IN THE IOWA DISTRICT COURT FOR IDA COUNTY

DALE GOETTSCH, KATHY GOETTSCH, and MARGARET STEFFEN, Petitioners, vs. **THOMAS GOETTSCH, BRIAN GOETTSCH, CIRCLE G FARMS, INC., an Iowa corporation, and GOETTSCH FARMS, an Iowa partnership,** Defendants.	)	No. EQCV015164 FINDINGS OF FACT, CONCLUSIONS OF LAW and JUDGMENT ENTRY

This case came on for trial before the Court November 17 through 20, 2014, and the parties submitted post-trial briefs and their requested relief on December 5, 2014. Petitioners were present and represented by Attorneys Bruce Recher and Wesley Graham. The Defendants were present and represented by Attorneys John Gray and Jacob Natwick. The Court, having considered the testimony and the exhibits, the parties' stipulations and the pre- and post-trial briefs, enters the following Findings of Fact, Conclusions of Law and Judgment Entry.

Petitioners Dale Goettsch, Kathy Goettsch, Margaret Steffen and Defendants Thomas Goettsch and Brian Goettsch are shareholders of Circle G Farms, Inc., a closely-held Iowa farm corporation. Defendants Tom Goettsch and Brian Goettsch, at all relevant times, have been directors and officers of Circle G Farms, Inc. Paul Goettsch is no longer a shareholder but was previously a director and officer of Circle G Farms, Inc.

Petitioners commenced the litigation on or about June 12, 2013, in the United States District Court for the Northern District of Iowa and sought equitable relief under Iowa Code §490.143 subsection 2, paragraphs b and d, including, among other requests, that the Court enter

an Order for the Judicial dissolution of Circle G Farms, Inc., or alternatively, a mandatory buyout of Petitioners' shares in Circle G Farms, Inc., or for other equitable relief. After extensive discovery and litigation in federal court, the parties stipulated to the dismissal of the federal court litigation and consented to proceed in Iowa Business Court.

In the parties' stipulation, defendants Tom Goettsch, Circle G Farms, Inc., and/or Goettsch Farms (a partnership consisting of Tom and Brian Goettsch) made an irrevocable election to purchase all of Petitioners' shares in Circle G Farms, Inc., for fair value pursuant to the provisions of Iowa Code §490.1434. Petitioners consented to that election and to a buyout of all of their shares of Circle G Farms, Inc., at fair value as defined in Iowa law. The fair value of Petitioners' shares pursuant to Iowa Code §490.1434 was therefore the primary issue to be decided by the Court. In order to make this decision, the Court is required to decide the following related issues:

1. How many shares are owned by Tom Goettsch;
2. The valuation date and the fair value of Petitioners' shares;
3. Is a liquidation tax discount required when determining the fair value of Petitioners' shares in this Subchapter S Corporation;
4. Is any discount to fair value for minority interest or lack of marketability appropriate;
5. Petitioners' claim for attorney fees and expenses; and
6. The terms of the buyout.

FINDINGS OF FACT

Petitioners are all residents of the state of Minnesota. Defendant Circle G is an Iowa Sub Chapter S Corporation with its principal place of business is in Iowa. Defendant Goettsch Farms is a farming partnership run by its partners, Tom and Brian Goettsch, who are both residents of

Iowa.

On June 12, 2013, Petitioners originally commenced this action seeking judicial dissolution of Circle G under Iowa Code §490.1430(2) & (4) in the United States District Court for the Northern District of Iowa (Western Division). On September 9, 2014 the parties entered into the Stipulation that the case may be heard by this Court, the Iowa Business Specialty Court.

Circle G is a closely-held Iowa S corporation and was formed in 1997. See Joint Factual Stipulation, ¶1; Exhibit 38 & 40. Circle G has always functioned as a corporation which seeks to generate a financial return on its farmland – it essentially holds land for investment and income. In 1997, 1998, 1999, and 2002, the parties' father, Murlen Goettsch conveyed certain parcels of land, approximately 311 acres, located in Cherokee County, Iowa, to his seven sons and daughters, including Petitioners and Defendants. The land was conveyed 1/7th to Jacquelynn Goettsch, 1/7th to Paul Goettsch, 1/7th to Margaret Steffen, 1/7th to Kathy Goettsch, 1/7th to Dale Goettsch, 1/7th to Thomas Goettsch, and 1/7th to Brian Goettsch. The recipients of this gifted land then in turn conveyed such land to Circle G. See Exhibits 50 & 68. The conveyances made Circle G the record owner of the following land in Cherokee County, Iowa:

> The North Half of the Southeast Quarter (N1/2 SE1/4) of Section Thirty-Three (33), Township Ninety (90) North, Range Thirty-nine (39) West of the Fifth P.M., EXCEPT the following described parcel:
>
> A tract of land located in the Northeast Quarter of the Southeast Quarter (NE1/4 SE1/4) of Section Thirty-Three (33), Township Ninety (90) North, Range Thirty-nine (39) West of the Fifth P.M., Cherokee County, Iowa, more completely described as follows:
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> Commencing at the Southeast (SE) Corner of said Section 33; thence N 00º00'00" W 2012.07 feet along the East line of the SE1/4 of said Section 33 to the Point of Beginning; thence continuing N 00º00'00" W 628.65 feet along said East line to the NE Corner of the SE1/4 of said Section 33; thence S 89º47'18" W 359.36 feet along the North line of the SE1/4 of said Section 33; thence S 02º59'43" E 159.49 feet; thence S 22º42'45" W 403.10 feet; thence N 89º13'47" E 277.08 feet; thence S 01º53'27" E 97.78 feet; thence S 89º26'34" E 226.39 feet to the Point of

Beginning. Said tract contains 5.45 acres, including present established roadway. Note: the East line of the SE1/4 is assumed to bear due North and South.

AND

The South half of the Southeast Quarter (S1/2 SE1/4) of Section Thirty-three (33), Township Ninety (90) North, Range Thirty-nine (39) West of the Fifth P.M.

AND

The North Half of the Southwest Quarter (N1/2 SW1/4) of Section Thirty-three (33), Township Ninety (90) North, Range Thirty-nine (39) West of the Fifth P.M.

AND

The South Half of the Southwest Quarter (S1/2 SW1/4) of Section Thirty-three (33), Township Ninety (90) North, Range Thirty –nine (39) West of the Fifth P.M.

In his Last Will and Testament dated November 7, 1995, Murlen Goettsch devised certain land located in Ida County, Iowa, as follows: 1/7th to Jacquelynn Goettsch, 1/7th to Paul Goettsch, 1/7th to Margaret Steffen, 1/7th to Kathy Goettsch, 1/7th to Dale Goettsch, 1/7th to Thomas Goettsch, and 1/7th to Brian Goettsch. Murlen Goettsch died on September 18, 2006. *Id.* The following described land was devised under Murlen Goettsch's Will to his seven sons and daughters:

The South Half of the Northwest Quarter (S1/2 NW1/4) of Section Seventeen (17), Township Eighty-nine (89) North, Range Thirty-nine (39) West of the Fifth P.M., Ida County, Iowa.

AND

The Southwest Quarter (SW1/4) of Section Twenty Four (24), Township Eighty-nine (89) North, Range Thirty-nine (39) West of the Fifth P.M., Ida County, Iowa.

AND

The Southwest Quarter (SW1/4) and the West Half of the Southeast Quarter (W1/2 SE1/4) of Section Twenty-eight (28), Township Eighty-nine (89) North, Range Thirty-nine (39) West of the Fifth P.M., Ida County, Iowa.

Murlen Goettsch's sons and daughters then in turn transferred the jointly-owned farmland they inherited to Circle G. *Id.* Therefore, prior to August of 2012, Circle G was the record owner of four farms (hereinafter "the Circle G Farmland"), the "Home Place", in southern Cherokee County on the Ida County border, as well as the "80", "Kistle", and "Madsen" farms, all located in Ida County. The Circle G Farmland consisted of 798 acres, approximately 746 acres of which was tillable. Circle G's principal asset of Circle G Farmland had no mortgages or other liens on it. Joint Factual Stipulation, ¶5.

In 2007, after Murlen Goettsch's death, Tom Goettsch sent a letter "To My Family, who are the Stockholders of Circle G Farms." Exhibit 49. Tom's letter updated his brothers and sisters on his father's estate, and Tom's recommendations for Circle G. Tom recommended the rent payment from Goettsch Farms be paid monthly, and that each shareholder who owned 1,000 shares would receive dividends of $1,000 month. *Id.* He suggested the shareholders meet for a special meeting in July and noted that "[n]o cash disbursement can be made without all of us in agreement." *Id.* He pledged that "all of us have been and will continue to be treated equally in the future as in the past." *Id.*

Circle G issued in total 7,000 shares of common stock with each of Murlen Goettsch's seven sons and daughters receiving 1,000 shares. From 2007 to 2010, the shareholders of Circle G held annual meetings and other events where all the shareholders actively participated in the governance issues regarding Circle G. Since prior to 2005, Circle G had been paying regular monthly cash dividends, funded by the rent payments received from Goettsch Farms, to all shareholders. Circle G paid monthly dividends in 2007, 2008, 2009, 2010, 2011, and the first eight months of 2012, to all shareholders based on $1 per share. Circle G paid additional dividends at the end of 2009, 2010, and 2011, at the rate of $5 per share. Per year, on average,

the rent payments made between 2007 and August 2012 from Goettsch Farms to Circle G generated annual regular dividends of approximately $17,000 per shareholder (for 1,000 shares) per year. Joint Factual Stipulation ¶46.These dividends from Circle G were the only financial return the Petitioners realized from their ownership interest in Circle G.

Also from its inception in 1997, Circle G rented for cash the Circle G Farmland to Goettsch Farms, a 50/50 farming partnership run by Tom and Brian Goettsch, who have been actively involved in farming the land since that time. Tom Goettsch has been in charge of the business functions of Goettsch Farms. Brian Goettsch has been involved in the farm operations, and has worked for Tom in Tom's trucking business. Brian Goettsch has historically deferred to his brother Tom on business decision such as rent with respect to Circle G and Goettsch Farms. Deposition of Brian Goettsch, p. 96-98.

Plaintiff Dale Goettsch is 62 years old and lives in Burnsville, Minnesota, where he has resided for the last 35 years. His sisters, Kathy and Margaret, also reside in Minnesota and he sees them regularly. The Court found Dale Goettsch to be a credible witness. He answered questions on direct and cross examination in a forthright manner with a good recollection of the facts and he did not tend to embellish. Dale was initially a teacher and then entered the corporate world, and sold industrial chemicals for a period of time until he formed Nationwide Townhome Consultants, a property management company. He is fairly sophisticated when it comes to property management and rent issues.

Though Dale's testimony, Petitioners introduced the 2004 farm leases between Circle G and Goettsch Farms. Since at least 2004, the base cash rent paid by Goettsch Farms was $100,800 a year, or $8,400 a month. Stipulation of Facts ¶ 40. These rents in 2004 were in effect while Murlen was alive and after Murlen died in 2006, the rent remained the same through 2009. Until the end of 2012, this base rent was an effective cash rental rate of $135 per acre based on

746 tillable acres. *Id.*

Circle G had minimal expenses – property taxes and liability insurance; therefore, the most important financial decision for Circle G is how much to charge in rent for a return on its only asset. The appropriate rent to charge Goettsch Farms was the subject of discussion and dissension among the shareholders of Circle G for several years prior to 2012. In 2009, Dale started researching average per acre farm rent and located an Iowa State University study on rent values. At the 2009 and 2010 annual meetings for Circle G, Dale Goettsch raised issues regarding the fairness of the rent paid by Goettsch Farms. Dale did not object to the manner in which Goettsch Farms was caring for the land. There was no indication that Goettsch Farms was anything other than good stewards of the land and there was no suggestion that they were "mining" the land. Still, at the 2009 meeting, Dale presented a slide show he had put together from the Iowa State University study on land values and cash rents which demonstrated that the rents being paid by Goettsch Farms to Circle G were low.

