Filed 11/19/09

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

VILMA GO, Plaintiff, Cross-defendant and Appellant, v. PACIFIC HEALTH SERVICES, INC., et al., Defendants, Cross-complainants and Respondents.	B211054 (Los Angeles County Super. Ct. No. BC358117)
VILMA GO, Plaintiff, Cross-defendant and Respondent, v. PACIFIC HEALTH SERVICES, INC., et al., Defendants, Cross-complainants and Appellants.	B212255

APPEALS from an order of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Law Office of Stewart J. Neuville and Stewart J. Neuville for Plaintiff, Cross-defendant and Appellant and for Plaintiff, Cross-defendant and Respondent.

Quintana Law Group, Andres F. Quintana and John M. Houkom for Defendants, Cross-complainants and Appellants and for Defendants, Cross-complainants and Respondents.

---

* Pursuant to California Rules of Court, rules 8.1100 and 8.1110, this opinion is certified for publication with the exception of part I of the DISCUSSION.

INTRODUCTION

Plaintiff Vilma Go filed a complaint seeking the involuntary dissolution of Pacific Health Services, Inc. (PHS), in which she had been a director and shareholder, pursuant to Corporations Code section 1800,[1] naming as defendants PHS, and David Sylvia and Paul Husen, the other directors and shareholders of PHS (sometimes collectively referred to herein as defendants). Defendants sought to avoid dissolution of PHS by purchasing Go's shares under section 2000 which, once invoked, requires the trial court to appoint three disinterested appraisers to assist the court in determining the valuation of the corporation at issue. After considering the reports of the appraisers, in accordance with the requirements of section 2000, the trial court stayed the dissolution proceeding and fixed the fair value of Go's shares, and thereafter entered a decree providing in the alternative for the winding up and dissolution of the corporation unless defendants made payment to Go for her shares, in the specified amount, within the time specified by the decree.

Go appeals from the decree, contending that the court's valuation of PHS was erroneous and undervalued her shares. Defendants also appeal from the decree, contending that the decree awarded Go relief to which she was not legally entitled: that if defendants did not make payment within the specified time, the involuntary winding up and dissolution of PHS would proceed immediately, without defendants being afforded the opportunity to litigate the merits of the action for involuntary dissolution. In the nonpublished portion of this opinion, part I of the discussion, we conclude that the trial court had substantial evidence before it that supported the valuation it reached. In the published portion of this opinion,

[1] All further statutory references are to the Corporations Code.

part II of the discussion, we conclude that the alternative decree issued by the trial court followed the statutory requirements set forth in the plain language of section 2000. Accordingly, we affirm the order/alternative decree in its entirety.

FACTUAL AND PROCEDURAL BACKGROUND

Go is a licensed nurse. In early 2003, Go and David Sylvia formed Pacific Health Services, Inc. (PHS), a California corporation that was eventually licensed and certified to provide Medicare and Medi-Cal home nursing and health care services. Go and Sylvia each owned half of the shares of PHS, and each made an initial investment of $30,000. Originally, Go and Sylvia were both directors and officers of PHS.

In early 2004, Sylvia and Go brought Paul Husen into the corporation as director of nursing. Husen, Go, and Sylvia each became one-third shareholders.

In early 2006, PHS received its certification from Medicare and Medi-Cal and obtained a county license, at which time the company became profitable. Until PHS obtained its licensure and certification, the business was not permitted to bill for its services.

Also in early 2006, Sylvia and Husen began paying themselves salaries of approximately $8,000 per month. Go did not receive a salary; Sylvia told her "there was not enough money."

Go contends that on August 8, 2006, Sylvia and Husen held an unnoticed board meeting at which they amended the bylaws in order to terminate her from the board of directors. Go contends that Sylvia and Husen set the price of Go's shares at $20,000, then issued to themselves company checks ($25,000 to Sylvia and $15,000 to Husen), which they used to fund personal checks which they sent to

Go (for $10,000 from each of them). They then purported to transfer Go's shares to themselves.

Sylvia and Husen contend, however, that in February 2006, they learned that Go was breaching her duties to PHS by competing with it, and directing potential customers to competing agencies in return for monetary compensation. They assert that they properly removed her from the board of directors and compensated her for the fair market value of her shares.[2]

Go sued defendants on September 7, 2006, seeking the involuntary dissolution of PHS pursuant to section 1800, subdivisions (b)(3) and (b)(4).[3] Go also sought damages based on claims of breach of fiduciary duty and fraud (1) as a shareholder's derivative action, and (2) as a direct action brought by a shareholder and director. (*Vilma Go v. Pacific Health Services, Inc.*, *et al.*, Los Angeles Super. Court Case No. BC358117.)

