

STATE OF MICHIGAN
COURT OF APPEALS

In re HELEN TENNEY MILLER TRUST.

NEW PRODUCTS CORPORATION,

Plaintiff-Appellant,

v

GREG L. MILLER, Individually and as Co-Trustee and Co-Personal Representative, VALORIE MILLER, Individually and as Co-Trustee and Co-Personal Representative, BETHANY MILLER MORGAN, CINDY MILLER KING, and MODERN PLASTICS CORPORATION,

Defendants-Appellees.

UNPUBLISHED

June 29, 2023

No. 360048

Berrien Probate Court

LC No. 2019-000349-TV

Before: GLEICHER, C.J., and RICK and MALDONADO, JJ.

PER CURIAM.

This appeal arises from a civil case filed in probate court that was consolidated with the supervised administration of the Helen Tenney Miller Trust (the Miller Trust). After a bench trial, plaintiff, New Products Corporation, appeals by right the amended judgment entered by the Berrien Probate Court in favor of defendants, Greg L. Miller and Valorie Miller, individually and as the cotrustees of the Miller Trust and co-personal representatives of the Helen Tenney Miller Estate, Bethany Miller Morgan, Cindy Miller King, and Modern Plastics Corporation. New Products raises numerous claims of error, but we conclude that each is without merit. Thus, we affirm.

I. BASIC FACTS

The facts giving rise to this litigation started with a now-deceased man named Walter Miller. Walter was a businessman who, years before any of the parties to this litigation were born,

founded two businesses: Modern Plastics Corporation and New Products Corporation. Walter also had two sons, Stanley and Victor, both of whom are now deceased. Stanley eventually took control of New Products from his father, and Victor did the same with Modern Plastics. Stanley later passed control of New Products to his daughter, Cheryl. Cheryl has acted on behalf of New Products at all times relevant to this litigation. Victor married a woman named Helen, but she went by her middle name, Tenney. Tenney is likewise deceased. Victor and Tenney had five children who survived to adulthood: Greg, Valorie, Bethany, Heidi, and Cindy. Their sixth child, Randy, died when he was two years old. Victor and Tenney formed a trust (hereinafter: “the Miller Trust”), and they formed a corporation called Lee Five Enterprises. The corporation’s name derived from the fact that all five of their surviving children had the middle name of Lee. The Miller Trust owned 100% of the shares of Lee Five. Lee Five owned 95% of the shares of Modern Plastics. This litigation revolves around a piece of real property, known as 489 North Shore Drive, that was owned by Modern Plastics.

In June 2006, LaSalle Bank made a loan to Modern Plastics secured with a mortgage on 489 North Shore Drive. LaSalle Bank’s successor, Bank of America, instructed Modern Plastics to cease operations in 2008, following Victor’s death. Heidi caused Modern Plastics to cease operations and began to wind up the corporation’s affairs. In December 2008, just days before her death, Heidi entered into an agreement to sell 489 North Shore Drive to Ox Creek Development, LLC, for \$650,000, but the sale did not go through. Tenney acted on behalf of Modern Plastics following Heidi’s death, and Modern Plastics filed for bankruptcy protection in January 2009. In March 2013, Bank of America assigned its note and mortgage to New Products in exchange for \$225,000. In January 2014, the bankruptcy court allowed the bankruptcy trustee to abandon 489 North Shore Drive despite New Products’ objection. In August 2014, Tenney—purportedly as the trustee of the Walter Miller Trust—executed a quitclaim deed transferring Parcel 9 to New Products; Parcel 9 was surrounded by the parcels that made up 489 North Shore Drive, but which was not owned by Modern Plastics. Tenney, acting on behalf of Modern Plastics, later entered into an agreement with New Products that gave New Products the option to purchase the remaining parcels of 489 North Shore Drive. In July 2015, Tenney signed annual statements for Modern Plastics that had been due from 2009 through 2015. Tenney also assigned any claims that Modern Plastics or Lee Five might have had related to the real property to New Products.

Tenney died in January 2017. Greg applied to the probate court for informal probate of Tenney’s estate in April 2017. In June 2017, and again in May 2018, Cheryl caused New Products to send letters that warned Tenney’s beneficiaries that they should not allow Modern Plastics and Lee Five to become involuntarily dissolved for failing to file annual reports. New Products expressed its belief that, should that happen, the beneficiaries would become partners in an unincorporated entity and would be personally liable for all the preexisting debts and obligations of the two corporations. Cheryl’s protests notwithstanding, the state involuntarily dissolved Modern Plastics and Lee Five in July 2018 for failing to file annual reports for three consecutive years.

In May 2019, Greg and Valorie Miller, as trustees of the Miller Trust, petitioned the probate court to exercise its jurisdiction and supervise the Miller Trust’s administration. Specifically, they alleged that they had already disbursed approximately \$1,000,000 in assets from the trust but had become aware that New Products intended to assert claims against the Miller Trust and its beneficiaries. They believed that New Products’ claims had no legitimacy but asked the probate

court to supervise the remaining distributions. They simultaneously petitioned for an order approving their proposed final distributions. The probate court assigned Case No. 2019-000349-TV to that petition.

In August 2019, New Products sued Greg, Valorie, Bethany, and Cindy. New Products sued Greg and Valorie in their individual capacities as well as their capacities as the trustees of the Miller Trust and personal representatives of the Miller Estate. It sued Bethany and Cindy as beneficiaries of the Miller Trust. The probate court assigned Case No. 2019-000631-CZ to that complaint. New Products filed an amended complaint in November 2019. New Products added Modern Plastics as a defendant without serving it with a summons. New Products alleged six claims. It alleged that Greg and Valorie breached their fiduciary duty to maintain the Miller Trust's property by failing to protect the real property located at 489 North Shore Drive and by distributing the Miller Trust's assets without first resolving New Products' claim (Count I). It also alleged that the Miller Trust and Miller Estate was liable for the debts owed on the property (Count II). New Products alleged that Tenney, when she was alive, and Greg breached their duties as officers of Modern Plastics to maintain the property (Count III). New Products also restated its claim for reimbursement of protective advances (Count IV), for specific performance of its option to purchase 489 North Shore Drive (Count V), and for a declaration that the option to purchase 489 North Shore Drive had been extended (Count VI).

