



Agricultural Law Press

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The Latest Chapter in the *Baur* Saga

-by Neil E. Harl*

The Iowa Supreme Court case of *Baur v. Baur Farms, Inc.*,¹ which was reversed and remanded to the District Court “for further proceedings consistent with [the Supreme Court] opinion,” has produced yet another opinion,² which is far from “consistent with [the Supreme Court] opinion.”³ The long saga of the Baur disputes is, very likely, far from over.

The Iowa Supreme Court decision had held that “. . . majority shareholders act oppressively when, having the corporate financial resources to do so, they fail to satisfy the reasonable expectations of a minority shareholder by paying no return on shareholder equity while declining the minority shareholder’s repeated offers to sell shares for fair value.”⁴ The recently released District Court opinion paid little heed to the holding of the Supreme Court and concluded “. . . because his demands have exceeded the fair value of his equity interest, Jack [the plaintiff] has failed to meet his burden to prove oppression by a preponderance of the evidence.”⁵

Emphasis on “fair value of his equity interest”

One need not look very far in the facts of the case to question the District Court’s rather cavalier approach to what the court assumed was “fair value of his equity interest.” To understand the controversy, it is necessary to review the facts of the case.⁶ Two brothers, both now deceased, who had been farming together formed a C corporation in 1966 with 1,736 acres of farmland. It has been reported that 2,450 shares of stock were issued upon incorporation, 1188 to one brother, Merritt Baur (whose son, Jack, was the plaintiff in the *Baur* case) and 1262 shares to the other brother, Edward Baur, whose son, Robert was a defendant in the *Baur* case. Minimal attention apparently was given to the problems of stock valuation and the almost inevitable problem of conflict in succeeding generations. The uneven stock ownership was apparently not viewed as a problem as between the founding brothers but it later proved to be a huge problem with their descendants. Over the years, the stock ownership degenerated into controversy with a majority shareholder (Robert) and a minority shareholder (Jack).

In 1984, the corporation adopted an amendment to the corporate bylaws as follows –

“The price at which such shares are to be purchased by the corporation or the remaining shareholders thereof, pursuant to this By-Law, shall be a price mutually agreed upon between the transferring shareholder and the Board of Directors of the corporation. If no purchase price is agreed upon within thirty (30) days after giving

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notice of the exercise of an option by the corporation, the purchase price for each share shall be the book value per share of the shareholders' [sic] equity interest in the corporation as determined by the Board of Directors, for internal use only, as of the close of the most recent fiscal year. Such value, for example, for the fiscal year ended December 31, 1983, was \$686.00 per share."⁷

The value mentioned, \$686.00, was clearly referred to *as an example only*, and a reasonable and prudent owner of stock in the corporation would assume that the figure of \$686.00 per share, which was referred to as the "book value," would be adjusted from year-to-year thereafter. Certainly that is what is implied in the bylaw. That was not done and the parties concede that fact. In the years after 1984, average farmland prices in Madison County, Iowa increased *almost eight fold*.⁸

The District Court opinion reads as though the 1984 amendment was intended to remain the book value, and hence the determinant of the selling price, into the future. *Neither common sense nor the document language support that interpretation, however.* The notion that the \$636 figure was to prevail 30 years later after an eight-fold increase in land values is beyond belief.

Even more fundamentally, the founding brothers may not have been concerned about the relationship of "book value" to fair market value, but it is widely recognized that "book value," essentially reflective of the income tax basis of the assets, is an unacceptably low value for determining "fair market value." It is likely that the "fair value" of the assets in *Baur* rests somewhere between five and ten times (or more) the figure used in the District Court opinion as the "gold standard" in the case.

At no point in the extended litigation is the question raised as to the debt-free nature of the farmland owned by the corporation. Few farm businesses, including the large ones, maintain sufficient cash to pay minority interests. It is not asking too much for a corporation that had enjoyed the economic benefit of the minority's equity interest with no compensation in the form of dividends to generate the needed capital by borrowing funds. That is the route taken by virtually all corporations facing a minority bail-out along with negotiating a pay-out over 10 to 20 years with interest on the unpaid balance.

The District Court's tilt

Even a casual reader of the District Court's opinion would have to cringe in reading in five different places all about the fact that Jack received his ownership interest either by gift or inheritance. The reference would seem to have the effect of denigrating Jack's insistence in being treated fairly. There is nothing in common law, state law or federal law that treats property owners differently on the basis of how they acquired property. A vaunted feature of property law in this country has been that one's rights as a property owner are unaffected by how the individual managed to acquire the property. Also, for the record, Robert's ownership of stock in the corporation came in precisely the same manner. Certainly, the way in which the cousins acquired their stock should be completely irrelevant to how the case is decided. Arguably, they are both "non-farm heirs" pursuing off-farm occupations.

In conclusion

Many Iowans (and others outside the state) were pleased to see the stance taken by the Iowa Supreme Court in *Baur v. Baur*

*Farms, Inc.*⁹ Indeed, in the minds of many, the decision was long overdue. Hopefully, the Iowa Supreme Court will stand its ground. The time should be in the past when a majority owner can ride roughshod over minority owners with impunity and claim protection from the legal system.

ENDNOTES

¹ 832 N.W.2d 663 (Iowa Sup. Ct. 2013). See Harl, "Ignoring Reality: Iowa Supreme Court Decides Case Involving 'Oppression' by Majority Shareholder in Farm Corporation," 24 *Agric. L. Dig.* 113 (2013).

² *Baur v. Baur Farms, Inc.*, No. EQCV 032201 (July 29, 2014).

³ See note 1 *supra*.

⁴ Note 1 *supra*.

⁵ Note 2 *supra*.

⁶ See notes 1 and 2 *supra*.

⁷ See note 2 *supra*.

⁸ Iowa State University Land Value Survey, December, 1984 (farmland values averaged \$960 in Madison County); Iowa State University Land Value Survey, December 2013 (farmland values averaged \$7,542 in Madison County).

⁹ Note 1 *supra*.

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