STATE OF MICHIGAN

COURT OF APPEALS

RONALD G. HAARER and DAWN L. RHODES,

Plaintiffs-Appellants,

v

VREBA-HOFF DAIRY DEVELOPMENT, L.L.C., VREBA-HOFF HOLDINGS, L.L.C., VAN BAKEL EXPLOITATIEMIJ B. V., JOHN VANDER HOFF, WILHELM VAN BAKEL, and MENNO WAGLER,

Defendants-Appellees.

UNPUBLISHED
August 17, 2006

No. 260001
Ingham Circuit Court
LC No. 03-001767-CZ

Before: Cavanagh, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the circuit court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8). We affirm.

Plaintiffs were the former owners and sole shareholders of Agricultural Building and Design ("AB&D"), a corporation formed to build large dairy farms. Defendant Vreba-Hoff Dairy Development, L.L.C., was AB&D's largest and primary client. When AB&D began to experience financial difficulties, the corporate defendants were invited to offer assistance, along with DeLaval, another company in the dairy business. Subsequently, defendant Vreba-Hoff Holdings, L.L.C. and DeLaval promised to loan AB&D money. In exchange for the Vreba-Hoff loan, defendants Vreba-Hoff Dairy, Vreba-Hoff Holdings, and Van Bakel Exploitiemij B. V. were granted the right to appoint two of the six seats on AB&D's board of directors. Subsequently, AB&D went into further decline and eventually declared bankruptcy. At the time of the bankruptcy, the new board of directors had terminated plaintiffs' employment at AB&D. Plaintiffs later resigned from AB&D's board.

Plaintiffs argue on appeal that the trial court erred in deciding that they did not have standing to pursue their claims. We disagree. This Court reviews a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion for summary disposition under MCR 2.116(C)(8) "'tests the legal sufficiency of the claim on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted. The motion must be granted if no factual development could justify the plaintiff's claim

for relief.'" *Franchino v Franchino*, 263 Mich App 172, 181; 687 NW2d 620 (2004), quoting *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

The statute that governs plaintiffs' claims is MCL 450.1489. The statute, as it stood at the time of defendants' alleged oppressive conduct, at the time this action was brought, and at the time of summary disposition,[1] stated in relevant part:

> (1) A shareholder may bring an action in the circuit court . . . to establish that the acts of the directors or those in control of the corporation are illegal, fraudulent, or willfully unfair and oppressive to the corporation or to the shareholder. If the shareholder establishes grounds for relief, the circuit court may make an order or grant relief as it considers appropriate . . . .
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> (3) 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 shareholder as a 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.

Plaintiffs' claims are not unique, but rather they are claims that any shareholder could assert, and as such, belong to the corporation itself, or now to the trustee in bankruptcy. See *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 468, 473-474; 666 NW2d 271 (2003). Plaintiffs argue that, although their claims could have been asserted by the trustee in bankruptcy on behalf of the corporation, they are permitted to assert the claims as well. This position is contrary to the authority of *Belle Isle*. Plaintiffs' alleged harms all stem from some harm to the corporation, and although plaintiffs claim to be uniquely affected by harm to the corporation because of their status as shareholders, and initially as the sole shareholders, this Court clearly stated in *Belle Isle* that an individual's status as a sole shareholder does not entitle the individual to sue for claims that should properly be brought by the corporation. *Id*. at 473-474.

Plaintiffs cannot claim standing based on their termination either. Plaintiffs claim to have standing as former employees who were wrongfully terminated under a theory of minority shareholder oppression. In *Franchino, supra* 185-186, this Court held that minority shareholder

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[1] Although we recognize that MCL 450.1489 has recently been amended by 2006 PA 68, we limit our review to the statute in effect at the time of the alleged wrongful and oppressive conduct. "'Amendments of statutes are generally presumed to operate prospectively unless the Legislature clearly manifests a contrary intent.'" *Daimler Chrysler Services of North America, LLC v Dep't of Treasury*, ___ Mich App___; ___ NW2d ___ (2006), quoting *Tobin v Providence Hospital,* 244 Mich App 626, 661; 624 NW2d 548 (2001). We note, however, that we do not believe the language added by 2006 PA 68 changes the result under the facts of the present case.

oppression only applies when a shareholder's rights "as a shareholder" are affected. The termination of plaintiffs' employment in the present case is not an injury that is cognizable under MCL 450.1489 because it does not relate to plaintiffs' interests *as shareholders*.

We also find no merit in plaintiffs' assertion that their defamation and slander claims were prematurely dismissed, prior to the close of discovery. The elements of a claim of defamation are (1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged publication to a third party, (3) fault amounting to at least negligence on the part of the publisher, and (4) either actionability of the statements irrespective of special harm, or the existence of special harm caused by the publication. *Gonyea v Motor Parts Fed Credit Union*, 192 Mich App 74, 76-77; 480 NW2d 297 (1991). A claim of slander has the same requirements. See *Kefgen v Davidson*, 241 Mich App 611, 617; 617 NW2d 351 (2000). These elements must be specifically pleaded. *Gonyea, supra* at 77.

Initially, the circuit court dismissed plaintiffs' defamation and slander claims without prejudice, but granted plaintiffs leave to file an amended complaint with respect to these two claims. Plaintiffs did not put forth any specific allegations with respect to their defamation and slander claims in their amended complaint or during the motion hearing on summary disposition. Thus, the trial court did not err in summarily disposing of these claims.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael J. Talbot

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SMOLENSKI, J. (*concurring*).

I concur with the majority's conclusion that the trial court properly dismissed plaintiffs' slander and defamation claims after plaintiffs failed to plead them with the requisite specificity. However, I disagree with the majority's conclusion that plaintiffs lacked standing. Under MCL 450.1489(1), our Legislature gave standing to any shareholder to bring a direct action in the circuit court "to establish that the acts of the directors or those in control of the corporation are illegal, fraudulent, or willfully unfair and oppressive to the corporation or shareholder." See also *Estes v IDEA Engineering & Fabricating, Inc*, 250 Mich App 270, 283-285; 649 NW2d 84 (2002). Nevertheless, because plaintiffs failed to present evidence that the allegedly oppressive conduct harmed their interests as shareholders, see MCL 450.1489(3) and *Franchino v Franchino*, 263 Mich App 172, 188-189; 687 NW2d 620 (2004), I conclude that defendants were entitled to summary disposition of these claims. Therefore, I concur.

/s/ Michael R. Smolenski