

STATE OF MICHIGAN  
SIXTEENTH JUDICIAL CIRCUIT COURT

SAMUEL LANGER,

Plaintiff,

vs.

Case No. 19-1900-CB  
Hon. Richard L. Caretti

PRIORITY WASTE HOLDINGS, LLC,  
and TODD STAMPER,

Defendants.

OPINION AND ORDER

This matter comes before the Court on Defendants Priority Waste Holdings, LLC (“Priority Waste Holdings”) and Todd Stamper’s (together as “Defendants”) motion for summary disposition under MCR 2.116(C)(6) and (10), filed in lieu of an answer to Plaintiff Samuel Langer’s Complaint.

I. Factual and Procedural Background

Plaintiff Mr. Langer filed a Complaint in this Court on May 17, 2019 alleging: count I, member oppression under MCL 450.4515 and count II, accounting of company assets and liabilities.<sup>1</sup> According to the Complaint, Mr. Langer held a minority membership interest in Priority Waste Holdings, a waste removal company. Mr. Langer complains that Defendants, and specifically Mr. Stamper as manager, froze him out and impaired his interest in Priority Waste Holdings.

<sup>1</sup> Mr. Langer states in a footnote in his Response brief that he does not allege member oppression in his First Amended Complaint. Apparently Mr. Langer attempted to file an Amended Complaint on July 9, 2019 changing his claims from member oppression to breach of contract, promissory estoppel and unjust enrichment. The Amended Complaint was rejected by the clerk. See MCR 2.118(A)(1) and (2).

Previously, on April 3, 2019, Priority Waste Holdings filed a Complaint in the Circuit Court of Oakland County, case number 19-172995-CB, seeking injunctive relief and damages against Mr. Langer for alleged breach of a non-compete agreement. Priority Waste Holdings claimed Mr. Langer breached an employment contract by working for competitor GFL Environmental USA. Priority Waste Holdings now moves for summary disposition on the basis that the parties currently have pending litigation in Oakland County addressing similar legal theories. Second, Priority Waste Holdings seeks summary disposition on the claim of member oppression because Mr. Langer already resigned as a member of the company. The Court heard oral argument on July 15, 2019 and took the matter under advisement.

## II. Standards of Review

MCR 2.116(C)(6) authorizes the Court to grant a motion for summary disposition when “[a]nother action has been initiated between the same parties involving the same claim.” *Valeo Switches & Detection Sys, Inc v Emcom, Inc*, 272 Mich App 309, 311; 725 NW2d 364 (2006). Summary disposition under MCR 2.116(C)(6) requires another action between the same parties involving the same claims pending at the time of the motion. *Planet Bingo, LLC v VKGS, LLC*, 319 Mich App 308, 323; 900 NW2d 680 (2017).

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material

fact, the moving party is entitled to judgment as a matter of law. *Id.* The court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.* at 121. Indeed, “an adverse party may not rest upon the mere allegations or denials of his or her pleadings, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial.” MCR 2.116(G)(4).

### III. Arguments

Defendants argue that summary disposition is proper because the parties have a pending case in Oakland County concerning similar claims addressing the parties’ ongoing obligations to each other under various agreements.

Mr. Langer argues in response that the parties entered into a Service Agreement on February 28, 2018 that contains a forum selection clause in favor of Macomb County. Mr. Langer further contends that MCR 2.116(C)(6) does not apply because the Oakland County and Macomb County cases involve different claims seeking different relief based on different agreements.

### IV. Law and Analysis

“Under the unambiguous language of MCR 2.116(C)(6), summary disposition is appropriate whenever there is another action between the same parties involving the same claims currently initiated and pending at the time of the decision regarding the motion for summary disposition.” *Planet Bingo, LLC v VKGS, LLC*, 319 Mich App 308, 325; 900 NW2d 680 (2017) citing *Fast Air, Inc v Knight*, 235 Mich App 541, 546; 599 NW2d 489 (1999). “The rule is designed to stop parties from endlessly litigating matters

involving the same questions and claims as those presented in pending litigation.” *Fast Air, Inc*, 235 Mich App at 546 citation omitted.

