STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

KENNETH SPINDLER, an individual, and WILLIAM STOVER, an individual,

Plaintiffs/Counter-Defendants,

v

Case No. 23-199232-CB
Hon. Michael Warren

NRL HOLDINGS, LLC, a Michigan limited liability company, BRIAN CHOUINARD, an individual, ANTHONY GOFF, an individual, and ADAM LONG, an individual.

Defendants/Counter-Plaintiffs.

OPINION AND ORDER REGARDING
DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

At a session of said Court, held in the County of Oakland, State of Michigan
September 20, 2024

PRESENT: HON. MICHAEL WARREN

OPINION

I
Overview

This action arises out of the December 2022 merger of Vassar Tech Holdings, LLC ("VT") with and into NRL Holdings, LLC ("NRL"). The Plaintiffs are two members of NRL who did not approve of the merger. They filed the instant suit against NRL and

three individual managers of NRL (Brian Chouinard, Anthony Goff, and Adam Long (collectively, the "Individual Defendants") seeking the fair value of their membership interests pursuant to MCL 450.4702 (Count I), requesting an accounting pursuant to MCL 450.4503 (Count II), and alleging that the Individual Defendants breached their fiduciary duties (Count III).[1]

Before the Court is the Defendants' Motion for Summary Disposition. Oral argument is dispensed as it would not assist the Court in its decision-making process.[2]

At stake is whether Plaintiff Spindler lacks standing to pursue his request for redemption rights pursuant to MCL 450.4702 because he sold his membership interest to Plaintiff Stover? Because the sale of Spindler's membership interest is not yet effective, the answer is "no" and summary disposition in favor of the Defendants is not warranted.

Also at stake is whether there is any genuine issue of material fact that the fair value of the Plaintiffs' equity interests was zero on the merger date? Because the parties

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[1] Breach of Fiduciary Duties was erroneously labeled "Count IV" in the Verified Complaint, but the parties refer to this as "Count III" in their briefing. For clarity, the Court will refer to the Breach of Fiduciary Duties as Count III.

[2] MCR 2.119(E)(3) provides courts with discretion to dispense with or limit oral argument and to require briefing. MCR 2.116(G)(1) specifically recognizes application of MCR 2.119(E)(3) to summary disposition motions. Subrule (G)(1) additionally authorizes courts to issue orders establishing times for raising and asserting arguments. This Court's Scheduling Order clearly and unambiguously set the time for asserting and raising arguments, and legal authorities to be in the briefing – not to be raised and argued for the first time at oral argument. Therefore, both parties have been afforded due process as they each had notice of the arguments and an opportunity to be heard by responding and replying in writing, and this Court has considered the submissions to be fully apprised of the parties' positions before ruling. Because due process simply requires parties to have a meaningful opportunity to know and respond to the arguments and submissions which has occurred here, the parties have received the process due.

have submitted conflicting evidence about the valuation of NRL, the answer is "yes," there are genuine issues of material fact regarding the valuation, and summary disposition in favor of the Defendants is not warranted.

Further at stake is whether the Defendants are entitled to summary disposition on Count II (Accounting)? Because the Defendants did not make any arguments relating to Count II, they have not met their burden under MCR 2.116(C), and summary disposition is not warranted.

Additionally at stake is whether the Plaintiffs are the correct parties to pursue a claim for breach of fiduciary duties against the individual Defendants? Because the claim for breach of fiduciary duties is a derivative claim under the test announced in *Murphy v Inman*, 509 Mich 132 (2022), the answer is "no" and summary disposition in favor of the Defendants is warranted.

Finally at stake is whether sanctions are appropriate because the Plaintiffs allege that the Defendants' motion is "completely lacking in any rational or legal bases [sic] as to merit sanctions"? Because the Plaintiffs have not met the high burden of showing that sanctions are warranted, the answer is "no."