This created some animosity but it had the desired effect as Goettsch Farms agreed to pay rent bonuses in 2009 and 2010 of $35,000 per year which equated to about $185 per acre with the base rent. See Stipulation of Facts ¶¶40-43. These rent bonuses were not a part of any lease provision but were the result of periodic shareholder discussions. However, in both 2009 and 2010, Circle G shareholders still approved the base rent charged by Circle G in the amount of $135 per acre. While all shareholders including Petitioners approved the rent, the base rent remained well below market rents or average Ida County rents.

In 2008, Jacquelynn Goettsch asked to be bought out of her shares of Circle G because of personal financial problems. Tom Goettsch bought 500 shares of Circle G from his sister Jacquelynn in 2008. In 2008, in discussions with Jim Higgins, Circle G's CPA, Mr. Higgins and

Tom worked through a model which illustrated the income tax consequences of the sale of her stock to Tom, who owned 1/7th of Circle G's stock. The model used the projected value for Circle G and divided that by 1/7th to arrive at the purchase price. In December 2008, Jim McGuire, of McGuire Appraisal Services, provided a value opinion to Tom, which valued Circle G's land at $4,000 per acre.

In 2010, Defendant Tom completed the purchase of Jacquelynn's other 500 shares of Circle G, increasing Tom Goettsch's stock ownership in Circle G to 2,000 shares, while Jacquelynn Goettsch ceased to be a shareholder. Exhibit 58. Tom paid Jacquelynn $300,000 for all of her shares. Tom testified that with respect to the first installment purchase of Jacquelynn's shares, the price of $150,000 was arrived at because he could not afford to pay more. Jacquelyn may have received less than a 1/7th pro rata interest of the value of Circle G – but this was what Tom was willing to pay and Lynn needed the money. There was no testimony a discount relating to marketability or a minority interest was used when Tom purchased Jacquelynn's shares. In both 2008 and 2010, the parties followed the Buy and Sell Agreement process with written notice provided to all shareholders, and all of the Circle G shareholders consented in writing to the transfer of Jacquelynn's shares to Tom. Exhibits 56 & 58. Although the consents attached to Exhibit 56 were unsigned, Dale Goettsch testified all the shareholders signed the consents. Tom Goettsch is the sibling with the most Circle G shares.

In 2010, Tom Goettsch offered to purchase the other shareholders' stock in Circle G for $200 a share or $200,000 each. His second offer, in June of 2010, was $300,000 for 1,000 shares. Exhibit 35, p. 2; Joint Factual Stipulation ¶52. Neither Petitioners nor Paul Goettsch had any interest in Tom's offers. Circle G shareholders then had no annual meeting in 2011. Joint Factual Stipulation ¶53.

There were other issues that contributed to dissension among the shareholders besides the rent to be charged. Paul did not get along with his sisters, Kathy and Margaret. Further some of the shareholders and their spouses had health issues. Due to this continued internal dissension and discord between the shareholders and their families, a separation of the family members as shareholders was discussed. In the spring of 2012, Paul approached Tom and asked him if something could be done to split up the corporation as the family members were not getting along. Paul also wanted his own 80 acres. Joint Factual Stipulation ¶56. Tom then formulated a proposal and discussed it with Paul and Brian, who agreed to it in May of 2012. *Id.* at ¶57.

The proposal envisioned that Circle G transfer most of its land to shareholders Tom, Paul, Dale, Kathy, and Margaret, which once completed would leave Circle G with approximately 311 acres known as the "Home Place." Thus, the separation plan proposed the transfer of approximately 470 acres of Circle G's land to Paul, Dale, Kathy, Margaret, and Tom. Each of these shareholders, except Tom, was to receive approximately 80 acres of Circle G land in exchange for their shares. Tom was to receive 160 acres (the Madsen farm) from Circle G, but remain a shareholder of Circle G. Brain would remain a shareholder of Circle G but receive no land or cash.

Tom was also to pay Paul, Dale, Kathy, and Margaret $50,000 each and they each were to enter to enter into a five-year lease with Goettsch Farms of the acreage conveyed to them for $20,000 a year, effectively $250 per acre. Joint Factual Stipulation ¶59. This was a substantial increase over the base rent Circle G charged Goettsch Farms previously. When asked at trial if the $250 per acre proposed rent was fair or unfair, Tom declined to say one way or the other. The Court found this testimony disingenuous. Tom had been farming all his life and rented land from other owners, surely he had an opinion on whether this was fair rent. However, to admit that the

proposed rent was fair rent would essentially be admitting that the rent paid previously and since then by Goettsch Farms was not fair.

Tom Goettsch sent a series of letters about the separation proposal in May and June of 2012 to Dale, Kathy, and Margaret. Two of these letters indicated that any agreement regarding the proposal would need to be unanimous among the shareholders. Joint Factual Stipulation ¶¶ 57 & 58; Exhibits 25, 27, & 28. One letter outlined the proposal and expressed a need to have an outcome where it unanimous:

> "If you feel that you aren't being treated fairly, then we will have to leave things as they are. If we can't come up with a unanimous agreement then things will stay as it is."

Exhibit 27. Another letter from Tom indicated:

> "[i]f anyone, including your spouse disagrees or feels cheated, then nothing is going to happen. Nobody is going to be forced into anything. It is one for all and all for one."

Exhibit 28. None of Tom's letters sent before the August 4, 2012, meeting addressed who would receive the stock of Paul, Dale, Kathy, and Margaret. See Exhibits 25, 27 & 28. In one of his letters Tom enclosed an example copy of what the next meeting minutes could look like entitled "Annual Meeting of Circle G Farms." See Exhibit 27. The enclosed minutes referenced the August 4, 2012, meeting that was approximately a month away.

Defendants characterize the document entitled "Annual Meeting of Circle G Farms" as simply an agenda of items to discuss, however, the document is not entitled "agenda" and in fact the document takes the form of detailed minutes with reference to specific motions relating to significant issues such as changing the Buy and Sell Agreement, passing a rent authorization,

repaying Goettsch Farms for tearing down and replacing a building, and a farmland repair reimbursement to Goettsch Farms of $35,000. The meeting minutes also reflect that a motion be made and carried to leave rent as is at $8,400 per month for five years and suspending dividends. Curiously, the pre-meeting minutes (or agenda as characterized by Defendants) do not even mention the major proposal that was to be under consideration which was to transfer land to Paul, Dale, Kathy, Margaret, and Tom in exchange for their shares in Circle G. Petitioners characterize these pre-meeting minutes as Tom's attempt to pressure the Petitioners by conveying the message that no dividends would be paid to them because Circle G would be spending money on the matters outlined in the pre-meeting minutes. Petitioners assert the message being conveyed was that they should go along with Defendants' proposal if they wanted any kind of financial return from their stake in Circle G in the future. At trial Tom denied that the meeting minutes were an attempt to pressure Petitioners to go along with Defendants' proposal. The Court does not have the ability to determine exactly what Tom's intention was in sending the annual meeting minutes prior to the meeting, but whether it was his intention or not, the message conveyed certainly was that there would be no dividends and Petitioners would receive no financial return.

The annual meeting of Circle G's shareholders and directors took place on August 4, 2012, in Galva, Iowa. Tom, Brian, and Paul Goettsch were elected as officers and as members of the Board of Directors of Circle G. At the August 4th meeting, there was considerable emotion about the proposed split-up and the terms of any arrangement. After the shareholders took a break and some discussion occurred between Dale and Tom, Tom agreed the rental amount to be paid by Goettsch Farms to Paul, Kathy, Margaret, and Dale for the rental of each of their 80 acres to be transferred to them under the proposed deal would be increased from $20,000 a year

to $40,000 a year. The justification for this compromise was that Dale, Kathy, Margaret, and Paul were receiving less in the way of acreage than what would be a 1/7th share, while Tom was receiving 160 acres while still maintaining a majority interest in Circle G. This increase amounted to $100,000 in additional consideration payable over five years. This increase was consistent with an attempt to divide the value of Circle G into the departing shareholders respective percentages of ownership. Joint Factual Stipulation ¶62. None of the shareholders had obtained an appraisal of Circle G's land prior to the meeting.

When the August 4th meeting continued, all of the shareholders of Circle G voted in favor of the following proposal from Defendants: Paul Goettsch and Petitioners each receive 80 acres of Circle G land, $50,000 cash, and each enter into a five-year lease with Goettsch Farms at a cash rental rate of $40,000 per year in exchange for transferring their Circle G stock. There was discussion at the August 4th meeting that the agreement needed to be put in writing and Tom indicated that his daughter, Abby Walleck, the attorney for Circle G, would draft the written agreements and circulate them. Tom's notes reflect that his offer to each of the shareholders "must be signed or offer is void." At the August 4th meeting no one discussed a right of refusal or option to purchase, nor did anyone discuss a deadline. Additionally, although Tom's letters prior to the meeting required unanimity on the plan, no one discussed what would happen if some shareholders decided not to go forward with the transaction.

Petitioners then left the meeting and they claim that they were not advised the meeting would continue. The Court found Dale's testimony that Petitioners all thought the meeting was over and they left to be credible. Defendants, meanwhile, continued their meeting after Petitioners left. Defendants passed the following motions: Circle G gives a five-year lease of Circle G's land to Goettsch Farms at the existing rental rate of $8,400 per month, or $100,800

per year (approximately $151 per acre cash rent on 666 tillable acres after the conveyance to Paul of 79 acres); Circle G pays Goettsch Farms $35,000 for farm repairs at the rate of $7,000 per month for the next five months; Circle G pays Goettsch Farms $35,000 to build a new machine shed on the "home place"; and no dividends paid during the period when Circle G was repaying Goettsch Farms. The meeting minutes signed by Paul and Defendants recite that the five-year lease to Goettsch Farms was to commence March 1, 2013. According to the minutes circulated after the August 4, 2012, meeting, the Defendants also discussed making an additional $42,000 payment from Circle G to Goettsch Farms, but postponed such action because there were no funds to do so.

On August 16, 2012, Circle G's counsel, Abby Walleck, prepared drafts of an Agreement for Sale of Stock and Partial Distribution of Assets, a five-year lease between a shareholder and Goettsch Farms, a deed, and an option/right of refusal agreement (which had never been discussed previously), and circulated such drafts to Circle G's shareholders. The proposed option/right of refusal agreement granted any of the shareholders the right to buy the 80 acres received by any of the other shareholders for fair market value. Petitioners were not interested in the option/right of refusal concept. The draft of the Agreement for Sale of Stock and Partial Distribution of Assets, provided that the shareholder (here Paul, Dale, Kathy, and Margaret) would "surrender [his or her] 1,000 shares of stock to the "Corporation" in exchange for cash and land.

The draft further stated that "[u]pon payment in full of all sums due herein and transfer of the real estate as set forth herein, Paul, Margaret, Kathy, and Dale shall release such stock certificate to the corporation for retirement." Per the draft Agreement once the transfers were completed and the stock surrendered for retirement, a stock certificate was to be issued to Tom

for the stock surrendered by the other shareholders. The draft agreement also provided that the "signatures of all six shareholders shall be considered each parties full consent to the sale of property and partial distribution of assets" pursuant to the Circle G bylaws and the Buy and Sell Agreement.

The shareholders are all parties to a Buy and Sell Agreement, which restricts the transfer of their shares. Exhibit 52. In paragraphs 2 and 3 of the Circle G Buy and Sell Agreement, signed in 2005 by all of the shareholders, it states that any transfers of Circle G stock cannot be made without "the consent of the Corporation and the other Shareholders," unless the process set forth in paragraph 3 is followed. Paragraph 3 of the agreement provides that any offer shall be "given initially to the Corporation" and that Circle G then has 60 days to elect to accept the offer. Only then can shareholders offer their shares to other shareholders on a "pro rata" basis. The By-Laws of Circle G, adopted by the Corporation upon its inception, have a similar requirement, where the corporation has the priority to purchase the shares of a selling shareholder, and if the corporation does not make such an election to purchase the stock, the other shareholders have a right to purchase the stock on a pro rata basis.

