

IN THE CHANCERY COURT FOR THE 21ST JUDICIAL DISTRICT
AT WILLIAMSON COUNTY, TENNESSEE

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FILED FOR ENTRY 9-4-19

THOMAS A BUCKLEY, Individually,)
and derivatively on behalf of TLC OF)
FRANKLIN, INC.,)
Plaintiff,)

V.)

No. 46310 W

GROVER C. CARLOCK, JR., and)
CARLOCK MANAGEMENT)
COMPANY, INC.)
Defendants.)

FINAL ORDER ON REDEMPTION

This dispute between shareholders of a closely-held corporation came before the Court on Wednesday, August 21, 2019, for a hearing to determine the fair value for purposes of involuntary redemption of Plaintiff, Thomas Buckley’s (“Mr. Buckley”), 20% ownership interest in TLC of Franklin, Inc. (“TLC”).¹ After carefully considering the evidence and applying the appropriate legal standard, the Court decides the question of fair value as set out in this Order.

PROCEDURAL HISTORY

The relevant procedural history is set out in the Court’s Memorandum and Order entered July 9, 2018, and is expressly incorporated herein by reference.

DISCUSSION

In its earlier Memorandum and Order, the Court determined the holding of the Tennessee Supreme Court in *Athlon Sports Communications, Inc. v. Duggan*, 549 S.W.3d 107 (Tenn. 2018)

¹ In a Memorandum and Order entered July 9, 2018, the Court determined TLC’s majority shareholder, Defendant, Grover C. Carlock, Jr. (“Mr. Carlock”) had breached his fiduciary duty as majority shareholder, and oppressed Mr. Buckley in his capacity as minority shareholder. The Court determined the appointment of a receiver and dissolution of the corporation is too drastic a remedy, and concluded the redemption of Mr. Buckley’s shares at fair value was the appropriate remedy.



applied to cases such as the present case brought pursuant to Tennessee Code Annotated section 48-24-302.² In *Athlon*, the Supreme Court held:

[W]e overrule *Blasingame* to the extent that it implies that trial courts are allowed to use *only* the Delaware Block method of valuation. We adopt the more open *Weinberger* approach, which allows “proof of value by any techniques or methods which are generally considered acceptable in the financial community and otherwise admissible in court.” *Weinberger*, 457 A.2d at 712-13. As in *Weinberger*, “[o]nly the speculative elements of value that may arise from the ‘accomplishment or expectation’ of the merger are excluded.” *Id.* at 713. This exception is “designed to eliminate use of *pro forma* data and projections of a speculative variety relating to the completion of a merger. But elements of future value, including the nature of the enterprise, which are known or susceptible of proof as of the date of the merger and not the product of speculation, may be considered.” *Id.* The Delaware Block method of valuation remains available where appropriate, but trial courts may now choose to use another valuation method to determine the fair value of a dissenting shareholder’s shares of stock.

549 S.W.3d at 126.

“Fair value does not mean fair market value. Fair value only requires that the dissenter be fairly compensated. No particular valuation method is required.” Mark S. Rhodes, *Transfer of Stock* § 4:9 (7th ed. 2019).

The parties have each presented testimony of qualified expert witnesses. Both experts have relied upon the same actual financial performance of TLC; they do not disagree about the reliability of TLC’s financial statements and tax return information. Both experts agree the valuation date is as of January 31, 2017, and each agrees on the definition of “fair value.”

The experts differ with each other in certain material respects. For example: Mr. Buckley’s expert, Adam Lawyer (“Mr. Lawyer”), has employed a so-called “market approach” for determining value. The “market approach” first computes an estimate of “normalized pre-tax

² The Court’s conclusion is consistent with post-*Athlon* commentary by legal scholars. *See, e.g.* F. Hodge O’Neal and Robert B. Thompson, *O’Neal and Thompson’s Oppression of Minority Shareholders & LLC Members*, § 5:41 (citing *Athlon*); Ferdinand S. Tinio, Annotation, *Valuation of stock of dissenting stockholders in case of consolidation or merger of corporation, sale of its assets, or the like*, 48 A.L.R.3d 430 (1973).

earnings,” and multiplies this result by a “blue-sky” multiple to determine the value of the corporation’s intangible goodwill as an on-going business. An upward adjustment is then added for net value of tangible assets derived from the company’s adjusted balance sheet. Mr. Carlock’s expert, Scott Womack (“Scott Womack”), uses a so-called “income approach,” which estimates value by capitalizing the earnings of the company through a process of making adjustments to account for various risks against the prospect of a desired return.

