IN THE CHANCERY COURT FOR THE 21ST JUDICIAL DISTRICT
AT WILLIAMSON COUNTY, TENNESSEE

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FILED FOR ENTRY 7/9/18

THOMAS A BUCKLEY, Individually, and derivatively on behalf of TLC OF FRANKLIN, INC., Plaintiff,	)	
V.	)	Nos. 46310 and 46915
GROVER C. CARLOCK, JR., and CARLOCK MANAGEMENT COMPANY, INC., Defendants.	)	

MEMORANDUM AND ORDER

This case was before the undersigned on April 20, 2018 and May 4, 2018 for trial on the merits of Plaintiff, Thomas A. Buckley's ("Mr. Buckley") claims seeking judicial dissolution of TLC of Franklin, Inc. a closely held for-profit corporation in which Mr. Buckley is a 20% shareholder and Defendant, Grover C. Carlock, III ("Mr. Carlock") is the controlling 75% shareholder.[1] After consideration of the evidence and application of the appropriate legal standards, the Court makes the findings of fact and legal conclusions set out in this Memorandum and Order.

PROCEDURAL HISTORY

On June 16, 2017, Mr. Buckley filed a Complaint against Defendants, Mr. Carlock and Carlock Management Company, Inc., alleging Mr. Carlock had entered into self-dealing transactions, breached fiduciary duties, and stolen corporate opportunities in connection with the management and operation of TLC of Franklin, Inc., a closely held

[1] A third person, Mr. Bryan, owns 5% of the capital stock. Mr. Bryan is not a party in this action.

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Tennessee corporation that owns the Maserati, Rolls-Royce, Aston Martin, Bentley and Alfa Romeo new motor vehicle dealership located at 1599 Mallory Lane, Brentwood, TN 37027.[2] Specifically, Mr. Buckley asserted the following claims against Mr. Carlock and Carlock Management Company, Inc.: (i) dissolution pursuant to Tennessee Code Annotated § 48-24-301(2), (ii) misappropriation of corporate opportunities, (iii) directors conflicting interest transactions, (iv) breach of fiduciary duty, (v) promissory fraud, (vi) conversion, (vii) lien *lis pendens*, and (viii) unjust enrichment (in the alternative to Count II).

On August 8, 2017, Mr. Carlock filed a Motion to Dismiss, arguing Mr. Buckley's Complaint should be dismissed because he cannot fairly and adequately represent the interest of shareholders who are similarly situated. Additionally, Mr. Carlock submitted a Motion for Protective Order on August 9, 2017. On September 27, 2017, Mr. Buckley filed his Response to the Motion for Protective Order, and on September 28, 2017, he filed his Response to the Motion to Dismiss. On October 13, 2017, the Court entered an Order denying the Motion to Dismiss and the Motion for Protective Order.

Subsequently, on October 31, 2017, the Court determined on its own motion that this case should be subject to customized case management pursuant to Local Rule § 9.03 and entered an Initial Case Management Order. On December 27, 2017, Mr. Buckley filed a Motion to Dissolve Corporation and for Temporary Injunctive Relief. On February 12, 2018, the Court entered an Order, after holding a telephonic conference in this matter, requiring Mr. Buckley to file and serve Notice stating with reasonable particularity each ground upon which he seeks dissolution of TLC of Franklin, Inc. and setting the Motion

[2] The Court notes this case was consolidated with another chancery court case styled *Grover C. Carlock, Jr., individually and derivatively on behalf of TLC of Franklin, Inc., v. Thomas A. Buckley*, Case No. 46915.

to Dissolve Corporation and for Temporary Injunctive Relief to be heard on April 20, 2018 and May 4, 2018.

On February 26, 2018, Mr. Carlock and Carlock Management Company, Inc. filed a Motion for Summary Judgment Dismissing Individual Claims. On March 5, 2018, the parties appeared and participated in mediation on March 5, 2018; however, no matters in controversy were resolved. On April 6, 2018, Mr. Buckley filed his Response to Defendant's Motion for Summary Judgment Dismissing Derivative Claims.

Accordingly, the Court held an evidentiary hearing on Mr. Buckley's Motion to Dissolve Corporation and for Temporary Injunctive Relief on April 20, 2018 and May 4, 2018. The Court also permitted the parties to present closing arguments on May 17, 2018.

