If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

ROSE NEVADA INC, trustee of the JONATHAN ROSE EXEMPT TRUST II and the JONATHAN ROSE DISTRIBUTION TRUST,

Plaintiff-Appellant,

v

ROSE CASH MANAGEMENT II, LLC and WARREN ROSE,

Defendants-Appellees.

UNPUBLISHED
September 25, 2026
10:17 AM

No. 372174
Oakland Circuit Court
LC No. 2022-196766-CB

Before: M. J. KELLY, P.J., and O'BRIEN and LIEVENSE, JJ.

PER CURIAM.

Plaintiff, Rose Nevada, Inc, trustee of the Jonathan Rose Exempt Trust II (Exempt Trust II) and the Jonathan Rose Distribution Trust (Distribution Trust) (collectively, the Trusts), appeals as of right the trial court order granting summary disposition to defendants Warren Rose and Rose Cash Management II (RCM II) under MCR 2.116(C)(7) (statute of limitations) and (C)(10) (no genuine issue of material fact). For the reasons stated in this opinion, we affirm.

I. BASIC FACTS

In the 1920s, Edward Rose formed the business Edward Rose & Sons. Although the business was initially concerned with building single-family homes, over time it developed into a successful real estate development and management company. The business is comprised of multiple closely held entities that are owned by members of the Rose family. Sheldon Rose, one of Edward's sons, eventually became chief executive officer (CEO). In 2005 or 2006, Sheldon stepped down as CEO and Warren Rose, one of his sons, took on the position. Warren also became involved in the "top leadership" at each associated Edward Rose & Sons business entity by taking on the roles such as manager, president, or CEO.

As relevant to this appeal, Warren is the manager of RCM II, a limited liability company that was "specifically formed" in order to fund the Edward Rose Company (ERC). As manager of RCM II, Warren was responsible for its day-to-day operations. He worked with the chief

financial officer (CFO) of Edward Rose & Sons to manage RCM II's finances but was the only person who made decisions relating to the transfer of RCM II's funds. Warren explained that it was RCM II policy to lend all of its money to ERC. He also testified that, in his personal capacity, he is ERC's sole owner. Warren explained that ERC was established specifically for intercompany lending and borrowing, i.e., to act as a "bank" for other Rose family entities or members.

Despite stepping down from a leadership role, Sheldon remained active in the Edward Rose & Sons businesses until his death in 2020. Prior to his death, Sheldon engaged in extensive and complex estate planning across the various generations of the Rose family. That planning resulted in the formation of approximately 39 trusts, including the Trusts at issue in this case: the Exempt Trust II and the Distribution Trust. The Trusts' beneficiary is Dr. Jonathan Rose, who is one of Sheldon's children. Sheldon's other children, Laurie Dubin and Warren, each received a similar exempt trust and distribution trust. It is undisputed that Sheldon determined whether a trust owned an interest in an asset. And not all trusts had interests in the same assets.

After the Trusts initial trustee resigned, Henry Grix was appointed as the successor trustee for multiple trusts, including the trusts benefiting Sheldon's children. As relevant to this appeal, in 2015, Warren was appointed as co-trustee of the Trusts for "tax purposes" and because of his familiarity with the Rose family businesses. Grix's role as co-trustee was primarily to communicate with the Trust beneficiary and Warren's role was to make general business decisions.

The Trusts initially invested funds directly with ERC in exchange for promissory notes that paid interest to the Trusts at an intercompany rate. If the funds were needed for distributions, ERC would provide access to the funds to the Trusts. However, once RCM II was formed in December 2016, the Trusts consistently used their surplus funds to purchase an equity interest in RCM II, thereby becoming minority members. The decision to invest the Trusts' funds into RCM II was made by Warren and Grix as co-trustees. Indeed, Grix testified that the "agreed-upon method" of investing the Trusts' assets was to "put" the Trusts' money into RCM II. Information regarding the Trusts' investment was conveyed to Dr. Rose in the form of annual trust reports. The annual trust reports generally reflected that money from the Trusts was invested in RCM II and that interest was paid to the Trusts by ERC.

