IN THE COURT OF APPEALS OF IOWA

No. 9-931 / 09-0480
Filed February 10, 2010

JOHN R. BAUR,
Plaintiff-Appellant/Cross-Appellee,

vs.

BAUR FARMS, INC. and ROBERT F. BAUR,
Defendants-Appellees/Cross-Appellants.

Appeal from the Iowa District Court for Madison County, Peter A. Keller, Judge.

John Baur appeals from summary judgment entered in favor of defendants based on statute of limitations grounds. Robert Baur and Baur Farms, Inc. cross-appeal. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Douglas A. Fulton and Zachary C. Eubank of Brick Gentry, P.C., West Des Moines, for appellant.

Holly M. Logan of Belin McCormick, P.C., Des Moines, for appellee Baur Farms.

David L. Charles of Crowley Fleck, P.L.L.P., Des Moines, for appellee Baur.

Heard by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

John Baur appeals from summary judgment entered in favor of defendants based on statute of limitations grounds. Robert Baur and Baur Farms, Inc. cross-appeal from the denial of their motion for summary judgment on substantive grounds, as well as the denial of their motion for sanctions. We reverse the entry of summary judgment, and affirm the denial of sanctions.

I. Background Facts & Proceedings.

We recite the following undisputed facts as set forth by the district court:

> Defendant Baur Farms, Inc., ("BFI") is a family farm corporation that was formed on December 30th, 19[66]. It was formed by Merritt Baur and Edward Baur, two brothers who owned and jointly farmed Madison County property, which had been owned by the family since the 1850s. The brothers were the third generation to farm the property. BFI was formed with the intent the property would remain intact as a farming operation in the future instead of being sold and divided upon the deaths of Merritt and Edward.
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> When BFI was formed, Merritt and Edward decided the majority interest should go to Edward, as his son, Defendant Robert F. Baur ("Bob Baur"), was the only heir interested in carrying on the farming operation. In line with such wishes, 1262 shares of stock, or 51.51%, went to Edward and 1188 shares, or 48.49%, went to Merritt. According to BFI's bylaws, the sale of the shares was restricted—BFI was allowed to purchase the shares for $100 a piece if any disposition was attempted. BFI has never paid any dividends on the shares.
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> Merritt Baur has two sons: Plaintiff John R. Baur ("Plaintiff") and Dennis Baur. By the time BFI was incorporated, the Plaintiff had made it clear he was not interested in farming. He attended law school and was employed in various capacities until his retirement on September 30, 2004. Dennis Baur was unable to act as an operator of the farm due to a brain tumor and medical procedure he went through during his youth. Ultimately, Merritt passed his shares of BFI through gift and inheritance to the Plaintiff and Dennis—the Plaintiff receiving 644 shares, or 26.29%, and Dennis receiving 544 shares, or 22.20%, that are owned through two trusts of which Dennis is the beneficiary.
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> The Plaintiff did not contribute any money or anything else of value, including sweat equity, for his shares. He was made one of

> the original members of BFI's Board of Directors and has served on the Board through the present period.
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> Edward Baur died in May 1977, and his wife died in March of 1990. Upon his wife's death, the last of his majority ownership was transferred to Bob Baur. Prior to becoming the majority shareholder, Bob Baur worked on the farm from childhood on, became employed by BFI when it was formed, and ran the farm operation from the mid-1970s on. In approximately 1998, he began delegating day-to-day work to employees until James Baur, Dennis Baur's son, returned to the farm in 2002. Bob withdrew from day-to-day work in 2005.
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> In June 2002, James Baur and his family, including three sons, returned to the farm. James began working for BFI, assuming more and more duties as time passed. When the farm manager left in 2005, James became the farm manager. James has held this position ever since and has expressed a desire to hold it into the indefinite future.
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> At some point after the death of Merritt Baur and Edward Baur's surviving widow, the Plaintiff began attempting to have either Bob Baur or BFI buy his shares. The parties could never reach an agreed upon price, or even a "process" for arriving at a price per share. Both parties admit to attempting to negotiate a sale.

