



the company's taxes, barring his access to books and records, and in September 2011, "arbitrarily and unilaterally" reducing Patel's membership interest to 25%.

Plaintiffs claim that Defendants also demanded money for loan payments to Rachmale, refused to acknowledge his "substantial work" performed for Best Value, and demanded that Patel relinquish his shares of Best Value. Plaintiffs also claim that Best Value's 2012 Federal Tax Return reported that Rachmale's wife owned 95% of the company, with 5% owned by Bhalla.

On these general claims, Plaintiffs sued on claims of breach of contract (Counts I and II), breach of fiduciary duties (Counts III and IV), minority shareholder oppression (Count V), unjust enrichment (Count VI), and conversion (Counts VII and VIII).

As stated, Defendants now moves for summary disposition under MCR 2.116(C)(7), (C)(8), or (C)(10). A motion under (C)(7) determines whether a claim is barred, among other grounds, by a statute of limitations. A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. And a motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

#### **I. Defendants' Motion on Count I**

Defendants first argue that Plaintiffs' Count I for breach of contract fails because the alleged breach is not founded on any obligation contained therein.

With respect to Count I, Plaintiffs' Complaint alleges:

80. The MOU is a valid, enforceable, and binding contract.

81. By failing to present an Operating Agreement, let alone an Operating Agreement containing all the MOU understanding, to Plaintiff Advanced Pharmacy for its review and approval, Defendants [Advanced Seniors] and Rachmale breached the MOU.

82. As proximate results of Defendant [Advanced Seniors'] and Defendant Rachmale's breach of contract, Plaintiff Advanced Pharmacy has suffered the damages outlined . . . above.

Plaintiffs appear to have pled this Count on the foundation that the MOU requires Defendants Advanced Seniors and Rachmale to present an Operating Agreement. But, Defendants claim, "the MOU is silent as to which 50% member was to 'present' an operating agreement." As a result, Defendants claim, "the failure of any Defendant to prepare an operating agreement is not a breach of any term contained within the MOU subjecting Defendants . . . to liability."

In order to prove breach of contract, a plaintiff must establish: (1) the existence of a contract; (2) a breach of that contract; and (3) damages resulting from that breach. *Stoken v JET Electronics & Technology, Inc*, 174 Mich App 457, 463; 436 NW2d 389 (1988).

Michigan law is well-established that "[a] contract must be interpreted according to its plain and ordinary meaning." *Holmes v Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008), citing *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998). "Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court. If the contract is subject to two reasonable interpretations, factual development is necessary to determine the intent of the parties and summary disposition is therefore inappropriate." *Holmes*, 281 Mich App at 594; quoting *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997).

Plaintiffs cite to the following portion of the MOU: "Once the parties agree to this MOU, Articles of Incorporation and an Operating Agreement will be presented for review and

execution, which Operating Agreement will incorporate in principle part all of the understandings contained herein.”

Plaintiffs appear to argue that Defendants actually prepared an Operating Agreement, but they never forwarded it to Plaintiffs for review and approval. In fact, Plaintiffs claim that Defendants never even informed them of the existence of this “Unilateral Operating Agreement.” Further, Plaintiffs allege that Defendants drafted all proposed MOUs, and this made them, the “true drafting parties.”

Based on the same, Plaintiffs argue that cited provision is ambiguous – as it is unclear which party was obligated to draft the Operating Agreement. The Court disagrees.

The MOU is simply a preliminary agreement that provides that the parties will review and execute an Operating Agreement. The duty to draft the same did not fall on either party. This isn’t ambiguous. The parties simply didn’t agree that any particular party would be so obligated. And Plaintiffs cannot found a breach of contract claim on a nonexistent contractual obligation – as they attempt in their Count I.

For the above reasons and viewing all evidence in the light most favorable to Plaintiffs, the Court finds that there are no material questions of fact in dispute and Defendants are entitled to judgment as a matter of law. Therefore, the Court GRANTS Defendants’ motion for summary disposition of Plaintiffs’ Count I under (C)(10), and the same is DISMISSED.<sup>1</sup>

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<sup>1</sup> In the alternative, the Court would find that the six-year statute of limitations found in MCL 600.5807(8) would bar Count I. The fraudulent concealment statute, MCL 600.5855, has no application because Plaintiffs identify no affirmative act on Defendants’ part that somehow concealed the existence of Plaintiffs’ alleged claim. Rather, Plaintiffs always knew, from the first moment the MOU was signed, that nobody prepared any Operating Agreement. Defendants not conceal any claim.

## II. Defendants' Motion on Counts V, VII, and VIII.

Defendants next argue that they are entitled to summary disposition of Plaintiffs' minority shareholder oppression and conversion claims (Counts V, VII, and VIII) because the same are time barred. In support, Defendants cite MCL 450.4515(1)(e)<sup>2</sup> and MCL 600.5805(10),<sup>3</sup> which are the respective statutes of limitations on shareholder oppression and conversion claims.

And Defendants argue that the bulk majority of the conduct giving rise to Plaintiffs' Complaint precedes January 23, 2012 (three years before Plaintiffs filed their Complaint on January 23, 2015).<sup>4</sup>

In response, Plaintiffs simply argue that the Court should "deny the motion for the January 23, 2012 [to] present period" – apparently conceding Defendants' argument that portions of their oppression and conversion claims are time barred.

Indeed, the Court finds that Plaintiffs are limited to presenting conduct occurring after January 23, 2012 in support of their shareholder oppression and conversion claims. But Plaintiffs are barred from presenting any evidence of alleged conduct that precedes that date for purposes of establishing their entitlement to relief on said claims (Counts V, VII, and VIII, respectively).

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<sup>2</sup> MCL 450.4515(1)(e) provides (in relevant part): "An action seeking an award of damages must be commenced within 3 years after the cause of action under this section has accrued or within 2 years after the member discovers or reasonably should have discovered the cause of action under this section, whichever occurs first."

<sup>3</sup> MCL 600.5805(10) provides: "Except as otherwise provided in this section, the period of limitations is 3 years after the time of the death or injury for all actions to recover damages for the death of a person, or for injury to a person or property."

<sup>4</sup> Indeed, Plaintiffs' Complaint levels many allegations relating to conduct occurring before January 23, 2012, but it also makes allegations of conduct occurring after that date.

As a result, Defendants' motion for summary disposition is GRANTED IN PART under (C)(7) to the extent outlined above.

**IT IS SO ORDERED.**

February 16, 2016  
Date

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