

MAY 2014 NEWSLETTER

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THE RIGHTS OF A MINORITY SHAREHOLDER AGAINST OPPRESSION

FIRM ANNOUNCEMENTS:

A. Pozzuolo Rodden, P.C. are pleased to announce that Kelly Barse, Esquire has joined the Firm as an associate. Ms. Barse has a Masters of Law (LL.M) in taxation, and an Estate Planning Certificate from Temple University Beasley School of Law and received her Juris Doctorate from Rutgers School of Law. Ms. Barse will be concentrating in the estate planning and estate administration areas at the firm.

B. Pozzuolo Rodden, P.C. are pleased to announce that Bernard D. Beitch, Esquire has joined our firm in an “Of Counsel” position. Bernie is a dual graduate of the University of Pennsylvania and the University of Pennsylvania Law School. For the past 53 years Bernie has specialized in: (i) representing privately held businesses and professionals; (ii) estate planning, estate administration and estate litigation for high net worth individuals; and, (iii) has heard over 1,000 AAA federal and state court arbitrations and mediations. Bernie is a Member of the Bars of States of Pennsylvania, New Jersey and Florida.

SEMINARS:

A. Joseph R. Pozzuolo, Esquire and Jeffrey S. Pozzuolo, Esquire will be presenting a CPE/CLE at *Penn State Doylestown Campus* on **Thursday May 22, 2014** from **12:30pm-4:30pm**. The Topic will be “*Retirement Planning for Middle Income Families*”.

B. Judith P. Rodden, Esquire and Lesley M. Ibanez, Esquire will be presenting a CPE/CLE at *Penn State Doylestown Campus* on **Thursday June 19, 2014** from **12:30pm-4:30pm**.

The Topic will be “*Commercial and Residential Real Estate Practice Today: From Agreement of Sale to Closing, with Ethics*”.

Please contact Theresa M. Bloom, Education Program Manager to sign up.

Call 215-881-7402 or email: tmb17@psu.edu

C. Joseph R. Pozzuolo, Esquire will be a speaker at a CPE seminar sponsored by the Montgomery County Society of CPA’s on Wednesday May 14, 2014 @ 9:00 AM at the Cedarbrook Country Club, 180 Penllyn Blue Bell Pike, Blue Bell, PA 19422. Contact Diane McLeer at DMcLeer@Janney.com

QUESTION OF THE MONTH:

CAN MY HUSBAND BE SENT TO PRISON IF HE DOES NOT PAY HIS FORMER WIFE CHILD SUPPORT PAYMENTS?

Answer-See Page 5 of this Newsletter

The Rights of a Minority Shareholder Against Oppression

Minority shareholders are by definition outnumbered by majority shareholders and, as such, they are targets for shareholder oppression by the majority. However, there are various

equitable remedies available to minority shareholders who are subjected to such oppression.

I. What is Shareholder Oppression?

Typically, shareholder oppression occurs in closely held corporations, or other small businesses, because there is a lack of a public market to sell minority shares. Oppression occurs when the majority shareholders exert their majority power or authority to take actions that unfairly prejudice minority shareholders and jeopardize their interest in the business.

One of the most common types of shareholder oppression is a “squeeze-out” of a minority shareholder. This occurs when the majority shareholders force an involuntary compulsory acquisition of the minority shareholder’s interest in the business by forcing the minority shareholder to accept a cash payout for his or her shares. This may arise when majority shareholders take actions to freeze out the minority shareholder in an attempt to force them to sell his or her shares. Often times this will happen by the majority shareholders refusing to issue dividends, or even physically barring the minority shareholder from entering the business’ premise or reviewing the corporate books and records. By blocking the minority shareholder’s access, the majority is able to limit the minority’s knowledge and information relating to the operation of the business, which could cause significant harm to his interest in the business.

Shareholder oppression can take many forms, but always results in harm or prejudice to the minority shareholders by the majority shareholders.

II. Remedies to Shareholder Oppression

Each state has separate corporate laws which govern that state’s responses and remedies to shareholder oppression. Accordingly, a minority shareholder must look to the law of the state where the business was formed or incorporated to determine what relief is available to him or her in the case of shareholder oppression.

A. Pennsylvania Remedies to Shareholder Oppression

Pennsylvania has various statutes and safeguards in place to offer protections to minority shareholders.

