

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

TERRELL K. RALEY, individually, and)
on behalf of 4 POINTS)
HOSPITALITY, LLC,)

Plaintiffs,)

VS.)

NO. 16-196-BC)

CEES BRINKMAN and BRINKMAN)
HOLDINGS, LLC,)

Defendants,)

AND)

CEES BRINKMAN, individually, and)
on behalf of 4 POINTS)
HOSPITALITY, LLC,)

Counterclaimant,)

VS.)

TERRELL K. RALEY, AMARANTH)
HOSPITALITY GROUP, LLC,)

Counterdefendants.)

MEMORANDUM AND FINAL ORDER ON REMAND

It is ORDERED that the fair value of Plaintiff Raley's 50% membership in 4 Points Hospitality, LLC ("4 Points") is \$2,165,664 based upon the findings of fact and conclusions of law of the June 13, 2022 Memorandum and Order.

It is further ORDERED that Defendant Brinkman has been previously credited an offset and two installment payments, totaling \$1,290,279.10. These credits reduce the amount he owes to Plaintiff Raley for the membership interest to \$875,384.90.

Additionally, interest in the amount of \$316,922.02 is ORDERED to be paid by Defendant Brinkman to Plaintiff Raley under Tennessee Code Annotated section 48-249-506(3)(B)(vi). This order for payment of interest is not entered under Tennessee Code Annotated section 47-14-123. The Court finds section 47-14-123 is not applicable to this stage of the proceedings and has not been ordered on remand by the Court of Appeals.

Totaling the foregoing, it is ORDERED that the final judgment entered is that Defendant Brinkman shall pay a total of \$1,192,306.92 to Plaintiff Raley.

Further, the payment installment terms of the October 9, 2018 Memorandum and Order are outdated and moot. Given that Defendant Brinkman has possessed Plaintiff Raley's membership interest for 4 years now, it is ORDERED that the \$1,192,306.92 shall be paid by Defendant Brinkman in a lump sum.

It is ORDERED that the Plaintiff's request for security to be ordered for Defendant Brinkman's payment is denied.

It is ORDERED that post judgment interest accrues at the rate of 6.75% per annum on the \$1,192,306.92 payment due by Defendant Brinkman for Plaintiff Raley's membership interest.

It is ORDERED that Defendant Brinkman's request to recover post judgment interest on his damage award from the 2017 trial is denied.

Finally, because of Chancellor Lyle's retirement on August 31, 2022, it is ORDERED that the deadline for filing motions to alter or amend is shortened to August 10, 2022, with a response date of August 15, 2022; a reply deadline of August 17, 2022, and thereafter a ruling on the papers—unless by July 22, 2022, an objection to these deadlines is filed.

Court costs are taxed to Plaintiff Raley.

Reasoning and Authorities

Interest to be Paid to Plaintiff Raley

In ruling above that Defendant Brinkman must pay interest, the Court adopts the analysis and authorities provided in *Raley's Post-Hearing Brief Regarding Interest*, October 27, 2021, and *Raley's Brief in Support of Interest Award and Entry of Final Judgment Order*, July 8, 2022, at pages 10-11, that interest at the rate of 7% beginning November 1, 2018 is recoverable under Tennessee Code Annotated section 48-249-506(3)(B)(vi). In particular, the Court adopts the following from the Plaintiff's briefing.

The Tennessee Court of Appeals' June 30, 2020 opinion affirmed in part, vacated in part, the Trial Court's first valuation judgment. Specifically, the Court of Appeals "affirm[ed] the trial court's judgment in every respect but one" – whether the trial court "erred by failing to consider evidence relative to tax-affecting when determining the fair value of Raley's membership interest." The Court of Appeals "vacate[ed] the judgment

valuing Raley's interest and remand[ed] for the trial court to consider evidence relative to tax-affecting in determining the fair value of Raley's membership interest and to enter judgment accordingly." As Brinkman asserted in his April 6, 2020 Brief filed in response to Raley's Motion for post-judgment relief, "[a]ll other facets of this Court's rulings remained intact." (Apr. 6, 2020 Brinkman Resp. Brief at p. 2) (arguing that the Court of Appeals' opinion did not vacate the termination of Raley's membership interest or void the transfer of Raley's membership interest, which he transferred in accordance with the Court's October 9, 2018 Final Order).

Importantly, the Court of Appeals did not vacate the post-judgment interest award for Raley. Rather, the Court of Appeals held that, "on remand, the trial court should award post-judgment interest in accordance with the [post-judgment interest] statute." (June 30, 2020 Opinion, p. 45).

Brinkman argues that the post-judgment interest runs from the date of any new order from this Court because the Court of Appeals ordered an evidentiary hearing on tax-affecting. Brinkman fails to cite the Court of Appeals' directive to award post-judgment interest. Brinkman's reliance on the case *St. John-Parker v. Parker* is misguided. 2018 Tenn. App. Lexis 141 (Tenn. Ct. App. 2018). The *Parker* case involved an "undisputed" factual divorce, with one spouse disputing the amount of jointly-held martial property. This case, on the other hand, involves a statutory valuation proceeding under the Revised LLC Act that mandates interest with the trial court maintaining plenary and exclusive jurisdiction.

