

# Is Your CPA Prepared to Testify?

*Springer v. The Library Store* (2017 IL App (3d) 160577-U)

**Citation:** 2017 U.S. IL. App. (3d) 160557-U)

**Date of Decision:** Nov. 17, 2017

**Court:** Appellate Court of Illinois

**By:** Tony Garvy and James Arogeti



**CVS Comment:** In a recent shareholder oppression case, *Springer V. The Library Store* (2017 IL App (3d) 160577-U), the Appellate Court affirmed the Trial Court over issues of shareholder oppression, so-called heavy-handed tactics and expert witness testimony. The Plaintiff's expert failed to lay the foundation needed to submit another expert's report. In a recent court case from November 17, 2017 – *Springer vs. Library Store*, a dissenting shareholder matter is a good reminder that it is picking the right appraiser can make substantial difference between winning and losing.

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Cynthia Springer was terminated from employment at The Library Store (TLS) after being diagnosed with a life-threatening cancer. Cynthia was a shareholder, employee and board member of TLS up until October 2007.

Two months after termination, the majority of the directors elected to reduce the board by one seat, and Cynthia was not elected back to the board. In July of 2008 Cynthia filed multiple complaints in federal court alleging violation of the Americans with Disability Act (ADA), retaliation, and wrongful termination. Thereafter, Cynthia passed away in October 2008. In 2010, the federal case was settled and dismissed. Later, Rollie Springer (Belated Husband to Cynthia, Executor of Cynthia's Estate and Plaintiff), filed a multi-count complaint in state court against the defendants (Don, Marilyn, Stephen and Gregory Gunter) in February of 2011 for alleged shareholder oppression against each individual defendant, infliction of emotional distress, and civil conspiracy. In 2010 TLS sold the building to Gunter Properties (Owned by the defendants)

for \$835,000 and leased it back to TLS for \$15,000 per month.

Neil Gerber, testified in the case on behalf of the plaintiff. Gerber argued that the salaries of the officer's before and after Cynthia's death were significantly modified. After the death of Cynthia, the salaries of the Officer's significantly increased, at that same time, distributions to the shareholders significantly decreased. He stated it was concerning in the context of the post 2008 Great Recession had an enormous negative effect on the company. Gerber had used several different analyses including: historical percentage historical average and independent investors test. Another point that Gerber was trying to make was that TLS was paying excessive rent to Gunter Properties. In making this argument, Mr. Gerber cited an appraisal prepared by another expert. The defendants objected to Mr. Gerber citing another expert's work and the Trial Court agreed and barred that testimony and other expert's report. The defendant's expert, Bethany Hearn, CPA, argued that the salaries of the officers are viable because the company had to "reinvent itself" and change its business model after 2008. The Trial Judge decided the argument of Bethany Hearn was stronger due to her rate of return of 8-12%, which he deemed reasonable. Further

she laid the foundation of her argument based on her experience and she utilized information from several publications. Gerber had only used his experience to determine a reasonable rate of return and did not use other supporting sources.

#### The Appellate Court's Decision

The Appellate Court affirmed the Trial Court in its entirety. On the legal matters, the Appellate Court stated that contracting a board seat was not an abuse or heavy handed when the board couldn't function with a dissident shareholder with her attorney present at board meetings.

The Appellate Court also found that the Trial Court did not error in precluding the testimony from Mr. Gerber in relation to a report prepared by another appraiser expert. The Appellate Court explained that Mr. Gerber failed to lay the proper foundation that relying on another expert's work is customary in this type of analysis. Therefore, the Trial Court didn't abuse its discretion in barring that testimony.

Tony Garvy, ASA, CPA/ ABV /CFF, CVA, CDFA, FCPA ([tgarvy@coporatevaluationservices.com](mailto:tgarvy@coporatevaluationservices.com)) is President of Corporate Valuations Services, Inc. and James Arogeti, CFA, CVA ([jarogeti@coporatevaluationservices.com](mailto:jarogeti@coporatevaluationservices.com)) is Manager of Corporate Valuation Services, Inc.

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