STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

THE BITTKER GROUP, LLC
a Michigan limited liability company,

Plaintiff,

-v-

MYLOCKERCOM, LLC, a Michigan limited liability company, ROBERT HAKE, INC, a Michigan corporation, ROBERT HAKE, an individual,

Defendants.

Case No. 24-011128-CB

Hon. Annette J. Berry

OPINION AND ORDER

At a session of said Court held in the Coleman A. Young Municipal Center, Detroit, Wayne County, Michigan, on this: 10/14/2025

PRESENT: JUDGE ANNETTE J. BERRY
Circuit Judge

This civil matter is before the Court on a motion for summary disposition filed by Defendants MyLockerCom, LLC ("MyLocker"), Robert Hake, Inc ("RHI"), and Robert Hake ("Hake") and a motion for partial summary disposition filed by Plaintiff The Bittker Group, LLC ("TBG"). For the reasons stated below, the Court grants in part and denies in part Defendants' motion. It also denies Plaintiff's motion.

I. BACKGROUND

MyLocker is a company located in Corktown that does online decorating of various articles of clothing. It consists of two members: (1) Plaintiff TBG has a 5% minority ownership

interest in Defendant MyLocker; and (2) Defendant RHI has a 95% majority ownership interest in MyLocker. Defendant Hake is the sole member, Chief Executive Officer ("CEO"), and manager of RHI.

According to MyLocker, several years ago, RHI held a larger interest in the company. Due to a breakdown in the relationship between RHI and TBG, the parties negotiated a process by which TBG could be redeemed from the entity. MyLocker contends that, to date, TBG has received approximately $19 million dollars in redemption. On May 8, 2015, the parties entered into an Amended and Restated Operating Agreement ("the Agreement") to provide a process by which the remaining 5% owned by TBG could be redeemed.

RHI wanted to purchase TBG's remaining 5% minority interest. MyLocker names this a "call event." A "call event" is defined in Section 6.5 of the Agreement and provides in pertinent part:

> **6.5 Call Rights**
>
> (a) Upon the occurrence of either (i) a Change of Control of the Bittker Group or (ii) the Company's payment to Bittker Group of the Total Outstanding Debts to Bittker Group (as applicable, the "Call Event"), RHI shall have the right, but not the obligation to purchase all, but not less than all, of the Bittker Group's Membership Interest in the Company (the "Call Transfer interest"). The Bittker Group shall give RHI prompt written notice of such Call Event (the "Call Option Notice"), provided that the Bittker Group's failure to give the Call Option Notice shall not diminish RHI'S right to purchase the Call Transfer Interest upon the occurrence of a Call Event. RHI shall have an option to buy the Call Transfer Interest at the Appraised Value.
>
> (b) The purchase price payable for the Call Transfer Interest shall be equal to the appraised value of the Call Transfer Interest calculated as a proportion (based on the Membership Interest ownership percentage of the Bittker Group) of the overall fair market value of the Company determined on a going concern basis as between a willing buyer and willing seller without discount for a minority interest (lack of control) and/or lack of transferability or

> Marketability (collectively, a "Minority and Marketability Discount") (such appraised value as so determined, referred to as the Appraised Value")…
>
> [Emphasis added].

The process governing the determination of the Appraised Value is outlined in the Section 6.5(b)(i) and (ii) of the Agreement in relevant part as follows:

> (i) Within 15 Business Days of the occurrence of a Call Event, the Company shall appoint a firm of independent accountants of national standing to which RHI and the Bittker Group agree and which has not provided services to the Company, either such Member or any of their respective Affiliates (the "Independent Accountants") to determine the Appraised Value of the Call Transfer Interest held by the Bittker Group and its permitted transferees. If RHI and the Bittker Group cannot agree on the identity of the Independent Accountants, then each of RHI and the Bittker Group shall nominate its own accountant and the two accountants shall select the Independent Accountants. … The determination of Independent Accountants shall be final. The costs and expenses of the Independent Accountants shall be paid by the Company.
>
> (ii) To enable the Independent Accountants to conduct the valuation, the Members and the Company shall furnish to the Independent Accountants such information as the Independent Accountants may request, including information regarding the business and the Company's assets, properties, financial condition, earnings and prospects, provided that information related to the valuation of any Membership Interests previously redeemed by the Company shall not be considered by the Independent Accountants in determining the Appraised Value.
>
> [Emphasis added].

Thus, under the Agreement, if RHI exercises its right to purchase TBG's interest, MyLocker must appoint an independent accountant of national standing to determine the appraised value of TBG's membership interest. Both RHI and TBG must approve of the appointment. In addition, the parties are obligated to furnish the accountant with whatever information he or she

needed for the appraisal. Finally, the independent accountant's determination of the appraised value is deemed to be final.

