



Mekhaya v. Eastland Food Corp.

slip.op. (2022) | Cited 0 times | Court of Special Appeals of Maryland | December 22, 2022

Edward Mekhaya v. Eastland Food Corporation, et al., No. 266, September Term, 2022. Opinion by Harrell, J.

CORPORATIONS AND BUSINESS ORGANIZATIONS CAPITAL AND STOCK DIVIDENDS AND DIVISION OF PROFITS WHAT IS A DIVIDEND

CORPORATIONS AND BUSINESS ORGANIZATIONS DERIVATIVE ACTIONS; SUING OR DEFENDING ON BEHALF OF CORPORATION DERIVATIVE ACTIONS BY SHAREHOLDERS AGAINST DIRECTORS, OFFICERS, OR AGENTS PERSONS ENTITLED TO SUE OR DEFEND; STANDING DERIVATIVE OR DIRECT ACTION

initial complaint advancing claims for shareholder oppression, breach of fiduciary duty,

f directors. In his claim for shareholder oppression, Appellant alleged that, as a minority shareholder in Eastland, he received, before his firing as an employee and removal from the board, and expected to continue to share (as a shareholder) in Eastland

terminating his employment. He asserted that such expectation was reasonable, despite the fact that Eastland, a closely-held corporation, never declared officially a dividend. Appellant alleged that, by depriving him of the de facto dividend portion of his salary upon terminating his employment, Eastland and its board of directors defeated substantially his reasonable expectation as a shareholder. Those allegations were sufficient to state a claim for shareholder oppression, and the court erred in finding otherwise. Moreover, because de facto dividend could constitute a breach of a fiduciary duty owed directly to Appellant, if proven, and resulted in a direct harm that was

duty and unjust enrichment were direct, and not derivative. The court erred in dismissing th which is inapplicable to direct claims. Circuit Court for Howard County Case No. C-13-CV-21-000666

REPORTED

IN THE APPELLATE COURT*

OF MARYLAND

No. 266



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September Term, 2022

EDWARD MEKHAYA

v.

EASTLAND FOOD CORPORATION, ET AL.

Berger, Albright, Harrell, Glenn T., Jr. (Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: December 22, 2022

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022. s in

Frank Robinson, TIME Magazine, 31 July 1973.

To understand how this phrase might be useful in appreciating the outcome of this case, one should recall how scoring occurs in the game of horseshoes. The rules of horseshoes provide that: (1) three points are awarded if a horseshoe lands encircling the stake (commonly called a e that, although not a

ringer, touches or leans against the stake (commonly called is scored for a shoe that lands within six inches of the stake. Thus, getting close to an

objective may prove important to staying in the game.

Edward Mekhaya, Appellant, filed in the Circuit Court for Howard County a civil

alleging counts of shareholder oppression, breach of fiduciary duties, and

unjust enrichment. Appellees responded with a motion to dismiss. The court dismissed



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, with prejudice. Mekhaya filed a motion to alter or amend that judgment, which the court denied.

In this timely appeal, Mekhaya presents six questions. For clarity, we have rephrased and consolidated them to:

1. Did the circuit court err in dismissing his complaint with prejudice and without leave to amend?
2. Did the circuit court err in denying his motion to alter or amend the ? For reasons to be explained, we hold that the circuit court erred in dismissing

Accordingly, we reverse and remand for further proceedings consistent with this opinion. We do not need to address the second question.

BACKGROUND

Eastland is a Maryland corporation that imports and distributes food and other products from international and domestic suppliers. In 2000, Mekhaya was hired by Eastland. Eventually, he rose to become Vice President of Operations. In December 2008, Mekhaya received an ownership interest in Eastland in the form of 28% of its stock. The remaining shares were also 28% of the shares; a who owns 35% of the shares; and, Until remaining members were Oscar, Vipa, and a third individual, Tisnai Thaitham h Eastland was led and managed formerly her, Pricha In September 2017, Pricha was removed as President and a President of Eastland. In



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October 2018, Mekhaya was not re- later, his employment with Eastland was terminated. At the time of his termination, The Complaint

In 2021, Mekhaya initiated the present lawsuit against Eastland, Oscar, Vipa, and

