

THINK YOU'VE GOT A SLAM-DUNK CASE OF SHAREHOLDER OPPRESSION? HOLD MY BEER.



By Ryan Downes

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An interesting case from our neighboring state invites a look at the factual requirements to establish a claim for shareholder oppression under Minnesota law. In *Eichoff v. New Glarus Brewing Co.*, the Wisconsin Court of Appeals affirmed the District Court's granting of a motion to dismiss for failure to state a claim on a litany of shareholder oppression claims, among others. 2024 WL 718774 (Wis. Ct. App. Feb. 22, 2024). Plaintiffs asserted various factual allegations as the basis for their claims. However, the Court determined that the facts alleged by Plaintiffs contradicted various organizational documents and, therefore, could not support many of the asserted claims in the case, warranting the motion to dismiss under Wisconsin law. How does this case shape up with Minnesota law?

The Minnesota Revised Uniform Limited Liability Company Act statutorily defines oppressive conduct as conduct that is "unfairly prejudicial... because

the conduct frustrated an expectation of the applicant member that: (i) is reasonable in light of the reasonable expectations of the other members; (ii) was material to the applicant's decision to become a member of the limited liability company or for a substantial time has been material during the member's continuing membership; (iii) was known to the other members or that the other members had reason to know; and (iv) is not contrary to the operating agreement as applied consistently with the contractual obligation of good faith and fair dealing." Minn. Stat. § 322C.0102, subd. 18(a)(3) (i-iv) (2020).

The Minnesota Business Corporation Act (the "MBCA") states, "A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business . . . in an action by a shareholder when it is established that . . . the directors or those in control of the corporation have acted in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders or directors of a corporation that is not a publicly held corporation, or as officers or employees of a closely held corporation." Minn. Stat. § 302A.751, subd. 1(b)(3).

While the MBCA employs a statutory scheme by which shareholders can seek relief for oppressive conduct, it relies on continually developing case law to specifically define such conduct. The Minnesota Supreme Court has defined "unfairly prejudicial," and thereby oppressive, conduct as "conduct that frustrates the reasonable expectations of shareholders in their capacity as shareholders." *U.S. Bank N.A. v. Cold Spring Granite Co.*, 802 N.W.2d 363, 377, 379 & N.10 (Minn. 2011) (quoting *Berremans v. West Publishing Co.*, 615 N.W.2d 362, 374 (Minn. App. 2000), review denied (Minn. Sept. 26, 2000)). This reading is consistent with other jurisdictions such as Wisconsin. See *Jorgensen v. Water Works, Inc.*, 218 Wis. 2d 761, 783 n.10 (Ct. App. 1998).

This determination into whether the reasonable expectations of a shareholder of a closely held cor-

poration have been violated is fact specific and is a question for the court. *Gunderson v. Alliance of Computer Prof'ls, Inc.*, 628 N.W.2d 173, 186 (Minn. App. 2001), review granted (Minn. July 25, 2001), appeal dismissed (Minn. Aug. 17, 2001). The district court must consider all of the unique facts that comprise the record when determining what reasonable expectations the shareholder had. *Pedro v. Pedro*, 489 N.W.2d 798, 802-03 (Minn. App. 1992) (*Pedro II*), review denied (Minn. Oct. 20, 1992).

So, what have Minnesota courts deemed to be shareholder oppression? In *Steffen v. Uttley*, the Court found that shareholder oppression had occurred under Minn. Stat. 302A.751, subd. 1(b)(3), when a shareholder of a closely held company was excluded from the governance of the entity. 2021 WL 9848497 (Minn. Dist. Ct. Nov. 12, 2021).

In *Lund as trustee of Revocable Tr. Of Kim A. Lund v. Lund*, the court determined that, based on the decades-long conduct of the various shareholders of the corporation, a reasonable expectation of liquidity of Plaintiff's interest in the corporation had formed and the absence of such liquidity amounted to shareholder oppression. 924 N.W.2d 274, 281 (Minn. Ct. App. 2019).

Similar to *Eichoff*, these cases required intense factual scrutiny by the Court. All of this is to say, one can drum up a long list of actions and inactions that would constitute shareholder oppression and the equitable relief that stems from such, but the devil is in the details. And these details must withstand meticulous analysis by the Courts within the context of the organization's governing documents and the shareholders' course of conduct.

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