The draft of the proposed Buy and Sell Agreement had a provision that "[e]ach party has been advised to seek their own legal counsel prior to execution of documents herein." Circle G's attorney, Abby Walleck, later in August, 2012, also advised the shareholders by email, to obtain independent legal counsel to discuss tax consequences. Exhibit 29. Petitioners then did consult independent legal counsel. Petitioners informed Abby Walleck on August 31, 2012, the supposed deadline for signing the draft agreements, that they were not in a position to accept the proposal by August 31, and that they needed to obtain additional information.

Meanwhile, Paul Goettsch decided to go forward with the August 4, 2012, agreement and

he signed the documents along with Defendants. Paul Goettsch signed the "Agreement for Sale of Stock and Partial Distribution of Corporate Assets", prepared and circulated as part of the draft proposal from Abby Walleck, when the deed which conveyed him the land was signed on behalf of Circle G. Paul Goettsch also signed the other agreements circulated as part of the proposal, including a five-year lease in favor of Goettsch Farms with respect to the land conveyed to him by Circle G, as well as an Option to Purchase and Right of Refusal in favor of Goettsch Farms. A warranty deed dated August 25, 2012, and filed in the Ida County Recorder's Office on November 26, 2012, from Circle G to Paul Goettsch, and signed by Brian Goettsch on behalf of Circle G, transferred the 79 acres of land described as follows:

> The South Half of the Northwest Quarter of Section 17, Township 89 North, Range 39, West of the 5th P.M. Ida County, Iowa.

Thereafter, Paul was the record owner of this 79 acre tract. This was the same parcel of land that was proposed to be conveyed to Paul Goettsch in exchange for his stock in Circle G as part of the August 4, 2012 meeting proposal.

As a result of this transaction, Paul Goettsch received land with a value of $920,000, cash of $50,000 (in August 2012) from Tom Goettsch, and rent under a five-year rental agreement which will pay him $200,000 over that five-year span. Some portion of that rental stream, i.e., $100,000, was identified in the parties' discussions on August 4, 2012, as a part of the value for the transfer of his shares, and the other $100,000 was identified as rent, at $250/acre. Paul Goettsch has and will receive assets in the way of land and cash of approximately $1,070,000 for his Circle G shares, excluding any base rent at $250/acre. Paul Goettsch ceased to be a shareholder of Circle G upon the completion of this transaction in August of 2012.

The ownership of the shares formerly owned by Paul is in dispute and the percentage of

ownership each of the shareholders own in Circle G is likewise in dispute. Defendants asset that Tom purchased Paul's 1,000 shares, while Petitioners asset that Paul's 1,000 shares were redeemed by Circle G. Petitioners claim that the Buy and Sell Agreement signed by Paul contemplates that the stock exchanged for the cash and land was to be transferred to Circle G, to be "surrender[ed]" and "retired," and that the transaction was intended as a redemption, consistent with the By-Laws and the Buy and Sell Agreement. Defendants claim that it was intended by all of the shareholders that Tom was to receive a selling shareholder's stock in Circle G. Either way, the process properly followed in the 2008 and 2010 transfer of Jacquelynn Goettsch's shares to Tom Goettsch was not followed in the 2012 transaction(s) that took place with regard to Paul Goettsch's shares.

On September 11, 2012, Circle G counsel, Abby Walleck, circulated minutes from the August 4, 2012, meeting by email to Petitioners for their approval. The minutes reflected that Defendants had adopted a five-year lease in favor of Goettsch Farms, authorized expenditures, and stopped the payment of dividends. In response to the September 11th email asking for their approval of the August 4th meeting minutes, Petitioners' counsel sent a letter dated September 28, 2012, to Circle G's counsel, Abby Walleck, pointing out that Petitioners were not present at the August 4th meeting when the actions were taken by Defendants and that they objected to the actions taken outside their presence. Petitioners did not sign the written agreements and at the end of September 2012, Petitioners informed Defendants in writing that they decided not to go forward with the August 4, 2012, proposal, citing as the principal problem that there was not enough cash available to pay the federal and state income taxes due, and that Defendants would also face significant taxes, even if they were not recipients of any land.

Prior to the August 4, 2012, meeting none of the shareholders communicated anything

regarding the tax ramifications to the shareholders of Circle G if the 470 acres of appreciated land contemplated by the proposal were transferred by the corporation to its shareholders. Defendants, the proponents of the proposal, had not explored the tax consequences and had not sought or received any professional tax, legal, or accounting advice about income tax consequences. Until September of 2012, none of Petitioners had any meaningful understanding of what level of income tax, if any, they would be required to pay. Unbeknownst to any of the shareholders at the August 4th meeting, the proposed deal would have required $1 million collectively in income tax payments for Circle G shareholders the following April, cash that the shareholders did not have. Joint Factual Stipulation ¶90-93.

If the proposal went forward in 2012, using estimated 2012 land values, Circle G would generate a taxable gain from transferring appreciated land in excess of its basis in the land. Since, Circle G is an S corporation, each Circle G shareholder would then have the gain of the S corporation pass through to each of them in accordance with their percentage ownership. The amount of the gain allocated to a particular shareholder would then increase the individual shareholder's basis in their Circle G stock. If and when a shareholder sold or exchanged his or her stock for the appreciated land, that shareholder would also have to pay another level of income tax, measured by the difference between the fair market value of what was received (the value of the land and any cash or other assets) less the shareholder's adjusted basis in their Circle G stock (which had increased by virtue of the percentage of the corporation's gain because of the corporation's gain in their Circle G stock). The shareholder who sold would receive income on the corporation's gain allocated to him or her, and on the difference between the fair market value of what is received, less the shareholder's adjusted basis. Joint Factual Stipulation ¶94.

If the parties went forward with the August 4th meeting proposal, at a maximum federal

and state combined tax rate of 31%, Petitioners and Paul would have each had an income tax liability of close to $160,000. Tom's tax liability would have been even higher as he owned 2,000 or 3,000 shares. Brian would have likely had an income tax liability of more than $100,000, even though he received no cash and no land, as he would have had to pay tax on his respective percentage of Circle G's gain. This income tax liability was due in six months or in April 2012. Petitioners were to receive $50,000 up front under the proposal but this would not have been enough to cover their tax liability due. Joint Factual Stipulation ¶¶ 95-96.

As an alternative to the August 4th meeting proposal, on September 27, 2012, Petitioners, through their counsel, proposed a buyout of Petitioners' stock (at a price less than the later appraised value), to be financed by Petitioners with installment payments due over time, so Petitioners would have cash to pay income taxes as they came due and as they received the cash. On October 5, 2012, Ms. Walleck, sent a letter and informed Petitioners that the items in the August 4, 2012, meeting minutes were approved by a majority of the outstanding shares and as such were considered ratified. On or about October 15, 2012, after Petitioners sent their September 27, 2012, proposal and rejected the August 4th meeting proposal, Tom, through a letter from his then counsel (not trial counsel), informed Petitioners that the actions taken, which Defendants had approved, at the August 4, 2012, meeting would stand. The letter further withdrew all prior offers, rejected Petitioners' proposal, and again offered to purchase all of Petitioners' Circle G stock by payment of $300,000 cash to each of the Petitioners. Tom Goettsch's offer of $300,000 was characterized as "one last attempt to purchase their shares." The Court finds this letter to be extremely ill-advised and clearly retaliatory in nature as it offered Petitioners approximately one-seventh less than what each of their shares were worth (compared to what the parties agree was the value received by Paul). Joint Factual Stipulation

¶114.

Defendants now claim that Petitioners' refusal to go forward with what they agreed to at the August 4 shareholders meeting was a breach of an oral contract. Petitioners counter this assertion by arguing that any agreement involving a transfer of land and a lease needed to be in writing and signed to be enforceable, pursuant to Iowa Code §622.32. Petitioners argue, therefore, that unless the August 4th meeting proposal was put in writing and signed, which was not done by Petitioners, it is an unenforceable oral agreement.

On or about January 21, 2013, Petitioners made a written demand to Defendants, as the Board of Directors of Circle G, which indicated that the actions taken at the August 4, 2012, meeting, including the decision to lease the Circle G Farmland to Goettsch Farms for $8,400 per month for five years, the action to pay Goettsch Farms for expenses, and the decision to stop paying dividends were not properly authorized and were unfair. Petitioners requested such actions be rescinded and that Defendants restore dividends, increase the cash rent paid by Goettsch Farms to something close to market rent, and reconsider their spending decisions. Defendants never replied to Petitioners January 21, 2013, demand letter.

Dale's letter of January 21, 2013, objecting to the above decisions concerning rent and dividends included a 2012 cash rental survey prepared by Iowa State University demonstrating that the cash farm rents in the Ida County and Cherokee County area averaged over $300 per acre. Tom Goettsch never responded to the letter and in other correspondence to siblings he stated that it was just "too bad."

In the spring of 2013, after discussions with Jim Higgins, an accountant, Tom Goettsch took actions to effectuate a transaction which he claims allowed him to acquire all the stock of Paul Goettsch. In March 2013, Tom Goettsch commissioned an appraisal of the "80" parcel

which Circle G conveyed to Paul Goettsch. Jim McGuire, a local appraiser, appraised the value of the "80" at $11,500/acre as of March 2013, for a total of $920,000.

One of the actions taken by Tom Goettsch following his discussions with Jim Higgins was to make a payment to Circle G of $350,000 in April 2013. Tom claims the $350,000 was a down payment on the purchase from Circle G of the land that had been deeded to Paul Goettsch. These funds were then distributed, $50,000, to each shareholder as a dividend. The $50,000 payment was more than enough to cover the tax liability of each shareholder resulting from the Corporation's transfer of the 80 acres to Paul, which was approximately $20,000 per 1,000 shares, leaving each shareholder with an additional $30,000 per 1,000 shares. Another action taken by Tom at the end of 2013 was a payment of $27,000 to Circle G. Tom claims this was an interest payment of 3% on the remaining balance of $570,000 on what Tom contends was his purchase of land from Circle G.

Petitioners object to this transaction/purchase by Tom on a number of grounds and ask the Court to set it aside. If Tom's claim that he owns Paul's stock is set aside by this Court, Petitioners assert Tom's $350,000 payment to Circle G should be recast as a loan. If the payment is recast as a loan, both parties agree that the overall valuation of Circle G should be reduced by the $350,000, plus interest at the same rate paid by Tom to Circle G in 2013. If the transaction is set aside, Tom would currently own 2,000 shares and Petitioners would each own 1,000 shares. If Tom's claim that he owns Paul's stock is upheld, both parties agree that Circle G owns a receivable from Tom in the amount of $570,000, and the overall valuation of Circle G should be increased by $570,000. If the transaction is upheld Tom owns 3,000 shares and Petitioners each own 1,000 shares.

In March 2013, each of the shareholders received a K-1 with each Plaintiff having a net

section 1231 taxable gain of $95,755 for each 1,000 shares owned for year 2012. Joint Factual Stipulation ¶113. The transfer of the 79 acres to Paul or Tom had created an income tax liability of over $600,000 for Circle G, which was passed through to its shareholders. Circle G used $920,000 as the value of the 79 acres transferred to Paul, which was based on an appraisal done by Jim McGuire that valued the land at $11,500 an acre. Joint Stipulation ¶112-114. The evidence demonstrates that Petitioners were unaware that Defendants had gone forward with the conveyance of land to Paul until spring 2013.

In April 2013, when Petitioners learned from Accountant Higgins that they had a tax liability and that it related to a sale of land from Circle G to Tom, Dale attempted to discuss it with Mr. Higgins. Mr. Higgins refused to speak with him. Tom told Mr. Higgins not to respond further, other than to inform Dale to contact Tom or Brian. When Dale addressed his questions to Tom and Brian, neither Tom nor Brian responded to his questions.

In June of 2013, when Petitioners commenced their action in federal court seeking dissolution of Circle G. Circle G had cash in the bank of $4,250.