On December 7, 2006, defendants filed a cross-complaint for breach of contract, misappropriation of corporate opportunities, and breach of the duty of loyalty.

---

2 The record contains copies of the reverse sides of Sylvia's and Husen's personal checks, on which Go made the notation "all rights reserved" when cashing the checks, thus preserving her standing to object to defendants' actions.

3 A shareholder of a close corporation may file a verified complaint for involuntary dissolution of the corporation. (§ 1800, subd. (a).) Subdivision (b) of section 1800 provides: "The grounds for involuntary dissolution are that: [¶] . . . [¶] (3) There is internal dissension and two or more factions of shareholders in the corporation are so deadlocked that its business can no longer be conducted with advantage to its shareholders . . . . [¶] (4) Those in control of the corporation have been guilty of or have knowingly countenanced persistent and pervasive fraud, mismanagement or abuse of authority or persistent unfairness toward any shareholders or its property is being misapplied or wasted by its directors or officers."

On April 5, 2007, defendants filed a motion pursuant to section 2000 for an order to stay the dissolution proceedings.[4] They requested that the court set a valuation date of August 14, 2006, and fix the value of Go's shares.

Go filed a response to defendants' motion to stay the proceedings and fix the value of the shares. She did not oppose the request that the court determine the value of the corporation, but requested that the valuation date be set for the time of the actual valuation, i.e., sometime in 2007.

Defendants filed a reply.

---

[4] "[I]n any suit for involuntary dissolution, . . . , the corporation or, if it does not elect to purchase, the holders of 50 percent or more of the voting power of the corporation (the 'purchasing parties') may avoid the dissolution of the corporation and the appointment of any receiver by purchasing for cash the shares owned by the plaintiffs or by the shareholders so initiating the proceeding (the 'moving parties') at their fair value." (§ 2000, subd. (a).)

Section 2000 continues, in relevant part: "(b) If the purchasing parties (1) elect to purchase the shares owned by the moving parties, and (2) are unable to agree with the moving parties upon the fair value of such shares, and (3) give bond with sufficient security to pay the estimated reasonable expenses (including attorneys' fees) of the moving parties if such expenses are recoverable under subdivision (c), the court upon application of the purchasing parties, . . . in the pending action . . . shall stay the winding up and dissolution proceeding and shall proceed to ascertain and fix the fair value of the shares owned by the moving parties.

"(c) The court shall appoint three disinterested appraisers to appraise the fair value of the shares owned by the moving parties, and shall make an order referring the matter to the appraisers so appointed for the purpose of ascertaining such value. The order shall prescribe the time and manner of producing evidence, if evidence is required. The award of the appraisers or of a majority of them, when confirmed by the court, shall be final and conclusive upon all parties."

Subdivision (f) of section 2000 provides: "For the purposes of this section, the valuation date shall be (1) in the case of a suit for involuntary dissolution under Section 1800, the date upon which that action was commenced, ... However, . . . the court may, upon the hearing of a motion by any party, and for good cause shown, designate some other date as the valuation date."

On May 11, 2007, the court issued an order staying the dissolution proceedings, and providing for the appointment of three appraisers. The parties were to each choose one appraiser, and the two appraisers would then choose the third appraiser. The court ordered the valuation date to be September 7, 2006—the date Go filed suit—and ordered the appraisal to be concluded by September 14, 2007.

Go chose Barbara Luna, defendants chose Jeffrey Freeman, and together Luna and Freeman chose Stanley Deakin.

Defendants filed three unopposed ex parte applications to continue the required reporting date. The court eventually set May 31, 2008, as the date by which the appraisers were required to provide their reports. Go filed an unopposed ex parte application to continue the reporting date for an additional 45 days, but the court denied the application.

The three appraisers each filed a separate report, stating the value of 100 percent of the shares of PHS, including Go's shares.[5] Luna set the value of the corporation at $1,046,000, Freeman at $410,000, and Deakin at $600,000.

On June 3, 2008, the court held a conference with counsel and ordered them to meet and confer regarding the valuation. The parties could not agree on the value, but stipulated that the court could determine the value of the corporation based upon the appraisers' reports and briefing to be filed by the parties.

