

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
BUSINESS COURT**

**NICOLE ANTAKLI,  
Plaintiff,**

**v.**

**Case No. 13-135553-CB  
Hon. James M. Alexander**

**JEHAD ANTAKLI, ET AL,  
Defendants.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on the Individual Defendants' Motion for Summary Disposition of Plaintiff's Counts I and II and Defendants' Joint Motion for Summary Disposition of Plaintiff's Count III. These Defendants have moved for summary disposition before, which resulted in a January 22, 2014 Opinion.

Generally, as stated by the Court in its prior Summary Opinion:

Plaintiff is a minority shareholder and former President, COO, and Director of Defendant Intraco Corporation. The remaining Defendants are also Intraco shareholders and Plaintiff's mother, sister, and brothers. Plaintiff's Complaint alleges that the Defendant shareholders (the Family Control group) systematically oppressed Plaintiff, removed her as President and COO, reduced her compensation, and otherwise interfered with her interests as a shareholder.

Plaintiff's Complaint alleges claims of: (1) Shareholder Oppression; (2) Breach of Fiduciary Duty; (3) Tortious Interference with Prospective Business Relationship; and (4) Equitable Dissolution.

As they did before, Defendants characterize this case as a "family dispute, and not a legal dispute requiring Court adjudication." To their end, Defendants again seek summary disposition

under MCR 2.116(C)(8) or (C)(10). In her Response, Plaintiff also asks the Court to enter judgment in her favor on her shareholder oppression claim under MCR 2.116(I)(2).

A (C)(8) motion tests the legal sufficiency of the complaint. When deciding such a motion, the Court may only consider the pleadings. MCR 2.116(G)(5).

And a (C)(10) motion tests the factual sufficiency of the complaint. As has been said countless times, the Court is always suspect when it receives (C)(10) motions with hundreds of pages of exhibits.

### **1. Shareholder Oppression – Count I**

Defendants first claim that Plaintiff's Shareholder Oppression claim should be dismissed because Plaintiff "cannot show any oppressive conduct that injured her interests as a Shareholder."

Under MCL 450.1489(1), in order to establish a shareholder oppression claim, a plaintiff must establish "that the acts of the directors or those in control of the corporation are illegal, fraudulent, or willfully unfair and oppressive to the corporation or to the shareholder."

The statute defines "willfully unfair and oppressive conduct" as:

a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the shareholder as a shareholder. Willfully unfair and oppressive conduct may include the termination of employment or limitations on employment benefits to the extent that the actions interfere with distributions or other shareholder interests disproportionately as to the affected shareholder. The term does not include conduct or actions that are permitted by an agreement, the articles of incorporation, the bylaws, or a consistently applied written corporate policy or procedure. MCL 450.1489(3).

Defendants argue that they are entitled to summary disposition of this claim because this statute "does not apply to the facts of this case because Plaintiff continues to receive her share of

distributions and other benefits.” Further, Defendants argue that “Plaintiff cannot show that her employment as President and COO was a shareholder interest.”

In fact, Defendants argue: “Plaintiff was never: [1] deprived of the right to vote; [2] deprived of inspecting books and records; [3] deprived of receiving a dividend or distribution; [4] deprived of entering into any voting agreement; [or] [5] deprived of the right to elect directors.” Finally, Defendants claim that the August 8, 2011 meeting (at which, Plaintiff was removed) “was valid and duly noticed.”

In response, Plaintiff argues that she was oppressed in the following ways: (1) her voting rights were interfered with; (2) she does not have full access to corporate financial information; (3) her distribution and dividend rights have been interfered with; (4) her rights to expense reimbursement was interfered with; (5) the majority took her shareholder management rights; and (6) she was not provided a tax liability distribution.

And Plaintiff attaches many, many documents in the form of meeting minutes, emails, deposition transcripts, and her own Affidavit – supporting her allegations on this claim. Although there are many, one such example is Plaintiff’s claim that the majority is interfering with her distribution/dividend rights. Plaintiff presents evidence that she appears to be the only Intraco shareholder whose total compensation (through wages and distributions) has declined in recent years.<sup>1</sup> And an email from one shareholder to another appears to state that bonus distributions are being held back “because of the situation with [Plaintiff].”

