](#)

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