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Shareholder Oppression: What's Left After *Ritchie v. Rupe*?

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SHAREHOLDER OPPRESSION: WHAT'S LEFT AFTER *RITCHIE V. RUPE*?

By Erica W. Harris

After nearly three decades of recognition and development of a common law cause of action for shareholder oppression by Texas lower courts, on June 24, 2014, a majority of the Texas Supreme Court ("Majority" or "Court") ruled in a 54 page opinion written by Justice Boyd that: "we decline to recognize or create a Texas common law cause of action for 'minority oppression.'" *Ritchie v. Rupe*, ___ S.W.3d ___, 2014 WL 2788335 (Tex. June 20, 2014), (attached as Appendix 1).

I. THE UNDERLYING CASE

While the legal holding is a significant change in Texas law, the facts of the underlying case were fairly typical. As the Majority summarized:

> The minority shareholder in a closely held corporation alleged that the corporation's other shareholders, who were also on the board of directors, engaged in "oppressive" actions and breached fiduciary duties by, among other things, refusing to buy her shares for fair value or meet with prospective outside buyers.

App. 1 at 1. The minority shareholder had family ties with some of the other shareholders. *Id.* at 2. There was no shareholders agreement. *Id.* The minority shareholder was unhappy with the way she was being treated and wanted to sell her shares. *Id.* at 4. The majority shareholders offered to buy her stock, but the minority shareholder thought the price offered was much too low to accept. *Id.*

The minority shareholder tried to sell her shares to an outside party and hired a broker to help her do so. *Id.* However, every outside party that was interested in buying the shares wanted to meet with the executives "as part of their due diligence." *Id.* at 5. After consulting with counsel with expertise in securities laws, the majority shareholders refused to allow any third

party to meet with any of the executives, because to do so would put the company at risk of suit for misrepresentations if the buyer was later dissatisfied. *Id*. The minority shareholder's broker testified that in his view, there was "zero" chance of ever selling because of the refusal. *Id*.

"The jury found in Rupe's favor on essentially all of her claims and found that the fair value of Rupe's stock was $7.3 million." *Id*. at 6. "The trial court rendered judgment on the jury's verdict, concluding that [the majority shareholders] . . . had 'engaged in oppressive conduct,' . . . that 'the most equitable remedy' for this oppression was to require [the corporation] to redeem [the minority shareholder's] shares, and that this remedy was 'less drastic' than liquidating the company or appointing a receiver." *Id*. The court of appeals affirmed the finding of oppressive conduct but reversed the award of $7.3 million, finding that a minority discount should have been applied to the valuation of the minority shareholder's interest. *Id*.

II. WHAT IS OPPRESSIVE?

The Majority began "by determining the meaning of 'oppressive' as the Legislature used that word in the Texas receivership statute." *Id*. at 7. Rupe relied on TEX. BUS. ORGS. CODE § 11.404 as "authority for the trial court's judgment ordering RIC to buy out her shares." *Id*. Thus, the Texas Supreme Court looked at that statute first. *Id*. at 8. The statute provides:

> § 11.404. APPOINTMENT OF RECEIVER TO REHABILITATE DOMESTIC ENTITY.
>
> (a) Subject to Subsection (b), a court that has jurisdiction over the property and business of a domestic entity under Section 11.402(b) may appoint a receiver for the entity's property and business if:
>
> (1) in an action by an owner or member of the domestic entity, it is established that:
>
> (A) the entity is insolvent or in imminent danger of insolvency;
>
> (B) the governing persons of the entity are deadlocked in the

management of the entity's affairs, the owners or members of the entity are unable to break the deadlock, and irreparable injury to the entity is being suffered or is threatened because of the deadlock;

(C) the actions of the governing persons of the entity are illegal, oppressive, or fraudulent;

(D) the property of the entity is being misapplied or wasted; or

(E) with respect to a for-profit corporation, the shareholders of the entity are deadlocked in voting power and have failed, for a period of at least two years, to elect successors to the governing persons of the entity whose terms have expired or would have expired on the election and qualification of their successors;

(2) in an action by a creditor of the domestic entity, it is established that:

(A) the entity is insolvent, the claim of the creditor has been reduced to judgment, and an execution on the judgment was returned unsatisfied; or

(B) the entity is insolvent and has admitted in writing that the claim of the creditor is due and owing; or

(3) in an action other than an action described by Subdivision (1) or (2), courts of equity have traditionally appointed a receiver.