On October 10, 2007, John filed a two-count petition. In the first count, John sought judicial dissolution of BFI pursuant to Iowa Code section 490.1430 (2007) based on claims of oppressive conduct. In the second count, against Robert F. Baur for a violation of a fiduciary duty upon the same claims of oppressive conduct, John sought alternatively that either the corporation be dissolved, or that he be paid his interest in the corporation plus exemplary damages. The petition specifically alleged that Bob Baur,[1] president of BFI and majority shareholder, "has total control of all the Corporation's assets, operations, and finances"; John[2] was removed as an officer of BFI in 1997; due to Bob's actions, John's involvement in the corporation "has been minimal"; John had "not

[1] This court will refer to Robert as "Bob," as did the district court.

[2] As noted by the district court, John was one of the original members of the board of directors and remains so.

received dividends . . . nor any return on his ownership interest . . . even though the Corporation holds assets worth in excess of Seven million dollars"; his repeated requests that BFI make a distribution of assets or profits or "be dissolved so that minority shareholders would receive a return on their investment"[3] had been rejected; and Bob had utilized corporation assets to his own advantage and for his own purposes, and for the benefit of his immediate family and friends. Furthermore, John alleged BFI should be dissolved because Bob "has acted in a manner that is illegal, oppressive and fraudulent towards the minority shareholders" and his actions are "harsh, oppressive, hostile and designed to 'freeze out' a minority shareholder." He also claimed that Bob "misapplied, misused and wasted corporate assets," thereby breaching a fiduciary duty owed to a minority shareholder by a majority shareholder.

Bob moved for summary judgment arguing (1) a minority shareholder has no right to force shareholders or the corporation to buy a minority shareholder's interest or to force dissolution of the corporation, and (2) a shareholder can force dissolution only on very limited grounds, none of which are applicable here. He asked that sanctions be assessed against the plaintiff under Iowa Rule of Civil Procedure 1.413(1) (pleadings are to be well grounded in fact and warranted by existing or a good faith extension of law). BFI joined in Robert's motion and separately moved for summary judgment on statute-of-limitations grounds. BFI asserted the five-year statute of limitations found at Iowa Code section 614.1(4) is applicable to John's claims, all of which are based upon alleged conduct that

[3] John does not, however, indicate what this "investment" might be. It is undisputed that John received his shares as gifts (as did Bob and Dennis) and has never invested any of his own money in BFI.

occurred before the limitations cut off. John resisted both motions.

The district court noted:

> The Plaintiff responded to an interrogatory asking for all facts supporting the claim Bob Baur utilized corporate assets to his own advantage or for the benefit of the family and friends in relevant part as follows:
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> > The Plaintiff has been a member of [BFI] for nearly twenty years. In the time that the Plaintiff has been a member of [BFI], despite the fact that [BFI] owns millions of dollars of assets both as land and buildings, equipment, livestock, crops, the Plaintiff has received nothing for his own use and the operation has been monopolized by [Bob] Baur to the exclusion of the Plaintiff. Plaintiff's efforts to rectify the situation and to seek information have repeatedly been blocked and the Plaintiff has been excluded from corporate activities.
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> Def.'s Statement of Undisputed Material Facts ¶ 48 [quoting John's answer to interrogatory]. The Plaintiff stated in another interrogatory he "has been removed as an officer of [BFI] and has been consistently outvoted by Defendant Bob Baur and others in [BFI]. Plaintiff has not been allowed to have any utilization of corporate assets, profits, cash flows, despite Plaintiff's repeated request that Plaintiff's share be bought out." *Id.* at ¶ 50.
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> During his July 8th, 2008, deposition, the Plaintiff identified the following facts as additional support for the allegations in his Petition: (1) Bob Baur had BFI purchase pasture ground the Plaintiff did not believe should be purchased; (2) Bob has the use of a corporate vehicle; (3) Bob has prestige in the community from his association with BFI; (4) BFI built a cattle shed the Plaintiff thought was unnecessary; (5) corporate money was spent on a meal the Plaintiff believed was not for a corporate purpose; (6) corporate money was spent on a birthday party for Dennis Baur; and (7) the Board of Directors was expanded, which eliminated the Plaintiff's ability to block Bob Baur's ability to borrow money. *Id.* at ¶ 51.
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> The Defendants do not dispute these facts. The Plaintiff produced no evidence as to when the meal occurred or who attended it. The Plaintiff estimated the cost of the meal at less than $100. The Plaintiff also provided no information on when the purchase of the pasture ground occurred and how much it cost. The cattle shed was built in 1984. The birthday party for Dennis cost $180. Furthermore, the Plaintiff could point to no particular instance where he was denied access to corporate information and acknowledges he was able to access all of the corporate records in October 2002, yet failed to do so.