II
The Controversy

NRL is a Michigan limited liability company with its headquarters in Pontiac, Michigan.[3] NRL is the owner and operator of a marijuana growing and manufacturing business that provides products for sale at the Nature's Releaf retail stores in Burton, Michigan, Grand Rapids, Michigan, and Mancelona, Michigan.[4]

The Plaintiffs are members and owners of NRL.[5] Prior to December 31, 2022, Spindler owned 18.66% of the outstanding membership interests in NRL, and Stover owned 2.41% of the outstanding membership interests.[6]

Two of the named Individual Defendants, Brian Chouinard and Anthony Goff, are managers of NRL who owned 25.52% and 22.10%, respectively, of the outstanding membership interests in NRL prior to December 31, 2022.[7] The third Individual Defendant, Adam Long, was appointed to serve as a manager of NRL along with Chouinard and Goff in 2022.[8]

In November 2022, the Plaintiffs received notice that an Agreement and Plan of Merger between NRL and VT had been approved by the holders of the majority of the

[3] Verified Complaint ¶ 3.
[4] *Id.* ¶¶ 9-10.
[5] *Id.* ¶ 15.
[6] *Id.* ¶¶ 16-17.
[7] *Id.* ¶¶ 12-13.
[8] *Id.* ¶ 14.

Class A interests of NRL.[9] VT was another cannabis company, and Chouinard and Goff owned a majority interest in VT.[10] After the merger, NRL would be the surviving company.[11] The Plaintiffs allege that VT was operating at a loss and having financial difficulties prior to the merger.[12] Despite these difficulties, the Defendants valued each company at $15,000,000 with a combined post-merger valuation of $30,000,000.[13] The Plaintiffs allege that this valuation was "severely inflated" for the purpose of convincing the NRL members to approve the terms of the merger.[14] The merger was approved and became effective on December 31, 2022.[15] As a result of the merger, the Plaintiffs' membership interests in the combined entity was diluted, while Chouinard and Goff's interests increased from 47.62% to 55.45%, giving them the majority interest in the surviving company.[16] The Plaintiffs did not consent to the merger of NRL and VT.[17]

In addition to their claims regarding the merger with VT, the Plaintiffs also allege that the Defendants used NRL assets as security for a $3,000,000 loan for Otisville Farm, Hunt and Storage, LLC, a separate and unrelated entity owned by Chouinard and Goff, without any notice to the NRL members.[18]

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[9] *Id.* ¶ 18.
[10] *Id.* ¶ 19.
[11] *Id.* ¶ 18.
[12] *Id.* ¶ 21.
[13] *Id.* ¶ 23; see also Plaintiffs' Response to Defendants' Motion for Summary Disposition, Exhibit C.
[14] Verified Complaint ¶ 24.
[15] *Id.* ¶ 28.
[16] *Id.* ¶¶ 25-26.
[17] *Id.* ¶ 27; see also Verified Complaint, Exhibits A and B.
[18] *Id.* ¶ 22.

On January 3, 2023, the Plaintiffs elected to exercise their right to withdraw from the company and receive the fair value of their interests pursuant to MCL 450.4702.[19] Using the valuation that the Defendants provided prior to the merger ($15,000,000), Spindler demanded $2,799,000 and Stover demanded $361,500.[20] When the Defendants failed to pay these amounts, the Plaintiffs filed the instant suit alleging a violation of MCL 450.4702 (Count I), seeking an accounting (Count II), and alleging that the individual Defendants (Chouinard, Goff, and Long) breached their fiduciary duties (Count III). The Defendants now move for summary disposition pursuant to MCR 2.116(C)(5), (C)(8), and (C)(10) against Spindler on all counts and against Stover on Counts II and III of the Verified Complaint.

III
Standards of Review

A
MCR 2.116(C)(5)

"Review of a determination regarding a motion under MCR 2.116(C)(5), which asserts a party's lack of capacity to sue, requires consideration of the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties." *McHone v Sosnowski*, 239 Mich App 674, 676 (2000). The Court must view the record in the light most favorable to the plaintiff and determine whether the moving

[19] *Id.* ¶ 29; see also Verified Complaint, Exhibits C and D.
[20] *Id.*, Exhibits C and D.

party is entitled to judgment as a matter of law. *Id.* See also *Franklin Historic Dist Study Comm v Vill of Franklin*, 241 Mich App 184, 187 (2000).