DISCUSSION

The business entity known today as TLC of Franklin, Inc. ("TLC") was originally known as TT of Nashville, Inc. Its business is to operate a "high end" or exotic car dealership in Williamson County, Tennessee[3] originally known as "Music City Motor Cars." Its shareholders, and their percentage interests, were Terry Taylor and Stephen Terry (combined 75%), and Mr. Buckley 25%. Beginning in January 2014, Robert J. Morris, a business broker affiliated with the Tim Lamb Group, was retained by the controlling majority shareholders to find a buyer for the stock of TLC of Franklin, Inc. Because of Mr. Morris' efforts at finding a prospective buyer, Mr. Carlock contemplated purchasing 100% of TLC for $12,000,000. Mr. Morris disclosed to Mr. Carlock that Mr. Taylor and Mr. Terry owned 75% of TLC's stock and Mr. Buckley owned the remaining

[3] The dealership sold ultra-expensive foreign automobiles such as Jaguar, Land Rover, Ferrari, Aston Martin, Bentley, Rolls Royce, and other high-priced vehicles.

25%.[4] Mr. Carlock expressed to Mr. Morris his interest in purchasing 100% ownership of TLC.

Between January and March 2014, the form and extent of Mr. Carlock's purchase of TLC stock changed and in March 2014, Mr. Carlock entered into a stock purchase agreement with Mr. Terry and Mr. Taylor to purchase only their combined 75% stock ownership interest in TLC in a transaction that involved cash payments to the selling shareholders, payoff of certain bank debt, and payment of certain professional fees owed by TLC, for an aggregate purchase amount of $10,578,087.85 (Tr. Ex. 1). Mr. Carlock did not agree to purchase Mr. Buckley's 25% interest in TLC, and Mr. Buckley did not exercise any dissenting shareholder rights to compel the purchase of his shares, rather Mr. Carlock and Mr. Buckley agreed that Mr. Buckley would continue to be employed as the general manager of the TLC dealership while he and Mr. Carlock - a successful automobile dealer who owns nine other dealerships in Tennessee, Mississippi, and Alabama - pursued new joint venture opportunities in the car dealership business.[5]

Mr. Carlock appointed himself, Mr. Buckley, and Corbett Hill to the TLC board of directors which in turn named Mr. Carlock president, Mr. Buckley secretary, and Mr. Hill treasurer of the company. Although Mr. Hill owns no TLC stock, he is not an independent director; he is employed by Mr. Carlock through Carlock Management Company, Inc., one of Mr. Carlock's wholly-owned business entities, and serves as a director and officer of each of Mr. Carlock's other corporations.

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[4] Mr. Buckley purchased his 25% ownership interest in TLC in January 2014 from Mr. Taylor for the total sum of $375,000 reflected in a promissory note made by Mr. Buckley payable to Mr. Taylor. (Tr. Ex. 32).

[5] On January 1, 2014 prior to Mr. Carlock's purchase of TLC stock, Mr. Buckley entered into an Employment and Non-Competition agreement with the company (Tr. Ex. 33). This employment agreement defines the scope of Mr. Buckley's authority as General Manager and imposes certain restrictions on his right to compete against the dealership. There is no evidence this contract was amended after Mr. Carlock purchased the controlling interest in the corporation.

In September 2014, Mr. Buckley sold a portion of his TLC shares, equal to 5% of the issued and outstanding shares of the company, to Luke Bryan for $700,000. Mr. Buckley used half of these proceeds ($350,000) to pay off his debt obligation to First Tennessee Bank which he incurred in March 2014 in connection with Mr. Carlock's purchase of TLC stock from Mr. Taylor and Mr. Terry.[6]

The evidence proves that initially Mr. Carlock and Mr. Buckley managed to work cooperatively in the day-to-day operations of TLC's business. Mr. Buckley functioned as the general manager of the business, and Mr. Carlock provided strategic direction. Over time, however, Mr. Carlock assumed unilateral and plenary authority over business strategy and effectively froze Mr. Buckley out of any meaningful participation in decisions rightfully vested in the directors and shareholders. It is undisputed, for example, that for the entire time Mr. Carlock has been the majority shareholder, TLC has never held a meeting of the board of directors for the purpose of conducting corporate business, and has never held a meeting of the shareholders as such for the purpose of corporate governance. Mr. Carlock dismisses this failure to adhere to corporate formalities by pointing out that, until Mr. Buckley's resignation as general manager on January 27, 2017, the two men were in almost daily contact regarding TLC's business matters. Mr. Carlock, however, misses the point. The daily operations of the auto dealership are different in kind and character from the strategic business decisions of the corporation itself. With respect to the former class of business decisions, the evidence shows Mr. Buckley functioned as the general manager under Mr. Carlock's general supervision. With respect to the latter class of business decisions, the evidence proves

[6] Mr. Buckley gave Mr. Terry a promissory note in the amount of $350,000 for the purchase of his 25% stake in TLC. When Mr. Carlock purchased Mr. Terry and Mr. Taylor's 75% stake, Mr. Buckley obtained a loan from First Tennessee Bank to satisfy the note held by Mr. Terry.

