STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

BLAIR C. SHARPE,

Plaintiff,

vs.

GEORGE ALPHONSUS SHARPE; GEORGE ANDREW SHARPE; SHARPE BUICK, INC.; and GR AGENCY, LLC,

Defendants.
_____/

Case No. 16-01983-CBB

HON. CHRISTOPHER P. YATES

SHARPE BUICK, INC.,

Counter-Plaintiff,

vs.

BLAIR C. SHARPE,

Counter-Defendant.
_____/

OPINION AND ORDER RESOLVING CROSS-MOTIONS
FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

For decades, the Sharpe car dealership has enjoyed remarkable financial success. Defendant George Alphonsus Sharpe ("father") wanted his sons, Plaintiff Blair Sharpe and Defendant George Andrew Sharpe, to eventually take over the family businesses, so the father made sure that each son had a significant stake in Defendant Sharpe Buick, Inc. ("Sharpe Buick") and Defendant GR Agency, LLC ("GR Agency"). Specifically, the father maintained a 51-percent interest in Sharpe Buick, but each of his two sons held a 24.5-percent interest in the family's principal company. Similarly, each

son held a 40-percent stake in GR Agency, while their mother, Linda Sharpe, held the remaining 20-percent share of that company. In addition, each son assumed substantial managerial responsibilities in the family businesses. Specifically, George Andrew Sharpe was assigned to be the chief financial officer for Sharpe Buick, and Blair Sharpe served as the general manager for Sharpe Buick. But the father terminated Blair Sharpe's employment with Sharpe Buick as a result of a family disagreement. Then, Sharpe Buick tried to purchase Blair Sharpe's shares in the family's business, but Blair Sharpe resisted, so the Court has to determine whether Sharpe Buick has the right to Blair Sharpe's interest in that business. Based upon a careful review of the governing documents and the parties' actions, the Court concludes that neither side has earned summary disposition on Count One of the amended complaint, that Blair Sharpe is entitled to summary disposition as to Count Two, that the defendants are entitled to summary disposition as to Counts Three and Four, and that Blair Sharpe must amend his oppression allegations in Count Five in order to proceed on that claim.

I. Factual Background

In a multitude of motions, the competing parties have requested summary disposition under MCR 2.116(C)(8) and (10) on all five counts in Plaintiff Blair Sharpe's amended complaint as well as Defendant Sharpe Buick's counterclaims. In reviewing a motion for summary disposition under MCR 2.116(C)(8), "the court considers only the pleadings." State *ex rel* Gurganus v CVS Caremark Corp, 496 Mich 45, 63 (2014). A request for summary disposition pursuant to MCR 2.116(C)(10), in contrast, permits the Court to consider "affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties," Maiden v Rozwood, 461 Mich 109, 120 (1999), so the Court can refer to the entire record in explaining the factual background of this dispute.

The parties generally agree about the facts underlying their claims and counterclaims. That is, they agree that Plaintiff Blair Sharpe not only held a management position in the family business, but also that he owned 24.5 percent of the stock in Defendant Sharpe Buick and a 40-percent stake in Defendant GR Agency, which furnishes warranty and insurance products that are sold through the dealership. But in November 2015, a family dispute prompted the father to inform Blair Sharpe that "you're done," and ultimately to terminate Blair Sharpe's employment. The parties disagree about the precise date on which that termination took place, so the Court shall discuss the termination date in detail in its analysis of the parties' claims.

On February 29, 2016, an attorney for Defendant Sharpe Buick sent a letter to Plaintiff Blair Sharpe providing notice of Sharpe Buick's "exercise of its option to purchase your shares" in Sharpe Buick under the terms of a stock purchase agreement that went into effect on January 1, 2008. That prompted Blair Sharpe to file suit against Sharpe Buick, his father, and his brother on March 4, 2016. In his original complaint, Blair Sharpe demanded declaratory relief, financial information concerning Sharpe Buick, and relief from shareholder oppression. On April 11, 2016, the defendants filed their answer to the complaint and added two counterclaims for declaratory relief and specific performance under the stock purchase agreement.