Challenges pursuant to MCR 2.116(C)(5) based on a party's lack of legal capacity to sue must be raised in the first responsive pleading or stated in a motion filed prior to the first responsive pleading. MCR 2.116(D)(2).

B
MCR 2.116(C)(8)

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc,* 504 Mich 152, 159-160 (2019); *Pawlak v Redox Corp*, 182 Mich App 758 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf,* 494 Mich 595, 603 (2013); *Parkhurst Homes, Inc* v *McLaughlin*, 187 Mich App 357 (1991). Exhibits attached to pleadings may be considered under MCR 2.116(C)(8) because they are part of the pleadings pursuant to MCR 2.113(C). *El-Khalil*, 504 Mich at 163. Matters of public record may also be considered. MCR 2.113(C)(1)(a). See also *Dalley v Dykema Gossett,* 287 Mich App 296, 301 n 1; (2010) (court documents are matters of public record that may be considered on a motion under MCR 2.116[C][8]).

"All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119 (1999); *Wade v*

Dep't of Corrections, 439 Mich 158, 162 (1992). Summary disposition is proper when the claim is so clearly unenforceable as a matter of law that no factual development can justify a right to recovery. *Parkhurst Homes*, 187 Mich App at 360; *Spiek v Dept of Transportation*, 456 Mich 331, 337 (1998).

"[T]he mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action." *ETT Ambulance Serv Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395 (1994).

C
MCR 2.116(C)(10)

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim or defense. See, e.g., MCR 2.116(G)(3)(b); *Quinto v Cross & Peters Co*, 451 Mich 358, 362 (1996). Accordingly, "[i]n evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Maiden,* 461 Mich at 119-120; MCR 2.116(C)(10); MCR 2.116(G)(4); *Quinto*, 451 Mich at 358. The moving party "must specifically identify the issues" as to which it "believes there is no genuine issue" of material fact and support its position as provided in MCR 2.116. MCR 2.116(G)(4).

Under Michigan law, the moving party may satisfy its burden of production under MCR 2.116(C)(10) by demonstrating to the court that the non-moving party's evidence is

insufficient to establish an essential element of the nonmoving party's claim. *Quinto*, 451 Mich at 361. If the moving party properly supports its motion, the burden "then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Id.* at 362. If the moving party fails to properly support its motion for summary disposition, the nonmoving party has no duty to respond and the trial court should deny the motion. MCR 2.116(G)(4). See also *Meyer v City of Center Line*, 242 Mich App 560, 575 (2000) (concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116(C)(10)).

In all cases, MCR 2.116(G)(4) squarely places the burden on the parties, not the trial court, to support their positions. A reviewing court may not employ a standard citing mere possibility or promise in granting or denying the motion, *Maiden*, 461 Mich at 121-120 (citations omitted), and may not weigh credibility or resolve a material factual dispute in deciding the motion. *Skinner v Square D Co*, 445 Mich 153, 161 (1994). Rather, summary disposition pursuant to MCR 2.116(C)(10) is appropriate if, and only if, the evidence, viewed most favorably to the non-moving party fails to establish any genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362, citing MCR 2.116(C)(10) and (G)(4); *Maiden*, 461 Mich at 119-120 (1999). A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160 (2019) (citation omitted). Granting a motion for summary disposition under MCR 2.116(C)(10) is warranted if the substantively admissible

evidence shows that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362-363.

IV
Count I (Violation of MCL 450.4702)

A
The Law

In Count I, the Plaintiffs bring a cause of action under MCL 450.4702, which provides dissenting members of a limited liability company a statutory right to withdraw following a merger they do not approve:

> If an operating agreement of a constituent company provides for approval of a merger by less than unanimous vote of members entitled to vote and the merger is approved, a member that did not vote in favor of the merger may withdraw from the limited liability company and receive, within a reasonable time, the fair value of the member's interest in the limited liability company, based upon the member's share of distributions as determined under section 303.