Mr. Carlock treated TLC no different from any of his other wholly-owned companies without regard to the rights or interests of the minority shareholders. Indeed, it is hard to conceive how Mr. Carlock would have run things differently than he did if he had in fact owned 100% of the TLC stock.

For example, the evidence at trial proves the following:

- Mr. Carlock has never read the TLC bylaws.[7]
- There are no written minutes of shareholder meetings, and no such meetings were held in accordance with the bylaws.[8]
- There were never any regular meetings of the directors held in accordance with the bylaws.[9]
- Payments of ostensible business expenses characterized as "management fees" by TLC to Mr. Carlock's wholly-owned entity, Carlock Management Company, Inc., Mr. Buckley, and Mr. Bryan were in fact constructive dividend payments. In January 2017, Mr. Carlock unilaterally terminated the payments to the minority shareholders (Buckley and Bryan) and increased the amount of the monthly payment to his wholly-owned entity by the same amount previously paid to the minority shareholders.[10]
- Before Mr. Carlock purchased his controlling stock interest in TLC, the dealership paid management fees to AMSI, an entity controlled by the previous majority shareholder. The management fees paid to AMSI were $2,500 per month. The fees paid to Carlock Management, were originally

[7] Trial testimony of Grover C. Carlock.
[8] *Id.*
[9] *Id.*
[10] *Id.*, Trial testimony of Thomas A. Buckley.

$7,500 and are now $10,000. The increase in the monthly amount paid to Carlock Management is due entirely to the fact that monthly distributions are no longer being made to Mr. Buckley and Mr. Bryan. Mr. Buckley and another witness, Kelly Mitchell, testified the services performed by Carlock Management are the same as those performed by AMSI. The increase in payments to Carlock Management are dollar-for-dollar the amounts formerly paid as constructive dividends to the minority shareholders with no evidence that Carlock Management increased or improved its services. Moreover, Mr. Bryan has never been employed by TLC and provides no services to the company of any kind. Mr. Carlock has unilaterally terminated dividend payments to the minority shareholders and increased the dividend payments to himself through his wholly-owned entity Carlock Management Co.

- Mr. Carlock has engaged in the following conflict of interest transactions with TLC that were not beneficial to TLC or fair to the minority shareholders: (i) TLC pays the utilities on Mr. Carlock's personal condominium in Nashville; (ii) TLC made interest free loans to other Carlock affiliated entities;[11] (iii) Mr. Carlock assigned to himself personally from TLC, for no consideration, an option contract between TLC and Lee Family Partnership L.P. for the purchase of a track of land on which a new facility for the dealership was built. Thereafter, Mr. Carlock leased the facility back to TLC at an annual rental of $750,000 determined by calculating a return on Mr. Carlock's personal investment in the construction of the facility rather than upon the

[11] Mr. Carlock attempts to mitigate this conflict by pointing out that TLC was also the recipient of interest free loans from Carlock controlled entities.

going rate for such leases in the market. Such related-party transactions where the wholly-owned dealership entity leases its facility from the 100% shareholders are common in the auto dealership business, and the rent paid by TLC to Mr. Carlock is within the range of rents paid in comparable related-party arrangements. Nevertheless, the rent paid by TLC, calculated as a "return on investment" for Mr. Carlock's cost of constructing the facility is greater than the rent paid by dealerships renting facility space from unrelated owners.[12] (iv) Mr. Carlock received a unilateral distribution from TLC of $22,000 in May 2016 so that he would have cash available with which to pay his income tax. This amount was determined and executed at the direction of Mr. Carlock's employee, Mr. Hill, who is also a TLC director. All of Mr. Carlock's entities contributed their *pro rata* amount to the distribution paid to Mr. Carlock, as determined by Mr. Hill. No approval from the TLC board was obtained prior to this distribution being made; Mr. Hill merely executed the distribution at Mr. Carlock's direction. The minority shareholders were neither informed of nor asked in advance to approve this distribution. Mr. Hill's involvement with the distribution was done in his capacity as Mr. Carlock's financial controller, employed by Carlock Management Co. Mr. Buckley only learned about the distribution after the fact when he noticed a debit transaction having been posted to TLC's operating account. Only after