Between 2016 and 2020, RCM II, loaned substantially all of its funds—including the funds received from the Trusts—to ERC. In return, the Trusts received promissory notes that paid interest to the Trusts at an intercompany rate. ERC subsequently invested its money into various Rose family entities, including several entities in which Warren (and/or his direct family), but not the Trusts, held an interest either directly or indirectly (the Discovered Entities).[1]

Following Sheldon's death, Dr. Rose removed Grix and Warren as co-trustees of the Trusts, and Rose Nevada was appointed as their successor trustee. As trustee, Rose Nevada requested documentation so that it could file tax returns for the Trusts. Based upon the information

[1] ERC also approved personal loans for various Rose family members and for trusts benefiting Rose family members.

received, Rose Nevada learned that the Trusts did not have an interest in the Discovered Entities, but that Warren or his direct family members had an interest.

After learning of the Discovered Entities, Rose Nevada filed a complaint against RCM II and Warren, in his capacity as manager of RCM II. As relevant to this appeal, Rose Nevada brought claims for membership oppression, fraud, breach of fiduciary duty, and unjust enrichment. It also sought an accounting from RCM II. Following discovery, Warren and RCM II moved for summary disposition under MCR 2.116(C)(7) and MCR 2.116(C)(10). The trial court granted the motion after determining that summary disposition was warranted under MCR 2.116(C)(7) because Rose Nevada's claims were barred by the applicable statutes of limitations and that summary disposition was warranted under MCR 2.116(C)(10) because there were no genuine issues of material fact. This appeal follows.

II. SUMMARY DISPOSITION UNDER MCR 2.116(C)(7)

A. STANDARD OF REVIEW

Rose Nevada argues that the trial court erred by summarily dismissing its claims under MCR 2.116(C)(7). We review de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering*, *Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). "In reviewing the record to determine if defendant was entitled to judgment as a matter of law, we consider all affidavits, pleadings, and other documentary evidence submitted by the parties and construe the pleadings in plaintiff's favor." *Doe v Roman Catholic Archbishop of the Archdiocese of Detroit*, 264 Mich App 632, 638; 692 NW2d 398 (2004). "Absent a disputed question of fact, the determination whether a cause of action is barred by a statute of limitations is a question of law that this Court reviews de novo." *Id*.

B. ANALYSIS

1. APPLICABLE STATUTES OF LIMITATIONS

The parties agree that the statute of limitations for a claim of member oppression requires a plaintiff "to bring a claim seeking monetary damages for LLC member oppression within two years after discovery of the cause of action or three years after accrual of the cause of action, whichever occurs first." *Frank v Linkner*, 500 Mich 133, 149; 894 NW2d 574 (2017), citing MCL 450.4515(1)(e). They also agree that a breach of fiduciary duty claim is subject to a three-year period of limitations, with the claim accruing "when the beneficiary knew or should have known of the breach." *Prentis Family Foundation v Karmanos Cancer Institute*, 266 Mich App 39, 47, 698 NW2d 900 (2005); MCL 600.5805(2).

The parties disagree whether the limitations period for the unjust enrichment claim is three years under MCL 600.5805(2) or six years under MCL 600.5813. MCL 600.5805(2) states:

> Except as otherwise provided in this section, the period of limitations is 3 years after the time of the death or injury for all actions to recover damages for the death of a person or for an injury to a person or property.

In turn, MCL 600.5813 provides:

> All other personal actions shall be commenced within the period of 6 years after the claims accrue and not afterwards unless a different period is stated in the statutes."

When determining whether a limitations period applies, we must consider "the nature and origin of a cause of action to determine which limitations period applies. *Miller-Davis Co v Ahrens Const, Inc*, 489 Mich 355, 364; 802 NW2d 33 (2011). In its first amended complaint, Rose Nevada alleged that Warren was unjustly enriched by his wrongful actions as manager of RCM II, i.e., his self-interested transactions. Given that the nature and origin of the claim is based upon Warren's actions as manager and given that Rose Nevada is seeking an award of damages on behalf of the Trusts, which are members of RCM II, we conclude that the limitations period in MCL 450.4515(1)(e) applies to the unjust enrichment claim. Thus, like the claim for membership oppression, the claim for unjust enrichment is subject to a two to three year limitations period.

