**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A08-0097**

Heather Lynn Haubenschild,
Appellant,

vs.

Thomas Haubenschild,
Respondent,

Haubenschild Farms, Inc., et al.,
Respondents.

**Filed January 13, 2009**
**Reversed and remanded**
**Schellhas, Judge**
**Concurring specially, Crippen, Judge**[*]

Isanti County District Court
File No. 30-CV-06-498

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Considered and decided by Schellhas, Presiding Judge; Johnson, Judge; and Crippen, Judge.

## U N P U B L I S H E D  O P I N I O N

**SCHELLHAS,** Judge

In this appeal from summary judgment entered for and against both appellant and respondents, because the district court erred in its application of the law and there are genuine issues of material fact, we reverse and remand.

## FACTS

Appellant Heather Lynn Haubenschild and respondent Thomas Haubenschild were married in 1989. Respondent Haubenschild Farms, Inc. (HFI) is a family farm owned and operated by respondents Dennis and Marsha Haubenschild and their two children, Thomas and respondent Bryan Haubenschild. Dennis, Marsha, Bryan, and HFI are referred to herein as "respondents." Thomas has separate legal counsel and did not file a brief in this appeal, although he has informed this court that he joins the arguments of respondents on appeal.

Thomas purchased stock in HFI in August 1999, after which Dennis, Marsha, Bryan, and he each owned a 25% interest in HFI. Thomas purchased his stock from his grandparents by executing a $77,050 promissory note payable in monthly installments of $700. Also in August 1999, Dennis, Marsha, Bryan, and Thomas entered into a Cross Purchase Agreement (CPA). The HFI stock certificates contain notations that transfer of the stock is "restricted by, and subject to, the terms and provisions of [the CPA] dated August 3, 1999." As relevant to this appeal, the CPA provides:

> 6.1 In the event any Stockholder desires to sell all or part of his/her stock, he/she shall give written notice of such election to the other Stockholders who shall then have the right, exercisable within thirty (30) days, to purchase such stock in the same proportion that their share holdings bear to each other at date of the written notice. In the event the remaining Stockholders elect not to purchase all the shares of the selling Stockholder, the Corporation will redeem the balance of the stock, at the price set forth in Sections 6.2 and 7, within one month of the lapse of the Stockholder's option.
>
> 6.2 The purchase price of all stock sold by Stockholders under the age of 55 shall be ten (10%) percent of the amount set forth in Section 7 hereof. Any divorce by a Stockholder under the age of 55 shall trigger an automatic sale of that Stockholder's entire interest in the Company pursuant to the preceding sentence. The purchase price of all stock sold by Stockholders 55 years of age or older shall be one-hundred (100%) percent of the amount set forth in Section 7 hereof.

Heather maintains that she was not aware of the CPA until after Thomas signed it.

Thomas contemplated a divorce from Heather in 2005. In April a company providing financial services to HFI, AgStar, prepared a report that states that Thomas was having significant marital difficulties, "the clients" had considered buying out Thomas's interest in HFI, "[a]ll involved want[ed] to do what [was] best for Tom and the business," and Marv Siekman had been hired to assist in planning efforts. In June an AgStar representative, Greg Steele, stated in an e-mail that Thomas "will be moving ahead with a divorce," and that Siekman believed "the 1st choice will be to not have Tom exercise the Buy/Sell option unless the attorney believes that somehow this will enhance or improve Tom's position. Next step will be to determine if the plan needs to sit and age after the

filing or move ahead quickly." On November 4 and 12, Heather received marriage dissolution documents in the mail from Thomas; Heather was not personally served.[1]

On November 28 and 29, 2005, HFI stockholders held meetings regarding Thomas's ownership interest in HFI. According to an e-mail from Siekman, the first meeting was scheduled for November 28, 2005, and would be attended by Dennis, Marsha, and Brian with the purpose "for this group to map out their reaction to the status of Tom's divorce."[2] The record contains two sets of minutes from a November 29, 2005 meeting, which was attended by Dennis, Marsha, Brian, and Thomas. The first set of minutes states that the purpose of the meeting was to "review the financial performance of the business, and for the management team to have a discussion with Tom to resolve issues, and work out a long term plan for Tom's employment." These minutes also reflect that HFI management was disappointed in Thomas's performance and proposed a reduction in his salary. The minutes also report that Thomas planned to complete a divorce; he could not make payments on the promissory note if his pay was cut; he recognized "that under the buy sell agreement, he will be bought out upon completion of the divorce"; he "advanced the concept of exercising his right to get bought out immediately"; and his "request to withdraw as an owner of the business was accepted." These minutes report the value of Thomas's interest in HFI as $1,139,641, and that HFI's