In February of 2014, Bill Holstine of Hertz Farm Management provided an appraisal of Circle G Farms on behalf of Petitioners using two different valuation dates – November 2012 and June 2013. Holstine's appraisal report lists the following values for the Circle G parcels for the two valuation periods:

Farm	**Acres**	**June 2013**		**November 2012**	
		in $	per acre	in $	per acre
Home place	310.84	$4,040,000	$12,997	$3,380,000	$10,874
The "80"	79.04	$1,000,000	$12,652	$825,000	$10,438
Kistle	236.48	$2,840,000	$12,009	$2,340,000	$9,895

Madsen	153.73	$2,030,000	$13,204	$1,675,000	$10,895
	780.09	$9,910,000		$8,220,000	

Mr. Holstine also provided a report on cash rents, where he expressed his opinion that the fair cash rental value of Circle G in 2013 was $425/acre. The cash rents report reflects that Circle G could have generated approximately $283,000 in revenue in 2013 if it charged market rent for its tillable acres.

Defendants then obtained an appraisal of the remaining Circle G Farmland in July of 2014 from Jim McGuire, using a July of 2014 valuation date. McGuire's appraisal lists the following values for the Circle G parcels:

Farm	**Acres**	**July 2014**	
		in $	per acre
Home place	310.84	$3,617,325	$11,500
Kistle	236.48	$2,400,000	$10,000
Madsen	160	$1,616,000	$10,100
	714.55	$7,633,325	

The Court found both Bill Holstine, who testified for the Petitioners as to farm values and cash rental values, and Jim McGuire, who testified on the farm values, to be credible and qualified witnesses. The differences in their appraisals were not so much the result of disagreements about the value of the land at issue at a particular point in time but rather the differences resulted from them being asked to value the land on different dates. Both experts agreed that farm values were rising throughout 2012, 2013 and into 2014 and started dropping in early to mid-2014.

Circle G's tax basis in the land it currently owns, approximately 715 acres, is $1,850,925. Each shareholder's tax basis in his or her shares at the end of 2013 was: Margaret Steffen: $367,375; Kathy Goettsch: $367,407; Dale Goettsch: $366,408; Brian Goettsch: $369,408; and

Tom Goettsch: $1,102,222 (assuming ownership of 3,000 shares).

Goettsch Farms has paid cash rent of $8,400 per month to Circle G since August 2012, with no rent bonuses. In July 2014, Circle G had cash in the bank of approximately $100,000. Circle G has paid no regular monthly dividends since August 2012.

CONCLUSIONS OF LAW

As noted above, there are a number of issues that must be decided in order to determine the fair market value of the buyout of Petitioners' shares pursuant to Iowa Code §490.1434. The Court will address the ownership of Paul Goettsch's stock, the valuation date of the land, whether a tax discount is appropriate in valuing this S corporation, whether a discount for minority interest is appropriate, whether either party should be awarded attorney fees or expert witness expenses and the terms of the buyout.

I. Stock Ownership – Number of Shares Owned by Tom Goettsch

This Court must decide how many shares Tom Goettsch currently owns in Circle G. The determination of how many shares Tom owns in Circle G influences the pro rata share of what Petitioners own in Circle G. Petitioners argue that this Court should set aside what they characterize as "Tom Goettsch's 2013 Attempted Do-Over of the Redemption of Paul Goettsch's Control Block of Circle G Stock." Defendants, on the other hand, argue that Tom Goettsch purchased Paul's 1,000 shares as part of the agreement reached at the August 4, 2012, shareholder meeting. This would mean Tom currently owns 3,000 shares of Circle G.

Defendants claim that at the August 4, 2012, meeting the shareholders reached an enforceable agreement for the buyout of the shares of Paul, Dale, Kathy, and Margaret. The agreement included a transfer of 80 acres that were then owned by Circle G, $50,000 from Tom to the departing shareholder, and a five-year lease with Goettsch Farms for $200,000. Defendants

contend that Petitioners breached the unanimous oral agreement reached at the August 4, 2012, shareholder meeting. Petitioners argue that no binding contract was ever formed at the August 4, 2012, shareholder meeting.

This Court finds that no enforceable contract or agreement was reached at the August 4, 2012 meeting between the Circle G shareholders. The central aspect of Defendants' August 4th proposal was the transfer of land for stock. Iowa's Statute of Frauds provides that for a contract for the transfer of any interest in land, including a lease in excess of one year, to be enforceable, there must be a written agreement signed by the party to be charged. *See* Iowa Code §622.32 (2014); *Elliott v. Loucks*, 194 Iowa 64, 187 N.W. 689, 690 (1922) (statute of frauds applies to a lease in excess of a year). While Defendants repeatedly urge Plaintiffs breached the August 4 agreement as their justification for their acts and their suggestion as to the appropriate terms of the buyout, Defendants cite no authority to demonstrate that the agreement was anything other than unenforceable. There is no enforceable agreement stemming from the August 4th meeting without Petitioners' signature on the relevant agreements and Petitioners never signed such agreements.

Defendants proceed to point to language in Exhibit 8, the Redemption Agreement, that states "[a] stock certificate shall be issued to Tom for the stock surrendered," for proof that it was the intent of the shareholders at the August 4th meeting that Tom was to receive the shares of the departing shareholders. Defendants contend that after Petitioners breached the August 4th agreement Paul Goettsch decided to go through with his part of the agreement and all Defendants along with Paul signed an "Agreement for Sale of Stock and Partial Distribution of Corporate Assets," but Petitioners did not. Defendants claim that the transaction where Tom paid $50,000 to Paul in August 2012, where a deed for 80 acres was issued to Paul from Circle G, and where

Paul entered into a five-year lease with Goettsch Farms beginning in 2013, was structured to fulfill the intent of the agreement reached by the shareholders at the August 4th meeting (i.e., that Tom was to receive the shares of the departing shareholders).

In response to Defendants' claim that the transaction with Paul was fulfilling an agreed upon intent, Petitioners point to the Redemption Agreement to show that the intent of their August 4th oral agreement, which did not constitute a binding contract, was that Tom would only get the stock after all of the other shareholders had consented to the Redemption Agreement and had surrendered their stock to Circle G. Petitioners contend that when Defendants entered into the Redemption Agreement in August 2012, without their knowledge or consent, and Paul received a deed from Circle G making him the record owner of the 80 acres, the Circle G shares then owned by Paul became treasury shares under the terms of the Redemption Agreement signed by Paul and Defendants, under Circle G's Bylaws, under the Buy and Sell Agreement, and under Iowa Code §490.603 (stating that shares of a corporation are outstanding until reacquired or redeemed). Petitioners contend that the actions completed in August 2012 led to Paul's Circle G shares no longer being outstanding shares under Iowa law. Thus, this left Tom with 2,000 shares, Brian with 1,000 shares, and the Petitioners with 3,000 shares total, or 1,000 shares each.

The Court agrees with Petitioners' contention that the transaction that occurred with Paul in August 2012 led to his Circle G shares becoming treasury shares under the Redemption Agreement signed by Paul and Defendants, under Circle G's Bylaws, under the Buy and Sell Agreement, and under Iowa Code §490.603. The Redemption Agreement (Exhibit 8) where Paul agreed to "surrender his 1,000 shares of stock to the Corporation," shows that it was not the Petitioners' or Defendants' intention in agreeing to the proposal at the August 4th meeting that

Tom should get their shares directly from them upon their departure from Circle G. The Redemption Agreement even reflected that in that it did not operate to convey Paul's stock directly to Tom. The Redemption Agreement, signed only by Paul and Defendants, stated that the shareholders would release their stock "for retirement," which generally are words used to show redemption of stock by a corporation. See Iowa Code §490.603 (2014). Therefore, under the Redemption Agreement Circle G clearly redeemed Paul's shares.

Further, both Circle G's Bylaws and the Buy and Sell Agreement provide that Circle G has the option to initially purchase a selling shareholder's shares. The Redemption Agreement effectively follows this provision, in that it is only after all the shareholders consent and have their shares redeemed by Circle G that Tom Goettsch is to have the stock reissued to him. The Redemption Agreement provided that after "***all***" the transfers of land were completed, which required all of Circle G shareholders' consent under the Bylaws and the Buy and Sell Agreement, and after the departing shareholders stock was surrendered for retirement, a stock certificate would be issued by Circle G to Tom for the stock surrendered by the departing shareholders (emphasis added). Thus, the Redemption Agreement itself shows that unanimous consent to the actions to be taken under the Redemption Agreement was required before the redeemed shares would be reissued to Tom. Tom himself in his 2012 letters states that any agreement to a buyout or transfer of land or shares needed to be unanimous among the shareholders.

The Redemption Agreement has a provision that reflects that the signatures of all the parties would be considered the "full consent" needed under the Bylaws and the Buy and Sell Agreement. However, Petitioners here did not consent to the stock transfer to Circle G or to Tom, they never signed the Redemption Agreement nor did they consent to the minutes of the

August 4th meeting and in fact they objected to them. Still, Petitioners agree that Paul should get to keep the 80 acres deeded to him under the August 2012 transaction. Therefore, the most logical and reasonable document to look at for the terms of the transaction with Paul is the Redemption Agreement that he and Defendants signed. As stated above, under the Redemption Agreement, Paul's shares become treasury shares of Circle G and are not reissued to Tom, because all of the shareholders did not consent to the Redemption Agreement or surrender their stock for retirement, which was required under the Redemption Agreement before Tom was to be issued the treasury shares from the departing shareholders. Therefore, under the Redemption Agreement, Circle G's Bylaws, the Buy and Sell Agreement, and Iowa Code §490.603, after the August 2012 transaction, Paul's shares became redeemed treasury shares owned by Circle G.

Further, Defendants claim that due to the breach of the agreement by Petitioners, "the structure of the transfer [had to be] modified in coordination with the corporation's accountant to meet IRS requirements and to fulfill the intent of the agreement." Defendants contend that Tom is the owner of Paul's 1,000 shares due to this modified transaction. Thus, Defendants contend that the corporate accountant, Jim Higgins, simply helped structure the buyout of Paul to fulfill all IRS requirements and to be in accord with the intent of the parties. The Court finds that Mr. Higgins did far more than that. What he did was to simply invent a transaction that did not take place based only on input from Tom Goettsch and Abby Walleck.

On August 25, 2012, Circle G conveyed 80 acres of Circle G land to Paul in exchange for his stock. The deed was not actually recorded until November 26, 2012. Mr. Higgins testified that he became aware in March of 2013, when he met with Tom, of the deed from Circle G to Paul of the 80 acres that was recorded on November 26, 2013, in exchange for Paul's 1,000 shares. When Tom met with Mr. Higgins in March of 2013, and Tom expressed the belief that

he owned the 1,000 shares previously owned by Paul, Mr. Higgins identified a problem. Mr. Higgins informed Tom that what had been done was not correct. If Tom was going to end up with Paul's stock, the transaction (well after the fact) would have to be restructured. Mr. Higgins and Tom worked up a solution to the problem without consulting any of the other shareholders, and Mr. Higgins did not do any independent review of the relevant documents. The problem identified by Mr. Higgins was that Circle G was the entity that has transferred value to Paul Goettsch when it deeded land in exchange for Paul's shares, but Tom was stating that he received the 1,000 shares as an individual even though the value had come from the Corporation. Mr. Higgins attempted to claim in his testimony that he simply restructured the transaction to follow the "intent" of the parties but he acknowledged that he had obtained his information on the intent solely from Tom and Abby Walleck as opposed to any independent review of the documents or speaking with the other shareholders. Mr. Higgins admitted in his testimony that he "effectively invented a purchase by Tom of the same land that had already been conveyed to Paul Goettsch." While the original transaction had been simply a conveyance of corporate land to Paul in exchange for his stock, under this modified transaction invented by Mr. Higgins, Tom purchased the same 80 acres that had been conveyed to Paul from the Corporation in exchange for Paul's 1,000 shares of stock. This was done by a simple journal entry created in the Circle G accounting papers by Mr. Higgins or his staff in March of 2013 and back dated to August, 2012. See Exhibit 13. It is hard to characterize this as anything other than a "do-over" as Petitioners contend.

