At an IAS Term, Part 18 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 30th day of June, 2026.

P R E S E N T:

HON. GINA ABADI,
Justice.

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ANTHONY MAZZIO,
Plaintiff,

-against-

MIKE'S HEAVY DUTY TOWING INC., MIKE'S HD ROAD SERVICE & TOWING INC., MIKE'S HD ROAD SERVICE AND TRANSPORTATION INC., MIKE'S TOWING NO. 2 INC., MIKE'S TOWING NO. 3 INC., MIKE'S TOWING SERVICES, INC., MIKE'S HEAVY DUTY RECOVERY INC., TRUCK DOCTORS INC., MARGARET MAZZIO, MICHAEL MAZZIO, SR., MICHAEL MAZZIO, JR., SALVATORE MAZZIO, ANGELO MAZZIO, and JENNIFER LAPRICE,

Defendants.

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Index No.: 542667/2025
Mot. Seq. No. 1

DECISION/ORDER

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of this motion:

Papers	NYSCEF Numbered
Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed..................................	23 - 24
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Reply Affidavits (Affirmations).......................................	32

Upon the foregoing papers, in this action by plaintiff Anthony Mazzio (plaintiff) for breach of fiduciary duties, aiding and abetting breach of fiduciary duty, civil conspiracy, minority shareholder oppression, unjust enrichment, a demand for an equitable accounting, and a demand for an inspection of books and records pursuant to Business Corporation Law § 624, defendants Mike's Heavy Duty Towing Inc., Mike's HD Road Service & Towing Inc., Mike's HD Road Service and Transportation Inc., Mike's Heavy Duty Recovery Inc., Truck Doctors Inc., Margaret Mazzio, Michael Mazzio, Sr., Michael Mazzio, Jr., Salvatore Mazzio, Angelo Mazzio, and Jennifer LaPrice (collectively, defendants)[1] move, under motion sequence number one, for an order, pursuant to CPLR 3211 (a) (7) and CPLR 3211 (a) (3), dismissing plaintiff's complaint in its entirety, together with such other and further relief as the court deems just and proper (NYSCEF Doc No. 23).

Facts and Procedural Background

Mike's Heavy Duty Towing Inc. (the Company) is a New York corporation, which was founded by plaintiff's father, nonparty Michael Mazzio, in 1973, and was intended to be a family business. For four decades, the Company has offered heavy duty towing services in Brooklyn. Margaret Mazzio was Michael Mazzio's wife and is the mother of plaintiff and his three brothers, namely, Michael Mazzio, Sr., Salvatore Mazzio, and Angelo Mazzio, who all worked for the Company. Michael Mazzio, Jr., who is Michael Mazzio, Sr.'s son and plaintiff's nephew, also worked for the Company. Plaintiff's father died in 2013, and after his passing, Margaret Mazzio assumed 52% of the shares of the Company, while plaintiff and Michael Mazzio, Sr. each received 24% of the shares. Plaintiff was also the vice-president and a long-term employee of the Company.

[1] Defendants Mike's Towing No. 2 Inc., Mike's Towing No. 3 Inc., and Mike's Towing Services, Inc. are not among the defendants who have brought this motion.

On February 21, 2018, the New York County District Attorney's office indicted Michael Mazzio, Sr., Salvatore Mazzio, and Angelo Mazzio for alleged crimes relating to the towing industry. Michael Mazzio, Sr. and Salvatore Mazzio each pleaded guilty to the crime of Attempted Contract or Agreement for Monopoly or in Restraint of Trade, a class A Misdemeanor, and Angelo Mazzio pleaded guilty to Contract or Agreement for Monopoly or in Restraint of Trade, in violation of General Business Law § 340, a class E Felony. At the time of the indictments, Michael Mazzio, Sr. relinquished his shares in the Company. Margaret Mazzio's shares in the Company then increased to 76%, with plaintiff continuing to hold his 24% of the shares in the Company.

Plaintiff was listed as a signatory on the Company's bank accounts, and in addition to drawing a salary from the Company, he was compensated for his services by receiving certain fringe benefits, such as his car payments and cell phone plan payments, and a $20,000 bonus at the end of each year. Margaret Mazzio, who is now nearly 90 years old, gave Jennifer LaPrice, who is plaintiff's niece, her power of attorney permitting her to conduct certain affairs on her behalf.