The probate court granted New Products' motion for summary disposition on Counts V and VI, which are not at issue on appeal. It held a trial on the remaining four claims and entered a judgment of no cause of action on those four claims. New Products then appealed by right in this Court.

II. BREACH OF DUTIES

New Products argues that the probate court erred by determining that Greg and Valorie did not breach any duty that they might have owed to New Products as the trustees of the Miller Trust and the personal representatives of the Miller Estate. We disagree.

A. STANDARD OF REVIEW

This Court reviews de novo whether the probate court properly interpreted and applied the relevant statutes and court rules. *Franks v Franks*, 330 Mich App 69, 86; 944 NW2d 388 (2019). Whether a fiduciary owes a particular duty to another under a given set of facts is a question of law that this Court reviews de novo. See *Prentis Family Foundation v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 43; 698 NW2d 900 (2005). This Court, however, reviews the findings underlying a probate court's decision for clear error. See *In re Redd*, 321 Mich App 398, 403; 909 NW2d 289 (2017). A finding is clearly erroneous when this Court is left with the definite and firm conviction that the probate court was mistaken. *Id.*

B. ANALYSIS

While there are circumstances in which trustees and personal representatives of estates can be liable to creditors of the respective trusts and estates, there is no such liability in this case because New Products was a creditor of Modern Plastics, and New Products was a creditor of

neither the Miller Trust nor the Miller estate. Modern Plastics owned 489 North Shore Drive; not the trust or the estate. Therefore, Greg and Valorie did not owe any duties to New Products.

1. DUTIES TO CREDITORS

While trustees and estates personal representatives do not act as fiduciaries to the creditors of their respective trusts and estates, there are situations in which trustees and personal representatives do owe duties and can be liable to said creditors.

The Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*, defines fiduciaries to include, in relevant part, personal representatives and trustees. See MCL 700.1104(e). EPIC also defines the persons to whom a fiduciary owes a heightened duty of care:

A fiduciary stands in a position of confidence and trust with respect to each heir, devisee, beneficiary, protected individual, or ward for whom the person is a fiduciary. A fiduciary shall observe the standard of care described in [MCL 700.7803] and shall discharge all of the duties and obligations of a confidential and fiduciary relationship, including the duties of undivided loyalty; impartiality between heirs, devisees, and beneficiaries; care and prudence in actions; and segregation of assets held in the fiduciary capacity. With respect to investments, a fiduciary shall conform to the Michigan prudent investor rule. [MCL 700.1212(1).]

A fiduciary who violates a duty owed to an “heir, devisee, beneficiary, protected individual, or ward for whom the person is a fiduciary” has breached his or her duty, and the probate court may remedy the breach in a variety of ways. MCL 700.1308(1). A personal representative has the same fiduciary duties as a trustee when dealing with property belonging to the estate. See MCL 700.3703(1); MCL 700.7803. Generally, a trustee or representative need only “take reasonable steps to take control of and protect trust property.” MCL 700.7810.

In *In re Baldwin Trust*, 274 Mich App 387, 401; 733 NW2d 419 (2007), this Court concluded that an estate’s representative does not owe fiduciary duties to the creditors of the estate. Concurring in part and dissenting in part, Judge Servitto reasoned that, even though a fiduciary does not owe *fiduciary* duties to a creditor, a fiduciary could nevertheless be liable to a creditor under certain limited circumstances. See *id.* at 405 (SERVITTO, J., concurring in part and dissenting in part). She explained that EPIC provided that a personal representative was liable for certain losses to an estate caused by a breach of the fiduciary’s duties, had an obligation to act in the best interests of claimants whose claims have been allowed, and could be liable to interested persons for losses caused to the estate. *Id.* at 405-406, citing MCL 700.1308(1), MCL 700.3703(1), and MCL 700.3712. She concluded that a creditor who was able to show that the fiduciary breached a duty owed to the estate and thereby harmed the estate could petition to compel the fiduciary to reimburse the estate for the loss, which then might be available to pay creditors. *Id.* at 406. Our Supreme Court subsequently criticized the majority decision in *In re Baldwin Trust*: “[W]e reject the reasoning of the Court of Appeals majority to the extent it is inconsistent with the partially dissenting opinion.” *In re Baldwin Trust*, 480 Mich 915, 915 (2007).

Accordingly, Michigan caselaw establishes that a creditor may assert a claim against a personal representative or trustee for a breach of duty that the fiduciary owed in order to recover for the harm to the estate.

2. CREDITOR STATUS

Modern Plastics, as a corporation, was an entity separate and distinct from Lee Five, the Miller Trust, and the Miller Estate; therefore, while Modern Plastics was indebted to New Products, the Miller Trust and Miller Estate were not.

In this case, New Products presented evidence that it believed established that it was a creditor of the Miller Estate and Miller Trust. It argued that Greg and Valorie owed it a duty as a creditor and that Greg and Valorie could be liable to it for the harms caused by their failure to handle properly the real property located at 489 North Shore Drive. The evidence, however, demonstrated that the Miller Estate and Miller Trust had no obligations involving the real property that supported New Products' claim to be a creditor of the Miller Trust or Miller Estate. The undisputed evidence established that Modern Plastics held title to all the parcels at issue except one, which Tenney had previously deeded to New Products, and to the extent that it did not own that parcel, it had exercised possession over that parcel for decades. It was also undisputed that Modern Plastics executed the note and mortgage concerning the property with New Products' predecessor in interest and that those documents imposed obligations concerning the property only on Modern Plastics. There was no evidence that any other person or entity guaranteed Modern Plastics' obligations under the note and mortgage.

