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Illinois Compiled Statutes 805 ILCS 5 Business Corporation Act of 1983. Section 12.56

(805 ILCS 5/12.56)

Sec. 12.56. Shareholder remedies: non-public corporations.

(a) In an action by a shareholder in a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the Circuit Court may order one or more of the remedies listed in subsection (b) if it is established that:

(1) The directors are deadlocked, whether because of

even division in the number of directors or because of greater than majority voting requirements in the articles of incorporation or the by-laws or otherwise, in the management of the corporate affairs; the shareholders are unable to break the deadlock; and either irreparable injury to the corporation is thereby caused or threatened or the business of the corporation can no longer be conducted to the general advantage of the shareholders; or

(2) The shareholders are deadlocked in voting power

and have failed, for a period that includes at least 2 consecutive annual meeting dates, to elect successors to directors whose terms have expired and either irreparable injury to the corporation is thereby caused or threatened or the business of the corporation can no longer be conducted to the general advantage of the shareholders; or

(3) The directors or those in control of the

corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent with respect to the petitioning shareholder whether in his or her capacity as a shareholder, director, or officer; or

(4) The corporation assets are being misapplied or

wasted.

(b) The relief which the court may order in an action under subsection (a) includes but is not limited to the following:

(1) The performance, prohibition, alteration, or

setting aside of any action of the corporation or of its shareholders, directors, or officers of or any other party to the proceedings;

(2) The cancellation or alteration of any provision

in the corporation's articles of incorporation or by-laws;

(3) The removal from office of any director or

officer;

(4) The appointment of any individual as a director

or officer;

(5) An accounting with respect to any matter in

dispute;

(6) The appointment of a custodian to manage the

business and affairs of the corporation to serve for the term and under the conditions prescribed by the court;

(7) The appointment of a provisional director to

serve for the term and under the conditions prescribed by the court;

(8) The submission of the dispute to mediation or

other forms of non-binding alternative dispute resolution;

(9) The payment of dividends;

(10) The award of damages to any aggrieved party;

(11) The purchase by the corporation or one or more

other shareholders of all, but not less than all, of the shares of the petitioning shareholder for their fair value and on the terms determined under subsection (e); or

(12) The dissolution of the corporation if the court

determines that no remedy specified in subdivisions (1) through (11) or other alternative remedy is sufficient to resolve the matters in dispute. In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve the corporation solely because it has accumulated earnings or current operating profits.

(c) The remedies set forth in subsection (b) shall not be exclusive of other legal and equitable remedies which the court may impose.

(d) In determining the appropriate relief to order pursuant to this Section, the court may take into consideration the reasonable expectations of the corporation's shareholders as they existed at the time the corporation was formed and developed during the course of the shareholders' relationship with the corporation and with each other.

(e) If the court orders a share purchase, it shall:

(i) Determine the fair value of the shares, with

or without the assistance of appraisers, taking into account any impact on the value of the shares resulting from the actions giving rise to a petition under this Section;

(ii) Consider any financial or legal constraints

on the ability of the corporation or the purchasing shareholder to purchase the shares;

(iii) Specify the terms of the purchase,

including, if appropriate, terms for installment payments, interest at the rate and from the date determined by the court to be equitable, subordination of the purchase obligation to the rights of the corporation's other creditors, security for a deferred purchase price, and a covenant not to compete or other restriction on the seller;

(iv) Require the seller to deliver all of his or

her shares to the purchaser upon receipt of the purchase price or the first installment of the purchase price; and

(v) Retain jurisdiction to enforce the purchase

order by, among other remedies, ordering the corporation to be dissolved if the purchase is not completed in accordance with the terms of the purchase order.

For purposes of this subsection (e), "fair value", with respect to a petitioning shareholder's shares, means the proportionate interest of the shareholder in the corporation, without any discount for minority status or, absent extraordinary circumstances, lack of marketability.

The purchase ordered pursuant to this subsection (e) shall be consummated within 20 days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to dissolve and articles of dissolution are properly filed with the Secretary of State within 50 days after filing the notice with the court.

After the purchase order is entered and before the purchase price is fully paid, any party may petition the court to modify the terms of the purchase and the court may do so if it finds that such changes are equitable.

Unless the purchase order is modified by the court, the selling shareholder shall have no further rights as a shareholder from the date the seller delivers all of his or her shares to the purchaser or such other date specified by the court.

If the court orders shares to be purchased by one or more other shareholders, in allocating the shares to be purchased by the other shareholders, unless equity requires otherwise, the court shall attempt to preserve the existing distribution of voting rights and other designations, preferences, qualifications, limitations, restrictions and special or relative rights among the holders of the class or classes and may direct that holders of a specific class or classes shall not participate in the purchase.

(f) When the relief requested by the petition includes the purchase of the petitioner's shares, then at any time within 90 days after the filing of the petition under this Section, or at such time determined by the court to be equitable, the corporation or one or more shareholders may elect to purchase all, but not less than all, of the shares owned by the petitioning shareholder for their fair value. An election pursuant to this Section shall state in writing the amount which the electing party will pay for the shares.

(1) The election shall be irrevocable unless the

court determines that it is equitable to set aside or modify the election.

(2) If the election to purchase is filed by one or

more shareholders, the corporation shall, within 10 days thereafter, give written notice to all shareholders. The notice must state: (i) the name and number of shares owned by the petitioner; (ii) the name and number of shares owned by each electing shareholder; and (iii) the amount which each electing party will pay for the shares and must advise the recipients of their right to join in the election to purchase shares. Shareholders who wish to participate must file notice of their intention to join in a purchase no later than 30 days after the date of the notice to them or at such time as the court in its discretion may allow. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs.

(3) The court in its discretion may allow the

corporation and all non-petitioning shareholders to file an election to purchase the petitioning shareholder's shares at a higher price. If the court does so, it shall allow other shareholders an opportunity to join in the purchase at the higher price in accordance with their proportionate ownership interest.

(4) After an election has been filed by the

corporation or one or more shareholders, the proceeding filed under this Section may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit the discontinuance, settlement, sale, or other disposition. In considering whether equity exists to approve any settlement, the court may take into consideration the reasonable expectations of the shareholders as set forth in subsection (d), including any existing agreement among the shareholders.

(5) If, within 30 days of the filing of the latest

election allowed by the court, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(6) If the parties are unable to reach an agreement

as provided for in paragraph (5) of this subsection (f), the court, upon application of any party, shall stay the proceeding under subsection (a) and shall determine the fair value of the petitioner's shares pursuant to subsection (e) as of the day before the date on which the petition under subsection (a) was filed or as of such other date as the court deems appropriate under the circumstances.

(g) In any proceeding under this Section, the court shall allow reasonable compensation to the custodian, provisional director, appraiser, or other such person appointed by the court for services rendered and reimbursement or direct payment of reasonable costs and expenses, which amounts shall be paid by the corporation.

(Source: P.A. 94-394, eff. 8-1-05; 94-889, eff. 1-1-07.)

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