

Application of the Oppressed Shareholder Provisions of the Business Corporations Act to Minority Oppression in other Business Organizations

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A developing trend toward applying minority shareholder oppression remedies under the Business Corporations Act (“BCA”), to owners of other business entities was curtailed by the Appellate Division. *Tutunikov v. Markov*, A-1827-10T3 (August 1, 2013).

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N.J.S.A. 14A:12-7, contained in the BCA, provides a range of remedies to oppressed minority shareholders. “Oppression” is said to occur where the conduct of the majority owners frustrate the minority shareholder’s reasonable expectations in the venture. Where oppression is demonstrated, courts are authorized to order a forced buyout of the oppressed shareholder’s interests and fix the price at “fair value.” “Fair value” is a judicial construct designed to avoid diminishing the value of an oppressed shareholder’s stock by valuation discounts, such as those for minority or non-marketable interests, which would inure to the benefit of the buyer.

The current Limited Liability Act (the “LLC Act”) does not contain a compulsory buyout remedy. Instead N.J.S.A. 42: 2B-39 provides that an LLC member may resign and receive fair value for his shares “less all applicable valuation discounts.” Because of similarities in the predicaments of oppressed owners in the corporate and LLC settings, and in the absence of a specific, statutory remedy, Courts had begun to “import” oppression remedies from the BCA to minority members.

In *Tutunikov*, the Appellate Division flatly held that the BCA is not applicable to LLCs. Thus its oppression remedies were not portable. Nevertheless, the opinion did uphold a buyout at fair value, a concept generally seen in the setting of shareholder oppression.

New Jersey has adopted the Revised Uniform LLC Act (“RULLCA”), which includes an oppression remedy similar to that under the BCA. N.J.S.A. 42:2C-48. The RULLCA will become effective for all New Jersey LLCs on March 1, 2014. In the short interval before RULLCA becomes effective, the application of the BCA to LLCs is unlikely to receive additional judicial attention. However, the Tutunikov decision does not necessarily foreclose crafting oppressed owner remedies in the partnership setting by analogy to the BCA. Like the LLC Act, the Partnership Act, N.J.S.A. 42:1A-1, et seq. is silent on remedies for oppression. In precluding BCA remedies for LLC members, the Tutunikov Court relied in part on the fact that an oppression remedy under the RULLCA was imminent. No such revision in the partnership statutes is pending, and accordingly, the Tutunikov decision does not completely preclude arguments along those lines.