Mr. Higgins further testified that he advised Tom needed to get an appraisal of the 80 acres transferred to Paul and use that as his own price for purchasing the land from Circle G. The appraisal stated that the 80 acres transferred to Paul was worth $920,000, so Tom used this

amount as his purchase price from Circle G. Mr. Higgins also advised that Tom make a down payment to the corporation of $350,000 for the 80 acres, which he did, leaving Circle G with a $570,000 receivable from Tom.

Defendants point out that Tom's $350,000 down payment was distributed to shareholders as a dividend, with each shareholder receiving $50,000 per 1,000 shares, which was more than enough to pay the less than $20,000 tax liability that passed through to shareholders as a result of the transfer of Circle G land. Defendants also point out that based on Mr. Higgins advice, Tom is paying 3% interest to the corporation on the remaining loan from the corporation and that at the end of 2013 Tom made a payment of interest of $27,000 to Circle G. Defendants do not deny that there is no promissory note or corporate minutes reflecting the terms of Circle G's loan to Tom. Tom simply testified that a promissory note and corporate minutes reflecting the terms would have been addressed at the 2013 annual meeting, which was cancelled due to the ongoing litigation.

Petitioners contend that "[t]his purported land/stock transaction was all Tom's attempt at a "do over" and their argument is persuasive. First, Petitioners argue that Tom's March 2013 "modification" of the transaction violates Iowa's Statute of Frauds. As stated, Iowa's Statute of Frauds provides that for a contract for the transfer of any interest in land to be enforceable, there must be a written agreement signed by the party to be charged. See Iowa Code §622.32 (2014). Here there is no written agreement or contract for Tom to purchase the 80 acres from Circle G in 2012, nor is there any deed from Circle G to Tom, or deed from Tom to Paul. No director or shareholder of Circle G consented to or signed any written agreements for the modified transaction and there was no shareholder or director approval for Circle G to convey land to Tom. Furthermore, no writing exists on the terms of the loan Circle G allegedly made to Tom in

his purchase of the 80 acres. There is no promissory note, no mortgage, and no schedule of payments or timeline for repayment of the loan. The Court agrees that Tom's March 2013 modification of the transaction violates Iowa's Statute of Frauds and therefore is unenforceable.

Second, Petitioners maintain that Tom's actions in March 2013 in modifying the transaction with Paul violate Circle G's Bylaws and the Buy and Sell Agreement. Both the Circle G Bylaws and the Buy and Sell Agreement Appendix A require that when a shareholder sells stock, a written notice must be given to the corporation and following the expiration of a time period giving priority to the corporation to acquire the shares, the shares must be presented to the other shareholders for purchase of the stock on a pro rata basis. See Exhibit 39, section 13.10, p10-11. Only after this process has been followed may a shareholder sell his/her shares to others. Here, the Circle G directors did not waive the corporation's priority to acquire Paul's stock; Tom did not even inform the other two directors of Circle G, Paul and Brian, about the modified transaction until 2014. Additionally, Petitioners, as shareholders of Circle G, were never given a written notice, never consented to a stock transfer from Paul to Tom, and never had an opportunity to purchase Paul's shares on a pro rata basis.

Defendants argue that the transaction between Tom and Paul did not violate Circle G's Buy and Sell Agreement, because all of the shareholders consented to the transfer at the August 2012 shareholder meeting. As stated previously, this Court finds that no enforceable agreement was reached at the August 4, 2012, meeting and consequently Petitioners, as shareholders of Circle G, did not consent to the transfer of Paul's shares to Tom as required by the Bylaws and the Buy and Sell Agreement. Defendants further contend that even if Paul had offered his shares first to the corporation (as required by the Buy and Sell Agreement), Circle G would not have bought Paul's shares because Circle G did not have the cash assets to purchase the shares and it

is not likely that a majority of the outstanding shares would have agreed to allow any land to be mortgaged. Additionally, Defendants contend that even if Paul had offered his shares to the remaining shareholders on a pro rata basis after Circle G turned down his offer (as required by the Buy and Sell Agreement), Dale, Kathy, and Margaret have all testified or stipulated that they could not have purchased Paul's shares at that time. Tom Goettsch told no one of this fiction and what had happened. He did not inform Petitioners and he did not even tell Brian and Paul. Circle G's directors never considered approving the actions taken by Tom and Mr. Higgins, nor did the shareholders. If they had, it is unlikely the transaction would have been approved by Dale, Kathy and Margaret, who represented 50 % of the outstanding shares. Thus, it is irrelevant whether Petitioners would have purchased their pro rata shares of Paul's stock as there never would have been director or shareholder approval for Circle G to waive its priority to redeem the shares.

Third, Petitioners contend that Tom's March 2013 "modification" breached his fiduciary duties as a director of Circle G and therefore the transaction is void. Petitioners correctly point out that throughout the attempted modification of the transaction in March 2013, Tom "purported to act for Circle G as a seller of Circle G's land, and personally as a buyer of the same land." Tom determined the down payment Circle G would require from him on the purchase of the 80 acres ($350,000), he determined the interest he owed Circle G for the remaining balance of the purchase price (3%), he decided when he should pay interest (one payment made at end of 2013), he determined that the transaction did not need to be in writing, he decided there did not need to be collateral for the remaining balance of the loan, and he determined the terms of repayment. Tom notified none of the other shareholders of this modified transaction, not even Brian. Tom was acting as both a buyer and seller, both a lender and borrower, and in Tom not disclosing the

transaction to the other shareholders or directors there are obvious conflicts of interest here.

Directors of a corporation do occupy a fiduciary relation to the shareholders of that corporation. *Liken v. Shaffer*, 141 F.2d 877, 879-80 (8th Cir. 1944). Director's acts are "subject to close scrutiny by the courts, and must be in the utmost good faith and fair." *Wabash R. Co. v. Iowa & S.W.R. Co.*, 202 N.W. 595, 599 (Iowa 1925). "Under Iowa law, officers and directors are not prohibited from purchasing property belonging to the corporation, but their actions will be examined in the light of their fiduciary responsibility, and the transaction may be set aside on slight grounds as being unfair in the relationship." *Liken v. Shaffer*, 141 F.2d 877, 879-80 (8th Cir. 1944) (citations omitted). A director of a corporation purchasing property belonging to the corporation is "bound to exercise the utmost good faith, to act for, and in the interest of, the corporation and not for his own benefit or profit. A contract between a director and the corporation will be closely scrutinized in equity, and he must act in entire good faith." *First Nat. Bank v. Fireproof Storage Bldg. Co.*, 202 N.W. 14, 19 (Iowa 1925).

The Iowa Supreme Court summarized a director's good faith obligations stating:

> Corporate directors and officers may under proper circumstances transact business with the corporation including the purchase and sale of property, but it must be done in the strictest good faith and with full disclosure of the facts to, and the consent of, all concerned. And the burden is upon them to establish their good faith, honesty and fairness. Such transactions are scanned by the courts with skepticism and the closest scrutiny, and may be nullified on slight grounds. It is the policy of the courts to put such fiduciaries beyond the reach of temptation and the enticement of illicit profit.

Des Moines Bank & Trust Co. v. George M. Bechtel & Co., 51 N.W.2d 174, 216 (Iowa 1952). Additionally, Iowa Code §490.832 invalidates transactions by directors that have a conflict of interest with the corporation if the transaction is unfair or undisclosed. Iowa Code §490.832 provides:

1. A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:
a. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction.
b. The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and the shareholders authorized, approved, or ratified the transaction.
c. The transaction was fair to the corporation.

Iowa Code §490.832 (2013). Here, Tom clearly had a conflict of interest in the March 2013 transaction; he was buying land from Circle G himself, while also authorizing the sale of the land by Circle G by himself, without other director or shareholder approval. Therefore, Tom had the duty to fulfill his obligations as a director of Circle G with "the utmost good faith" and this Court will "closely scrutinize" the transaction for "entire good faith" on Tom's part.

Tom completed this whole transaction without seeking approval from or even notifying the other directors or the other shareholders. Tom set the terms of the entire transaction, from the purchase price, to the interest rate, to the fact that Circle G would loan him the money without collateral or written loan terms. The interest charged on the unsecured "loan" to Tom is "well below what a bank would charge for a 100% collateralized farm loan where there were actually written terms." The Court finds that in conducting this March 2013 transaction Tom did not fulfill his obligation as a director of Circle G in that he did not act in "the utmost good faith" as required of such a transaction. Therefore, Tom breached his duty of good faith and loyalty as a director of Circle G.

Additionally, Tom did not fulfill his obligations under Iowa Code §490.832 because he did not disclose the material facts of the transaction or even seek or have the approval of the

other non-interested directors (Brian) nor did he disclose the transaction to or have the approval of the other non-interested shareholders (Brian, Dale, Kathy, and Margaret). In fact, it is apparent from the facts presented that Tom attempted to hide this modified transaction from the other shareholders, in that he advised Mr. Higgins, Circle G's accountant who helped construct the transaction, not to answer questions Dale was posing to him in regards to the tax repercussions of the transaction. Due to this apparent lack of good faith, purposeful absence of transparency and the solitary decision making by Tom, this Court also cannot find that this March 2013 transaction was fair to the corporation under Iowa Code §490.832. Therefore, because of the breach of the duty of good faith and loyalty and the violation of Iowa Code §490.832, this Court finds that Tom's March 2013 transaction is void.

Defendants argue that the transaction between Tom and Paul did not present a conflict of interest because all of the shareholders consented to the transfer at the August 2012 shareholder meeting. Again, this Court reiterates that the shareholders needed to provide written consent for such a transfer of land for there to be proper consent. Defendant Tom also claims that it is Petitioners' fault that there are no terms laid out for the purchase of the land or the loan from Circle G, as these things should have been worked out at the 2013 annual shareholder meeting which was cancelled by Petitioners due to the ongoing litigation. This Court finds this argument disingenuous because such terms of the purchase and the loan should have been discussed, decided on, and put into writing prior to the transaction taking place and not as an afterthought. Additionally, Tom claims that he did not inform the other shareholders of this modified transaction because he was going to bring it up at the annual meeting. Again, this Court finds this argument disingenuous. Tom should have informed and obtained the consent of the other shareholders before completing this transaction. Furthermore, Tom had the opportunity to inform

at least one other shareholder shortly after he completed the transaction, when Dale was contacting Mr. Higgins and Tom in regards to the tax effects of the hidden transaction.

For the reasons set forth above, the Court finds that the modified transaction attempted by Tom in March 2013 is invalid and void. Furthermore, in the original transaction conducted with Paul in 2012, Paul's 1,000 shares were redeemed by Circle G. Therefore, this Court finds that Paul's 1,000 shares are treasury stock of Circle G. Tom owns 2,000 shares of Circle G and Brian, Dale, Kathy, and Margaret each own 1,000 shares of Circle G.

The parties do agree that if the Court sets aside the transaction, and finds Paul's shares to be treasury shares, the $350,000 deposit made by Tom in 2013 is recast as a loan made by Tom to Circle G and the overall valuation of Circle G is reduced by $350,000 plus interest at the rate of 3% (the same rate paid by Tom to Circle G in December 2013) from the time of payment to Circle G, because the loan becomes a liability for Circle G. Additionally, this Court finds that Tom's interest payment of $27,000 in December 2013 should be treated as a loan to Circle G with interest at 3% from the time of the payment to Circle G.

II. THE FAIR VALUE OF PETITIONERS' SHARES IN CIRCLE G-VALUATION DATE:

The parties agree that the appropriate valuation method to use is the corporation's net asset value. In *Northwest Investment Corp. v. Wallace,* 741 N.W.2d 782 (Iowa 2007), the Court recognized net asset value as a recognized method of valuation and the Court agrees that is the appropriate method to use here. If Circle G were to be sold, the fact that the seller is a corporation is meaningless to the buyer, most buyers of farmland are farmers, the buyer wants the farmland so Circle G would sell its assets, i.e., its farmland. Petitioners' expert, Bill Holstein, testified the comparable sales method of valuing Circle G's assets is the most appropriate, that being the asset value at the valuation date. Defendants' expert used the same

valuation method, comparable sales. Corporations which hold real estate for investment or rental, like farmland, are appropriately valued on a net asset value basis. See *Rev. Rul. 59-60, 1 C.B. 237* (IRS Discussion of Valuation Factors Notes Adjusted Net Worth, Based on an Appraisal of "The Fair Market Value of the Assets Underlying the Stock" should be afforded greater weight in valuing the stock in a company holding real estate).