B
Analysis

The Defendants move for summary disposition of Count I for two reasons. The first reason is specific to Spindler; namely, the Defendants argue that Spindler sold his interest in the company to Stover, and as such, he no longer has standing to redeem shares that he no longer owns. Next, the Defendants argue for summary disposition of Count I

in its entirety because "the fair market value of Plaintiffs'/Counter-Defendants' ownership interest is $0.00."[21]

1

Spindler is Still the Owner of his Membership Interests

The Defendants first argue that Count I should be dismissed as to Spindler because he sold his membership interests in NRL to Stover on December 20, 2023. Since he sold his shares after the filing of the case, the Defendants argue that Spindler "can no longer claim an injury, and is not a real party in interest."[22]

This argument, however, is undercut by the documents submitted by the Defendants. The Defendants explain that because the purchase of Spindler's membership interest would put Stover above the 9.99% ownership threshold, Stover is required to become a Supplemental Applicant with the CRA. The Defendants attached the application materials submitted to the CRA, including the Unanimous Consent of the Managers to the transfer of ownership.[23] The Unanimous Consent states that "Kenneth Spindler is no longer the beneficial owner of any units in the Company and is hereby removed as a member of the Company *upon the approval of this transaction*" by the CRA.[24] Similarly, the Amendment Verification & Affidavit of Full Disclosure Attestation

[21] Defendants' Motion for Summary Disposition, p 2.
[22] *Id.*, p 14.
[23] Defendants' Reply to Plaintiffs' Response to Defendants' Motion for Summary Disposition, Exhibit B.
[24] *Id.* (emphasis added).

submitted to the CRA requires the applicant (i.e., Defendant Long) to attest that "I understand this requested amendment is a proposed change and cannot be executed prior to receiving approval from the Agency."[25] Per the Defendants' admission, as of June 21, 2024, the application with the CRA is still pending.[26]

Because the transfer of the membership interests from Spindler to Stover was explicitly conditioned on the approval of the CRA and the CRA has not yet issued its approval, Spindler is still the owner of the membership interests. Accordingly, the Defendants' argument that Spindler lacks standing to pursue a claim under MCL 450.4702 is without merit.

2
The Evidence on the Fair Value of the Member's Interests is Conflicting

The Defendants also argue that they are entitled to summary disposition as to Count I in its entirety because the Plaintiffs' ownership interest had a negative value on the merger date. As noted above, the redemption rights provided in MCL 450.4702 entitle the Plaintiffs to the "fair value" of their interest in NRL. The Defendants produced a valuation analysis of the fair market value of NRL and related entities as of December 31, 2022 that was prepared by Bodmer Price.[27] The Bodmer Price valuation report uses a discounted cash flow analysis and also takes general market considerations into account

[25] *Id*.
[26] *Id*., Exhibit C.
[27] Defendants' Motion for Summary Disposition, Exhibit B.

through an analysis of publicly traded cannabis companies.[28] Per the report, as of December 31, 2022, the ownership interests of both Stover and Spindler were worth $0.00.[29]

In response, the Plaintiffs have submitted an email from Ryan Fritzsch, the Corporate Controller of NRL, which shows that the estimated valuation of the combined entity post-merger would be $30,000,000.[30]

In deciding a motion under MCR 2.116(C)(10), "[t]he trial court is not permitted to assess credibility, weigh the evidence, or resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10)." *Pioneer State Mut Ins Co v Dells*, 301 Mich App 368, 377 (2013). The parties have both offered evidence regarding the valuation of NRL at the time of the merger, and the evidence is in conflict. Accordingly, summary disposition is not warranted.

