

STATE OF MICHIGAN
IN THE TRIAL COURT FOR THE COUNTY OF BERRIEN – BUSINESS DOCKET
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STEVEN H. EDWARDS, as Independent
Personal Representative of the **ESTATE**
OF CHARLES EDWARDS,
Plaintiff,

CASE NO. 2022-0016-CB

HONORABLE DONNA B. HOWARD

-v-

DAVID EDWARDS, NAN EDWARDS,
AMY EDWARDS, CHRIS COCHRANE,
THE ESTATE OF SALLY BUTLER,
and **THE LAND COMPANY**,
Defendants.

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At a session of the Berrien County Trial Court,
Held on the 15th day of November, 2023, in the
City of St. Joseph, Berrien County, Michigan

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

I. BACKGROUND

This matter comes before the Court following a bench trial held on May 9-10, 2023. Plaintiff's decedent, Charles Edwards¹ initiated this action on or about January 25, 2022, asserting claims against Defendants under the shareholder oppression statute, MCL 450.1489, of the Business Corporation Act (BCA), MCL 450.1101, *et seq.* [Complaint, Count I, pp 2-4]. Prior to trial, the Court denied Defendants' motion for summary disposition, finding genuine issues of material fact remained for trial [Order, 3/27/23], and their motion in limine regarding certain appraisal evidence [Order, 5/10/23]. At trial, after hearing opening arguments, the Court received testimony from Charles

¹ Charles Edwards unfortunately passed away on or about July 20, 2023, after the trial, but before the Court issued this final judgment.

Edwards, David Edwards, Amy Edwards, and Chris Cochrane, and Douglas Eplee, a certified public accountant.

The Court admitted the following exhibits into evidence at trial: Articles of Incorporation [Exh A1]; Aerial View of Property [Exh A2]; Tax Information for 80-03-033-014-00 [Exh A3]; Deed – 1984 [Exh A4]; Tax Information for 80-03-033-016-20 [Exh A5]; Deed – 1994 [Exh A6]; LARA – TLC [Exh A7]; 2021 Tax Returns [Exh A8]; 2002 Meeting Minutes [Exh A9]; Notice of 11/9/21 Meeting [Exh A10]; Notice of 11/16/21 Meeting [Exh A11]; Meeting Minutes from 11/16/21 [Exh A12]; Articles for Cedar Lodge Recreational Services & Youth Development [Exh A13]; LARA – Cedar Lodge Recreational Services & Youth Development [Exh A14]; Articles for Cedar Lodge Recreation Services [Exh A15]; LARA – Cedar Lodge Recreation Services [Exh A16]; Articles for Cedar Lodge Stables LLC [Exh A17]; LARA – Cedar Lodge Stables LLC [Exh A18]; Deposition of Appraiser James Zerbi [Exh A21]; Appraisal Report [Exh A22]; Request for Meeting [Exh A23]; Notice of 3/15/23 Meeting [Exh A24]; 2010-2022 Tax Returns [Exh A25-36]; 2018-2022 Annual Reports of TLC [Exh A38]; Deposition of David Edwards [Exh A39]; Partial Bylaw Form Document [Exh B2]; Election by a Small Business Corporation [Exh B4]; 1994 Shares of Stock [Exh B5]; Summary Reports [Exh B6]; Individual Equity Position [Exh B7]; 1984-2021 TLC Meeting Minutes [Exh B13-B32]; Cedar Lodge 1995 Invoice to TLC [Exh B33]; 10/25/2021 TLC Meeting Minutes [Exh B37]; Text Messages [Exh B43]; 2003-2022 Tax Returns [Exh B50-B69]; 1994-2001 Shareholder's Share Filings, Schedule K-1 [Exh B70-B76]; and Miscellaneous TLC Trial Balances [Exh B77].

After the close of proofs, upon request by then-Plaintiff and agreement by Defendants, the Court permitted the parties to submit written closing arguments to the Court within 14 days thereafter. The parties' written closing arguments were timely filed. The Court took this matter under advisement for issuance of written findings of fact and conclusions of law consistent with MCR 2.517. In so doing, the Court has considered the testimony of witnesses and exhibits admitted into evidence, in the context of the Parties' arguments. The Court has assessed the credibility of the witnesses and has applied the standard of proof by a preponderance of the evidence to Charles Edwards' sole claim for shareholder oppression under MCL 450.1487(1), except where clear and convincing evidence is required as a matter of law.