In their Reply Brief, Defendants challenge Plaintiff’s characterization of this case. Defendants claim that Plaintiff “still receives distributions, participates in shareholder meetings, and

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<sup>1</sup> Michael Rosseau, Intraco’s Vice President of Finance & Administration and Board of Directors Secretary testified at deposition that shareholder compensation was paid as a distribution, salary, and/or bonus – depending on the tax

has been given the books and records of the company.” Again, however, Plaintiff disputes this and offers evidence in support of her claims. And while she may receive some distributions, Plaintiff claims (with evidentiary support) that her distributions are far less than other shareholders.

Defendants also characterize Plaintiff’s affidavit as “self-serving” and not worthy of consideration. But the Court is bound to view her affidavit as evidence – particularly as many assertions are supported by documentary evidence.

Further, Defendants’ claim amounts to an attack on Plaintiff’s credibility, and credibility is an issue that must be submitted to the trier of fact. *White v Taylor Distributing Company, Inc*, 275 Mich App 615; 739 NW2d 132 (2007). The *White* Court reasoned that, “courts may not resolve factual disputes or determine credibility in ruling on a summary disposition motion” *White, supra* at 625, citing *Burkhardt v Bailey*, 260 Mich App 636, 646-647; 680 NW2d 453 (2004); and *Foreman v Foreman*, 266 Mich App 132, 135-136; 701 NW2d 167 (2005).

It would be wholly inappropriate for this Court to weigh or disregard evidence on a motion for summary disposition – which is what Defendants suggest the Court do in order to rule in their favor.

For the foregoing reasons and viewing the evidence in the light most favorable to Plaintiff, this Court cannot conclude that there are no material facts in dispute whereby Defendants are entitled to judgment as a matter of law. As a result, Defendants’ Motion for Summary Disposition under (C)(10) is DENIED. Plaintiff’s motion under (I)(2) is likewise DENIED.

Resolution of this claim is so substantially intertwined with fact-finding and credibility determinations as to render summary disposition wholly inappropriate.

## 2. Breach of Fiduciary Duty – Count II

Defendants next argue that they are entitled to summary disposition of Plaintiff's breach of fiduciary duty claim because there is no evidence of any breach and Defendants' actions are protected under the Business Judgment Rule.

Michigan law recognizes that "directors and officers of corporations are fiduciaries who owe a strict duty of good faith to the corporation which they serve." *Salvador v Connor*, 87 Mich App 664, 675; 276 NW2d 458 (1978). The *Salvador* Court continued:

The same is true of majority shareholders, since: **[The] law requires the majority in control of the corporation the utmost good faith in its control and management as to the minority** and it is the essence of this trust that it must be so managed so as to produce to each shareholder, the best possible return upon his investment. *Id.* at 675 (internal citations omitted) (emphasis added).

Defendants argue that their actions were protected by the Business Judgment Rule, quoting *In re Estate of Butterfield*, 418 Mich 241; 341 NW2d 453 (1983), for the proposition that "[i]n the absence of bad faith or fraud, a court should not substitute its judgment for that of corporate directors," and therefore, "[a] court should be most reluctant to interfere with the business judgment and discretion of directors in the conduct of corporate affairs." *Id.* at 255. But the very next sentence of *Butterfield* continues "[h]owever, when a board's refusal to declare a dividend constitutes a breach of its fiduciary duty to the shareholders, this amounts to a breach of trust and is ground for court intervention." *Id.* at 255-256.

Plaintiff has alleged that the Family Control Group has "frozen her out of Intraco," "halved [her] salary and reduced her total compensation by over 80 percent." Additionally, Plaintiff claims that she has been repeatedly denied expense reimbursement – while the other shareholders'

reimbursement requests are readily paid. As a result, Plaintiff claims that it is the “differential treatment” that she receives relative to other shareholders that constitutes a breach of fiduciary duty.