Plaintiff alleges that his mother, brothers, niece, and nephew have deliberately conspired to strip him of his rights and loot Company assets, and that they are attempting to eviscerate his role in the family business by denying him access to Company books and records to fleece him out of millions of dollars in earnings from the family business. Plaintiff claims that Margaret Mazzio, Michael Mazzio, Sr., Michael Mazzio, Jr., Salvatore Mazzio, Angelo Mazzio, and Jennifer LaPrice, operating through a web of sham entities, namely, Mike's HD Road Service & Towing Inc., Mike's HD Road Service and Transportation Inc., Mike's Towing No. 2 Inc., Mike's Towing No. 3 Inc., Mike's Towing Services, Inc., Mike's

Heavy Duty Recovery Inc., and Truck Doctors Inc., have diverted millions of dollars' worth of corporate assets away from the Company for personal gain. Plaintiff states that the individual defendants created these sham entities, which they operated exclusively with assets misappropriated from the Company, as a means of funneling those assets to themselves. Plaintiff also claims that Jennifer LaPrice used the power of attorney entrusted to her by Margaret Mazzio to further the individual defendants' fraudulent and illicit conduct and course of dealing with respect to him and the Company.

Plaintiff alleges that the individual defendants have siphoned cash from the Company, funneled it through the corporate entities, and used it to enrich themselves unjustly by, among other things, purchasing high-end jewelry, paying for luxurious vacations, making mortgage payments on multi-million-dollar personal homes, and acquiring cryptocurrency. Plaintiff further asserts that the individual defendants have also converted tow trucks and related property belonging to the Company by transferring title to these valuable business assets to the corporate defendants, without paying fair consideration to the Company. Plaintiff alleges that many of the Company's tow trucks are now in operation earning revenues for the sham entities that the individual defendants have established as part of their illicit attempt to legitimize their fraudulent scheme.

Plaintiff asserts that Margaret Mazzio, Michael Mazzio, Sr., Michael Mazzio, Jr., and Jennifer LaPrice, acting through the corporate defendants, have all converted the Company's assets to ensure that he is not in a position to obtain his rightful share of the Company's earnings. Plaintiff also asserts that he was locked out of the Company's bank accounts and denied any information concerning his rights to distributions despite owning 24% of the

Company. Plaintiff claims to have made numerous requests to inspect books and records of the Company, all of which have gone unanswered and have been rejected.

Plaintiff alleges that in 2015, he was told by Margaret Mazzio, under the influence of Michael Mazzio, Sr., not to come into the office anymore, but to stay home and continue to collect his salary and fringe benefits instead. Plaintiff sets forth that the actual reason that he was told to stay home was because he refused to participate in Michael Mazzio, Sr.'s fraudulent scheme and Michael Mazzio, Sr. knew that he could not get away with conducting illicit activities in the office if he were there.

In a letter dated July 28, 2025, Gary Rosen, Esq., as Margaret Mazzio's counsel, made a buyout offer to plaintiff (the Buyout Letter) (NYSCEF Doc No. 5). The Buyout Letter provided that the Company would pay plaintiff's salary through August 31, 2025, pay his automobile payments for three years, and pay for plaintiff and his wife's health insurance for three years. Plaintiff states that this offer, therefore, sought to give him only that to which he was already entitled for a period of time, while forcing him to sacrifice his rights to those entitlements into the future. Plaintiff asserts that in exchange for his shares in the Company, the Buyout Letter offered him only $2,000 per week for three years, totaling $312,000, thereby valuing 100% of the shares of the Company at a paltry $1.3 million, whereas the Company brings in more than $13 million per year in gross revenue. On August 8, 2025, the individual defendants terminated plaintiff's employment, froze him out of Company management, began denying him access to the Company's books and records, and cut off his distributions, bonus payments, and fringe benefits.

On December 6, 2025, plaintiff filed this action. Plaintiff's complaint contains seven causes of action. It purports to allege a first cause of action for breach of fiduciary duty, a second cause of action for aiding and abetting breach of fiduciary duty, a third cause of action for civil conspiracy, a fourth cause of action for minority shareholder oppression, a fifth cause of action for unjust enrichment, a sixth cause of action for an equitable accounting, and a seventh cause of action for an inspection of books and records under Business Corporation Law § 624 (NYSCEF Doc No. 2). On January 13, 2026, defendants filed their instant motion to dismiss, under motion sequence number one (NYSCEF Doc No. 23). Plaintiff opposes defendants' motion (NYSCEF Doc No. 28).