V
Count II (Accounting)

Count II of the Plaintiffs' Verified Complaint requests, pursuant to MCL 450.4503, that this Court order Defendant NRL to "produce its financial statements, books and

[28] *Id.*
[29] *Id.*
[30] Plaintiffs' Response to Defendants' Motion for Summary Disposition, Exhibit C.

records, and to provide Plaintiffs with a full accounting of its affairs as of December 31, 2022. . . ."[31] In their motion, the Defendants request summary disposition of Count II as to both Spindler and Stover, but they fail to present any argument or evidence in support of this request.

Michigan jurisprudence is clear that an argument must be supported by citation to appropriate authority and analysis otherwise the argument is abandoned. See, e.g., *Houghton v Keller*, 256 Mich App 336, 339-340 (2003) (a party "may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . nor may he give issues cursory treatment with little or no citation of supporting authority" (citations omitted)). Conclusion without authority is insufficient to warrant dispositive relief or even to bring an issue before the Court for review, especially where, as here, the Plaintiff bears the ultimate burden of proof. *Mitcham v City of Detroit*, 355 Mich 182, 203 (1959) ("It is not enough . . . to simply announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and rationalize the basis for his arguments, and then search for authority either to sustain or reject his position"); *Wilson v Taylor*, 457 Mich 232, 243 (1998) ("A mere statement without authority is insufficient to bring an issue before this Court"). "Trial Courts are not the research assistants of the litigants; the parties have a duty to fully

[31] Verified Complaint ¶ 45.

present legal arguments for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388 (2008).

Consequently, summary disposition as to Count II is not warranted.

VI
Count III (Breach of Fiduciary Duties)

In Count III, the Plaintiffs allege that the Individual Defendants (Chouinard, Goff, and Long) breached their "fiduciary duties to Plaintiffs as members and owners of the company."[32] Specifically, the Plaintiffs allege that they received personal financial benefits as a result of the merger with VT, that they breached their duty of candor when they circulated an inflated value of VT to the members of NRL, and that they used NRL assets to secure loans in the name of another entity they owned.[33] In their motion for summary disposition, the Defendants argue that the Plaintiffs lack standing to bring Count III in their individual capacities because the claims are derivative in nature.

A
The Law

Generally, "a suit to enforce corporate rights or to redress or prevent injury to the corporation, whether arising out of contract or tort, must be brought in the name of the corporation and not that of a stockholder, officer or employee." *Michigan Nat Bank v*

[32] Verified Complaint ¶ 48.
[33] *Id.* ¶¶ 50-55.

Mudgett, 178 Mich App 677, 679 (1989). MCL 450.4510 permits a member to initiate a derivative proceeding "in the right of a limited liability company" if the member meets certain demand requirements.

In *Murphy v Inman*, 509 Mich 132 (2022), the Michigan Supreme Court adopted a new test for the distinction between direct and derivative actions, borrowing from Delaware law:

> [T]he proper analytical distinction between direct and derivative actions "turn[s] solely on the following questions: (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?" . . .
>
> In answering the first question, the relevant inquiry is: "Looking at the body of the complaint and considering the nature of the wrong alleged and the relief requested, has the plaintiff demonstrated that he or she can prevail without showing an injury to the corporation?" The second question, whether the benefit of any recovery will go to the corporation or the shareholders individually, logically follows from the first. *Id.* at 162-164, quoting *Tooley v Donaldson, Lufkin & Jenrette, Inc*, 845 A2d 1031, 1033, 1036 (Del 2004).

If the court finds that the claim is derivative, "a shareholder has no standing to sue except on behalf of the corporation." *Murphy*, 509 Mich at 161.