---

5 In response to Go's section 1800 petition for involuntary dissolution of PHS, defendants claimed they had already paid Go for her shares and that she no longer owned any shares. However, the section 2000 proceeding was conducted based on the assumption that the appraisers were to value the corporation as a whole in order to establish the fair value of the shares presumptively owned by Go (in this case, one-third of the outstanding shares).

Go filed an opening brief, a reply brief, and a sur-reply brief, as did defendants.

The court held a hearing on July 31, 2008. The court issued a tentative ruling, which it later adopted as its order, in which it found the fair value of the PHS shares to be $466,500, and therefore Go's ownership interest was valued at $155,484. The court indicated that it had thoroughly considered each of the three reports, but that it found Deakin's report and conclusions to be the most compelling. The court stated that it found Luna's appraisal to be "inflated and unreliable."

On August 22, 2008, Go filed a motion requesting issuance of an order directing payment of the value of her shares or, in the alternative, for the winding up and dissolution of the corporation, and for an award of expenses. Defendants filed opposition.

On September 19, 2008, the court issued an order directing PHS, Sylvia, and Husen to pay Go $155,484, within 45 days, and stating that "if this payment is not made within such time the involuntary winding up and dissolution of defendant corporation shall proceed immediately."

Go filed a notice of appeal on September 23, 2008.

Defendants filed a notice of appeal on November 17, 2008.

The parties later stipulated to consolidate the two appeals.

DISCUSSION

I. Go's Appeal: Valuation of PHS

Go argues that in setting the value of PHS, the court improperly (1) inferred a profit margin for PHS based on industry norms rather than based on evidence of the actual income and profits earned by PHS; (2) applied an expected value range for the sale of PHS which in fact represented only the value of PHS's license, without revenue; and (3) believed that a license as a Medicare provider had dubious value. Go seeks de novo review of the valuation of PHS, or an order directing the trial court to conduct a further review and cure the purported deficiencies in the valuation accepted by the court. We find no error in the court's valuation of PHS.

Standard of Review

Pursuant to section 2000, subdivision (a): "The fair value [of a corporation's shares] shall be determined on the basis of the liquidation value as of the valuation date but taking into account the possibility, if any, of sale of the entire business as a going concern in a liquidation."

"The factual aspects of the court's fair value determination are reviewed under the substantial evidence standard. [Citation.] However, the superior court's interpretation of the statutory standard set forth in section 2000 is subject to de novo review on appeal. [Citations.]'" (*Mart v. Severson* (2002) 95 Cal.App.4th 521, 530.)

Factual Background

As previously stated, the three appraisers each filed a separate valuation report. Luna, the appraiser selected by Go, set the value of the corporation at $1,046,000; Freeman, the appraiser selected by Sylvia and Husen, valued the company at $410,000; and Deakin, chosen by the other two appraisers, valued PHS at $600,000.

The court took note of the fact that the appraisers had consulted with an expert, "Jack Eskenazi of American Healthcare Capital, who informed them that a privately held start-up home health care agency could be expected to sell for between $350,000 and $500,000 as a result of the value of Medicare and Medi-Cal licensure." The court arrived at its determination of the valuation of the outstanding shares of PHS, $466,500, in reliance on the information and values stated in Deakin's report. However, rather than applying a 20 percent anticipated profit margin as did Deakin (by which Deakin arrived at a valuation of $600,000), the court applied a 15 percent profit margin, noting that the industry norm was between 10 and 20 percent, and arrived at a valuation of $466,500. The court noted that the valuation it selected was "within the expected sales range of $350,000-$500,000 for a start-up and relatively comparable to Freeman's numbers."

In its ruling on valuation, the court discussed at some length the appraisal provided by Luna, which the court found to be "flawed in several respects," and "resulted in a valuation far beyond those of the other appraisers, and far beyond any price the actual market is likely to bear." Luna's calculations were based on comparing publicly traded companies to PHS, "despite the fact that PHS is a privately held company, many times smaller than the 'comparables,' and was a start-up, not an established company." Furthermore, Luna assumed a 48 percent profit margin. As to the latter, the court stated that "Luna cannot rely on a short-term profit of 48% over the long-term when the industry average is between 10-20%. There is no justification or excuse given why PHS would be such a fabulous company that it would outstrip the competition on an ongoing basis by almost triple the norm."