On or about July 24, 2023, Plaintiff's counsel filed the Notice of Death for Charles Edwards' passing on July 20, 2023. With his passing, the Court awaited issuance of this final judgment until the appropriate substitution for Mr. Edwards as the named Plaintiff was entered, pursuant to MCR 2.202(A). During a telephone status conference with the Court on August 15, 2023, Plaintiff's counsel

indicated that an estate for Charles Edwards was initiated in the appropriate probate court and a personal representative of his estate would be appointed in the near future. Thereafter, by stipulation of the parties, the Court entered an Order substituting Steven H. Edwards, as the personal representative of the Estate of Charles Edwards, as the named plaintiff.

II. FINDINGS OF FACT

There is no dispute that The Land Company (or “TLC”) is a Michigan corporation incorporated on March 20, 1984, with the listed incorporators of Charles Edwards, his wife, Patricia Edwards, David Edwards, and his wife, Nancy Edwards, Amy Edwards, Sally Butler (then Sally Edwards)², Chris Cochrane, and a Richard J. McMakin [Articles of Incorporation, **Exh A1**]. Charles, David, Amy and Sally are siblings. Chris Cochrane is a long-time family friend. Over the years, the shareholders only slightly changed. From 2016 through 2022, TLC’s shareholders remained solely the named parties – Charles Edwards, David and Nan Edwards, Amy Edwards, Sally Butler, and Chris Cochrane [2016-2021 TLC Tax Returns, **Exh B51-B56**]. The present registered business address for TLC is in Watervliet, Berrien County, Michigan.

It was demonstrated at trial that Charles Edwards served as President of TLC from 1984 to 2021 [1984-2021 TLC Meeting Minutes, **Exh B13-B32**]. Further, David Edwards has also served on TLC’s board of directors from 1985 to present and both Chris Cochrane and Amy Edwards have served on the board since 2000 and 2001 respectively [2000-2021 TLC Meeting Minutes, **Exh B28-B32**]. There are no meeting minutes or other records of TLC conducting meetings from 2002 until November 2021. Additionally, although a partial form document entitled “By-Laws” at the top was admitted at trial, there is no indication that it was related to TLC or that it was ever adopted by TLC. Instead, Article VII of the Articles of Incorporation provides in part as follows:

Any action required or permitted by the Act to be taken at an annual or special meeting of shareholders may be taken **without a meeting, without prior notice and without a vote, if a consent in writing**, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote thereon were present and voted.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to shareholders who have not consented in writing.

[Articles of Incorporation, **Exh A1**](emphasis added).

² By stipulation of the parties, Sally Butler is now named-defendant the Estate of Sally Butler.

It is also undisputed that soon after the incorporation of TLC by the parties in 1984, Charles, Patricia, David, Nancy, Sally and Amy Edwards collectively deeded their rights to the subject real property located at 47000 52nd Street and 47138 52nd Street in Lawrence, Arlington Township, Van Buren County, Michigan (“the Property”) to TLC [Deed – 1984, **Exh A4**].³ The parties agree TLC has remained the sole deeded owner of the Property, and the Property is TLC’s primary asset [Trial, 5/9/2023, 11:10 a.m.; Trial, 5/10/23, 9:02 a.m.].

Amy Edwards and Chris Cochrane both live in residences located on the Property. In addition, the Cedar Lodge Recreation Services, LLC, Cedar Lodge Stables, LLC and Cedar Lodge Recreational Services and Youth Development (dissolved in 2019), collectively “the Cedar Lodge Businesses,” are or were owned by Amy Edwards, operated by both Amy Edwards and Chris Cochrane, and located on the Property as well. The parties agree that no written leases exist between TLC and either Amy Edwards, Chris Cochrane or the Cedar Lodge Businesses. There was evidence demonstrating that historically some amount of rent was to be paid, such as the November 16, 2000 Annual Meeting Minutes, indicating that for 2001 Chris Cochrane paid \$75.00 per month, Amy Edwards paid \$100.00 per month and then:

For the next year, TLC will be receiving **5% of gross earnings for both the camp and stables**, based on the year before’s gross fees. **This covers all rent payments** including rent by the camp, new house, blue house, stables, trailer and all group day fees, which will now be combined into one rent fee.

