Eastland Food Corporation, et al. v. Edward Mekhaya, No. 37, September Term, 2022. Opinion by Gould, J.

SUFFICIENCY OF PLEADINGS – STOCKHOLDER OPPRESSION – "REASONABLE EXPECTATION"

The Supreme Court of Maryland held that a proposed amended complaint stated a cause of action for stockholder oppression because the plaintiff alleged sufficient facts to support the reasonableness of his expectation that, by virtue of his status as a stockholder, he would have had continued employment and managerial involvement in his company and would have continued to receive his proportional share of the distributable profits.

BREACH OF FIDUCIARY DUTY – STANDING TO BRING ACTION

The Supreme Court of Maryland held that a proposed amended complaint did not state a cause of action for breach of fiduciary duty. The Court determined that the plaintiff could not bring a direct claim for compensatory damages as opposed to a derivative claim because his alleged injury due to breach of fiduciary duty was not separate and distinct from any injury suffered by the corporation.

UNJUST ENRICHMENT – STANDING TO BRING ACTION

The Supreme Court of Maryland held that a proposed amended complaint did not state a cause of action for unjust enrichment. The Court determined that the plaintiff could not bring a direct claim for compensatory damages as opposed to a derivative claim because the alleged excessive compensation and use of company funds for personal purposes came at the corporation's expense, not at his expense.

Circuit Court for Howard County
Case No. C-13-CV-21-000666
Argued: June 2, 2023

IN THE SUPREME COURT OF

MARYLAND*

No. 37

September Term, 2022

EASTLAND FOOD CORPORATION, *et al.*

v.

EDWARD MEKHAYA

Fader, C.J.,
Watts,
Hotten,
Booth,
Biran,
Gould,
Eaves,

JJ.

Opinion by Gould, J.
Fader, C.J., and Booth, J., concur.

Filed: August 31, 2023

Pursuant to the Maryland Uniform Electronic Legal Materials Act (§§ 10-1601 et seq. of the State Government Article) this document is authentic.

2023-09-05 16:21-04:00

Gregory Hilton, Clerk

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

This case requires us to test the legal sufficiency of the three-count complaint filed by a minority stockholder in a family-owned corporation against the majority stockholders and directors. The minority stockholder alleged one count of stockholder oppression seeking equitable relief short of dissolution and two counts seeking compensatory damages for claims of breach of fiduciary duty and unjust enrichment. The Circuit Court for Howard County granted defendants' motion to dismiss for failure to state a claim upon which relief may be granted. In doing so, the court denied plaintiff's request for leave to amend the complaint, a copy of which was appended to plaintiff's motion to alter or amend the judgment, which the court also denied.

The Appellate Court of Maryland[1] reversed the judgment of the circuit court, finding that plaintiff's complaint alleged sufficient facts to state a cause of action for each of the three counts. *Mekhaya v. Eastland Food Corp.*, 256 Md. App. 497 (2022). For the reasons explained below, we affirm the judgment of the Appellate Court as to Count I (stockholder oppression) and reverse as to both Count II (breach of fiduciary duty) and Count III (unjust enrichment).

[1] 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.

BACKGROUND

The Allegations of the Proposed Amended Complaint[2]

This case involves a Maryland corporation called Eastland Food Corporation ("Eastland"). Eastland imports and distributes food and other products. Eastland was founded in the 1980s by Pricha Mekhayarajjananonth, the father of respondent Edward Mekhaya.[3]

Edward had always wanted to be an engineer and, in furtherance of this goal, obtained a Bachelor of Science degree in Electrical and Computer Engineering and a Master of Science degree in Electrical Engineering. He then began a successful engineering career with Hughes Networking Systems in 1997.

