

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF WESTCHESTER

In the Matter of the Application of Robert Prialx, as
 Administrator of the Estate of

DECISION AFTER
 TRIAL

HUMBERT CARL VERDESCHI
 a/k/a H. CARL VERDESCHI,
 CARL VERDESCHI

INDEX NO.: 0083/045

Deceased,

Pursuant to SCPA 2103 and Business Corporation
 Law 1104-a

The Petitioner herein, ROBERT PRIAULX, as Administrator of the Estate of Humbert Carl Verdeschi (hereinafter "VERDESCHI"), commenced a petition to dissolve G.B. TEPPER & ASSOCIATES, LTD. (hereinafter "TEPPER & ASSOCIATES") and to determine the value of VERDESCHI'S interest therein. TEPPER & ASSOCIATES was a closely held corporation doing accounting work and the shareholders and their percentages were, VERDESCHI - 35%, GERALD B. TEPPER (hereinafter "G.B.T.")-35%, MONTE TEPPER (hereinafter "M.T.")-15% and JAY SAMUELS (hereinafter "J.S.")-15%. VERDESCHI died in November 2003 and in February 2004, M.T. and J.S. formed TEPPER TAX ASSOCIATES, INC. (hereinafter "TEPPER TAX"), which operated in the same premises, used the same equipment and serviced the same clients as that of TEPPER & ASSOCIATES. No monies were paid at that time to the VERDESCHI estate.

By decision of Westchester Surrogate, Hon. Anthony A. Scarpino, Jr., dated September 29, 2006, it was held that the respondents, G.B.T., M.T. and J.S. looted, wasted or diverted property of TEPPER & ASSOCIATES for non-corporate purposes pursuant to Business Corporation Law - Paragraph 1104-a (a)(2)." That is the law of this case and hence a two day trial ensued to determine the value of VERDESCHI'S 35% share of TEPPER & ASSOCIATES.

Prior to trial, the parties hereto stipulated on the record that the expert of Petitioner, namely, Edward Heben and of respondents, namely Glen Ross, were qualified as experts. The Court, therefore, did not have to make a determination to certify as to the expertise of these witnesses although had a hearing similar to a "Frye" hearing been conducted, it is doubtful whether Glen Ross would have been found qualified.

Mr. Heben testified in depth as to the various methods he used to determine the value of VERDESCHI'S share of stock. There was never any shareholder's agreement so that nothing had been agreed to among the parties giving any formula for buy-out of any of the shareholders nor was there any mention of good will. He was very credible and had evaluated other businesses. He gave the basis for his evaluation and his reliance on certain texts and how he arrived at his

conclusions after looking at and explaining other types and methods of evaluating VERDESCHI's share, namely by looking at assets, or income or market value.

In arriving at the value of stock, fair value would include net asset value, investment value and market value - Matter of Fulton 257 NY 487. All three factors must be considered - Matter of Behrens, 61 N.Y.S. 2d 179, aff'd 271 1007 A.D. He detailed the various methods that could be employed and explained in detail how and why he used the valuation method which was used in this matter.

He testified that good will is an intangible asset derived from revenue strength and based partly on the likelihood that the most clients will return. He examined the books and records for 1999-2003 and found that over the years, the gross revenues were consistent and there were no material changes. He favored the market method which includes "good will" and has a weighted basis. For the year ending December 31, 2003, the gross revenue was \$630,368.00 and using the multiple of 1.5% in accord with the formula used, he estimated the value of TEPPER & ASSOCIATES to be \$908,000.00 and, therefore, VERDESCHI's 35% share of the business would have been \$318,000.00. However, he testified that in using this formula, one could multiply the gross revenues by anywhere from 1.0 to 2.0 to determine a fair sale price for an accounting firm. He further explained how he arrived at a multiple of 1.5 as the appropriate ratio for arriving at the value of G.B. TEPPER & ASSOCIATES. There was no explanation in the books for various items distributed to each of the shareholders including \$25,000.00 paid to VERDESCHI for the years 2000, 2001 and 2002 nor could he account for or determine the reasons for distribution of monies to the other shareholders. He could not account for the salary of \$1,200.00 per week paid to VERDESCHI from April 2003 when he stopped work and certainly continuing after he died in November 2003. Mr. Heben then proceeded to show, based on prior years, income for 2003 and other relevant factors that VERDESCHI would also have been entitled to receive a dividend for the year ending December 31, 2003 of \$49,204.00.

The respondent's expert, Glen Ross, was hired to evaluate VERDESCHI's share. He testified that VERDESCHI received an excess of \$168,492.00 without going into any depth to explain the same. He also stated that each of the shareholders operated on their own although he did admit that all billings were done by TEPPER & ASSOCIATES and payments for all services rendered by any of the shareholders were made payable to TEPPER & ASSOCIATES and deposited in the corporate account. He then concluded that a small accounting firm has no good will, only the partners have good will regardless of the number of years that the corporation has been in business. He had never evaluated an accounting firm and was not familiar with some of the texts referred to by Edward Heben nor the various methods of determining the value of an accounting firm. On these bases he valued VERDESCHI's interest as zero.