By way of background, the parties entered into an agreement, which included a Mutual Release ("the Release") on December 2, 2021. This included MyLocker, RHI, Robert Hake, MyLocker Properties, ML Properties, II, LLC, all as majority member parties, and TBG, Alan Bittker, and Sandra Bittker, all as minority member parties. The Release provided in relevant part:

> (b) Each of the Minority Member Parties hereby irrevocably and forever release, remise, acquit, and forever discharge each of the Majority Member Parties' past, present or future affiliates (including any parent, subsidiary, joint venture, and related entities), directors, officers, shareholders, employees, managers, administrators, contractors, agents, insurance companies, representatives, attorneys, accountants, fiduciaries, trustees, heirs, executors, administrators, predecessors, successors and assigns (collectively, the "Majority Member Releasees") from all Claims previously existing, now existing or which may hereafter accrue by reason of any facts existing as of the date hereof. Each of the Minority Member Parties hereby agrees to refrain from commencing any action or suit against any of the Majority Member Releasees on account of any action or cause of action which currently exists or may hereafter accrue upon the basis of known or unknown facts existing as of the date hereof. Each of the Minority Member Parties hereby represent and warrant that it, he and/or she has not transferred or assigned, or caused to be transferred or assigned, to any person or entity any claim or claims that it and/or he might have asserted against any of the Majority Member Releasees. Notwithstanding anything contained in this Section S(b) or otherwise set forth in this Agreement to the contrary, the Minority Member Parties do not release the Majority Member Releasees from and against any right of action or suit to enforce this Agreement and/or the Existing Agreements for claims arising 0n or after the date of this Agreement.
>
> [Defendants' Motion, Exhibit N, p. 3] [Emphasis added].

Pursuant to the Amended and Restated Operating Agreement, RHI exercised its right and the parties appointed Crowe LLP ("Crowe") as the independent accountant. Both RHI and TBG approved the appointment. Robert Kendall is the Chief Financial Officer of MyLocker who signed

the engagement letter for Crowe's services which was sent on January 11, 2024 to MyLocker. The engagement letter designated MyLocker as its client. According to Defendants, Crowe only considered MyLocker to be its client in the handling of Crowe's engagement letter and because it was MyLocker that provided payment for Crowe's services. Justin Smith is Crowe's a managing director in the advisory group. Smith stated that, when an engagement letter is created, Crowe must identify a client in the letter. Furthermore, the Amended Operating Agreement specifies in Section 6.5(b)(i), it is MyLocker, as "the Company," that appoints the independent accountant after both parties agree to the appointment. Importantly, it is MyLocker that is responsible for payment of the accounting firm's services.

The engagement letter provides in pertinent part:

> **1. Valuation Assignment**
>
> (b) Approach - The approach used will consider the applicable guidelines of Internal Revenue Service Ruling 59-60 and other relevant Rulings. Crowe will consider and apply the valuation approaches and methods Crowe deems appropriate in the circumstances. Any formal offers to acquire the stock of the Subject Interest or the businesses will need to be given consideration. Because these methods may yield varying values. Crowe will apply its judgment to determine the value Crowe considers most appropriate in the circumstances. Users of Crowe's report will be cautioned that other valuation approaches may yield different results.
>
> **2. Obligations Limited**
>
> (a) The Client and the Client's representatives will provide Crowe with all information, documentation. and projections reasonably deemed necessary or desirable in connection with the valuation analysis, and further, the Client will provide Crowe with any information affecting any valuation of the business. The Client and the Client's representatives represent and warrant that all information. documentation, and projections provided or to be provided to Crowe are true, correct, and complete. The Client agrees that Crowe may rely upon such information without independent investigation or verification.
>
> (b) Crowe's valuation analysis service wilt not include any appraisals of real or personal property or record searches relating to real or personal property, nor win it take into consideration any factors relative to the state of title to real or personal property.

ln delivering services to Client, Crowe may use subsidiaries owned and controlled by Crowe within and outside the United States. Crowe subsidiaries are subject to the same information security policies and requirements as Crowe LLP and will meet the requirements set forth in the confidentiality and data protection provisions 0f this Agreement.

Crowe Engagement Terms

CLIENTS ASSISTANCE - For Crowe to provide Services effectively and efficiently, Client agrees to provide Crowe timely with information requested and to make available to Crowe any personnel, systems, premises, records, or other information as reasonably requested by Crowe to perform the Services. Access to such personnel and information are key elements for Crowe's successful completion of Services and determination of fees. If for any reason this does not occur. a revised fee to reflect additional time or resources required by Crowe will be mutually agreed. Client agrees Crowe will have no responsibility for any delays related to a delay in providing such information to Crowe. Such information will be accurate and complete, and Client will inform Crowe of all significant tax, accounting and financial reporting matters of which Client is aware.

[Defendants' Response to Plaintiff's Motion, Exhibit B].

CEO Kendall was the primary source of information supplied to Crowe while Alan Bittker was the source of information supplied to Crowe for the appraisal of TBG's interest in MyLocker. In a deposition, Justin Smith testified that he communicated with both Robert Kendall and Alan Bittker during the appraisal process.

In early March 2024, Justin Smith of Crowe issued via email the first draft of the appraisal report to both Kendall and Bittker. In an email sent to Justin Smith on March 21, 2024, Bittker expressed his concerns with the draft report. He was particularly concerned with the method used for the valuation of TBG's interest. He was disturbed by the fact that there was no consideration of comparable companies in the valuation method.

After a discussion, Justin Smith sent an email dated April 16, 2024, in which he stated:

> After internal consideration of our conversation last week and information provided from all parties, we have considered an update to the valuation of MyLocker we have considered an update to the

> valuation of MyLocker as shown in the attached exhibits. Specifically, we have now incorporated a market-based consideration of value. …
>
> [Defendants' Motion, Exhibit G].

In his response, Alan Bittker stated in an email sent April 17, 2024, "Confirming receipt of your email and revised schedules. We continue to reject your underlying assumptions thereby calling into question the validity of your report. …" [Id].

Previously, after Alan Bittker expressed his concerns, Justin Smith stated:

> We as a valuation firm are limited to publicly available data. I was unable to find any directly comparable companies to MyLocker that are publicly traded. However, if you know of any "custom on-demand printing business with a focus on apparel and other selected products" which are publicly traded, please share those and I will certainly give those consideration. …
>
> [Id, March 28, 2024 Email].