(b) A court may appoint a receiver under Subsection (a) only if:

(1) circumstances exist that are considered by the court to necessitate the appointment of a receiver to conserve the property and business of the domestic entity and avoid damage to interested parties;

(2) all other requirements of law are complied with; and

(3) the court determines that all other available legal and equitable remedies, including the appointment of a receiver for specific property of the domestic entity under Section 11.402, are inadequate.

(c) If the condition necessitating the appointment of a receiver under this section is remedied, the receivership shall be terminated immediately, the management of the domestic entity shall be restored to its managerial officials, and the receiver shall redeliver to the domestic entity all of its property remaining in receivership.

TEXAS BUSINESS ORGANIZATIONS CODE §11.404. Rupe relied on subsection (c), so the Texas

Supreme Court determined it had to decide "what the Legislature meant when it used the term 'oppressive' in this statute, whether the refusal to meet with Rupe's potential buyers fits within that meaning, and what remedies the statute provides for such actions." *Id*. at 8.

A. Prior case interpretations

The Court started its analysis with a look at cases that had interpreted the receivership statute in the past. *Id*. at 8-9. It noted that the statute did not distinguish between closely held corporations or any other type of corporations, so that closely held corporations were not entitled to special treatment. *Id*. at 9. It also noted that a 1966 case had interpreted the statute narrowly and required the conduct be "inconsistent with the honest exercise of business judgment and discretion by the board of directors." *Id*. (citing *Texarkana Coll. Bowl, Inc. v. Phillips*, 408 S.W.2d 537, 539 (Tex. Civ. App.—Texarkana 1966, no writ)). A 1998 case had required an "emergency on which to base the relief sought." *Id*. (citing *Balias v. Balias*, 748 S.W.2d 253, 257 (Tex. App.—Houston [14th Dist.] 1988, writ denied)).

The Majority then turned to the case of *Davis v. Sheerin*, 754 S.W.2d 375 (Tex. App.—Houston [1st Dist.] 1988, writ denied). *Id*. at 10. *Davis v. Sheerin* is the case in which the first Texas appellate court affirmed judgment based on the receivership statute's oppressive actions provisions. *Id*. (citing *Davis v. Sheerin*, 754 S.W.2d 375 (Tex. App.—Houston [1st Dist.] 1988, writ denied)). The court recognized that *Davis v. Sheerin* had become the "seminal Texas opinion on the issue" and explained the holding from that case as follows:

> Although the court of appeals acknowledged that the statute does not expressly authorize a buy-out order and that no Texas court had previously forced a shareholder buyout in the absence of a buy-out agreement, id. at 378–79, it concluded that "Texas courts, under their general equity power, may decree a [buyout] in an appropriate case where less harsh remedies are inadequate to protect the rights of the parties."

Id. at 10 (quoting *Davis*, 754 S.W.2d at 380).

The Majority noted that the *Davis* court had "cited two standards for oppression:

> • a New York court's definition of oppression as occurring "when the majority's conduct substantially defeats the expectations that objectively viewed were both reasonable under the circumstances and were central to the minority shareholder's decision to join the venture," and
>
> • an Oregon court's collection of oppression definitions, which included "'burdensome, harsh and wrongful conduct,' 'a lack of probity and fair dealing in the affairs of a company to the prejudice of some of its members,' or 'a visible departure from the standards of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely.'"

Id. (citing and quoting *Davis*, 754 S.W.2d at 381–82). The Texas Supreme Court explained that these two standards are generally referred to as the "reasonable expectations" test and the "fair dealing" test and had been applied by a number of other Texas courts thereafter. *Id*. at 11. Indeed, the court below had found that the refusal to meet with potential buyers of Rupe's stock violated both tests and refused to apply the business judgment rule, reasoning that the rule applies only in derivative suits and only to protect directors from individual liability. *Id*.

B. Divining legislative intent

Acknowledging "that the Legislature has never defined the term 'oppressive' in the Business Corporations Act or the Business Organizations Code," the Majority looked to the common meaning of oppressive but found a large number of definitions and meanings. *Id*. at 12. The Majority concluded that "the test for determining whether something is oppressive will necessarily vary from one context to the next, and thus the term has multiple meanings, depending on the circumstances" and thus turned back to rules of statutory construction. *Id*. at 12-13.