Further, neither party's farmland value expert had any significant criticism of the other's valuation method or even the values placed on the farmland at various dates. Rather, the primary differences in their opinions were because they were asked to provide opinions on different valuation dates.

Iowa Code § 490.1434(4) provides that the Court "shall determine the fair value of the petitioner's shares as of the day before the date on which the petition under §490.1430, subsection 1, paragraph "b" was filed or as of such other date as the Court deems appropriate under the circumstances." Petitioners urge the Court to use the statutory valuation date, i.e., the day before the petition was filed and Petitioners further contend that the day before the Federal Court action commenced, June 12, 2013, is the day to be used. Defendants assert that the Court should select "such other date as the Court deems appropriate under the circumstances" which in Defendants' view is the November 17, 2014, trial date or the day before the petition was filed in Ida County (after this case was transferred by the agreement of the parties from Federal Court to Business Court). In the Court's view, Iowa Code § 490.1434 provides a presumptive valuation date of the day before the petition was filed ("a court shall determine the value . . .") unless strong equitable reasons dictate otherwise. See *Hollis v. Hill,* 232 Fed. 3rd 460, 472 and n. 39 (5th Cir. 2000)("The presumptive valuation date for other states allowing buyout remedies is the date of filing unless exceptional circumstances exist which require an earlier or later date to be

chosen"); *Musto v. Vidas,* 333 N.J. Super. 52, 754 A.2d 586, 592 (N.J. 2000) (date of filing of the complaint in an oppression action was the appropriate valuation date); See also *Moll, Shareholder Oppression and "Fair Value": Of Discounts, Dates and Dastardly Deeds in Close Corporation,* 54 Duke L.J. 293, 370-71 (2004)(in election cases, the date of filing as the presumptive valuation date is sensible). The day before the filing date of June 12, 2013, is the presumptive valuation date under §490.1434 and, as the Court will note below, this is consistent with the parties' agreements in the Stipulation. The filing date as a valuation date is also consistent with the notion that shareholders who file a dissolution action at that point seek to end their relationship with the corporation.

Defendants assert this Court should use its equitable power to determine a different valuation date than the statute explicitly calls for due to the "unusual variation" in the price of farmland in Iowa in recent years.

There is some merit to this position. Owners of farmland have little ability to influence the value of farmland in the short term because the value of farmland is determined by market conditions. This is not a situation in which the owners of a corporation could intentionally decrease the value of the corporation after a petition seeking a buyout by doing things such as decreasing sales, front loading expenses or taking on additional debt. Additionally, Defendants assert (with little evidentiary support) they may have difficulty borrowing money to fund a buyout because the loan amount will be tied to the current value of the farmland which has now decreased. Defendants again argue that Petitioners breached the August, 2012, agreement and refuse to proceed with a transaction Petitioners considered fair and they put forth this alleged breach of the agreement as another equitable reason to deviate from the statutory valuation date. After carefully considering Defendants' arguments (and others not summarized here), the Court

finds that the statutory valuation date of the day before the Petition was filed is appropriate under the evidence developed in this case.

On June 12, 2013, Petitioners commenced an action in the United States District Court for the Northern District of Iowa, which named all the present defendants, and also board member Paul Goettsch. The principal claim in the federal court complaint was under Iowa Code § 490.1430, where Petitioners sought an order dissolving Circle G Farms, Inc. or, alternatively, a buyout, or other equitable relief, because of fraud and acts of shareholder oppression. That complaint referenced section 490.1434, and the option of Defendants to make an irrevocable election to buy out Petitioners' shares as an alternative to dissolution.

In the parties' September 9, 2014 Stipulation, while the case was still pending in federal court, the Defendants agreed to make an irrevocable election to purchase Petitioners' shares in Circle G, and Petitioners consented to that election. The parties agreed as follows:

> The parties agree that the continuation of the Litigation shall proceed in accordance with the provisions of § 490.1434 of the Iowa Code as if such election was timely made after the commencement of the Litigation.

In the Stipulation, the "Litigation" was defined to be the action pending in federal court. Section 490.1430 provides that a defendant in a dissolution action like this one has 90 days after the commencement of an action seeking a dissolution action to make an irrevocable election to buy shares at fair value, which has the effect of avoiding a corporate dissolution. Thus, under the Stipulation, the parties agreed that the election to purchase petitioners' shares in Circle G was effectively made in a timely way, within 90 days of the federal court action being filed.

As noted above, the Court concludes that the value of Petitioners' shares as of the day before the date on which the Petition was filed is presumptive the date to use unless strong equitable considerations dictate otherwise. The Court finds there are no exceptional or equitable

reasons to depart from the June, 2013, presumptive valuation date. Prior to a suit being filed, Defendants made the buyout offer which resulted in the parties' August, 2012, meeting. That buyout offer was made after a number of years of below market rent paid to the shareholders. While Petitioners did agree to that proposal at least in principle during the August, 2012, meeting, it was eminently clear that the agreement would need to be placed in writing (both by the agreement of the parties and based on the Statute of Frauds as a matter of law) and when the written documents were circulated they contained terms never discussed. When Petitioners appropriately sought legal counsel, they made an eminently fair proposal in September of 2012 that was probably cheaper to Tom and Brian than the cost of their prior proposal and certainly avoided very large tax ramifications for all of the parties. Tom Goettsch's response was oppressive, he made an offer of $300,000 for each of Petitioners' shares which was approximately one-third or one-fourth of what the shares were worth and withdrew all prior offers. In addition to the August, 2012, agreement being unenforceable under the Statute of Frauds, his withdrawal of all prior offers certainly puts to rest an argument Defendants had that the Court should enforce the oral agreement. Further, he continued to pay the low rents, not pay dividends and continued with spending resolutions that were passed without Petitioners' input. When Petitioners requested Defendants reconsider their rent and dividend decisions in January, 2013, and provided average cash rent information from Iowa State University demonstrating cash rents were over $300 per acre, far in excess of what Goettsch Farms was paying, Defendants provided no response at all to Petitioners, with Tom stating to Paul that his "take on it is too bad", Exhibit 67. Tom continued with the transaction with Paul in late-2012 without notifying Petitioners. He then engaged in the attempt to modify the transaction which the Court discussed extensively above, in which he authorized the sale of land to himself, he set the terms

of the purchase, he set the interest rate, he set the security for the loan, all without informing Petitioners. When Petitioners attempted to obtain information to which they were rightly entitled from the corporate accountant, Tom told the accountant not to provide that information.

Yet another opportunity to make an irrevocable election to purchase the shares presented itself to Defendants in the summer of 2013 when Petitioners filed their suit in Federal Court but they chose instead to contest liability. The market for farmland was increasing from late-2012 and continued to rise all throughout 2013 and into 2014. Farm values didn't start dropping until early or mid-2014. Then in September of 2014, presumably with the knowledge that farm values had dropped considerably, Defendants consent to a fair value buy out. Defendants' refusal to come to grips with the tax and financial realities of a separation (an idea they proposed), Defendants' blind insistence that they follow an oral agreement (unenforceable as it was) for the transfer of land, the revocation of all prior offers, considering no other reasonable proposals, deprived Petitioners of the opportunity to obtain fair value for their shares for nearly two years, all at a time when they could have realized higher prices through a sale of land.

Defendants' argument that they value of Circle G is determined by market forces and is out of their control may be true to a large extent, but Defendants did have control over their decision making in the past two years which was stubborn, self-serving and oppressive. They have also benefitted from low rent for the entire two year period. Petitioners had no idea what land values would do when they filed the Federal Court action. Farm prices do tend to be cyclical. By way of example, Mr. McGuire identified a sale in March of 2013 for $18,950 an acre. There is no viable policy reason to allow one side or the other to use the high end or the low end of the range if the values change just prior to trial. No doubt Defendants would be clamoring for a June, 2013, valuation date if prices had increased through the present.

The Court was also not convinced that the current prices for farmland have fallen as low as Defendants assert. While Defendants' expert, Mr. McGuire, presented comparable sales in the fall of 2014 and based on these opined the Kistle Farm was worth $7,500 per acre, the Madsen Farm was worth $7,600 an acre and the Home Place was worth $8,500 per acre, there were some recent sales of land in September, October, and November if 2014 in the surrounding area, after the parties entered into the September 9, 2014 Stipulation. McGuire had a list of transactions at lower prices, but on cross examination acknowledged that there was a sale eight weeks before trial for $11,000 an acre and an 80 acre farm in Cherokee brought $12,000 an acre. He said in general he still sees good farms at $10,000 per acre. Both experts agree that the Circle G farms are good quality farms.

Holstine provided information on the most recent sale, on November 14, 2014, of 240 acres in Buena Vista County, at prices per acre between $10,750 acre and $10,900 acre. (Exhibit 73) This most recent sale involved properties which compared favorably to Circle G's newer CSR II ratings. Holstine testified that high quality farms were still generating higher prices during 2014, although the Iowa farmland market has softened. The Court found Mr. Holstine's testimony to be more convincing. The Court does not need to determine the trial date value of the farm land because the Court believes a June, 2013, valuation date to be appropriate in this case. The Court is simply noting that it does not believe the current values are as low as Defendants suggest.

On behalf of petitioners, Bill Holstine of Hertz Farm Management provided an appraisal of Circle G Farms using two different valuation dates – November 2012 and June 2013. Exhibit 47.

Holstine's appraisal report lists the following values for the Circle G parcels for the two valuation periods:

Farm	**Acres**	**June 2013**		**November 2012**	
		in $	per acre	in $	per acre
Home place	310.84	$4,040,000	$12,997	$3,380,000	$10,874
The "80"	79.04	$1,000,000	$12,652	$ 825,000	$10,438
Kistle	236.48	$2,840,000	$12,009	$2,340,000	$ 9,895
Madsen	153.73	$2,030,000	$13,204	$1,675,000	$10,895
	780.09	$9,910,000		$8,220,000	

Without the "80" parcel conveyed to Paul Goettsch, the fair market value of Circle G as of June 2013 according to the Holstine/Hertz appraisal was $8,910,000. The Holstine/Hertz appraisals included $250,000 for improvements/building values. Goettsch Farms erected grain bins on the Home Place after June of 2013 at their expense. If the cost of this improvement (which basically aids Goettsch Farms in its own farming efforts, and not Circle G as a landlord, especially if the cost of improvements is not covered in increased rent) is backed out of the Holstine/Hertz values at cost, the fair market value of Circle G's land as of June 2013 without "the 80" was $8,785,000.

For the reasons set forth above, the Court uses the filing date of June, 2013, as the date on which to determine the fair value of Petitioners' shares and finds the fair market value of Circle G assets, with a Circle G liability of $350,000 to Tom Goettsch, to have a fair market value of $8,435,000 and 50% of that amount is $4,217,500 or $1,405,833 per Plaintiff.