1. Inspection

15 Pa.C.S. § 1508, offers one such protection by granting a right of inspection to shareholders. The statute requires every business corporation to keep complete and accurate books and records of its accounts, minutes of proceedings, and a register of the shareholders and directors. Every shareholder of the business corporation has the right to examine the corporate books and records during business hours for any proper purpose, upon his or her written demand. A “proper purpose” under Pennsylvania law is any purpose which is reasonably related to the interest of the shareholder. Additionally, if the corporation refuses a minority shareholder this right of inspection or does not allow inspection within five (5) days of the written demand, the statute allows for the shareholder to apply to the Pennsylvania Courts for an order compelling inspection.

2. Dissenters’ Rights and Other Remedies in a Squeeze-Out

Pennsylvania corporate, 15 Pa.C.S. § 1571, *et seq.*, law allows for dissenter's rights or appraisal rights for shareholders who object to a merger. This can provide relief for minority shareholder during a squeeze-out situation. Under the Dissenters' Rights law, 15 Pa.C.S. § 1571, a shareholder "shall have the right to dissent from, and to obtain payment of the fair value of his shares in the event of any corporate action" covered under the law. This allows a minority shareholder to dissent to proposed mergers of a corporation and give notice of their intent to demand payment of the fair value of their shares if the proposed merger is approved.

If the proposed merger is approved by the majority over the dissent of the minority, then the dissenting minority can demand payment of the fair value of his shares. The corporation may then give notice of the fair value of the shares, and the minority shareholder has an opportunity to provide his or her own estimate of the fair values of his or her shares to the corporation. If the amount cannot be agreed upon and the demand of payment is unsettled then, pursuant to 15 Pa.C.S. § 1579, the business corporation may initiate valuation proceedings to have the Court determine the fair value of the shares in question.

In addition, in Mitchell Partners, L.P. v. Irex Corp. et al., 617 Pa. 423 (Pa. 2012) the Supreme Court of Pennsylvania interpreted Pennsylvania's Dissenters' Law and determined what remedies are available to a minority shareholder in a squeeze-out situation. The Court found that appraisal was the exclusive remedy in merger situations, unless fraud or fundamental unfairness is present. In instances of fraud or fundamental unfairness, a minority shareholder may seek remedies under other equitable and legal claims such as breach of fiduciary duty and unjust enrichment and he or she is not limited to appraisal as his or her exclusive remedy. However, the Court in Mitchell Partners, L.P., expressly stated that appraisal is the usual remedy and other remedies would only be considered in exceptional circumstance with fraud or fundamental unfairness to the minority shareholder.

3. Dissolution

In other instances of shareholder oppression, the minority shareholder can apply for an involuntary dissolution of the corporation pursuant to 15 Pa.C.S. § 1981. This statute allows a shareholder to apply to the Court to dissolve and wind up the corporation when "the acts of the directors, or those in control of the corporation, are illegal, oppressive or fraudulent and that it is beneficial to the interest of the shareholders that the corporation be wound up and dissolved." This provides a catch-all remedy for minority shareholders to any actions of the majority shareholders which are found to be illegal, oppressive and/or fraudulent.

B. New Jersey Remedies to Shareholder Oppression

Similar to Pennsylvania, New Jersey statutes also provide protections for minority shareholder subjected to oppressive tactics by majority shareholders.

Pursuant to N.J.S.A. § 14A:12-7, if a corporation has twenty-five (25) or less shareholders, a shareholder may bring an action if the "directors or those in control of the corporation have acted fraudulently or illegally, mismanaged the corporation, or abused their authority as officers or directors or have acted oppressively or unfairly toward one or more minority shareholders in their capacity as shareholders, directors, officers or employees." This allows minority shareholders to have a remedy even if they are prejudiced or harm in their

capacity as an employee and not just as a shareholder with a business interest. Often times with closely-held corporations,

shareholders are employees and majority shareholders will terminate the minority shareholder's employment in an attempt to oppress the minority shareholder's interest and freeze them out from the corporation.

Furthermore, the statute provides a minority shareholder with multiple remedies to choose from including, seeking a order to: (1) to dissolve the corporation, (2) appoint a provisional director, (3) appoint a custodian, or (4) order a sale of the corporation's stock. If either a provisional director or custodian is appointed that person must be a disinterested party who is not a shareholder, creditor or affiliate of the corporation, who will report on the status of the situation to the Court and will participate in making decisions relating to the business of the corporation.