> The Plaintiff presented additional allegations of wrongdoing on the part of Bob Baur and BFI in his supplemental interrogatories. Specifically, he alleged: (1) Bob Baur obtained an education paid for by BFI that was used for his personal benefit; (2) Bob was paid a salary and a percent of profits throughout the years, even when not a fulltime employee; (3) Bob placed his nephew, James, into management and continues to have James operating the farm without consulting the Plaintiff; (4) Bob continues to run his car expense, cell phone expense, meal expenses, and other expenses through BFI; and (5) Bob has used his status as majority shareholder to vote to reimburse his legal fees in this action. *Id.* at ¶ 70.
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> Again, the facts are undisputed between the parties. The Plaintiff approved allowing Bob's education to be paid for by BFI and only objected after the degree was complete. Similarly, the Plaintiff approved payment of a salary to Bob until 2002 when the Plaintiff made a motion at a Board meeting to not pay salaries to officers who worked for BFI. The motion did not pass, but Bob's salary was reduced to $15,000 in 2002, $1,500 in 2003, and nothing after that time. Bob Baur reimburses BFI for his expenses, and only runs them "through" BFI. The Plaintiff was made aware of all expenditures in 2002, when detailed records were made available to him. Further, the Plaintiff was made aware of James Baur['s] increasing involvement in BFI and made no objections, other than objecting to James serving as an officer or director.
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> When BFI was formed on December 30th, 1966, it had a value of $394,000. The Plaintiff's shares were worth $300 per share on April 5th, 1989. In 2002, the Plaintiff believed his stock had a value of $931.68 per share, and in August of 2007 a value of $3027.95 per share. BFI has a current estimated worth of more than $7 million.

The district court ruled that, even if it accepted John's argument that the continuous wrong doctrine was applicable to his claims, the claims were barred by the five-year statute of limitations. The district court concluded that the only conduct complained of that fell within the limitations period was Bob Baur's vote to reimburse legal fees to defend this action, which occurred after the filing of the suit, and thus could not be the basis for the suit. The court found:

> There is no evidence of any wrongs having occurred after October 10, 2002. The majority of facts, undisputed by both parties, relate to actions that occurred well over ten years ago. For example, the

> issue with the cattle shed—mentioned by the Plaintiff has one of the more troublesome events—occurred in 1984. The Plaintiff's failure to be re-elected as an officer of BFI and the expansion of the Board occurred in 1997. The Plaintiff never objected to salary amounts paid to Bob Baur until sometime in 2002 but after the complaint Bob Baur's salary was reduced and ultimately taken away.

The court granted summary judgment and dismissed the petition.

However, the district court rejected the motion for sanctions because "Iowa law *does* create rights for minority shareholders and a reasonable person could have found the undisputed facts to be evidence of oppression and waste." The court noted, "Although the claims have been defeated by the statute of limitations, the evidence shows the Plaintiff reasonably believed the wrong was continuing and the statutory period had been tolled."

