

alienation, and possession that survived the death of the Decedent.”

- “The record on appeal is sufficient for us to render a final judgment and dispose of the sole issue in this case without prolonging it by remand at the cost of more time and money to the parties.”

- “[We] hold that the correct quantum of the fractional-ownership discounts applicable to the Decedent’s pro rata share of the stipulated FMVs of the various works of art are those determined by the Estate’s experts....”

As you can read in the above quotes from the Fifth Circuit, this was a complete rejection of the Tax Court’s valuation discount decision in *Elkins*. As a sop to the Judge in *Elkins*, the Fifth Circuit stated, “We are never comfortable in disagreeing with, much less reversing, a jurist of the experience, reputation, and respect enjoyed by the Tax Court judge whose work product we are called on to review today. Yet, our review of the court’s extensive explication of this case and its ultimate conclusion that the proper discount is 10 percent, leaves us with the ‘definite and firm conviction that a mistake has been made.’”

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<sup>[1]</sup>No. 13-60472 (September 15, 2014) overturning *Estate of Elkins* 140 T.C. No. 5 (March 11, 2013)

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<sup>[2]</sup> The Fifth Circuit, while never addressing this issue directly, clearly considered the co-tenant agreement in its overturning of the Tax Court’s conclusions. This author has previously faulted the Tax Court’s decision in *Elkins* because the Tax Court failed to consider the exceptions to Section 2703(a) found in Section 2703(b). The co-tenant agreement appeared to qualify under each of the three exceptions in Section 2703(b).

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