Thaitham. In his complaint, he alleged that, during the years that he was employed by

ite those efforts, Mekhaya claimed, Appellees engaged in a scheme to

According to Mekhaya, that scheme commenced in September 2017, with the

removal of Pricha as director and the election of Oscar as president of Eastland. Mekhaya

objected to those decisions, in part, [,]

[,] employees would tell him what he does not want to hear, resulting in high employee

In August 2018, a majority of

held a stockholder

meeting in October 2018, eholders getting

dividends with respect to ownership in lieu of their salaries being paid as if they were

Mekhaya alleged that, after he was removed from the board of directors and

remaining board of directors chose not to

consider further that study. Mekhaya alleged further that, although years following his departure from the company, 1

instead to Mekhaya asserted also that Oscar and Vipa

Mekhaya pleaded three causes of action. The first named all four defendants and

named Oscar, Vipa, and Thaitham as defendants Breach of

The third called-out Unjust

In his claim for oppression of a minority stockholder, Mekhaya alleged that



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, fraudulent and oppressive conduct substantially defeat[ed] the

He becoming a stockholder in Eastland, he would not be summarily removed from

employment and management of reasonable

expectations were central to [his] decision to spearhead the growth and development of

Mekhaya maintained also 1 will not agree to pay a dividend to its stockholders [.] He

contended reduced profits for Eastland[,] By terminating his employment,

removing him from the board of directors, refusing to pay dividends, paying excessively

high salaries, and diverting the defendants

He sought from the

court the following relief under this count: appoint a receiver to continue operation of the

company for the benefit of the stockholders until the oppressive conduct ceased; retain

jurisdiction of the case for the protection of the minority stockholders; issue an injunction

to prohibit continuing acts of oppression; and award compensatory damages.

As for the breach of fiduciary duties count, Mekhaya claimed that Oscar, Vipa, and

Thaitham owed him a fiduciary duty to act in good faith and in a manner consistent with

s. He asserted that the three defendants breached that duty

by authorizing Eastland to pay excessive salaries to Oscar and Vipa and by diverting

actions had resulted in reduced profits and other damages. He asked the court to award

compensatory damages.

In his claim for unjust enrichment, Mekhaya claimed that Oscar and Vipa were

enriched unjustly, at his expense, when they received excessive salaries and when they



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diverted company funds for their personal use and gain. Mekhaya alleged that it would be inequitable to allow Oscar and Vipa to retain those benefits, which they received through their [.] He asked the court to award compensatory damages.

The Motion to Dismiss

Eastland, Oscar, Vipa, and Thaitham filed a joint motion to dismiss, claiming that Mekhaya failed to state any claims for which relief could be granted. They argued that Mekhaya failed to state a claim for minority oppression because he did not establish any that business decisions by a board of directors are reasonable and made in good faith (the Appellees asserted that their decision to remove Mekhaya as an employee and member of the board, and their decision not to declare dividends, could the existence of any shareholder or employment agreement conferring those rights to him of fiduciary duty and unjust enrichment, Appellees argued that those claims failed because Mekhaya did not show that he suffered a harm that was separate and distinct from any harm suffered by Eastland.

At the hearing on the motion to dismiss, Mekhaya responded to the arguments raised by the motion to dismiss. Regarding e and a shareholder, counsel asserted that the complaint made clear that [.] in large measure. Counsel insisted that there was an understanding amongst the parties that Eastland would not declare a dividend, but would instead



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salary[.] Counsel maintained that, when Mekhaya was terminated as an employee and stopped receiving a salary, he was, in essence, deprived of a dividend that he should have

received as a shareholder. Counsel claimed that the deprivation of that -à-

vis the loss of his salary supported also the claims for breach of fiduciary duty and unjust

enrichment, as that deprivation was a harm separate and distinct from any harm suffered

by Eastland.

sought, in the alternative that,

if the circuit court believed that the complaint was somehow deficient, it should grant leave

[.] The

court asked counsel to elaborate. Counsel responded significantly in 2008, when he became a shareholder, and that his salary remained high

until 2018, when he was terminated. Counsel maintained further that a reasonable

n

undeclared a was injured personally.