In 1999, Pricha recruited Edward to work for Eastland. Pricha told Edward he would become an employee of Eastland, eventually become an owner, and, once an owner, be compensated as an owner. Pricha explained that Eastland distributed profits as annual bonuses instead of dividends. Based on Edward's conversations with his father, recognition of the importance of family, expectations of continued employment and participation in Eastland's management, and Eastland's compensation structure, Edward

[2] Because this case comes to us in the context of the granting of a motion to dismiss for failure to state a claim, the summary that follows is drawn from plaintiff's allegations, which obviously are slanted from plaintiff's perspective. Our recitation of the facts in this fashion should not be construed as reflecting any assessment of the merits of the allegations. Moreover, for the reasons explained below in the Standard of Review, we are analyzing this matter based on the allegations in plaintiff's proposed amended complaint.

[3] For clarity purposes only, because all but one of the parties are immediate family members, we will use first names throughout this opinion. In doing so, we intend no disrespect.

resigned from Hughes Networking Systems in 2000 to join Eastland. Edward's parents, Pricha and Vipa Mekhaya, knew that he was forgoing his successful engineering career to join Eastland.

In 2002, Edward was promoted to Vice-President of Operations and was elected to Eastland's board of directors. From 1996 through the end of 2008, Pricha and Vipa each owned 50 percent of the issued and outstanding stock in Eastland. In 2008, as part of Edward's parents' estate planning, Eastland amended its articles of incorporation to increase the number of authorized shares. Eastland then issued sufficient shares to Pricha, Vipa, Edward's brother Oscar Mekhaya, and Edward to establish the following allocation of the issued and outstanding stock: Pricha – 35 percent; Vipa – 35 percent; Oscar – 15 percent; and Edward – 15 percent.

Eventually, in November 2015, Pricha ceased being a shareholder of Eastland and agreed to distribute his shares. This distribution yielded the current allocation of Eastland's stock, with Vipa owning 35 percent, Edward owning 28 percent, Oscar owning 28 percent, and trusts for the benefit of Oscar's three children owning a collective 9 percent.

Edward made many contributions to the company over the years. He led efforts to establish and improve business procedures, and selected and implemented technology to support these improvements. He also introduced warehouse management software and tablet-based order taking, led the design and construction of all but one of Eastland's warehouses, managed Eastland's move to its current Maryland offices, led research into better financial and purchasing methods, and researched and worked on Eastland's first employee handbook.

From 2000 to 2008, Edward's annual compensation increased dramatically, from $53,564 in 2000 to $457,376 in 2008. Between 2008 and 2018, Edward's annual compensation ranged from $400,000 to $600,000. This compensation included the bonus payments—which fluctuated year to year based on Eastland's profitability—that Edward received between 2010 and 2018 in lieu of dividends.[4] Edward expected to continue sharing in Eastland's profits, maintain his employment, and participate in management for the duration of Eastland's existence.

In August 2017, Pricha, who until then had led and managed Eastland as its President and as a member of the board of directors, was removed from both positions because, among other reasons, he had moved to Thailand and was not expected to return to resume his duties. Prior to his departure, Pricha had always unilaterally determined the amount of the profit bonuses paid to Eastland's owners.

The following month, over Edward's objection, Oscar was elected President of Eastland.[5] In August 2018, as a director of Eastland, Edward signed a consent form approving a credit line increase for Eastland. Edward did so under protest over various concerns he had raised with the apparent accumulation of excess inventory at a time when revenues increased only "modestly."

---

[4] Edward included this information in tables that listed the annual compensation he received every year from 2000 to 2018, including the amounts attributable to Pricha's unilaterally-determined profit bonuses from 2010 to 2018.

[5] The amended complaint uses the passive voice "was elected" but does not say who did the electing. We assume that Oscar was elected by the board of directors, consistent with its statutory duties. *See* Md. Code Ann. Corps. & Ass'ns § 2-413 (1975, 2014 Repl. Vol.).