[2000 TLC Meeting Minutes, **Exh B28** (emphasis added); *see also*, 1995 TLC Meeting Minutes, **Exh 24**]. During the trial, Amy Edwards and Chris Cochrane both testified that they pay rent to TLC [Trial, 5/10/23, 11:27 a.m.; Trial, 5/10/23, 2:52 p.m.]. However, specifically how much rent was paid in recent years by either Amy Edwards, Chris Cochrane or any of the Cedar Lodge Businesses to TLC was not shown by a preponderance of the evidence. The tax returns admitted at trial merely show gross rents for TLC. For example, in 2019 the gross rents were \$17,876.00 (for a net loss of \$-2,617); in 2020, the gross rents were \$17,158.00 (for a net loss of \$-3,957.00; in 2021 the gross rents were \$15,760.00 (for a net loss of \$-17.00); and in 2022, the gross rents were \$19,270.00 (for a net loss of \$-7,891.00) [2019-2022 Tax Returns, **Exhs B50-B53**]. After a heated exchange of texts in October 2019 between Charles and Amy Edwards, Amy indicated she was paying about \$500.00 per month

³ Additionally, on or about June 28, 1994 and July 5, 1994, Mr. McMakin deeded his rights to certain parts of the Property to TLC. Similarly, on or about September 8, 1994, Arlene M. Segur deeded any of her rights to the Property to TLC [Deed – 1994, **Exh A6**].

in rent, but again, whether that would have been for her personally, and/or her Cedar Lodge businesses remained unclear [Text Messages, **Exh B43**].

Further, the evidence demonstrates that throughout the years, several capital improvements or material changes were made to the Property at the direction of Charles Edwards, Amy Edwards, and potentially others. These alterations include but are not limited to the chopping down of trees, the construction of or to an indoor riding arena, and the addition of a residence to the Property. For instance, the November 27, 1991 Annual Meeting Minutes [1991 TLC Meeting Minutes, **Exh B20**] stated in pertinent part that on passed motion:

“[T]he TLC board suggests that capital improvements be improvements made which cost over \$1,000, or which change the character of the land. All capital improvements must be disclosed in writing to the TLC Board. The board will be given 30 days to oppose said disclosure. [I]f no opposition is given, the capital improvement may be done as disclosed.”

Both Charles and Amy Edwards testified that any capital improvements or changes made by them were paid out of pocket rather than with TLC funds [Trial, 5/9/23, 11:46 a.m.; Trial, 5/10/23, 11:04 a.m.]. At the same time, the meeting minutes reflect that some maintenance and improvements by David Edwards, Amy Edwards and/or the Cedar Lodge Businesses, while initially out of pocket, were reimbursed respectively by TLC [1985-1988 TLC Meeting Minutes, **Exhs B14-B17**]. Charles Edwards also testified that he was aware of all capital improvements completed on the Property and made no formal objection to them [Trial, 5/9/2023]. Charles Edwards stated that he “assume[d]” that any capital improvements not made by himself were completed by David Edwards and Amy Edwards [Trial, 5/9/23, 1:14 p.m.]. Nonetheless, Charles Edwards believed that all the capital improvements made to the Property have increased the value of the Property [Trial, 5/9/23, 1:17 p.m.]. The appraisal report [Appraisal Report, **Exh A22**] and Appraiser James Zerbi’s deposition transcript [Deposition of Appraiser James Zerbi, **Exh A21**] admitted at trial provided an appraised value of the Property as of August 23, 2022 to be \$1,800,000.00. The 2022 tax return [2022 Tax Returns, **Exh B50**] indicates loans from shareholders to be \$307,551.00 and other mortgages or notes to be \$14,377.00, for a total of \$321,928.00. At the same time, the balanced assets and liabilities for tax purposes totaled \$109,912.00 [2022 Tax Returns, **Exh A36**; 2022 Tax Returns, **B50**].

On or about October 25, 2021, David Edwards mailed a Notice of Annual Meeting to all shareholders stating that a meeting would take place on November 16, 2021 [Notice of 11/16/21 Meeting, **Exh A11**]. On or about October 29, 2021, Charles Edwards, through counsel, also mailed an Amended Notice of Meeting of Shareholders stating that a meeting would take place on November 9, 2021 [Notice of 11/9/21 Meeting, **Exh A10**]. A meeting took place on November 9, 2021 in which

all TLC members were present [11/9/2021 TLC Meeting Minutes, **Exh B31**]. As reflected in the meeting minutes, no vote regarding the 2022 board of directors was made, and while there were discussions, no motions passed. Notably, David Edwards made a motion, which was seconded by Amy Edwards, to consider “sweat equity” for 2021, but the motion failed to pass [11/9/2021 TLC Meeting Minutes, **Exh B31**].