B
Analysis

1
The Defendants Have Not Waived their Standing Argument

Before addressing the merits of the Defendants' standing argument, the Plaintiffs point out that a challenge to their legal capacity to sue pursuant to MCR 2.116(C)(5) must be made "in a party's responsive pleading, unless the grounds are stated in a motion filed under this rule prior to the party's first responsive pleading." MCR 2.116(D)(2). Thus, the Plaintiffs argue that the Defendants' challenge of their standing "fails because Defendants failed to raise MCR 2.116(C)(5) in their first responsive pleading."[34]

First, "standing to sue and capacity to sue are two distinct concepts," which must not be conflated. *Flint Cold Storage v Dep't of Treasury*, 285 Mich App 483, 502 (2009). See also *Leite v Dow Chem Co*, 439 Mich 920, 920 (1992) (noting that "the real-party-in-interest is not the same as the legal-capacity-to-sue defense"). Lack of capacity to sue "refers to some legal disability, such as infancy or mental incompetency, which deprives a party of the right to come into court." *Moorhouse v Ambassador Ins Co*, 147 Mich App 412, 419 n 1 (1985). "Capacity to sue" does not, however, "speak to whether the party has a cause of action or not." *Id.*

[34] Plaintiffs' Response to Defendants' Motion for Summary Disposition, p 11-12.

In contrast, "[t]he purpose of the standing doctrine is to assess whether a litigant's interest in the issue is sufficient to 'ensure sincere and vigorous advocacy.'" *Lansing Sch Educ Ass'n v Lansing Bd of Educ*, 487 Mich 349, 355 (2010). Although the plaintiff's legal capacity to sue must be challenged in the first responsive pleading, the defendant may argue that "the plaintiffs are not and never were persons who possessed a cause of action against them" in a motion under MCR 2.116(C)(8) and MCR 2.116(C)(10). *Leite*, 439 Mich at 920. Indeed, "the question of standing may be raised by a party or the court at any stage of the proceeding, including for the first time on appeal." *Attendant Care Companies v Farm Bureau Gen Ins Co of Michigan*, unpublished per curiam opinion of the Court of Appeals, issued Nov. 29, 2018 (Docket No. 340205), p 4. See also *Nat'l Org for Women, Inc v Scheidler*, 510 US 249, 255 (1994) ("Standing represents a jurisdictional requirement which remains open to review at all stages of the litigation"). Absent standing, "[o]ne cannot rightfully invoke the jurisdiction of the court." *Bowie v Arder*, 441 Mich 23, 42 (1992), citing 59 Am Jur 2d, Parties, § 30, p 414. If a court determines that a party lacks standing, it must "recognize its lack of jurisdiction and act accordingly by staying proceedings, dismissing the action, or otherwise disposing thereof, at any stage of the proceeding." *In re Fraser's Est*, 288 Mich 392, 394 (1939).

Consequently, the Plaintiffs are correct that the Defendants cannot challenge their capacity to sue under MCR 2.116(C)(5) because it was not raised in the Defendants' first responsive pleading or by motion prior to the first responsive pleading. However, the

Defendants have properly raised the Plaintiffs' standing to maintain Count III pursuant to MCR 2.116(C)(8) and (C)(10), and this argument was not waived.

2
The Plaintiffs Do Not Have Standing to Bring Count III as a Direct Cause of Action

In Count III, the Plaintiffs allege that the individual Defendants breached their fiduciary duties by (1) receiving personal benefits as a result of the merger with VT, (2) circulating inaccurate valuations of VT in order to gain member approval of the transaction, and (3) using NRL assets as collateral to secure loans in the name of and on behalf of Otisville Farm, Hunt and Storage, LLC.[35] The Defendants correctly point out that in each of these allegations, the party harmed by the alleged wrongful conduct is NRL, not the Plaintiffs. Thus, under *Murphy v Inman,* this claim should have been brought as a derivative action under MCL 450.4510. *Murphy*, 509 Mich at 132.

In response, the Plaintiffs implicitly concede that their claim for breach of fiduciary duties should be a derivative action and instead argue that the "gravamen" of Count III is actually a claim for member oppression under MCL 450.4515, which is appropriately brought as a direct action.[36] This argument defies credulity. Count III is labeled "Breach of Fiduciary Duties." Nowhere in the Verified Complaint do the Plaintiffs cite to MCL

[35] Verified Complaint ¶¶ 52-54.
[36] Plaintiffs' Response to Defendants' Motion for Summary Disposition, p 12.