On October 2, 2018, Edward received from Eastland's counsel the agenda for the stockholders' meeting scheduled for October 12. The agenda included "introduction of a dividend study (advantages to moving to shareholders getting dividends with respect to their ownership in lieu of salaries being paid as if they were dividends)." On October 10, Edward requested three years of payroll data from Eastland's human resources manager. At Oscar's instruction, the manager withheld the requested information from Edward.

Edward came to the October 12 stockholders' meeting accompanied by his personal counsel. Motions to exclude his counsel from the meeting were made and then withdrawn. Various matters were discussed, and the board of directors was elected. This time, "without cause or reason," Edward was not re-elected. Since that meeting, the board of directors has consisted of three members: Oscar, Vipa, and an individual named Tisnai Thaitam. Edward's efforts to re-join the board were rejected by the stockholders at subsequent annual stockholder meetings.

Three days after the October 12 stockholders' meeting, Edward was terminated from his position with Eastland. After he was terminated, despite the company's continued profitability, Eastland has refused to pay Edward any share of the profits whatsoever, regardless of its form. Instead, Vipa, who has done no substantial work for Eastland, and Oscar, whose poor management skills have caused high employee turnover and low morale, have been taking excessive compensation and diverting corporate funds for personal use.

The Counts

Edward's proposed amended complaint alleges the same three causes of action asserted in his initial complaint: oppression of a minority shareholder against Oscar, Vipa, Tisnai, and Eastland (Count I); breach of fiduciary duty against Oscar, Vipa, and Tisnai (Count II); and unjust enrichment against Oscar and Vipa (Count III). Each count rests on common facts, namely, that since Edward was terminated from Eastland: (1) Oscar and Vipa have received distributions of Eastland's profits through excessive compensation; (2) Oscar and Vipa have diverted corporate funds for personal use; and (3) Eastland refuses to pay any share of the profits to Edward through compensation or dividends.

In Count I, Edward alleges that Vipa and Oscar, as both majority stockholders and directors, along with Tisnai as director, engaged in conduct that has defeated his reasonable expectations of continued employment, managerial input, and sharing of profits as a stockholder. In doing so, Edward invokes the involuntary dissolution statute, Md. Code Ann. Corps. & Ass'ns ("CA") § 3-413 (1975, 2014 Repl. Vol.), but seeks various forms of equitable relief short of dissolution, namely: (i) "the appointment of a receiver . . . to continue the operation of Eastland for the benefit of all stockholders"; (ii) "the retention of jurisdiction of the case by the court for the protection of the minority stockholders without appointment of a receiver"; (iii) an injunction prohibiting continuing acts of "oppressive" conduct as alleged in the amended complaint; (iv) "an injunction directing [petitioners] to declare and pay dividends for the calendar years 2018, 2019, and 2020"; (v) an injunction directing petitioners to pay Eastland's profits to Edward as a bonus in lieu of a declared dividend; (vi) "a constructive trust against the profits of [] Eastland for distribution to

[Edward] in the same form as the profits of [] Eastland are distributed to other stockholders . . . ."; (vii) "an accounting to [Edward] of all income, expenses, profits, liabilities, assets, and transactions of [] Eastland"; and (viii) other equitable relief as appropriate under CA § 3-413. He also seeks compensatory damages of at least $75,000.

In Count II, Edward alleges that Oscar, Vipa, and Tisnai, in their capacities as Eastland's directors, breached their fiduciary duties to Eastland and its stockholders, including the duties

> to act (1) in good faith; (2) in a manner each reasonably believes to be in the best interests of Eastland; and (3) with the care that an ordinarily prudent person in a like position would use under similar circumstances, so as to benefit all stockholders equally and not in furtherance of their personal interest or benefit.[6]

In addition, Edward alleges that, as majority shareholders of Eastland, Oscar and Vipa breached their fiduciary duty not to exercise their control of the company to his disadvantage. Edward seeks compensatory damages of at least $75,000 for this count.

In Count III, Edward alleged that Oscar and Vipa were unjustly enriched at his expense by their excessive compensation and diversion of corporate funds for personal use. He seeks compensatory damages of at least $75,000.