On appeal, New Products contends that Greg and Valorie had obligations to New Products as a creditor because the Miller Trust—in its view—owned 489 North Shore Drive, albeit indirectly. This argument is premised on the facts that Modern Plastics was owned by Lee Five and Lee Five was owned by the Miller Trust. However, New Products' argument overlooks the separate existences of these entities: Modern Plastics had a separate existence from that of Lee Five, and Lee Five had a separate existence from the Miller Trust. Michigan courts honor the separate existence of artificial entities unless a court sitting in equity has pierced the corporate veil and disregarded the entity's separate existence. See *Green, Hendrickson, Esper, and Libwag, LLC v Ziegelman*, 310 Mich App 436, 450-451; 873 NW2d 794 (2015). As will be explained in section IV, *infra*, the probate court properly determined that New Products failed to establish grounds for disregarding these entities' separate existences, and the undisputed evidence demonstrated that Modern Plastics' legally continued as a separate corporate entity throughout the events at issue.

Greg testified that New Products' predecessor in interest, Bank of America, compelled Modern Plastics to cease operations in 2008, and by December 2008, Heidi had attempted to find a purchaser for Modern Plastics' real property. That purchase agreement, however, was never completed. Modern Plastics then sought bankruptcy protection. The bankruptcy trustee took over Modern Plastics' assets and proceeded to liquidate them. After determining that the real property had no value to the bankruptcy estate, the bankruptcy trustee abandoned the real property back to Modern Plastics in January 2014. By that time, Modern Plastics had already been involuntarily dissolved as a result of the failure to file annual reports. See MCL 450.1831(d). Although Tenney acted to restore Modern Plastics' corporate status at Cheryl's request, it was again involuntarily

dissolved in July 2018. The involuntary dissolutions did not, however, affect Modern Plastics' separate existence.

A dissolved corporation continues in existence for the purpose of winding up its affairs, MCL 450.1833, and the corporation continues to function for that purpose in the same manner as though no dissolution had occurred, MCL 450.1834. Moreover, during that winding-up process, the corporation's assets remain titled in the corporation until transferred by the corporation to another entity or person. See MCL 450.1834(b). The corporation may not carry on business except for the purpose of winding up, but it may perform any act incident to liquidation of its business and affairs. MCL 450.1833(d). The Legislature did not provide a time limit on the process of winding up a corporation's affairs, but this Court has held that a corporation continues to exist after dissolution for a reasonable period for the purpose of winding up its affairs; whether a period is reasonable is a question of law for the court. *Flint Cold Storage v Dep't of Treasury*, 285 Mich App 483, 496-497; 776 NW2d 387 (2009). During this period of extended life, the corporation is entitled to hold and transfer property in its own name. *Kay Furniture Co v Rovin*, 312 Mich 290, 296; 20 NW2d 194 (1945). An involuntarily dissolved corporation remains a corporation during the process of winding up, and, as such, the partnership theory of liability does not apply to the persons conducting the corporation's business during this period. See *Bergy Bros, Inc v Zeeland Feeder Pig, Inc*, 415 Mich 286, 294-295; 327 NW2d 305 (1982). Indeed, the obligations of the corporation remain solely the obligations of the corporation: "Thus, corporate obligations incurred during the period of forfeiture are binding upon the corporation, and only the corporation—individual members are no more liable than had the forfeiture not occurred." *Id.* at 296.

Responsibility for 489 North Shore Drive remained solely with Modern Plastics because its officers acted with reasonable diligence with winding it up. The evidence established that Heidi and Orlaske were the only officers of Modern Plastics after Greg's termination in 2008. Heidi, and later Orlaske, acted to wind up Modern Plastics' affairs. They caused Modern Plastics to cease ongoing operations and attempted to sell the corporation's property. After Heidi's death in December 2008, the sole officer was Orlaske. In January 2009, Modern Plastics went into bankruptcy, which status continued until after the bench trial in this case. Modern Plastics could not take steps to liquidate its property when the property was under the control of the bankruptcy trustee. See 11 USC 362(a). Modern Plastics did have the authority to dispose of the real property after the bankruptcy trustee abandoned it, see 11 USC 554; *Catalano v Comm'r of Internal Revenue*, 279 F3d 682, 685 (CA 9, 2002) ("Upon abandonment, the debtor's interest in the property is restored *nunc pro tunc* as of the filing of the bankruptcy petition.").¹ However, the undisputed evidence showed that the property had sat unused for approximately five years and had suffered damage as a result of salvage activities, neglect, and exposure to the elements. Additionally, the property was subject to the note and mortgage as well as other possible liens or claims that existed before the bankruptcy. It is undisputed that these claims far exceeded the real property's value and were not discharged by the bankruptcy. See *RDM Holdings, Ltd v Continental Plastics Co*, 281 Mich App 678, 695; 762 NW2d 529 (2008) (stating that corporate

¹ Federal authorities are not binding on this Court, but may be persuasive. See *Abela v Gen Motors Co*, 469 Mich 603, 606; 677 NW2d 325 (2004).

entities do not get the benefit of a bankruptcy discharge after a Chapter 7 bankruptcy). Consequently, 489 North Shore Drive had no value to Modern Plastics, and any resources spent on it would be solely for the benefit of Modern Plastics' lienholder—New Products—which had elected not to take ownership of the real property notwithstanding that it had both the right to foreclose and the option to purchase the parcels for a nominal sum. Modern Plastics also had no income and no cash reserves with which to make improvements to the real property, and in any event, its other assets were under the bankruptcy trustee's control. Under the circumstances, it was reasonable for Modern Plastics to allow the mortgage holder and other potential lienholders to exercise their rights to seize title to the property as a method of liquidating the real property as the last remaining asset of Modern Plastics, rather than spending resources it did not have to repair and market the property for the benefit of the lienholders.