"[W]hen an undefined [statutory] term has multiple common meanings, the definition most consistent within the context of the statute's scheme applies." *Id*. at 13 (quoting *State v. $1,760.00 in U.S. Currency*, 406 S.W.3d 177, 180–81 (Tex. 2013) (per curiam)). The Majority

noted that the receivership statute authorized a harsh remedy, authorizing "courts to appoint a receiver to take over a corporation's governance, displacing those who are otherwise legally empowered to manage the corporation." *Id*. Thus, the legislature had imposed multiple requirements on a person seeking a receiver under the statute. *Id*. at 14. The Majority concluded that whatever constituted oppressive conduct, the conduct had to "create exigent circumstances for the corporation." *Id*. This conclusion was reinforced by the fact that all of the other bases meriting appointment of a receiver "pose[d] a serious threat to the well-being of the corporation" and that fraudulent and illegal actions did as well. *Id*. at 15.

The Majority also concluded that oppressive conduct could not be conduct that was good for the corporation, even if bad for an individual shareholder. *Id*. at 16. "[B]ecause a director is duty-bound to exercise business judgment for the sole benefit of the corporation, and not for the benefit of individual shareholders, we cannot construe the term 'oppressive' in a manner that ignores that duty." *Id*. Accordingly, conduct is oppressive only if it is "inconsistent with the honest exercise of business judgment and discretion by the board of directors." *Id*. at 17 (quoting *Texarkana Coll. Bowl*, 408 S.W.2d at 539; see also *Willis v. Bydalek*, 997 S.W.2d 798, 801, 802-03 (Tex. App.—Houston [1st Dist.] 1999, pet. denied)).

The Majority concluded that the "language and context of the statute" create three characteristics of "actions" that the statute refers to as "oppressive":

> (1) the actions justify the harsh, temporary remedy of a rehabilitative receivership;
> (2) the actions are severe and create exigent circumstances; and
> (3) the actions are inconsistent with the directors' duty to exercise their honest business judgment for the benefit of the corporation.

Id. at 18. Despite having said that the word has a variety of meanings in common usage, the court used "common meaning" and "usage" to create a fourth characteristic:

> (4) the actions involve an unjust exercise or abuse of power that harms the rights

> or interests of persons subject to the actor's authority and disserves the purpose for which the power is authorized.

Id. at 18-19. The Majority noted that "[a]ctions that uniformly affect all shareholders typically will not satisfy this aspect of the term's meaning because, collectively, the shareholders of a business are not at the mercy of the business's directors." *Id*. at 19.

The Majority found that neither of the two tests previously used – the reasonable expectations of fair tests – was appropriate in light of those four characteristics, since neither would be sufficiently stringent. *Id*. at 20. The Majority concluded:

> a corporation's directors or managers engage in "oppressive" actions under former article 7.05 and section 11.404 when they abuse their authority over the corporation with the intent to harm the interests of one or more of the shareholders, in a manner that does not comport with the honest exercise of their business judgment, and by doing so create a serious risk of harm to the corporation.

Id. Importantly, the Court explained that it was not requiring that the business judgment rule be applied to informal fiduciary duties such as those claimed by Rupe against the majority shareholders. *Id*. at 25 fn. 27.

C. Rupe failed to show oppressive conduct

Applying the standard to the allegations of the case, the Majority found that the complained of conduct was not oppressive. *Id*. at 20-21. Because meeting with outside buyers had the potential of increasing risk to the corporation and because "the evidence does not support a finding that they abused their authority with the intent to harm Rupe's interests in RIC, or that their decision created a serious risk of harm to RIC," the Court concluded the conduct was not oppressive. *Id*. at 20.

The Court acknowledged that the complained of conduct made it difficult if not impossible for Rupe to sell her shares but felt that was the problem created by the failure of the parties to contract for a shareholder's agreement. *Id*. at 21.

III. WHAT IS THE STATUTORY REMEDY?

The Court noted that Rupe had complained of other conduct as oppressive but found that those arguments need not be reached because the remedy Ritchie sought was not authorized by the statute. *Id*. at 21-22.

The Texas Supreme Court held that the court of appeals had erred by interpreting a "restriction on the availability of receivership" as an "expansion of the remedies that the statute authorizes." *Id*. at 23. The court of appeals relied on the following provision:

> (b) A court may appoint a receiver under Subsection (a) only if:
>
> . . .
>
> (3) the court determines that all other available legal and equitable remedies, including the appointment of a receiver for specific property of the domestic entity under Section 11.402, are inadequate.