450.4515 or even use the word "oppression." Rather, the Plaintiffs focus on the duties of due care, loyalty, and good faith, i.e., the key elements of a fiduciary duty claim.[37]

Michigan is a notice-pleading jurisdiction in which "the primary function of a pleading in Michigan is to give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position." *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 317 (1993). MCR 2.111(B)(1) requires that a complaint contain "the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend." In the present matter, the Verified Complaint does not put the Defendants on notice that they are being accused of member oppression under MCL 450.4515.

If Count III is viewed as a claim for breach of fiduciary duties, summary disposition is appropriate under *Murphy v Inman* because the claim is derivative and the Plaintiffs do not have standing to bring it. If Count III is viewed as a claim for member oppression pursuant to MCL 450.4515, it does not contain the allegations necessary to inform the Defendants of the claim they are being called upon to defend, and it is deficient under MCL 2.111(B)(1). In either case, summary disposition in favor of the Defendants is warranted.[38]

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[37] Verified Complaint ¶ 50.

[38] The Plaintiffs request the opportunity to amend their Verified Complaint pursuant to MCR 2.116(I)(5) "should this Honorable Court believe the gravamen of Plaintiffs' Complaint does not properly allege a direct claim under MCL 450.4515." Under MCR 2.116(1)(5), "[i]f the grounds asserted are based on subrule

VII
Sanctions

In the Plaintiffs' response, they request that this Court impose sanctions pursuant to MCR 1.109(E)(6) because the Defendants' motion is "so egregious and so completely lacking in any rational or legal bases [sic] as to merit sanctions."[39]

Here, the Plaintiffs have failed to show that sanctions are warranted. In fact, contrary to the Plaintiffs' assertion, this so called "egregious" motion actually resulted in the dismissal of Count III. In any event, the higher courts have established an exceedingly high threshold for granting sanctions and have reversed trial courts for awarding them under similar circumstances. See, e.g., *Kozma v Scott Law,* unpublished per curiam decision of the Court of Appeals, issued March 14, 2024 (Docket Nos. 363508 and 364450), p 9 (dedicating nine pages of analysis to reverse the granting of sanctions, finding that "plaintiff's claim was not frivolous because it was sufficiently grounded in law and fact"); *Davis v Wayne County Commission*, unpublished per curiam opinion of the Court of Appeals, issued May 11, 2023 (Docket No. 362547), p 1 ("The trial court clearly erred in concluding that Davis's complaint was devoid of arguable legal merit and intended to harass"); *Thayer v Dipple*, unpublished per curiam opinion of the Court of Appeals, issued May 11, 2023 (Docket No. 362213), p 1 ("The circuit court granted the Thayers' motion to

(C)(8), (9) or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified." Accordingly, the Plaintiffs shall have the opportunity to seek leave to amend under MCR 2.116(I)(5).

[39] Plaintiffs' Response to Defendants' Motion for Summary Disposition, p 6.

impose sanctions against Siudara based on 'deliberate misrepresentations to the Court.' We vacate the court's order and remand for further proceedings consistent with this opinion"); *Mass2Media, LLC v Cimini*, unpublished per curiam opinion of the Court of Appeals, issued March 30, 2023 (Docket Nos. 357973, 360357) (finding that sanctioning a party who was found to have based his entire case on lies was erroneous when the dispute boils down to a contract dispute).

Accordingly, sanctions are not warranted.

ORDER

Based on the foregoing Opinion, the Defendants' Motion for Summary Disposition is DENIED as to Count I (Violation of MCL 450.4702) and Count II (Accounting) and GRANTED as to Count III (Breach of Fiduciary Duties). The Plaintiffs' request for sanctions is DENIED.

ANY REQUEST TO AMEND THE COMPLAINT IN LIGHT OF THIS OPINION AND ORDER MUST BE MADE BY SEPARATE MOTION TO BE FILED NO LATER THAN OCTOBER 2, 2024 OR IT WILL BE DEEMED ABANDONED.

/s/ Michael Warren

HON. MICHAEL WARREN
CIRCUIT COURT JUDGE