

Benjamin v. Bierman

Case Number

S-19-0328)

S-19-0329)

Case Audio

Download Audio

Call Date

March 6, 2020

Case Time

9:00 AM

Court Number

Buffalo

Case Location

Lincoln

Court Type

District Court

Case Summary

S-19-0328, S-19-0329 Brenda L. Benjamin, Personal Representative of the Estate of Mark W. Benjamin, Deceased (Appellant) v. Douglas S. Bierman, Eugene J. Bierman and Sixth Street Rentals, L.L.C., a Nebraska Limited Liability Company

Buffalo County District Court, Judge John H. Marsh

Attorneys: Bradley D. Holbrook & Nicholas R. Norton (Jacobsen, Orr, Lindstrom & Holbrook, P.C., L.L.O.) --- Kenneth F. George & Luke M. Simpson (Ross, Schroeder & George, LLC) and William J. Linday & John Svoboda (Gross & Welch, P.C., L.L.O.)

Civil: Contract; damages; dissolution

Proceedings below: The district court held that 1) Appellees breached the operating agreement; 2) Appellant was entitled to damages in the amount of \$22,200.00; that sufficient grounds for dissolution did not exist; and 4) that Doug was required to provide an accounting of Sixth Street Rentals to Appellant.

Issues: Whether the district court erred in finding that dissolution of Sixth Street Rentals was inappropriate.

Issues on Cross-Appeal: Whether the district court erred: 1) by finding that Article IX, Section 3, of the Operating Agreement set forth an unambiguous method for determining fair market value (purchase price), 2) by rewriting the contract of the parties such that Mr. Galloway's opinion of value (appraisal) fixed and established fair market value under the Article IX, Section 3, of the Operating Agreement when his value or appraisal was not 'fair market value?', 3) in finding that the contract required the use of Mr. Galloway's appraisal as the purchase price, 4) in finding that Appellees failed to negotiate in good faith and breached the contract to purchase Mark's Interest from Brenda Benjamin under the Operating Agreement and that such breach was not minor, but a substantial failure of the exchange, 5) in finding that Appellees refused to complete the purchase of Mark's Interest because no agreement

had been reached on BD Construction, 6) in finding that Appellees rejected Mr. Galloway's valuations only when the parties did not agree on the value of the BD Construction stock, 7) in finding that Terry T. Galloway was an independent appraiser and the date of valuation was December 31, 2014, and not April 14, 2015, Mr. Benjamin's date of death, 8) in finding that Mr. Galloway's valuation was substantially complete on November 30, 2015, 9) in finding that fair market value was established by Mr. Galloway's opinion of value as of November 30, 2014. 10) by entering judgment without first finding or determining the correct fair market value of Mark' Interest under the Operating Agreement, 11) in not using the value determined by the Court, Mr. Ingersoll's value, as the fair market value of Mark's Interest and the contract price, 12) in using Mr. Galloway's appraisal as fair market value, instead of Mr. Ingersoll's valuation, when it found that Mr. Ingersoll was the more credible expert, 13) in finding the starting date for accrual of interest to be March 30, 2016, 14) in denying Development's counterclaim for specific performance, 15) in using Mr. Galloway's value in and its calculation of damages, 16) in finding that Appellees contractually agreed to purchase Mark's Interest at a price equal to Mr. Galloway's opinion of value, even if it was not its "fair market value", and 17) in awarding damages of \$437,233.00 and \$22,000.00, respectively, plus interest, to Appellant and against Appellees when there was no evidence she sustained such damages.

Schedule Code

SC