T , finding as follows:

defeated. The concept of this salary as dividends or dividends as salary,

excuse me, is a new concept today. There is no there seems to be no confirmed basis that it was ever reviewed as a dividends or that the salary was viewed as dividends in this matter. And I think that when you look at [and]

would be continued to be paid. There was an employee of the company who had been terminated and so on. And so, I think in the general nature of the t sufficient at this time. In terms of Counts Two and Three, this was not brought as a derivative been paid is a misnomer here. That he was receiving a salary before. He

was fired as an at-will employee and so was no longer receiving a salary. And in the pleading, itself, it indicates that really makes assertions that part harm was distinct from that presumption, based on



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[the business judgment rule], that the Defendants in

acted accordingly. And based on what is in the pleadings, they are not sufficient. And I have heard nothing today, even with what [Mekhaya] through Counsel has added that would or could be had with amendment.

And for those reasons I am going to dismiss all three counts and that ng of the court.

The Motion to Alter or Amend

Ten days after judgment was entered, Mekhaya filed a motion to alter or amend the judgment. He attached to that motion an amended complaint, which he claimed cured any defect in his initial complaint. In the amended complaint, Mekhaya claimed that, in 1999, he had a conversation with his father, Pricha, during which Pricha asked Mekhaya to join Ea that he would become an employee of Eastland, participate in the management of Eastland, and become eventually an owner and be paid as an owner. Pricha told Mekhaya that the d based on that

management of Eastland, and receipt of the profits of Eastland as an eventual

owner[.] Mekhaya included a table outlining his yearly salary from 2006 to 2018, which he claimed show, based on the increases in his yearly income, how he had shared in the

profits of Eastland as a shareholder. Additional facts were claimed showing that

- ts of Eastland as

prevailed. He insisted that,

,

status.

n to alter or amend. This timely appeal



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followed.

DISCUSSION

I.

Mekhaya argues that the circuit court erred in dismissing his complaint, with prejudice. He asserts that he pled adequately claims for stockholder oppression, breach of fiduciary duty, and unjust enrichment. ² He asserts that his claim for stockholder oppression board of directors, and by diverting profits of Eastland from him to Oscar and Vipa in the ² d almost exclusively on the facts as set forth in his amended complaint. For the purposes of reviewing the circuit original complaint, we are concerned only with the facts as alleged in the original complaint and reasonable inferences that could be drawn from those allegations. See *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 475 (2004). form of high salaries. ³ He argues also that, even if his initial complaint was somehow

deficient, the court should have granted him leave to amend the complaint.

Unsurprisingly, Appellees retort that the circuit court did not err in dismissing , with prejudice. Appellees contend that he failed to state a claim for shareholder oppression because he did not demonstrate arguably that he was entitled to any benefit as a shareholder, nor did he establish that his expectations as a shareholder were reasonable objectively. Appellees contend that Mekhaya failed to state a claim for breach of fiduciary duty and unjust enrichment because he did not allege adequately that he suffered a harm distinct from any harm suffered by Eastland. Appellees continue that Mekhaya failed to advance a prima facie rebuttal of the application of the business judgment rule. Finally, Appellees claim that the court did not err in denying Mekhaya leave to amend because he failed to identify any additional facts that would have cured the



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aforementioned deficiencies.

Standard of Review

D.L. v. Sheppard Pratt Health Sys.,

Inc., 465 Md. 339, 350 (2019) (quotation marks and citations omitted). In making that

Ceccone v.

3 Mekhaya argues also that the circuit court erred in finding that the lack of a written shareholder agreement precluded his recovery for shareholder oppression. We need not address that claim, as it appears from our review of the court made no such finding. Carroll Home Servs., LLC land case

Cochran v. Griffith Energy Servs., Inc., 426 Md. 134, 139 (2012).

-322(b)(2), a defendant may seek dismissal of a complaint

if the complaint fail[s] to state a claim upon which relief can be granted. Cain v. Midland

Funding, LLC, 475 Md. 4, 33 (2021). claims upon which relief can be granted, there is a big difference between that which is

Aleti

v. Metro. Baltimore, LLC, 479 Md. 696, 717 (2022). Cain, 475 Md. at

33-

merely determine[] Aleti, 479 Md. at 717-18

(quotation marks and citation omitted).

-322(c).

amendments to pleadings or to grant leave to amend pleadings is within the sound

A.C. v. Maryland Commission on C.R., 232 Md. App. 558, 579

(2017) (quoting , 368 Md. 434, 443-44 (2002)).



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-established that leave to amend complaints should be granted freely to serve

RRC Ne., LLC v. BAA Maryland, Inc., 413 Md. 638, 673 (2010). opposing party or undue delay, such as where amendment would be futile because the claim

Id. at 673-74.