Discussion

A. *Actual Profitability Versus Average Profitability in the Industry*

Go contends on appeal that profitability must be based on *actual* profitability, based on the corporation's accounting records, not on expected or industry standard profitability. She points out that Luna's report relied on the "actual known profitability percentage of 48% in PHS'[s] corrected books and records."[6] Specifically, Luna relied in part on government documents detailing Medicare payments made to PHS during 2006 and 2007. Luna also relied on *projections* of anticipated sales for the first three years of full operations based upon Go's involvement and knowledge of her marketing efforts prior to September 7, 2006, because, as noted by the court, Go had not been involved in PHS since August 2006.

In short, Go argues on appeal that the trial court was required to accept Luna's valuation approach, rather than Deakin's. However, she cites no authority that supports the notion that profitability must be based on so-called "actual" profitability rather than industry norms. The trial court exercised its discretion in a reasonable manner when it concluded that Luna's valuation was inflated and unreliable because it applied unrealistic, short-term profits, assuming the company could be expected to maintain such profits over the long-term. The trial court's use

---

6 We note that Luna's appraisal of PHS's profitability was based on her "correction" of PHS's earnings, that is, adding to the company's earnings more than $200,000, representing what were in Luna's opinion excessive salaries and other purportedly fraudulent entries made by Sylvia and Husen.

We also note that Freeman, defendants' chosen appraiser, made corrections to PHS's earnings of approximately $158,000, including corrections for Sylvia's and Husen's salaries, but nonetheless arrived at a valuation of PHS of $410,000.

Go contends that Deakin did not calculate reasonable compensation. However, Deakin's report examined PHS's "internally compiled results during 2006" in order to calculate PHS's profit margin, "after adjusting for owners' discretionary expenses, among other factors."

of a profit margin between 10 and 20 percent, the accepted range in the industry, was entirely rational, particularly considering that PHS was a start-up. As stated by the trial court, "There is no justification or excuse given why PHS would be such a fabulous company that it would outstrip the competition on an ongoing basis *by almost triple the norm*." (Italics added.) The court had considered Luna's report, which stated that PHS was structured differently than most companies in the industry in that it had no employees beyond the officers and one assistant, staffing of nurses was done by independent contractor relationships, and PHS used an outside billing company. Luna concluded that, as a result, the company was more profitable than most of its competitors. Deakin's report also acknowledged that "[a]s a result of servicing patients with a minimal workforce of employees, the Company could better manage profitability and increase operating margins during its first year of revenues from patients served." Even so, Deakin applied a profit margin of 20 percent, basing his valuation on industry norms and expectations that the profit range for such companies was 10 to 20 percent. The trial court thus had before it substantial evidence to conclude that 15 percent was a reasonable profit margin to apply, given PHS's brief operating history and the fact that it was a privately-held, start-up company. Judging by the required standard of what a disinterested party would pay for the corporation, the trial court realistically concluded that a hypothetical buyer would not purchase the company for a price that assumes an almost 50 percent profit margin, based on otherwise questionable valuation methods applied by Luna. For a closely held corporation, often "'there will be no actual market value or any actual cash sales by which the market value could be determined. Therefore, the value to be determined must necessarily be a constructed or hypothetical market value at which the hypothetical willing seller would sell and the hypothetical willing buyer would purchase.' (2 Marsh et al., Cal. Corporation Law [(4th ed. 2001 supp.)] § 21.08[C], pp. 21-45.)" (*Mart v. Severson, supra*, 95 Cal.App.4th at p. 531.) We find that the trial court had sufficient evidence upon which to base its conclusion as to the value of PHS.

B. *The Court's Purported Misunderstanding of Eskenazi's Input*

The appraisers each consulted Jack Eskenazi of American Healthcare Capital. The court noted in its order that Eskenazi stated that a privately held start-up home health care agency could be expected to sell for between $350,000 and $500,000 as a result of the value of Medicare and Medi-Cal licensure. The Court noted that the Freeman and Deakin reports stated figures for the value of the business that are "within the expected sales range of $350,000-$500,000 for a start-up." During the valuation hearing, the court stated that "[b]oth sides agree that Mr. Eskenazi says that a startup would sell between $350,000 and $500,000. This is essentially a startup."