Under the facts applicable to this case, it cannot be said that Modern Plastics' actions were unreasonable or that it had exceeded a reasonable period for winding up its affairs. See *Flint Cold Storage*, 285 Mich App at 496-497. It took reasonable steps to wind up its affairs by ceasing its production, filing bankruptcy, and allowing the lienholders to seize the real property at issue, if they chose, after the bankruptcy trustee abandoned the property. It was, accordingly, a de facto corporation throughout the events at issue, see *Bergy Bros, Inc*, 415 Mich at 294-295, and the probate court correctly respected its separate existence in the absence of evidence justifying disregarding it, see *Green*, 310 Mich App at 450-451. Because Modern Plastics remained a separate legal entity, New Products could not rely on its note and mortgage with Modern Plastics to establish that the Miller Trust owed it any debts. Similarly, and contrary to New Products' contention on appeal, Greg and Valorie had no need to disclaim an interest in the real property under MCL 700.3601 because the Miller Trust did not own the real property; Modern Plastics owned it. Greg and Valorie also had no obligation to take control of the real property as the personal representatives of the Miller Estate. See MCL 700.3709. Not only did the Miller Estate have zero ownership in the real property at issue, it did not even own shares in Modern Plastics or Lee Five. No reasonable finder of fact could conclude that the Miller Estate had any obligations involving Modern Plastics' property.

As trustees, Greg and Valorie had an obligation to take “reasonable steps to take control of and protect trust property.” MCL 700.7810. However, the Miller Trust did not own the real property at issue: it owned stock in Lee Five.² Greg and Valorie, therefore, had an obligation to take reasonable steps to take control of and protect the Miller Trust's shares in Lee Five. The

² New Products complains that, if the Miller Trust did not have an obligation to maintain Modern Plastics' corporate form, to appoint officers, and to maintain its real property, then no one had the obligation because the Miller Trust indirectly owned Modern Plastics. New Products' complaint is not well-taken. Even if shareholders fail to appoint directors or officers to wind up a corporation's affairs, a creditor has a remedy: he or she may sue and ask the court to exercise its inherent authority under equity to appoint a receiver to wind up the corporation's affairs. See *Edison v Fleckenstein Pump Co*, 249 Mich 234, 236-238; 228 NW 705 (1930); see also MCL 450.1851(1). New Products had, and continues to have, remedies available to it. It simply refuses—for whatever reason—to avail itself of those remedies.

evidence showed that Lee Five's only assets were shares in Modern Plastics, which was in bankruptcy and had no income, and its only asset was worth far less than the lien held by New Products. Because Modern Plastics had no value, Lee Five's shares were also worthless.³ No reasonable trustee in the position of Greg and Valorie would spend any trust funds on real estate that the trust did not own and that, no matter how much time and effort were expended on it, would never have value to the Miller Trust. And that is precisely what the probate court found: "It would have been financially irresponsible for these Trustees and Personal Representatives to expend any trust resource[s] on the [Modern Plastics] property given all the circumstances of this case." The obligations stated under the note and mortgage were obligations of Modern Plastics alone, and New Products cannot rely on the note and mortgage to establish that the Miller Trust owed it anything.

We also note that New Products places much weight on the evidence that Greg made loans to himself from the Miller Trust and that he and Valorie came to an understanding about the repayment of those loans. New Products also cites other irregularities in the administration of the Miller Trust. Identifying those irregularities and relying on Judge Servitto's partial dissent in *In re Baldwin Trust*, 274 Mich App at 405-406, it then concludes that it had the right to sue to compel Greg and Valorie to pay Modern Plastics' debts. New Products' reliance on *In re Baldwin Trust* is inapposite. Judge Servitto explained that a personal representative has a limited duty to a creditor who is harmed by the personal representative's wrongdoings that result in a loss to the estate. *Id.* at 406. Judge Servitto did not state that the personal representative becomes liable for the debt owed by the estate to the creditor. Rather, the creditor would still have to establish that the loss to the estate harmed the creditor—that is, the creditor would have to establish that, but for the harm, the creditor would have been compensated to some extent by the estate. See *id.* at 405-406. New Products never established that the Miller Trust or Miller Estate had any obligation to pay anything to New Products. Accordingly, New Products was not a creditor and, even if there were irregularities in the administration of the Miller Trust, those irregularities did not harm New Products as a creditor.

The probate court did not err when it determined that New Products was not a creditor and that it failed to establish that it had a valid claim against the Miller Estate or Miller Trust. Therefore, the probate court did not err when it concluded that there was no cause of action stated under Count I of New Products' complaint.⁴

III. DUTIES OF SHAREHOLDERS, DIRECTORS, AND OFFICERS

New Products argues that that the probate court erred when it found that New Products failed to show that Greg and Valorie were officers of Modern Plastics and erred when it determined

³ Given that the shares were worthless, Greg and Valorie could have abandoned the shares and could have declined to accept any distributions—in whatever form—to the Miller Trust because of its ownership in Lee Five. See MCL 700.7817.

⁴ Because we conclude that the probate court did not err in this respect, we decline to address defendants' alternate bases for affirming.

that Tenney did not breach any duty that she might have owed as a director or officer of Modern Plastics. We disagree.

A. STANDARDS OF REVIEW

This Court reviews de novo the interpretation and application of statutes and court rules. *Franks*, 330 Mich App at 86. This Court also reviews de novo whether the probate court properly applied this state's common law. *Conlin v Upton*, 313 Mich App 243, 254; 881 NW2d 511 (2015). This Court reviews the findings underlying a probate court's decision for clear error. See *In re Redd*, 321 Mich App at 403.

B. ANALYSIS

Under Count III, New Products alleged that Tenney and Greg breached the duties that they owed as officers of Modern Plastics and Lee Five when they failed to maintain the real property owned by Modern Plastics. The probate court found that Tenney was an officer of Modern Plastics from 2009 through to her death. However, it also found that it was reasonable for Tenney to take no action with respect to the property because Modern Plastics had no assets and Tenney was not required to invest her personal funds into Modern Plastics' property. The probate court similarly found that New Products failed to establish that Greg or Valorie were officers at all. Accordingly, it determined that no cause of action should enter as to Count III.

1. WHETHER GREG AND VALORIE WERE OFFICERS

New Products argues that the probate court clearly erred by finding that Greg and Valorie were not officers of Modern Plastics or Lee Five and that they should be held personally liable for the dereliction of their duties as officers. However, because the probate court properly found that Tenney was the only corporate officer and because the probate court properly found that Tenney acted reasonably as a corporate officer, this argument is without merit.