The Shareholder Oppression Count

Section 3- Code states, in pertinent part, that certain shareholders may petition a court to dissolve a
ors or those in control of the

CA § 3-413(

closely-held corporation by those who wield pow Bontempo v.

Lare, 444 Md. 344, 365 (2015). The term has been defined also Edenbaum v.

Schwarcz-Osztreicherne, 165 Md. App. 233, 256 (2005) (quotation marks and citation
omitted). T doctrine is favored when dealing with closely-

held corporations. Id. at 256-57.

Typically, a closely-held corporation has a small number of stockholders, no active

market for the trade of such stock, and substantial majority stockholder participation in the

direction and management of the company. Id. at 257. understood that, in addition to supplying
capital and labor to a contemplated enterprise and

expecting a fair return, parties comprising the ownership of a [closely-held] corporation

expect to be actively involved in its management and operation Id. (quotation marks and

citation omitted). A shareholder in a closely-held corporation considers generally himself

-owner of the business and wants the privileges and powers that go with Id. (quotation marks and
citation omitted). Such privileges may include



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employment, a share of corporate earnings, and a role in the management of the company.

Id. at 258.

But the very nature of a closely held corporation makes it possible for a majority

of her interest in the business or a fair return on her [or his] Id. at 257-58

(quotation marks and citation omitted). Because the market for stock in a closely-held corporation is limited, a minority shareholder will have likely few, if any, recourses when faced with oppressive tactics by a majority shareholder. Id. at 258. ave

expectations held by minority shareholders in committing their capital to the particular

Id. at 258 (quotation marks and citation omitted). A majority is said to have

no Id. (quotation marks and citation

omitted).

That said,

substantially defeats expectations that, objectively viewed, were both reasonable under the

Id.

(quotation marks and citation Id. (quotation marks and citation

omitted). If the majority conduct is found to be oppressive, the court may order

dissolution; however, that is not the only remedy. Bontempo, 444 Md. at 370. A court

may order various equitable remedies in lieu of dissolution. Edenbaum, 165 Md. App. at

260-61. Those equitable remedies include, but are not limited to: entering an order

requiring dissolution at a future date if the stockholders fail to resolve their differences

prior to that date; appointing a receiver to continue the operation of the company until the



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differences are resolved; appointing a special fiscal agent to report to the court regarding the case; ordering an accounting of company funds; issuing an injunction to prohibit certain conduct; and, entering an order stock to the minority shareholder. Id. A declaration of a dividend or a reduction and distribution of capital[,] the court may

ve Id. at

261.

Here, the corporation at issue Eastland was, for all intents and purposes, a closely-held corporation. Mekhaya owned 28% of the shares, his brother, Oscar, owned 28% of the shares, and his mother, Vipa, owned 35% of the shares, with the remaining 9%

Prior to 2018, the three main shareholders, along with

Thaitham, composed the entire board of directors and controlled the operation of the

company. In 2018, Mekhaya was fired as an employee and removed from the board, but retained his 28% interest. From that point forward, Oscar, Vipa, and Thaitham were the

only board members.

To allege properly a cause of action for shareholder oppression, Mekhaya was

obligated to allege, namely, Oscar and Vipa, engaged

in conduct that defeated substantially his objectively reasonable expectations as a minority shareholder. In addition, the relief requested by Mekhaya needed to come within the circuit

As explained below, we are convinced that he met those

threshold requirements in his complaint.

claim was that, as a shareholder, he expected to share in



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company profits via dividends, which he had been receiving as part of his salary prior to While conceding that

Eastland and its board of directors never declared expressly that a dividend was to be paid, would be distributed to them as part of their yearly salaries. He asserted that, by firing him and refusing to pay the de facto dividend following the termination of his employment, the majority shareholders engaged in conduct that defeated his expectations as a shareholder.

Mekhaya claimed that the majority shareholders continued that oppressive conduct by providing excessive salaries and other benefits to themselves from company profits, without conferring a similar benefit upon him. He asked the circuit court to award him various forms of relief, including appointing a receiver to continue operation of the

company for the benefit of the stockholders until the oppressive conduct ceased, retaining jurisdiction of the case for his protection, issuing an injunction to prohibit continuing acts of oppression, and awarding compensatory damages.