While the claims and counterclaims were pending, Defendant Sharpe Buick's attorney sent an e-mail on April 26, 2016, to Plaintiff Blair Sharpe's attorney in an effort to arrange a closing date for Sharpe Buick's purchase of Blair Sharpe's stock. Apparently, the e-mail did not elicit a response, so Sharpe Buick's attorney sent proposed closing documents to Blair Sharpe's attorney. On May 16, 2016, Sharpe Buick's attorney once again wrote to counsel for Blair Sharpe, stating that he had "not received a response to our April 27, 2016 correspondence with which we provided proposed closing

documents for our client's purchase of Blair C. Sharpe's interest in the company" and, therefore, "scheduling a closing at the offices of Sharpe Buick Inc. at 10:00 a.m. on May 26, 2016." The letter further advised Blair Sharpe's attorney that the purchase price would be $30.72 per share. Finally, on May 26, 2016, Sharpe Buick's attorney sent Blair Sharpe's attorney a letter describing the events of that morning as follows:

> Closing of the redemption transaction for your client, Blair C. Sharpe's shares, in Sharpe Buick Inc. was scheduled for this morning at 10:00 a.m. at the offices of the company. Your client failed to attend the closing nor did he have any representatives attend on his behalf.
>
> At the closing the enclosed check payable to your client was tendered and our client was prepared to execute the closing documents in accordance with the agreement of the parties and previously provided to your office for review and comment.
>
> After waiting a reasonable time we concluded that your client was not going to attend the closing.
>
> This letter is intended to document your client's failure to comply with the terms and conditions of the agreement.

In sum, Sharpe Buick attempted to go forward with the closing, notwithstanding the pending lawsuit and the absence of anyone acting on behalf of Blair Sharpe.

Unsurprisingly, the attempted closing prompted a new round of claims. Plaintiff Blair Sharpe filed an amended complaint on September 16, 2016, that expanded his request for declaratory relief from one count to two, doubled the demand for disclosure of financial information from Defendant Sharpe Buick and added Defendant GR Agency to one of the claims, and enhanced the shareholder-oppression claim. Meanwhile, on June 21, 2016, Sharpe Buick reasserted its two counterclaims for declaratory relief and specific performance. After amending their pleadings, both sides filed a series of motions for summary disposition, which the Court must now address.

II. Legal Analysis

In their numerous motions for summary disposition, the parties have requested relief under MCR 2.116(C)(8) and (10) on the various claims and counterclaims, but both sides have supported their motions with a raft of documents beyond the pleadings. If the Court considers "documentary evidence beyond the pleadings," the Court must treat the motion purely as a request for relief under MCR 2.116(C)(10). See Cuddington v United Health Services, Inc, 298 Mich App 264, 270 (2012). Pursuant to MCR 2.116(C)(10), "[w]here 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." Maiden, 461 Mich at 120. Such "[a] genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." West v General Motors Corp, 469 Mich 177, 183 (2003). Applying these well-understood standards, the Court shall consider each claim and counterclaim *seriatim*.

A. Declaratory Relief – Timeliness of Sharpe Buick's Exercise of Its Option.

To a significant degree, Plaintiff Blair Sharpe's request for declaratory relief in Count One of his amended complaint and Defendant Sharpe Buick's first counterclaim are two sides of the same coin. That is, Count One of the amended complaint seeks a declaration that, because Blair Sharpe "was terminated not later than November 20, 2015[,]" see Amended Complaint, ¶ 35, Sharpe Buick did not exercise its option to purchase his shares of company stock within the 60-day period that the stock purchase agreement prescribed. Sharpe Buick's first counterclaim rests upon the assertion that "[t]he effective date of Blair [Sharpe]'s mutually-agreed termination was December 31, 2015," see First Amended Counterclaim, ¶ 3, so the exercise of the option on February 29, 2016, was timely.

Thus, the Court begins its analysis on common ground because both sides agree that Sharpe Buick had 60 days from Blair Sharpe's termination to exercise its option under section 4.1(c) of the stock purchase agreement to buy Blair Sharpe's shares in Sharpe Buick. See Amended Complaint, Exhibit 1 (Stock Purchase Agreement, § 4.1(c)). The issue that the Court must resolve, however, turns upon the timing of Blair Sharpe's termination. Simply put, if Blair Sharpe's termination took place before December 31, 2015, then the letter sent by Sharpe Buick's attorney on February 29, 2016, came too late to constitute a timely exercise of the company's option to purchase Blair Sharpe's shares under section 4.1(c) of the stock purchase agreement.