John appeals. Bob and BFI cross-appeal. They contend the district court erred in failing to grant them summary judgment on substantive grounds and in failing to impose sanctions upon John, an attorney, for filing this action.

II. Scope and Standard of Review.

We review a district court's ruling on a motion for summary judgment for correction of errors at law. *Wilkins v. Marshalltown Med. & Surg. Ctr.*, 758 N.W.2d 232, 235 (Iowa 2008); *Lobberecht v. Chendrasekhar*, 744 N.W.2d 104, 106 (Iowa 2008). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3). A genuine issue of material fact exists if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Baratta v. Polk*

Co. Health Serv., 588 N.W.2d 107, 109 (Iowa 1999). The moving party has the burden to establish it is entitled to judgment as a matter of law, and the evidence must be viewed in the light most favorable to the nonmoving party. *Hunter v. City of Des Moines Mun. Hous. Auth.,* 742 N.W.2d 578, 584 (Iowa 2007).

III. Discussion.

A. Judicial Dissolution. Contrary to the defendants' one ground for summary judgment, a corporation may be judicially dissolved in a proceeding brought by a shareholder if it is established that "[t]he directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent." Iowa Code § 490.1430(2)(b) (formerly Iowa Code § 496A.94(1)). In *Maschmeier v. Southside Press, Ltd.,* 435 N.W.2d 377, 379 (Iowa Ct. App. 1988), we noted that "oppressive" conduct is not defined in the statute or in the Model Business Corporation Act, from which the statute was derived. We then considered *Balvik v. Sylvester,* 411 N.W.2d 383, 385 (N.D. 1987), and the North Dakota court's discussion of oppressive conduct. *Maschmeier,* 435 N.W.2d at 379.

There, the court found that oppressive conduct, under an identical statute permitting dissolution of a corporation when the directors or others in control of the corporation engage in such conduct, is an expansive term used to cover a multitude of situations dealing with improper conduct, which is neither illegal nor fraudulent. *Balvik*, 411 N.W.2d at 385. The alleged oppressive conduct by those in control of a close corporation must be analyzed in terms of "fiduciary duties" owed by majority shareholders to the minority shareholders and "reasonable expectations" held by minority shareholders in committing capital and labor to the

particular enterprise, in light of the predicament in which minority shareholders in a close corporation can be placed by a "freeze-out" situation. *Id.* at 386-87.

Thus, in *Maschmeier*, this court affirmed a trial court finding that majority shareholders acted oppressively toward the minority shareholders and wasted corporate assets where the board gutted the corporation by depleting assets, paid themselves salaries grossly out of proportion to the profits of the corporation, failed to commit any capital or labor to the corporation, and attempted to "freeze-out" the minority shareholders. 435 N.W.2d at 380-81.

The *Maschmeier* trial court did not require dissolution of the corporation, but did order the majority purchase the shares of the minority shareholder. *See id*. at 379. We upheld this remedy noting, "It is clear in Iowa that once oppression, waste, or misapplication of the corporate assets has been found, the trial court, sitting in equity, can devise a remedy to meet the situation." *Id*. at 382; *see also Sauer v. Moffitt*, 363 N.W.2d 269, 275 (Iowa Ct. App. 1984).

B. Statute of Limitations. Here, the district court acknowledged that John's complaints might support a finding of oppression; but concluded that John's complaints were barred by the statute of limitations. John argues that this matter "is not subject to the statute of limitations in the sense that once oppression starts in the form of a freeze out and removal from activities associated with the corporation, this conduct simply does not end, but continues" until the court can fashion a remedy.