If the Court orders the sale of the corporation's shares, the purchase price will be the fair value of the shares on the date of the action was commenced, or any other date the Court deems equitable. If the parties cannot agree on the fair value of the shares then the Court may determine the fair purchase price of the shares. If the minority shareholder is seeking dissolution of the corporation, the Court will consider whether the corporation is operating profitably and in the shareholder's best interest and any other relevant factors.

Furthermore, N.J.S.A. § 14A:12-7 provides for attorney's fees and cost to the injured party if a determination is made that the other party acted "arbitrarily, vexatious, or otherwise not in good faith."

In addition to closely-held corporation, New Jersey statutes also provide remedies for members of Limited Liability Companies and Partnerships who are the victim of oppressive behavior by majority members.

III. Conclusion

If you are a minority shareholder or member and think you are the victim of oppression which is jeopardizing your business interest, please contact this office to further discuss what remedies are available with one of our experienced attorneys.

QUESTION OF THE MONTH:

CAN MY HUSBAND BE SENT TO PRISON IF HE DOES NOT PAY HIS FORMER WIFE CHILD SUPPORT PAYMENTS?

In Pennsylvania, a parent may to be sentenced to incarceration by the Court for not paying child support. Child support is determined based on statutory guidelines and put in place by an Order of the Court. If a party violates the Court's Order for child support and fails to pay child support, than that party can be held in Contempt of Court. However, a party cannot be incarcerated unless there is evidentiary hearing before a judge prior to the incarceration and the Court makes a finding on the record as to whether the party has the ability to pay the support

order.

If the party is found to be in Contempt of the child support Order, the judge can commit the party to jail and specify the conditions for his release, typically these conditions are a minimum amount of support being paid and/or the passage of a set number of time. For example, if a parent was found in Contempt of Court, the Court could send that party to jail and order that he remains incarcerated until they have paid thirty (30%) percent of the outstanding child support or until sixty (60) days have passed.

In addition to incarceration, Orders for child support may also be enforced against the party responsible for payment by income withholding, liens against real property, attaching and seizing assets, and suspension of their occupational, commercial/driver's and recreational licenses.

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- If there are any legal questions you would like this office to answer in the future, please email the question to us at info@pozzuolo.com. Each month, the question with the most relevance to our privately held business clients, advisors, and friends will be answered in our monthly newsletter. The questions can relate to any of the areas practiced by this office including business planning and transactions, corporate law, commercial litigation, employment law and litigation, commercial real estate and development, construction law and litigation, estate planning, estate administration, tax and pension law, family law litigation.
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PUBLICATIONS

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: [http://pozzuolo.com/Pubs Articles.shtml](http://pozzuolo.com/Pubs%20Articles.shtml)

- **Corporate/Tax Articles**
- Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business
- Deferred Compensation Rewards And Retains Key Employees
- Design Buy-Sell Agreements For Maximum Utility
- How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend
- How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations
- How To Look, Act And Sound Like A Professional Corporation
- How to Structure a Suitable Buy-Sell Agreement
- How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool
- Money Purchase Pension Plan Falls Out Of Favor
- Protecting A Client's Business From Unfair Competition Using Restrictive Covenants
- Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules

- What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs
- Why An Employment Contract Is Mandatory
- **Estate Planning Articles**
- Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples
- College Funding Tool Offers Estate Planning Advantage
- Diversify Strategies For An Effective Estate Plan
- Divorce and Estate Planning
- Divorce Raises The Need For Performing An Estate Planning Review
- Drafting The Durable Power Of Attorney For Wealth Protection Purposes
- Estate Planning For Pet Owners
- Remarriage Situations Can Raise Special Estate Planning Considerations
- Six Proven Estate Planning Techniques
- Special Needs Trust - An Estate Planning Tool For The Disabled
- The Limited Liability Company -A Sophisticated Tool For Estate Planning
- Using Trusts To Maximize Family Protection And Minimize Estate Tax
- Why Living Wills- Advance Directives Are An Essential Part Of Estate Planning

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.

This newsletter is courtesy of Pozzuolo Rodden, P.C.

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