Finally, Warren and RCM II assert that the limitations period for "fraudulent concealment" is two years. In support, they cite MCL 600.5855. That statute, as will be discussed below, is a tolling statute, not a statute of limitations. The trial court agreed with Warren and RCM II that the limitations period for the fraud claim was two years. However, claims for fraud are generally governed by a six-year limitations period. MCL 600.5813; *Adams v Adams*, 276 Mich App 704, 710; 742 NW2d 399 (2007). The trial court, therefore, erred by determining that it was a two-year limitations period.

2. ACCRUAL

The trial court found that each claim accrued when RMC II was formed in December 2016. In doing so, the court noted that it was undisputed that the Trusts were members of RCM II, that Grix was their co-trustee, and that Grix was aware of the business structure involving the flow of funds from the Trusts to RCM II from RCM II to ERC and from ERC to other Edward Rose & Sons businesses. In its reply brief on appeal, Rose Nevada concedes that Grix knew that RCM's purported purpose was to lend funds to ERC, which would use the funds for Edward Rose & Sons business. It also acknowledges that Grix knew the information in the annual trust reports. However, it argues it was never disclosed to Grix that ERC, through Warren, would then disproportionately funnel the money it received from RCM II, including the Trusts' funds, to the Discovered Entities. The Discovered Entities, however, are Edward Rose & Sons entities, so it is clear that Grix was aware that they could receive money from ERC. Moreover, Grix testified that not all of the trusts were funded with the same assets, so he was also aware that not every trust had an interest in every Edward Rose & Sons entity. Consequently, from the time that RCM II was formed, Grix knew or could have discovered everything about the business structure. Indeed, by requesting financial records necessary to prepare the Trusts' tax returns, Rose Nevada was able to discover that Warren, through ERC, was loaning money to the Discovered Entities. Other than stating that Grix did not know specific details regarding the investments in the Discovered Entities, Rose Nevada has offered no explanation for why such information was not discoverable by Grix.

Regardless, other than stating that there is a question of fact regarding what information was known by Grix, Rose Nevada has offered no analysis of the reason why the alleged factual dispute requires a different accrual date. "It is not enough for an appellant in his brief simply to 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 elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Accordingly, the facts relied upon by the trial court to determine that the claims accrued when RCM II was formed were, in fact, undisputed. And Rose Nevada has abandoned its argument that additional, allegedly disputed facts, mandate a later accrual date by failing to present any legal argument or analysis in support of its contention.

In light of the fact that the claims accrued in December 2016, the claims for membership oppression, breach of fiduciary duty, and unjust enrichment were time-barred. The claim for fraud, however, was timely because Rose Nevada filed its claim less than six years after RCM II was formed.

3. FRAUDULENT-CONCEALMENT EXCEPTION

Rose Nevada next argues that the trial court erred by granting summary disposition under MCR 2.116(C)(7) because the applicable statutes of limitations should have been tolled by the fraudulent-concealment exception in MCL 600.5855. We disagree.

The fraudulent-concealment exception to an applicable statute of limitations provides:

> If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations. [MCL 600.5855.]

"Fraudulent concealment means employment of artifice, planned to prevent inquiry or escape investigation, and mislead or hinder acquirement of information disclosing a right of action." *Doe*, 264 Mich App at 642-643 (quotation marks and citation omitted). "The fraud must be manifested by an affirmative act or misrepresentation." *Id*. (quotation marks, citation, and alteration omitted). "Mere silence does not demonstrate fraudulent concealment[.]" *Dillard v Schlussel*, 308 Mich App 429, 443; 865 NW2d 648 (2014) (quotation marks and citation omitted). An affirmative act or misrepresentation, however, is not required if "there is an affirmative duty to disclose [because] the parties are in a fiduciary relationship." *Brownell v Garber*, 199 Mich App 519, 527; 503 NW2d 81 (1993) (quotation marks and citation omitted). In such cases, fraudulent concealment can be shown if the defendant intentionally fails to disclose information in order to mislead the plaintiff. *Id*. at 531.