[1] Heather and Thomas agreed to wait until after the holidays to move forward with the marriage dissolution. Heather did not admit service of the marriage dissolution summons and petition until January 2006.

[2] At his deposition, Siekman testified that he had misunderstood the purpose of the meeting and submitted an errata sheet to his deposition, elaborating that the purpose of the meeting was to talk about management of the business and Thomas's performance.

redemption price for Thomas's stock would be $113,964. A revised set of minutes omits the reference to Thomas's divorce plans, noting instead his "personal circumstances."

On December 3, 2005, Thomas executed a redemption agreement with HFI, whereby he transferred his HFI shares to HFI in consideration of a cash payment of $48,468 and HFI's assumption of the balance of his promissory-note indebtedness to his grandparents in the amount of $65,496. The redemption of Thomas's stock was based on ten percent of the total approximate value of Thomas's stock, $1,139,641, determined under the provisions of the CPA.

Heather claims that she did not learn of HFI's redemption of Thomas's stock until December 25, 2005, when she confronted Thomas about a bank deposit of $46,468. Heather maintains that HFI's stock redemption was "made on paper only," because Thomas's duties at HFI have not changed since December 3, 2005.

Following Heather's discovery of execution of the redemption agreement, Siekman sent an e-mail to Thomas's attorney and respondents' attorney on January 3, 2006, stating that he had learned that Heather intended to "dispute the sale of the stock as a transaction that is not allowable as you move towards a divorce." On January 19, Siekman sent an e-mail to Dennis and Marsha in which he stated that Thomas would have to discuss the situation with Heather and advised Dennis and Marsha to review notes from "the November meeting" with Thomas "so that he still recognizes that the actions were initiated because of job performance . . . I know that in his view he has not fully come to grips with his job performance issues."

Thomas has said that before he executed the redemption agreement on December 3, 2005, Dennis told Thomas that Dennis would not let Heather "take the farm under." Thomas also has said to Heather, regarding the redemption agreement, that "they made me do it." Subsequently, Thomas has clarified that he was not forced to sell his stock but has also stated that he did not really feel he had any choice.

In March 2006 Heather contacted the Minnesota Secretary of State and reserved the names "Haubenschild Farms" and "Haubenschild Dairy." Because of Heather's action, HFI was unable to file its annual report without Heather's consent. Heather refused to consent to the name use unless Thomas's HFI stock was restored to the marital estate. Heather has stated that her reason for reserving the names was for her children's future use. In May 2006, respondents changed HFI's name to "Haubenschild Farm Dairy, Inc."

In July 2006, in Heather and Thomas's marriage dissolution proceeding, the district court issued an order that states that the parties "allege that [the stock redemption] transaction deprived them of funds alleging that the payment received by [Thomas] was not a full compensation for the true value of their interest in Haubenschild Farms, Inc." and that the parties sought a court order permitting joinder of Haubenschild Farms, Inc. as a party to the marriage dissolution proceeding. The district court denied the request for joinder of HFI, concluding that "it is likely that the issues the parties seek to address

through joinder would more properly be addressed in a separate action" against HFI.[3] The district court included a finding that:

> 7. No reason has been shown and none have been found as to why the Court could not simply value the cause of action against the corporation, if any, and make a property distribution based on that valuation. This would avoid trying a case within a case and the issues and lack of economies that would be involved in multiparty litigation. If the valuation issue is too difficult for resolution the Court could continue the marriage dissolution case, or the property division thereof, until the corporate matter is resolved.

