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## 2002 Survey of Rhode Island Law: Cases: Business Law

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**Business Law.** *In re McBurney Law Services, Inc.*, 798 A.2d 877 (R.I. 2002). The Rhode Island Supreme Court held that prior to a hearing of a valuation panel appointed by the supreme court to determine the fair market value of shares of a corporation, a stipulation; that is (1) entered into with the assent of counsel and their clients, (2) relative to an evidentiary fact or an element of a claim, and (3) absent fraud or mutual mistake, is conclusive upon the parties and removes the issue from the controversy. The court also held that interest on the purchase price of the shares begins to accrue from the date of the election to purchase the shares.

#### FACTS AND TRAVEL

The petitioner, McBurney Law Services, Inc. (McBurney Law), is a professional service corporation engaged in the practice of law.<sup>1</sup> The respondent, Kevin McBurney, became a shareholder of McBurney Law in 1982, and he voluntarily terminated his employment on July 29, 1993.<sup>2</sup> Respondent held twenty-five shares of common stock in McBurney Law.<sup>3</sup> McBurney Law, as a professional service corporation engaged in the practice of law, was governed by article II, rule 10(g) of the Rhode Island Supreme Court Rules, which states, "If a shareholder dies or becomes ineligible, the professional service corporation shall: (1) Redeem the shareholder's shares . . . or (2) Cause the shareholder's shares to be purchased by an eligible person or persons."<sup>4</sup> McBurney Law neither redeemed respondent's shares nor caused them to be purchased by an eligible person, and respondent neither transferred his shares to an eligible person nor offered them to McBurney Law for redemption.<sup>5</sup> Pursuant to rule 10(g), McBurney Law and respondent had three months to agree on the fair market value of the shares or, failing an agreement, McBurney Law was required to apply to the Rhode Island Supreme Court for appointment of a valuation panel to determine the fair market value of the shares.<sup>6</sup> There was

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1. *In re McBurney Law Servs., Inc.*, 798 A.2d 877, 879 (R.I. 2002).

2. *Id.*

3. *Id.*

4. *Id.* at 879 n.1 (quoting R.I. SUPER. CT. R. 10(g)).

5. *Id.* at 880.

6. *Id.*

no agreement, and at that time, McBurney Law did not file a petition for appointment of a valuation panel.<sup>7</sup>

On January 13, 2000, McBurney Law filed a petition for appointment of a valuation panel, and the supreme court granted the petition.<sup>8</sup> On June 5, 2000, prior to the hearing of the valuation panel, McBurney Law and respondent entered into a written stipulation providing that respondent "shall be deemed to have owned 25% of the issued and outstanding shares of stock as of the [v]aluation [d]ate."<sup>9</sup> Respondent later moved to modify the stipulation based on later-acquired information that showed respondent to be the owner of one-third of the shares issued, rather than the previously stipulated twenty-five percent.<sup>10</sup> The valuation panel granted the respondent's motion.<sup>11</sup>

McBurney Law filed a petition for certiorari in the supreme court seeking review of the valuation panel's decision that the stipulation entered into by the parties could be modified.<sup>12</sup> McBurney Law also challenged the panel's decision to award prejudgment interest from the date respondent voluntarily ended his employment with McBurney Law, arguing that the appropriate date was when McBurney Law filed the petition for appointment of the valuation panel.<sup>13</sup>

#### ANALYSIS AND HOLDING

##### *Stipulation*

The Rhode Island Supreme Court stated that stipulated agreements must be placed on the record or be reduced to an agreed upon writing so the stipulation does not become a source of further controversy, and that the stipulation in this case met those requirements.<sup>14</sup> The court held that a "stipulation entered into with the assent of counsel and their clients, relative to an evidentiary fact or an element of a claim, is conclusive upon the parties and

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7. *Id.*

8. *Id.*

9. *Id.* (alteration in original).

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at 881.

14. *Id.* at 881-82.

removes the issue from the controversy.”<sup>15</sup> Such a conclusive stipulation is not a matter for consideration by the valuation panel.<sup>16</sup> The court further stated that a stipulation “has the attributes of a consent order or consent judgment and cannot be set aside simply because a litigant no longer wants to be bound by its terms.”<sup>17</sup>

Justice Flanders dissented. He stated that the valuation panel possessed the authority to vacate the stipulation and that because the stipulation afforded respondent a lesser ownership interest in McBurney Law than was later discovered he possessed, enforcement of the stipulation “would not be conducive to the interests of truth or justice.”<sup>18</sup>

### *Interest*

The court also stated that since neither rule 10(g) of the Rhode Island Supreme Court Rules nor section 7-5.1-5 of the Rhode Island General Laws provide for an award of prejudgment interest on the valuation reached by the panel, the panel could not award such interest to the respondent.<sup>19</sup> The court did state, however, that the Rhode Island Professional Service Corporation Act refers to chapter 7-1.1 of the Rhode Island General Laws and provides that the Rhode Island Business Corporations Act shall apply to professional business corporations.<sup>20</sup> Therefore, in a case such as this one, in which a corporation elects to purchase the shares of an ineligible shareholder, section 7-1.1-90 of the Rhode Island General Laws sets forth a procedure for the valuation and sale of the shareholder’s shares.<sup>21</sup> In such a situation, “the shareholder is entitled to interest, at the rate on judgments in civil actions, on the purchase price of the shares from the date of the filing of the election to purchase the shares . . . .”<sup>22</sup> Based on this provision, the court stated that the valuation panel was without authority to set a different date at which to begin the accrual of interest, and the

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15. *Id.*

16. *Id.* at 882.

17. *Id.* (citing *DeFusco v. Giorgio*, 440 A.2d 727, 729 (R.I. 1982)).

18. *Id.* at 885-86 (Flanders, J., dissenting)

19. *Id.* at 884.

20. *Id.*

21. *Id.*

22. *Id.*

date in this case should have been set at January 13, 2000, the date on which McBurney Law filed the petition for valuation.<sup>23</sup>

Justice Flanders dissented on this issue as well. He stated that the election-to-purchase statute was not applicable to this proceeding because McBurney Law did not elect to purchase respondent's shares, rather, it was required to do so by law under rule 10(g).<sup>24</sup> He further asserted that it was McBurney Law's responsibility to apply to the supreme court for a valuation panel after McBurney Law and respondent did not agree on a buyout agreement.<sup>25</sup> Because McBurney Law did not do so, it was proper to set the date for the accrual of interest at the date on which respondent voluntarily ended his employment with McBurney Law, rather than to set the date at the date on which McBurney Law finally filed a petition for valuation.<sup>26</sup>

#### CONCLUSION

The Rhode Island Supreme Court reversed the decision of the valuation panel, holding that prior to a hearing of a valuation panel appointed by the supreme court to determine the fair market value of shares of a corporation, a stipulation that is (1) entered into with the assent of counsel and their clients, (2) relative to an evidentiary fact or an element of a claim, and (3) absent fraud or mutual mistake, is conclusive upon the parties and removes the issue from the controversy. The court also held that interest on the purchase price of the shares begins to accrue from the date of the election to purchase the shares.

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23. *Id.*

24. *Id.* at 889-90 (Flanders, J., dissenting).

25. *Id.* at 890 (Flanders, J., dissenting).

26. *Id.* (Flanders, J., dissenting).