In his market approach, Mr. Lawyer uses a profit margin of 5%, while Mr. Womack opines that a pre-tax profit margin of only 1.5% is reasonable. Mr. Lawyer added the value of TLC’s adjusted net worth to the product of the normalized pre-tax earnings and blue-sky multiple; Mr. Womack considers Mr. Lawyer’s blue-sky multiple as being within the range of reason, but criticizes Mr. Lawyer for further adjusting the value of the company by adding the blue-sky value with the value of net assets. Mr. Lawyer gives more weight to recent years’ financial performance than that of earlier years. Mr. Lawyer also applied his market formula approach to projected earnings; Mr. Womack did not.³ Additionally, Mr. Lawyer purported to analyze what he characterized as two previous transactions in TLC’s stock⁴ to extrapolate a value for Mr. Buckley’s 20% interest. Mr. Womack did not perform a comparable analysis because he believed the previous transactions were not reliable indicators of fair value.

In summary, Mr. Lawyer performed a market approach using three valuation methods: Normalized Pre-Tax Earnings; Projected Pre-Tax Earnings; and Prior Transactions. Using each of these methods, Mr. Lawyer computed a 100% value for TLC as an enterprise, and multiplied this value by 20% to determine the value of Mr. Buckley’s share. He then gave an equal 1/3

³ Mr. Womack found the earnings projections to be unreliable.

⁴ The two transactions Mr. Lawyer analyzed are: (i) Mr. Carlock’s purchase of 75% of TLC’s capital stock in June 2014; and (ii) Mr. Buckley’s sale of his personal shares, equivalent to 5% of the total outstanding shares of TLC, to Luke Bryan (“Mr. Bryan”), for \$700,000 in September 2014.

weight to each of these three calculations and derived an average of \$3,300,000, which in his opinion represents the fair value of Mr. Buckley's shares for purposes of redemption.⁵

Mr. Womack used only the income approach to value, and the capitalization of earnings valuation method to compute the value of TLC. From this analysis, Mr. Womack concluded the 100% value of TLC as of the valuation date is \$5,460,000; therefore the value of Mr. Buckley's 20% interest is \$1,092,000.⁶ Mr. Womack did, however, evaluate Mr. Lawyer's valuation report, and identified certain flaws with Mr. Lawyer's analyses. It is now incumbent upon this Court to consider all of the proof, and determine the reliability of the experts' opinions.

The Court finds the valuation methods employed by the experts are generally recognized and commonly employed in the field of business valuation. The reliability of these methods depends upon the validity of the underlying financial data, and the reasonableness of the computational variables used by the experts in their formulas. Both experts used TLC's documented financial performance for the most recent years; there is no dispute regarding the validity of this data.

Mr. Lawyer, however, also substituted *pro forma* projections of anticipated financial data in place of TLC's actual financial performance for a valuation computation, which he then gave equal weight with a computation based upon actual data. He labels this analysis based on *pro forma* projections as the "Market Approach – Current Industry Market Indicator (CIMI) Projected Pre-Tax Earnings".⁷ The Court finds this particular computation unreliable. This is so for two reasons. First, while valuation computation based upon *pro forma* projections is an

⁵ Trial Ex. 70, p. 21.

⁶ Trial Ex. 80. Both experts agree it would be inappropriate in a determination of "fair value" for the value of Mr. Buckley's minority interest to be further discounted for lack of control, and/or lack of marketability. The experts agree such discounts might be relevant in an appraisal of "fair market value" where the underlying assumption is an arms-length transaction between a willing buyer and willing seller acting without compulsion.

⁷ Trial Ex. 70, p.23.

acceptable practice by valuation professionals, *pro forma* projections are typically used to determine the value of start-up businesses with no track record of actual financial performance.⁸ TLC was not a start-up business. Secondly, TLC's actual financial performance fell short of its projections. Using the *pro forma* projections as the financial input to Mr. Lawyer's valuation formula results in an enterprise value that is \$1.5 million greater than the counterpart enterprise value calculated using TLC's actual financial results. This is a 10% variance. The Court finds this variance is material, and the *pro forma* calculation is therefore unreliable.

Mr. Lawyer also performed what he referred to as a "Market Approach – Prior Transactions Method". The two prior transactions in TLC stock that Mr. Lawyer analyzed were what he claimed to be (i) Mr. Carlock's original purchase of 75%, and (ii) Mr. Buckley's sale to Mr. Bryan of a 5% interest. He then performed computations to reach what he describes as "implied blue-sky value" to back into an enterprise value of \$16,416,095. Mr. Lawyer offered no persuasive justification for the reliability of this "implied blue-sky value" over the straightforward mathematical computation of enterprise value determined by dividing the price paid by the percentage ownership obtained. This uncomplicated, arithmetic approach is logically coherent,⁹ and produces an enterprise value that is \$2.4 million less than Mr. Lawyer expressed in his "implied blue-sky" exercise.