G.B.T. Testified for respondents. He hired VERDESCHI in the early 1970s and ran the business from 1960. He testified that at the end of every year, undistributed money was paid to each of the shareholders and VERDESCHI would receive 35%. G.B.T. was not active in the business from 1999 but he did receive monies from the corporation including an additional \$38,000.00 taken by him in the year 2000 which was listed in cash disbursements not in the general ledger. Since 1999, he took no part in running the business but he testified that he never

authorized VERDESCHI to take \$25,000.00 for each of three years. In fact, G.B.T. testified that he looked at the books for the first time after VERDESCHI died and he had not done so for five or six years prior thereto. He also stated that after VERDESCHI died, the firm's name was changed from "G.B. TEPPER & ASSOCIATES LTD." To "TEPPER TAX ASSOCIATES" and they used the same office space and the same equipment but they paid rent to G.B.T. who owned the space. His attorney then put into evidence a copy of an indictment out of the United States District Court-Eastern District of New York, dated August 1998, indicting G.B.T. On Count One - "Conspiracy to Invest Illicit Drug Profits" - on Count Two - "Money Laundering" and listing property held by G.B.T. in New Rochelle, NY - Palm Beach, FLA; Charlotte, North Carolina; Buffalo, NY, etc. Respondent's attorney never offered any explanation for introducing this piece of evidence or of the disposition of the indictment but it did affect the credibility of the witness.

M.T. testified that he never told the Administrator of the estate, ROBERT PRIAULX, that he would give a bonus for VERDESCHI of \$100,000.00 contrary to the latter's testimony in Court. He stated that all of the books and records were kept under lock and key by VERDESCHI and he was unaware of payments to VERDESCHI until he died. At an examination before trial, he had stated that a package to VERDESCHI would be \$100,000.00 and the corporation did pay bills for VERDESCHI but could not explain miscellaneous payments to himself. Referring to the indictment of G.B.T., he alleged that it affected the good will of TEPPER & ASSOCIATES and they needed to form a new company to get G.B.T. off the firm - hence - TEPPER TAX.

The fair value of a minority shareholder's interest in a corporation should be to value the enterprise as a whole and then apply the minority shareholder's percentage to that figure - Matter of Friedman v. Beway Realty Corp., 87 N.Y. 2d 161, 638 N.Y.S. 2d 399. In addition, if as in the present matter, the corporation is to continue to operate, albeit under a new name, as in the instant matter, net asset value might include elements such as good will, potential earnings among other tangible and intangible factors but each case must be looked at separately and the Court has wide discretion under B.C.L. 621 - Endicott Johnson Corp. V. Bade, 37 N.Y. 2d 585, 376 N.Y.S. 2d 103. The fact that the remaining partners after dissolving its firm to exclude one partner but immediately reconstitute themselves as a new firm using the same name, address, facilities and client list as the dissolved firm, indicates that the dissolved firm had good will to distribute - Dawson v. White & Case, 212AD 2d 385, 622 N.Y.S. 2d 269. Elements of good will and potential earnings must also be taken into account - Matter of Seiach, 170 AD 686, aff'd 219 N.Y. 634.

It is apparent from the evidence presented in this matter that good will was a factor in determining the value of TEPPER & ASSOCIATES. As enumerated by Surrogate Anthony A. Scarpino, Jr., in his decision dated September 29, 2006 and as brought out in the trial herein, TEPPER & ASSOCIATES had been in business for a long period of time; all bills rendered were in the name of the corporation and all payments made by clients were made payable to the corporation and deposited in corporate bank accounts. For the defendant's expert to make a finding that each of the partners had their own clients and if one shareholder died or left such as occurred herein, there is no good will left for the corporation files in the face of case law and the facts in this matter.

The direction of the Court as set forth in Surrogate Scarpino's decision, supra, states "a hearing must be held to determine the appropriate remedy for the estate". This was the basis for the trial which was held in this matter and to do this, there had to be a determination of the value of TEPPER & ASSOCIATES as of December 31, 2003.

It is the finding and determination of this Court that the gross revenues for G.B. TEPPER & ASSOCIATES, LTD. for the year ending December 31, 2002 was the sum of \$630,368.00. However, this Court also finds and determines that the multiple used by petitioner's expert of 1.5% to determine the value was too high and should have been only 1.2% or \$756,442.00 and of that sum, VERDESCHI's 35% share would be \$264,756.00. However, there are setoffs accrued to VERDESCHI's share by balancing the unaccounted monies taken by VERDESCHI of \$75,000.00 and those of the other shareholders equaling \$33,000.00, plus the weekly salary paid to VERDESCHI for the period after he died (November 3, 2003) totaling an additional sum of \$11,250.00. In addition, it is the finding and determination of this Court that it has not been proved to the satisfaction of this Court that VERDESCHI would have been entitled to a dividend for the year ending December 31, 2003 of \$49,204.00.

It is also the finding and determination of this Court, based on the findings of and determination of Surrogate Scarpino that the respondents willfully dissipated and transferred the assets of G.B. TEPPER & ASSOCIATES LTD. without just or adequate compensation to the estate of VERDESCHI. Under B.C.L. 1104 (a)(d) this Court assesses a surcharge against the respondents in the sum of \$40,000.00.

It is, therefore, the finding and determination of this Court:

1. The value of the shares of HUMBERT CARL VERDESCHI in G.B. TEPPER & ASSOCIATES LTD. as of December 31, 2003 was \$260,406.00.
2. Dissolution of G.B. TEPPER & ASSOCIATES LTD. be granted pursuant to Business Corporation Law Sec. 104-a (a) (1) (2) and subject to that corporation being liable to the Estate of HUMBERT CARL VERDESCHI for the sum of \$260,406.00 with interest from December 31, 2003.
3. That the individuals, GERALD B. TEPPER, MONTE TEPPER and JAY SAMUELS are individually liable to the Estate of HUMBERT CARL VERDESCHI in their proportionate shares in G.B. TEPPER & ASSOCIATES, LTD. in the sum of \$260,406.00 with interest from December 31, 2003.

4. That in piercing the corporate veil, TEPPER TAX ASSOCIATES, INC. is liable to the Estate of HUMBERT CARL VERDESCHI in the sum of \$260,406.00 with interest from December 31, 2003.

This constitutes the decision herein.

September 11, 2007
White Plains, NY


Robert James Friedman - J.H.O

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