On November 16, 2021, the meeting that David Edwards had noticed proceeded with all shareholders present *except* Charles Edwards [2021 TLC Meeting Minutes, **Exh B32**]. At the November 16, 2021 meeting, attended by David, Nan, and Amy Edwards, Sally and Ashley Butler, and Chris Cochrane, there were motions presented, including a vote by Defendants to seat the board of directors for the 2022 term as follows:

- President/Treasurer – David Edwards
- Vice Presidents – Amy Edwards and Chris Cochrane
- Secretary – Nan Edwards

[2021 TLC Meeting Minutes, **Exh B32**]. Also proceeding at the November 16, 2021 meeting was David and Amy Edwards re-motioing to “accept sweat equities” in shares, with the “[p]rocess, equitable distribution, time line and materials reimbursement to be decided and subject to approval of the board.” The motion passed. [2021 TLC Meeting Minutes, **Exh B32**].

Relatedly, the Court finds that these November 16, 2021 votes and appointments occurred even though David and Nan hold the same set of shares in TLC, and together would constitute one member. That is, it does not appear that Nan Edwards should have any separately-counted voting power from David Edwards, as David and Nan Edwards have an undivided joint ownership in their TLC shares upon which the voting is based [Articles of Incorporation, Article VII, **Exh A1**].

Finally, the Court also finds that the percentage of ownership in TLC demonstrated from 2016 to 2021 remained largely unchanged as follows:

- Charles Edwards – 28.88%
- David and Nan Edwards – 27.11%
- Sally Butler – 27.11%
- Amy Edwards – 9.28%
- Chris Cochrane – 7.62%

[2016-2021 TLC Tax Returns, **Exh B51-B56**]. However, it was shown by a preponderance of the evidence that after the November 16, 2021 votes and actions by Defendants David, Nan, and Amy Edwards and Chris Cochrane, the 2022 TLC Tax Return were filed indicating a notable increase in

Amy Edwards' shares in TLC held, and a decrease in the number of shares held by all other shareholders, including Charles Edwards. The 2022 TLC Tax Return reflects the following changes:

- Charles Edwards – 28.05281%
- David and Nan Edwards – 26.61%
- Sally Butler – 26.61%
- Amy Edwards – 12.17%
- Chris Cochrane – 6.56%

[2022 Tax Return, **Exh B50**].

III. CONCLUSIONS OF LAW

As previously stated, Plaintiff's sole count against Defendants is for shareholder oppression in violation of MCL 450.1489(1). For a claim of shareholder oppression under MCL 450.1489(1), the plaintiff must allege and prove: "(1) that they were shareholders of the corporation; (2) that defendants were 'directors' or 'in control of the corporation'; (3) that defendants engaged in acts; and (4) that those acts were 'illegal, fraudulent, or willfully unfair and oppressive' to the corporation or to them as shareholders." *Franks v Franks*, 330 MichApp 69, 99-101; 944 NW2d 388 (2019). Such suits may only be filed by current shareholders and must be brought within six years of when the alleged conduct occurred. *Estes v Idea Eng & Fabrications, Inc*, 250 MichApp 270, 281-82; 649 NW2d 84 (2002).⁴

Conduct that is alleged to be "willfully unfair and oppressive" within the meaning of MCL 450.1489, as opposed to illegal or fraudulent, it is defined in the statute as:

[A] continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the shareholder as a shareholder. 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 shareholder interests disproportionately as to the affected shareholder. The term does not include conduct or actions that are permitted by an agreement, the articles of incorporation, the bylaws, or a consistently applied written corporate policy or procedure.

MCL 450.1489(3); *see also*, *Franks*, 330 MichApp at 98-100.

The language of MCL 450.1489 does not specify that the shareholder be a "minority," but courts have described the provision as allowing actions by "minority shareholders." This is

⁴ Defendants argued that the statute of limitations bars this action in its entirety [Def's Closing Argument, 5/24/23, p 7]. However, the record reflects that each of Charles Edwards' claims involve alleged conduct that was either ongoing or occurred within six years of when Charles Edwards initiated this action. Defendants failed to demonstrate that any of Charles Edwards' allegations fall outside of the six year statute of limitations.

presumably because, unlike public corporations, minority shareholders of closely held corporations are generally more susceptible to oppression by the majority. *See, Estes*, 250 Mich App at 278-281. A shareholder's interests include those found within a corporation's articles of incorporation, the corporation's bylaws, and governing statutes. *Madugula v Taub*, 496 Mich 685, 718; 853 NW2d 75 (2014). Shareholder interests generally include, but are not limited to, the right to vote, inspect the books, and receive distributions, subject to statutory requirements. *Id.* at 719. Here, Charles Edwards, as a current, yet minority, shareholder, asserted that the acts related to the Property and running of TLC by Defendants, collectively as the majority shareholders, were in a "willful, unfair and oppressive manner" causing damage to him as a shareholder [Complaint ¶ 24, p 4].