Id. at 22. Because the requirement that "all other available legal and equitable remedies" be inadequate was a prerequisite, the Majority held it could not be a basis for ordering a buyout of Rupe's shares. *Id*. at 23-25.

Instead, the lower courts must consider whether other common law or statutory provisions provide lesser remedies. *Id*. at 25-26. If they do, then the courts cannot appoint a receiver. *Id*. at 26. Thus, for example, because the jury had found in Rupe's favor on her breach of fiduciary duty claim, the lower court was required to consider whether Rupe was entitled to remedies for the breach of fiduciary duty and whether those remedies were adequate. *Id*. The lower court had not done that. *Id*. In so holding, the Court expressly stated that it was not abolishing or limiting remedies available under the common law or statutes. *Id*. at 26 at fn. 28. The Majority explained "the actions that give rise to oppressive-action receivership claims typically also give rise to common-law claims as well, opening the door to a wide array of legal and equitable remedies not available under the receivership statute." *Id.* Thus, for example, the buy-out sought by Rupe in the underlying case might be a remedy based on her breach of

fiduciary duty claim. *Id.*

The Majority noted that the dissent criticized this holding as being inconsistent with the holdings of courts in other jurisdictions. *Id*. at 23, fn. 25. The Texas Supreme Court found, however, that the statutes in those other jurisdictions were worded differently, expressing a different legislative intent. *Id*. For example, the model act expressly authorizes a buy-out option as an alternative to dissolution based on oppressive actions. *Id*.

IV. IS THERE A COMMON LAW CAUSE OF ACTION FOR SHAREHOLDER OPPRESSION?

In considering whether Texas should recognize shareholder oppression as a common law cause of action, the Majority turned to the well-established list of non-dispositive factors:

- the foreseeability, likelihood, and magnitude of the risk of injury,
- the existence and adequacy of other protections against the risk,
- the magnitude of the burden of guarding against the injury and the consequences of placing that burden on the persons in question, and
- the consequences of imposing the new duty, including
    - whether Texas's public policies are served or disserved
    - whether the new duty may upset legislative balancing-of-interests, and
    - the extent to which the new duty provides clear standards of conduct so as to deter undesirable conduct without impeding desirable conduct or unduly restricting freedoms.

Id. at 30 (citations omitted).

The Majority recognized that minority shareholders "have 'no statutory right to exit the venture and receive a return of capital,'" "'usually have no ability to sell their share,"" and, "if they fail to contract for shareholder rights, they will be 'uniquely subject to potential abuse by a majority or controlling shareholder or group.'" *Id*. at 30. The Court recognized that those who control the corporation "may use various 'squeeze-out' or 'freeze-out' tactics to deprive minority

shareholders of benefits" or "misappropriate those benefits for themselves." *Id*. at 32. The Majority concluded that "the foreseeability, likelihood, and magnitude of harm sustained by minority shareholders due to the abuse of power by those in control of a closely held corporation is significant, and Texas law should ensure that remedies exist to appropriately address such harm when the underlying actions are wrongful." *Id*. at 33.

However, the Court found that the law already provided remedies for most of these complaints. *Id*. at 33-48. The Majority began "by noting that the Business Organizations Code permits corporations to declare themselves to be 'close corporations,' which allows them to take advantage of two subchapters of the Code dedicated to the special needs of such corporations and exempts them from many of the rules that govern other types of corporations." *Id*. at 34 (citing TEX. BUS. ORGS. CODE §§ 21.701–.732 (subchapter O, Close Corporations), 21.751–.763 (subchapter P, Judicial Proceedings Relating to Close Corporations)). The Majority noted that the "Legislature [had also] enacted special rules to allow [shareholders of closely held corporations] . . . more easily bring a derivative suit on behalf of the corporation." *Id*. at 35. The Majority then observed that "various common-law causes of action already exist to address misconduct by corporate directors and officers." *Id*. at 36. "Relying on the same actions that support their oppression claims, Texas minority shareholders have also asserted causes of action for: (1) an accounting, (2) breach of fiduciary duty, (3) breach of contract, (4) fraud and constructive fraud, (5) conversion, (6) fraudulent transfer, (7) conspiracy, (8) unjust enrichment, and (9) quantum meruit." *Id*. at 36-37.