The circuit court, in dismissing oppression claim, found that there was [the claimed dividend] was ever reviewed as a dividend[] or that

the salary was viewed as dividend[] also that there were and that these would be continued to

The question we ask ourselves, therefore, is whether the de facto dividend claimed by Mekhaya could

be an objectively reasonable expectation by him, according to the circumstances set out in the complaint. If so, we ask then



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substantially that expectation and whether requested relief was within the
to grant.

There is a dearth of Maryland law that touches on the de facto dividend claim.

assertions. W complaint established a cause of action. We are not concerned yet with whether his
allegations can be proven.

The Maryland statutes governing dividends do not recognize expressly a de facto

dividend. In reading those statutes, however, we cannot discern that the statutes foreclose

such a dividend. CA § 2-309(b) states that, corporation may make distributions to its stockholders,
subject to any restriction in its charter and the limitations in § 2-311 precludes distributions

under circumstances not relevant here. CA § 2-301(a)(1)(i) , in

pertinent part, of the

t

CA § 2-301(b)(1).

Nothing in that language indicates that a company would be precluded from paying a

dividend in the manner alleged by Mekhaya, i.e. salary as a corporate employee or director. Again,
whether such a dividend was declared

actually and paid is not as yet at issue here.

Outside of Maryland, t being

, and without being declared expressly, is well-

recognized. For instance, the Internal Revenue Service (IRS) permits generally a tax

e ordinary and necessary expenses paid or incurred during the taxable

(a). According to the Code



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personal 1.162-7(a). The test of deductibility is

Id. As such, companies are incentivized to characterize any payment to a

shareholder as salary so that the payment may qualify for a tax deduction. That incentive

can lead corporations, particularly closely- payment as salary: Any amount paid in the form of compensation, but not in fact as the purchase price of services, is not deductible. An ostensible salary paid by a corporation may be a distribution of a dividend on stock. This is likely to occur in the case of a corporation having few shareholders, practically all of whom draw salaries. If in such a case the salaries are in excess of those ordinarily paid for similar services and the excessive payments correspond or bear a close relationship to the stockholdings of the officers or employees, it would seem likely that the salaries are not paid wholly for services rendered, but that the excessive payments are a distribution of earnings upon the stock.

26 C.F.R. § 1.162-7(b)(1).

The federal regulations go on to state that a shareholder salary may be treated as

a dividend by the IRS, and thus not tax deductible by the company, depending on the

circumstances and regardless of how it is characterized by the company:

The income tax liability of the recipient in respect of an amount ostensibly paid to him as compensation, but not allowed to be deducted as such by the payor, will depend upon the circumstances of each case. Thus, in the case of excessive payments by corporations, if such payments correspond or bear a close relationship to stockholdings, and are found to be a distribution of earnings or profits, the excessive payments will be treated as a dividend.

26 C.F.R. § 1.162-8.

Various courts have looked similarly to the circumstances of the payment, and not

a shareholder was instead a disguised dividend. In *In re White*, 429 B.R. 201 (2010), the

United States Bankruptcy Court in the Southern District of Texas concluded that year-end

actually dividends, even though the company never declared a dividend. Id. at 207-10. In

reaching that conclusion, the court noted that the bonuses were paid in accordance with



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uses *Id.* at 209. The court quoted, with favor,

the following language from an opinion of the United States Court of Appeals for the Fifth

Circuit regarding how to recognize a disguised dividend:

Substantial bonuses declared at the end of the year when the earnings of a business are known usually indicate the existence of disguised dividends. Moreover, this Court has previously determined that, especially in the context of closely held corporations, it is in the tax interest of all parties to characterize the amounts distributed to shareholders/officers as compensation rather than dividends. Because the [d]istribution of profits through compensation payments to shareholder/officers avoids the double tax on corporate profits which are distributed to shareholders as dividends, the concern arises where corporations distribute their profits through the payment of unreasonably large salaries and bonuses to those controlling shareholder/officers. Therefore, it is necessary to carefully scrutinize the payments to ensure that they are not disguised dividends.

Id. at 209-10 (quoting *Brewer Quality Homes, Inc. v. C.I.R.*, 122 Fed. Appx. 88, 94-95 (5th Cir. 2004)) (internal quotation marks omitted).