Resolution of this issue requires consideration of what information regarding the Trusts' investments was known by the Trusts. As co-trustees of the Trusts, Warren and Grix were aware that the Trusts' funds were being invested in RCM II and that RCM II was loaning those funds to ERC in exchange for promissory notes that paid interest to the Trusts at the intercompany rate. In point of fact, such information was reflected upon the annual trust reports that were provided to the Trusts' beneficiary, Dr. Rose. Grix further knew that ERC used the funds that were loaned to it "[f]or the reasonable needs of the business . . . broadly defined" and that the idea was "to preserve

all of [the Rose Family & Sons] family entities." In written correspondence, Grix elaborated that ERC funds were used to facilitate all Edward Rose & Sons entities and that ERC acted as a central "bank" for Edward Rose & Sons entities. Finally, as noted above, Grix knew that ERC might invest in Edward Rose & Sons entities that the Trusts did not have an interest in.

Rose Nevada does not argue that Warren fraudulently concealed the fact that the Trusts were investing money in RCM II and that RCM II was loaning that money to ERC. Rather, it contends that the fact that was concealed is that ERC then loaned its money—including the funds received from RCM II that RCM II had received from the Trusts—to the Discovered Entities. As co-trustee, Grix was generally aware that a loan to an entity in which the Trusts had no interest could be made by ERC, but he had no specific knowledge that such loans were made to the Disputed Entities.[2]

In order to prevail on its argument that the statutes of limitations were tolled by the fraudulent-concealment exception stated in MCL 600.5855, Rose Nevada must show that Warren, in his capacity as manager of RCM II, fraudulently concealed ERC's financial decisions from the Trusts. It attempts to do so by asserting that Warren's fraud was manifested by affirmative act when Warren provided Grix with financial documents that omitted the fact that ERC loaned money to the Disputed Entities. Rose Nevada does not directly identify the financial documents that Warren allegedly provided to Grix. However, based upon the testimony it cited in support of its argument, it appears that the "financial documents" are the annual trust reports that were provided to Dr. Rose. Based upon the record, it is unclear whether the annual trust reports were prepared by Warren, Grix, or by someone else. As such, there is no factual basis for the implied assertion that Warren omitted information when he prepared the annual trust report. Nor is there any evidence that Warren provided the annual trust reports to Grix. As such, there is no factual support for Rose Nevada's claim that Warren provided Grix with "incomplete" financial documents in order to make Grix believe that he had all material information concerning the Trusts' investments. When responding to a motion for summary disposition, the nonmoving party cannot rely on mere allegations or denials, but must instead, "by affidavits or as otherwise provided in [MCR 2.116], set forth specific facts showing that there is a genuine issue for trial." *Barnard Mfg*, 285 Mich App at 374 (quotation marks and citations omitted).

Alternatively, Rose Nevada maintains that it can establish fraudulent concealment even in the absence of an affirmative act or misrepresentation because Warren had an affirmative duty to disclose his self-interested transactions and that he intentionally failed to carry out that duty in

[2] In contrast, Warren was aware of all the details involving the flow of money from the Trusts to the Discovered Entities because he was co-trustee of the Trusts, the manager of RCM II, the president of ERC, and a person who held an interest the Discovered Entities. On appeal, Warren and RCM II argue that his knowledge should be imputed to the Trusts and that such imputation of knowledge is sufficient to destroy Rose Nevada's claim of fraudulent concealment under MCL 600.5855. Essentially, they argue that no facts could be concealed—fraudulently or otherwise—because all facts were known to Warren. They have, however, cited no authority in support of their argument, so we consider it abandoned on appeal. See *Mitcham*, 355 Mich at 203.

order to mislead the Trusts. In support, it directs this Court to MCL 450.4409(1)(c), which provides

> (1) Except as otherwise provided in an operating agreement, a transaction in which a manager or agent of a limited liability company is determined to have an interest shall not, because of the interest, be enjoined, be set aside, or give rise to an award of damages or other sanctions, in a proceeding by a member or by or in the right of the company, if the manager or agent interested in the transaction establishes any of the following:
>
> * * *
>
> (c) The material facts of the transaction and the manager's or agent's interest were disclosed or known to the members entitled to vote and they authorized, approved, or ratified the transaction.

