

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

EDWARD CASTLE, JR.,

Plaintiff,

vs.

Case No. 2014-3568-CK

MARCIA SHOHAM, JONATHAN  
SHOHAM and MIDWEST AIR  
FILTER, INC.,

Defendants.

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OPINION AND ORDER

Defendants have filed a motion for partial summary disposition as to Plaintiff's breach of fiduciary duty claim against Defendant Midwest Air Filter, Inc. ("MAF"). Plaintiff has filed a response and requests that the motion be denied.

In addition, Defendants have filed a motion for dissolution. Plaintiff has filed a response and requests that the motion be denied.

*Factual and Procedural History*

Plaintiff is a minority owner of Filter Depot, LLC ("Filter Depot"). The remaining ownership interest of Filter Depot is held by MAF. MAF is owned by Defendants Marcia and Jonathan Shoham (collectively, the "Shoman Defendants").

In his complaint, Plaintiff alleges that MAF, at the direction of the Shoham Defendants has engaged in various improper activities. Plaintiff's complaint contains claims for: Oppression pursuant to MCL 450.4515 (Count I), Fraud (Count II), Breach of Contract (Count III), Unjust Enrichment (Count IV), Demand for Records pursuant to MCL 450.4503 (Count V), Accounting (Count VI), and Breach of Fiduciary Duty (Count VII).

On October 6, 2014, Defendants filed their motion for partial summary disposition pursuant to MCR 2.116(C)(8). On November 10, 2014, Plaintiff filed his response requesting that the motion be denied. On November 13, 2014, Defendants filed a reply in support of their motion. On November 17, 2014, the Court held a hearing in connection with the motion. At the conclusion of the hearing, the Court entered an order, *inter alia*, granting the portion of Defendants' motion seeking the dismissal of the Shoham Defendants without prejudice, taking the portion of Defendants' motion related to Plaintiff's breach of fiduciary duty claim under advisement, and denying the remainder of Defendants' motion.

On December 17, 2014, Plaintiff filed a motion for leave to file a first amended complaint. On January 13, 2015, the Court granted Plaintiff's motion.

On January 16, 2015, Defendants filed a motion for dissolution of the Filter Depot. On January 21, 2015, Plaintiff filed his response to the motion requesting that the motion be denied. On January 26, 2015, the Court held a hearing in connection with motion and took the matter under advisement.

The Court will address the two pending motions in turn.

1) Defendants' Motion for Summary Disposition of Plaintiff's Breach of Fiduciary Duty Claim.

*Standard of Review*

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party "has failed to state a claim on which relief can be granted." *Radtko v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439

Mich 158, 163; 483 NW2d 26 (1992); *Cork v Applebee's Inc*, 239 Mich App 311, 315-316; 608 NW2d 62 (2000).

### *Arguments and Analysis*

The core issue of the parties' dispute with respect to Plaintiff's breach of fiduciary duty claim against MAF is whether a majority member of an LLC owes a fiduciary duty to the minority member(s).

Under Michigan common law governing corporations, a majority or controlling shareholder is a fiduciary and holds a duty to the corporation and its minority shareholders to act in good faith. *Salvador v Connor*, 87 Mich App 664, 675; 276 NW2d 458 (1979). Specifically, Michigan Courts have recognized two types of situations in which a minority shareholder may maintain a breach of fiduciary duty claim against a majority shareholder: (1) When he has sustained a loss separate and distinct from that of other stockholders generally [*Christner v Anderson, Nietzke & Co, PC*, 433 Mich 1, 9; 444 NW2d 779 (1989)], and (2) When he can show a violation of a duty owed directly to him that is independent of the corporation. *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 464; 666 NW2d 271 (2003).

In their motion, Defendants contend that a majority member of an LLC, unlike a majority shareholder of a corporation, does not owe minority members a fiduciary duty. In support of their motion, Defendants rely on *Dawson v Delisle*, unpublished per curium opinion of the Court of Appeals, decided July 21, 2009 (Docket No. 283195). Specifically, Defendants rely on one sentence of the *Dawson* opinion in which the Court noted: "The LLCA's requirement that a manager discharge duties 'in the best interests of the limited liability company,' MCL 450.4404(1), indicate that a manager's fiduciary duties are owed to the company, not the individual members. *Id.* at 4, citing *Remora Investments, LLC v Orr*, 277 Va 316, 673 SE 2d 845

(2009). While the above-referenced sentence, when taken out of context, appears to indicate that a managing member only owes fiduciary duties to the LLC, the remainder of *Dawson* clarifies the state of the law in Michigan. Specifically, the Court acknowledged that the two situations that would allow a minority shareholder to pursue a breach of fiduciary duty claim in the context of corporations would also allow a member to bring a breach of fiduciary duty claim against a majority member. *Dawson*, supra, at 4, citing *Belle Isle*, supra, and *Michigan Nat'l Bank v Mudgett*, 178 Mich App 677, 679, 444 NW2d 534 (1989). While the Court in *Dawson* ultimately found that the plaintiff had failed to allege facts fitting into either situation, the fact remains that under certain circumstances a minority member may maintain a breach of fiduciary duty claim against a majority member.

In this case, Plaintiff has pled that Defendant MAF improperly took Plaintiff's share of TFD's profit for itself and other entities owned by MAF's principals. If proven, such a loss would certainly be a loss separate and distinct from that of the other member, i.e. MAF, since the other member is allegedly who has taken the money at issue. Consequently, the Court is convinced that Defendants' motion for summary disposition of Plaintiff's breach of fiduciary duty claims against MAF must be denied.

## 2) Defendants' Motion for Dissolution

### *Arguments and Analysis*

In their motion, Defendants seeks dissolution pursuant to MCL 450.4802. MCL 450.4802 provides:

Upon application by or for a member, the circuit court for the county in which the registered office of a limited liability company is located may decree dissolution of the company whenever the company is unable to carry on business in conformity with the articles of organization or operating agreements.

While Defendants have cited to authority by which the Filter Depot could be dissolved, the only evidence with respect to the issue of whether the Filter Depot is able to carry on business is a letter terminating Plaintiff's employment and two emails asking Plaintiff to stipulate to the dissolution of the Filter Depot. While the evidence presented establishes that Plaintiff's employment was terminated, and that Defendants would like the Filter Depot to be dissolved, it failed to provide any clarity as to the standard provided by statute. Consequently, the Court is convinced that Defendants' motion must be denied based on Defendants' failure to meet their burden.

*Conclusion*

For the reasons discussed above, Defendants' motion for summary disposition of Plaintiff's breach of fiduciary duty claims is DENIED. In addition, Defendants' motion for dissolution is DENIED.

Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

/s/ John C. Foster  
JOHN C. FOSTER, Circuit Judge

Dated: February 10, 2015

JCF/sr

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