Mr. Lawyer ignored Mr. Buckley's original purchase of a 25% share of TLC for \$375,000. He attempted to justify this exclusion by characterizing Mr. Buckley's transaction as the exercise of a contractual option right, as opposed to the bargained-for purchase of stock. The Court finds this is a distinction without a difference.

⁸ Trial testimony of Adam Lawyer.

⁹ Mr. Carlock paid \$10,578,000 for a 75% ownership interest in TLC. Dividing Mr. Carlock's purchase price by the percentage interest he acquired results in a value of \$14.1 million for 100% of TLC. Mr. Bryan paid \$700,000 for 5% of TLC. Dividing his purchase price by the percentage interest he acquired results in a value of \$14 million for 100% of TLC.

The much more likely explanation of why Mr. Lawyer disregarded Mr. Buckley's purchase is that dividing his purchase price by the percentage ownership he acquired results in an enterprise value of \$1.5 million. Coincidentally, this is the exact amount of the original capital investment made by Mr. Taylor when he formed TLC.

Although the Court does not find Mr. Lawyer's opinions based on *pro forma* projections and prior transactions to be reliable, Mr. Lawyer's "Market Approach – Current Industry Market Indicator (CIMI) Normalized Pre-Tax Earnings" is based upon reliable data, and is an analytical method accepted in the valuation industry for producing reliable results. Nevertheless, the Court finds Mr. Lawyer's use of a 5% profit margin to be unreasonably high. Conversely, the Court also finds Mr. Womack's use of a 1.5% profit margin to be unreasonably low.¹⁰ The Court further finds that adding a value for "adjusted net assets" to the blue-sky value to calculate enterprise value, as Mr. Lawyer has done, is a potentially dubious practice.

Neither expert offered generally accepted, reliable industry data for their preferred profit margins. Mr. Lawyer testified that he selected 5% based upon his experience in performing valuations in connection with merger and acquisition transactions involving ultra-high end car dealerships. He expressed the opinion that this profit margin takes into account his belief that ultra-high end brand franchises are inherently valuable.

After the record was closed, Mr. Buckley moved to re-open the proof and supplement the record with proposed exhibits 81 and 82, consisting of Securities and Exchange Commission forms 10-K filed on February 10, 2016 and February 8, 2017 by AutoNation, Inc. ("AutoNation"), a publicly-traded entity listed on the New York Stock Exchange. In these

¹⁰ The Court finds Mr. Lawyer's use of a Blue-Sky Multiple of 8 times normalized pre-tax earnings to be reasonable and supported by generally accepted reliable industry data (*See*, Trial Ex. 71, p. 15). Mr. Womack used a multiple of 7.5, but testified that Mr. Lawyer's use of an 8 multiple was reasonable.

regulatory filings, AutoNation reported the following ratios of net income to revenue for the years indicated:

<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
6.24%	6.22%	5.69%	5.25%

Mr. Carlock objects to the Court receiving the proposed exhibits. As he correctly points out, proposed exhibits 81 and 82 (i) were not produced in response to discovery, (ii) Mr. Lawyer did not rely on these exhibits in forming his opinions, and (iii) proffering the exhibits at this time is an attempt to bolster Mr. Lawyer's otherwise deficient testimony under circumstances where Mr. Carlock will be unfairly prejudiced by not having an opportunity for rebuttal. Mr. Carlock's objections are well taken, but could be cured if the Court were to re-open the proof and allow time for further discovery. The Court will not exercise its discretion to take such a course, however, because the Court finds the proposed exhibits to be irrelevant.

AutoNation is a publicly traded corporation listed on the New York Stock Exchange. It has a market capitalization of \$4.169 billion. Its shares trade at a price/earnings ratio of 10.65, with an average daily volume of 752,670 shares.¹¹ According to the proposed exhibits, AutoNation is the largest automotive retailer in the United States.¹² AutoNation's revenue from its premium luxury segment was \$5.889 billion in 2014, and \$6.607 billion in 2015.¹³ TLC is a closely-held corporation with no market for its shares. It has only one location, and generated gross revenues of \$24.9 million in 2014 and \$33.4 million in 2015.¹⁴ Simply put, TLC is not

¹¹ See, <https://finance.yahoo.com/quote/AN> (last visited Sept. 3, 2019).