Defendants' Motion to Dismiss

Petitioners Eastland, Oscar, Vipa, and Tisnai jointly moved to dismiss Edward's complaint pursuant to Maryland Rule 2-322. Petitioners' motion and Edward's opposition debated whether Edward alleged sufficient facts to: (1) sustain a stockholder oppression

[6] Edward does not cite CA § 2-405.1 as the source of such duties, but recites almost verbatim the language from that statute.

claim, given the at-will nature of his employment with Eastland; (2) overcome the business judgment rule under CA § 2-405.1; and (3) sustain a direct cause of action against Oscar, Vipa, and Tisnai.

The court heard oral argument on defendants' motion, at the end of which Edward's counsel sought leave to amend the complaint to cure any defects in it. The court asked counsel to proffer the additional facts that Edward would allege. Edward's counsel explained, among other things, that Edward would allege additional facts relating to the circumstances under which Edward joined Eastland and Eastland's practice of distributing profits through bonus compensation.

The circuit court denied Edward's counsel's request and granted the motion to dismiss in its entirety, with prejudice. Regarding Edward's claim of oppression of a minority shareholder, the trial judge explained:

> I think [Edward's] pleadings . . . fail to show or plead how [his] expectations were substantially defeated. The concept of his 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 [] dividends or that the salary was viewed as dividends in this matter. And I think that when you look at [the case law], it is necessary to look at . . . the overall relationship, [and] there's no expectations set up that there would be dividends and that these 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 pleadings, they're not sufficient at this time.

With respect to Edward's claims of breach of fiduciary duties and unjust enrichment, the court stated:

> In terms of Counts Two and Three, this was not brought as a derivative suit . . . . I think the – again, [Edward's] assertion that dividends would have 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 of that harm was to the corporation, and I've heard nothing today that the harm was distinct from that of the corporation . . . . And again, there is a presumption, based on [the business judgment rule], that the Defendants in their capacities acted . . . in the best interest of the company and that they acted accordingly. And based on what is in the pleadings, they are not sufficient. And I have heard nothing today, even with what [Edward] through Counsel had added that would or could be had with amendment.

Edward timely moved to alter or amend the judgment. He attached his proposed amended complaint as an exhibit. In a brief order, the circuit court denied Edward's motion "[a]fter careful consideration of the motion, opposition, and reply[.]"

Edward timely appealed to the Appellate Court of Maryland.

Opinion of the Appellate Court of Maryland

The Appellate Court of Maryland reversed the judgment of the circuit court and held that Edward alleged sufficient facts to support all three causes of action in his initial complaint. *Mekhaya v. Eastland Food Corp.*, 256 Md. App. 497, 526-27, 530 (2022). The Court found that he stated a claim for stockholder oppression because he "allege[d] that Eastland's majority shareholders, namely Oscar and Vipa, engaged in conduct that defeated substantially his objectively reasonable expectations as a minority shareholder," and "the relief requested . . . c[a]me within the circuit court's equitable powers." *Id.* at 518. The Court focused its attention on Edward's claim that he reasonably expected to continue sharing in company profits by way of "*de facto* dividends" paid to employees through compensation and bonuses, and that cessation of these payments due to his termination substantially defeated this expectation. *Id.*

The Court construed Maryland statutes on corporate dividends to neither expressly recognize nor foreclose the possibility of "*de facto*" dividends. *Id.* at 519. According to the Court, the concept of a "constructive," "disguised," or "*de facto*" dividend paid as part of a shareholder's salary is well-established in other jurisdictions. *Id.* Thus, the Court held that Edward's complaint "alleged facts sufficient to establish that his expectations as a shareholder were reasonable . . . and that Appellees defeated substantially one or more of those expectations." *Id.* at 519-26.