After the plaintiff establishes that willfully unfair and oppressive conduct by the defendants did occur, the plaintiff must prove that "the acts amounted to a 'continuing course of conduct or a significant action or series of actions that substantially' interfered with their interests as shareholders and that defendants took those acts with the intent to interfere with their interests as shareholders." *Franks*, 330 MichApp at 99-100. A shareholder who succeeds in establishing oppression by one or more shareholders, may be granted a wide variety of equitable relief. Specifically, under MCL 450.1489(1):

If the shareholder establishes grounds for relief, the circuit court may make an order or grant relief as it considers appropriate, including, without limitation, an order providing for any of the following:

- (a) The dissolution and liquidation of the assets and business of the corporation.
- (b) The cancellation or alteration of a provision contained in the articles of incorporation, an amendment of the articles of incorporation, or the bylaws of the corporation.
- (c) The cancellation, alteration, or injunction against a resolution or other act of the corporation.
- (d) The direction or prohibition of an act of the corporation or of shareholders, directors, officers, or other persons party to the action.
- (e) The purchase at fair value of the shares of a shareholder, either by the corporation or by the officers, directors, or other shareholders responsible for the wrongful acts.
- (f) An award of damages to the corporation or a shareholder. . . .

Though MCL 450.1489(1) provides multiple options for relief, the Court is not constricted to that list and may fashion a remedy as is just under the circumstances. *Three Lakes Ass'n v Kessler*, 91 MichApp 371, 377-378; 285 NW2d 300 (1979). It is well-settled under Michigan law that MCL

450.1489 empowers courts to grant no relief, even where shareholder oppression has been proven, if the equities warrant such. *Madugula*, 496 Mich at 711; *Franks*, 330 MichApp at 108. In this case, Charles Edwards’ requested relief included such things as Defendants to buy out Charles Edward’s shares at fair market value or dissolving TLC and appointing a receiver to sell TLC’s Property and distribute the proceeds [Complaint, p 4].

A. Shareholder Status

It is undisputed that Charles Edwards was a shareholder of TLC at the time of the alleged oppressive acts of Defendants. In fact, at the time of trial, Charles Edwards remained a shareholder. Thus, the first element of the shareholder oppression claim is satisfied. MCL 450.1489(1).

B. Directors or In Control of TLC

Next, the Court finds that Defendants David Edwards, Amy Edwards, Chris Cochrane, Nan Edwards, and Sally Butler were directors and/or in control of TLC at the time of the alleged oppressive acts. The record reflects that David Edwards has served on the board of directors from 1985 to present [1985-2021 TLC Meeting Minutes, **Exh B14-B32**]. Further, Amy Edwards and Chris Cochrane were both directors at the time of the alleged acts as both have served on the board of directors from 2002 to present [2000-2021 TLC Meeting Minutes, **Exh B28-B32**]. The Court also finds by a preponderance of the evidence that Nan Edwards, as joint owner of shares with David, and Sally Butler, separately did not own a majority share of TLC. However, together with any one or more of the remaining Defendant shareholders held a majority share of TLC stock [2016-2021 TLC Tax Returns, **Exh B51-B56**]. Additionally, it was found that each Defendant actually participated in making motions to the Board and voting on material TLC decisions 1984-2021 TLC Meeting Minutes [**Exh B13-B32**]. Therefore, due to their attendance to and participation in voting⁵ at TLC meetings, as well as their consistent ownership of stock in TLC each Defendant is found to be a director and/or in control of TLC at the time of the alleged acts [*see eg.* 11/16/2021 TLC Meeting Minutes, **Exhs A12/B32**].

C. Willfully Unfair and Oppressive Conduct that Interferes with the Interests of the Plaintiff as a Shareholder

Charles Edwards, as a minority shareholder in TLC, alleged that Defendants engaged in shareholder oppression under MCL 450.1489 by taking acts that “substantially interfere[d]” with

⁵ Again, from the evidence presented, the Court finds that Nan Edwards’ votes, to the extent counted as separate from David, were improperly given separate weight as she is not a separate member, but jointly holds shares with David [Articles of Incorporation, Article VII, **Exh A1**].

Charles Edwards' interests as a shareholder, and that Defendants specifically intended to achieve that result. *Franks*, 330 MichApp at 99-101; *Estes*, 250 MichApp at 281. Multiple allegations of specific acts by Defendants were made. In several respects, Charles Edwards failed to satisfy his burden of proof by a preponderance of the evidence. However, the Court finds that Defendants' November 16, 2021 voting and actions constituted a willfully unfair and oppressive act to Charles Edwards as a shareholder. The Court will evaluate each allegation in turn.