Based on Thomas's execution of the redemption agreement on December 3, 2005, Heather commenced an action against respondents and Thomas in July 2006. Subsequently, the district court granted Heather leave to amend her complaint. Although Heather's amended complaint is not part of the record on appeal, the record does contain a proposed amended complaint that includes a fraudulent conveyance claim and a request for money damages in its prayer for relief. The prayer for relief in the proposed amended complaint does not include a request for rescission of the redemption agreement, but does include a request for "[s]uch other relief as the Court deems just and equitable." Respondents and Thomas answered Heather's complaint and asserted counterclaims. Both Heather and respondents moved the court for summary judgment.[4]

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[3] Respondents included in their appendix a proposed amended order clarifying that only Heather, not Thomas, alleged that the stock sale price was inadequate, and that only Heather, not Thomas, sought to join HFI in the dissolution case. The record before us does not reveal whether the district court in the dissolution proceeding issued an amended order.

[4] The parties do not dispute that Heather has asserted a fraudulent conveyance claim or that she argued for rescission when moving the district court for summary judgment.

In an amended order and judgment, the district court granted summary judgment to Heather on the counterclaims of respondents and Thomas, granted summary judgment to respondents and Thomas on Heather's claims, and incorporated a memorandum of law. This appeal follows.

## D E C I S I O N

On appeal from summary judgment, appellate courts ask if the district court erred in its application of the law and if there are any genuine issues of material fact. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). The reviewing court must view the evidence in the light most favorable to the party against whom summary judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). "No genuine issue of material fact exists when the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *Frieler v. Carlson Marketing Group, Inc.*, 751 N.W.2d 558, 564 (Minn. 2008) (quotation omitted). "Summary judgment is inappropriate if the nonmoving party has the burden of proof on an issue and presents *sufficient evidence* to permit reasonable persons to draw different conclusions." *Id.* (quotation omitted).

### I.

Heather argued before the district court that Thomas's sale of stock to HFI pursuant to the redemption agreement of December 3, 2005 was a fraudulent conveyance and that the stock sale should be rescinded. The district court did not analyze Heather's fraudulent-conveyance argument. The court concluded that the CPA was valid, the consideration received by Thomas "was in accordance with the CPA," and that "if the CPA is valid in this situation there can be no damages." The court concluded: "As a

matter of law, Heather has suffered no damages from the sale of Thomas's stock, and summary judgment is appropriate in favor of Thomas and HFI." We review the district court's ruling by asking whether the court erred in its application of the law and whether any genuine issues of material fact exist. *French*, 460 N.W.2d at 4.

The district court concluded that it is "axiomatic that damages are an essential element of any legal claim," that Heather had suffered no damages because "Thomas's stock in HFI would have automatically–and legitimately–been sold at 10% of fair market value upon completion of his divorce from Heather," and that "[i]f there are no damages, plaintiff's claims fail as a matter of law regardless of the theory of recovery." The court also concluded that the fact that Thomas chose to sell his stock before the divorce was "of no consequence" because "[t]he results would have been the same: Thomas's entire stock in HFI sold for the price at which it was sold." The district court also concluded that the CPA prevented division of stock in a dissolution proceeding and, in this case, worked "exactly as it was intended."

We conclude that the district court erred in its application of law, and we reverse. We will explain the error in each step of the district court's reasoning.

First, summary judgment for failure to demonstrate damages is appropriate only if damages are an essential element of a claim and the claimant fails to show that she suffered damages. *See Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995) (stating that summary judgment is appropriately granted against a party who has failed to meet their burden of establishing the essential elements of their claim). "The remedies of rescission and damages are mutually exclusive." *TJB Cos., Inc. v. Maryland Cas. Co.*,

504 N.W.2d 476, 477 (Minn. 1993); *see also Hatch v. Kulick*, 211 Minn. 309, 310, 1 N.W.2d 359, 360 (1941) (concluding that victim of contract induced by fraud received no damages where contract was rescinded, because where the wrongful action was rescinded the victim was not damaged).