The Court also held that the circuit court erred in dismissing Edward's breach of fiduciary duty count, crediting Edward's allegations that the board owed him a fiduciary duty to continue paying him "*de facto*" dividends and that deprivation of those dividends constituted a breach resulting in harm to Edward. *Id.* at 529-30. The Court explained that because Edward alleged that he, rather than the corporation, suffered the harm alleged, he properly asserted a direct rather than a derivative claim. *Id.* However, the Court cautioned that Edward's breach of fiduciary duty claim would need to be brought derivatively if he could not prove his entitlement to the "*de facto*" dividends received by Oscar and Vipa. *Id.* at 530.

Finally, the Appellate Court held that the circuit court erred in dismissing Edward's unjust enrichment count. *Id.* The Court concluded that Edward alleged individual harm from being deprived of a "*de facto*" dividend paid to and inequitably retained by Oscar and Vipa, and that he therefore alleged a cognizable direct claim. *Id.*

Petitioners petitioned for writ of certiorari, which we granted. *Eastland Food Corp. v. Mekhaya*, 483 Md. 264 (2023). They present one question for our review, which we have rephrased as follows:[7]

> May a minority shareholder of a closely held Maryland corporation bring direct claims against the corporation's board of directors for minority shareholder oppression, breach of fiduciary duty, and unjust enrichment on the ground that the directors distributed corporate profits to the exclusion of the minority shareholder?

STANDARD OF REVIEW

Pursuant to Maryland Rule 2-322(b)(2), a defendant may move to dismiss a complaint for failure to state a claim upon which relief can be granted. The court must read the complaint in the light most favorable to the plaintiff, and accept as true the well-pleaded facts and the reasonable inferences drawn from such facts. *RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 643 (2010). The court may dismiss the complaint only if the allegations and permissible inferences drawn therefrom fail to state a cause of action. *Id.* The court's ruling is a question of law that appellate courts review without deference. *Chavis v. Blibaum & Assocs., P.A.*, 476 Md. 534, 551 (2021).

If the court orders dismissal pursuant to Maryland Rule 2-322(b)(2), "an amended complaint may be filed only if the court expressly grants leave to amend." Md. Rule 2-

---

[7] The question as presented by petitioners was:

> May a minority shareholder bring a direct action against a closely-held Maryland corporation whose Board of Directors had never declared a dividend on the grounds that a portion of the employment compensation previously paid to him was a "*de facto* dividend" he expected to continue, even though this Court has never recognized the doctrine of "*de facto* dividend" and Maryland law provides dividends cannot accrue or be payable unless they are declared by the corporation's Board of Directors?

322(c). Maryland Rule 2-341 governs amendment of pleadings. When leave of court is required, Rule 2-341(c) provides that "[a]mendments shall be freely allowed when justice so permits." Denial of leave to amend is appropriate if the amendment would result in prejudice to the other party, undue delay, or where amendment would be futile because the claim is irreparably flawed. *RRC Ne.*, 413 Md. at 673-74. This flexibility ensures that cases succeed or fail on their merits, not on the niceties of pleading. *Crowe v. Houseworth*, 272 Md. 481, 485 (1974).

Here, the circuit court dismissed the initial complaint with prejudice and denied Edward's request for leave to amend, which he made at the hearing on the motion to dismiss and again in his motion to alter or amend the judgment. We assume that the circuit court, after careful consideration, concluded that the proposed amended complaint did not cure the complaint's deficiencies and therefore determined that it would have been futile for plaintiff to file it.

The Appellate Court reversed the circuit court based on its analysis of the complaint alone, without considering the proposed amended complaint. We take a different approach and analyze the legal sufficiency of Edward's proposed amended complaint, summarized above. That's because, if the proposed amended complaint would have stated a cause of action, Edward should have been granted leave to file it. As explained below, we conclude that the proposed amended complaint alleged sufficient facts to support one of the three causes of action Edward asserted.

