SUPREME COURT OF SOUTH DAKOTA

In the Matter of the Dissolution of Midnight Star Enterprises, L.P.

724 N.W.2d 334 (S.D. 2006) · No. No. 24091 · Decided November 8, 2006

SUMMARY

The Supreme Court of South Dakota held that a partnership agreement did not require a mandatory open-market sale upon dissolution. The court ruled that fair market value must be determined using a hypothetical transaction standard rather than an actual offer, and that a forced sale was improper where the majority partners wished to continue the business. The court reversed and remanded for revaluation and further proceedings.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Sabers, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Zinter, Justice; Meierhenry, Justice
JURISDICTION	South Dakota
DECIDED	November 8, 2006
DOCKET	No. 24091
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The general partner petitioned for dissolution and appealed the circuit court's valuation of the partnership and order requiring the majority owners to purchase the business or face an open-market sale.
STANDARD OF REVIEW	Interpretation of the partnership agreement and the decision to force a sale are reviewed de novo. The circuit court's valuation of property is reviewed for clear error. Whether the circuit court used the correct method for determining fair market value is reviewed de novo.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of South Dakota.
PARTIES	Midnight Star Enterprises, Ltd., in its capacity as General Partner v. Canevas

TOPICS

partnership law · contract interpretation · dissolution · commercial litigation · remedies

PRACTICE AREAS

partnership law · contract interpretation · commercial litigation · valuation · remedies · gambling

QUESTIONS PRESENTED

1. Whether Article 10.4 of the partnership agreement required the partnership to be sold on the open market upon dissolution.
2. Whether the circuit court erred by determining fair market value from an actual offer rather than applying a hypothetical transaction standard.
3. Whether the circuit court abused its discretion by ordering the majority owners to purchase the entire business or have it sold on the open market.

HOLDINGS

1. Article 10.4 did not mandate an open-market sale upon dissolution. It required a sale only if the general partner elected to distribute partnership property in kind; the agreement permitted liquidation through either a sale or a transfer under Article 10.3.1.
2. When the partnership agreement requires determination of fair market value, the court must apply a hypothetical transaction standard rather than treating a single actual offer as conclusive fair market value.
3. The circuit court erred by ordering the majority owners to purchase the entire partnership for $6.2 million or suffer a forced sale. On remand, the majority owners could instead be required to pay the Canevas the value of their 6.5 partnership units after revaluation; a forced sale would be appropriate only if the majority owners refused to pay an amount owed.

KEY QUOTATIONS

> *"Fair market value is defined as, the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of the relevant facts."* (724 N.W.2d at 338)

> *"Importantly, courts have noted that the fair market analysis does not contemplate actual buyers."* (724 N.W.2d at 338)

> *"This standard provides the basis by removing the irrationalities, strategies, and emotions from the analysis."* (724 N.W.2d at 339)

> *"Instead of ordering the majority partners to purchase the whole partnership for the appraised value, the majority partners should only be required to pay any interests the withdrawing partner is due."* (724 N.W.2d at 340)

FACTUAL BACKGROUND

Midnight Star Enterprises, L.P., operated a gaming, liquor, and restaurant business in Deadwood, South Dakota. Midnight Star Enterprises, Ltd. was the general partner with 22 units; Kevin Costner owned 71.5 units, and

Francis and Carla Caneva each owned 3.25 units. After management relations deteriorated and the Canevas declined an amicable disassociation, the general partner invoked the partnership agreement's dissolution provisions. The circuit court accepted a $6.2 million actual offer as the partnership's fair market value and ordered a forced purchase or open-market sale.

PROCEDURAL HISTORY

Midnight Star Enterprises, Ltd., the general partner, initiated dissolution proceedings after the Canevas declined to participate in an amicable disassociation. Following an evidentiary hearing, the circuit court valued the partnership at $6.2 million based on an actual offer and ordered the majority owners to buy the business within ten days or have it sold on the open market. The South Dakota Supreme Court reversed and remanded.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The circuit court must redetermine Midnight Star's fair market value using the hypothetical transaction standard. The majority owners should be required to pay the Canevas the value of their 6.5 partnership units, if any value exists after revaluation. A forced sale may be ordered only if the majority owners refuse to pay an amount owed.

CASES CITED

- Liechty v. Liechty, 231 N.W.2d 729, 731 (N.D. 1975)
- Priebe v. Priebe, 1996 SD 136, 556 N.W.2d 78
- Pauley v. Simonson, 2006 SD 73, 720 N.W.2d 665
- Nelson v. Schellpfeffer, 2003 SD 7, 656 N.W.2d 740
- Jones v. Siouxland Surgery, 2006 SD 97, 724 N.W.2d 340
- Heck v. Commissioner, 83 T.C.M. (CCH) 1181, 2002 WL 180879 (2002)
- Estate of Newhouse v. Commissioner, 94 T.C. 193, 218 (1990)
- Estate of Jameson v. Commissioner, 267 F.3d 366, 371-72 (5th Cir. 2001)
- Maras v. Stilinovich, 268 N.W.2d 541, 544 (Minn. 1978)
- Wathen v. Brown, 200 Pa. Super. 620, 189 A.2d 900, 903 (1963)
- Horne v. Aune, 130 Wash. App. 183, 121 P.3d 1227, 1234 (2005)
- Eli v. Eli, 1997 SD 1, 557 N.W.2d 405
- Delfino v. Vealencis, 181 Conn. 533, 436 A.2d 27, 30 (1980)
- Disotell v. Stiltner, 100 P.3d 890 (Alaska 2004)
- Creel v. Lilly, 354 Md. 77, 729 A.2d 385 (1999)
- Nicholes v. Hunt, 273 Or. 255, 541 P.2d 820 (1975)
- Fortugno v. Hudson Manure Co., 51 N.J. Super. 482, 144 A.2d 207, 219 (1958)
- Goergen v. Nebrich, 12 Misc. 2d 1011, 174 N.Y.S.2d 366, 370 (N.Y. Sup. Ct. 1958)