In , 326 F.3d 1 (1st Cir. 2003), the United

States Court of Appeals for the First Circuit engaged in a similar analysis in evaluating

purposes. *Id.* at 1-2. There, the company claimed the bonuses as a deduction, but the IRS

disallowed the deduction. *Id.* The company appealed. The First Circuit reviewed the

Id. at 3-8. The Court engaged in that analysis even though

Id. at 2.

Outside of the tax context, but within the realm of individual claims by minority

shareholders against majority shareholders, courts have applied a similar analysis to determine whether the minority shareholder should be entitled to a dividend despite the

fact that the company never declared officially a dividend. In *Alaska Plastics, Inc. v.*

Coppock, 621 P.2d 270 (Alaska 1980), the Supreme Court of Alaska considered various



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remedies available to a shareholder who had been the victim of shareholder oppression and who claimed which should have been shared Id. at 277. In analyzing the merits of that claim, the Court noted that certain evidence had been adduced showing that, while the majority shareholders had not received dividends per se, they had received certain . Id. els

these expenditures, if they were not made for the reasonable value of services rendered to the corporation, some portion of these payments might be characterized as constructive dividends Id.

determine whether they are in fact a distribution of dividends, and if so the excluded shareholder must participate equa Id.

In *Yates v. Holt-Smith*, 768 N.W.2d 213 (Wis. Ct. App. 2009), the Court of Appeals of Wisconsin considered the merits of a breach of fiduciary duty claim filed by a shareholder against the president of a company, who was also a shareholder. Id. at 217-18. The claim was based, in part, on a year-end, lump sum payment that had been given to the president but not the aggrieved shareholder. Id. The shareholder claimed that the claimed that the board of directors did not declare a dividend [that year], or ever Id. at 218. The Court Id. The Court, after considering the circumstances surrounding the payment, concluded that the payment was a constructive dividend that should have been paid also to the suing shareholder. Id.

The United States Bankruptcy Court engaged in a similar analysis in *In re Toy King Distribs., Inc.*, 256 B.R. 1 (Bankr. M.D. Fla. 2000), a case in which a company made



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dividend payments to certain shareholders, which violated a confirmed bankruptcy plan.

Id. at 163. The Court found that the payments violated the plan even though the company

Id. In reaching that view, the Court

Id. (quotation marks and

citations omitted). The Court noted further the mere fact that the distributions are not called dividends by the board of directors of the

corporation does not detract from such distributions being dividends within the meaning of

Id. (quotation marks and citation omitted).

In Erdman v. Yolles, 233 N.W.2d 667 (Mich. Ct. App. 1975), a case somewhat

similar to the present one, the Court of Appeals of Michigan considered a claim filed by a

minority shareholder, who retained a 25% interest in a company after the company

terminated his employment. Id. at 668. The minority shareholder filed suit against the

three remaining shareholders, each of whom owned 25% of the company, after they granted

themselves pay increases and bonuses following the termination of the minority Id. Those payments, which were not paid to the minority

shareholder, were paid out of company profits. Id. The trial court ruled in favor of the

minority shareholder and found that he was entitled to his share of the profits, despite the

nds were specifically declared or other distributions to the

shareholders effected except through the medium of salaries. Id. The remaining

shareholders appealed to the Court of Appeals of Michigan, which affirmed. Id. at 669-

70. In so doing, the Court

salary increases and that, in this case, plaintiff was improperly denied his 1/4 Id.



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at 669 Id.

With respect to the remedies available to a minority shareholder who claims

oppression, some courts have made clear that the reasonable

expectations the failure of the claim

would render the shares worthless. In *Manere v. Collins*, 241 A.3d 133 (Conn. App. Ct.

2020), the Appellate Court of Connecticut reversed verdict denying a

he filed after being fired for misconduct

and was based, in part, on the termination of his employment. Id. at 161-62. Although the

Court agreed that the shareholder could not establish oppression based on the termination

of his employment (because it was unreasonable for the shareholder to expect to maintain

his employment following the misconduct), the Court held that the trial court had erred in

f. Id. In remanding the case expectations, the Court cautioned that, even though the shareholder was guilty of

misconduct, he nevertheless could not

precluded from realizing what reasonable expectation he still maintains as a minority

Id. at 161. The Court investment in [the company], his reasonable expectations include being entitled to certain

minimum rights[.] Id. at 162-63. The Court reasoned rights and a bar to any remedy [would] leave[] Id. at

163.