In that regard, the Majority found the most common complaints could be redressed by one of these other causes of action. *Id*. at 47-48. A shareholder complaining about the denial of access to corporate books and records could obtain the records and penalties for failure to

provide the records pursuant to statute. *Id*. at 37 (citing TEX. BUS. ORGS. CODE §§ 21.218 (examination of records), 21.219 (annual and interim statements of corporation), 21.220 (penalty for failure to prepare voting list), 21.222 (penalty for refusal to permit examination), 21.354 (inspection of voting list), 21.372 (shareholder meeting list)). Shareholders who believe officers or directors are failing to declare dividend in order to oppress them can assert a breach of fiduciary duty action. *Id*. at 38. The Texas Supreme Court expressly acknowledged that a lower court could enter an injunction order compelling payment of the dividends to remedy a breach of fiduciary duty where "a corporate director violates the duty to act solely for the benefit of the corporation and refuses to declare dividends for some other, improper purpose." *Id*.

The Majority also addressed "[a] third common complaint of those alleging minority shareholder oppression[, which] relates to the termination of the minority shareholder's employment with the corporation." *Id*. at 42. The Majority recognized that a "minority shareholder's loss of employment with a closely held corporation can be particularly harmful because a job and its salary are often the sole means by which shareholders receive a return on their investment in the corporation." *Id*. at 42-43. However, the Court also noted that "Texas is steadfastly an at-will employment state." *Id*. at 43. Accordingly, the Majority would not impose any special protection but rather noted that the parties can contract for something other than an at-will employment relationship and that, if the termination is "for no legitimate business purpose, intended to benefit the directors or individual shareholders at the expense of the minority shareholder, and harmful to the corporation," the decision could "violate the directors' fiduciary duties to exercise their 'uncorrupted business judgment for the sole benefit of the corporation' and to refrain from 'usurp[ing] corporate opportunities for personal gain.'" *Id*. at 44 (citations omitted).

The Court next addressed the "misapplication of corporate funds and diversion of corporate opportunities." *Id*. at 45. The Court found that the breach of fiduciary duty cause of action is sufficient to redress these complains, since "the duty of loyalty that officers and directors owe to the corporation specifically prohibits them from misapplying corporate assets for their personal gain or wrongfully diverting corporate opportunities to themselves." *Id*. The Court concluded that "[b]ecause the potential harm here is to the corporation and the shareholders collectively, this misconduct does not weigh in favor of recognizing an additional common-law remedy for individual shareholders." *Id*.

The last "common minority shareholder complaint" the Court addressed related to "directors' manipulation of the value of the corporation's stock." *Id*. at 46. The Court noted that "there may be circumstances in which the controlling shareholders or directors of a closely held corporation seek to artificially deflate the shares' value, perhaps to allow the company or its shareholders to purchase a minority shareholder's shares for less than their true market value, or to hinder a minority shareholder's sale of shares to third parties." *Id*. at 46. The Court found that claims based on such conduct belong to the corporation rather than individual shareholders and that "the directors' fiduciary duties to the corporation provide protection for minority shareholders affected by such conduct when the conduct harms them in their capacity as shareholders." *Id*. The Court admitted that there could be situations where the controlling directors could engage "in such conduct to harm the interests of one or more individual minority shareholders without harming the corporation (i.e., without giving rise to damages recoverable in a derivative suit)" but did not find that to be sufficient to warrant recognition of a common law cause of action. *Id*. at 47.

Throughout its analysis of the common claims of minority shareholders, the Court

stressed that shareholders of closely held corporations could enter shareholders' agreements or other agreements that would deal with the circumstances likely to arise in closely held corporations. *See generally id.* at 33-48. The Court was loathe to find the shareholders' failure to take advantage of their right to contract to justify the courts providing a remedy for them. *Id.* at 48.

The Texas Supreme Court held that "[a]bsent a contractual or other legal obligation, the officer or director has no duty to conduct the corporation's business in a manner that suits an individual shareholder's interests when those interests are not aligned with the interests of the corporation and the corporation's shareholders collectively." *Id.* The Court acknowledged that there might be a gap in the law without a common law action for shareholder oppression but found that creating a common law action would be undesirable for several reasons. *Id.*

First, adopting a common law cause of action would require adopting a meaning of oppressive conduct that is different from the one found in the statutory receivership cause of action. *Id.* at 49. To get to that conclusion, the Texas Supreme Court reasoned as follows:

> Adopting the Legislature's intended meaning of "oppressive" as the same meaning for a common-law claim would merely duplicate the statutory cause of action while permitting remedies that the Legislature has chosen not to permit. Yet adopting a meaning of "oppressive" that differs from the Legislature's would only create more confusion and foster both uncertainty and unnecessary litigation.