Iowa law has addressed the concept of a continuing wrong, yet applied the limitations period of Iowa Code section 614.1(4). *See Hegg v. Hawkeye Tri-County REC*, 512 N.W.2d 558, 559 (Iowa 1994). In *Hegg*, the court stated:

> We have considered the nature of a continuing wrong in prior cases. In *Anderson* [*v. Yearous*]*,* 249 N.W.2d [855, 855 (Iowa 1977)], the claimants sought nuisance damages for intermittent flooding caused by a levee on adjacent property. The claimants filed their action more than five years after the structure was erected. *Id.* at 858. In *Anderson,* we held that for purposes of statute of limitations, erection of the structure was not the determinative date, stating "[w]here resultant injuries are recurring and successive actions will lie, the limitation period runs from the occurrence of each such injury." *Id.* at 860. In *Earl* [*v. Clark*], 219 N.W.2d [487, 491 (Iowa 1974)], we held that a claimant seeking nuisance damages caused by waste drainage from an adjacent feedlot could recover for damages occurring within the five-year period preceding the date of trial. *Contra Kolpin* [*v. Pioneer Power & Light Co.*], 469 N.W.2d [595, 608 (Wis. 1991)] (holding, on facts similar to the case at issue here, the negligent use of an electrical distribution system over a period of time is one act of negligence, not a continuing wrong).

Id. at 560; *see also Riniker v. Wilson*, 623 N.W.2d 220, 228-29 (Iowa Ct. App. 2000) ("Where the wrongful act is continuous or repeated, so separate and successive actions for damages arise, the statute of limitations runs as to these later actions at the date of their accrual.").

In *Polk v. Hergert Land & Cattle Co.*, 5 P.3d 402, 405-06 (Colo. Ct. App. 2000), the Colorado court applied a three-year statute of limitations to a minority shareholder's claims of breach of fiduciary duties. With respect to the complained of conduct that occurred prior to the limitations cut-off, the court noted that the plaintiff knew or, through the exercise of reasonable diligence, should have discovered such actions before the limitations period. *Id.* at 405.

In *Roemmich v. Eagle Eye Development, L.L.C.*, 526 F.3d 343, 348 (8th Cir. 2007), a minority shareholder filed suit in April 2004 against majority shareholders claiming their actions—beginning in 1995—were unfairly prejudicial, breached fiduciary duties and a duty to act in good faith owed to him

as a minority shareholder, and denied the minority shareholder's right to vote as a member of the corporation. The federal district court held that North Dakota's six-year statute of limitations for tort, contract, and statutory causes barred his claims accruing prior to April 1998. *Roemmich*, 526 F.3d at 348. On appeal, the plaintiff contended the district court erred in treating the defendants' allegedly wrongful conduct as a series of discrete acts, rather than a continuing violation. *Id*.

The *Roemmich* court rejected the argument. "A series of wrongs is only continuous for the purposes of this [continuing wrong] doctrine, however, 'when no single incident in a chain of tortious activity can fairly or realistically be identified as the cause of significant harm.'" *Id.* at 350 (quoting 54 C.J.S. *Limitations of Actions* § 194, at 257 (2005)).[4] But, in cases presenting transactions that are "'separate, distinct, and could have been challenged by a plaintiff' when they occurred, we have found that the continuing wrong doctrine does not apply." *Id.* (citation omitted). The court further noted that the plaintiff had failed to point to any case identifying freeze-out or a series of breaches of fiduciary duties as a continuing wrong. *Id.* at 351. In fact, the court noted cases holding just the opposite. *See id.* at 351-52.

The New Hampshire Supreme Court in *Thorndike v. Thorndike*, 910 A.2d 1224 (N.H. 2006), also addressed claims of a minority shareholder of a closely-

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[4] 54 C.J.S. *Limitations of Actions* § 194, at 257-58, continues:

A continuing violation or tort is occasioned by continuing unlawful acts and conduct, not by continual ill effects from an initial violation. Thus, where there is a single overt act from which subsequent damages may flow, the statute begins to run on the date the defendant invaded the plaintiff's interest and inflicted injury, and this is so despite the continuing nature of the injury.

held corporation. The petitioner contended that in 1995, after his brother gained control of management of the family business, he added new board members, removed him from his position as director, eliminated his salary, and diluted his voting powers. *Thorndike*, 910 A.2d at 1226. The petitioner filed suit in 2005. *Id.* The New Hampshire court rejected the petitioner's claim that the continuing wrong doctrine defeated the statute-of-limitations defense, stating:

> Even if all that the petitioner alleges is true, and the respondent continues to exclude him from employment at AMD, continues to take a salary without paying a salary to the petitioner, continues to refuse to permit him to participate in AMD's operations, and continues to ban him from AMD's premises, the acts causing the petitioner's injuries occurred prior to February 18, 2002, and the statute of limitations began to run when the acts occurred.