The Superior Court of Pennsylvania reached a similar conclusion in *Ford v. Ford*,

878 A.2d 894 (Pa. Super. Ct. 2005). There, the Court upheld a



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shareholder oppression, no benefits whatsoever to

Id. at 903-04. The Court explained

shareholders have a reasonable expectation to derive some benefit from their ownership

Id. at 904. The

Court explained it from their

interest in a corporation, while the majority shareholder benefits substantially, the conduct

Id. The Court

concluded that, although certain expectations by a minority shareholder may be

unreasonable based on the circumstances, the shareholder nevertheless has expectation to receive some benefit from their minority shares[.] Id. (emphasis in original).

In *Bonavita v. Corbo*, 692 A.2d 119 (N.J. Super. Ct. Ch. Div. 1996), the Superior

Court of New Jersey held that a majority shareholder engaged in shareholder oppression

the company resulted in substantial benefits

for the majority shareholder, but no discernible benefit for the minority shareholder. Id. at

124-27. In reaching that holding, the Court concluded that the dividend constituted shareholder oppression. Id. The Court reasoned that, absent such a

dividend,

Id. at 126.

With these principles in mind, we are persuaded that the circuit court erred in finding

that Mekhaya failed to state a claim for shareholder oppression. The court based its

decision de facto

[] dividends



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As the case law discussed earlier makes clear, however, the de facto dividend as part of expressly declared as a dividend by Eastland. The question, rather, is whether Mekhaya alleged facts sufficient to establish that his expectations as a shareholder were reasonable (when viewed through an objective lens) and that Appellees defeated substantially one or more of those expectations. advanced such a showing. As noted earlier flagship allegation was that, as a shareholder, he expected to share in company profits by receiving a de facto dividend as part of his salary. That expectation was reasonable, despite the fact that Eastland never declared officially a dividend. Thus, when Appellees terminated and stopped paying his salary, thereby depriving him of the de facto dividend portion, arguably Appellees defeated substantially asserted reasonable expectation as a shareholder. Those allegations are sufficient to state a claim for shareholder oppression. Again, whether Mekhaya can prove those facts is immaterial to the stage of these proceedings as they reach us here. In addition, Mekhaya alleged that, following the termination of his employment, expressly a dividend, despite th According to Mekhaya, instead of declaring Those actions, if proven, could be considered shareholder oppression, particularly if the To the extent that the circuit court may have believed that it lacked an appropriate remedy under the circumstances as pleaded, we disagree. In his prayer for relief, Mekhaya



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asked the court to appoint a receiver to continue operation of the company for the benefit of the stockholders until the oppressive conduct ceased, retain jurisdiction of the case for the protection of the minority stockholders, and issue an injunction to prohibit continuing acts of oppression. All of those remedies have been recognized by this Court as being Edenbaum, 165 Md. App. at 260-61. Mekhaya asked also for compensatory damages, which, depending on the circumstances, could be awarded. Id.

That is, if Mekhaya can prove dividend to its shareholders, employees or directors, that he reasonably expected to receive that benefit, and that Appellees defeated substantially that expectation, the court has the

conduct by the majority in

Id. at 261.

The Breach of Fiduciary Duty

We hold also that the circuit court erred of fiduciary duty. The court provided, in this regard, two reasons for its decision: first, the

court found that Mekhaya failed to allege a direct harm that was separate and distinct from a harm suffered by the company; and second, the court found that Mekhaya failed to allege facts that could overcome the presumption afforded by the business judgment rule. Both reasons for dismissal were erroneous.

) the

existence of a fiduciary relationship; (ii) breach of the duty owed by the fiduciary to the

Plank v. Cherneski, 469 Md. 548, 599

(2020) (quotation marks and citations omitted). Shenker v. Laureate Educ., Inc., 411 Md.



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317, 346 (2009). Directors and officers of a corporation have generally a fiduciary duty to the corporation and its shareholders. Id. at 336; see also CA § 2-405.1. In addition, Maryland common law recognizes that minority shareholders are entitled to protection *Mona v. Mona Elec. Grp., Inc.*, 176 y shareholder owes a fiduciary duty to the minority shareholder (or shareholders) not to exercise [their] Id. (quotation marks and citation omitted).