Petitioners urge the Court to apply a rent adjustment to increase the fair value of Petitioners' shares. There is some merit to Petitioners' request. Since March of 2013, Tom and Brian Goettsch, through Goettsch Farms, have paid $150 per acre to Circle G. This level of rent is less than what it was before August, 2012, when Goettsch Farms paid lower base rent but

annual bonuses and it is considerably lower than the $250 per acre rent proposed by Goettsch Farms in the Separation Proposal and below the market value for fair cash rentals in 2013, which Petitioners' expert Holstine testified to be $425 per acre. It is also below the published rent surveys by Iowa State University demonstrating that the fair cash rental rates in Ida and Cherokee Counties were somewhat in excess of $300 per acre. Defendants put on relatively little evidence of cash rental rates and what evidence they did put on was not convincing. Tom Goettsch testified in a general fashion that the $151 per acre rent was the going rate in the area and similar to what he paid to rent other farmland. No leases were introduced and his testimony was not convincing. It was quite anecdotal. Similarly, Defendants had their accountant, Mr. Higgins, testify that he thought $151 in cash rent was fair and the going rate. There was no showing that he had any expertise in this area and the Court found his testimony biased in favor of Defendants. The Court found Mr. Holstine's detailed testimony based on his vast experience and expertise to be more compelling and the Court likewise found the Iowa State University studies to be more convincing. With that said, the Court is using a June of 2013 valuation date and in effect Petitioners are receiving a buyout at land values on that date which is certainly at a greater value than would be the case of the trial date values. The Court also notes that no farm management fee has ever been charged by Goettsch Farms, Tom Goettsch or Brian Goettsch. Farm managers typically charge a management fee that ranges from 6 to 10% of annual income. The Court concludes that no rent adjustment is warranted.

III. THERE IS NO JUSTIFICATION FOR THE APPLICATION OF A TAX EFFECT DISCOUNT TO FAIR VALUE

Defendants contend that a liquidation tax discount is required when a court is determining fair value under Iowa Code §490.1434, but the Court finds that Defendants and their accountant, Mr. Higgins, are wrong and they were unable to explain why such a discount should

operate in an S Corp setting. Defendants' argument is based largely on the July, 2014, trial court decision in *Baur v. Baur Farms, Inc.,* (*Baur II),* EQCV032201. However, that case involved a C Corp, not an S Corp like Circle G. Defendants and their expert, Mr. Higgins, did not and cannot explain why there is an embedded tax in an S corporation in the event of a buyout. Mr. Higgins' model assumes Circle G pays the tax when due when it legally has no such obligation. In a question from the bench, the Court asked Mr. Higgins to explain why his model would not require the income tax of a departing shareholder to effectively be paid twice, once by reducing the value of the corporation for supposed tax affects and again by the departing shareholders when the shareholder paid tax on the difference between the cash they receive for their stock and their basis in the stock. To put it bluntly, Mr. Higgins was unable to provide any cogent explanation and his answer was essentially double talk on the double taxation issue. Conversely, Petitioners' expert's, Mr. Peters', testimony was more credible and convincing. He explained in detail through his testimony and projections which modeled all possible scenarios (Exhibit 71, A-1 through C-4) that the burden on the remaining shareholders in an S Corporation after the buyout, is no greater than if Circle G liquidated all its assets today. Tom and Brian Goettsch do not pay any more tax in a future liquidation of Circle G for the same value than the tax they would pay if Circle G liquidated all its assets in the current year while Dale, Kathy and Margaret were still shareholders. If Petitioners' stock is purchased by Defendants in the court ordered buyout for fair value, Petitioners will pay capital gains tax on the difference between the cash value they receive for their stock and their individual basis in the stock. Defendants will receive a stepped-up basis in the stock. The Court finds Mr. Peters' opinion that a tax affect discount would be inappropriate in this setting is correct. There is no justification for a tax affect discount in an S Corporation when the S Corp is valued on a net asset basis.

In *Baur v. Baur Farms, Inc., (Baur II),* the district court held on remand that "the fair value of [the Petitioners'] shares under the standards adopted by the Supreme Court does not exceed the amount of his proportionate share of the market value of [the corporation's] assets, discounted to their liquidation value." In reaching that decision, the district court relied on expert testimony that full discounts for tax "are fair and customary in the purchase of a shareholder's interest in Iowa farm corporations." Defendants point to similarities to the *Baur Farms* case, principally that the corporation's assets consistent mainly of farmland, the value of the farmland had increased substantially in basis and the corporation had a minimal tax basis in the land. However, the Court in *Baur Farms II* was dealing with a C corporation and not an S corporation. *Baur II* involves accounting for "built in gains" which a C corporation pays at the entity level and which will materialize if assets need to be sold to fund the buyout. When a C corporation sells assets, the corporation itself has a capital gain and pays tax on that gain, thus the *Baur* Court recognized that the remaining shareholders of the C corporation would bear the burden of the capital gains tax the C corporation must pay. The Court notes the tax expert that testified in *Baur* limited his or her opinions to C corporations.

S Corps, like Circle G, pay no income tax at the entity level; S Corps taxable gain is passed through to the shareholders, and the shareholders pay income tax on a pro rata basis at the shareholder level. This is fundamentally different than the tax treatment of C Corps. C Corps pay tax at the entity level and any earnings distributed to shareholders from a C Corp are taxed as dividends. This leads to double taxation – once at the entity level, then again at the shareholder level.

Conversely, S corporations avoid double taxation. The Internal Revenue Code, 26 USC §1366(a), provides that in determining an S corporation's shareholder's income tax "there shall

be taken into account the shareholder's pro rata share of the corporation's items of income . . . loss, deduction or credit." See also 26 CFR 1.1366-1(a). When the gain is passed through to the shareholders, the basis of the shareholder in his or her stock increases by the amount of the S corporation's gain which is passed through to the shareholder. When the gain is passed through to the shareholders, the basis of the shareholder in his or her stock increases by the amount of the S Corp's gain which is passed through to the shareholder. 26 USC §1367(a) provides that a shareholder's basis in the stock of an S corporation is increased by such items of income and decreased by such items of loss or deduction. The impact of the adjustment to an S Corp shareholder's stock basis is important, as any increase from the sale of an S Corp's assets protects the shareholder from paying increased tax in the way of future asset sales by the S Corp. Here, Circle G, and thus the remaining shareholders, would not be left to pay the capital gains tax because the S Corp passes its gains through to the shareholders, which in this case would include Petitioners. Therefore, they would pay their proportionate and fair share of the taxes stemming from the buyout.

If there is to be a sale or transfer of land to fund a buyout, Circle G will generate a gain, which will be passed through to all of the shareholders. Each shareholder is then responsible to pay his or her pro rata share of the tax. In this setting, S Corp shareholders, unlike C Corp shareholders, fairly share the tax burden. In *Matthew G. Norton v. Smith,* 51 P.3rd, 159 (Wash. Ct. App. 2002), the court recognized that in determining fair value of an S corporation there should not be a discount for tax affects when the minority shareholders pay their proportionate share of any capital gains generated in affecting the transaction. The Washington Court of Appeals explained:

> "We emphasize that to the extent that Matthew G. Norton Company wishes the trial court to consider such tax implications, it needs to provide the trial court with a

> reasonable expectation of why such built-in gains should be considered in light of the fact that it has converted to Subchapter S status, thereby avoiding the double taxation problems of C corporations, and it needs to show the court by substantial evidence and appropriate briefing that the dissenting shareholders will not already have been taxed for their fair share of the gain of any such appreciated assets by virtue of the corporation's redemption of their appreciated shares for 'fair value'."

Id. at 169. Here Defendants have failed to provide any evidence that Petitioners "will not already have been taxed for their fair share of the gain of any such appreciated assets by virtue of the corporation's redemption of their shares." See also *Perlman v. Permonite Manufacturing, Co.,* 568 Fed.Sup. 222, 232 (Ind. 1983). "A discount in a dissenter's case for capital gains liability is inequitable if it is not prorated among shareholders, as it would be unfair to the minority shareholders." Once again, as the credible testimony of Mr. Peters pointed out, given the tax rules governing S Corps, the remaining shareholders have no more income tax obligation after a sale or transfer of assets in a future sale than they would have if Circle G liquidated its assets today. For the reasons set forth above, the Court finds there is no justification to apply a tax affects discount.

IV. NO MINORITY INTEREST DISCOUNT

1. Fair value is a valuation concept intended to protect minority shareholders in settings where they are unfairly treated or subjected to extraordinary corporate actions beyond their control. *Baur v. Baur Farms, Inc.*, 832 N.W.2d 663 (Iowa 2013). Iowa has adopted a statutory definition of "fair value" contained in the appraisal/dissenters rights portion of the Iowa Business Corporations Act, which sets forth a process for a shareholder to "dissent" from certain fundamental transactions, like mergers or asset sales, and obtain fair value for their shares.

2. Based on a Model Business Corporations Act provision, Iowa's statutory definition reads as follows:

> "Fair Value" means the value of the corporation's shares determined according to the following:
>
> (1) Immediately before the effectuation of the corporate action to which the shareholder objects.
>
> (2) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal.
>
> (3) Without discounting for lack of marketability or minority status . . . .

Iowa Code § 490.1301(4)(a). Section 490.1434 uses this defined term "fair value". *Baur* referred to the statutory fair value definition as applicable to judicial dissolution actions - "[t]he general assembly, in adopting the IBCA, has codified a 'fair value' principle as an alternative to other dissolution remedies." *Baur*, 832 N.W.2d at 673 (citing Iowa Code § 490.1434(1)). *Baur*'s reference makes it clear that the fair value definition in the appraisal rights section of the Iowa Business Corporations Act is equally applicable to dissolution actions or proceedings under section 490.1434. In that dissolution action, *Baur* also pointed out its "recent disapproval of share valuations incorporating a discount for a minority interest", and quoted a dissenters rights/appraisal case, *State Bank v. Ziegeldorf*, 554 N.W.2d 884, 889 (Iowa 1996), for the principle that "[s]uch a discount 'in effect would let the majority force the minority out without paying it its fair share of the value of the corporation.'" *Baur*, 832 N.W.2d at 670 n.5. Iowa's statutory definition eliminates any doubt regarding the application of discounts for lack of marketability or minority interest – there are no such discounts in any fair value determination.

3. In *Northwest Investment Corp. v. Wallace*, 741 N.W.2d 782 (Iowa 2007), the Supreme Court held that fair value under Section 490.1301(4) included a "control premium". *Id.* at 788. *Northwest Investment Corp.* cited the comments accompanying the amendments to the Model Business Corporations Act adopted by the Iowa Legislature:

> Subsection (c) prohibits discounting for lack of marketability or minority status. The official comment explains subsection (c) is "designed to adopt a more modern view that appraisal should generally award a shareholder his or her

> proportional interest in the corporation after valuing the corporation as a whole, rather than the value of the shareholders' shares when valued alone."

Id. at 787 (citations omitted, emphasis in original). The *Northwest Investment* court decided:

> To follow the position of jurisdictions who determine fair value based on "what a willing buyer realistically would pay for the enterprise as a whole on the statutory valuation date."

Id. at 791. (citations omitted). Thus, under sections 490.1301(4) and 490.1434, the "fair value" of a petitioner's shares is that shareholder's proportional interest in the corporation after determining the best price at which a willing buyer would pay for the entire enterprise as a whole on the valuation date, without any discounts for that shareholder's minority status or for any lack of marketability. *Id.*; see also *Swope v. Siegel Robert, Inc.*, 243 F.3d 486, 493 (8th Cir. 2001), cert. denied, 534 U.S. 887 (2001) (applying Missouri law - the market for minority stock in a dissenting shareholder's appraisal proceeding, absent extraordinary circumstances, is not a relevant fact to consider when determining fair value).

Defendants suggested that the Court consider the very discounts that Iowa Code § 490.1301(4)(a) plainly prohibits through the testimony of Jim Higgins. Higgins pointed to a section in the Buy and Sell Agreement which indicates that the "price for each share of capital stock to be sold under this Agreement shall be equal to its fair market value as an on-going business concern, as determined in the sole discretion of the Corporation's Certified Public Accountant . . . ." Exhibit 53, section 5. Despite the obvious conflict with Iowa's preference to not apply discounts for lack of marketability or minority interest, and despite a lack of valuation expertise, Higgins suggested such discounts should be applied.

The Court finds the Buy and Sell Agreement is inapplicable by its very terms, and therefore, the Court should not give any consideration to the language found in section 5. Higgins acknowledged that the provision in section 5 only applies to sales of stock under the

Agreement when one of the shareholders dies, and he admitted that lifetime transfers under section 3 of the Buy and Sell Agreement were not even governed by section 5.

