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## Lessons On the BCL § 623 Buy-Out Process from the Westchester Supreme Court

New York Business Corporation Law (BCL) § 623 establishes a procedure for minority shareholders to dissent from certain corporate transactions and obtain a fair value buy-out of their interest in the company. This is typically the dissenting shareholder's sole and exclusive remedy, but the procedure must be followed precisely. A recent case in Westchester County examines what can happen when a dissenting shareholder fails to adhere to the BCL § 623 process and his attempt to circumvent the statute's exclusivity provision.

### **The Case: *Vivanco et al. v. Ourem Iron Works, Inc.***

In *Vivanco et al. v. Ourem Iron Works, Inc.*, No. 69808/2018 (N.Y. Supreme Ct., Westchester Cty. Apr. 21, 2021), the plaintiff, Marco Vivanco, a 15% owner and shareholder of the defendant corporation, Ourem Iron Works, Inc., brought suit against Ourem, claiming it was planning to sell valuable property without notifying him. When the defendant later sold the property, the plaintiff sought to amend his complaint to assert a claim under BCL § 623 for a fair value appraisal proceeding and buy-out of his minority interest in the defendant company. In response, the court directed the plaintiff to commence a special proceeding to have his shares appraised, as required by BCL § 623. The plaintiff failed to do so and instead, once again, sought to amend his complaint to add buy-out related claims and pursue monetary damages. The defendant, in turn, moved for summary judgment to dismiss the complaint.

In its opinion, the court admonished the plaintiff for his "partial" use of the procedures established within BCL § 623, while also pursuing a monetary judgment. This is not allowed, as the court noted, because under BCL § 623, "a plaintiff's sole remedy is to seek the value of his or her shares." Other claims against the corporation, including those for monetary damages, are simply unavailable once an appraisal right has been exercised. The court further found that while the statute provides an exception to this exclusivity rule – when the corporate action will be unlawful or fraudulent to the shareholder – that exception still does not permit a plaintiff to seek monetary damages. Since the plaintiff was seeking money, the proposed amended complaint failed to state a claim under BCL § 623, hence the court denied the plaintiffs' motion to amend the complaint and granted the defendant's motion for summary judgment.

### **Takeaway**

BCL § 623 provides the exclusive remedy – a fair value appraisal and buy-out – for minority shareholders who oppose a proposed corporate transaction. With rare exception, these disgruntled shareholders have no right to monetary damages and their claims cannot be brought in ordinary litigation. Litigators should familiarize themselves with the BCL § 623 to ensure they properly advise clients on their limited remedies and the procedure to obtain them.

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