Id. at 1228.

We cannot disagree with the reasoning enunciated in *Roemmich* and *Thorndike* and, if these acts were looked at in isolation, we would agree that John's claims are time-barred. Some of the acts about which John complains (removal as an officer, purchase of pasture ground, use of corporate vehicle, construction of cattle shed, expansion of Board of Directors) were discrete acts that could have been challenged by a plaintiff when they occurred.[5] *Cf. Des*

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[5] On appeal, John asserts the following are continuing wrongs:

> exclusion from the BFI's day-to-day decision-making, ongoing exclusion from deriving any benefit from BFI or its activities, and a continued insistence by the majority shareholder that any purchase of the minority shareholder's interest would be subject to a large minority discount.

We note that our supreme court has recently decided a case that may have some bearing on John's claim that a minority discount is not applicable. In *Northwest Investment Corp. v. Wallace*, 741 N.W.2d 782, 783-84 (Iowa 2007), our supreme court considered an appeal from minority shareholders who were required to redeem their shares after a reverse stock split and refused to accept the corporation's offer to buy back their shares. The court was to determine the definition of "fair value" under Iowa Code section 490.1302. *Id.* at 787. The supreme court ruled:

Moines Bank & Trust Co. v. George M. Bechtel & Co., 243 Iowa 1007, 1099, 51 N.W.2d 174, 226 (1952) (finding statute of limitations did not bar stockholders derivative action to recover losses sustained due to continuing embezzlement by corporate officer).

However, these same acts can be viewed as specific and supportive evidence of the alleged plan by Bob to freeze out John, a minority stockholder. None of these cases, *Polk*, *Roemmich*, or *Thorndike*, involve the allegations here, that the defendants have prevented the minority stockholder from receiving any economic benefit. Nor do they involve a declination of dividends or a refusal to buy the minority stockholder's shares unless conditioned upon a low and discounted price.

> Subsection (c) prohibits discounting for lack of marketability or minority status. The official comment explains subsection (c) is "designed to adopt a more modern view that appraisal should generally award a shareholder his or her *proportional interest in the corporation after valuing the corporation as a whole,* rather than the value of the shareholder's shares when valued alone." Model Bus. Corp. Act § 13.01 cmt. 2, at 13-10 (emphasis added); *see Cavalier Oil Corp. v. Harnett,* 564 A.2d 1137, 1144 (Del.1989) (stating the corporation must be valued as an entity before determining the shareholder's proportionate interest). If an appraiser is valuing the corporation as a whole, then a control premium is certainly proper. A control premium is the additional consideration an investor would pay over the value for a minority interest in order to own a controlling interest in the common stock of a company. Shannon P. Pratt, *Valuing a Business: The Analysis and Appraisal of Closely Held Companies* 349 (4th ed. 2000) (quoting *Control Premium Study,* 4th quarter 1999 (Los Angeles: Applied Financial Information, LP, 1990), p. ii). "A controlling interest is considered to have greater value than a minority interest because of the purchaser's ability to effect changes in the overall business structure and to influence business policies." *Id.*
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> Our legislature made a policy decision when it adopted the current definition of "fair value." By not allowing a discount for lack of marketability or minority status, the legislature implicitly required shares to be valued on a marketable, control interest basis. We therefore hold a control premium may be considered in determining fair value if supported by the evidence.

Id. at 787-88.

