## Georgia State University ScholarWorks @ Georgia State University

Georgia Business Court Opinions

College of Law

2-3-2012

# Order on Motions for Summary Judgment (NICHOLSON ADVISORS)

Elizabeth E. Long
Fulton County Superior Court

Follow this and additional works at: http://scholarworks.gsu.edu/col businesscourt

### Recommended Citation

Long, Elizabeth E., "Order on Motions for Summary Judgment (NICHOLSON ADVISORS)" (2012). *Georgia Business Court Opinions*. Paper 229.

http://scholarworks.gsu.edu/col\_businesscourt/229

This Court Order is brought to you for free and open access by the College of Law at ScholarWorks @ Georgia State University. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of ScholarWorks @ Georgia State University. For more information, please contact scholarworks@gsu.edu.

## IN THE SUPERIOR COURT OF FULTON COUNT STATE OF GEORGIA

	F	ILED IN OFFICE	8	
	Z	FEB 0 3 2012	M M	
	DE	PUTY OLERK SUPERIOR COURT FULTON COUNTY, GA	00	

NICHOLSON ADVISORS, LLC Plaintiff,	BUS 2  DEPUTY CLERK SUPERIOR COL	
V.	) Civil Action File No. 2010-CV-191156	
GAA-NICHOLSON PARNTERS, LP,		
Defendant.		
NICHOLSON DEVELOPMENT PARTNERS, LLC, Plaintiff,		
<b>v.</b>	Civil Action File No. 2011-CV-197188	
GAA-NICHOLSON ADVISORS, LLC,		
Defendant.	) )	

#### ORDER ON MOTIONS FOR SUMMARY JUDGMENT

This matter is before the Court on Plaintiff's Motion for Summary Judgment on Counts

One and Two of Plaintiff's Complaint and for Entry of Final Judgment on all Buy-Sell Issues.

Upon consideration of the motions, the briefs submitted on the motions, and all matters of record in these cases, the Court finds as follows:

At issue is a dispute over issues concerning buy-sell transactions in two cases. With respect to the buy-sell transaction associated with GAA-Nicholson, LLC (the "Property Owner"), the parties were apparently in dispute over the buy-sell price in case number 2010-CV-191156; however, upon review of the briefs, both sides now agree that the buy-sell price is \$3,412,102.42, unless Defendant GAA-Nicholson Partners, LP's ("Partners") pays the 2011 real property taxes currently due and owing, in which case the buy-sell price would be increased to \$3,734,046.62. Accordingly, the Court **GRANTS** Plaintiffs' Motion and finds that the buy-sell price is, as the parties agree, \$3,412,102.42, unless Partners pays 2011 taxes associated with the Property Owner, in which case the buy-sell price will increase dollar for dollar by the amount of

the tax payment. In case number 2011-CV-197188, the parties agree that the buy-sell price is \$224,000.

The parties also dispute the form of assignment that the seller must execute in connection with the Property Owner buy-sell transaction, as well as the buy sell transaction associated with Nicholson Advisors, LLC (the "Company"). In both cases, Defendant advocates for an assignment that expressly reserves certain claims raised in another case pending before this Court. On the other hand, Plaintiff argues that the assignment language must track the operating agreements, which require that Defendant assign all, but not less than all, of its Membership Interest in each entity.

Upon review of the operating agreements, the Court finds that Defendant is required to provide an assignment consistent with section 13.4.2 of the operating agreements, which requires the buy-sell seller to "sell all, but not less than all" of its Membership Interest to the buy-sell purchaser. Accordingly, Plaintiff's Motions are **GRANTED**. The Clerk is directed to enter a final judgment on Counts One and Two of Plaintiff's Complaint in both cases reflected on the caption of this Order.

**SO ORDERED** this \_\_\_\_\_\_ day of February, 2012.

Elizabeth E. Long, SENIOR JUDGE Superior Court of Fulton County

Atlanta Judicial Circuit

## Copies sent via email to:

Charles L. Gregory

Jim Sherman

Ray & Sherman, LLC

One Securities Centre

3490 Piedmont Road, Suite 700

Atlanta, GA 30305

 $\underline{cgregory@rayandsherman.com}$ 

mgeer@rayandsherman.com

John A Christy

Mark W. Forsling

Robert H. Snyder

Schreeder, Wheeler & Flint, LLP

1100 Peachtree Street, N.E.

Suite 800

Atlanta, GA 30309-4516

jchristy@swfllp.com

mforsling@swfllp.com

rsnyder@swfllp.com