[12] TLC's rent amounts to a return on Mr. Carlock's personal investment of 8.8%. This is within the range of comparable related-party lease arrangements where the return on investment ranges from 7% to 9.8%. On the other hand, Mr. Carlock's personal return on investment is outside the range of lease arrangements where the dealership leases a facility was owned by a real estate investment trust; the rent paid by the dealership ranges from 7.25% to 8.0% return on investment to the REIT. Trial testimony of expert witness in the fields of accounting, financial analysis, and forensic accounting, James Mead.

Mr. Buckley protested the distribution, a similar distribution was made to Mr. Buckley and Mr. Bryan based upon their percentage stock ownership in TLC.[13] (v) Mr. Carlock pledged the assets of TLC to secure, in part, bank loans made to him personally, and to other of his business entities.[14]

- Mr. Carlock directed that Kelly Mitchell, an employee of TLC, be loaned, for no consideration to TLC, to work on-site for Mr. Carlock's wholly-owned entity, Carlock of Alabama, Inc., which owns and operates a BMW dealership in Tuscaloosa, Alabama. This employee was diverted to the Tuscaloosa dealership for a period of several weeks. During this time, TLC continued to pay Ms. Mitchell her annual salary.[15]

Mr. Buckley claims that Mr. Carlock, as TLC's controlling shareholder, has acted towards Mr. Buckley in a manner that is illegal and oppressive, and that grounds for a judicial dissolution of TLC exist pursuant to T.C.A. § 48-24-301(2)(B) and (C). That statute provides in relevant part as follows:

> Any court of record with proper venue in accordance with § 48-24-302 may dissolve a corporation:
>
> (1) . . .
>
> (2) In a proceeding by a shareholder if it is established that:
>
> (A) . . .
>
> (B) 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;

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[13] Mr. Buckley received a distribution of $5,866 and Mr. Bryan received $1,467.

[14] These loans TLC's assets secured were never called and the TLC collateral was never seized to satisfy any of Mr. Carlock's bank debt. Mr. Carlock characterizes this as TLC never having suffered a loss due to the pledge of its assets. The injury here is not necessarily to TLC, but to the minority shareholders, who were not consulted in advance and whose status as co-owners of the business was completely disregarded.

[15] Trial testimony of Grover Carlock, and Thomas Buckley. Deposition testimony of Kelly Mitchell.

(C) . . .

(D) The corporate assets are being misapplied or wasted.

T.C.A. § 48-24-301.

A majority shareholder of a closely-held corporation owes the minority shareholders a fiduciary duty to act in good faith and fairness in connection with the affairs of the corporation. *Hall v. Tennessee Dressed Beef,* 957 S.W.2d 536 (Tenn. 1997). Using the majority shareholder position to promote the personal interests of the majority shareholder at the expense of the minority is a breach of that fiduciary duty. *Id* at 541; see e.g., *PI, Inc. v. Beene,* No. 1:12-CV-350, 2014 WL 11455975 (E.D. Tenn. August 18, 2014) (Majority shareholder breached fiduciary duty by self-dealing transactions including: selling real estate owned by the corporation to a majority shareholder with the intent to lease the real estate back to the corporation; contracting with companies wholly owned by majority shareholder; using corporate funds for the personal benefit of the majority; entering into lease agreement with majority shareholder personally.)

Conduct of a majority shareholder is "oppressive" when it is "a visible departure from the standards of fair dealing and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely, and also as a lack of probity and fair dealing in the affairs of a company to the prejudice of some of its members." Annot. 56 A.L.R.3d 358, "What amounts to 'oppressive' conduct under statutes allowing for dissolution of a corporation?"

In *Cochran v. L.V.R.&R.C., Inc. et al.,* No. M2004-01382-COA-R3-CV, 2005 WL 2217067 (Tenn. Ct. App. September 12, 2005) the Court of Appeals provided a comprehensive discussion of this topic.