MCL 450.4409, however, does not require that a manager of an LLC disclose a self-interested transaction. Instead, it only provides that such a transaction will not be set aside under the circumstances set forth in MCL 450.4409(1)(c). No fiduciary duty to disclose, therefore, arises from MCL 450.4409.

Another problem with Rose Nevada's argument is that there is, quite simply, no evidence that Warren concealed any information from the Trusts that the Trusts were entitled to receive. As noted above, the Trusts provided funds to RCM II. In return for those funds, they obtained an equity interest in RCM II. Warren, as manager of RCM II, proceeded to loan the money it received from the Trusts to ERC in exchange for a promissory note that paid interest to the Trusts at an intercompany rate.

Thereafter, ERC made the decision to loan ERC's money (which included funds received from the Trusts) to members of the Rose family and to other Edward Rose & Sons entities, including the Disputed Entities. ERC's financial decisions were made by Warren, but they were made in his capacity as the president of ERC, not as the manager of RCM II and not as the co-trustee of the Trusts. "It is a well-recognized principle that separate corporate entities will be respected." *Seasword v Hilti, Inc*, 449 Mich 542, 547; 537 NW2d 221 (1995). Here, Rose Nevada directs this Court to no authority supporting its implied argument that the Trusts were entitled to the disclosure of ERC's financial decisions involving the Trusts' money. Nor has Rose Nevada directed this Court to any authority in support of the proposition that the fraudulent-concealment exception to the applicable statutes of limitations can be triggered by the concealment of information to which the person with a right to bring a claim is not entitled to discover. As such, the argument is abandoned on appeal. *Mitcham*, 355 Mich at 203.

In sum, the fraudulent-concealment exception to the applicable statutes of limitations does not apply. Further, the trial court did not err by determining that the claims accrued in December 2016. As a result, the claims for membership oppression, breach of fiduciary duty, and unjust enrichment were time-barred under the applicable limitations periods. The court properly granted summary disposition of those claims under MCR 2.116(C)(7). The court erred, however, by summarily dismissing the fraud claim under MCR 2.116(C)(7) because that claim was timely filed.

III. SUMMARY DISPOSITION UNDER MCR 2.116(C)(1)

A. STANDARD OF REVIEW

Rose Nevada next argues that the trial court erred by summarily dismissing its fraud claim under MCR 2.116(C)(10).[3] In reviewing a motion for summary disposition under MCR 2.116(C)(10), a court considers "affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion." *Greene v A P Prods, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006) (quotation marks and citation omitted). The motion for summary disposition "tests the factual support for a claim and should be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 280; 807 NW2d 407 (2011). A genuine issue of material fact exists if the record, viewed in a light most favorable to the nonmoving party, establishes a matter in which reasonable minds could differ. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

B. ANALYSIS

"Silent fraud, also known as fraudulent concealment, acknowledges that suppression of a material fact, which a party in good faith is duty-bound to disclose, is equivalent to a false representation and will support an action in fraud." *Maurer v Fremont Ins Co*, 325 Mich App 685, 695; 926 NW2d 848 (2018). To establish a claim for silent fraud, the plaintiff must show that (1) the defendant suppressed a material fact, (2) the defendant had the duty to disclose the fact, and (3) the plaintiff relied on the omission to his or her detriment. *Alfieri v Bertorelli*, 295 Mich App 189, 193; 813 NW2d 772 (2012). "Silent fraud is essentially the same [as fraudulent misrepresentation] except that it is based on a defendant suppressing a material fact that he or she was legally obligated to disclose, rather than making an affirmative misrepresentation." *Id*. at 193.