On April 17, 2024, Justin Smith again requested this information. Apparently, Alan Bittker did not supply any other information to Justin Smith, but requested that his experts review the analysis. Alan Bittker hired Stout for this purpose. Robert Kendall objected to having other experts review the analysis because the parties had agreed upon Crowe as the independent accounting firm to conduct the analysis. [Id, April 24, 2024 Email]. On April 24, 2024, Crowe released its final report dated April 21, 2024. Crowe valued TBG's member interest at $1,355,000.

According to Defendants, RHI proceeded to purchase TBG's interest for the Appraised Value in accordance with the Amended and Restated Operating Agreement. TBG received a wire transfer for the purchase price in the amount of $1,084,000, which was the appraised value of $1,355,000, less a 20% discount for paying the entire purchase price upon closing. It was around this time that TBG hired Stout to conduct its own analysis. RHI did not acknowledge or give

credence to any alternative analysis because it claims that, under the Amended and Restated Operating Agreement, the parties are bound by the agreed upon independent accountant's analysis.

On August 1, 2024, TBG filed its original complaint and later filed an amended complaint on April 21, 2025. The amended complaint contains five counts: (1) breach of contract and breach of duty of good faith and fair dealing against MyLocker; (2) fraud against MyLocker and Robert Hake; (3) member oppression against RHI and Robert Hake; (4) breach of fiduciary duty against RHI and Robert Hake; and (5) declaratory relief. In Count V, TBG requests the following declaratory relief:

> - There is an actual controversy between the parties concerning the validity and Crowe's valuation.
> - Crowe secretly designated MyLocker as its client.
> - Crowe secretly deferred to MyLocker in the substance and process of the valuation.
> - Crowe prematurely finalized its report at MyLocker's secret direction.
> - Crowe was not an "Independent Expert."
> - Crowe exhibited evident partiality.
> - Crowe's valuation did not comply With the Amended and Restated Operating Agreement.
> - Crowe's valuation was ineffective to trigger a transfer of TBG's membership interest
>
> [Amended Complaint].

Discovery closed on March 13, 2025. The parties submitted several documents including various emails, reports, and the depositions of Justin Smith, Robert Kendall, and Alan Bittker, As indicated above, now before the Court is Defendants' motion for summary disposition and TBG's

motion for partial summary disposition. The Court heard oral arguments on both motions on July 17, 2025. The Court will address the motions separately below.

II. STANDARDS FOR DETERMINING MOTIONS FOR SUMMARY DISPOSITION

Defendants base their motion on MCR 2.116(C)(7) and MCR 2.116(C)(10). Plaintiff bases its motion on MCR 2.116(C)(10).

Summary disposition may be granted under MCR 2.116(C)(7) when a claim is barred on the basis of a "release" or the "statute of limitations." "When considering a motion under MCR 2.116(C)(7), we accept the allegations of the complaint as true unless contradicted by documentation submitted by the moving party and consider any affidavits, depositions, admissions, or other documentary evidence submitted." *Spine Specialists of Michigan, PC v MemberSelect Ins Co*, 345 Mich App 405, 408-409; 5 NW3d 108 (2022) [Citation omitted]. "If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court. However, if a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is inappropriate." *Dextrom v Wexford Cnty.*, 287 Mich App 406, 429; 789 NW2d 211 (2010)[Footnotes omitted].

"'A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint.'" *Marion v Grand Trunk W R Co*, 513 Mich 220; 15 NW3d 180, 184 (2024), quoting *Maiden v Rozwood*, 461 Mich. 109, 120, 597 N.W.2d 817 (1999). In reviewing a motion under MCR 2.116(C)(10), a court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). If no genuine issue of material fact is established, the moving party is entitled to judgment as a matter of law. *Maiden, supra* at 120.

"A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

The moving party has the initial burden of supporting its position through documentary evidence. *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the opposing party to establish the existence of a genuine issue of material fact. *Id.* The non-moving party ". . . may not rest on the mere allegations or denials of his or her pleadings, but must, by affidavit or otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116 (G)(4). If the opposing party fails to do so, the motion for summary disposition is properly granted. Id.; *Quinto, supra* at 363. Finally, a "reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. A mere promise is insufficient under our court rules." *Maiden, supra* at 121.

III. DISCUSSION

A. Defendants' Motion

Defendants first argue that, like arbitration, the Amended and Restated Operating Agreement provides a binding and enforceable provision, which may not be set aside, absent fraud. They contend that there is no demonstrable fraud. They request that the Court consider the process as an arbitration process. TBG, however, argues that Crowe, as the "arbitrator," was not independent and that it was not permitted to present all information or evidence necessary to properly value its interest.

The Court declines to deem the valuation process as binding arbitration. There is no specific provision for "arbitration" in the Amended and Restated Operating Agreement. However,

if the Court was to consider that the valuation process in the Amended and Restated Operating Agreement to be akin to arbitration, rules governing arbitration should apply. "An agreement to arbitrate is a matter of contract." *Emerzian v N Bros Ford Inc*, __Mich App__; __NW3d__ (2024); 2024 WL 1221551, at *2 [Citation omitted]. The primary task in the interpretation of a contract is to ascertain the intention of the parties, and, if the court determines that an arbitration agreement exists, whether its terms are enforceable. *Id.* The goal of contract interpretation is to determine and enforce the parties' intent on the basis of the plain language of the contract. *Id* at *4. "Any conflict should be resolved in favor of arbitration." *Id.* "The burden is on the party seeking to avoid the agreement, not the party seeking to enforce the agreement." *Altobelli v Hartmann*, 499 Mich 284, 296; 884 NW2d 537 (2016).