New Products argues that the probate court clearly erred when it found that New Products failed to establish that Greg or Valorie were officers or directors of Lee Five or Modern Plastics. The evidence showed that Greg was fired as an officer of Modern Plastics in 2008. Although Greg apparently did not formally resign as a director of either Lee Five or Modern Plastics in 2008, his termination from the family business permitted an inference that he no longer had any role to play in the administration of either entity. There was also no evidence that Valorie was an officer or director before July 2015. Additionally, subsequent events permitted an inference that Greg and Valorie—even if they had been officers or directors—were replaced effective in 2009. In the filings that Tenney submitted in July 2015 at Cheryl's behest, she listed herself as the president of both Modern Plastics and Lee Five. Tenney further left the other officers' positions blank—even though a corporation must have a secretary and treasurer, see MCL 450.1531(1)—and left the spots for the directors blank as well. Likewise, there was testimony that Greg was at the meeting when his mother executed those documents and specifically refused to assume any role in the newly revived corporate entities. Tenney's filings in July 2015 strongly suggest that Tenney—as the majority shareholder in both corporations—chose to appoint herself as the sole director and officer for both Modern Plastics and Lee Five retroactive to 2009. By appointing herself to be the sole director and officer, Tenney effectively removed all the previous officers and directors from

their positions. See MCL 450.1505(2) (stating that a director holds office until his or her successor is elected); MCL 450.1531(3) (stating that an officer holds office until his or her successor is appointed). Accordingly, the probate court did not clearly err when it found that New Products failed to establish that Greg and Valorie were officers or directors who had duties to creditors during the period at issue. See *In re Redd*, 321 Mich App at 403.

The probate court also did not clearly err when it found that Tenney acted reasonably under the circumstances when she chose not to do anything with the real property after the bankruptcy trustee abandoned it. As the probate court correctly noted, Tenney had no authority to do anything with Modern Plastics' assets when the assets were under the bankruptcy trustee's control. Even after the bankruptcy trustee abandoned the property, there were no funds with which to pay any obligations involving the property at 489 North Shore Drive. The probate court correctly determined that Tenney had no obligation to expend her personal funds on Modern Plastics' debts. See MCL 450.1317(4). Rather, as defendants repeatedly noted in the lower court, directors are only liable for voting to allow wrongful distributions to shareholders, see MCL 450.1551(1), and the evidence showed that there were no distributions of any assets of Modern Plastics to any shareholder.

2. SHAREHOLDERS AS OFFICERS

New Products asserts that Michigan law requires a corporation's shareholders to be treated as the corporation's directors and officers whenever a corporation has no directors or officers, but it cites no law in support of that proposition. Regardless, the law does not support that claim. It is well settled that the shareholders of a corporation normally cannot be held liable for the debts incurred by a corporation. See MCL 450.1317(4). Moreover, the board of directors manages the affairs of a corporation, not its shareholders. MCL 450.1501. As such, a shareholder cannot be held liable for a failure to manage the operations of a corporation. If New Products was unhappy with the state of affairs at Modern Plastics, it could have asked a court sitting in equity to appoint a receiver to manage the entity during the remaining phase of its winding up. See MCL 450.1851(1).

3. WASTE

New Products argues that Greg and Valorie are liable in tort for waste with respect to 489 North Shore Drive. We disagree.

"The three elements of common-law waste are unreasonable conduct by the owner of a possessory estate, conduct resulting in physical damage to the real estate, and a substantial diminution in the value of the estate in which others have an interest." 93 CJS, Waste, § 4, p 295. New Products failed to establish that Greg or Valorie had any relationship with the real property that could be equated with a right of possession. Modern Plastics had the possessory interest throughout the period at issue, so it alone could be liable for waste. See *Id.* Additionally, Greg and Valorie held no position of authority in Modern Plastics and did no affirmative act causing harm to the property. They could not, for that reason, be held liable for aiding and abetting Modern Plastics' waste, even if Modern Plastics could be liable for waste. See *Nicholl v Torgow*, 330 Mich App 660, 675; 950 NW2d 535 (2019) (stating that liability can only be imposed under an aiding-and-abetting theory when the person gave substantial assistance to effecting the wrong with

knowledge of the wrong). The same is true for Tenney. Tenney did not have possession of the property—Modern Plastics had possession. Additionally, New Products also failed to show that Tenney acted unreasonably in her management of Modern Plastics. Modern Plastics had no income or assets with which to prevent waste to the real property other than the real property itself. Similarly, there was no evidence that Tenney took an affirmative act that harmed the property. Under these facts, the only entity that might be liable for waste would be Modern Plastics.

In conclusion, the probate court did not err when it determined that New Products had no cause of action against Greg and Valorie for breach of duties by corporate directors or officers under Count III.

IV. PIERCING THE CORPORATE VEIL

New Products argues that the probate court erred by refusing to pierce the corporate veil to hold defendants personally liable for Modern Plastics' debts. We disagree.

A. STANDARD OF REVIEW

This Court reviews de novo the probate court's decision whether to disregard the separate existence of a corporate entity. See *Green*, 310 Mich App at 450. This Court also reviews de novo whether the probate court properly applied the law, and reviews for clear error the probate court's findings of fact underlying its application of law. *Id.*

B. ANALYSIS

New Products' argument that Modern Plastics' corporate veil should be pierced is without merit because it was not used as a mere instrumentality.

“In order for a court to order a corporate veil to be pierced, the corporate entity (1) must be a mere instrumentality of another individual or entity, (2) must have been used to commit a wrong or fraud, and (3) there must have been an unjust injury or loss to the plaintiff.” *Florence Cement Co v Vettraino*, 292 Mich App 461, 469; 807 NW2d 917 (2011). Piercing the corporate veil enables courts to impose liability upon individual shareholders and officers. *Gallagher v Persha*, 315 Mich App 647, 664; 891 NW2d 505 (2016).