> Oppressive conduct is conduct whereby the majority attempts to freeze or squeeze the minority shareholder(s) out of the business, depriving the minority of its right to participate in the management of the corporation and/or their right to benefit financially in the form of reasonable compensation or dividends. Oppressive conduct is conduct which lacks "probity and fair dealing with the affairs of a company to the prejudice of some of its members, or a visual departure from the standards of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely". . . . It is conduct whereby the controlling shareholders operate the business for their sole benefit and to the detriment of minority shareholders ... Oppressive conduct includes conduct whereby the controlling shareholders/director do not declare dividends, but provide themselves with high compensation and "enjoy ... the fullest ... 'patronage' which corporate control entails, leaving minority shareholders who do not hold corporate office with the choice of getting little or no return on their investment for an indefinite period of time or selling out to the majority stockholders at whatever price they will offer. . . . Of course, the majority or controlling shareholders may offer very little for the minority's shares, or refuse to buy them altogether, thereby rendering the essentially unmarketable shares valueless.
>
> Additionally, although a finding of oppressive conduct does not require a finding of illegal or fraudulent acts, it does require a finding of more than merely poor business judgment on the part of the controlling shareholders.
> . . .

Id. (Internal citations omitted.)

"[I]n a proceeding brought to dissolve a corporation [a court] may issue injunctions, appoint a receiver or custodian *pendente lite* with all power and duties the court directs." T.C.A. § 48-24-302(c). "Corporate dissolution is a drastic measure." *Cochran v. L.V.R.&R.C., Inc. et al.* "... [A]lthough the Tennessee Code authorizes the court to order dissolution of the corporation upon a finding of one of the statutory grounds, it does not require it to do so. ... [A]lternative remedies include ... affirmative relief requiring the corporation or a majority of its stockholders to purchase the stock of the minority stockholders at a price to be determined according to a specific formula or at

a price determined by the court to be a fair and reasonable price..." *Id.* (Internal citations omitted.)

Mr. Carlock argues that Mr. Buckley has breached his fiduciary duties to TLC, has usurped corporate opportunities, and has otherwise acted in an inequitable manner thereby depriving him of the right to seek an equitable remedy such as redemption of his shares. For example, (i) Mr. Buckley used TLC's status as a licensed automobile dealer to facilitate one or more private transactions involving the purchase of a Ferrari automobile and that Mr. Buckley structured these transactions in a manner where TLC received no compensation for the use of its dealer's license. (ii) Mr. Buckley charged TLC $823.68 for his personal use of a car service provided by Grand Avenue Chauffeured Transportation on April 18 and 19, 2015.[16] (iii) Mr. Buckley applied for a loan to TLC from First Bank. In order to facilitate securing the loan, Mr. Buckley opened a demand deposit account at First Bank in TLC's name, with only himself and his wife as the authorized signatories on the account, and deposited $350,000 of his personal funds into the account.[17] The Court agrees with Mr. Buckley's argument that Mr. Carlock's asserted defense of "unclean hands" is inapplicable to a statutory remedy for oppression of a minority shareholder. In any event, the defaults alleged by Mr. Carlock relate to Mr. Buckley's conduct as the general manager of the dealership not as a minority shareholder. Therefore, such conduct, even if it is later proved to have caused economic injury to TLC, can be remedied by compensatory damages.[18]

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[16] Tr. Ex. 42.

[17] Mr. Carlock argues that by opening this account with First Bank, Mr. Buckley effectively gifted the initial deposit to TLC. There is no evidence to support the conclusion that Mr. Buckley intended to make a gift of $350,000 to TLC. Moreover, there is no evidence in this record that the existence of this bank account has caused TLC to suffer any loss or damage

[18] If Mr. Carlock subsequently carries his burden of proof to recover compensatory damages from Mr. Buckley, he would be entitled to a set off pursuant to T.C.A. § 25-1-103.

Mr. Buckley's original Complaint sought the appointment of a receiver. At trial he abandoned this form of relief and instead now asks the Court to order that his shares be involuntarily redeemed by the corporation.

The Court finds that appointment of a receiver for TLC would cause substantial disruption to the business, including placing the company in default of certain covenants in its credit facility with its bank and franchise agreements with one or more automobile manufacturers. Therefore, this remedy is too extreme, and would be unfairly prejudicial to all shareholders, especially Mr. Bryan who owns only 5% of the shares, for which he paid Mr. Buckley $700,000.

Accordingly, the more appropriate remedy for the oppression of his shareholder rights is for TLC to redeem Mr. Buckley's shares. The value to place on those shares for purposes of redemption remains an unanswered question. Mr. Buckley offered his opinion of the value of his 20% interest in TLC,[19] however, the Court finds that opinion to be unreliable in that Mr. Buckley seeks to be paid not only for his shares, but also for 20% of the value of the assets of the business. This is "double dipping" and results in an unreasonably high figure.