Here, as indicated above, the plain and unambiguous language of the Operating Agreement provides that, if RHI exercises its right to purchase TBG's interest, MyLocker must appoint an independent accountant of national standing to determine the appraised value of TBG's membership interest. Both RHI and TBG must approve of the appointment. In addition, the parties are obligated to furnish the accountant with whatever information he or she needed for the appraisal. Finally, the independent accountant's determination of the appraised value is deemed to be final.

Both parties herein agreed to the appointment of Crowe for the valuation determination. Both parties submitted information and their questions and concerns to Crowe. Crowe then issued its valuation report. Pursuant to Section 6.5(b)(i) of the Operating Agreement, Crowe's valuation determination is deemed to be final.

Under the court rule governing arbitration, specifically, MCR 3.602(J)(2), upon a motion of a party, "the court shall vacate an award if:

> (a) the award was procured by corruption, fraud, or other undue means;
> (b) there was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights;
> (c) the arbitrator exceeded his or her powers; or
> (d) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights.

Thus, as it pertains to the instant action, the Court may vacate the "award" or, in this case, Crowe's valuation determination, if Crowe was not impartial or refused to consider other material evidence present to it. TBG alleges that Crowe was partial to MyLocker and refused to consider evidence presented by TBG's expert.

TBG asserts that "Crowe was decidedly not independent, to the point of shutting down the process before Plaintiff could provide all the relevant evidence." To support this, TBG relies first on an email sent from Justin Smith to Bob Kendall dated April 23, 2024 in which he stated,

> I plan to begin the finalization process this afternoon. In the meantime, given Alan's comment yesterday that he's the client and I need to keep this open until he approves, you may need to step in and confirm this should be finalized. As you as the client, I have to always defer to you. If you respond saying Crowe has confirmed the valuation was performed under fair market value premise as they have been engaged and therefore can be finalized, then we should be okay. Let me know what you think.
>
> [Plaintiff's Motion, Exhibit O].

TBG also directs the Court's attention to Justin Smith's deposition in which the following exchange occurred:

> Q. Okay. You're using language with me that I'm trying to focus on, which is he signed the engagement letter, and I believe you're using that as a -- as another way of saying MyLocker is your client; am I right?

A. As defined in the engagement letter, MyLocker was defined as the client.

Q. So, when Bob Kendall says finalized, you deferred to him correct?

A. After consideration of all the information provided to me, yes.

[Plaintiff's Motion, Exhibit D, p. 50, ln 24-25, p. 51, ln 1-8].

***

Q. …And you say to Bob Kendall, if you respond saying Crowe has confirmed the valuation was performed under fair market value premise, as they have been engaged, and therefore, can be finalized, then we should be okay.

That's because you're taking direction from your client, correct?

A. Direction on the finalization process?

Q. Yes.

A. Yes.

[Id, p. 53, ln 5-14].

What TBG fails to acknowledge is that Justin Smith also testified

> I think throughout this process between our first draft and our final draft, Mr. Bittker argued that there should be a market approach considered in the valuation. That was something that we did, after consideration and conversations or communications with Mr. Bittker, we did incorporate a market approach.
>
> [Id, p. 53, ln 18-23].

In the Court's view, MyLocker was Crowe's "client" only to the extent that MyLocker is the party responsible for engaging Crowe's services and is the party that was responsible for payment of Crowe's services. In all other respects, there is no doubt that both RHI and TBG supplied information to Crowe and Crowe considered all information supplied to it. Crowe only deferred to Kendall for guidance as to whether or not to finalize the valuation process and issue a

final report. Moreover, both RHI and TBG agreed to the appointment of Crowe for the valuation process.

Thus, in terms of the valuation as an "arbitration" proceeding, Crowe did not exceed its powers, and did not refuse to consider material evidence. MCR 3.602(J)(2)(b)-(d). Nor was there any evidence of corruption, fraud, or other undue means in arriving at the appraised value of TBG's interest. MCR 3.602(J)(a).

Nonetheless, the Court will not construe the valuation process as arbitration, when the parties Amended and Restated Operating Agreement clearly provides for the valuation process and does not specify "arbitration" for the valuation process. A court is not bound by a party's choice of labels in determining whether a party has pleaded a cause of action, but, rather, the court determines the gravamen of a party's claim by reviewing the entire claim. *Attorney Gen v Merck Sharp & Dohme Corp*, 292 Mich App 1, 9-10; 807 NW2d 343 (2011). The issue of Crowe's neutrality can be adequately considered within TBG's claim for breach of contract.

Defendants next argue that TBG fails to satisfy the necessary elements for its breach of contract claim. In response, TBG contends that MyLocker breached its duty to perform its obligations under the Operating Agreement to perform its obligations in good faith by "working behind the scenes." Citing *Fodale v Waste Mgt of Mich,* Inc, 271 Mich App 11; 718 NW2d 827 (2006), Defendants also assert that there is no cause of action for a breach of an implied duty of good faith and fair dealing under Michigan law. However, TBG maintains that "MyLocker breached its covenant of good faith and fair dealing by taking control over the supposedly independent valuation" process. TBG concedes that it is not a separate cause of action, but "the covenant applies as 'a modifier' related to a contractual obligation," citing *Gorman v American Honda Motor Co, Inc*, 302 Mich App 113, 133; 839 NW2d 223 (2013).