There is nothing in the record suggesting that Modern Plastics was used as a mere instrumentality of defendants. First, defendants did not even own Modern Plastics; 95% of Modern Plastics shares were owned by Lee Five. Thus, New Products must establish that Modern Plastics was an instrumentality of Lee Five and that Lee Five was an instrumentality of defendants. New Products' argument that Modern Plastics was an instrumentality is largely based on the failure of its officers to comply with statutorily required formalities such as maintaining corporate records and conducting annual shareholders meetings. The problems with this argument are twofold. First, as is discussed in section III.B.1, *supra*, none of the defendants in this case were officers of Modern Plastics, and thus, they had no obligation to comply with these formalities. Second, poor management of a corporation does not establish that the corporation is a mere instrumentality. New Products also cites “at least two occasions” during which Lee Five's board of directors “met and passed resolutions authorizing the sale of real estate owned by Modern Plastics.” New

Products argues that this “shows that the two corporations were not operated as two separate companies.” However, even if we assumed the truth of New Products’ premise that these two corporations were not operated separately, this does not establish that they were used as instrumentalities for the execution of defendants’ personal affairs. Even if this fact justified piercing the corporate veil of Modern Plastics, that would only give New Products access to the assets of Lee Five and would not enable New Products to seek from defendants as individuals. New Products has not presented any evidence suggesting that any of the individual defendants used Lee Five or Modern Plastics to insulate them from liability with respect to their personal affairs. Because New Products failed to establish that Modern Plastics was a mere instrumentality of defendants, we need not address the other two requirements for piercing the corporate veil.

In conclusion, the probate court did not err when it refused to pierce the corporate veil.

V. SHAREHOLDER LIABILITY

New Products argues that the probate court erred when it refused to impose partner liability on the shareholders of Modern Plastics after they failed to windup Modern Plastics’ affairs within a reasonable time. We disagree.

A. STANDARDS OF REVIEW

The reasonableness of the amount of time taken to wind up a dissolved corporation is a question of law that this Court reviews *de novo*. *Flint Cold Storage*, 285 Mich App at 498. This Court also reviews *de novo* whether the probate court properly applied this state’s common law. *Conlin*, 313 Mich App at 254.

B. ANALYSIS

After a corporation is dissolved, it “must finish liquidating its business and complete the winding up process *within a reasonable time*.” *Flint Cold Storage*, 285 Mich App at 497 (emphasis added). “What constitutes a reasonable time is generally a question of law for the court.” *Id.* at 498. After the conclusion of this period, the corporation’s “existence is terminated and it ceases to exist for all purposes.” *Id.* A corporation normally winds up its affairs by liquidating its assets and using the proceeds to pay creditors, and if there is anything remaining after paying creditors, the corporation distributes the remaining assets to the shareholders. See MCL 450.1833; MCL 450.1855a.

Under the facts of this case, it was reasonable for the shareholders to take no actions involving the winding up of Modern Products’ affairs while Modern Plastics was still in bankruptcy. Notably, Modern Plastics was still in bankruptcy throughout the trial in this case. Although Modern Plastics regained title and control over 489 North Shore Drive in January 2014, it nevertheless had no authority to conduct business or marshal assets to improve or protect that property because its assets were subject to the bankruptcy proceeding. Modern Plastics did not even have the ability to pay for mowing. At the same time, the evidence showed that Berrien County had begun foreclosure proceedings against the real property and that New Products held a lien on the property that exceeded its value. New Products also had both the right to foreclose on the property and the option to purchase the parcels for a nominal sum. Accordingly, it would be

unreasonable to market or improve the property when the real property would likely be transferred by operation of law to New Products or Berrien County. The record also supports the conclusion that New Products played a role in the delayed resolution of the bankruptcy proceedings and obstructed Berrien County's efforts to take title to the property. Because Modern Plastics was still in bankruptcy and its only available asset was subject to liens far in excess of its value, it was sensible for Modern Plastics to refrain from attempting to wind up its affairs by selling off 489 North Shore Drive. It was instead prudent to wait for the lienholders to exercise their rights and wind up affairs formally after the closing of the bankruptcy estate. Consequently, the probate court did not err as a matter of law by determining that Modern Plastics had not exceeded a reasonable period for winding up its affairs, so it had not ceased to exist for all purposes. See *Flint Cold Storage*, 285 Mich App at 496-498.

In conclusion, the probate court did not err when it determined that the shareholders of Modern Plastics could not be held personally liable for debts incurred by Modern Plastics when it was a validly operating corporation. Those debts remained the debts of Modern Plastics.

VI. IMPROPER USE OF BANKRUPTCY OPINION

New Products argues that the probate court erred when it admitted an opinion from the bankruptcy case into evidence and that it improperly adopted the findings summarized in that opinion.⁵ We disagree.

A. STANDARDS OF REVIEW

This Court reviews a trial court's decision to admit evidence for an abuse of discretion. *Nashal v Fremont Ins Co*, 324 Mich App 696, 710; 922 NW2d 662 (2018). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Id.* A trial court necessarily abuses its discretion when it premises its decision on an error of law. *Id.* This Court reviews de novo the proper interpretation and application of the rules of evidence. *Mitchell v Kalamazoo Anesthesiology, PC*, 321 Mich App 144, 154; 908 NW2d 319 (2017).

B. ANALYSIS

In the trial court, New Products challenged the admissibility of the bankruptcy court's opinion, particularly arguing that it was not relevant. However, on appeal, New Products arguments pertain not to the admissibility of the opinion but to the trial court's reliance on the opinion. Specifically, New Products argues that the trial court erred by adopting the bankruptcy court's findings rather than making independent findings, that the trial court's reliance on the bankruptcy court's opinion violated the doctrine of res judicata, and that the trial court

⁵ To the extent that New Products claims that the opinion amounted to inadmissible hearsay, we decline to address that claim because New Products failed to object on that basis, see *Bailey v Schaaf (On Remand)*, 304 Mich App 324, 344; 852 NW2d 180 (2014), vacated on other grounds 497 Mich 927 (2014), and abandoned that claim by failing to offer any meaningful analysis support of it, see *Mitcham*, 355 Mich at 203.

impermissibly took judicial notice of the bankruptcy court's findings. For the reasons detailed below, each of these arguments is without merit.