The remedies available for fraudulent conveyance include avoidance of the transfer, attachment or other provisional remedy against the asset transferred, injunction against further disposition by the debtor or transferee, appointment of a receiver to take charge of the asset, or "any other relief the circumstances may require." Minn. Stat. § 513.47 (a) (2008). Because "any other relief the circumstances may require" is available, Heather's preferred remedy of rescission of the stock sale is available as a remedy if she succeeds in the prosecution of her fraudulent conveyance claim. Under the broad remedies available for fraudulent conveyance, the district court has the power, whether or not damages are proven, to protect Heather from corporate abuses. If Heather meets her burden of proving that Thomas's stock sale constitutes a fraudulent conveyance, she must be afforded relief in this action because her request to join HFI, the transferee of the stock, in the marriage dissolution proceeding was denied. Because the remedies of damages and rescission are mutually exclusive, the district court erred in its application of the law.

Second, the district court erred in its conclusion that Thomas's stock sale occurred under the divorce-trigger provision of the CPA. The record clearly reveals that the stock sale occurred under the voluntary-sale provisions of the agreement, not the divorce-trigger provision of the agreement.

Third, the district court erred in its conclusion that the divorce-trigger provision "worked exactly as it was intended" by preventing division of stock in a dissolution. The divorce-trigger provision in the CPA does not prevent an involuntary transfer of stock to Heather in the marriage dissolution proceeding. "[A] transfer of stock ordered by the court in a marriage dissolution proceeding is an involuntary transfer." *Castonguay v. Castonguay*, 306 N.W.2d 143, 146 (Minn. 1981). Restrictions on sale apply only to *voluntary* transfers unless the agreement explicitly states otherwise. *Id.* at 145. For example, in *Roof Depot, Inc. v. Ohman*, 638 N.W.2d 782, 785 (Minn. App. 2002), *review denied* (Minn. Apr. 16, 2002), an agreement included a provision that no shareholder could transfer, encumber, or otherwise dispose of his stock "whether voluntarily or involuntarily, directly, indirectly, by operation of law or otherwise" without first obtaining the corporation's consent or offering it to the corporation for sale. Here, the CPA contains no language about *involuntary* disposition or sale of HFI stock. Therefore, under *Castonguay*, the CPA does not prevent an involuntary division by a dissolution court. Further, under the divorce-trigger provision, a *divorce* triggers an automatic sale, not the contemplation of a divorce or commencement of a marriage dissolution proceeding. Nothing in the divorce-trigger provision suggests that Thomas's stock could not or should not remain in the marital estate until the parties are actually divorced. Thus, the district court erred in concluding that the divorce-trigger provision in the CPA prevents division of stock in a dissolution proceeding.

Fourth, the district court erroneously concluded that Heather is not harmed by the absence of Thomas's stock in the marital estate because the proceeds from Thomas's sale

could be divided in the dissolution proceeding. The district court's conclusion is based on an assumption that the marriage dissolution court would be bound by the stock valuation determined pursuant to the provisions of the CPA. This assumption is contrary to the law. The value of stock for purposes of marriage dissolution is not necessarily controlled by a buy-sell agreement. *Rogers v. Rogers*, 296 N.W.2d 849, 852 (Minn. 1980). In *Rogers*, the supreme court concluded that the dissolution court was "not required to accept" the purchase price set in a buy-sell agreement "as dispositive" of the value of a husband's interest in stock. *Id.* Additionally, the marriage dissolution court, not Thomas or HFI, has the discretion to determine the valuation date of Thomas's stock for purposes of the marriage dissolution. *See* Minn. Stat. § 518.58, subd. 1 (2008) (identifying a presumptive valuation date); *Grigsby v. Grigsby*, 648 N.W.2d 716, 720 (Minn. App. 2002) ("The district court has broad discretion in setting the marital property valuation date.").

Fifth, the district court's conclusion that the stock sale price would be the same whether the sale occurred in December 2005 or after the marriage dissolution was without factual basis. The record reflects that the value of Thomas's HFI stock may have increased since December 2005, whether or not the valuation method in the CPA is used to determine value. The date of the stock redemption cannot be assumed to be insignificant. Genuine issues of material fact exist as to whether the redemption price would be the same upon divorce as it was in December 2005.