Id.

The Texas Supreme Court noted that the "most developed common-law standards for 'oppression' – the "reasonable expectations" and "fair dealing" tests—have been heavily criticized for their lack of clarity and predictability." *Id.* at 50. The Court left open the possibility of creating a common law shareholder oppression cause of action in the future to "address a 'gap' in protection for minority shareholders" but stated that "any such theory of

liability will need to be based on a standard that is far more concrete than the meaning of 'oppressive.'" *Id*. at 51.

Second, the Court found that "[i]mposing on directors and officers a common-law duty not to act 'oppressively' against individual shareholders is the equivalent of, or at least closely akin to, imposing on directors and officers a fiduciary duty to individual shareholders." *Id*. at 51. The Court declined to do so. *Id*.

Third, to create a common law cause of action would – according to the Texas Supreme Court – "permit courts to interfere with the freely negotiated terms of a private contract, or to insert into such a contract rights or obligations that the parties could have bargained for but did not." *Id*. at 52.

V. THE DISSENT

Justice Guzman wrote a thirty page dissent, in which Justice Willett and Justice Brown joined. *See* App. 2 (herein the "Dissent"). Noting that basically every other jurisdiction protects minority shareholders, the Dissent criticized the majority for writing out of the receivership statute the "lesser remedies" and construing the word "oppressive" in a way that makes "any recovery highly unlikely." *Id*. at 2. The Dissent observed:

> typical acts of minority shareholder oppression (refusing to pay dividends, paying majority shareholders outside the dividend process, and making fire-sale buyout offers) usually operate to benefit the corporation and hardly ever harm it.

Id. at 2-3.

Moreover, while shareholders in closely held corporations could contract for protections, "[f]rom a relational standpoint, people enter closely-held businesses in the same manner as they enter marriage: optimistically and ill-prepared." *Id*. at 3 (quoted citation omitted). Indeed, in the underlying case, "the minority shareholder inherited her shares from her husband, who acquired his shares as a member of a family owned business that foresaw no need for shareholder

agreements." *Id*. The Dissent noted that thirty-six states "allow liquidation for oppressive or similar conduct." *Id*. at 6.

With regard to the statutory interpretation question, the Dissent found that the statute expressly preferred other remedies and did not extinguish them. *Id*. at 10. The Dissent reasoned that if – as the Majority held – there are no other remedies available under the statute or common law for oppressive conduct, then the statute's language preferring lesser available remedies would be meaningless. *Id*. at 11. With regard to the definition of oppression, the Dissent felt there was "no valid basis to overturn [the] mountain of jurisprudence [that had developed before the Majority's opinion], leave Texas out of step with other jurisdictions, and chill investment in closely held corporations." *Id*. at 17. With regard to the business judgment rule, the Dissent observed that virtually every other jurisdiction had rejected its incorporation in the minority oppression law because nearly every action that oppresses minority shareholders can be justified as benefitting the corporation. *Id*. at 20.

VI. CONCLUSION

The Texas Supreme Court curbed dramatically the ability of minority shareholders to obtain redress for oppressive acts, refusing to recognize a common law cause of action for shareholder oppression and interpreting narrowly the receivership statute for which oppressive conduct is actionable. Minority shareholders have the right to seek a receiver under Texas Business Organizations Code §11.404 only when the complained of conduct is inconsistent with the business judgment rule, harmful to the corporation, and undertaken with an intent to harm the minority shareholder or a group of shareholders.

The Texas Supreme Court did not disturb other common law causes of action that can be asserted by minority shareholders. Minority shareholders who invested directly (rather than receiving shares by marriage, inheritance, etc.) can assert a claim for fraudulent inducement of

the investment. Minority shareholders can bring derivative claims on behalf of the corporation for conduct that is inconsistent with business judgment and harmful to the corporation. Minority shareholders who have a special relationship with the majority shareholders that gives rise to informal fiduciary duties may obtain a variety of equitable remedies (e.g. buy out, order to declare dividends, etc.) if they can establish a breach of fiduciary duty. All shareholders have a right to access the books and records and can proceed under the statutes providing those rights. While expressly endorsing the use of these existing common law and statutory causes of action by minority shareholders, the Texas Supreme Court acknowledged that there may be a gap in the law with regarding to minority shareholder oppression. As the case law develops over the next few years, we will see just how wide that gap is.