1. INDEPENDENT FINDINGS

New Products' argument that the probate court shirked its responsibility to make independent findings, instead adopting the bankruptcy court's findings, is without merit because it lacks any support in the record.

New Products argues that the probate court improperly adopted the findings from the bankruptcy opinion, but there is no evidence in the record to support that contention. In the probate court, New Products argued that the opinion was irrelevant, but the probate court disagreed. However, deeming the opinion to be relevant is not the same as adopting its findings. Indeed, the probate court explicitly stated that it would not rely on the bankruptcy court's findings: "[I]t's not the exact issue. I'm not the same judge. I may reach a different conclusion" Accordingly, the probate court recognized its duty to make independent findings.

The opinion issued by the probate court likewise lends no support to New Products' contention that the probate court adopted the findings of the bankruptcy court. In its summary of the events, the probate court noted that the procedural history in the bankruptcy litigation was undisputed; specifically, it wrote that it was undisputed that New Products sued the bankruptcy trustee for allegedly breaching its fiduciary duties, that New Products lost that dispute, and that the bankruptcy trustee successfully abandoned 489 North Drive from the bankruptcy estate. The court noted that the trustee's decision to abandon the property was based largely on the fact that the property was subject to liens that far exceeded its value. At no point in the summary did the probate court adopt any factual findings identified in the bankruptcy opinion.

In its analysis, the probate court stated several times that the real property had little value and there was no indication that its opinion was borne of deference to the bankruptcy court. When analyzing whether to pierce the corporate veil, for example, the probate court determined that Lee Five had no obligation to use its own resources to "improve property that had little or no value." The court stated that it did not find Cheryl's testimony about the property's value to be credible; instead, it concluded that the fact that the bankruptcy trustee abandoned the property to be "much more instructive." Rather than deferring to the bankruptcy court's findings regarding the property's value, this statement was an acknowledgment of the impact that the bankruptcy trustee's choices had on Cheryl's credibility.

More generally, the court was explaining why a reasonable holding company would not seek to expend its own resources to improve or maintain real property held by a subsidiary. The context showed that the court was referring to the value that the property held for Modern Plastics and in turn for its holding company, Lee Five. Stated another way, the court found that it had no value relative to Modern Plastics, Lee Five, and the Miller Trust. That finding was not reasonably in dispute. It was well understood that only New Products held liens against the property that far exceeded the value of the real property on the open market. The same import applies to the other instances in which the probate court stated that the property had little or no value. In each case, the probate court was discussing whether a reasonable person would spend money to maintain or improve property when the expenditure would only help a third-party creditor.

Even if one were to reject the context within which the probate court made these findings, there was still overwhelming evidence to support the probate court's finding that the property had little or no value. The parties submitted evidence that, before she died, Heidi attempted to sell the real property for \$650,000, which was far less than the liens then held by Bank of America. There was also evidence that the EPA had conducted a cleanup on the property that cost approximately \$600,000 and chose not to attempt to recover its expenses because it was unlikely that any funds were available to cover those costs. Thereafter, in 2013, Cheryl caused New Products to purchase Bank of America's note and mortgage for \$225,000, which permitted an inference that even Cheryl believed the real property was worth less than the \$650,000 which Heidi arranged for in December 2008. Indeed, Cheryl testified that illegal salvage operations had resulted in approximately 3,000 square feet of roof collapsing and the loss of \$2 million in metal. She further testified that, at one point, the bankruptcy trustee offered to sell the real estate—with the bankruptcy court's approval—for \$25,000, and she offered to buy it for \$35,000. Although Cheryl opined that this offer did not establish that the real property had decreased significantly in value during the pendency of the bankruptcy litigation, a reasonable finder of fact could reject Cheryl's interpretation and conclude that the real property was worth substantially less than the fair market appraisal endorsed by Heidi in 2008 (\$650,000) and less than the amount paid by New Products for the note and mortgage (\$225,000). The evidence concerning the damage to the real property permitted an inference that the improvements had also significantly depreciated in value.

The presence of this evidence combined with the absence of any indication that the probate court adopted the bankruptcy court's findings leads us to conclude that New Products' argument is without merit.

2. RES JUDICATA

New Products' argument that the probate court's use of the bankruptcy court's opinion violated the doctrine of *res judicata* is without merit because the doctrine simply has no applicability to this issue. To the extent that New Products conflates the doctrine of *res judicata* with the law of the case doctrine, its argument is still without merit because the record does not support New Products' contention that the probate court believed itself bound by the bankruptcy court's findings.

New Products argues that “[t]he Probate Court, in an Opinion that contradicted its own statements during trial, violated the doctrine of *res judicata* by adopting the finding of fact made by the Bankruptcy Court in a separate case involving different parties and different issues.” *Res Judicata* serves “an important function in resolving disputes by imposing a state of finality to litigation where the same parties have previously had a full and fair opportunity to adjudicate their claims.” *Allen Park Retirees Ass’n v City of Allen Park*, 329 Mich App 430, 444; 942 NW2d 618 (2019) (quotation marks and citation omitted). *Res judicata* requires the satisfaction of the following elements: “(1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first.” *Garrett v Washington*, 314 Mich App 436, 441; 886 NW2d 762 (2016) (quotation marks and citation omitted). Collateral estoppel, on the other hand, requires satisfaction of the following elements: “(1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full and fair opportunity to litigate the issue; and (3) there must be mutuality of estoppel.” *Monat v*

State Farm Ins Co, 469 Mich 679, 682-684; 677 NW2d 843 (2004) (quotation marks, citation, and alteration omitted).