In November of 2015, a festering disagreement reached the boiling point as a result of some unfortunate events involving Sharpe family members. On November 12, 2015, Blair Sharpe and his father had an argument that ended when his father told Blair Sharpe: "You're done." Although the two men exchanged angry words, the relationship between Blair Sharpe and Defendant Sharpe Buick did not entirely end on that date, though. Shortly after that argument, Blair Sharpe recorded a Black Friday advertisement with his brother in anticipation of the upcoming Thanksgiving sales event. In addition, Sharpe Buick paid Blair Sharpe to attend a conference in Hawaii. On November 20, 2015, Sharpe Buick informed its employees that Blair Sharpe would be leaving the company, and his father then tried to set up a meeting with Blair Sharpe on Monday, November 23, 2015, to define the terms of Blair Sharpe's departure. Blair Sharpe responded by sending an e-mail to his father that included a letter dated November 23, 2015, that asked his father to "please tell me in writing what my status is with the Company and what exactly led you to the decisions you made, and where you believe we are headed with all this[.]" See Index of Exhibits to Defendants' Brief, Exhibit 13. That letter led to a significant exchange between Blair Sharpe and his father.

On November 30, 2015, Plaintiff Blair Sharpe re-sent his e-mail and letter to his father with a question: "Can you confirm that you received this?" See Index of Exhibits to Defendants' Brief, Exhibit 14. On December 1, 2015, his father tersely answered: "I did receive your letter. Dad" Id. Nearly two weeks later, his father added: "[B]lair I will have the documents for your review by the end of this week. Dad" Id. Then, on December 15, 2015, Blair Sharpe responded: "Thank you I look forward to reviewing the documents." Id. As promised, Blair Sharpe's father sent a packet of documents to his son *via* e-mail on December 21, 2015, with the following comments:

> Attached are the documents for your review in accordance with your buy-sell agreement. After your review I would like to set a time for us to meet with Bob Brouwer from Dolinka and Bob Brower from Miller Johnson to finalize these documents. I look forward to seeing you.
> Dad

Id., Exhibit 15. On December 29, 2015, Blair Sharpe's father sent an e-mail stating: "Blair, I would like to put closure on the documents regarding your buy sell agreement. Dad" Id., Exhibit 14. One day later, on December 30, 2015, Blair Sharpe explained in an e-mail that "[m]y counsel was out of town last week for the holiday and the document package is being reviewed. I'll be in touch soon[.]" Id. Later that day, his father responded: "Thanks Blair" Id. On December 31, 2015, Blair Sharpe's attorney sent an e-mail to the father entitled "Blair Sharpe Severance Agreement," which asked the father: "Please contact me or have your counsel contact me regarding the severance agreement that was presented to Blair." See id., Exhibit 16. Thus, as of December 31, 2015, negotiations over the severance agreement for Blair Sharpe were still taking place.

To be sure, Defendant Sharpe Buick severed Plaintiff Blair Sharpe's ties to the company in some important respects before December 31, 2015. For example, Blair Sharpe's cellular-telephone service through Sharpe Buick was discontinued as of December 29, 2015. See Index of Exhibits to

Defendants' Brief, Exhibit 17. But Sharpe Buick continued to pay a salary to Blair Sharpe through December 31, 2015, see Index of Exhibits to Defendants' Brief, Exhibit 11 (Affidavit of Malonnie ("Lonnie") Manning, ¶ 3), and the company even permitted Blair Sharpe to keep using company cars through June 30, 2016.[1] Moreover, the company furnished health insurance to Blair Sharpe until March 31, 2016. Id. (Affidavit of Malonnie ("Lonnie") Manning, ¶ 4).

Although both sides have asked the Court to render summary disposition pursuant to MCR 2.116(C)(10) on Count One, the two sides sharply disagree about when Plaintiff Blair Sharpe was, in fact, terminated by Defendant Sharpe Buick. Each side can buttress its arguments with evidence of great significance. Blair Sharpe can point to evidence that his access to company e-mail was cut off in November 2015, that his brother – Defendant George Andrew Sharpe – wrote in an e-mail on November 16, 2015, that "Blair is no longer with the company," see Plaintiff's Motion for Summary Disposition as to Count I, Exhibit 4, and that company employees were informed on November 20, 2015, that Blair Sharpe would be leaving the company. In contrast, the defendants can rely upon the evidence that Sharpe Buick provided Blair Sharpe with his salary until December 31, 2015, and that the company furnished Blair Sharpe with health insurance and company cars for his own use after December 31, 2015. On this record, therefore, the Court concludes that genuine issues of material fact prevent the Court from rendering summary disposition under MCR 2.116(C)(10) to either side on Count One of the amended complaint as well as the first counterclaim, which both depend upon whether Sharpe Buick terminated Blair Sharpe's employment before December 31, 2015.[2]

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[1] The record contains evidence that Plaintiff Blair Sharpe "dropped off both of the Company cars that he had been driving on February 24, 2016[.]" See Index of Exhibits to Defendants' Brief, Exhibit 10 (Affidavit of Jason Deutsch, ¶ 7).