Based on these statements, Go contends: "The Court incorrectly infers from the fact that [Eskenazi] set a range for a value of licensure, that the value of PHS must fall within the same range. Yet Mr. Eskenazi makes his estimate based on licensure alone and not on the value of a particular company and certainly not on the value of PHS whose financial records he never reviewed." She argues the court confused the statement of value of the license alone with the value of an entire operating business generating verifiable revenues. In other words, the court inferred that the statement on the value of the license, without revenue, was a broader statement on the expected range of value of the entire business, with revenue, and that the value of PHS must fall within that misconstrued expected range.

We disagree with Go's characterization of the information the appraisers received from Eskenazi and also of the court's findings. In his report, Deakin described Eskenazi as "an experienced valuation analyst and home healthcare industry specialist" who "regularly works with owners and buyers of healthcare service firms." "Along with EBITDA [earnings before interest, taxes, depreciation and amortization] margins and other measures of operating performance, Mr. Eskenazi considers a healthcare company's revenue and asset size, business location, operating trends, management and staffing of operations, and business mix, among other factors." In selecting "reasonable EBITDA margins, revenues and multiples," Deakin "considered and applied EBITDA value metrics that were in reasonable ranges discussed with Mr. Eskenazi." The Deakin report thus indicated that Eskenazi did not merely provide information on the value of Medicare licensure without taking revenue or other factors into account. Deakin's valuation—the one chosen by the court (albeit with a modified profit margin)—was based on Eskenazi's broader expertise.

More importantly, Go has not demonstrated that the court misconstrued the information Eskenazi provided, such that the court thought the value of the company had to fall within a range of value between $350,000 and $500,000. The Court had considered the three appraisers' reports in their entirety, including the fact that each appraiser relied on several methods of valuation. When it compared the valuations reached by Deakin and Freeman to the expected sales range provided by Eskenazi, the court did not indicate that it thought the valuation it chose had to fall within that range. The court clearly understood that the matter was more complex than that, and that the appraisers considered numerous factors in reaching their valuations.

C. *The Value of Medicare Licensure*

Finally, Go stresses on appeal that it generally takes two years to obtain a Medicare license, and that this fact increases the sales price for a company such as PHS that already holds such licensure. Eskenazi apparently agreed with that assertion. However, at the valuation hearing, the court said it was "very dubious about the value of a Medicare license and the delay in getting it." The court also said, "it is not at all clear to me that the license has any value to anyone but the person who holds it; that is, you cannot sell a Medicare license."

On appeal, Go relies on these statements by the court to assert that the court "dr[ew] inferences contrary to uncontroverted facts or simply based on speculation." We disagree.

During the hearing, the court stated its belief that a regulation might have been enacted requiring the Department of Health Services to act on applications for licensure within six months. However, the court made clear that it was not certain whether such a regulation had been enacted, and stated: "I'm not taking it into account because a) I didn't cite it for you, and b) I'm not a hundred percent sure it exists. It is just something that I have heard about. So I don't know why I'm telling you this, just in the interest of full disclosure *because it is not part of the analysis*." (Italics added.) Thus, while the court entertained some doubt about the continuing validity of the information regarding the increased value created by delay in licensure, it did not allow that doubt to enter into its selection of a proper value for PHS. All of the appraisers took into account that the delay in licensure increased the expected value of a home healthcare company, and the court relied on those reports, and particularly Deakin's, to determine the value of PHS. The court did not draw inferences contrary to uncontroverted facts; instead, it relied on the information provided to it by the appraisers and selected a value for PHS in accordance with the report it found to be best supported. We therefore affirm the court's determination that the proper valuation for PHS as of September 7, 2006, was $466,500.

II. Defendants' Appeal: The Propriety of the Alternative Decree

Defendants contend on appeal that the alternative decree the court issued on September 19, 2008, should be set aside "because [defendants] have not yet had the opportunity to defend themselves against [Go's] claim for Involuntary Dissolution of [PHS]," and that "Go has not proven that she is entitled to relief under that claim." Defendants argue, as they did in the trial court, that "once there has been a determination on the merits that [Go] is entitled to commence the dissolution of [PHS], the entry of a decree with the effect of the Alternative Decree would be appropriate. . . . However, now is not the time for such an order, as the interests of equity and the desire for a determination on the merits justify a delay in the imposition of that relief." They request that we set aside the alternative decree and "remand this matter with directions to the Trial Court to only enter such a decree after [Go] has prevailed on [her] claims for involuntary dissolution."