Discussion

Defendants contend that this action must be dismissed since plaintiff's complaint seeks individual damages for the alleged looting and diversion of corporate assets, including the use of corporate funds for personal expenses and the transfer of the Company's assets to other corporate entities. Defendants state that these claims are derivative claims belonging to the corporation. Plaintiff did not bring a derivative action and did not plead compliance with Business Corporation Law § 626. Defendants further contend that plaintiff's civil conspiracy cause of action and his minority shareholder oppression cause of action are non-cognizable, and that plaintiff improperly requests punitive damages.

Plaintiff, in opposition, contends that he has pleaded a direct claim, as opposed to a derivative claim. To provide a framework to determine whether a claim is direct or derivative, the Appellate Division, First Department, in *Yudell v Gilbert* (99 AD3d 108, 110 [1st Dept 2012]), adopted the test developed by the Supreme Court of Delaware in *Tooley v Donaldson, Lufkin & Jenrette, Inc.* (845 A2d 1031, 1039 [Del 2004]). This test provides that "[a] plaintiff asserting a derivative claim seeks to recover for injury to the business entity, whereas "[a] plaintiff asserting a direct claim seeks redress for injury to him or herself individually" (*Yudell*, 99 AD3d at 113). "Allegations of mismanagement or diversion of corporate assets . . . plead a wrong to the corporation only, for which a shareholder may sue derivatively but not individually" (*Abrams v Donati*, 66 NY2d 951, 953 [1985], *rearg denied* 67 NY2d 758 [1986]; *see also Yudell*, 99 AD3d at 114; *Albany-Plattsburgh United Corp. v Bell*, 307 AD2d 416, 419 [3d Dept 2003], *lv dismissed in part and denied in part* 1 NY3d 620 [2004]). The First Department reiterated its holding in *Yudell* in *Serino v Lipper* (123 AD3d 34, 40 [1st Dept 2014]) (*see also Shyer v Shyer*, 170 AD3d 577, 577 [1st Dept 2019]). The Second and Third Departments have also followed this precedent (*see e.g. Accredited Aides Plus, Inc. v Program Risk Mgt., Inc.*, 147 AD3d 122, 132 [3d Dept 2017]; *Mizrahi v Cohen*, 104 AD3d 917, 919 [2d Dept 2013], *lv dismissed* 21 NY3d 968 [2013]).

Allegations of diversion of assets by defendants for their own enrichment, without more, plead a wrong to the corporation only, for which a shareholder may sue derivatively, but not individually (*see Abrams*, 66 NY2d at 953). A complaint must be dismissed where its allegations confuse a shareholder's derivative and individual rights (*see id.*; *Kramer v Meridian Capital Group, LLC*, 201 AD3d 909, 911 [2d Dept 2022]; *Billig v Schwartz*, 190 AD3d 547, 548 [1st Dept 2021]; *Dian Kui Su v Sing Ming Chao*, 150 AD3d 424, 425 [1st Dept 2017]; *Serino*, 123 AD3d at 40). Plaintiff has not alleged that defendants breached a duty owed to him independent of the alleged wrongs to the Company (*see Abrams*, 66 NY2d at 953). Plaintiff seeks an individualized recovery for alleged corporate injury while failing to plead the prerequisite of a demand or demand futility with particularity, in order to pursue these claims on behalf of the Company.

A direct claim is appropriate only where the plaintiff pleads harm that is personal to him or her, which is distinct from the harm to the corporation, and where the remedy would benefit the plaintiff individually, rather than the corporation (*see Kramer*, 201 AD3d 909 at 911). An individual claim may proceed only where the plaintiff shareholder pleads a loss distinct from, and disproportionate to, any injury to the corporation, and where the claim vindicates personal rights independent of any corporate injury (*see Cortazar v Tomasino*, 150 AD3d 668, 671 [2d Dept 2017]). Here, plaintiff's claim is that defendants diverted and looted corporate assets, siphoned cash, and transferred company property, including tow trucks, among the named corporate entities (NYSCEF Doc No. 2, complaint at ¶¶ 53 through 57). Plaintiff further alleges that certain individual defendants used corporate funds to pay personal legal fees and to bond the real property where the Company is located, which is held in irrevocable trust equally for the benefit of him and his brothers (*id.* at ¶ 54). These allegations assert harm to the corporation, and any recovery of diverted corporate funds or corporate assets belong to the corporation.

