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Can a Majority/Equal Shareholder Be Oppressed? “Yes” According to the Michigan Court of Appeals in *Young v VanderMeer*

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On February 25, 2021, the Michigan Court of Appeals held in *Young v VanderMeer* [i] that a majority or equal shareholder has standing to pursue shareholder oppression claims under MCL 450.1489 so long as the defendant was in control of the company at the time oppression occurred. In addition, the Court of Appeals found the defendant shareholder’s receipt of funds from a usurped corporate opportunity to be a separate and distinct injury, thereby giving rise to a direct claim for misappropriation of corporate opportunity. While *Young* is an unpublished decision, its reasoning may provide a basis for the expansion of business claims in Michigan.

Facts

The parties in *Young* had formed an event planning company, Grand Connection, Inc., (“GCI”). They each held a 50% interest in the successful company. Over time, their relationship deteriorated, prompting Young to file a lawsuit for the dissolution of GCI in 2014 (“Lawsuit I”).

Lawsuit I resulted in the dissolution of GCI and appointment of a receiver tasked with identifying and winding up GCI’s existing “pipeline projects.” Profits from pipeline projects were to be split equally between the parties. In response to the receiver’s report, Young retained a forensic accountant and ultimately alleged that VanderMeer had misappropriated GCI pipeline projects and business opportunities for the benefit of VanderMeer’s new entity, GCLLC.

In May 2016, Young filed a second lawsuit against VanderMeer, her husband Peter, and GCLLC (“Lawsuit II”), complaining that VanderMeer, with the aid of Peter, had diverted business from GCI to GCLLC. Her amended complaint stated several claims, including misappropriation of corporate opportunity and shareholder oppression.

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VanderMeer moved for summary disposition on all claims, which was granted by the trial court. On appeal the Court of Appeals upheld dismissal of some claims but reversed dismissal and reinstated all other claims, including shareholder oppression and misappropriation of corporate opportunity.

Standing to Assert Oppression

The trial court had dismissed Young's claim for shareholder oppression because she was not a minority shareholder (she held 50%). The Court of Appeals disagreed that only minority shareholders may bring oppression claims. It noted that Section 489 of the Michigan Business Corporation Act^[ii] provides a shareholder with a direct right of action "to establish that the acts of the directors or those in control of the corporation are illegal, fraudulent, or willfully unfair and oppressive to the corporation or to the shareholder."^[iii] While noting that courts have described the statute as allowing for actions by minority shareholders, the Court found no case authority *limiting* its scope to minority shareholder claims. It refused to read such language into the unambiguous statute and held that Young "did not need to prove that she was a minority shareholder; she only needed to show VanderMeer was in control of GCI during the relevant time frame."^[iv] The Court found Young's evidence of VanderMeer's control over GCI during the dissolution process sufficient to pursue a shareholder oppression claim.

The Court of Appeals' holding is consistent with the express language of Michigan's shareholder oppression statute. That statute focuses on the actions of those in control of the corporation. While the typical shareholder oppression claim is asserted by a minority shareholder, there is no limiting language in the statute or case authority restricting the class of claimants. *Young* provides additional support for this principle.

Corporate Opportunity – Direct or Derivative Claim?

The Court of Appeals also reversed dismissal of Young's claim for misappropriation of corporate opportunity. In doing so, the Court analyzed corporate law principles under which claims for injury to a corporation may be asserted by a shareholder only derivatively, while claims for injury distinct to the shareholder may be asserted directly. This is important because there are limitations on derivative claims that do not apply to direct claims.

The trial court had held that claims for diversion of corporate opportunity belong to the corporation and may be asserted by a shareholder only derivatively. Young argued for application of a recognized exception allowing a plaintiff to directly assert an injury separate and distinct from that to the other shareholders generally. Young alleged that VanderMeer caused her competitor company to manage pipeline events, resulting in loss of revenue and injury to Young in a way that was separate and distinct from that suffered by the other shareholder, VanderMeer.

The Court of Appeals accepted this argument. It found that, to the extent that VanderMeer improperly directed events away from GCI to GCLLC, she prevented Young from having an equal share in the profits from those events. As such, it held that Young had adequately established an injury that was separate and distinct from that of the other shareholder and could assert a claim for misappropriation of corporate opportunity in her own name.

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This reasoning is suspect. The Court of Appeals failed to note that Young's injury arose solely from her status as a shareholder and could have been remedied by an award to the corporation. If the profits from the misappropriated opportunities were awarded to the corporation, they would have been divided equally between Young and VanderMeer – exactly the situation that would have applied had no misappropriation occurred. Under the Court's analysis, most corporate opportunity claims against fiduciaries could be held to be "distinct" because the defendants will have received a benefit from the diversion of the opportunity that was not shared by shareholders. The Court of Appeals' reasoning risks eviscerating the general rule that claims for diversion of corporate opportunity belong to the corporation.

Javon R. David

248.258.1415

davidj@butzel.com

Bernie J. Fuhs

313.225.7044

fuhs@butzel.com

Justin G. Klimko

313.225.7037

klimkojg@butzel.com

[i] Docket No. 349093, 2021 WL 744532 (Mich. App. Feb. 25, 2021).

[ii] MCL 450.1489.

[iii] See MCL 450.1489(1).

[iv] 2021 WL 744532 at 5