The Tennessee Court of Appeals noted in *Parker* that it "retains the discretion in its remand order regarding the calculation of post-judgment interest." *Id.* at *8. And unlike *Parker*, the Court of Appeals in this matter ordered that, "on remand, the trial court should award post-judgment interest in accordance with the [post-judgment interest] statute." The Court of Appeals also acknowledged Brinkman's \$500,000 installment payment on the transfer of Raley's membership interest. In *Parker*, no installment payments had been made by either of the parties pursuant to a Court order. Rather, the parties jointly held the funds prior to a judicial calculation on remand.

This Court's jurisdiction over a proceeding for the judicial determination of value under the Revised LLC Act § 48-249-506(3)(A) is plenary and exclusive. The Revised LLC Act § 48-249-506(3)(B)(vi) specifically provides that the Court "**[s]hall** order that interest, at the rate specified for judgments under § 47-14-121, **shall be paid** on such amount,

from the date such amount was determined to be due through the date of payment, if the court determines that all or any installment of the amounts to be paid in respect of the terminating member's membership interest **should have been paid prior to the date of judgment.**" (emphasis added). Thus, even if Brinkman's argument – that the Court has not yet entered its judgment – had merit, the Revised LLC Act expressly dictates that the Court shall enter an award of interest, at the post-judgment interest rate, for amounts that should have been paid prior to the date of the judgment. Whatever amount the Court determines should have been paid for Raley's Membership Interest, Raley is entitled to interest on that amount owed from the original payment date of November 1, 2018, through the date the amount is paid.

Raley's Post-Hearing Brief Regarding Interest, Oct. 27, 2021, at 3-5 (emphasis in original).

In addition the following facts of record are pertinent.

On September 20, 2018, after ordering that Plaintiff Raley's membership interest in 4 Points was terminated and after Defendant Brinkman chose to buy the membership, this Court entered an order setting the value of Plaintiff Raley's membership interest to be \$2,387,139.09 and set the terms for installment payments of that amount. The next day, Defendant Brinkman filed a motion to amend seeking for the Court to offset from his payment for the membership the amount of an award of damages Defendant Brinkman had recovered against Plaintiff Raley on a counterclaim in the trial of this case. The Court granted the amendment, and, on October 9, 2018, a revised valuation order (the "*Valuation Order*") was entered that offset and thereby reduced the total amount payable to Plaintiff Raley for his membership interest by the net damages awarded in trial (and that also modified the payment terms). The *Valuation Order* "provides that the fair value amount should be offset by \$290,279.10 based upon damages awarded in the trial, leaving a total net fair value amount payable [for Plaintiff Raley's membership] of \$2,096,859.99."

The Court further ordered the amount to be paid in installments, with the first installment of \$500,000 being due by November 6, 2018, two days before the final order became appealable on November 8, 2018. The remaining payments were to be made as follows: (a) \$750,000 paid by December 7, 2018; (b) \$750,000 paid by January 8, 2019; and (c) the remaining \$96,859.99 to be paid in minimum monthly installments of \$15,000. The Court also ordered that, upon payment of the first installment of \$500,000, Plaintiff Raley was to transfer his membership interest in 4 Points pursuant to Tennessee Code Annotated section 48-249-506(3)(B)(iv).

Pursuant to the Court's October 9, 2018 *Valuation Order*, on November 1, 2018 (prior to filing an appeal), Defendant Brinkman made an installment payment to Plaintiff Raley in the amount of \$500,000. Upon receipt of the funds, Plaintiff Raley transferred his membership interest to Defendant Brinkman. As Defendant Brinkman stated in his May 29, 2019 Appellate Response Brief "the \$500,000 payment by 4 Points and Raley's corresponding transfer of his membership were not voluntary. They were mandated by the trial court's judgment and were ordered to be done before that judgment became final and appealable." (Brinkman May 29, 2019 Appellate Brief at pgs. 9-10). The reason the Court ordered the immediate conveyance of the membership was that otherwise the business could not function, as the Court had determined in its July 17, 2017 findings of fact and conclusion of law from trial.¹

¹ Quoting from the July 17, 2017 findings at pages 55-56 the Court determined that, "The evidence established that the personal and business relationship of the parties has been destroyed." The Court further found "The evidence established that the parties have not personally spoken to each other in over a

Defendant Brinkman then filed an appeal. The trial court decision was affirmed except for one issue: for the trial court to consider evidence on the issue of tax affecting on the value of Plaintiff Raley's membership. The case was remanded by the Court of Appeals for determination of this issue.

After the case was remanded, pursuant to an agreed order submitted by the parties and entered on May 19, 2021, Defendant Brinkman made a second payment of \$500,000 to Plaintiff Raley on May 21, 2021 for the membership interest.

year, and have not met or discussed matters which require mutual consent under the Operating Agreement.” The Court reasoned,

The impact of this lack of communication and trust is exponential in this case because Defendant Brinkman is the landlord of the premises where The Pharmacy is located. That the parties are no longer working together but are suspicious and at odds has also destroyed the landlord/tenant relationship.