We conclude that defendants misapprehend the plain meaning and effect of section 2000 which, once invoked, mandates the entry of an alternative decree such as the one entered by the trial court here. The procedure permitted by section 2000, which is entirely optional, embodies a summary proceeding which supplants the action for involuntary dissolution pursuant to section 1800.

The Plain Meaning of Section 2000

"'A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law.

[Citations.] In construing a statute, our first task is to look to the language of the statute itself. [Citation.] When the language is clear and there is no uncertainty as to the legislative intent, we look no further and simply enforce the statute according to its terms. [Citations.]' (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387-388.)" (*Smith v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 117, 123.)

Section 2000, subdivision (b), provides that after the purchasing parties have elected to purchase the shares owned by the moving parties (among other conditions), upon application of the purchasing parties in the pending action for dissolution, the court shall stay the winding up and dissolution proceeding and shall determine the fair value of the shares owned by the moving parties. Pursuant to section 2000, subdivision (c) after the court has confirmed the fair value of the shares, "[t]he court *shall enter a decree which shall provide in the alternative for winding up and dissolution of the corporation unless payment is made for the shares within the time specified by the decree. If the purchasing parties do not make payment for the shares within the time specified, judgment shall be entered against them* and the surety or sureties on the bond for the amount of the expenses (including attorneys' fees) of the moving parties. Any shareholder aggrieved by the action of the court may appeal therefrom." (Italics added.) Section 2000, subdivision (d), continues: "*If the purchasing parties desire to prevent the winding up and dissolution, they shall pay to the moving parties the value of their shares ascertained and decreed within the time specified pursuant to this section*, or, in case of an appeal, as fixed on appeal. On receiving such payment or the tender thereof, the moving parties shall transfer their shares to the purchasing parties." (Italics added.)

The language of section 2000 is clear: after the court has confirmed the fair value of the corporation's shares, the court "*shall* enter a decree which *shall* provide in the alternative for winding up and dissolution of the corporation unless payment is made for the shares within the time specified by the decree." (§ 2000, subd. (c).) Defendants in essence ask us to engraft onto the statute a provision that the court's decree shall provide in the alternative for the winding up and dissolution of the corporation *if the moving party then prevails in the action for involuntary dissolution pursuant to section 1800*, unless payment is made for the shares within the time specified by the decree. Of course we cannot do so.

Defendants state that "[u]nder the [trial court's] reading of [section 2000, subdivision (c)], [Go] was then entirely excused from having to prove the merits of her Involuntary Dissolution claim before she received the benefits of the Alternative Decree." But that is precisely the concession defendants chose when they elected to proceed under section 2000. In such a proceeding, purchasing parties aspire to buy out the moving party, with minimal expenditure of time and money that would otherwise be spent in litigation, in order to preserve the corporation. If they (or the corporation) cannot pay the purchase price, or decide not to do so, then both sides must walk away, receiving pro rata the proceeds resulting from dissolution of the corporation. On the other hand, if the purchasing parties tender the amount determined by the court, the moving party cannot reject the share price as being too low. (§ 2000, subd. (d) ["On receiving such payment or the tender thereof, the moving parties shall transfer their shares to the purchasing parties"].) "The objective of section 2000 is to provide an alternative to dissolution through a buy-out by the [purchasing parties]. The objective of the statutory appraisal process is to find a fair value for the shares of the parties seeking dissolution and to award the [moving parties] seeking dissolution the liquidation value they would have received had their dissolution action been allowed to proceed to a successful conclusion. If the purchasing parties believe the price fixed by the court is too high, they can refuse to purchase the shares at that price and permit the winding up and dissolution of the corporation to proceed. Their only liability would be to pay the expenses (including attorney fees) incurred by the moving parties in the appraisal process. (See § 2000, subd. (c); [citation].) No comparable provision allows moving parties to refuse to accept a share price they believe to be too low." (*Trahan v. Trahan* (2002) 99 Cal.App.4th 62, 75.)