[2] The Court cannot even identify at this point what "termination" means in this context.

The defendants contend that, even if the Court cannot determine Plaintiff Blair Sharpe's date of termination, the Court must award summary disposition to them because Blair Sharpe essentially tricked them into believing that his termination date was December 31, 2015, and then pulled the rug out from under them when they sent him notice on February 29, 2016, of Defendant Sharpe Buick's intent to purchase his stock in the company. In legal terms, the defendants rely upon the concept of estoppel, citing Pleger v Bouwman, 61 Mich App 558 (1975), which holds "'that an estoppel arises when one by his acts, representations, or admissions, or by his silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts.'" Id. at 561. There, our Court of Appeals ruled that the plaintiffs "were led to believe that they had effectively and validly communicated to defendants their intention to exercise the option" available to them and "would have supplied" written notice of that intention if they had "been aware that written notice was going to be insisted upon[.]" Id. Here, in contrast, Blair Sharpe did nothing "to cajole [Sharpe Buick] into believing" that Blair Sharpe's termination took place before December 31, 2015. See id. In fact, as early as November 23, 2015, Blair Sharpe asked his father to "please tell me in writing what my status is with the Company and what exactly led you to the decisions you made, and where you believe we are headed with all this[.]" See Index of Exhibits to Defendants' Brief, Exhibit 13. Blair Sharpe's father never provided that clarification, so estoppel cannot bar Blair Sharpe from arguing that his termination occurred before December 31, 2015. Accordingly, the Court not only must deny summary disposition to the defendants on Count One pursuant to MCR 2.116(C)(10), but also must foreclose the defendants from relying upon their estoppel theory.

B. Declaratory Relief – Compliance with the Stock Purchase Agreement.

Plaintiff Blair Sharpe's demand for declaratory relief in Count Two and Defendant Sharpe Buick's second counterclaim both start from the assumption that Sharpe Buick timely exercised its option to purchase Blair Sharpe's stock within 60 days of his termination. Blair Sharpe insists that, notwithstanding Sharpe Buick's timeliness, the company failed to perform the stock purchase in the manner prescribed by the stock purchase agreement, so the company's effort was ineffectual. Sharpe Buick contends it adhered to the requirements of the stock purchase agreement, so Blair Sharpe must be compelled to tender his shares to Sharpe Buick as a matter of specific performance. Both sides seem to acknowledge, as they must, that Sharpe Buick had to act in conformity with the terms of the stock purchase agreement in order to repurchase Blair Sharpe's stock in the company. Accordingly, the stock purchase agreement forms the basis for the Court's resolution of the competing claim and counterclaim.

In simple terms, Plaintiff Blair Sharpe contends that Defendant Sharpe Buick breached the stock purchase agreement "by demanding that Plaintiff execute transaction documents on terms that varied from, and were in breach of, the terms mandated by" that agreement. Blair Sharpe notes that, although Article IV of the stock purchase agreement granted Sharpe Buick an option to purchase his shares upon termination, Article VI prescribed the terms governing such a purchase. See Amended Complaint, Exhibit 1. For example, section 6.2(c) establishes that "[t]he interest rate shall be at the published Fifth Third Bank Prime Rate adjusted as of January 1 and July 1 of each year[,]" see id., section 6.3(c) specifies that the closing shall not be "later than . . . [t]he ninetieth (90th) day after the exercise of the option to purchase" Blair Sharpe's shares and Sharpe Buick "shall pay the purchase price at the closing in the manner described in the applicable provisions" of the agreement, see id.,

section 6.4 states that "the payment of the purchase price shall be collaterally secured by the pledge of Shares purchased" as long as "any portion of the purchase price for Shares . . . remains unpaid" and that the "Shares shall be held by seller . . . until the purchase price has been fully paid[,]" see id., section 6.9 calls for a two-year noncompetition agreement, see id., and section 7.5 makes clear that the stock purchase agreement "contains all the terms of the agreement between the parties" as to the subject matter addressed by that agreement. See id. According to Blair Sharpe, Sharpe Buick failed to adhere to those requirements in the closing documents the company tendered to him in an attempt to purchase his shares in the company,[3] so Sharpe Buick failed in its effort to purchase his shares in the company under the strict requirements of the stock purchase agreement.