One authority has noted that a minority stockholder's lack of ready access to a marketplace to sell their stock can result in the minority stockholder

> being held hostage by the controlling interest, and can easily lead to situations where the majority "freeze-out" or "squeeze-out" minority shareholders by use of oppressive tactics. Because minority shareholders cannot sell their stock on the open market, as can shareholders in public corporations, the minority shareholders may be compelled to deal with the majority and be vulnerable to low offers for their stock. If the minority shareholder can allege specific facts showing that the majority shareholders have embarked upon a plan to freeze-out the minority from their rightful benefits, a cause of action may accrue. Generally, the offer to buy stock at a low price is the "capstone of the majority plan" to freeze-out the minority of any financial benefits from the close corporation.

12B William Meade Fletcher, *Fletcher Cyclopedia of the Law of Private Corporations* § 5820.10 (Thomson Reuters ed. 2009) (hereinafter Fletcher).

Here, the sum and substance of John's claims of oppressive conduct relates to his inability to receive any return on his interest in the corporation and, more importantly, his inability to sell his stock other than at a low price determined by Bob. To the extent that Bob's insistence on a minority discount is a continuing wrong or a wrong that has reoccurred within the statute of limitations period, the cases of *Polk*, *Roemmich,* and *Thorndike* are distinguishable.

There can be no dispute regarding the rights of a majority shareholder as aptly summarized in *Connolly v. Bain*, 484 N.W.2d 207, 211 (Iowa 1992):

> Majority shareholders have the right to "control the affairs of a corporation, if done so lawfully and equitably, and not to the detriment of minority stockholders." Courts are disinclined to interfere in internal corporate operations involving management decisions subject to the principle of majority control. The selection and retention or dismissal of officers, directors, and employees are examples of such internal corporate operations.

(Citations omitted.) Nonetheless, in a close corporation the only real prospective buyer of a minority shareholder's shares is the majority stockholder. *Muellenberg v. Bikon Corp.*, 669 A.2d 1382, 1386 (N.J. 1996). Thus, a minority shareholder who does not hold a corporate office is left with no return on their interest in the corporation for an indefinite period of time or selling to the majority shareholder at whatever price they will offer. *Maschmeier*, 435 N.W.2d at 380.

This is exactly the position taken by the defendants. In essence, the defendants contend John can have no reasonable expectation of any economic benefit because the corporation has never issued dividends, and so long as a member of the family continues to farm the farmland, the corporation continues its perpetual existence.[6]

The defendants also contend a distinction should be made because John never invested any capital or labor (sweat equity) to the corporate enterprise. Although we agree that the court in *Maschmeier* referred to the reasonable expectations held by minority shareholders who had committed "capital and labor," the minority shareholders in *Maschmeier* had in fact been gifted their shares. *Maschmeier*, 435 N.W.2d at 378. Additionally, someone who buys a minority interest in a closely held corporation has made a business decision to take a minority position. *See* Fletcher § 5820.11 (noting "[s]hareholder oppression may also exist where a majority shareholder's conduct substantially defeats the minority's expectations that, objectively viewed, were both reasonable under the circumstances and central to the minority shareholder's

[6] At one time the bylaws permitted the sale of stock, albeit at a minimal price, but the bylaws since have been revised by deleting these provisions.

decision to join the venture"). Whereas a minority shareholder who receives shares by gift or inheritance does not make a similar business or investment decision, and may have different expectations.

The defendants' reliance on *Cookies Food Products, Inc. v. Lakes Warehouse Distributing, Inc.*, 430 N.W.2d 447 (Iowa 1988), is also misplaced. The *Cookies* case was a derivative suit brought by minority shareholders who alleged that the majority shareholder violated his duty of loyalty to the corporation by self-dealing. Although, the shareholders were motivated by the lack of dividends and lack of ready access to buyers of their shares and thus could not realize any of the corporation's success, the lack of dividends was due to a prohibition in the terms of an SBA loan. *Cookies*, 430 N.W.2d at 450. No such prohibition exists in this case, and *Cookies* did not involve any allegation of a freeze-out.