"The implied covenant of good faith and fair dealing has been broadly described as a promise 'that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.'" *Kircher v Boyne USA, Inc*, ___Mich___; ___NW3d___ (2025); 2025 WL 938147, at *3, quoting *Hammond v United of Oakland, Inc*, 193 Mich App 146, 152, 483 N.W.2d 652 (1992). Hence, an implied covenant of good faith and fair dealing means that parties may not perform in such a way as to interfere with the rights and obligations of a contract. The covenant, therefore, is inherent in contracting.

A party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach. *Zwiker v Lake Superior State Univ*, 340 Mich App 448; 477-478 986 NW2d 427 (2022); *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich. 161, 178; 848 NW2d 95 (2014). A party's expectations do not supersede the language of an unambiguous contract. *Zwiker* at 477.

The parties do not dispute that the Operating Agreement is a contract between the parties. As it pertains to this action, Section 6.5 is the relevant provision. MyLocker appointed Crowe after both RHI and TBG agreed to the appointment. MyLocker paid the costs and expenses for Crowe's service. MyLocker provided all information necessary for valuation to Crowe. This comports with the Operating Agreement. However, there is a dispute as to whether Crowe was "independent." There is considerable evidence of interactions between Alan Bittker and Crowe and between all parties. Crowe requested information regarding a market approach, which TBG did not supply. However, because TBG has presented some evidence in the form of emails and deposition testimony that Crowe designated MyLocker as its client and the language used by Justin Smith

that he "deferred" to Robert Kendall, there is a genuine issue of material fact whether Crowe was independent and whether RHI and MyLocker breached the agreement.

Defendants also argue that TBG cannot prevail on its fraud claim against MyLocker and Robert Hake. Conversely, TBG contends that Defendants concealed their "secret relationship" with Crowe, the purpose of which was to deflate the valuation of TBG's interest.

"A plaintiff asserting a claim of fraud must demonstrate these six elements: (1) that the defendant made a material representation; (2) that it was false; (3) that the defendant made the representation knowing that it was false or made it recklessly without knowledge of its truth; (4) that the defendant intended that the plaintiff would act on the representation; (5) that the plaintiff relied on the representation; and (6) that the plaintiff suffered injury as a result of having relied on the representation." *Lucas v Awaad*, 299 Mich App 345, 363; 830 NW2d 141 (2013) [Citation omitted]. "Fraud claims must be pleaded with particularity, addressing each element of the tort." *Stephens v Worden Ins Agency, LLC*, 307 Mich App 220, 229–30; 859 NW2d 723 (2014); MCR 2.112(B)(1). "Further, a viable fraud claim may not be inferred, even viewing plaintiffs' complaint in the light most favorable to them." *Cummins v Robinson Twp*, 283 Mich App 677, 695; 770 NW2d 421 (2009).

TBG claims that "MyLocker knowingly supplied Crowe and TBG with false information and omitted material information that it had a duty to disclose." [Amended Complaint, ¶ 85]. It fails to specify what information was false, what statements were made, and when they were made. Nor does TBG specify why or how the information was relied upon. TBG also alleges that "Robert Hake participated in and personally committed the fraud." [Id, ¶ 90]. TBG, however, fails to allege how Robert Hake participated in the fraud. Robert Hake's purported fraudulent actions cannot be inferred, *Cummins, supra,* when the allegation is a bare assertion lacking specificity and

particularity. Bare assertions and conclusory allegations are insufficient to state a claim. *Golec v Metal Exch Corp*, 208 Mich App 380, 382; 528 NW2d 756 (1995); *Wolfenbarger v Wright*, 336 Mich App 1, 16; 969 NW2d 518 (2021). They must be supported by factual assertions. *Id.* Therefore, there no genuine issue of material fact has been established and TBG's fraud claim fails as a matter of law. MCR 2.116(C)(10); *Maiden, supra.*

Count III of TBG's amended complaint is a claim for member oppression against RHI and Robert Hake. Defendants assert that TBG's oppression claim cannot factually and legally survive.

TBG cites MCL 450.4515, which is applicable to limited liability companies. TBG and MyLocker are limited liability companies, while RHI is a corporation, to which MCL 450.1489 is applicable. TBG is a Minority member of MyLocker, which is a limited liability company. The applicable statute for a member oppression action is MCL 450.4515, which provides in relevant part:

> (1) A member of a limited liability company may bring an action in the circuit court of the county in which the limited liability company's principal place of business or registered office is located to establish that acts of the managers or members in control of the limited liability company are illegal or fraudulent or constitute willfully unfair and oppressive conduct toward the limited liability company or the member. …
>
> (2) As used in this section, "willfully unfair and oppressive conduct" means a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the member as a member. Willfully unfair and oppressive conduct may include the termination of employment or limitations on employment benefits to the extent that the actions interfere with distributions or other member interests disproportionately as to the affected member. The term does not include conduct or actions that are permitted by the articles of organization, an operating agreement, another agreement to which the member is a party, or a consistently applied written company policy or procedure.

Hence, MCL 450.4515(1) provides a cause of action for members of an LLC when the LLC's manager's actions "are illegal or fraudulent or constitute willfully unfair and oppressive conduct toward the limited liability company or the member." Id. The actionable harm is "a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the member as a member." Id.[1]

As Defendants summarize, TBG bases its oppression claim on three factors: (1) the alleged fraudulent valuation process; (2) that RHI and Robert Hake excluded TBG from MyLocker Properties II, LLC ("ML"); and (3) that TBG secretly created an entity called RWH Ventures, LLC "RWH"), which TBG did not learn of until MyLocker provided TBG with financial statements on November 10, 2023.

