

IN THE CIRCUIT COURT OF THE  
NINETEENTH JUDICIAL CIRCUIT  
IN AND FOR INDIAN RIVER COUNTY  
FLORIDA

Case No. 312017DR000305

Judge: Robert L. Pegg

IN RE: The Marriage of

JUDITH HEBERT,  
Petitioner, Wife,  
and

STEPHANE COTE,  
Respondent / Husband.

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**ORDER EXCLUDING EXPERT TESTIMONY OF CHARLES CLAY PRICE, CPA  
REGARDING THE VALUATION OF CANIX COLO, INC.**

This cause having come on to be heard upon the husband's Motion To Exclude Expert Testimony of Charles Clay Price, CPA,, and the court having considered the evidence presented and argument of counsel, and being otherwise duly advised in the premises, the court finds as follows:

1. The parties were married on October 3, 2009.
2. During April, 2003, the husband created a Canadian company called Canix Colo, Inc., (Canix). The purpose of the company was to host computer servers for various companies.
3. The company grew rapidly and the husband sought to expand the business in a new location. During negotiations for the financing of the growth, the husband made a decision to sell the company instead. The company was sold on February 10, 2011. The eventual sale price was \$37 million dollars with net sales proceeds of \$22 million dollars.

4. All documents relating to the formation of Canix and its ownership were all in the husband's name alone. The proceeds from the sale were deposited in accounts in the sole name of the husband.

5. The wife has retained the services of Charles Clay Price, Certified Public Accountant, to determine her interest in Canix Colo. He believes that the value of Canix Colo increased significantly from the date of the marriage, October 3, 2009, to the date of the sale, February 10, 2011.

6. Mr. Price has attempted to calculate a "Minimum Marital Component" from the proceeds of the Canix Colo sale of \$8,918,136 from the gross sale and \$6,453,721 for the net sale.

7. His methodology for making this calculation is basically as follows:

a. He uses the revenue and retained earnings between July 31, 2009, and July 31, 2010;

b. He calculates the difference in those figures between those dates and references it as a percentage change;

c. Using the percentage change in retained earnings between July 31, 2009 and July 31, 2010, he applies that figure to the dates of October 3, 2009, (date of marriage), and February 10, 2011 (date of sale of Canix Colo). He then calculates a value for retained earnings as of October 3, 2009;

d. Mr. Price also creates a "goodwill" component of the sale proceeds by starting with the gross sales price and subtracting the retained earnings as of the sale date;

e. By applying the percentage change in revenues between July 31, 2009 and July 31, 2010, to the “goodwill” value of February 10, 2011, Mr. Price calculates a “goodwill” value as of the date of the marriage;

f. Finally, Mr. Price uses the extrapolated value of the increase in “goodwill” between October 3, 2009 and February 10, 2011, and adds it to the extrapolated value of the increase in retained earnings between those same dates. This calculation results in an opinion of \$8,919,136 as the “Minimum Marital Component” value of Canix Colo, Inc..

### **DISCUSSION**

§90.702 Florida Statutes (2017) governs the testimony of experts. It provides as follows:

*If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:*

- (1) The testimony is based upon sufficient facts or data;*
- (2) The testimony is the product of reliable principles and methods;*
- and*
- (3) The witness has applied the principles and methods reliably to the facts of the case.*

The burden of laying the proper foundation for the admission of expert testimony is on the party offering the expert, and the admissibility must be shown by a preponderance of the evidence. *Kilpatrick v. Breg, Inc.*, 613 F.3d 1329, (2010). §90.702 was revised in 2013 to require a *Daubert* standard rather than *Frye*.

To make an award for the enhancement in value and appreciation of a nonmarital asset, the court must make specific findings as to the value of such enhancement and appreciation during the marriage, as well as which portion of that enhanced value is attributable to marital funds and labor. *Higgins v. Higgins*, 226 So.3d 901, (4<sup>th</sup> DCA 2017). The correct approach in determining if any portion of Canix Colo, Inc. is marital is to determine the value at the date of the marriage and again at the date of the sale.

§61.075(6)(a)1.b. *Florida Statutes (2017)* states that only the enhanced value of non-marital assets resulting from the efforts of either party during the marriage will become marital. *Ramos v. Ramos*, 230 So.3d 893, (4<sup>th</sup> DCA 2017). The husband has the initial burden of proving that he owned the business prior to the marriage. The burden then shifts to the other spouse to prove that some portion of the premarital business became marital through an enhancement of value. *Ramos*.

The correct (and accepted) approach in determining when any portion of the husband's company is marital is to determine the value at the time of the marriage and again at the time of the dissolution. *Anson v. Anson*, 772 So.2d 52, (5<sup>th</sup> DCA 2000). If appreciation took place, an analysis of the reasons for appreciation must be undertaken to determine whether to classify all or a portion of the appreciation as marital.

Mr. Price candidly admits that he did not attempt to arrive at a fair market value for Canix Colo, Inc.. He cannot, and does not attempt to, give an opinion on the increase in value between the dates of the marriage and the sale of the

company. He did not request or receive any documents from the husband or Canix Colo that would aid him in making such an evaluation. In fact, he uses a completely different technique to arrive at a “minimum marital component” of value.

Certified Public Accounts are required to conform to the standards contained in the Statement of Standards for Valuation Services (SSVS) when rendering an opinion of value. Typically that opinion of value can be based on one of three different methods to arrive at a fair market value: the market approach, asset approach, and the income approach. Mr. Price does not use any of these.

Additionally, in rendering an opinion, only known facts may be used in making the evaluation. The use of any “subsequent act” is prohibited. Mr. Price uses the sale of Canix Colo as one of the anchor points in reaching his conclusion of valuation.

Mr. Price believes his opinion is permitted under SSVS because he was retained for a “Calculation Engagement”. This type of calculation has no precedent in any statutory or case law in the state of Florida to render an opinion of fair market value. The only approved methodology is the fair market value calculation. The opinion of Mr. Price does not conform to that standard.

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8. I am making a finding of fact that the opinion of Charles Clay Price, CPA, regarding a “minimum marital component” of Canix Colo, Inc. does not meet the only recognized valuation standard of “fair market value”.

9. The opinion of Charles Clay Price, CPA, regarding the valuation of Canix Colo, Inc. does not conform to the requirements §90.702 *Florida Statutes* (2017).

10. The opinion of Mr. Price is should be stricken and not be admitted as evidence in the trial in this cause regarding the valuation. or marital component, of Canix Colo, Inc..

It is therefore

**ORDERED AND ADJUDGED** as follows;

1. The opinion of Charles Clay Price, CPA, regarding the valuation of Canix Colo, Inc. does not conform to the requirements §90.702 *Florida Statutes* (2017).

2. The opinion of Charles Clay Price, CPA, is hereby stricken and shall not be admitted as evidence regarding the valuation or “marital component” of Canix Colo, Inc..

**DONE AND ORDERED** this 29<sup>th</sup> day of May, 2018, in Vero Beach, Indian River County, Florida.



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ROBERT L. PEGG  
Circuit Judge

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