Finally, a genuine issue of material fact exists as to whether the December 2005 stock redemption constitutes a fraudulent transfer. A spouse in a dissolution proceeding

can be a "creditor" authorized to sue to undo a fraudulent transfer. *See Greer v. Greer*, 350 N.W.2d 439, 442 (Minn. App. 1984) (ruling that conveyance from husband to daughter during dissolution proceeding was fraudulent); *see also* Minn. Stat. § 513.47 (a) (allowing relief to creditors for fraudulent transfers). A transfer fraudulent as to present and future creditors is one where "the creditor's claim arose before or after the transfer," and the debtor made the transfer with actual intent to hinder, delay, or defraud or without receiving a reasonably equivalent value. Minn. Stat. § 513.44 (a)(1)-(2) (2008). Here, genuine issues of material fact exist about whether Thomas received reasonably equivalent value in the HFI's stock redemption and whether the stock redemption was completed with actual intent to hinder Heather's ability to prosecute her claim for an equitable share of the marital estate in the marriage dissolution proceeding.[5]

In determining actual intent, the district court may consider, among other factors, the following:

(1) the transfer was to an insider;
(2) the debtor retained possession or control of the property transferred;
(3) the transfer was disclosed or concealed;

[5] We note that a marriage dissolution court is required to compensate a party to a marriage dissolution proceeding if a party, without consent of the other party, has in contemplation of commencing, or during the pendency of, the current dissolution, transferred, encumbered, concealed, or disposed of marital assets outside the usual course of business and not for the necessities of life. The court compensates the other party "by placing both parties in the same position that they would have been in had the transfer, encumbrance, concealment, or disposal not occurred." Minn. Stat. § 518.58, subd. 1a (2008). We do not view the existence of this statutory remedy to suggest that rescission of HFI's stock redemption is superfluous. If the redemption is not rescinded, Heather will be precluded from seeking an in-kind distribution of HFI stock or a lien against Thomas's stock to secure any obligations he may have to Heather, as determined by the marriage dissolution court.

(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
(5) the transfer was of substantially all of the debtors assets;
(6) the debtor absconded;
(7) the debtor removed or concealed assets;
(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and
(11) the debtor transferred the essential assets of the businesses to a lienor who transferred the assets to an insider of the debtor.

Minn. Stat. § 513.44(b) (2008). Heather submitted sufficient evidence to the district court to create a genuine issue of material fact on her fraudulent conveyance claim. *See Frieler*, 751 N.W.2d at 564 (stating that a genuine issue of material fact is created where reasonable persons could draw different conclusions based on the evidence presented).

Because a genuine issue of material fact exists and the district court erred in its application of the law, we reverse the district court's grant of summary judgment against Heather on her fraudulent conveyance claim. Because we reverse as to Heather's fraudulent conveyance claim, we do not address the district court's conclusion that the CPA, particularly the divorce-trigger provision, is valid and enforceable. Even if the CPA, including the divorce-trigger provision, is valid and enforceable as to respondents and Thomas, its validity and enforceability is not dispositive of Heather's fraudulent conveyance claim.

## II.

Respondents argue that the district court erred in dismissing their deceptive trade practices claim. Because the dismissal followed a grant of summary judgment to Heather on this claim, we ask whether the district court erred in its application of the law and whether any genuine issues of material fact exist. *See French*, 460 N.W.2d at 4 (applying this standard on review of grant of summary judgment).

The portion of the deceptive trade practices statute relied on by respondents states that a person engages in deceptive trade practices when "in the course of business" the person: (1) causes a likelihood of confusion as to the source, sponsorship, approval, or certification of goods or services; (2) causes a likelihood of confusion as to affiliation, connection, or association with another; or (3) engages in any other conduct which similarly creates a likelihood of confusion. Minn. Stat. § 325D.44, subd. 1(2), (3), (13) (2008). The district court concluded that respondents could not succeed on their claim because Heather had not used the names she reserved.