The evidence further established through the testimony of Mandy Allen and Defendant Brinkman and the absence of strenuous refutation of this proof by Plaintiff Raley that The Pharmacy's recipes and aspect and operations have been developed to the point that The Pharmacy could certainly function for a year absent Plaintiff Raley and likely beyond that. Further the Court accredits the testimony of Defendant Brinkman that he intends to rehire Ben Albert, a former manager knowledgeable of and capable in operating the business.

Additionally, in weighing the equities considering the best business interest of 4 Points, the evidence is that Plaintiff Raley has other successful restaurants he has created and provided to the community and possibly more to come. Also, as a matter of law, in Phase 2 of this case, Plaintiff Raley's membership interest will be valued and he will be paid fair compensation for that interest.

Plaintiff Raley's assertion that he should not be terminated as a member because the business has been profitable, the Court finds, is a testament to the genius of the business the parties have created. The Court finds that The Pharmacy has managed to prosper despite the dysfunctioning of the members. The prosperity of the business, however, does not overcome the evidence that the members are unable to make key decisions going forward on the operation and governance of the Business because their personal and business relationship has been irreparably destroyed.

On remand, after the parties engaged in discovery and two evidentiary hearings were conducted, this Court applied an 8.21% tax affect to the value of Plaintiff Raley's membership that reduced the \$2,387,139.09 value, determined by this Court in its October 9, 2018 *Valuation Order*, by \$221,475.09, resulting in a value of \$2,165,664 of Plaintiff Raley's membership. This was determined in a June 13, 2022 Memorandum and Order.

Applying section 48-249-506(3)(B)(vi) to the foregoing facts, the Court takes the \$2,165,664 valuation of Plaintiff Raley's 50% membership interest, and crediting Defendant Brinkman the \$290,279.10 net damage award from the trial of the case from the offset he was granted on October 9, 2018, the Court determines that the total fair value amount owed and due Plaintiff Raley as of the November 1, 2018 date he transferred his membership interest to Defendant Brinkman was \$1,875,385.90. Next, accounting for the first payment of \$500,000 on November 1, 2018, the principal amount owed thereafter was \$1,375,384.90. Following that, there was the May 20, 2021 second payment of \$500,000 made by Defendant Brinkman. That left \$875,384.90 in principal owed to Plaintiff Raley for his membership interest as of the date of this filing.

From the foregoing, the Court adopts the calculations of Plaintiff Raley as follows, except the Court updates the calculation to the date of issuance of this decision, July 19, 2022. The 7% interest amount comes from the Tennessee Judgment Interest Rates published by the Administrative Office of the Courts as required by Tennessee Code Annotated section 47-14-121(b).

Interest Calculations

- November 1, 2018 payment of \$500,000, left \$1,375,384.90 owed.
 - o Simple Interest at 7% on \$1,375,384.90 for 931 days between November 1, 2018 and May 20, 2021
 - o Interest = \$245,572.15
- May 20, 2021 payment of \$500,000, left \$875,384.90 owed.
 - o Simple Interest at 7% on \$875,384.90 for 425 days between May 20, 2021 and July 19, 2022
 - o Interest = \$71,349.87
- Total Interest owed = \$316,922.02
- Total Principal of \$875,384.90 plus interest of \$316,922.02 = \$1,192,306.92

Post Judgment Interest Denied to Defendant Brinkman

As to Defendant Brinkman's claim that he should recover post judgment interest on the damages he recovered from 2017 the trial of this case, that claim is denied. In the October 9, 2018 *Valuation Order* Defendant Brinkman was credited with an offset of his \$290,297.10 damages award against the payment he owed the Plaintiff on the membership buyout. That offset constitutes satisfaction of Defendant Brinkman's damages award, particularly since the Court ordered Plaintiff Raley's membership to be transferred at that same time, and Defendant Brinkman has held the membership since that time. Thus,

Defendant Brinkman, as of October 9, 2018, received satisfaction of his \$290,297.10 damages award and accordingly is not entitled to post judgment interest.

Security

Tennessee Code Annotated section 48-249-506(3)(B)(iii) provides that a court “[s]hall specify the terms of the purchase, including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the other creditors of the LLC, security, including the purchased membership interest, for a deferred purchase price, and a covenant not to compete or other restriction on the member whose membership interest has terminated.” The Plaintiff asserts that, “Regardless of the Court’s decision and determination on the issues of pre-, post-, statutory interest, Raley respectfully submits that the Court should obligate Brinkman to pledge security to ensure payment of the fair value payment amount ultimately ordered by the Court.” The Court declines to award security under section 48-249-506(3)(B)(iii) in the absence of specificity by the Plaintiff as to the kind and amount of security he is seeking.

s/ Ellen Hobbs Lyle

ELLEN HOBBS LYLE
CHANCELLOR
TENNESSEE BUSINESS COURT
PILOT PROJECT

