

Court Rules Bankruptcy Code Does Not Preempt California Buy-Out Statute

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A few weeks ago, I [wrote](#) about Judge [Troy L. Nunley's](#) holding that the limitations on distributions in Chapter 5 of the General Corporation Law do not apply to a corporation's repurchase of shares pursuant to Section 2000 of the Corporations Code. *Clark v. S&J Adver., Inc.*, 2019 U.S. Dist. LEXIS 198725. Section 2000 allows the corporation or, if it does not elect to purchase, the holders of 50% or more of the voting power of the corporation to avoid the dissolution of the corporation by purchasing for cash the shares owned by the plaintiffs or by the shareholders so initiating the proceeding at their fair value.

The shareholder initiating the dissolution triggering the corporation's buy-out right was a debtor in bankruptcy. Hence, she argued that Section 363 (11 U.S.C. § 363) preempted Section 2000. Judge Nunley rejected this argument finding that she had failed"

"to provide the Court with any authority to suggest a federal interest required the bankruptcy court to apply § 363 rather than § 2000. Section 363 does not discuss the valuation and sale of corporate shares specifically, while § 2000 is directly on point."

The shareholder also argued that a bankruptcy court could not compel sale by a Chapter 13 debtor. Judge Nunley, however, found that the case had been converted to Chapter 7 when the sale was ordered.

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