A careful review of the closing documents that Defendant Sharpe Buick tendered to Plaintiff Blair Sharpe leaves no doubt that Sharpe Buick overplayed its hand in drafting the documents. The proposed closing documents set a fixed interest rate of 3.25% per annum, see Amended Complaint, Exhibit 3 (Promissory Note), failed to provide that the sale of stock was secured by the stock itself, see id., Exhibit 3, expanded the noncompetition clause by adding two non-solicitation obligations, see id. (Redemption Agreement, § 5), and added a host of provisions not contemplated by the stock purchase agreement, such as a broad release of Blair Sharpe's potential claims, see id. (Redemption Agreement, § 4), a non-disclosure and non-disparagement clause, see id. (Redemption Agreement,

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[3] The closing documents provided by Defendant Sharpe Buick to Plaintiff Blair Sharpe are attached to the plaintiff's amended complaint as Exhibit 3. The attorney for Sharpe Buick sent those documents to Blair Sharpe's attorney on April 26, 2016, along with a transmittal e-mail explaining: "Pursuant to its timely election to redeem the shares of stock owned by your client, Blair Sharpe, our client, Sharpe Buick, Inc. has directed me to provide you the attached closing documentation and to indicate that it is ready, willing and able to close the transaction as soon as possible." The attorney for Sharpe Buick invited Blair Sharpe's attorney to "let me know as soon as possible your client's comments and when he and you are available to proceed with the closing." Blair Sharpe's attorney chose not to offer any comments concerning the closing documents.

§ 6), and an indemnification provision. See id. (Redemption Agreement, § 8). To be sure, none of those provisions is barred by Michigan law, but each of those provisions varies from the language of the stock purchase agreement, and almost every single one of those variations would have worked to the advantage of Sharpe Buick if Blair Sharpe had signed the closing documents.

Under well-settled precedent, "'strict compliance' with the terms of an option is the rule in Michigan." Rapanos v Plumer, 41 Mich App 586, 588 (1972). Indeed, in circumstances similar to the instant case, our Court of Appeals reaffirmed that "[o]ption contracts are strictly construed by the courts of our state." See Allen v Plummer, No 224500, slip op at 3 (Mich App April 19, 2002) (unpublished opinion). Here, as in Allen, Plaintiff Blair Sharpe insists that "because the buy-out did not occur under the terms of the option agreement," he remains a shareholder of Defendant Sharpe Buick. See id., slip op at 5. The Court agrees. In several significant respects, Sharpe Buick failed to adhere to the terms of the stock purchase agreement in drafting the proposed closing documents for Blair Sharpe to sign. Thus, Sharpe Buick failed to act in "strict compliance" with its option to purchase Blair Sharpe's shares, and that failure to comply with the terms of the option leaves Blair Sharpe in the position of a shareholder in Sharpe Buick, notwithstanding Sharpe Buick's tender of closing documents to Blair Sharpe's attorney and the company's subsequent attempt to proceed with a closing on May 26, 2016.

The defendants contest the analysis advocated by Plaintiff Blair Sharpe and adopted by the Court. The defendants assert that the closing was a condition precedent to the closing documents, so Blair Sharpe's refusal to attend the closing scheduled for May 26, 2016, rendered nugatory any defects in the closing documents. This argument misconstrues the nature of the option, which simply afforded Defendant Sharpe Buick the opportunity to purchase Blair Sharpe's stock in the company