1. Material Changes to the Property

First, Charles Edwards alleged that several material changes were wrongfully made by Defendants to the Property, including but not limited to, permitting individuals to cut down trees on the Property, acquiring a house that was placed on the Property, constructing an indoor arena, and initiating other capital improvements. It is unclear from the record whether Defendants engaged in all of the alleged material changes to the Property. Despite being the top corporate officer of TLC at the time that each alleged act took place, Charles Edwards testified with uncertainty as to who completed the alleged changes. At trial, Charles Edwards stated that he "assum[ed] David and Amy" conducted the changes to the Property [Trial, 5/9/23, 11:22 a.m.]. Mere assumptions are insufficient to establish credible evidence of liability. *See, Krisher v Duff*, 331 Mich 699, 705; 50 NW2d 332 (1951)(stating that presumptions have no value as evidence unless supported by other credible evidence).

Further, it is not evident that the completion of these material changes impeded Charles Edwards' rights as a shareholder. The matters to which shareholders are entitled to vote on are generally established by the articles of incorporation or other provisions of the statute. *See*, MCL 450.1441(2). There is nothing in the Articles of Incorporation that would empower Charles Edwards, as a shareholder, to have a vote on decisions regarding changes to the Property. No other authority was offered by Charles Edwards pointing to a right he had as a shareholder that was affected by these changes to the Property. Moreover, Charles Edwards admitted that any changes made to the Property increased the value of the property. Thus, there is no showing of any damage to Charles Edwards' interests as a shareholder and the Court consequently finds that the alleged material changes to the Property do not constitute willfully unfair and oppressive acts within the meaning of MCL 450.1489.

2. Use of the Property

Charles Edwards next alleged that Defendants permitted improper uses of the Property, such as Amy Edwards and Chris Cochrane's living on the Property rent free and Amy Edwards' running the Cedar Lodge Businesses on the Property. However, there is no evidence that Defendants engaged in the act of permitting Amy Edwards and Chris Cochrane to live on the Property rent free. The record

indicates that oral lease agreements were in place, rent was paid by both Amy Edwards and Chris Cochrane, and these rent payments were discussed at TLC meetings in which Charles Edwards was present [Trial, 5/10/23, 11:27 a.m. & 2:52 p.m.; 1995 TLC Meeting Minutes, **Exh B23**; Text Messages, **Exh B43**]. Additionally, Charles Edwards failed to establish how either of these alleged acts affect any interest of his as a shareholder. Consequently, the Court finds that Charles Edwards failed to satisfy his burden of establishing that Defendants' use of TLC property equates to shareholder oppression under MCL 450.1489.

3. Request to Review Corporate Records

The Court also finds that Defendants' acts of not providing Charles Edwards with corporate records upon his request did not amount to shareholder oppression. Charles Edwards alleged that, at the November 9, 2021 meeting, he asked to review corporate minutes and bylaws but Defendants did not permit him to do so. MCL 450.1487(2) gives shareholders the right to examine corporate records. However, a shareholder wishing to inspect records must give the corporation a written demand that describes with reasonable particularity their purpose in doing so, the specific records they wish to inspect, and how the inspection of those records is directly related to their stated purpose. *Id.*

Here, no evidence was offered indicating that Charles Edwards attempted to make his request to examine records at the November 9, 2021 meeting in writing. The only indication of a request within the record is a text message sent from Charles Edwards to Amy Edwards stating, "I would love to have a TLC meeting and see the books" [Text Messages, **Exh B43**]. This written request was not made in conformity with the requirements set forth in MCL 450.1487(2) as it was not made to the corporation, did not state which records he specifically desired to inspect, and did not state what his purpose in inspecting them was. As a result, the Court finds that Charles Edwards' unfulfilled request to review the corporate records did not constitute willfully unfair or oppressive conduct by any Defendants, as there was no showing of a proper request by him, nor interference with his interests as a shareholder in that regard.

4. Administration of TLC

Charles Edwards further alleged that Defendants' operation of TLC was in a manner that is willfully unfair and oppressive towards his interest as a shareholder. In particular, Charles Edwards alleged that Defendants operated TLC at a loss, Defendants had no intention of operating TLC so as to yield a profit and make a distribution to its shareholders, and Defendants took actions that conflict with his interests. A series of acts are only considered to be shareholder oppression if they affect the shareholder's interest as a shareholder. MCL 450.1489(1). Also, in analyzing Plaintiff's allegations

with the evidence presented, the Court is mindful of the business judgment rule, which refrains courts from interfering in matters of business judgment and discretion unless it is established that the directors or officers “are guilty of willful abuse of their discretionary powers or act in bad faith.” *Reed v Burton*, 344 Mich 126, 131; 73 NW2d 333 (1955).