In *New Castle Siding Co. v Wolfson* (97 AD2d 501, 502 [2d Dept 1983], *affd* 63 NY2d 782 [1984], *rearg denied* 64 NY2d 755 [1984]), the Appellate Division, Second Department, recognized that an individual claim may exist where the pleaded injury arises from a duty owed directly to the shareholder and independent of the corporate entity. However, plaintiff's complaint does not plead any such independent duty. Rather, plaintiff pleads alleged wrongdoing directed at the Company, involving Company funds, Company assets, and Company management, and he seeks to recover these alleged corporate losses for himself. Furthermore, as previously noted, "even where an individual harm is claimed, if it is confused with or embedded in the harm to the corporation, it cannot separately stand" (*Serino*, 123 AD3d at 40; *see also Abrams*, 66 NY2d at 953).

It is noted that the Company is a closely-held corporation. While some states have adopted a close corporation exception with respect to derivative claims asserted individually, New York has not adopted this exception (*see Glenn v Hoteltron Sys.*, 74 NY2d 386, 393 [1989]; *Barbaro v Spinelli*, 121 AD3d 727, 728 [2d Dept 2014]; *Corso v Byron*, 11 Misc 3d 1072[A], 2006 NY Slip Op 50520[U], *5 [Sup Ct, Suffolk County 2006]). Rather, a shareholder, even in a closely-held corporation, may not recover in their individual capacity for wrongs against the corporation (*see Abrams*, 66 NY2d at 953; *Weight v Day,* 216 AD3d 702, 704 [2d Dept 2023]; *Jacobs v Cartalemi*, 156 AD3d 605, 608 [2d Dept 2017]; *Barbaro*, 121 AD3d at 728; *Rodolico v Rubin & Licatesi, P.C.,* 112 AD3d 608, 609-610 [2d Dept 2013]).

Plaintiff cannot maintain his claims for wrongs against the Company directly and he lacks standing to seek personal damages for these corporate injuries. Where, as here, the complaint alleges claims for mismanagement, diversion, or misuse of corporate assets, these allegations are derivative in nature and must satisfy the pleading and procedural prerequisites of Business Corporation Law § 626. A plaintiff seeking to proceed derivatively must plead demand or demand futility with particularity, meaning the complaint must set forth specific facts showing why a presuit demand would have been futile, and conclusory assertions of wrongdoing are insufficient (*see* Business Corporation Law § 626 [c]; *Guzman v Kordonsky*, 177 AD3d 708, 710 [2d Dept 2019]; *Mason-Mahon v Flint*, 166 AD3d 754, 758 [2d Dept 2018]; *JAS Family Trust v Oceana Holding Corp.*, 109 AD3d 639, 641 [2d Dept 2013]). Plaintiff did not bring a derivative action, and did not plead any demand or demand futility allegations, as required by Business Corporation Law § 626.

Significantly, plaintiff seeks damages based, in part, on his allegation that he was terminated from employment with the Company on August 8, 2025, and that the individual defendants cut off his distributions, bonus payments, and fringe benefits (NYSCEF Doc No. 2, complaint at ¶ 62). Plaintiff also frames his breach of fiduciary duty allegations around Margaret Mazzio's wrongful termination of his employment and her withholding of the distributions of his share of the Company's profits (*id.* at ¶¶ 189, 191). However, plaintiff fails to allege the existence of either an oral or written employment contract fixing his employment for a definite duration. The duties owed to a shareholder in his or her capacity as a shareholder are distinct from any duties owed to that individual as an employee, and in the absence of an employment contract, a corporation has the right to discharge a plaintiff-shareholder at will (*see Ingle v Glamore Motor Sales*, 73 NY2d 183, 190 [1989]). Thus, plaintiff cannot seek damages based on the termination of his employment and alleged lost wages or employment benefits.