by strictly complying with the terms of the stock purchase agreement. The defendants further argue that they did not breach the stock purchase agreement by tendering proposed closing documents that varied from the terms of that agreement. The defendants insist that "[a]ny perceived deficiencies of the promissory note or redemption agreement, such as interest rate, collateral, and the non-compete, are readily curable either by the severance clause of the draft documents or amendment of the parties, which Blair could have raised at any time upon his receipt of the drafts." But Blair Sharpe had no obligation to assist Sharpe Buick in its attempt to exercise its option, and the suggestion that he had to do so in order to weed out the terms that worked against him runs counter to Michigan law on the subject of options. Additionally, any reliance upon the severance clause of the draft documents is unavailing because that clause never went into effect. To the extent that the defendants rely upon the argument that their numerous breaches of the stock purchase agreement are not substantial, the Court necessarily must reject that contention for two reasons. First, Michigan law requires "'strict compliance'" with the terms of an option agreement. See Rapanos, 41 Mich App at 588. Second, the Court finds the breaches in the proposed closing documents manifestly substantial. Finally, the defendants accuse Blair Sharpe of committing the "first breach" of the stock purchase agreement by filing the instant suit on March 4, 2016, and by failing to attend the scheduled closing. E.g., Able Demolition, Inc v City of Pontiac, 275 Mich App 577, 585 (2007). The Court concludes, however, that Blair Sharpe acted well within his rights in filing suit to determine whether the defendants had met the 60-day deadline for commencing the stock-purchase process, and that Blair Sharpe had no obligation to attend the scheduled closing in order to sign the documents that did not conform to the terms of the stock purchase agreement. Accordingly, the Court shall award summary disposition to Blair Sharpe on Count Two of his amended complaint and on the second counterclaim.

C. February 2016 Demand for Production of Financial Information.

Count Three of Plaintiff Blair Sharpe's amended complaint, which is not paired with any type of corresponding counterclaim, alleges that Defendant Sharpe Buick violated MCL 450.1487 when it refused to provide corporate documents in response to a demand made in February of 2016. The parties agree that Blair Sharpe was a shareholder of Sharpe Buick on that date,[4] so the company had an obligation to make company documents available to him. Nevertheless, on February 29, 2016, the attorney for Sharpe Buick provided the following response to Blair Sharpe's request:

> [Y]our February 25, 2016 letter to your father requesting a substantial amount of company related documentation has been reviewed with him and our office. Your request goes beyond that to which you are entitled and is irrelevant to the purchase of your Company stock because the Stock Purchase Agreement sets the price and process for the repurchase. Thus the requested documentation will not be provided.

See Amended Complaint, Exhibit 2. This response seems puzzling because, by all accounts, Blair Sharpe was a shareholder when he made his demand on February 25, 2016, and the documents that he requested plainly fell within the ambit of the company's disclosure obligation under Michigan law. Compare id., Exhibit 1 (Request for Records dated February 25, 2016) with MCL 450.1487.

In light of Defendant Sharpe Buick's intransigence in the face of a seemingly proper request, Plaintiff Blair Sharpe not only included a count in his amended complaint that alleged a violation of MCL 450.1487, but also moved for summary disposition on that claim under MCR 2.116(C)(10). In response, Sharpe Buick argues, first and foremost, that Blair Sharpe ultimately received all of the relevant documents through the discovery process in the instant case, so there is nothing left for the Court to order Sharpe Buick to produce. Specifically, Sharpe Buick contends that its production of

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[4] At oral argument on February 9, 2017, counsel for Defendant Sharpe Buick explained that "[w]e are not contesting that he was a shareholder at that time [and] that he was permitted to make that demand." See Hearing Tr (Feb 9, 2017) at 44.

documents on May 13, 2016, in response to Blair Sharpe's request for production on April 14, 2016, satisfied every demand in Blair Sharpe's February 2016 pre-suit request for inspection of the books and records of Sharpe Buick.[5]

Although post-suit disclosure seems tardy enough to trigger remedies for improper denial of a shareholder's rights because a shareholder ought not have to bear the costs of a lawsuit in order to review a corporation's books and records for "any proper purpose," the statutory language of MCL 450.1487 and an unpublished decision from our Court of Appeals support the defendants' position. That is, MCL 450.1487(3) authorizes a shareholder to file suit "[i]f the corporation does not permit an inspection within 5 business days after a demand has been received" by the corporation, and MCL 450.1487(5) allows for sanctions (including attorney fees) if, but only if, "the court orders inspection of the records demanded" by the shareholder. Our Court of Appeals essentially adopted this analysis in upholding an award of summary disposition for a corporation in a dispute regarding "the adequacy of business records provided or otherwise made available to" shareholders. See Nagia v Chota, No 229311, slip op at 4 (Mich App June 14, 2002) (unpublished opinion). Indeed, our Court of Appeals brushed aside the shareholders' claim, explaining "that, since initiation of this suit, defendants have provided them with a number of financial documents relating [to the company]'s operations." Id. Thus, the Court shall award summary disposition to the defendants on Count Three, albeit with the caveat that Blair Sharpe can resurrect that claim if, but only if, he can "identify with any specificity any further documents to which [he is] entitled." See id.

