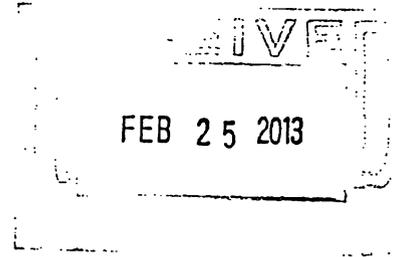


13-0290

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST IN VIRGINIA

DOMENICK MARRARA, JR., individually and
as co-Trustee of the DOMENICK MARRARA, JR. TRUST,
SANDRA JEAN MARRARA, individually and
and co-Trustee of the DOMENICK MARRARA, JR., TRUST,
and DOMENICK Marrara, Jr., TRUST,
Plaintiffs,



v.

CIVIL ACTION NO. 12-C-59
Special Judge Larry V. Starcher

ROCCO S. MARRARA, JR., individually and
as Trustee of the MARY JANE MARRARA TRUST
and as Trustee of the ROCCO S. MARRARA SR. TRUST,
MARY JANE MARRARA TRUST,
ROCCO S. MARRARA, SR. TRUST,
PURE LAND CO., and
RIPLEY ASSOCIATES, LLC.
Defendants.

**ORDER REGARDING EVIDENTIARY HEARING ON VALUE OF PLAINTIFF
DOMENICK MARRARA JR. TRUST'S INTEREST IN RIPLEY ASSOCIATES, LLC**

On January 15, 2013, an evidentiary hearing was held regarding the above matter. More specifically, said evidentiary hearing was held to determine the fair market value of the distributional interest of Plaintiff, Domenick Marrara Jr., Trust, in Ripley Associates, LLC, as of November 4, 2011, the date Plaintiff, Domenick Marrara Jr., Trust, dissociated from Ripley Associates, LLC. At the hearing, Plaintiff, Domenick Marrara, Jr., appeared in person, and all Plaintiffs appeared by counsel, William C. Brewer, Esquire. Defendant Rocco S. Marrara Jr., appeared individually, and all

Defendants also appeared by counsel, Lisa Hyre, Esquire.¹

At said evidentiary hearing, testimony was presented and exhibits were presented and admitted into evidence by Plaintiffs and Defendants. More specifically, the Court heard testimony from Rocco Marrara, Jr., Domenick Marrara, Jr., Darrell Rølston, CPA, Shane Grady, CPA, Thomas Weyer, CPA , CVA, and Joyce Bernatowicz, CPA. Additionally, various exhibits were marked and admitted into evidence during said hearing. All exhibits which were admitted into evidence are a part of the record in this matter.

After hearing testimony from the above noted individuals, reviewing the case file, reviewing all of the exhibits admitted into evidence at the evidentiary hearing, and hearing the arguments of counsel, the Court makes the following findings, conclusions, and rulings:

1. Plaintiffs filed this civil action to determine the fair market value of the distributional interest of Domenick Marrara Jr., Trust, a dissociated member of a Defendant Ripley Associates, LLC, a West Virginia Limited Liability Company, pursuant to West Virginia Code § 31B-7-701 et. seq.
2. Defendant Pure Land Co., is a West Virginia closely held Corporation.
3. Defendant, Ripley Associates, LLC, is a West Virginia limited liability company with its principal office in Kingwood, Preston County, West Virginia. Ripley

¹Ginny Armistead of Armistead Court Reporting was the court reporter for said evidentiary hearing.

Associates, LLC, is the successor in interest to Ripley Associates, Ltd.

4. Defendant Pure Land Co., is a member of Defendant Ripley Associates, LLC. Defendant Pure Land Co., holds a fifty percent (50%) distributional interest in Defendant Ripley Associates, LLC.

5. Defendant Rocco S. Marrara, Sr. Trust is a member of Defendant Ripley Associates, LLC, and holds a twenty five percent (25%) distributional interest in Defendant Ripley Associates, LLC.

6. Plaintiff Domenick Marrara, Jr., Trust, is a dissociated member of Defendant Ripley Associates, LLC, and holds a twenty five percent (25%) distributional interest in Defendant Ripley Associates, LLC.

7. On November 4, 2011, Plaintiff Domenick Marrara, Jr., Trust dissociated from Defendant Ripley Associates, LLC, pursuant to West Virginia Code § 31B-6-601 et. seq.

8. By letter dated December 2, 2011, Ripley Associates, LLC, pursuant to West Virginia Code § 31B-7-701 et. seq., elected to purchase the distributional interest of Domenick Marrara, Jr., Trust, rather than dissolve and wind up the business of Ripley Associates, LLC, pursuant to West Virginia Code § 31B-8-801 et. seq.

9. The parties were unable to reach an agreement regarding the value of the distributional interest of Domenick Marrara, Jr., Trust.

10. Pursuant to West Virginia Code § 31B-7-701(d), if an agreement cannot be reached for the purchase of a dissociated member's distributional interest within one

hundred twenty (120) days of the member's dissociation, the dissociated member has a right to a proceeding to enforce the purchase of his interest.

