

# The Wayne L Ryan Revocable Trust v. Ryan (20)

## Additional Case Names

11:25 am

### Case Number

S-19-0951

### Case Audio

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### Call Date

September 29, 2020

### Case Time

9:00 AM

### Court Number

Sarpy

### Case Location

Lincoln

### Court Type

District Court

### Case Summary

## **S-19-0951 The Wayne L. Ryan Revocable Trust v. Ryan**

Sarpy County District Court, Judge Nathan B. Cox

Attorneys: Marnie A. Jensen, David Lopez, & Kamron T.M. Hasan (Husch Blackwell LLP) (Appellees the Wayne L. Ryan Revocable Trust; Steven Ryan; and First Nebraska Trust) --- Daniel J. Welch & Damien J. Wright (Welch Law Firm, P.C.) (Cross-Appellant Constance Ryan) --- Thomas H. Dahlk & Victoria H. Butter (Kutak Rock LLP) (Appellant Streck, Inc.)

Civil: Fair value determination

Proceedings below: The district court issued a judgment determining the fair value of Streck stock owned by the Wayne L. Ryan Revocable Trust (WLRT). Appellant Streck, Inc. appeals and Constance Ryan cross-appeals. Both Appellant and Appellees filed a motion to bypass the Court of Appeals, which were granted by the Nebraska Supreme Court.

Issues: The district court erred in 1) denying Streck's Motion to Supplement the Record for purposes of appeal to include the Post-Trial Proposed Findings of Fact and Conclusions of Law submitted by the WLRT, which were incorporated verbatim in the Fair Value Order, 2) awarding \$255 million in prejudgment interest on an unliquidated amount when the statutory preconditions of Neb. Rev. Stat. § 45-103.02(1) were not satisfied and contract-based claims listed in § 45-104 are not involved, and in ruling that Neb. Rev. Stat. § 45-103.02 was inapplicable, 3) awarding prejudgment interest under Neb. Rev. Stat. § 21-20,166(5) (Reissue 2012) when the petitioning shareholder never made any attempt to negotiate the price of the fair value of the shares nor made any type of offer or demand for payment of any amount

before trial and where the petitioning shareholder continued to contest Streck's right to purchase the shares held by the WLRT, 4) its determination of fair value because it failed to independently review all relevant factors and ignored evidence contrary to its findings, 5) its determination of fair value because it adopted an expert opinion that failed to apply a correct definition of "fair value" and rejected an expert opinion that applied the correct standard, 6) its determination of fair value because it adopted in total an expert opinion whose valuation opinion far exceeded the value established for Streck by a sales process that occurred shortly before the filing of the oppression/dissolution action and entered a fair value that was based on an enterprise value hundreds of millions of dollars in excess of the values established by the sales process, 7) determining the WLRT did not act arbitrarily and in bad faith by refusing to respond to Streck's offer to purchase the shares held by the WLRT, 8) its determination of fair value in stating that the bids received following a sales process in 2014 were of "limited relevance," 9) its determination of fair value by its adoption in total of an expert opinion on fair value that included the synergies created by the objected-to transaction, 10) its determination of fair value in adopting an expert opinion on fair value that was unsupported by the record and fundamentally flawed, including in the application of the methodologies used, and in rejecting the credible expert testimony offered by Streck, and 11) refusing to allow payment terms that may include payment of the purchase price in installments in the interest of equity.

Issues on Cross-Appeal (Constance Ryan): The district court erred in 1) failing to consider the Project Blizzard bids as strong, if not dispositive evidence, of the fair value of Streck, and 2) failing to set payment terms that would comply with the statutory limitations on distributions to shareholders.

**Schedule Code**

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