The basis for Rose Nevada's fraudulent-concealment claim is its contention that Warren had a duty to disclose to the Trusts that he was engaging in self-interested transactions. In support, it once more cites MCL 450.4409. Again, that statute provides that a self-interested transaction will not be set aside if the material facts were "disclosed or known to the members entitled to vote and they authorized, approved, or ratified the transaction." MCL 450.4409(1)(c). Nothing in the statute creates a duty for a manager to disclose the material facts of a self-interested transaction. Instead, the statute only states the circumstances under which such a transaction will not be set aside.

Rose Nevada nevertheless argues that Warren was required under MCL 450.4409(1)(c) to disclose the core facts of his self-interested transactions to Grix, in writing, and that, Grix then had to authorize, approve, or ratify the transactions. Even if MCL 450.4409(1)(c) created a duty to disclose material facts, Rose Nevada's argument would fail. First, nothing in MCL 450.4409(1)(c)

---

[3] Rose Nevada also argues that the trial court erred by summarily dismissing its claims for breach of fiduciary duty, membership oppression, and unjust enrichment under MCR 2.116(C)(10). However, because those claims were properly dismissed under MCR 2.116(C)(7), we need not address those arguments.

requires written disclosure of any information. Thus, it is not dispositive that no such written documents were produced during discovery. Second, the statute clearly contemplates that the material facts of a self-interested transaction must be either *disclosed* or *known* to the voting members. Thus, even if Warren did not disclose any material facts, it is sufficient if those facts were nevertheless known to the voting members. Here, as explained above, Grix knew that the Trusts were purchasing an equity interest in RCM II, that RCM II was investing their funds in ERC, and that ERC was the family "bank" that was using its funds to invest in other Edward Rose & Sons entities. Finally, it is worth noting that there were no voting members of RCM II. Rather, it appears that all decisions were made solely by Warren, as manager.

Rose Nevada again asserts that Warren took affirmative steps to conceal his fraud by providing Grix with "financial records relating to the Trusts' investment which omitted his self-interested transaction." It does not identify any factual support for the contention that Warren provided the annual trust reports to Grix. And Rose Nevada has not provided any authority supporting a determination that ERC's financial decisions needed to be disclosed to the Trusts.

Finally, Rose Nevada argues that Grix relied upon the annual trust reports to his detriment and that he had no reason to believe that Warren was engaged in any self-dealing. Yet, Grix was fully aware of the operative facts: the Trusts owned assets in various Edward Rose & Sons entities, they invested their surplus cash in RCM II, an LLC that was operated solely as a cash-management vehicle for Rose family members. In turn, RCM II invested all of its funds in ERC. Grix knew that ERC served as a "bank" for the Rose family. Its purpose was to provide loans to Edward Rose & Sons entities. Grix further knew that Warren was co-trustee of the Trusts and the manager of RCM II. He asked Warren to serve as co-trustee in order to reap tax benefits that would inure to the Trusts as a result of Warren's relationship to Edward Rose & Sons entities. Under these circumstances, it defies common sense to suggest that Grix was unaware that, at least some of Warren's acts as manager of RCM II, might be self-interested ones. The entire business structure was designed to aid the Rose family and its businesses.

In sum, the trial court did not err by summarily dismissing the fraud claim because there is no evidence that Warren suppressed a material fact that he had a duty to disclose.

IV. ACCOUNTING

Lastly, Rose Nevada argues that the trial court erred by summarily dismissing his claim for an accounting under MCL 450.4503(5), which permits a formal accounting of LLC's affairs "whenever circumstances render it just and reasonable." However, Rose Nevada seeks information on ERC's financial affairs. Nothing in MCL 450.4503 entitles members of an LLC to an accounting of a different business just because the LLC's manager is the president of another business. The trial court, therefore, did not err by dismissing this claim.

Affirmed. Warren and RCM II may tax costs as the prevailing parties. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Colleen A. O'Brien