In *In re Pace Photographers, Ltd.*, 71 N.Y.2d 737, 525 N.E.2d 713, 530 N.Y.S.2d 67 (1988), the Court of Appeals of New York, in a statutory proceeding where defendants elected to purchase plaintiff's shares at fair value, reversed a lower court ruling which had applied discounts set forth in a buy sell agreement to reach a fair value for the purchase of plaintiff's stock. The buy sell agreement provided a formula for lifetime transfers, and also provided an agreed on a mechanism to purchase shares upon death. *Id*. at 746-47. Plaintiff brought a dissolution action, and defendants elected to purchase his shares for fair value. The *Pace* court held that the statutory election process for fair value was not a purchase under the shareholder's agreement and, therefore the discount formula from the buy sell agreement did not apply in a fair value election proceeding. *Id.* at 748 ("In this forced sale, the court's objective will be to fix the value of the business as a going concern as of the day prior to the filing of the petition, which may be very different from the objective of a shareholders' agreement fixing value for a voluntary sale"); *see also Rigel Corp. v. Cutchall*, 511 N.W.2d 519, 524 (Neb. 1994) (in determining fair value, the Nebraska Supreme Court held the stock restriction agreement to be inapplicable because "the relevant provision of the stock restriction agreement contemplated that [defendant] would own the shares at the time of his death, a circumstance which obviously will not come to pass"); *Hughes v. Sego International Ltd.*, 192 N.J. Super. 60, 469 A.2d 74 (N.J. App. 1983) (in equitable buy out for fair value, the trial court erred in applying a buy sell formula which "by its very terms did not apply", as it was "written primarily for application upon the death of a stockholder"). Here, as in *Pace*, the terms of the Agreement do not apply to a fair value determination to be made by this Court.

Furthermore, the parties did not apply section 5 of the Buy and Sell Agreement in connection with the exchange of value for Paul Goettsch's shares in 2012. While Higgins suggested some minority discount was applied to the purchase of Paul's shares, he reached his conclusion on the basis that Paul did not receive value for a 1/7th interest in Circle G. But Higgins was unaware of the extra $100,000 in value that was intended to be provided over time to Paul through lease payments. There was simply no evidence that any party intended to value shares at some lesser amount because of their minority status. Higgins' testimony on this point is not credible.

Under the Buy and Sell Agreement, any lifetime transfer is governed by paragraph 3, and the price is set by the selling shareholder, not the certified public accountant, and paragraph 5 is irrelevant. This action is not a sale under the agreement; none of the petitioners invoked the Buy and Sell Agreement as a part of the litigation. This proceeding involves an irrevocable election to purchase shares under fair value pursuant to Iowa law, which as a policy matter, bars minority interest and lack of marketability discounts.

The Court finds the Buy and Sell Agreement inapplicable by its very terms. Further, the Iowa Code does not direct the Court to look to the shareholders' agreement as part of its fair value determination. Had the Iowa legislature wanted the courts to take into account shareholder agreements in determining fair value in an equitable buyout proceeding, it could have added such language. Iowa's codification of fair value has no such language, and the Court will not take into account the Buy and Sell Agreement when determining fair value.

The Court finds for the reasons set forth above that it is inappropriate to apply a discount for minority interest of lack of marketability.

V. ATTORNEY FEES AND EXPERT WITNESS EXPENSES

Petitioners contend that they are entitled to reasonable attorney fees and expenses for expert witnesses. In the Stipulation to proceed in Iowa state court, the parties agreed that the continuation of the federal litigation should be governed by Iowa Code §490.1434. Iowa Code §490.1434(5) provides in part, "If the court finds that the petitioning shareholder has probable grounds for relief under section 490.1430, subsection 1, paragraph "b", subparagraph (2) or (4), it may award the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by the shareholder." Iowa Code §490.1430(1)(b)(2) & (4) states:

> 1. The district court may dissolve a corporation in any of the following ways:
> b. A proceeding by a shareholder if it is established that any of the following conditions exist:
> (2) 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.
> (4) The corporation assets are being misapplied or wasted.

Petitioners claim that since August 4, 2012, the directors, specifically Defendants, have acted oppressively in making decisions on behalf of Circle G without Petitioners' input.

Petitioners layout the minority shareholders' reasonable expectations framework that applies to cases brought under Iowa Code §490.1430. *Baur v. Baur*, 832 N.W.2d 663, 673-74 (Iowa 2013). The Supreme Court's opinion in *Baur* held that "[e]very shareholder may reasonably expect to share proportionally in a corporation's gains. . . . When this reasonable expectation is frustrated, a shareholder-oppression claim may arise." *Id.* at 673 (internal citations omitted). Petitioners also highlight a few other instances where relief under Section 490.1430 to minority shareholders is appropriate. First, Petitioners argue that when dividends are withheld from shareholders there is shareholder oppression. O'Neal & Thompson, *Oppression of Minority Shareholders and LLC Members*, Vol. 1, §3.3, 3-20 (2014). Petitioners claim that when Tom,

Brian, and Paul voted to stop dividend payments after Petitioners had left the August 2012 meeting, the vote constituted shareholder oppression and Defendants' refusal to reconsider or revisit their decision to terminate dividends in January of 2013 (after being presented with further information on average cash rents continued the harm). Petitioners contend that they "expected dividends to continue – dividends of some sort had been paid for more than ten years."

There is some merit to Petitioners' claim for attorney's fees and expert witness fees. However, an award of attorney's fees and expenses is discretionary with the Court and the Court declines to order Defendants to pay attorney's fees and expert witness expenses for the following reasons.

Prior to the August, 2012, meeting the rent paid by Goettsch Farms to Circle G certainly was below the prevailing cash rents paid in Cherokee and Ida Counties but Petitioners never voted against the rent proposed by Tom and Brian. While the rent was low, all shareholders voted to approve those rents. As noted above, the low rents were certainly the subject of discussion of dissention but the rents were nonetheless approved.

Turning to the August, 2012, meeting, Tom's circulation prior to the meeting of pre-meeting minutes which reflected action taken to make various expenditures and terminate dividends probably was a pressure tactic to warn Petitioners that if they did not go along with the sale proposal there would be no dividends. However, at the meeting the shareholders did agree to the buyout proposal (subject to the proposal being placed in writing and subject to them having the opportunity to seek legal counsel) and Defendants did proceed to take the action reflected in the August, 2012, pre-meeting minutes with the understanding at that time that Petitioners would no longer be shareholders. This does not excuse Defendants in refusing to revisit the rent and the other actions taken at the August, 2012, meeting after it became apparent

that Petitioners did not accept the separation proposal. Nonetheless, the actions taken at the August, 2012, meeting were taken by Defendants with their belief Petitioners would no longer be involved in the corporation.

The Court also finds that Petitioners did in fact receive dividends from Circle G albeit by a circuitous route. Petitioners received a lump sum dividend of $50,000 in March, 2013, that exceeded the amount of dividends that had been customarily distributed previously. In prior years, the monthly dividend for each 1,000 shares was $1,000 plus a $5,000 year-end bonus in the two years when Goettsch Farms paid rent bonuses. Therefore, had customarily dividends been paid, Petitioners would have only received $37,000 from August of 2012 until December of 2014 ($1,000 a month for 27 months plus $10,000 in bonus rent for 2012 and 2013). Petitioners did have to use some of their $50,000 dividend payment to pay capital gains taxes but this does not diminish the fact that a lump sum dividend was paid to each of them which in effect compensated them for no monthly dividends in the interim.

The Court also notes that one of the principal claims made by Petitioners in the Federal Court litigation commenced in June of 2013 was based on their allegations of oppression under Iowa Code §490.1430(1)(b)(2) and (4). However, the parties' stipulation to proceed before this Court reflects that the Petitioners dropped their oppression claims under Iowa Code §490.1430 and agreed to proceed solely under Iowa Code §490.1434.

Finally, in the Court's attempts to do justice between the parties, the Court must take into consideration the fact that the Court has determined it is appropriate to value Petitioners' shares using a June, 2013, valuation date. The Court is aware that the value of the farmland in question has dropped significantly since that date. To award attorney's fees and expert witness fees would be unduly punitive under these circumstances.

VI. TERMS AND CONDITIONS OF THE FAIR VALUE BUYOUT

The Court has determined above that fair value of Petitioners' shares is $4,217,499 or $1,405,833 each.

Gary Peters testified based on input from Farm Credit Services that Circle G (and presumably Tom and Brian Goettsch) could use Circle G's unencumbered farmland to borrow approximately $4,000,000 over ten to twenty years (up to $5,900 per acre) at 4 to 5% interest. Defendants put on scant evidence concerning their borrowing or payment capacity. Tom Goettsch initially testified that he had not talked to his banker about a buyout and then on questioning from his counsel stated he could not borrow $4,000,000 or $3,000,000. No specifics were provided and the Court did not find this testimony convincing. The testimony from Tom indicates that he personally owns the farm adjacent to the Madsen Farm and has other business interests as well. Defendants did not put on any meaningful evidence about the capability they collectively had or did not have to finance a purchase. The Model Acts comparable provisions to Iowa Code §490.1434 provide that subject to the Court's discretion on installment payments, "an order pursuant to subsection (e) will ordinarily provide for payment in cash . . ." Model Business Corporation Act Annotated, Official Comment, Section 14.34, 14-171(2013 Revision). The Court is cognizant of the fact that it will take Defendants time to arrange a loan or sell property if that is the direction they chose to take to make the payments required to Petitioners.

Defendants Circle G Farms and Tom and Brian Goettsch are obligated to purchase Petitioners' shares for fair value in the amount of $4,217,499 ($1,405,833 each) on the following terms and conditions:

A. As set forth hereafter, a cash payment to each one of the Petitioners in the amount of $1,405,833;

B. Such payments shall be made in installments as follows:

(i) A cash payment to each one of the Petitioners in the amount of $140,000 ($420,000 total) within 30 days of the date of this Order;

(ii) The balance of $3,797,499 to be paid within 90 days of the date of this Order. In the event the Defendants make an election to sell Circle G farmland to fund the payments due herein, all parties shall be responsible for whatever income tax is due from them personally in connection with any gain passed through to them as Circle G shareholders. In the event the proceeds from the sale of land are not sufficient to pay the amounts due hereunder, Defendants will make cash payment of the difference to Petitioners within 20 days after Petitioners receive the payment of the sale proceeds. Any sale of Circle G land shall be made free and clear of any lease obligation of Circle G to Goettsch Farms and Tom and Brian Goettsch, and Defendants shall execute such further documentation as reasonably necessary to effectuate any transaction, and the Court shall issue such further orders as necessary.

C. Upon payment in full of the fair value amount to Petitioners as set forth herein, Petitioners will no longer be shareholders in Circle G as of such date and shall surrender any stock certificates.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. Tom Goettsch owns 2,000 shares in Circle G, Brian Goettsch owns 1,000 shares in Circle G and Dale Goettsch, Kathy Goettsch and Margaret Steven each own 1,000 shares in Circle G.

2. The valuation date selected by the Court is June, 2013, and the fair value for each of Petitioners' share is $1,405,833 per 1,000 shares for a total buyout of $4,217,499 for Petitioners' 3,000 shares with the terms and conditions of the buyout as set forth immediately above.

3. Judgment is entered in favor of Petitioners and against Defendants, Thomas Goettsch, Brian Goettsch, Circle G Farms and Goettsch Farms in the amount of $4,217,499, payable as set forth above with judgment interest at the rate of 2.21%.

4. Petitioners are not entitled to recover attorney's fees or expenses.

5. On payment of the judgment amount in full, Dale Goettsch, Kathy Goettsch and Margaret Steven shall each tender their 1,000 shares to Defendants and shall execute such documents as necessary to complete the transfer of their shares to Defendants.

6. All parties are to pay their own attorney's fees.

7. The costs of this action are assessed to Defendants.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
EQCV015164	DALE GOETTSCH ETAL VS THOMAS GOETTSCH ETAL

So Ordered

John Telleen, District Court Judge,
Seventh Judicial District of Iowa