In this case, Charles Edwards alleged that Defendants stated at the November 9, 2021 meeting that they operate TLC for their own personal benefit. However, there is nothing in the record to establish that these acts actually occurred. More significantly, no evidence was presented such that the Court could find that any individual Defendants are guilty of a willful abuse of discretion or they have acted in bad faith. Absent evidence that the purported acts occurred or that they were either an abuse of discretionary power or done in bad faith, the Court is precluded by the business judgment rule from substituting its own judgment for that of Defendants.

In fact, as it relates to Defendants Nan Edwards and the Estate of Sally Butler, Charles Edwards’ own testimony at trial for the most part negated the majority of the allegations of shareholder oppression against them. At trial, Charles Edwards testified that the only oppressive behaviors that Nan Edwards engaged in were unpleasant comments that would disrupt meetings [Trial, 5/9/23, 1:36-1:38 p.m.]. Outside of the November 16, 2021 meeting, discussed below, Charles Edwards failed to provide any other evidence that Nan Edwards’ comments or actions prevented him from invoking his right to vote, right to inspect records, or otherwise inhibited his rights as a shareholder in any way. Likewise, Charles Edwards testified that Sally Butler was merely grumpy and that her attitude did not affect his rights as a shareholder [Trial, 5/9/23, 1:36 p.m.].

In light of the foregoing, and notwithstanding the below, Charles Edwards failed to demonstrate by the presented evidence that his accusations of mismanagement by any of the individual Defendants constituted shareholder oppression under MCL 450.1489.

5. November 16, 2021 Meeting & Thereafter

Lastly, Charles Edwards alleged that Defendants substantially interfered with his interests as a shareholder by holding the November 16, 2021 meeting and taking improper votes or actions to change shares. The Court agrees, in part.

As it relates solely to Charles Edwards’ accusation that David Edwards attempted to manipulate 107 shares in an unfair and oppressive manner, the Court does not find that allegation was substantiated by a preponderance of the evidence. More specifically, Charles Edwards alleged that David Edwards issued 107 shares to Chris Cochrane in 2022. However, the record only reflects that Chris Cochrane’s ownership interest remained consistent until 2020 when it inexplicably decreased

by 1.06% by the close of 2021 [2016-2021 TLC Tax Returns, **Exh B51-B56**; 2022 Tax Return, **Exh B50**]. Absent sufficient evidence that David Edwards actually engaged in the alleged act of issuing the 107 shares to Chris Cochrane in 2022, the Court cannot find there to be shareholder oppression in that specific regard. *See Franks*, 330 Mich App at 99-101.

With that said, the Court does find that Defendants' willful acts of proceeding with the meeting on November 16, 2021 and taking actions adverse to Charles Edwards' status as a shareholder was demonstrated. Generally, shareholders have a right to vote on the election of the board of directors subject to the corporation's articles of incorporation and bylaws. MCL 450.1441; MCL 450.1451. Article VII of the TLC Articles of Incorporation states that "[a]ny action that is required or permitted by the Act to be taken at an annual or special meeting of shareholders may be taken" so long as "a consent in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote thereon were present and voted" [Articles of Incorporation, **Exh A1**]. Thus, Charles Edwards had an interest as a shareholder in voting on the board of directors. *See, Madugula*, 496 Mich at 718 (stating that a corporation's articles of incorporation may be considered when determining what interests a shareholder possesses). Moreover, it is clear that David and Nan Edwards both getting to vote when they jointly and undividedly hold shares was improper under the Articles of Incorporation [**Exh A1**].

However, Defendants conducted the vote for the 2022 board of directors despite Charles Edwards' absence and without first obtaining his consent in writing [11/16/21 TLC Meeting Minutes, **Exh B32**]. Further, Defendants had the requisite intent to interfere with Charles Edwards' interest in voting as a shareholder because they knew he had a right to vote on the matter and chose to proceed without him. Hence, the Court finds that the vote taken at the 2022 board meeting constitutes a willfully unfair and oppressive act that substantially interfered with Charles Edwards' interest as a shareholder in voting and that Defendants had the specific intent to do so.