TBG contends that Robert Hake's creation of ML and RWH was unfair to TBG and to MyLocker, and were created secretly. In his deposition, Robert Hake explained that there was a partnership agreement with RWI and a company called All American, which supplied industrial digital printing equipment. Hake stated that RWI acquired a 65% equity share in All American. He said, " Prior to acquiring interest in All American I believe it was marking products up to Mylocker 35 to 40 percent. Post acquisition (sic) we reduced that down to around 10 percent, cost plus 10 percent." [TBG's Response, p. 12, ln 19-22]. Thus, the purpose of the acquisition of the equity interest in All American was to reduce costs passed on to customers of MyLocker.

Hake also testified as follows:

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[1] "[T]he LLCA mirrors the definition of the same phrase as set forth in the Michigan Business Corporation Act at MCL 450.1489(3) with the word 'shareholder' taking the place of 'member.'" *BSA Mull, LLC v Garfield Inv Co*, unpublished opinion of the Court of Appeals, issued September 30, 2014 (Docket No. 310989), 2014 WL 4854306, p *4. "By association, only conduct that substantially interferes with rights that automatically accrue to a member by virtue of being a member will be considered for purposes of determining whether such conduct was willfully unfair and oppressive." *Id.*

> Q. Okay. So when Alan -- since Alan Bittker is an owner of 5 percent of Mylocker, do you understand that you have any obligation to determine the fairness of pricing when there is a related entity involved?
>
> A. Absolutely. And I saved Mylocker a lot of money by setting this up. I think if I was charging Mylocker more money that it was traditionally paying it would be a different story, then, yes, a conversation would be warranted.
>
> [Id, p. 15, ln 12-19].

With regard to the ink used in MyLocker's products, Hake explained:

> A. Yes, I looked for ink for quite some time. I was not able to find a compatible ink that would work in our printers. It is a highly specialized product. It's not just everyone sells ink and it's a commodity to be able to use in any printer. So I researched ink significantly and was not able to find anything. As it relates to the other product we are purchasing, the pretreatment, we were -- we were paying close to double or maybe even more -- I think 70 percent more actually, than what we were able to get it made through Rio.
>
> Q. Did you research whether there might be a lower cost option than Rio?
>
> A. Yes, I'm always looking to save Mylocker money.
>
> [Id, p. 15, ln 24-25, p. 16, ln 1-7].

There does not appear to be any deposition testimony regarding ML. According to TBG, "[i]n 2019, MyLocker excluded TBG from MyLocker Properties II, LLC, a new entity set up to hold an interest in the company's real estate." [TBG's Amended Complaint, ¶ 99].

Defendants correctly argue that the creation of ML was disclosed to TBG when the Consolidated Financial Statements for the years ending 2019 and 2018 were emailed to Alan Bittker on May 1, 2020. [Defendants' Motion, Exhibit S].

Likewise, as to RWH, Alan Bittker was sent the financial statements for years 2017 and 2015 on May 1, 2018. During his deposition, Alan Bittker said that he did not remember reading

the email or following up on the disclosure of RWH, but does not dispute having received the email noting the financial statements. [Id, Exhibit J, p. 100, ln 4-13].

In the Court's view, TBG has failed to demonstrate that RHI and Robert Hake, as manager, have "substantially interfered" with TBG's interest to the extent that the actions "are illegal or fraudulent or constitute willfully unfair and oppressive conduct." MCL 450.4515(1). Accordingly, there is no genuine issue of material fact whether RHI and Robert Hake engaged in oppressive conduct. MCR 2.116(C)(10).

Defendants next argue that the oppression claim is barred by the Release Agreement, dated December 21, 2021. As indicated above, the Release provides that "Minority Member Parties hereby irrevocably and forever release, … Majority Member Parties' past, present or future affiliates … from all Claims previously existing, now existing or which may hereafter accrue by reason of any facts existing as of the date hereof. Each of the Minority Member Parties hereby agrees to refrain from commencing any action or suit against any of the Majority Member Releasees on account of any action or cause of action which currently exists or may hereafter accrue upon the basis of known or unknown facts existing as of the date hereof." As demonstrated above, TBG knew or should have known of the alleged basis for its oppression claim due to the disclosures sent to Alan Bittker on May 1, 2018 and May 1, 2020. The date of the Release was December 21, 2021, well after the financial disclosures were sent to Alan Bittker. Thus, the oppression claim is barred by the Release Agreement. MCR 2.116(C)(7).

Defendants also contend that the oppression claim is barred by the statute of limitation. Because the Court has already determined that the claim is barred by the Release Agreement, the Court need not address the statute of limitations.

Defendants' last argument is that TBG does not have standing to assert a breach of fiduciary duty claim against RHI and Robert Hake. In response, TBG contends that its injury is separate and distinct from other members and that, in certain circumstances, it may be owed a duty independent of MyLocker.

Whether a party has standing is a question of law. *Murphy v Inman*, 509 Mich 132, 143; 983 NW2d 354 (2022). Preliminarily, it should be noted that, "[a]lthough a limited liability company is not a corporation under Michigan law, it is nonetheless true that the rules regarding corporate form apply equally to limited liability companies." *Salem Springs, LLC v Salem Twp*, 312 Mich App 210, 223; 880 NW2d 793 (2015) [Citations omitted].