A review of the facts asserted in this action reflects that John made requests to Bob and the corporation to buy his minority interest on multiple occasions. In fact, the record reflects that John communicated with either Bob or the board of directors on at least five occasions in 1989, 1992, 1997, 2002, and finally on August 7, 2007. On two of the occasions he proposed a specific price. At the same time, Bob's discussions have always entailed the insistence upon a minority discount and a discount for the capital gains tax that would be incurred. Bob continues to insist upon a minority discount in valuing John's shares throughout these proceedings by his statement of undisputed facts and argument in support of his motion.

Although the minority discount may have been consistent with Iowa law initially, the insistence on a minority discount was called into question as early as 1996 when our supreme court in *Security State Bank v. Ziegeldorf*, 554 N.W.2d 884, 890 (Iowa 1996), stated:

> To allow a marketability discount under this record would undermine the legislature's intent to protect minority shareholders from being forced out at a price below the fair value of their pro-rata share of the corporation. Therefore, we conclude the trial court did not err in rejecting a marketability discount in this case.

Additionally, as noted by our supreme court in *Northwest Investment Corp. v. Wallace*, 741 N.W.2d 782, 786-87 (Iowa 2007), the Iowa Legislature adopted in 2002 a new definition for "fair value," which provides that the value of corporate shares shall not be discounted for "lack of marketability" or "minority status." Iowa Code § 490.1301(4)(c); *see Northwest Investment*, 741 N.W.2d at 787-88. Thus, any insistence by Bob that a minority discount be imposed after 1996, and certainly after July 1, 2002, may be found to be oppressive and a continuing wrong when coupled with the other evidence in this action.

Accordingly, the insistence by Bob of an inadequate price for John's shares along with the specific evidence that no dividends have ever been paid; that John was removed as an officer; the payment of a salary to Bob as late as 2003 for serving as an officer; and other supportive facts clearly raise a genuine issue of material fact concerning whether the statute of limitation bars this action.

C. Substantive Grounds of Summary Judgment. On cross-appeal, Bob and Baur Farms, Inc. argue the district court should have found as a matter of law that the facts relied on by John do not raise a jury question regarding oppressive conduct. We acknowledge that whether certain acts constitute

oppressive conduct is generally a question of law for the court. *See Davis v. Sheerin*, 754 S.W.2d 375, 380 (Tex. App. 1988) ("Although whether certain acts were performed is a question of fact, the determination of whether these acts constitute oppressive conduct is usually a question of law for the court."); *accord Reget v. Paige*, 626 N.W.2d 302, 308 (Wis. Ct. App. 2001) (finding "the determination of whether the historic facts as found by the circuit court, or as agreed to by the parties, constitute oppression is a question of law" for the court). However, because we have found summary judgment was improperly granted based upon the applicable statute of limitations, this argument may be made to the district court on remand.

D. Sanctions. We review the district court's denial of a motion for sanctions for an abuse of discretion. *In re Estate of Atwood*, 577 N.W.2d 60, 64 (Iowa Ct. App. 1998). "[W]hether a violation has occurred is a matter for the court to determine, and this involves matters of judgment and degree." *Mathias v. Glandon*, 448 N.W.2d 443, 446 (Iowa 1989). We will not disturb the district court's findings of fact absent a finding they are clearly erroneous. *Dull v. Iowa Dist. Ct.*, 465 N.W.2d 296, 297 (Iowa Ct. App. 1990). The district court is best acquainted with the local bar's litigation practices and best situated to determine when a sanction is warranted to serve the goal of specific and general deterrence. *Id.* at 298.

We find no abuse of discretion.

IV. Conclusion.

Summary judgment was improperly granted where genuine issues of material fact remain concerning whether the statute of limitations barred this

claim. The district court did not abuse its discretion in denying the defendants' motion for sanctions.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.