Furthermore, it was shown that once the new board with seated, the Defendants all participated in allowing for the issuance of shares to themselves or others in exchange for "sweat equity" without proper authorization to do so in that manner [11/16/21 TLC Meeting Minutes, **Exh B32**]. Moreover, despite there being no specific evidence in the meeting minutes from November 16, 2021 arising from the "sweat equity" motion passing by the board, there is a preponderance of evidence that after those decisions were made and actions were taken, by the close of 2021, Charles Edwards' percentage ownership in TLC materially decreased to his detriment from 28.88% to only 28.05281% [2021 &

2022 TLC Tax Returns, **Exhs B50 & B51**]. Consequently, in this regard only Plaintiff is entitled to judgment against Defendants for shareholder oppression pursuant to MCL 450.1489.

D. Relief Under MCL 450.1489(1)

With the authority of MCL 450.1489(1), as discussed above, the Court has broad discretion once shareholder oppression is demonstrated to grant relief as it deems equitable under the circumstances. *See, Madugula v Taub*, 496 Mich 685, 711 (stating that a claim of shareholder oppression is equitable by nature). In this case, as determined, Defendants are liable for shareholder oppression due to their willfully unfair and oppressive actions conducted at the November 16, 2021 meeting and thereafter. After the new board of directors was instated, and the allowance of “sweat equity” shares was passed, the TLC Tax Return was filed in 2022 reflecting an inexplicable decrease in Chares Edwards’ percentage of ownership [2022 Tax Return, **Exh B50**]. In 2020, Chares Edwards’ owned 28.88% of TLC’s shares [2021 TLC Tax Returns, **Exh B51**]. Notably, the 2022 TLC Tax Return filed by information provided to the accountant by David Edwards indicates that Charles Edwards’ percentage of ownership dropped to 28.05281% [2022 Tax Return, **Exh B50**]. Moreover, between that same year (2020 to 2021) Amy Edwards’ percentage in TLC share increased from 9.28% to 12.17%. Clearly, Defendants took actions on TLC ownership which harmed Charles Edwards to the benefit of Amy Edwards. With that said, the Court, in weighing the acts and the circumstances of this case, especially in light of the Estate of Charles Edwards currently pending in another jurisdiction, does not find that the requested dissolution and appointment of a receiver, or forced buy-out of the shares in this case is warranted. Instead, the Court finds the prudent and equitable remedy Plaintiff is entitled to against Defendants is to restore and declare that the Estate of Charles Edwards’ percentage of ownership in TLC is to be 28.88%, and the Court strikes and invalidates any issuance or movement of shares by any Defendant to or among themselves in 2021 to the present which resulted in a reduction in the percentage share of ownership in TLC by the Estate of Charles Edwards falling below 28.88%.

IV. CONCLUSION

For the foregoing reasons, and the Court being otherwise advised in the premises, the Court concludes as follows:

IT IS HEREBY ORDERED that judgment of no cause of action is entered in favor of Defendants and against Plaintiff in all respects of Plaintiff’s Complaint and asserted allegations except JUDGMENT IS ENTERED in favor of Plaintiff and against Defendants for shareholder oppression under MCL 450.1489, occurring on or about November 16, 2021, and thereafter, and as the resulting

remedy, within twenty-one (21) days of the date of this Judgment Defendants shall take such lawful actions necessary to restore the Estate of Charles Edwards' percentage of ownership in TLC to be 28.88%, as is equitable under these circumstances.

IT IS HEREBY FURTHER ORDERED that any claims for allowable costs and/or attorney fees to be added to this Judgment may be submitted to the Court by stipulation of the parties within fourteen (14) days of the date of this Judgment, or if the parties do not timely stipulate, such claims shall be submitted to this Court through proper motion filing within twenty-eight (28) days of the date of this Judgment, including all support for the claim consistent with MCR 2.625(G), or shall be deemed waived. To the extent there is the filing and service of a motion, a non-moving party shall have fourteen (14) days thereafter in which to file objections or oppositional response brief, accompanied by affidavits, if appropriate. The Court will determine if an evidentiary hearing is warranted, or enter an order on the parties' submissions.

IT IS SO ORDERED.

This Judgment resolves the last pending claim and closes the case, *except* as to the amount of reasonable costs and attorney fees, if any. MCR 2.602(A)(3).

11/15/2023
Date

/s/ Donna B. Howard
DONNA B. HOWARD (P57635)
Trial Court Judge – Civil Division

Certificate of Service: The undersigned certifies that a copy of the foregoing Opinion and Final Judgment was served upon the attorneys and/or parties of record to the above cause by mailing the same to them at their respective addresses as disclosed by the file with postage fully prepaid or interoffice office delivery, if available, on: 11/16/2023.

/s/ Rebecca Witt
Deputy Clerk/Bailiff