

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

**MICHAEL WAYNE,
Plaintiff,**

v.

**Case No. 14-144499-CZ
Hon. James M. Alexander**

**JONATHAN R. LODDEN, ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendants Michigan Network Services (MNS), Lodden, Powell, Robinson, O'Connor, Transnetworks, and Lodden Services' motion for summary disposition. Plaintiff is a 25% owner of Defendants MNS and Transnetworks. Defendant Jonathan Lodden is a 40% shareholder in MNS and Transnetworks and the manager of MNS. The current dispute revolves around the sale of MNS's and Transnetworks' assets to Defendant 123.NET – allegedly connected with the resolution of a prior lawsuit.

Plaintiff generally claims that he was unaware of the final transaction, which was unlawful and fraudulent. As a result, Plaintiff sued on claims of (1) breach of fiduciary duty, (2) minority oppression, (3) conversion, (4) declaratory relief, (5) breach of management duties, (6) unjust enrichment, (7) civil conspiracy, (8) accounting, (9) aiding and abetting breach of fiduciary duty, and (10) potential interference with an economic relationship/business advantage.

Defendants now move for summary disposition under MCR 2.116(C)(8), which tests the legal sufficiency of the complaint. When considering such a motion, all well-pled factual

allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dept of Corrections*, 439 Mich 158, 162-163; 483 NW2d 26 (1992). A motion under this subrule may be granted only where the claims alleged are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Id.* at 163. When deciding such a motion, the court considers only the pleadings. MCR 2.116(G)(5).

Defendants first argue that they are entitled to summary disposition of Plaintiff’s Counts I, III, IV, V, VI, VII, IX, and X because Plaintiff “does not have the capacity to sue and therefore has no standing.” Although not entirely clear, Defendants appear to base their request on the argument that “a shareholder cannot sue on his own behalf merely because the acts complained of resulted in damage both to the corporation and to the individual.”

Defendants also claim that Plaintiff cannot succeed on his Count II for minority oppression because he fails to allege that Defendant Lodden was a majority member. Finally, Defendants argue that Plaintiff is not entitled to an accounting under Count VIII.

But, as Plaintiff responds, 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] 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).

Further is long recognized that “A director is a fiduciary. So is a dominant or controlling stockholder or group of stockholders.” *Pepper v Litton*, 308 US 295, 305; 60 S Ct 238; 84 L Ed 281 (1939) (internal citation omitted).

Further, Michigan's Limited Liability Company Act, at MCL 450.4515(1) (emphasis added), provides:

A member of a limited liability company may bring an action . . . to establish that acts of the managers or members in control of the limited liability company are illegal or fraudulent or constitute willfully unfair and oppressive conduct toward the limited liability company or the member.

If Plaintiff establishes such conduct, the Court has broad discretion to craft an appropriate remedy under MCL 450.4515(1)(a)-(e). This section goes on to define "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 member as a member. 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 member interests disproportionately as to the affected member. The term does not include conduct or actions that are permitted by the articles of organization, an operating agreement, another agreement to which the member is a party, or a consistently applied written company policy or procedure. MCL 450.4515(2).

In his Complaint, Plaintiff alleges that Defendants engaged in illegal, fraudulent and or willfully unfair and oppressive conduct toward Plaintiff by, among other things, (1) failing to conduct appropriate votes, (2) failing to provide notice of meetings, (3) making distributions in violation of statute, (4) paying excessive salaries, (5) terminating Plaintiff's membership interests in MNS, and (6) neglecting to disclose fundamental information about MNS and Transnetworks upon demand.

In their Reply Brief, Defendants (apparently confused about the (C)(8) standard) dispute Plaintiff's factual allegations and request summary disposition based on its view of the facts – rather than the allegations pled in Plaintiff's Complaint. But this is not the standard. When reviewing a (C)(8) motion, the Court is required to accept Plaintiff's factual allegations as true and construe the same in a light most favorable to Plaintiff.

In so doing, the Court cannot conclude that Plaintiff's claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery."

As a result, Defendants' motion for summary disposition is DENIED.

IT IS SO ORDERED.

May 27, 2015
Date

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