

DIVORCE BUSINESS STYLE:

LITIGATION AMONGST CORPORATE
SHAREHOLDERS OR LLC MEMBERS

BY

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COMMON SOURCES OF GOVERNANCE RULES

- Articles and By-laws
- Minn. Ch. 302A/322B
- Common Law
- Company Policy or Practice
- Shareholder Voting or Control Agreements
- Employment Agreements
- Buy Sell Agreements

BUY-SELL AGREEMENT

- Can be found in bylaws, shareholder control agreement, or elsewhere
- Provides for events that give rise to right or obligation to purchase or sell
- Provides mechanism for determining price
- Provides payment terms

FREEZE-OUT

- Terminating minority shareholder's employment
- Terminating minority shareholders board or management participation
- Terminating minority shareholder's access to information
- Terminating minority shareholder's return on investment
- Other means as varied as the imagination

SOURCES OF COURT AUTHORITY

- Broad equitable authority
 - 302A.467
 - 302A.751
 - Common Law

Buyout Under 302A.751

- Deadlock
- Fraud or illegality
- Unfairly prejudicial conduct – reasonable expectations
- Corporate assets being misapplied or wasted – but see Wessin

DIRECT V. DERIVATIVE

Derivative claims are those claims which belong directly to the corporation, but which can be asserted indirectly, by a shareholder, on behalf of the corporation under certain circumstances.

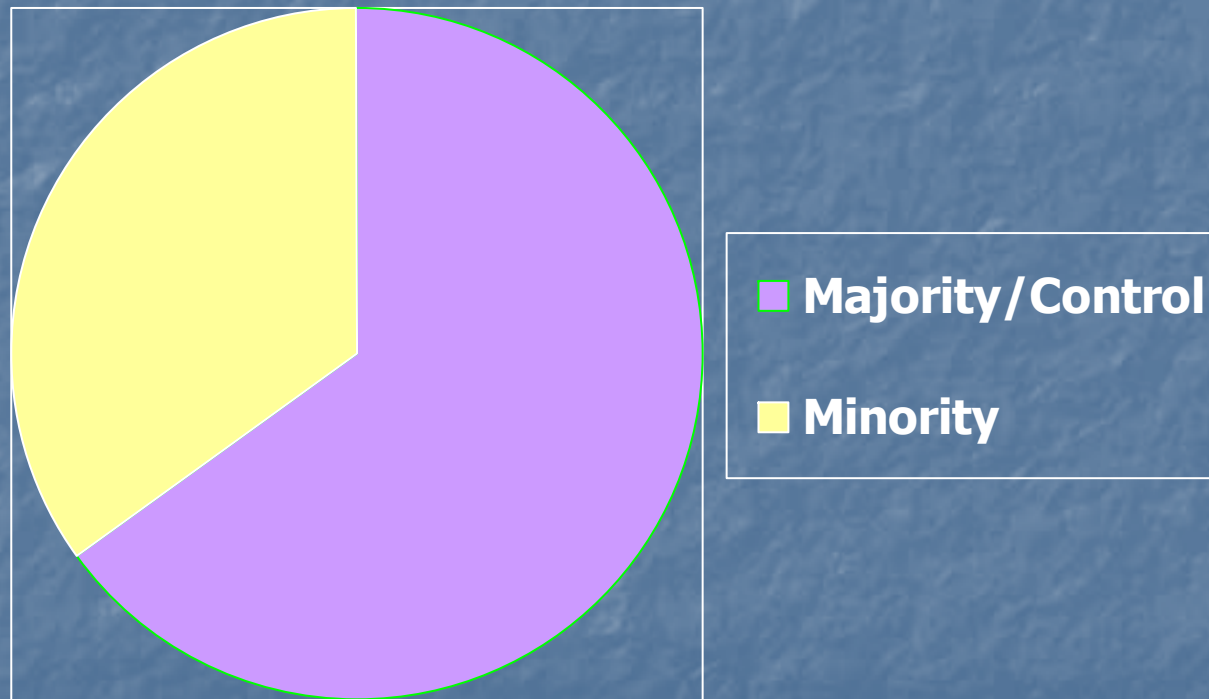
ASSESSING SHAREHOLDER EXPECTATIONS

- Written agreements not dispositive
- Controlling shareholder have a substantive obligation of fairness
- Obligation of complete candor in negotiations
 - But see Berreman v. West Pub.
- “Associative bargaining”

REASONABLENESS OF EMPLOYMENT EXPECTATION

- Employment part of investment?
- Known and accepted by other shareholders?
- Shareholder misconduct or incompetence?
- Agreement specifically providing for termination?
- Any capital investment? Or part of compensation package?

FAIR VALUE v. FAIR MARKET VALUE



DISCOUNTS

- Minority Discount
 - Not allowed. MT Properties v. CMC Real Estate Corp.
- Marketability Discount
 - Allowed to prevent an unfair wealth transfer

VALUATION DATE

- “as of the date of the commencement of the action or as of another date found equitable by the court.”

Valuation Formula

- “if the shares in question are then subject to sale and purchase pursuant to the bylaws of the corporation . . . unless the court determines that the price or terms are unreasonable under all the circumstances of the case.”

Best Means of Avoiding Shareholder Disputes

- Clear agreements.
- Exit strategy understood and accepted by all.
- Clearly articulated expectations for sharing the benefits of ownership.
- Avoid secrecy of compensation.

BEWARE OF CONFLICT

- Evans v. Blesi
- Miller Waste Mills v. Mackay