Respondents argue that Heather's actions have caused confusion as to the name of HFI regardless of whether she has used the names. Respondents argue that injunctive relief is appropriate when a court determines that use of names would violate the law, even if the names have not yet been used. An injunction is allowed under Minn. Stat. § 325D.45, subd. 1 (2008), to a "person likely to be damaged by a deceptive trade practice." This court has affirmed issuance of an injunction where the use of names was at issue and the names had not yet been used. *State by Andersen v. Reward Corp.*, 482 N.W.2d 815, 820 (Minn. App. 1992), *review denied* (Minn. May 15, 1992). In *Andersen*,

appellant company reserved lottery-related names but never used them in any business activity, and respondent State of Minnesota challenged the use of the names. *Id.* at 817. We concluded that the company posed a threat of deceptive trade practices and that the state had a protectable interest in the name necessary to warrant an injunction. *Id.* at 820. Heather argues that she is unlike the company in *Andersen* and that injunctive relief is not warranted against her. Heather's argument pertains to whether an injunction is warranted, not whether the district court erred by requiring use of the names before injunctive relief could be granted. Under *Andersen*, an injunction could be issued without Heather's use of the names she reserved. The district court therefore erred in its application of the law, and we reverse.

**III.**

Respondents also argue that the district court erred in dismissing their conversion claim upon summary judgment. The district court recognized that respondents were pursuing a conversion claim, but did not analyze the claim. Respondents argue that they have demonstrated that the elements of common law conversion are satisfied in this case.

Conversion requires that the plaintiff hold a property interest and that the defendant deprive the plaintiff of that interest. *Lassen v. First Bank Eden Prairie*, 514 N.W.2d 831, 838 (Minn. App. 1994), *review denied* (Minn. June 29, 1994). Conversion requires "the exercise of dominion and control" over property "inconsistent with, and in repudiation of, the owner's rights in those goods." *Rudnitski v. Seely*, 452 N.W.2d 664, 668 (Minn. 1990). The parties do not dispute whether respondents had a property interest in the names. The parties dispute whether respondents were deprived of the use of the

names. Heather argues primarily that respondents were not deprived of their interest because she has not used the names and respondents have not ceased in their use of the names. Respondents emphasize their inability to file their annual report without changing HFI's name. The district court did not address whether Heather's actions with respect to the names amounted to "an exercise of dominion and control inconsistent with, and in repudiation of, respondents' rights in the names." Because the district court did not apply this law to the conversion claim before granting summary judgment, we conclude the district court erred in its application of the law. Therefore, we reverse the district court's ruling on this point and remand for the claim to be reevaluated under the applicable law.

**Reversed and remanded.**

**CRIPPEN**, Judge (concurring specially)

I concur in the opinion of the court, but write separately solely to enlarge on our observation that we do not review the district court's statement that the 1999 CPA is valid.

Appellant alleged in this case that the CPA was void but her pleadings did not include a prayer for relief from the purportedly invalid CPA. Instead, she challenged Thomas Haubenschild's 2005 sale of the HFI stock that was in his name as a fraudulent transfer because the sale was, pursuant to the CPA, for ten percent of its value. The district court rejected this assertion in its order granting the parties' motions for summary judgment; the court's explanatory memorandum stated that the CPA was valid, that any sale of Thomas's HFI stock would have to be pursuant to the CPA, and that, as a result, Heather Haubenschild suffered no damages in connection with the sale she challenges. For the reasons stated in the majority opinion, we reverse this no-damages reasoning of the district court.

In doing so, the opinion of the court correctly notes that our current holding leaves us with no occasion to reach a conclusion on the validity of the CPA. And review of this issue is further precluded because relief from the CPA, not having been pleaded, was not fully litigated in the district court proceedings; in addition, we have a limited summary-judgment record before us. This being said, our review of the case has called the attention of the parties and this court to the district court's statements on the validity of the CPA, including its divorce-trigger provision.

The district court addressed the application of the CPA's divorce-trigger language, determining, or at least assuming, that it became effective when a marital dissolution is initiated, rather than when it is completed. But as the majority correctly notes, this is not the case. As a prelude to its statements on the divorce-trigger provision, the district court commented extensively on the CPA in its memorandum supporting the summary judgment, stating that the agreement itself was valid.

Although we currently lack the record and pleadings to address the question dispositively, it is already evident that there are various arguments suggesting that the CPA's divorce-trigger provision is not valid and enforceable in Minnesota. As the parties go forward in this proceeding, or in a related marital-dissolution proceeding, there will be occasion for further attention to the CPA and its divorce-trigger provision. Even without additional pleadings by appellant in this or still other proceeding, appellant's claims on the CPA and its divorce-trigger clause will be before the dissolution court.