"[U]nder this state's common law, directors owe fiduciary duties first and foremost to the shareholders of the corporation; their roles within, and obligations to, the corporation cannot be properly understood without first recognizing this fundamental tenet of corporate law in Michigan." *Murphy v Inman*, 509 Mich 132, 148; 983 NW2d 354 (2022). "Colloquially, directors are required to act with due care, with loyalty, and in good faith." *Id.* "For example, directors are required to exercise candor toward the corporation's shareholders and must disclose all material facts within their knowledge that may influence shareholder action." *Id* [Footnote omitted].

In *Murphy*, the Supreme Court explained the concept of "standing" in the context of corporate law:

> If a claim is derivative, a shareholder has no standing to sue except on behalf of the corporation. Further, a shareholder bringing a derivative action must comply with numerous statutory requirements before bringing that action, including making a showing that the corporation has refused to proceed after suitable demand by the shareholder, which plaintiff has undisputedly not done here. A direct action, on the other hand, belongs to the shareholder; it seeks redress for harm done to the shareholder or to enforce a personal right belonging to the shareholder independently from the corporation. In other words, when the shareholder suffers

> the harm or seeks to enforce a personal right, the "general rule" articulated by the Court of Appeals that an action is derivative does not apply.
>
> *Id* at 161 [Footnotes omitted] [Emphasis added].

In adopting the reasoning of *Tooley v Donaldson, Lufkin & Jenrette, Inc*, 845 A2d 1031, 1039 (Del, 2004), the Supreme Court concluded:

> In sum, we hold that in order to distinguish between direct and derivative actions brought by shareholders of a corporation in Michigan, courts must ask (1) who suffered the alleged harm, and (2) who would receive the benefit of any remedy recovered. The second question logically follows from the first. If the answer to both questions is the corporation, the action is derivative. If the shareholder suffers the harm independent of the corporation and receives the remedy rather than the corporation, the action is direct.
>
> *Id* at 165.

TBG attempted to pursue a direct action, seeking redress for a harm done to it or to enforce its own personal right belonging to it as a member, independent of MyLocker. It would be TBG that would benefit from any remedy. *Id.* Thus, as to the breach of fiduciary duty claim, the action here is direct and is not derivative. Furthermore, assuming that TBG can demonstrate evidence that it has suffered harm and that it has a right that is independent of MyLocker's rights, TBG has standing to pursue the claim for breach of fiduciary duty. Accordingly, the Court rejects Defendants' argument that TBG lacks standing for the breach of fiduciary duty claim.

Defendants argue against the breach of fiduciary duty claim by stating that the claim is barred by the Release Agreement and the statute of limitations. When interpreting the Release Agreement, the Court finds that the claim is not barred by the Release Agreement because the valuation process and Crowe's final appraised value is a "new fact" and was "unknown" at the time of the execution of the Release Agreement. Hence, the Court also rejects Defendants'

argument on the basis that TBG's breach of fiduciary duty claim is barred by the Release Agreement.

Defendants next argue that the breach of fiduciary duty claim is barred by the statute of limitations, which they state is three years from the time the claim accrued. They further argue that TBG's claim is nearly two years too late. In support, Defendants cite *Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 47; 698 NW2d 900 (2005) (citing MCL 600.5805(10)). They also assert that the cause of action accrues when the plaintiff knew or should have known of the breach, again citing *Prentis*. They contend that, in May 2020, TBG was aware of the alleged wrongful conduct in support of its claim and TBG had until May 2023 to file its claim for breach of fiduciary duty against RHI and Robert Hake. According to Defendants, TBG filed its original complaint on August 1, 2024, which is untimely.

Although TBG provides no factual or legal support for its argument that it "retains the right to pursue claims based on facts that occurred after the Release Agreement and [is] still within the statute of limitations," the Court nevertheless disagrees with Defendants' argument that the claim accrued in May 2020. First, it is unclear what event in May 2020 Defendants argue gave rise to the accrual of this claim. Next, "our Legislature has stated that a claim accrues 'at the time the wrong upon which the claim is based was done,' MCL 600.5827, and our Supreme Court has clarified that 'the 'wrong' ... is the date on which the defendant's breach harmed the plaintiff, as opposed to the date on which defendant breached his duty,' *Frank v Linkner*, 500 Mich 133, 147; 894 NW2d 574 (2017) (quotation marks and citation omitted)." *Mays v Snyder*, 323 Mich App 1, 28; 916 NW2d 227 (2018), sub nom. Mays v Governor of Michigan, 506 Mich 157; 954 NW2d 139 (2020). In the Court's view, the alleged harm done to TBG occurred on the earliest date was the April 2024 issuance of Crowe's valuation report with a valuation as of November 2023. Thus,

TBG's breach of fiduciary duty claim is timely and is not barred by the statute of limitations. Accordingly, the Court denies Defendants' motion on the basis that the claim is barred by the statute of limitations.

Defendants also argue that RHI and Mr. Hake did not depress the valuation of TBG and Alan Bittker admitted that allegedly concealed information actually was disclosed to TBG. Conversely, TBG argues that Defendants cannot meet the burden of establishing fairness pursuant to MCL 450.4409(1)(a). MCL 450.4409 provides in pertinent part:

> (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:
>
> (a) The transaction was fair to the company at the time entered into.
> (b) The material facts of the transaction and the manager's or agent's interest were disclosed or known to the managers and the managers authorized, approved, or ratified the transaction.
> (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.
>
> ***
>
> (4) Satisfying the requirements of subsection (1) does not preclude other claims relating to a transaction in which a manager or agent is determined to have an interest. Those claims shall be evaluated under principles of law applicable to a transaction in which a similarly situated person does not have an interest.
>
> MCL 450.4409(1) and (4) [Emphasis added].