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[5] In the defendants' response in opposition to Plaintiff Blair Sharpe's motion for summary disposition on Counts III and IV, the defendants not only make that very assertion on page 7, but also provide a chart on page 9 that links each demand made on February 25, 2016, to the disclosures on May 13, 2016. Consequently, the record appears to support the defendants' assertion that they have, in the fullness of time, met every demand made by Blair Sharpe in February of 2016.

D. July 2016 Demand for Production of Financial Information.

Count Four not only accuses Defendant Sharpe Buick of violating MCL 450.1487, but also alleges that Defendant GR Agency violated MCL 450.4503 – the disclosure analogue applicable to limited liability companies – by refusing to respond to Plaintiff Blair Sharpe's disclosure requests propounded *pendente lite* on July 25, 2016. See Amended Complaint, Exhibit 8. Notwithstanding the absence of any sanction provision in MCL 450.4503, Blair Sharpe has demanded the production of "the items requested in Plaintiff's July 25, 2016 correspondence, together with an award of costs and reasonable attorneys' fees." See Amended Complaint, Count IV Prayer for Relief. But Sharpe Buick and GR Agency insist that they have produced all documents requested by Blair Sharpe in July of 2016, and the defendants have even furnished a detailed chart identifying the production date and Bates numbers for each document at issue. See Defendants' Response in Opposition to Plaintiff's Motion for Summary Disposition as to Counts III and IV of the Amended Complaint at 10. Because the record appears to establish that the defendants received Blair Sharpe's production request during the flow of this litigation and, in response, made timely production of each requested document, the Court shall grant summary disposition to the defendants on Count Four, albeit with the caveat that Blair Sharpe can resurrect that claim if he can "identify with any specificity any further documents to which [he is] entitled." See Nagia, No 229311, slip op at 4 (Mich App June 14, 2002).

E. Shareholder Oppression.

In Count Five, Plaintiff Blair Sharpe accuses all of the defendants of shareholder oppression, but the principal target of that claim seems to be Blair Sharpe's father. To complicate matters, Blair Sharpe has furnished a laundry list of grievances pertaining to the operations of Defendant Sharpe

Buick and even Defendant GR Agency, in which Blair Sharpe's father holds no ownership interest.[6] The Court shall do its best to make sense of this mélange of misconduct, but summary disposition appears to be a poor vehicle for resolving most aspects of the oppression claim.

Our Legislature has created oppression claims in the contexts of corporate management, see MCL 450.1489, and the operation of limited liability companies. See MCL 450.4515. Significantly, a member of a limited liability company may only bring an oppression claim against "the managers or members in control of the limited liability company[.]" See MCL 450.4515(1). Because Plaintiff Blair Sharpe's father is neither a manager nor a member of GR Agency, Blair Sharpe cannot assert an oppression claim against him.[7] Similarly, neither Defendant Sharpe Buick nor GR Agency itself is a manager or member of GR Agency, so neither business can be sued for oppression under MCL 450.4515(1). That leaves only Defendant George Andrew Sharpe, who holds a 40-percent interest in GR Agency, as a potential target of an oppression claim under MCL 450.4515(1). Consequently, the Court shall limit its analysis of GR Agency matters to the actions of George Andrew Sharpe. As far as Sharpe Buick itself is concerned, only the father holds a controlling interest in that corporation, so the Court shall consider only the father as the potential target of Blair Sharpe's oppression claim under MCL 450.1489(1).

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[6] Although the oppression claim in Count Five of the amended complaint refers to an entity called Relax Properties, LLC, see Amended Complaint, ¶¶ 95-96, the Court signed a stipulated order on February 9, 2017, that dismissed "with prejudice" the allegations "regarding the amount of rent Sharpe Buick, Inc. pays Relax Properties, LLC." As a result, the Court need not engage in analysis of the relationship between Defendant Sharpe Buick and Relax Properties, LLC.

[7] Plaintiff Blair Sharpe attempts to address this flaw by asserting that, "[t]hough not formally a member of GR Agency, Defendant [father] controls GR Agency just as he controls Sharpe Buick." See Amended Complaint, ¶ 92. The Court has found no appellate decision in Michigan, published or unpublished, that has approved that puppet-and-puppeteer theory, which is entirely inconsistent with the limiting language of MCL 450.4515(1).