11. More than one hundred twenty (120) days has passed since Plaintiff Domenick Marrara, Jr., Trust dissociated from Defendant Ripley Associates, LLC.

12. Pursuant to West Virginia Code § 31B-7-701 et. seq., this Court has plenary and exclusive jurisdiction to enforce and order the purchase of Plaintiff Domenick Marrara, Jr., Trust's distributional interest in Defendant Ripley Associates, LLC.

13. Darrell Rolston, CPA, testified that the value of Ripley Associates, LLC², using a comparative sales approach, was two million two hundred sixty thousand dollars (\$2,260,000.00). Mr. Rolston further testified that the value of Ripley Associates, LLC, using an income approach, was one million seven hundred thirty-six thousand four hundred ninety dollars (\$1,736,490.00). Accordingly, Mr. Rolston's ultimate opinion was that the total value of Ripley Associates, LLC, was two million dollars (\$2,000,000.00). The Court was impressed with Mr. Rolston's expertise and found Mr. Rolston's testimony to be extremely persuasive.

14. Shane Grady, CPA, testified that the value of Ripley Associates, LLC, was approximately one million eight hundred thousand dollars (\$1,800,000.00).

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Unless otherwise indicated, all testimony and findings regarding the value of Ripley Associates, LLC, and the value of the distributional interest of Domenick Marrara, Jr., Trust, in Ripley Associates, LLC, are in regards to said value(s) as of November 4, 2011, the date Domenick Marrara, Jr., Trust became dissociated from Ripley Associates, LLC.

15. Thomas Weyer, CPA , CVA, testified that the value of Ripley Associates, LLC, was two million ten thousand dollars (\$2,010,000.00).

16. Joyce Bernatowicz, CPA, testified that the value of Ripley Associates, LLC, was approximately two million one hundred eight thousand dollars (\$2,108,000.00).

17. Rocco Marrara, Jr., testified that the value of Ripley Associates, LLC, was one million seven hundred fifty-four thousand eight hundred dollars (\$1,754,800.00).

18. Domenick Marrara, Jr., testified that the value of Ripley Associates, LLC, was three million dollars (\$3,000,000.00).

19. Accordingly, based on the above, and based on the evidence presented during the evidentiary hearing on January 15, 2013, the Court hereby **FINDS** that the fair market value of Ripley Associates, LLC, as of November 4, 2011, is two million dollars (\$2,000,000.00).

20. The Court further **FINDS** that the fair market value of the distributional interest of Plaintiff, Domenick Marrara Jr., Trust, in Ripley Associates, LLC, as of November 4, 2011, is five hundred thousand dollars (\$500,000.00). As such, pursuant to West Virginia Code § 31B-7-701 et. seq., the Court hereby **ORDERS** Defendant Ripley Associates, LLC, to pay to Plaintiff, Domenick Marrara Jr., Trust, five hundred thousand dollars (\$500,000.00), plus interest at the statutory rate of seven percent (7%) per annum, running from January 15, 2013, the date of the court determined the interest share and orally made the award, with interest running until the date said payment is made in full with interest, to Plaintiff, Domenick Marrara, Jr.,

Trust, the same to be paid within sixty (60) days of the date of the January 15, 2013, hearing in this matter.³ Said interest shall continue to accrue until said judgment is paid in full, along with any accrued interest.

21. Finally, pursuant to W. Va. Code, § 31B-7-702(3), upon receipt of five hundred thousand dollars (\$500,000.00), plus interest, due and payable pursuant to this Order, the Plaintiff, Domenick Marrara Jr., Trust **ORDERS** that said Plaintiff shall deliver an assignment of its interest in Ripley Associates, LLC, to Ripley Associates, LLC.

The Clerk of the Court is directed to send copies of the Order to all counsel of record.

ENTER: February 19, 2013

Copies
s/b 2-28-13
LH
WCB

Larry V. Starcher
Special Judge Larry V. Starcher

Entered: February 20, 2013
Betsy Castle, Clerk
by: Lisa Leckman, Deputy

*Prepared by:
William C. Brewer, Esq.
J. Tyler Slavey, Esq.
Brewer & Giggenbach, PLLC
Counsel for Plaintiffs

* Modified by the Court

A TRUE COPY:

ATTEST: Betsy Castle
S: BETSY CASTLE
CLERK OF THE CIRCUIT COURT
BY: Lisa Leckman Deputy

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The sixtieth (60th) day after the January 15, 2013 hearing is Saturday March 19, 2013. The recommended Oder in this matter was received by the Court by mail on or about February 14, 2013; therefore, it could not be entered and filed until a few days later. Accordingly, Defendant Ripley Associates, LLC, must pay five hundred thousand dollars (\$500,000.00), plus interest, to Plaintiff Domenick Marrara, Jr., Trust, forthwith after receiving a certified copy of the Order from the clerk of the Court.