

IN THE NEWS

Butzel Long attorneys Bernard Fuhs and Rebecca Klein publish article, "Blog: Calling All Frustrated Minority Shareholders: Are You Being Oppressed."

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Imagine someone named Kolin Capernick owns 25 percent of an up-and-coming sports apparel company. Social media has dubbed it "The Next Nike!" Kolin's partner, Phil Night, is the 75 percent majority owner. Kolin and Phil are lifelong best friends and started the company together.

The business is finally taking off. But something does not feel right. Kolin feels like Phil is "freezing" him out. Among other things, Phil is (i) not including Kolin in important meetings, (ii) not paying dividends, (iii) using the company credit card to take his family on vacation, and (iv) refusing to provide the company's books and records.

Does Kolin have any rights and/or options? Yes, he does.

For decades, Michigan courts were reluctant to interfere with the business decisions of majority shareholders. Fortunately, the legal climate has changed in Michigan (and other states). Courts are more inclined to protect the rights of frustrated minority shareholders (like Kolin).

A QUICK OVERVIEW OF MICHIGAN OPPRESSION LAW

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Under Michigan law, minority shareholders CAN bring a lawsuit against a majority owner if the majority owner engages in illegal, fraudulent, or willfully unfair and oppressive conduct against the company or a minority shareholder. Such conduct can be a *single* significant action or a continuing course of conduct that substantially interferes with the interest of another shareholder (including a minority shareholder).

REAL LIFE EXAMPLES OF ACTUAL OPPRESSION

This all sounds great in legalese, but what are some real-life examples of actual oppression where the minority owner actually won? While not exhaustive, the following list contains examples of the types of conduct that may lead to liability for majority shareholders.

- Treating a majority shareholder more favorably than a minority shareholder (e.g., buying out majority shareholders' interests on significantly more favorable terms than minority shareholders).
- Refusing to pay dividends to a minority shareholder.
- Using corporate funds for the majority shareholder's solely personal benefit (e.g., using corporate funds for personal travel expenses).
- Causing the company to spend a large amount of money in transactions where the majority owner has an interest on the other side.
- Freezing out the minority shareholder (e.g., ejecting the minority shareholder from the board of directors and amending the bylaws to limit his or her involvement).
- Breaching the corporation's legal documents (e.g., the operating agreement).
- Denying the minority shareholder access to corporate books or records.

REMEDIES FOR OPPRESSION

Michigan courts have broad discretion to order relief in minority shareholder oppression cases. There are a number of remedies available, including, but not limited to, the following:

- Dissolving or liquidating the assets and business of the company;
- Cancelling or revising a provision of the legal documents;
- Ordering the company to specifically act and/or enjoining the company from doing an act (e.g. stopping the sale of a company);
- Ordering that the majority owner(s) or company purchase the minority shareholder's interest at fair value (not fair market value, which would likely include windfall discounts in favor of the majority owner); and/or
- Awarding the minority owner damages, including his or her attorneys' fees and costs in the lawsuit.

CONCLUSION

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Minority shareholders (like Kolin) do have significant rights under Michigan law. When a majority shareholder(s) engages in conduct that is truly unfair and oppressive (determined on a case-by-case basis), courts will not hesitate to order appropriate relief. If you are a minority owner and observe questionable behavior by the majority owner (like Kolin), you should consider seeking legal counsel. An attorney experienced in these kinds of cases can help you evaluate whether bringing a lawsuit and/or exercising other strategic options might be appropriate.