Because directors/majority shareholders owe fiduciary duties to both the company and its shareholders, an action for a breach of those duties may be brought directly or derivatively,

Shenker, 411 Md. at 346 (quotation marks and

citation omitted). Where the breach relates to a fiduciary duty owed to the company, a

derivative action is the appropriate course. shareholder or group of shareholders to bring suit to enforce a corporate cause of action

against officers, directors, and third parties where those in control of the company refuse

Id. at 342. In a derivative action, any recovery belongs

Id. at 344. Moreover, in a derivative

action, because courts avoid generally business judgment rule protects a disinterested director from liability to the corporation

and its stockholders by insulating the business decisions made by the director from judicial review, absent a showing of fraud, self- Id.

a shareholder may bring a direct action, either individually or



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as a representative of a class, against alleged corporate wrongdoers when the shareholder suffers the harm directly or a duty is owed directly to the shareholder, though such harm

Id. at 345. For instance,

here the rights attendant to stock ownership are adversely affected, shareholders generally are entitled to sue directly, and any monetary relief granted goes to the

Id. To maintain such an action duty breached was owed to the stockholder and that he or she can prevail without showing

Tooley v. Donaldson, Lufkin & Jenrette, Inc., 845 A.2d 1031,

1039 (Del. 2004); accord Oliveira v. Sugerman, 451 Md. 208, 230-31 n.15 (2017) (citing

Tooley with approval). Importantly

Shenker, 411 Md. at 345.

The question here, then, is whether Mekhaya alleged a breach of a duty owed

directly to him and, if so, whether he, and not Eastland, suffered harm from that breach. If

such a basis was made in his complaint

motion to dismiss, the business judgment rule being inapplicable. If, however, the harm

alleged was suffered by Eastland, such that any recovery would go to Eastland and not

Mekhaya, then his claim was derivative and was dismissed properly because a derivative

claim must be brought in the name of the company. Id. at 343.

Examining

he alleged properly a direct claim. As noted earlier, Mekhaya alleged that, as a shareholder,

he was owed a de facto dividend

to continue to pay that dividend. See Burnett v. Spencer declaration of a dividend creates a



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debtor-creditor relationship between a corporation and

see also *In re Classic Coach Interiors, Inc.*, 290 B.R. 631, 636 (2002)

Mekhaya alleged that the board breached that duty by refusing to pay that dividend out of ample profits, instead using those profits to pay excessive salaries to Oscar and

Vipa. He alleged also that Oscar and Vipa used those same profits for personal use. All

of those claims were based on a fiduciary duty owed directly to Mekhaya, and any recovery

(in the form of an unpaid dividend) would go directly to him.

To be sure, it remains to be seen de facto

dividend can be proven. If they cannot, that is, if Mekhaya can prove that Oscar and Vipa

, but cannot prove that those profits should have gone to

him via a dividend, then his breach of fiduciary duty claim would be derivative and would

for derivative claims. At this point in the proceedings, however, Mekhaya asserting a direct claim is sufficient to survive the motion to dismiss.

Unjust Enrichment

For much of the same reasons, we hold that the circuit court erred in dismissing

To succeed with a claim for unjust enrichment, a

plaintiff needs to allege and then prove: (1) that a benefit was conferred upon the defendant;

(2) that the defendant knew about or appreciated the benefit; and (3) that it would be

inequitable to allow the defendant to retain the benefit. *Mona*, 176 Md. App. at 712-13.

In If he can show that he was

owed the dividend, that Appellees knew about or appreciated the de facto dividend

structure, and that it would be inequitable to allow Appellees to retain the dividend, then



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his direct claim for unjust enrichment passes muster for purposes of the motion to dismiss.

Id. at 724-25. If, on the other hand, he can only show that Oscar and Vipa received a benefit from , that is, if Mekhaya cannot show that that benefit should

have gone to him via a dividend, then his claim would be derivative and would need to be

ith the appropriate procedures for

derivative claims. In any event, as with his claim for breach of fiduciary duty, whether

Mekhaya can prove his claim is immaterial at this point. His complaint sets forth the

necessary elements of an unjust enrichment claim, and that claim should have survived the

motion to dismiss.

Returning to the somewhat attenuated horseshoes metaphor opening this opinion,

may not be it was close enough to survive the motion to dismiss.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY REVERSED; CASE
REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO
BE PAID BY APPELLEES.