¹² See, Part I, Item 1: Business; General

¹³ *Id.*

¹⁴ See, Trial Ex. 70, p. 22.

comparable to AutoNation, and the economic performance of AutoNation has no relevance as a benchmark for calculating the value of TLC.¹⁵

The record contains Trial Exhibit 72, which is a compilation of automobile dealership statistical data published by the National Auto Dealers Association (“NADA”). Both experts consider Exhibit 72 to be authoritative and reliable. Mr. Lawyer testified that he relied upon the data in Exhibit 72 in the course of formulating his valuation opinions. He used the data in the NADA statistics as a baseline from which he then made subjective upward adjustments to increase the profit margin percentage multiplier.

According to Exhibit 72, the average net profit before tax of all dealerships was 2.5% in 2016, and 2.7% in 2017. The net profit before tax of all dealerships in the luxury vehicle segment of the new car market was 2.7% in 2016, and 2.8% in 2017. A careful review of Exhibit 72 reveals marginal increases in the range of 10 basis points between the various market segments.¹⁶ None of this data supports Mr. Womack’s use of a 1.5% profit margin. Mr. Lawyer testified that since TLC was a franchisee for “ultra-high end” brands – a category above even “luxury” brands – a profit margin of 5% was justified. Mr. Womack credibly testified that in his experience, while ultra-high end dealers might be able to achieve profit margins as high as 5% in given years, dealerships rarely sustained such profits over the long term.

The objective industry data does not support either expert’s normalization factor. Given the pattern of increase in profit margins between brand segments, 2.9% is a reasonable normalization factor for TLC’s revenue in 2015, and 2.8% is a reasonable normalization factor for TLC’s 2016 revenue.

¹⁵ For this reason, Mr. Carlock’s objection to re-opening the proof and admitting proposed exhibits 81 and 82 is hereby sustained. The Clerk & Master shall receive these proposed exhibits as appellate exhibits.

¹⁶ For example, the data for 2015 reports profit margins for domestic dealers of 2.6%, import dealers of 2.7%, and luxury dealers of 2.8%. Moreover, 2016 was a less profitable year in all segments than 2015, again by a factor of approximately 10 basis points.

The next issue is whether it is reasonable to add the net adjusted value of TLC's tangible assets to the "blue-sky value" to determine the enterprise value of TLC. Mr. Lawyer made such an adjustment; Mr. Womack did not. Mr. Lawyer justified his calculation by pointing out that "blue-sky value" is the value of only the intangible assets of an on-going business; whereas, to value the business as a whole, the value of tangible assets must be taken into account. Mr. Womack testified that the value of tangible assets can be expressed in various ways: (i) liquidation value; (ii) book value; or (iii) reflected in the assets' capacity to generate revenue. The "blue-sky value" is a function of revenue, and consequently expresses the value of tangible assets deployed for the purpose of carrying on business. Therefore, according to Mr. Womack, adding the adjusted net asset value to the "blue-sky value" is actually a double-counting of the tangible assets.

Although Mr. Womack's opinion makes intuitive sense, both experts agree that in the typical merger or acquisition transaction where dealerships are bought and sold, the customary valuation methodology is to set a price based upon the sum of blue-sky and net assets. This valuation, however, is not a bargained-for sale of a dealership as a whole. It is redemption or repurchase of stock from an oppressed minority shareholder at the fair value of the stock.

The Court concludes the most reliable measure of fair value is to determine the normalized value of pre-tax earnings, applying the formula set out by Mr. Lawyer on page 22 of Exhibit 70, to TLC's historic revenues for 2015 and 2016, using a normalization factor of 2.9% to 2015 revenues, and a normalization factor of 2.8% to 2016 revenues. To these blue-sky values, the Court will add an adjusted net asset value of \$1,185,000.¹⁷ The Court will then

¹⁷ This is the average between the values of adjusted net assets determined by the two experts. Mr. Lawyer calculated the adjusted net asset value to be \$1,220,561. Mr. Womack calculated the value to be \$1,150,000.

average the four resulting values¹⁸ to determine a fair value. Having performed this calculation, the Court notes the exact value is \$1,745,489.50; however, the Court finds a slight upward adjustment to this figure is appropriate for purposes of determining the fair value of Mr. Buckley's 20% interest in TLC. This is so because fair value is to be determined by a reasonable method. A punctilious method is not required. Therefore, for the purpose of redemption/repurchase as a remedy pursuant to Tennessee Code Annotated sections 48-24-301(2)(B) and (D), the Court finds the fair value of Mr. Buckley's interest in TLC is: \$1,745,500.00.¹⁹

CONCLUSION

As detailed in the Court's Memorandum and Order entered July 9, 2018, the Court has concluded Mr. Carlock did engage in conduct that was oppressive of Mr. Buckley's rights as a minority shareholder of a closely-held corporation, and Mr. Buckley has carried his burden to prove grounds for judicial dissolution pursuant to Tennessee Code Annotated sections 48-24-301(2)(B) and (D). The Court also concluded the appointment of a receiver and dissolution of the corporation is too drastic a remedy for that oppression, and redemption of Mr. Buckley's shares

¹⁸ The four values are: (i) blue-sky value with no net asset adjustment for 2015 and 2016; (ii) blue-sky value with net asset adjustment for 2015 and 2016.