Simply put, we are unable to perform a res judicata analysis because it's not clear how it applies in this case. Surely New Products is not arguing that its own lawsuit is barred by the bankruptcy case, and defendants have not raised res judicata as a defense. New Products further argues that "[t]he Probate Court was required by law to make an independent determination regarding the Modern Plastics' Property based solely on the evidence in the record from the trial in this case. Res judicata does not apply here to make the Bankruptcy Court's Opinion binding on the Probate Court." From this statement it appears that New Products might be conflating res judicata with the law of the case doctrine. "The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue." *Farish v Dep't of Talent and Economic Dev*, 336 Mich App 433, 449; 971 NW2d 1 (2021) (quotation marks and citation omitted). We agree that the law of the case doctrine does not apply to this case, but nothing in the record suggests that the probate court believed otherwise. There is nothing in the record suggesting that the probate court believed it was bound by the bankruptcy court's findings.

Therefore, the doctrines of res judicata and the law of the case have no applicability in this case.

3. JUDICIAL NOTICE

New Products' argument that the probate court improperly took judicial notice of the bankruptcy court's findings is without merit because nothing in the record suggests that the probate actually did take judicial notice of the bankruptcy court's findings.

New Products argues that "[t]he Probate Court erred by relying on a Bankruptcy Court's finding that the Modern Plastics Property had 'no value' because a trial court cannot take judicial notice of that fact. New Products continued that "[a] factual determination of 'no value' in an unrelated case with different parties is not a proper subject of judicial notice." New Products concludes that, "[b]ecause the Probate Court's opinion is based on this improper judicial notice of an alleged fact, the Probate Court's decision cannot stand." This argument can be rejected for the simple reason that the trial court did not take judicial notice of the bankruptcy court's findings. Simply put, New Products' contention to the contrary is wholly unsupported by the record.

Therefore, we can easily conclude that the probate court's decision was not based on an erroneous decision to take judicial notice.

4. HEARSAY

New Products makes a cursory argument suggesting that the bankruptcy court's opinion was inadmissible hearsay, but for multiple reasons, this argument has been waived.

The following was all that New Products said in its brief regarding hearsay: "[The opinion] is hearsay and therefore inadmissible if used as evidence. The Bankruptcy Court's decision was

hearsay under MRE 801 and 802. Neither the Bankruptcy Judge nor any expert on the value of the Property testified at trial. No exception to the hearsay rule applies in this case.” First, New Products did not raise a hearsay objection at trial, and pursuant to Michigan’s raise or waive rule, New Products thereby waived review of this argument. See *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008) (“[A] failure to timely raise an issue waives review of that issue on appeal.” (quotation marks and citation omitted)). Moreover, the argument is also waived by virtue of New Products failure to provide any meaningful analysis. See *In re Warshefski*, 331 Mich App 83, 87; 951 NW2d 90 (2020) (“An appellant 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 only cursory treatment [of an issue] with little or no citation of supporting authority.” (quotation marks and citation omitted)).

Therefore, we decline to review New Products’ argument that the bankruptcy court’s opinion was inadmissible hearsay.

In conclusion, each of New Products’ arguments pertaining to the probate court’s use of the bankruptcy court’s opinion is without merit.

VII. ATTORNEY-CLIENT PRIVILEGE

New Products argues that “[i]n defense of their inaction regarding the Modern Plastics Property and their obligations to New Products, Defendants Greg Miller and Valorie Miller testified that they relied on the advice of their counsel that Defendants had no responsibility for the Property.” New Products asserts that this amounted to an “advice of counsel defense” and that defendants thereby waived the attorney-client privilege. In particular, New Products asserts that Greg and Valorie testified that they did not reinstate Modern Plastics as a corporation, did not pay property taxes, and did not maintain 489 North Shore Drive “based on advice of counsel.” However, New Products does not provide a citation to the record directing to the relevant testimony. New Products likewise does not provide quotations of this testimony, instead resting on a summary assertion that such testimony occurred. New Products essentially requests us to hunt through the trial transcripts for evidence that might support its argument; however, we decline to do so. See *In re Warshefski*, 331 Mich App 83, 87; 951 NW2d 90 (2020) (“An appellant 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.” (quotation marks and citation omitted)); see also MCR 7.212(C)(7) (“Facts stated must be supported by specific page references to the transcript, the pleadings, or other document or paper filed with the trial court.”). Therefore, New Products has not established this claim of error.

VIII. EVIDENCE OF IRREGULARITIES

Finally, New Products argues that the trial court erred by failing to consider evidence that Greg made improper loans to himself from the assets of the Miller Trust, that Valorie acquiesced to the improper loans, and that Greg and Valorie failed to comply with numerous requirements of the trust instrument. We discern no error because these collateral issues are irrelevant to New Products’ arguments. New Products’ claims revolve around the question of whether defendants owed any duties to New Products, particularly with respect to Modern Plastics and 489 North Shore Drive. That Greg and Valorie might have breached duties that they, as trustees of the Miller

Trust, owed to the beneficiaries of the Miller Trust, is wholly irrelevant to the issues pertaining to whether any duties were owed to New Products. Therefore, this argument is without merit.

IX. CONCLUSION

Greg and Valorie did not owe a duty to New Products because New Products was a creditor of Modern Plastic but was not a creditor of the Miller Trust or the Miller estate. The probate court did not err by finding that Greg and Valorie were not officers of Modern Plastics nor by finding that Tenney, as an officer of Modern Plastics, did not breach a duty owed to New Products. It would have been improper to pierce the corporate veil of Modern Plastics or Lee Five because, at a minimum, New Products did not establish that either corporation was a mere instrumentality. The probate court properly held that Modern Plastics shareholders could not be held personally liable for its debts. The record does not support New Products' contention that the probate court adopted the findings of the bankruptcy court. The probate court did not abuse its discretion by excluding evidence pertaining to Greg's and Valorie's communications with their attorneys. Finally, any alleged misconduct by Greg and Valorie with respect to the management of the Miller Trust was irrelevant to New Products claims. Therefore, New Products is not entitled to appellate relief.

Affirmed. As the prevailing parties, defendants may tax their costs. See MCR 7.219(A).

/s/ Elizabeth L. Gleicher

/s/ Michelle M. Rick

/s/ Allie Greenleaf Maldonado