Again, just as in its shareholder oppression analysis, the Court notes that Plaintiff attaches substantial documentary evidence, including her own Affidavit, supporting her claims. In short, Plaintiff has produced more than sufficient evidence to survive summary disposition on this claim.

For the foregoing reasons, Defendants’ motion for summary disposition of Plaintiff’s breach of fiduciary duty claim under (C)(10) is DENIED.

### **3. Tortious Interference – Count III**

Defendants next claim that Plaintiff’s tortious interference claim<sup>2</sup> fails because Plaintiff fails to allege that: (1) Defendants are third parties to Intraco; or (2) Defendants acted strictly to further their own personal motives.

To support such a claim, a plaintiff must allege and prove, in relevant part that, “the defendant was a ‘third party’ to the contract or business relationship,” and they acted to further “strictly personal motives.” *Dzierwa v Michigan Oil Co*, 152 Mich App 281, 287; 393 NW2d 610 (1986) and *Feaheny v Caldwell*, 175 Mich App 291, 305; 437 NW2d 358 (1989) respectively.

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<sup>2</sup> Michigan law provides that:

The elements of tortious interference with a business relationship are the existence of a valid business relationship or expectancy, knowledge of the relationship or expectancy on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and resultant damage to the plaintiff. To establish that a lawful act was done with malice and without justification, the plaintiff must demonstrate, with specificity, affirmative acts by the defendant that corroborate the improper motive of the interference. Where the defendant’s actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference. *Badiee v Brighton Area Sch*, 265 Mich App 343, 365-366; 695 NW2d 521 (2005); quoting *Mino v Clio Sch Dist*, 255 Mich App 60, 78; 661 NW2d 586 (2003), and *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996).

In its prior summary opinion on this claim, the Court held that Plaintiff's allegations "fall far short of the conduct necessary to establish [such a] claim." The Court also expressed its "skepticism" that Plaintiff could maintain this claim in these circumstances, but still allowed Plaintiff an opportunity to amend her Complaint to adequately plead the same.

In its Amended Complaint, Plaintiff bases its tortious interference claim on the allegation that "Defendants have intentionally taken actions against Plaintiff to interfere with her business relationship and expectancy with Intraco, including removing Plaintiff from her position as President and COO." Plaintiff alleges that these intentional actions were generally motivated "for the purpose of oppressing her as a minority shareholder and dissuading her from exercising her shareholder rights."

In other words, Plaintiff's tortious interference claim is simply be a recast shareholder oppression or breach of fiduciary duty claim.

The Court previously summarized *Dzierwa* as follows:

In *Dzierwa*, an employee sued his former employer following his termination – including, among others, a claim for tortious interference. The Court of Appeals, however, concluded that he could not pursue the tortious interference claim against the President of the company because the President was a controlling shareholder of the corporation and, therefore, could not be considered a third party.

Such is the case here. The individual Defendants are all corporate officers and cannot, therefore, be third parties to Intraco. The Court is not inclined to extend applicability of this claim to instances where the other shareholders allegedly interfered in a business relationship that consisted solely of plaintiff's shareholder status in the same corporation, and Plaintiff presents no compelling reason to do so.

For these reasons, considering only the pleadings, and viewing all well-pled factual allegations in the light most favorable to Plaintiff, this Court concludes that Plaintiff's claim is "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." As a result, summary disposition of the same is appropriate under MCR 2.116(C)(8).

In her Response, Plaintiff again asks that the Court allow her an opportunity to amend her Complaint should the Court grant Defendants' motion. But Plaintiff fails to suggest a proposed amendment that would convince the Court that said claim is appropriate in these circumstances. For this reason, Plaintiff's second request to amend is DENIED.

### **Summary**

To summarize, the Individual Defendants' Motion for Summary Disposition of Plaintiff's Counts I and II is DENIED.

Defendants' Joint Motion for Summary Disposition of Plaintiff's Count III, however, is GRANTED, and Plaintiff's claim for tortious interference with prospective business relationship (Count III) is DISMISSED.

**IT IS SO ORDERED.**

January 14, 2015  
Date

/s/ James M. Alexander  
Hon. James M. Alexander, Circuit Court Judge