To determine if two actions involve the same claim, a court should look to whether “[r]esolution of either action will require examination of the same operative facts.” *JD Candler Roofing Co, Inc v Dickson*, 149 Mich App 593, 601; 386 NW2d 605 (1986) (Summary disposition proper even though one claim sounded in fraud and the other in contract; the principal question to be decided remained the same); see also *Bagley & Langan PLLC v Garland*, unpublished per curium opinion of the Court of Appeals, issued April 17, 2018 (Docket No. 337660) p, 4 (Applying *J.D. Candler Roofing* to conclude that claims were the same under MCR 2.116(C)(6) where they required examination of the same operative facts); *Tucker v Detroit Police Dept Chief of Police Craig*, unpublished per curium opinion of the Court of Appeals, issued April 12, 2018 (Docket No. 336804) p, 3 (Applying *J.D. Candler Roofing* to conclude both cases involved the same claims where they arose from the same transaction).

In sum, when applying MCR 2.116(C)(6), the Court asks three questions: 1) do both cases involve the same parties; 2) are both cases currently pending; and 3) do both cases involve the same claims. Without question, the present litigation and case 19-172995-CB in Oakland County both have Priority Waste Holdings and Mr. Langer as parties. Second, without question both cases are currently pending. Third, it is the view of this Court that both cases involve the ‘same claims’ as Michigan courts interpret that phrase.

More particularly, although the Oakland County case relates to causes of action for breach of contract, injunctive relief, the Michigan Unfair Trade Secrets Act and

tortious interference, and here Mr. Langer asserts claims of member oppression and accounting, both cases arise from the same essential facts or events. See again *JD Candler Roofing Co, Inc*, 149 Mich App at 601 (Same claims despite different stated causes of action). Resolution of both cases requires a determination of the same circumstances that occurred during Mr. Langer's relatively brief membership in Priority Waste Holdings.

Specifically, both cases will involve inquiry into the cause and context of Mr. Langer's departure from Priority Waste Holdings, whether he was forced out or otherwise, the parties' obligations to one-another under the terms of their agreements or contracts in light of their actions, the roles of those in the organization, and the impact of various events both on Mr. Langer's role as an employee and shareholder. While Mr. Langer argues that the Confidentiality, Non-Compete and Non-Solicitation Agreement is not relevant to the Priority Waste LLC Service Member Agreement ("Service Agreement") at issue here, both agreements contain confidentiality and non-compete provisions. The Oakland County litigation focuses on alleged violations of a non-compete agreement. Therefore, it stands to reason that the Oakland County litigation could also implicate correlating provisions in the Service Agreement. In short, the litigation between the parties is not easily divided by cause of action but will no-doubt involve overlapping questions of the parties' relationship and its subsequent deterioration.

Finally, Mr. Langer refers to a forum selection clause in the Service Agreement as a basis for litigating his claim in this Court. Mr. Langer's Exhibit 1. The Service Agreement is an Agreement entered on February 28, 2018 between the predecessor of

Priority Waste Holdings and Mr. Langer. The Service Agreement, as opposed to an operating agreement, relates not to shareholder rights but only to Mr. Langer's role as president of the company and his duties to perform services in exchange for agreed-upon compensation and confidentiality. Paragraph 10 of the Service Agreement selects Macomb County as a forum for "claims or disputes arising out of or relating to this Agreement or your employment . . ." Exhibit 1.

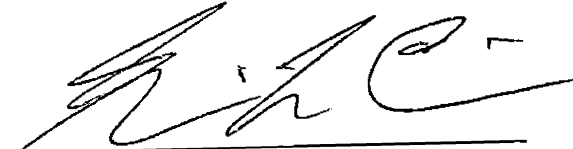
On the other hand, the Complaint in the present case concerns a claim for shareholder oppression where those in control of the company allegedly engaged in conduct that deprived a minority shareholder of the value of his interest as a shareholder. Clearly then, the forum selection clause does not control the present litigation since Plaintiff's allegations of shareholder oppression do not arise out of Mr. Langer's employment Service Agreement with Priority Waste Holdings. Even if the forum selection clause controlled, Mr. Langer has not addressed the interpretation of such a clause in light of the considerations of MCR 2.116(C)(6).

For these reasons, and to avoid needless duplication, the Court is persuaded that both the Oakland County case and the present matter involve the same claims for purposes of MCR 2.116(C)(6). Consequently, Defendants' motion for summary disposition is granted. Having granted the motion on procedural grounds, the Court does not need to address Defendants' substantive argument of whether Mr. Langer may assert a shareholder oppression claim after resigning his membership.

V. Conclusion

For the reasons set forth above, Defendants' motion is GRANTED. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* resolves the last pending claim and closes this case.

IT IS SO ORDERED.

  
HONORABLE RICHARD L. CARETTI  
Circuit Court Judge

DATE: August 15, 2019

cc: Mark C. Rossman, Esq.  
Robert S. Huth, Esq.