The appellate courts of our state have held that the amount paid to redeem the shares of an oppressed shareholder should be the "fair value" of the stock. The Tennessee Supreme Court, in *Athlon Sports Communications, Inc. v. Duggan,*[20] recently addressed the question of valuation methodology, albeit in the context of valuing the shares of a

[19] Mr. Buckley expressed his opinion that his 20% interest is worth three million dollars. (Tr. Test. of Thomas Buckley.)

[20] *Athlon Sports Communications, Inc. v. Duggan*, No. M201502222SCR11CV, 2018 WL 2752992 (Tenn. June 8, 2018).

dissenting shareholder pursuant to T.C.A. § 48-23-101 *et seq.*, rather than a redemption pursuant to § 48-24-302. The Supreme Court held:

> In sum, we overrule *Blasingame v. American Materials, Inc.*, . . . to the extent that it implies that trial courts are allowed to use *only* the Delaware Block method to determine the fair value of the shares of a dissenting shareholder. We adopt the more open *Weinberger* approach, which allows 'proof of value by any techniques or methods which are generally considered acceptable in the financial community and otherwise admissible in court.' . . . This approach allows a trial court to consider valuation methods that incorporate projections of future value, so long as they are susceptible of proof as of the date of the merger and are not the product of speculation. The Delaware Block method of valuation remains available where appropriate, but trial courts may now choose to use another valuation method to determine the fair value of a dissenting shareholder's shares of stock.

Athlon Sports Communications, Inc. v. Duggan, No. M201502222SCR11CV, 2018 WL 2752992, at *17 (Tenn. June 8, 2018) (intermediate citations omitted).

Because the redemption of an oppressed minority shareholder's stock and the stock of a dissenting shareholder are to be based upon the "fair value" of the shares, the Court concludes that the holding in *Athlon Sports* is applicable to cases brought pursuant to § 48-24-302.

Based upon the evidence presented at trial, the Court concludes that Mr. Carlock did engage in conduct that was oppressive of Mr. Buckley's rights as a minority shareholder of a closely-held corporation. The Court also concludes that the appointment of a receiver and dissolution of the corporation is too drastic a remedy for that oppression and the Court concludes that redemption of Mr. Buckley's shares is the appropriate remedy. The record, however, is insufficient for the Court to determine the fair value of Mr. Buckley's shares.

Rule 706 of the Tennessee Rules of Evidence allows the Court to appoint an expert witness on the Court's own motion. At the close of the trial, the Court requested

the parties to submit their nominations of potential Rule 706 expert witnesses to be appointed by the Court. Mr. Carlock nominated Haig Partners, of Ft. Lauderdale, FL, and Kerrigan Advisors, of Irvine, CA. Mr. Buckley nominated Lance Schmidt, of Mission Viejo, CA, and Brady Schmidt of Irvine, CA. The Court is satisfied that each of the experts nominated by the parties are qualified by education, training, and experience to express an expert opinion regarding the fair value of Mr. Buckley's 20% interest in TLC for purposes of redemption.

Rule 706(a) of the Tennessee Rules of Evidence provides, in relevant part, as follows:

> As to bench-tried issues, the court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed and may request the parties to submit nominations. The court ordinarily should appoint expert witnesses agreed upon by the parties, but in appropriate cases, for reasons stated on the record, the court may appoint expert witnesses of its own selection.

Tenn. R. Evid. 706(a).

In the present case, the parties have been unable to agree on the appointment of a Rule 706 expert. The Court has determined the current state of the record is insufficient for the Court to determine the fair value of Mr. Buckley's shares. Rather than appointing a Rule 706 expert nominated by only one party, the Court shall consider appointing Vic Alexander, the Chief Manager of KraftCPAs PLLC to be the Rule 706 expert in this case. Mr. Alexander's qualifications are attached as Exhibit 1 to this Memorandum and Order. The parties shall each advise the Court, in a writing filed and served, not later than ten business days after entry of this Memorandum and Order, whether they know of any reason why Mr. Alexander should not be so appointed. After considering the submissions of the parties, the Court shall decide, in a separate order, whether or not to appoint Mr.

Alexander. Even if the Court decides to appoint Mr. Alexander, the Court shall grant leave for each party to offer qualified and reliable expert opinion pursuant to Rules 702-705 of the Tennessee Rules of Evidence regarding the fair value of Mr. Buckley's shares.

It is so **ORDERED** this 9th day of July, 2018.

JOSEPH A. WOODRUFF, Chancellor