Primarily, this examination of the issue will permit weighing the force and effect of a CPA agreement that in some ways resembles, at least in its effects, a prenuptial agreement, and does so despite the fact that it was entered unilaterally by Thomas Haubenschild after the couple married; the CPA that purports to deal only with the interests of stockholders and is signed only by them, requires, in the event of a future divorce, a conveyance out of the marital estate of what may constitute the bulk of this estate for a price that will equal a small fraction of the market value. Yet in Minnesota, a judgment dissolving a marriage vests in both spouses ownership of marital property,

which presumptively includes property, like the HFI stock, acquired by either or both parties during their marriage. Minn. Stat. § 518.003, subd. 3b (2008).

Thus, aside from any other questions on the validity of the CPA, the impact of its divorce-trigger provision on appellant, a nonparty to the agreement, could be at issue. The impact of the divorce-liquidation clause is first evident in its reduction of the value of the marital investment in HFI stock. In addition, it has impact in substituting cash for the stock itself; the assessment of the effects of the agreement on the marital estate must take into account evidence on other segments of this estate and the prospect, if any, for a fair division without an in-kind division of the HFI shares.

Attention also may be given to the question of whether the CPA has any tendency to promote a choice for divorce by a stockholder who is not yet 55 years of age. *See State by Cooper v. French*, 460 N.W.2d 2, 6 (Minn. 1990) (articulating a public policy "in favor of the institution of marriage"); *cf. State v. Gianakos*, 644 N.W.2d 409, 419 (Minn. 2002) (stating, in the context of addressing the marital evidentiary privilege, that "while we recognize the concern for establishing artificial barriers to the truth, our jurisprudence clearly weighs the balance in favor of the social policy of protecting the sanctity of the marriage"(quotation omitted)).

Appellant's assertions require that the district court determine a number of fact issues. Appellant has alleged that the CPA is void as against public policy because it wrongfully impairs the marital estate of Thomas and Heather Haubenschild. Discussing the CPA, the district court focused instead on another of appellant's pleadings, that the agreement served no legitimate business purpose, and the court identified business

purposes it said were reasonable. On this analysis, the court stated that the CPA was valid. Arguably, this limited discussion on the validity of the CPA is incomplete, distorting the issue.

The statute governing stockholder agreements on buyouts states that agreements restricting the transfer of stock "may" be enforced if the agreement is, among other things, "not manifestly unreasonable under the circumstances." Minn. Stat. § 302A.429, subd. 2 (2008). By limiting its consideration to whether the CPA's business purposes were unreasonable, the district court did not address whether the CPA is "manifestly unreasonable under the circumstances" due to Heather Haubenschild's allegations that her husband's execution of the CPA was a wrongful impairment of the couple's marital estate; these allegations suggest that impairment of the marital estate was a reason for, rather than a completely collateral result of, the CPA. Further, that the agreement "may" be enforced does not require that it be enforced. *Compare* Minn. Stat. § 645.44, subd. 15 (2008) (stating that "'[m]ay' is permissive"), *with id.*, subd. 16 (2008) (stating that "'[s]hall' is mandatory").

As indicated earlier, the district court must examine the impact of the CPA on the marital estate of the parties. Other concerns include the consideration provided by Thomas Haubenschild during his marriage for the HFI stock. This topic embraces the price he paid for the stock, which is addressed by this record, the matter of any gift-related questions presented by the stock's price being less than its value, and the appreciation of the stock attributable to the personal service that Thomas Haubenschild provided for HFI after he bought the stock. Finally, an inquiry into the CPA and its

divorce-trigger provision require attention to the evidence that it was designed for the purpose of reducing this or other marital estates; this inquiry would also extend to the circumstances and implications of the evidence in the present record that Thomas Haubenschild continues serving HFI in the same manner that he did before the 2005 buyout, and that he does so despite his family's testimony that the buyout was at least partially prompted by the allegedly inferior work he was doing for the corporation.

Many of these questions are beyond the scope of this appeal. But in the larger context of the Haubenschild dissolution, the questions are evidently relevant.