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AND A WONDERFUL NEW YEAR!**

MATRIMONIAL CASE OF INTEREST

KIMBERLY C. V. CHRISTOPHER C. (App Div., 3rd Dep't)

The plaintiff-wife has an interest in a landscape architecture firm subject to valuation and equitable distribution. The defendant-husband's expert determined the wife had a 23% ownership interest in the firm in 2011 and a 36% ownership interest in 2012, 2013 and 2014. The ownership percentages as determined by the husband's expert were based upon the firm's tax returns, specifically on Schedule K-1 under "Profit, Loss and Capital".

The wife's expert testified that the entry on these figures onto the firm's tax returns were erroneous and that ownership interest percentages displayed on the tax return represented the wife's income as compared to the income of the firm's other owner's, not the wife's ownership percentage. The firm's accountant confirmed the opinion of the wife's expert. He further testified that he had mistakenly used these figures and that he had no additional information showing the wife had more than the 10% ownership interest stated in the partnership agreement.

The wife's expert and the firm's accountant's testimonies support the Supreme Courts determination that the wife owned a 10% interest in the firm.

[LINK TO DECISION](#)

CORPORATE CASES OF INTEREST

JACOBS v. CARTALEMI (App Div., 2nd Dep't)

In June 1995, William Jacobs and Charles Cartalemi entered into an operating agreement and formed Westchester Industrial Complex, LLC ("WIC"). On July 20, 2015, Jacobs commenced an action asserting that he was entitled to withdraw as a member of WIC and was entitled to be paid the fair value of his membership interest.

Based on the operating agreement, Jacob's withdrawal as a member of WIC was effective as of December 1, 2015. WIC's operating agreement includes an article

setting forth the procedures to be followed when a member "desires to sell his, her or its Membership Interest." In cases where a selling member has received a prior offer from a bona-fide purchaser, the selling member must offer the membership interest first to the other WIC members. In cases where there is no offer, the selling member must make an offer to the other WIC members who may accept or counter offer. In the event of a rejection of the offer, the selling member may offer the membership interest to any other party.

Jacobs did not engage in this procedure. However, it is Jacobs's contention that these provisions govern a "sale" of a membership interest and not a member's withdrawal from WIC. The court found this point unavailing as the operating agreement establishes procedures for when a member wishes to relinquish his, her or its membership interest but has not received an offer of sale. Based on that premise, the Supreme Court properly determined Jacobs was not entitled to a judgment of the fair value of his membership interest in WIC. However, the Supreme Court should have declared that Jacobs has withdrawn as a member of WIC as of December 1, 2015 and should follow the procedures set forth in the operating agreement to receive the value of his membership interest.

[LINK TO DECISION](#)

BURNTISLAND II, LLC V. FALKLAND, LLC (Supreme Court, New York County)

Burntisland II, LLC ("Burntisland II") is the surviving entity of a merger with Burntisland I, LLC ("Burntisland I") on June 30, 2016. Falkland, LLC ("Falkland") has a 4.5% interest in Burntisland I for which the value is to be determined.

Burntisland II argues that Falkland's 4.5% interest as of June 30, 2016 was \$330,000. This amount is based on the appraisal report of Cushman & Wakefield ("C&W") dated September 26, 2016. C&W utilized the Income Capitalization Approach based upon gross rent of \$901,000, operating expenses of \$37,030, capitalization rate of 5% and discount for lack of marketability ("DLOM") of 20% in its valuation of Falkland's 4.5% interest.

Falkland provided the court with two valuation appraisals. The first appraisal was prepared by CBRE-Valuation & Advisory Services ("CBRE"). CBRE valued Falkland's 4.5% interest at \$538,626 by using gross rent of \$901,000, operating expenses of \$44,577, capitalization rate of 4.25% and applied no DLOM. The second appraisal provided by Falkland was prepared by Metropolitan Valuation Services ("MVS") and valued Falkland's 4.5% interest at \$579,126. MVS utilized gross rental income of \$955,060, operating expenses of \$5,000, capitalization rate of 4.5% and no DLOM. Further, Falkland retained expert Kevin Vannucci who opined that a reasonable DLOM range would be 0% to 6.9%.

Based on the evidence submitted and expert testimony, the court determined the value of Falkland's 4.5% interest to be \$422,483. The court determined gross rental income of \$901,000 and operating expenses of \$25,000. The court also utilized a

capitalization rate determined by averaging the three capitalization rates provided in the expert reports. Finally, the court determined a DLOM of 16% was proper for Falkland's ownership interest.

[LINK TO DECISION](#)

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