



Business Divorce Litigation

Dallas Appellate Court Affirms Minority Shareholder Oppression Claim, But Reverses Buyout Award Based on Improper Valuation Instruction

Minority shareholders in private Texas companies have a significant new case on which to rely in bringing oppression claims against majority shareholders. In late March, the Dallas Court of Appeals held that a cause of action exists for minority shareholder oppression and affirmed the court-ordered buyout of a minority shareholder's stock interest by the controlling majority shareholders. See *Ritchie v. Rupe*, No. 05-08-00615-CV (Tex. App.—Dallas Mar. 28, 2011)(the "*Rupe*"), link to case at http://www.5thcoa.courts.state.tx.us/cgi-bin/as_web.exe?c05_11.ask+D+4938914.

The *Rupe* decision does not represent a sea change in Texas law and, in fact, all other Texas appellate courts that have considered the claim have similarly held that a cause of action exists for minority shareholder oppression. The decision by the Dallas Court of Appeals in *Rupe* is nevertheless important because it is the first time this appellate court, which is generally viewed as conservative on business issues, has held that a claim exists for minority shareholder oppression. In upholding this oppression cause of action, the Dallas appellate court noted that each case must be limited to its facts.

As the Texas supreme court stated in *Patton*, "[w]isdom would seem to counsel tailoring the

remedy to fit the particular case" of shareholder oppression. *Patton*, 279 S.W.2d at 857. We agree and conclude that Texas law authorizes the trial court, in an appropriate case, to order a buyout of an oppressed minority shareholder as an equitable remedy for shareholder oppression. We reject Appellants' argument to the contrary.

Although the *Rupe* decision upheld the trial court's finding that the minority shareholder had been oppressed by the actions of the majority shareholders, the Court of Appeals overturned the amount of the mandatory buyout award of \$7.3 million – as determined by the jury – for the minority shareholder's stock interest. Specifically, the appellate court remanded the case to require the jury on retrial to apply discounts for lack of control and lack of marketability in valuing the minority shareholder's stock interest in the company.

Whether the majority shareholders oppressed the minority owner is a question of law for the trial court. Further, once the trial court concludes that the majority has engaged in oppressive conduct, according to the appellate court in *Rupe*, the trial court has considerable discretion to apply an appropriate equitable remedy.



The equitable relief the trial court decides to award to the minority shareholder may then be overturned on appeal only for an abuse of discretion.

We conclude that a buyout is an available remedy for shareholder oppression under Texas law and that, under the circumstances, appellants' conduct in refusing to meet—or allow RIC management to meet—with prospective purchasers constituted oppressive conduct as to Ann. We also conclude that the trial court did not abuse its discretion in ordering appellants to cause RIC to buy the Stock as an equitable remedy for this oppressive conduct. To this extent, we overrule appellants' first issue. As a result, we need not consider whether the trial court erred in concluding that appellants' other conduct—standing alone or in conjunction with their conduct as a whole—was oppressive. See Tex. R. App. P. 47.1. See *id.*

The appellate court also favorably cited commentary by Professor Doug Moll, who has written extensively regarding minority shareholder oppression claims. Prof. Moll has expressed the view that trial courts should adopt a flexible approach in construing minority shareholder oppression claims and fashioning remedies for oppressed minority shareholders. See *"Majority Rule Isn't What It Used To Be: Shareholder Oppression In Texas Close Corporations"* (63 Tex.B.J. 434).

The appellate court's reversal of the trial court's mandatory buyout award to the minority shareholder in *Rupe* makes clear that expert valuation opinions will remain a critical component in shareholder oppression cases. In *Rupe*, the appellate court rejected the trial court's instruction to the jury that it should not apply discounts in valuing the minority shareholder's stock interest. Instead, the appellate court concluded that discounts based on lack of marketability and lack of control must be considered by the jury in valuing the minority stock interest when the minority stockholder complains the majority shareholders blocked the sales of its minority stock interest to a third party by the majority shareholders.



For more information regarding Business Divorce claims, litigation or partnership disputes (including claims for minority shareholder oppression), please contact Ladd Hirsch at (214) 389-5323 or by e-mail at LHirsch@diamondmccarthy.com. Ladd represents both majority and minority owners and investors in private Texas companies that have claims, disputes or litigation arising out of their ownership interests.