As explained above, there is sufficient evidence viewed in the light most favorable to TBG to establish a genuine issue of material fact that Defendants engaged in some form of undisclosed communications with Crowe, thereby breaching their fiduciary duties to TBG. However, as explained above, the alleged nondisclosure of the existence of RWI and ML has already been

determined. Nevertheless, there are numerous issues as to whether RHI and Robert Hake acted in good faith, loyalty, and avoided self-dealing. *Prentis Family Foundation, Inc, supra* at 49. Therefore, the Court denies Defendants' motion as to the breach of fiduciary duty claim.

B. TBG's Motion

Also, before the Court is TBG's motion for partial summary disposition, which only addresses its claim for declaratory relief requesting that the Court declare that Crowe's valuation is ineffective, and declare that, because there was no "closing," Plaintiff still owns its 5% interest.

TBG first argues that Crowe was not independent and, therefore, RHI and MyLocker breached the Amended and Restated Operating Agreement. As explained above, because TBG has presented some evidence in the form of emails and deposition testimony that Crowe designated MyLocker as its client and the language used by Justin Smith that he "deferred" to Robert Kendall, there is a genuine issue of material fact that whether Crowe was independent and whether RHI and MyLocker breached the agreement.

TBG next argues against Defendants' characterization of the valuation process as an arbitration proceeding. Again, as discussed above, in terms of the valuation as an "arbitration" proceeding, the Court is inclined not to construe the valuation process as arbitration, when the parties Amended and Restated Operating Agreement clearly provides for the valuation process. The issue of neutrality can be adequately addressed with regard to the parties' contract.

TBG asserts that Crowe was not independent and disregarded material evidence when it prematurely terminated the valuation process. It concludes that Crowe's "valuation is ineffective in the context of the parties' Operating Agreement." As already noted, there is a genuine issue of material fact whether Crowe was "independent" as it pertains to TBG's breach of contract claim. Therefore, the Court denies TBG's motion regarding its declaratory relief request that, pursuant to

MCR 2.605(A)(1), the Court declare Crowe's valuation is ineffective, and declare that, because there was no "closing," Plaintiff still owns its 5% interest.

IV. CONCLUSION

Because TBG has presented some evidence in the form of emails and deposition testimony that Crowe designated MyLocker as its client and the language used by Justin Smith that he "deferred" to Robert Kendall, there is a genuine issue of material fact whether Crowe was independent and whether RHI and MyLocker breached the agreement. Accordingly, the Court denies Defendants' motion as to TBG's breach of contract claim.

The Court grants Defendants' motion as to TBG's fraud claim because no genuine issue of material fact has been established and TBG's fraud claim fails as a matter of law. MCR 2.116(C)(10); *Maiden, supra.*

TBG has failed to demonstrate that RHI and Robert Hake, as manager, have "substantially interfered" with TBG's interest to the extent that the actions "are illegal or fraudulent or constitute willfully unfair and oppressive conduct." MCL 450.4515(1). Accordingly, there is no genuine issue of material fact whether RHI and Robert Hake engaged in oppressive conduct, MCR 2.116(C)(10), and the Court grants Defendants' motion as to the member oppression claim. The oppression claim is also barred by the Release Agreement. MCR 2.116(C)(7).

The Court rejects Defendants' argument that TBG lacks standing for the breach of fiduciary duty claim. *Murphy, supra.* The Court also rejects Defendants' argument on the basis that TBG's breach of fiduciary duty claim is barred by the Release Agreement. Nor is it barred by the statute of limitations. There is also a genuine issue of material fact that Defendants RHI and Robert Hake breached their fiduciary duties to TBG. Therefore, regarding Defendants' arguments concerning TBG's breach of fiduciary duty claim, the Court denies Defendants' motion.

Finally, because there is a genuine issue of material fact whether Crowe was an "independent" as it pertains to TBG's breach of contract claim, the Court denies TBG's motion regarding its request for declaratory relief pursuant to MCR 2.605(A)(1).

For the reasons stated in the foregoing Opinion,

IT IS ORDERED that the motion for summary disposition filed by Defendants MyLockerCom, LLC, Robert Hake, Inc, and Robert Hake is hereby **DENIED** as to The Bittker Group, LLC's breach of contract claim (Count I);

IT IS FURTHER ORDERED that Defendants' motion as to The Bittker Group, LLC's fraud claim (Count II) is hereby **GRANTED** and the claim is **DISMISSED**;

IT IS FURTHER ORDERED that Defendants' motion as to The Bittker Group, LLC's member oppression claim (Count III) is hereby **GRANTED** and the claim is **DISMISSED;**

IT IS FURTHER ORDERED that Defendants' motion as to The Bittker Group, LLC's breach of fiduciary duty claim (Count IV) is hereby **DENIED**;

IT IS FURTHER ORDERED the motion for partial summary disposition filed by Plaintiff The Bittker Group, LLC is hereby **DENIED;**

IT IS FURTHER ORDERED that this **DOES NOT RESOLVE** the last pending claim and **DOES NOT CLOSE** the case.

IT IS SO ORDERED.

DATED: 10/14/2025

/s/ Annette J. Berry
October 14, 2025
Circuit Judge