CHICAGOLAWBULLETIN.COM TUESDAY, FEBRUARY 28, 2017

Chicago Daily Law Bulletin®

Volume 163, No. 40 Serving Chicago's legal community for 162 years

Financial neutral can be star of divorce

The United States has witnessed a vast rise in business creation and ownership over the past several decades. This influx can be attributed to expansion of entrepreneurial business, developments within the areas of corporate and tax law and technological advancements. These have all made business ownership more attainable for the average person.

As a result, business ownership and matrimonial law worlds frequently collide. Today, matrimonial law is flooded with complex financial situations as a result of this business ownership. Those involved within the practice are confronted with an increasing number of disputes arising out of the complexities associated with business ownership and its relationship to the marital estate.

The marital estate is often intertwined with, and dependent upon, the family business. Accordingly, to obtain an equitable outcome for all parties involved, knowledge of the business value is imperative.

A business evaluator is a crucial professional in divorce matters involving a business. Regardless of whether divorce is sought through collaborative efforts, or litigation within the court system, a neutral third-party business evaluator can prove to be essential.

When to engage a business evaluator?

The "earlier the better" said Christiana Zouzias, a financial analyst and business evaluator with extensive experience in collaborative law and matrimonial litigation. She explained that business valuation is not an overnight process and it can take a great deal of time.

Additionally, a business evaluator can determine whether the business at issue even necessitates valuation.

Depending on a number of factors including company size, ownership structure and operation type, the business evaluator may advise against expending costs for a valuation, as the costs would far outweigh the benefits to the parties. Thus, when the parties know that a business makes up some part of the marital estate, it is advantageous to involve a business evaluator from the beginning of the divorce process.

Moreover, engaging a business evaluator can establish cooperation and transparency at the beginning of the divorce.

Neutrality in business valuation

One of the challenges in a divorce is the issue of neutrality. A business evaluator can add neutrality to the process leading to a fair and equitable result for both parties. According to Zouzias, neutrality is critical for a successful valuation.

Attaining neutrality is based on a number of key factors. One of those many factors, if attainable, is an agreement by the parties on the use of a single business evaluator. If the parties can agree on one evaluator, it establishes an initial foundation of cooperation, as both parties share equal interest in the evaluator's opinion, avoiding a battle of the experts.

Additionally, Zouzias explained that experience is key, not simply experience in financial and business analysis, but experience within the field of matrimonial law. Understanding client expectations and how to communicate with the parties comes through experience in litigated, mediated or collaborative divorces.

Parties often attempt to manage the business evaluator, but one armed with experience in matrimonial law and divorce can stay the course of neutrality delivering a comprehensive analysis of the business for the benefit of both parties.

COLLABORATIVE CONCEPTS

Beth Fawver McCormack

Beth Fawver McCormack is a partner at Beermann. She practices exclusively in family law matters and is a collaborative law fellow, mediator and child representative.

Involvement with attorneys

To ensure transparency and fair disclosures from both sides, a business evaluator should be extensively involved with both party's attorneys. Open communication with the attorneys helps expedite the valuation process, the free flow of information and limits any misrepresentations.

The successful relationship between the business evaluator and the attorneys aids client communication. The evaluator can advise the client with his or her attorney.

A business evaluator often looks to the attorneys to aid in the effective explanation of the business's strengths and weaknesses as well as the current economic trends.

Because the valuation process can be extremely costly, frequent communication between the parties' attorneys and the business evaluator are critical in determining the extensiveness of the evaluation and the payment of fees associated with it. The business evaluator's involvement with the attorneys provides for the most comprehensive and thorough valuation for the parties.

In a collaborative divorce, the business evaluator's role is especially critical. The evaluator is key to determining not only the marital estate, but also significant other financial determinations, including the proper income, distribution of maintenance and even child support. At times, the evaluator acts as a mediator between all parties involved, including the attorneys, to come to the most equitable resolution for the entire family.

How long does the process take and what can be expected?

As in all things, the answer is "it depends." A valuation process can take anywhere from several weeks to "a couple of months or more," said Zouzias. The amount of information coming from a valuation can be extremely important to several aspects of the divorce process. Therefore, if the parties agree at the outset to engage a single evaluator, the process will flow with greater ease and will help to keep the divorce process moving.

According to Zouzias, engaging a single evaluator also limits the need for all of the bells and whistles. Using a single evaluator typically means that the valuation need not incorporate a full, extensive appraisal ending in a voluminous final report.

Rather, it allows the parties to agree on a valuation option that is less costly while still producing enough information to make important financial decisions.

Regardless of whether a single evaluator is chosen, or whether each party hires his or her own evaluator, the findings at the end of the valuation process give a solid foundation for the parties, allowing the parties to come to a conclusive and equitable agreement.

— The author would like to acknowledge the substantial contributions to this article by Christiana Zouzias and Molly Bloem.