Defendants contend that "the claim under [section 1800] triggered the use of [section 2000] even before there was a determination of liability on that claim, or for that matter, before there was even an opportunity for [defendants] to present evidence on the claim." However, we stress that Go's filing of her complaint for involuntary dissolution did not "trigger" defendants' use of section 2000. Defendants were not required to invoke the procedures prescribed by section 2000; they *elected* to do so. They could have chosen to litigate their cross-complaint and defend the section 1800 action for involuntary dissolution on its merits. They chose instead to use the summary procedure afforded by section 2000, which resulted in a stay of the dissolution proceedings, valuation of the corporation, and an alternative decree to either pay Go the designated amount or have judgment of dissolution entered against them. If this were not the inevitable outcome, then all majority shareholders facing an action for involuntary dissolution would invoke section 2000 if only for the purpose of delay, with nothing to lose other than the expense of the appraisal and attorney fees, knowing they could eventually litigate the action for involuntary dissolution on its merits. The plain language of section 2000, and the apparent legislative purpose inherent in the language of the statute, does not permit such an interpretation.

The statutory buy-out procedure set out in section 2000 has been aptly described as a "special proceeding" rather than a civil "action." (See *Veyna v. Orange County Nursery, Inc.* (2009) 170 Cal.App.4th 146, 154.) Indeed, an action for dissolution of a corporation is itself a special proceeding. (*Esparza v. Kadam, Inc.* (1960) 182 Cal.App.2d 802, 807.) "'Special proceedings being of statutory origin do not proceed according to the course of the common law, but give new rights and afford new remedies. [Citations.]'" (*Ibid.*) We conclude that the trial court here followed the statutory procedure mandated by section 2000, affording to both the moving party and the purchasing parties the remedy to which they were entitled under that statute in the form of the alternative decree.

Waiver

We note that defendants argue at length that the alternative decree was also improper because Go waived notice of ruling, and expressly waived the entry of an interlocutory order such as the alternative decree. The trial court found that entry of such an order could not be waived by Go, just as she could not waive final judgment. Suffice it to say that we agree with the trial court that after it had determined the value of the corporation, section 2000 mandated entry of the alternative decree and Go could not "waive" its entry.

Offset

Finally, defendants argue that they should have been given the opportunity to establish that they had already paid Go $20,000, or perhaps more, for her shares, and that this amount should have been directly offset from the $155,484 the trial court ordered defendants to pay Go in the alternative decree. However, the only issue to be determined by the court in the section 2000 proceedings was the valuation of the corporation. Whether defendants acted appropriately in removing Go from the board of directors and unilaterally setting a price and paying her for her shares, and whether defendants were entitled to any offset for sums paid to Go, were matters that would have been determined in the section 1800 action for dissolution had defendants not elected to invoke section 2000. Having done so, the only issue before the court was the valuation of the corporation. As the trial court correctly observed: "Defendants contend that they have the right to prove that Vilma Go has already been paid at least $20,000 for her shares and they should be entitled to prove the actual amount paid. Defendants misunderstand the nature of the decree, which will merely state the amount that Defendants must pay for Vilma Go's shares. Whether Defendants have partially complied, or will comply, by paying the amount specified is not an issue for the court to address in the decree." Properly understood, the court's order recognized, as required by section 2000, that defendants were directed to pay Go the stated amount, without any setoff. Defendants are not obliged to pay Go for her shares, but if they do, they must do so in the amount stated in the alternative decree. Were they to deduct from the payment tendered the claimed offset, they would not be in compliance with the first alternative stated in the decree, and the second alternative, the winding up and dissolution of the corporation, would appropriately ensue.

Defendants do not argue on appeal that the valuation amount was incorrect because it failed to take into account the purported $20,000 payment. (Cf. *Cotton v. Expo Power Systems, Inc.* (2009) 170 Cal.App.4th 1371.) They argue only that the trial court's alternative decree was improper because it prevented defendants from litigating their entitlement to an offset, because the decree merely set the value of the corporation and required payment to Go of a specified amount by a date certain, or else winding up and dissolution of the corporation would commence. Because we conclude that the alternative decree was entirely in keeping with the requirements of section 2000, we decline to remand the matter for further consideration of possible offsets.

In addition, defendants have not demonstrated on appeal that any such payments were not already taken into account in Deakin's report, on which the court relied in determining the proper valuation of PHS. Deakin apparently did not directly offset the $20,000 payment, as did Freeman, but he did review the corporation's balance sheet, ledger, check register, and checking account statements and related documents, which would have included evidence of any payments made by PHS to Go, or by PHS to Sylvia and Husen to be used to pay Go.

DISPOSITION

The order of September 19, 2008, is affirmed. The parties are to bear their own costs on appeal.

CERTIFIED FOR PARTIAL PUBLICATION

WILLHITE, Acting P. J.

We concur:

MANELLA, J. SUZUKAWA, J.