¹⁹ The Court's computation is as follows:

Year	Historic Revenue	Normalization Factor	Normalized Pre-Tax Earnings:	
2015	\$33,480,406	2.9%	\$970,931.77	
2016	\$37,957,329	2.8%	\$1,062,805.20	
Norm. Pre-Tax Earnings		Blue Sky Multiple	Blue Sky Value of 100%	20% Share
\$970,931.77		8X	\$7,767,454	\$1,553,490.80
\$1,062,805.20		8X	\$8,502,441.60	\$1,700,488.30
Blue Sky Value	Adjusted Net Assets		Enterprise Value of 100%	
\$7,767,454	\$1,185,000		\$8,952,454	\$1,790,490.80
\$8,502,441.60	\$1,185,000		\$9,687,441.60	\$1,937,488.30
			Total:	\$6,981,958.20
			Avg:	\$1,745,489.50

is the appropriate remedy. For the reasons detailed *supra*, the Court hereby concludes the fair value of Mr. Buckley's 20% shareholder interest in TLC of Franklin, Inc. is \$1,745,500.00.²⁰

IT IS THEREFORE ORDERED THAT: Grover C. Carlock's objection to re-opening the proof and admitting proposed exhibits 81 and 82 is hereby sustained, as the Court finds the proposed exhibits to be irrelevant as a benchmark for the valuation of TLC of Franklin, Inc. The Clerk & Master shall receive these proposed exhibits as appellate exhibits.

IT IS FURTHER ORDERED THAT: By lodging his share certificate with the Clerk & Master of this Chancery Court, Thomas A. Buckley has constructively tendered his shares equaling 20% of the issued and outstanding shares of TLC of Franklin, Inc. (the "Corporation") to the Corporation and/or Grover C. Carlock for redemption or repurchase.

IT IS FURTHER ORDERED THAT: The Corporation and/or Grover C. Carlock shall redeem or repurchase Thomas A. Buckley's shares by payment to Thomas A. Buckley of the total sum of \$1,745,500.00 not later than thirty (30) days following the entry of this Order on Redemption.

IT IS FURTHER ORDERED THAT: Thomas A. Buckley is hereby granted a judgment against TLC of Franklin, Inc. and Grover C. Carlock, jointly and severally in the amount of \$1,745,500.00, which judgment shall be discharged upon the redemption and/or repurchase of Thomas A. Buckley's shares of TLC of Franklin, Inc. as set out in this Order on Redemption.

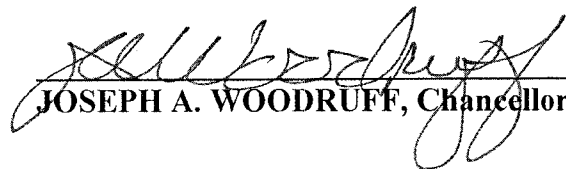
IT IS FURTHER ORDERED THAT: Thomas A. Buckley shall have a lien of judgment against TLC of Franklin, Inc. and Grover C. Carlock pursuant to Tenn. Code Ann. § 25-5-101 *et.*

²⁰ It is conceivable that the disposition of Mr. Buckley's claim seeking dissolution of TLC of Franklin, Inc., as embraced by this Order on Redemption and the Memorandum and Order entered July 9, 2018, renders moot some or all of Mr. Buckley's remaining claims in this lawsuit. That particular issue is not before the Court at this time, but the parties have leave to raise the issue by way of motion as they deem appropriate.

seq., which lien shall attach to the capital stock of TLC of Franklin, Inc. and to all of the Corporation's assets.

IT IS FURTHER ORDERED THAT: The Court finds this Order on Redemption, and the Memorandum and Order entered July 9, 2018, together constitute a final judgment with respect to the matters adjudicated therein. The Court further finds there is no just reason for delay in the entry of a final judgment with respect to these matters. Therefore, the Clerk & Master is hereby directed, pursuant to Rule 54.02(1) of the Tennessee Rules of Civil Procedure, to enter a final judgment with respect thereto.

IT IS SO ORDERED THIS 4 DAY OF SEPTEMBER, 2019.


JOSEPH A. WOODRUFF, Chancellor