Since plaintiff's breach of fiduciary claim is largely premised upon alleged injury to the corporation, it cannot be properly asserted in this action which was not brought as a derivative action (*see* CPLR 3211 [a] [3]). In addition, "[t]o recover damages for aiding and abetting a breach of fiduciary duty, a plaintiff must plead and prove that a fiduciary duty owed to the plaintiff was breached, that the defendant[s] knowingly induced or participated in the breach, and that the plaintiff was damaged as a result of the breach" (*Smallberg v Raich Ende Malter & Co., LLP*, 140 AD3d 942, 944 (2d Dept 2016). Here, plaintiff's cause of action for aiding and abetting cannot stand independent of his cause of action for breach of fiduciary duty.

As to plaintiff's cause of action for civil conspiracy, "New York does not recognize civil conspiracy to commit a tort as an independent cause of action" (*McSpedon v Levine*, 158 AD3d 618, 621 [2d Dept 2018]). Plaintiff nevertheless argues that his cause of action alleging civil conspiracy is cognizable because he has alleged a claim for breach of fiduciary duty, "coupled with an agreement between the conspirators regarding the tort, and an overt action in furtherance of the agreement" (*id.*). However, this argument must be rejected since plaintiff's civil conspiracy claim stands or falls with the underlying tort, i.e., breach of fiduciary duty, and plaintiff's breach of fiduciary claim is a derivative claim, and not an individual claim.

As to plaintiff's minority shareholder oppression cause of action, defendants assert that Business Corporation Law § 1104-a contemplates a dissolution proceeding, and it provides a structured mechanism for relief, including consideration of whether dissolution is feasible and whether other equitable relief is appropriate in lieu of dissolution. Plaintiff did not commence a dissolution proceeding under Business Corporation Law § 1104-a, and he does not seek dissolution (*see Matter of Kassab v Kasab*, 195 AD3d 832, 837 [2d Dept 2021]). Plaintiff, however, argues that he has properly requested damages as an alternative to a dissolution of the Company.

In any event, insofar as plaintiff's oppression allegations rest on alleged diversion of corporate assets or alleged withholding of information and management access, these allegations describe corporate injury. Since the Company is a close corporation, plaintiff's claim that he has been frozen out of the Company's management asserts a cognizable wrong (*see Barbour v Knecht*, 296 AD2d 218, 227 [1st Dept 2002]). However, this claim is derivative in nature.

In addition, plaintiff's unjust enrichment cause of action asserts that defendants unjustly enriched themselves by denying him distributions of his share of the Company's profits and salary without justification, and using the Company's funds and assets to purchase goods and services for their own benefit, without paying just compensation to the Company. Thus, this cause of action alleges unjust enrichment at the expense of the Company, rather than plaintiff individually, rendering it derivative.

Plaintiff also seeks an equitable accounting based on alleged looting and diversion of the Company's assets, but this is a claim for corporate relief, which may only be pursued in a derivative action. Plaintiff further demands an inspection of the books and records pursuant to Business Corporation Law § 624 (b), which provides that "[a]ny person who shall have been a shareholder of record of a corporation upon at least five days' written demand" may examine the corporation's "minutes of the proceedings of its shareholders and record of shareholders and . . . make extracts therefrom for any purpose reasonably related to such person's interest as a shareholder." Plaintiff alleges that he made such written demand on August 27, 2025, and that the individual defendants, through counsel, have ignored or refused his demand.

Business Corporation Law § 624 (d) provides that where a corporation refuses to permit such an inspection, "the person making the demand for inspection may apply to the supreme court . . . for an order directing the corporation, its officer or agent to show cause why an order should not be granted permitting such inspection by the applicant." Since Business Corporation Law § 624 (d) requires that a demand for inspection be made by order to show cause, this claim must be dismissed, without prejudice, with leave to demand inspection pursuant to this section (*see Greenberg v Falco Const. Corp.*, 29 Misc 3d 1202[A], 2010 NY Slip Op 51669[U], *4 [Sup Ct, Kings County 2010]).

The court finds that plaintiff's complaint must be dismissed.

Conclusion

Accordingly, defendants' motion to dismiss plaintiff's complaint is granted and the case is dismissed.

Any issue raised and not addressed in this decision and order is denied.

This constitutes the decision and order of the court.

ENTER:

HON. GINA ABADI
J.S.C.