Plaintiff Blair Sharpe's first oppression theory concerns Defendant Sharpe Buick's payments to its shareholders for quarterly estimated tax obligations. See Amended Complaint, ¶¶ 80-90. For the first quarter of 2016, Sharpe Buick did not pay Blair Sharpe's estimated taxes.[8] See id., ¶¶ 81-82. Blair Sharpe insists that the company's refusal to cover his estimated tax obligations for one quarter constitutes a deviation from the company's treatment of its other shareholders and amounts to an act of oppression, as defined by MCL 450.1489(3). Such disparate treatment certainly falls within the ambit of actionable oppression under MCL 450.1489(1), but Blair Sharpe's father contends that the payments to Sharpe Buick's shareholders for quarterly estimated tax obligations have been treated historically as loans, rather than distributions. Moreover, the defense has offered evidence that Blair Sharpe received a $121,269.80 distribution from Sharpe Buick on April 15, 2016. See Defendants' Response to Plaintiff's Motion for Partial Summary Disposition as to Count V, Exhibit 5. Thus, the Court must sort out the treatment of that first-quarter payment before granting summary disposition to either side on that oppression theory.

Plaintiff Blair Sharpe's second oppression theory stems from the alleged recapitalization of the equity of Defendant GR Agency,[9] see Amended Complaint, ¶¶ 91-94, so the Court must consider the actions – if any – undertaken by Defendant George Andrew Sharpe. Blair Sharpe's allegations refer generically to the actions of "Defendant," see id., ¶¶ 93-94, which seems to be the father, rather than George Andrew Sharpe. Thus, the Court shall grant summary disposition to the defendants on

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[8] Plaintiff Blair Sharpe concedes in his amended complaint that Defendant Sharpe Buick did provide Blair Sharpe with funds to cover his estimated tax obligations for the second quarter of 2016. See Amended Complaint, ¶¶ 89-90.

[9] Plaintiff Blair Sharpe also contends that the defendants denied him access to the books and records of Defendant GR Agency, but the Court has already dealt with that argument in addressing Count Four and awarding summary disposition to the defendants on that count.

that oppression theory, but the Court shall afford Blair Sharpe the opportunity to amend that claim pursuant to MCR 2.116(I)(5) because the Court cannot yet conclude that the recapitalization ought not be laid at the feet of George Andrew Sharpe.

Plaintiff Blair Sharpe's final two oppression theories, which involve only Defendant Sharpe Buick, appear to be in some embryonic stage. Paragraph 97 of the amended complaint simply states: "Moreover, in addition to the above rent-related costs, Defendant causes Sharpe Buick to pay for the renovation, expansion, and construction of buildings." The Court cannot possibly divine from that single, cryptic pronouncement how oppression has been visited upon Blair Sharpe. And in similar fashion, paragraph 98 of the amended complaint alleges that "Defendant also causes Sharpe Buick to pay above-market compensation to Defendant, who, while retaining control of Sharpe Buick, has been minimally involved in managing the business." This undeveloped theory appears to rest upon the audacious assertion that the father grossly overcompensates himself. Needless to say, the Court cannot work with such bare-bones claims, so the Court shall award summary disposition on both of those theories to the defendants and send Blair Sharpe back to the drawing board by permitting him to reformulate (and hopefully fill out) those theories pursuant to MCR 2.116(I)(5).

III. Conclusion

For all of the reasons set forth in this opinion, the Court shall deny summary disposition to both sides on Count One of Plaintiff Blair Sharpe's amended complaint and the defendants' opening counterclaim. In contrast, the Court shall award summary disposition to Blair Sharpe on Count Two of his amended complaint and the defendants' second counterclaim under MCR 2.116(C)(10). The Court is convinced that Blair Sharpe has the right to retain his shares in Defendant Sharpe Buick,

so the Court shall not permit the defendants to amend their second counterclaim in order to try again to divest Blair Sharpe of his minority interest in Sharpe Buick. If the company wishes to purchase Blair Sharpe's shares, the company must complete that transaction by negotiating with Blair Sharpe. With respect to Blair Sharpe's claims for access to company books and records, the Court shall grant summary disposition under MCR 2.116(C)(10) to the defendants on Counts Three and Four, but the Court must note in passing that, as a shareholder of Sharpe Buick and as a member of Defendant GR Agency, Blair Sharpe has a continuing right of access to the books and records of those companies. Finally, the Court shall permit Blair Sharpe to proceed on most of his oppression theories in Count Five of his amended complaint, but Blair Sharpe must develop and refine his approved theories in a second amended complaint, which must be filed within 21 days of the issuance of this opinion.

IT IS SO ORDERED.

Dated: August 17, 2017

HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge