IN THE

Indiana Supreme Court

Supreme Court Case No. 20S-PL-618

Blake B. Hartman,

Appellant (Plaintiff)

–v–

BigInch Fabricators & Construction Holding Company, Inc.,

Appellee (Defendant)

Argued: December 3, 2020 | Decided: January 28, 2021

Appeal from the Parke Circuit Court
No. 61C01-1809-PL-394
The Honorable Hunter J. Reece, Special Judge

On Petition to Transfer from the Indiana Court of Appeals
No. 19A-PL-2263

Opinion by Chief Justice Rush

Justices David, Massa, Slaughter, and Goff concur.

Rush, Chief Justice.

The value of corporate shares may not correspond proportionally to the company's overall value. Shares are usually valued less if they represent a noncontrolling interest or if they are not publicly traded. When valuing such shares, an appraiser will often account for this reality by applying "minority" and "marketability" discounts.

Here, when tasked with valuing shares, an appraiser applied these discounts, even though the shares would be sold in a compulsory, closed-market sale. The selling shareholder takes issue with the valuation, arguing that minority and marketability discounts are open-market concepts inapplicable to the buyback provision of his shareholder agreement with the company.

While we recognize the public policy rationale underlying the shareholder's position, we hold that the parties' freedom to contract may permit these discounts, even for shares in a closed-market transaction. And under the plain language of this shareholder agreement—which calls for the "appraised market value" of the shares—the discounts apply.

Facts and Procedural History

Blake Hartman is a former officer and director of BigInch Fabricators & Construction Holding Company, Inc., a closely held corporation. He also owns a minority portion of that company's shares.

In 2006, all BigInch shareholders, including Hartman, agreed to be bound by a contract that included a buyback clause. That clause requires BigInch to repurchase a shareholder's interest if the company involuntarily terminates the shareholder as an officer or director. And the clause further provides that the company must pay the former officer or director the shares' "appraised market value" as determined by a third-party valuation company in accordance with generally accepted accounting principles.

In 2018, Hartman was terminated without cause, triggering BigInch's obligation to purchase Hartman's shares in the company. BigInch hired

Wonch Valuation Advisors to appraise Hartman's interest. Applying a fair market value standard, the appraiser discounted the shares for their lack of marketability and Hartman's lack of control.

Hartman sued BigInch, asking, in part, for a declaratory judgment that the discounts are inapplicable because the shareholder agreement doesn't contemplate a fair market value standard. On cross-motions for summary judgment, the trial court ruled in BigInch's favor. The court interpreted the valuation term and found that "appraised" merely states how to determine "market value" and that "market value" and "fair market value" are synonymous terms, both consistent with the appraiser's approach. Hartman appealed; and the Court of Appeals reversed, concluding that the discounts could not apply to any closed-market sale. *Hartman v. BigInch Fabricators & Constr. Holding Co., Inc.*, 148 N.E.3d 1017, 1024 (Ind. Ct. App. 2020).

BigInch petitioned for transfer, which we granted, vacating the Court of Appeals opinion. Ind. Appellate Rule 58(A).

Standard of Review

We review summary judgment motions de novo, using the same standard the trial court applied. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). "[S]ummary judgment is appropriate 'if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Id.* (quoting *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009)). Here, the parties have stipulated that no genuine issues of material fact are in dispute, so we need only determine whether the trial court correctly applied the law.

Discussion and Decision

Indiana courts "firmly defend" parties' freedom to contract by enforcing their chosen terms. *Care Grp. Heart Hosp., LLC v. Sawyer*, 93 N.E.3d 745, 749 (Ind. 2018). So, when construing an agreement, we focus

on the words that the parties agreed to, giving clear and unambiguous language its ordinary meaning. *Holiday Hosp. Franchising, Inc. v. AMCO Ins. Co.*, 983 N.E.2d 574, 577 (Ind. 2013).

Hartman argues the minority and marketability discounts cannot apply to BigInch's buyback of his shares. He asserts it is a "settled rule" that the discounts are inapplicable to transactions that do not affect control of a company and that are not in the open market. BigInch contends that the "fatal flaw with Hartman's position" is that he asks for a "fundamentally different" valuation term than the one he agreed to in the shareholder agreement. We agree with BigInch.

We acknowledge caselaw that declines, on public policy grounds, to apply marketability and minority discounts to a closed-market sale of a noncontrolling business interest. *See, e.g.*, *Wenzel v. Hopper & Galliher, P.C.*, 779 N.E.2d 30, 38–39 (Ind. Ct. App. 2002), *trans. denied*. But those decisions do not govern because they do not concern a sale under a contract that expressly contemplates the shares' "market value."

Upholding the parties' freedom to choose their own valuation terms, we conclude that the discounts can apply to BigInch's buyback of Hartman's shares. The clause's plain and ordinary language anticipates a fair market valuation, and applying the discounts does not yield an absurd result. We thus affirm the trial court's grant of summary judgment for BigInch.

I. Freedom of contract principles govern our analysis.

We recognize parties' freedom to enter into contracts; and we presume, when construing a contract, that its terms represent the parties' freely bargained agreement. *Haegert v. Univ. of Evansville*, 977 N.E.2d 924, 937 (Ind. 2012). Thus, our analysis of the parties' rights and responsibilities under a shareholder agreement—like the one governing the buyback of Hartman's shares—normally begins with that contract's language. *See Sawyer*, 93 N.E.3d at 749, 752.

But, here, we first address a threshold argument before turning to the agreement's terms. Hartman argues that, as a matter of law, minority and

marketability discounts do not apply to shares sold to a controlling interest in a closed-market sale. He asserts that the discounts would "improperly punish minority shareholders and create a windfall for majority shareholders." And he contends that the Court of Appeals' *Wenzel* opinion should govern our analysis of such a transaction. As explained below, we hold that such a blanket rule—one that disallows minority and marketability discounts in closed-market transactions, irrespective of an agreement's terms—is incompatible with basic contract-law principles.

In *Wenzel*, the Court of Appeals held that, as a matter of law, the trial court erred when discounting a minority shareholder's stock that was being purchased by the company in a compulsory buyout. 779 N.E.2d at 36–39. The panel reasoned that a minority discount is inappropriate in such a situation because "a sale to a majority shareholder or to the corporation simply consolidates or increases the interest of those already in control," which "would result in a windfall to the transferee." *Id.* at 39 (quoting *Hansen v. 75 Ranch Co.*, 957 P.2d 32, 41 (Mont. 1998)). And the panel further noted that, in such a sale, a marketability discount "ignores the fact" that there already was a ready-made market for the shares. *Id.*

But *Wenzel* is distinguishable because it concerned the interpretation not of a contract but of a statute. And when a statutory valuation term applies—not a contractual one—courts resort to the rules of statutory interpretation to discern the legislature's intent. Thus, the *Wenzel* panel applied those rules to construe the meaning of "fair value" under the Indiana Professional Corporations Act. *Id.* at 35, 37–38. The Court of Appeals determined that the discounts did not apply because "fair value," within the Act's language, "carries with it the statutory purpose that shareholders be fairly compensated, which may or may not equate with the market's judgment about the stock's value." *Id.* at 38 (quoting *HMO-W Inc., v. SSM Health Care Sys.*, 611 N.W.2d 250, 255 n.5 (Wis. 2000)). *Wenzel*'s rationale, then, doesn't control in this situation—one where the valuation term comes not from a statute but from a contract that contemplates the shares' "appraised market value," not their "fair value."

We also observe that no court applying Indiana law has concluded these discounts are always inapplicable to a closed-market sale—only that the discounts cannot be applied in certain situations. For example, in *Eyler v. Eyler*, we determined that the trial court improperly applied a minority discount to a wife's share of stock in a family business during a marital asset division. 492 N.E.2d 1071, 1074 (Ind. 1986). But there, the wife jointly owned a majority of the business's shares with her husband; and we concluded that, under those specific facts, her shares should not be discounted. *Id.* And while the Southern District of Indiana has applied *Wenzel*'s reasoning, it did so when interpreting an Indiana statute providing for dissenters' rights. *Stone v. Peoples Tr. & Sav. Bank*, 363 F. Supp. 2d 1036, 1037–39 (S.D. Ind. 2005) (citing Ind. Code § 28-1-7.5-8(a) (2004)). It did not conclude that the discounts could never apply to a closed-market sale. *Id.*

Cases Hartman cites from our sister states declining to apply the discounts are also distinguishable. These decisions, like *Wenzel*, either concern statutory valuation procedures, and not contracts, or interpret agreements that don't relate valuation to the stock's **market** value.[1] Thus, while these opinions' public policy discussions are valid, they do not dictate the outcome here as a matter of law. Rather, we must honor the parties' freedom to contract and look to the terms they chose to govern the buyback of Hartman's shares. *See Sawyer*, 93 N.E.3d at 749, 752.

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[1] Hartman points to a variety of jurisdictions rejecting minority and marketability discounts when a shareholder is compelled to sell to a controlling party. But Hartman primarily depends on cases that concern whether the discounts should apply under state statutory appraisal procedures. *See Cavalier Oil Corp. v. Harnett*, 564 A.2d 1137, 1144–45 (Del. 1989); *Arnaud v. Stockgrowers State Bank of Ashland, Kansas*, 992 P.2d 216, 218, 220 (Kan. 1999); *Shawnee Telecom Res., Inc. v. Brown*, 354 S.W.3d 542, 556–58 (Ky. 2011); *In re Valuation of Common Stock of McLoon Oil Co.*, 565 A.2d 997, 1003 (Me. 1989); *Lawson Mardon Wheaton, Inc. v. Smith*, 734 A.2d 738, 749–50 (N.J. 1999); *Friedman v. Beway Realty Corp.*, 661 N.E.2d 972, 977 (N.Y. 1995); *HMO-W Inc. v. SSM Health Care Sys.*, 611 N.W.2d 250, 257 (Wis. 2000); *Brown v. Arp & Hammond Hardware Co.*, 141 P.3d 673, 681–83, 690 (Wyo. 2006). And although Hartman also cites two opinions involving contractual valuation terms, neither of those terms related to the shares' market value. *See In re Stebnitz*, 586 B.R. 289, 296–97 (Bankr. E.D. Wis. 2018) (interpreting the term "appraisal"); *Wallace v. Wallace*, 813 S.E.2d 428, 436–37 (Ga. Ct. App. 2018) (interpreting the term "current value").

To be sure, the parties here—not the legislature—dictated how to value a former officer or director's shares when sold to the company. And when parties "stipulate to a valuation method in a purchase agreement," a court "will not rewrite an explicit agreement." *Shriner v. Sheehan*, 773 N.E.2d 833, 843 (Ind. Ct. App. 2002), *trans. denied*.

Having determined that no blanket rule prevents the discounts from applying to the valuation of Hartman's shares, we now move on to the next inquiry: does the shareholder agreement's valuation term call for applying the discounts?

II. The agreement's valuation term unambiguously allows the discounts to apply.

Our goal in contract interpretation is to determine the parties' intent when they entered into their agreement. *Sawyer*, 93 N.E.3d at 752. We start by determining whether the contract's language is ambiguous—and when it isn't, we apply its plain and ordinary meaning in light of the whole agreement, "without substitution or addition." *Id.* Importantly, the parties' disagreement over a term's plain meaning doesn't itself create ambiguity. *Id.* at 753.

Here, the shareholder agreement's valuation term specifies that the "price per Share" in a forced purchase

> shall be the **appraised market value** on the last day of the year preceding the valuation, determined in accordance with generally accepted accounting principles by a third party valuation company within the twenty-four months immediately preceding the transfer of shares.

(emphasis added). The agreement, however, does not define "appraised market value."

BigInch argues that "market value" and "fair market value" are interchangeable terms and that "appraised" simply refers to who values the stock. According to BigInch, the trial court correctly found that the

minority and marketability discounts were appropriate, as the third-party appraiser employed a "fair market value" standard when calculating the value of Hartman's interest.

Hartman, on the other hand, contends that the terms "appraised market value" and "fair market value" are not synonymous and that the trial court improperly injected the latter standard into the shareholder agreement. He claims the agreement's valuation standard requires an "appraisal approach," which rests on the "market value" of the whole company, not of Hartman's shares. According to Hartman, the appraiser should have first calculated the market value of BigInch and then divided that figure by the number of outstanding shares, "regardless of who owns them," to determine the per-share value. And so he complains that the shareholder agreement does not contemplate the appraiser's additional step of discounting his shares for lack of marketability and lack of control. We disagree.

The buyback clause, through its plain language, expressly calls for a standard identical to "fair market value," which, in turn, contemplates minority and marketability discounts for Hartman's interest.

First, the agreement's language explicitly sets the "price per Share" at its "appraised market value." Thus, the valuation standard refers to the "market value" of the terminated member's individual interest in the company— not the value of the company as a whole.

Second, "market value" plainly and unambiguously refers to the shares' "fair market value." Black's Law Dictionary, which Hartman cites, defines those terms identically as "the price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction." *Compare Fair Market Value*, Black's Law Dictionary (10th ed. 2014), *with Market Value*, *id.* (stating only "see *Fair Market Value*"). We, too, on multiple occasions have used the two terms interchangeably. *See, e.g.*, *State v. Bishop*, 800 N.E.2d 918, 924 (Ind. 2003); *State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1041, 1042 (Ind. 1998).

And, third, we agree with the trial court that the term "appraised" merely describes how to determine the shares' market value. Black's Law

Dictionary does not define this term, but the plain and ordinary meaning of the word "appraise" is "to set a value on" or "to judge and analyze the worth, significance or status of." *Appraise*, Webster's Third New International Dictionary (2002). And, as used in the buyback clause, "appraised" is an adjective modifying "market value," which is then followed by the method to be used, namely, "in accordance with generally accepted accounting principles by a third party valuation company."

Ultimately, while the parties agreed to a compulsory, closed-market sale—not an arm's-length transaction—the agreement's plain and unambiguous language also shows that the shareholders agreed to value their shares as if they were sold on the open market. We further note that, even if the valuation term were somehow ambiguous, we would find "fair market value" to be the appropriate standard. In *Shriner*, the Court of Appeals pointed out that we "presume that a fair market valuation is the proper approach" when there's ambiguity with an agreement's valuation method. 773 N.E.2d at 843 (citing *Battershell v. Prestwick Sales, Inc.*, 585 N.E.2d 1, 5–6 (Ind. Ct. App. 1992), *trans. denied*).

Hartman finally asserts that interpreting "appraised market value" as "fair market value" would yield an absurd result and defeat the shareholder agreement's intent. He claims the agreement's purpose is to "protect[] the Company's shareholders by ensuring that they will have the ability to sell the[ir] shares if they are forced out of the Company." And he argues this intent is defeated if the shares' value can be discounted: discounts would deprive BigInch shareholders of their bargained-for benefit by placing them "back into the very circumstances the Shareholder Agreement intended to prevent."

In extraordinary circumstances, we have declined to enforce a contract's plain and ordinary language when doing so "would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument." *USA Life One Ins. Co. of Indiana v. Nuckolls*, 682 N.E.2d 534, 539 (Ind. 1997) (quoting *Haworth v. Hubbard*, 220 Ind. 611, 615, 44 N.E.2d 967, 968 (1942)). But those circumstances aren't present here— interpreting the agreement's plain language to allow the discounts' application doesn't lead to an absurd result or defeat the agreement's intent. BigInch does not

receive a windfall from the discounts because, by definition, a windfall is unexpected—while here, all of the company's shareholders agreed years ago to be equally bound by the agreement's terms. Hartman also acknowledges that he benefits from the agreement because it gives him a market for his shares by compelling the company to purchase them. And Hartman doesn't dispute that it is an accepted practice to apply minority and marketability discounts when determining shares' fair market value under "generally accepted accounting principles," as the buyback clause further specifies.

In sum, the plain and unambiguous language of the shareholder agreement calls for BigInch to pay Hartman the fair market value of his shares. We thus conclude that Hartman's shares could be discounted for their lack of marketability and his lack of a controlling interest in the company. To the extent that Hartman contends that his shares were discounted "arbitrarily," we note that he failed to exercise his contractual right to "obtain an additional third party valuation company appraisal." And he has designated no evidence to show that the appraiser failed to correctly calculate the fair market value of his shares.

Conclusion

There is no blanket rule prohibiting agreements that call for open-market concepts to apply to compulsory, closed-market transactions. Here, the shareholder agreement's valuation term clearly contemplates a fair market valuation of Hartman's shares, and so a third-party appraiser could apply minority and marketability discounts. We therefore affirm the trial court's grant of summary judgment for BigInch.

David, Massa, Slaughter, and Goff, JJ., concur.

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