DISCUSSION

Basic Principles of Corporate Law

"A commercial corporation is a legal entity conceived by the mind of man and legitimated by statute for the avowed purpose of achieving a maximum profit with a minimum exposure to liability." *Dixon v. Process Corp.*, 38 Md. App. 644, 645 (1978). Corporations are legal entities separate and apart from their owners. *United Elec. Supply Co. v. Greencastle Gardens Section III Ltd. P'ship*, 36 Md. App. 70, 79 (1977). The statutory provisions governing Maryland corporations are contained in the Corporations and Associations Article. Titles 1 through 3 of that article are collectively known as the Maryland General Corporation Law (the "MGCL"). The MGCL covers, among other things, the formation of corporations, rights and duties of stockholders, officers, and directors, and extraordinary actions such as dissolving and winding up the affairs of corporations. The internal affairs of a corporation are governed by the relevant provisions of the Corporations Article, along with the corporation's articles of incorporation, bylaws, and any stockholder agreements.[8]

[8] These instruments may alter the default rules governing the internal affairs of corporations set forth in the MGCL. *See, e.g.*, CA §§ 2-405.2 ("The charter of the corporation may include any provision expanding or limiting the liability of its directors and officers . . . ."); 2-406 ("Unless the charter of the corporation provides otherwise . . . ."); 2-407 ("[U]nless the charter or the bylaws of the corporation provide otherwise . . . ."); 2-408 ("Unless the bylaws of the corporation provide otherwise . . . ."), 2-409 ("Unless the bylaws of the corporation provide otherwise . . . ."); 2-413 ("Unless the bylaws provide otherwise, the board of directors shall elect the officers."); 2-503 ("Unless the charter provides otherwise, meetings of stockholders shall be held as . . . ."); 2-504 ("Unless the charter or bylaws provide otherwise . . . .").

A corporation is owned, but not managed, by its stockholders. *Mona v. Mona Elec. Grp., Inc.*, 176 Md. App. 672, 695 (2007). The responsibility for managerial oversight of a corporation lies with its board of directors pursuant to CA § 2-401, which provides:

> (a) All business and affairs of a corporation, whether or not in the ordinary course, shall be managed by or under the direction of a board of directors.
> (b) All powers of the corporation may be exercised by or under authority of the board of directors except as conferred on or reserved to the stockholders by law or by the charter or bylaws of the corporation.

The board of directors exercises its authority either directly or through the officers it appoints. CA § 2-401; *Werbowsky v. Collomb*, 362 Md. 581, 598-99 (2001). Directors are elected by the stockholders. CA § 2-404. Among other duties, directors are responsible for establishing the compensation structure for executives. *Mona*, 176 Md. App. at 695.

The standards for director conduct are set forth in CA § 2-405.1. Enacted by the General Assembly in 1976, this statute was designed to replace the prior and sometimes inconsistent or confusing articulations of such standards in Maryland caselaw.[9] Under the current version of CA § 2-405.1(c):

Given the context in which this case comes to us—a dismissal of the complaint for failure to state a claim—none of these instruments are before the Court. The discussion that follows is limited, therefore, to the relevant provisions of the MGCL.

[9] *See, e.g.*, *Booth v. Robinson*, 55 Md. 419, 436-37 (1881) (explaining that the confidence reposed in directors "require[s] a strict and faithful discharge of duty"); *Fisher v. Parr*, 92 Md. 245, 265 (1901) (establishing that directors are "required to perform their duties with skill and reasonable care"); *Carrington v. Basshor*, 118 Md. 419, 442-43 (1912) (requiring proof of "gross or culpable negligence" to render a director personally liable); *Matthews v. Headley Chocolate Co.*, 130 Md. 523, 528 (1917) (explaining that a corporation can proceed in equity for the "illegal, fraudulent, ultra vires, or grossly negligent acts of its directors or officers"); *Pritchard v. Myers*, 174 Md. 66, 77 (1938) (noting that a director may be personally liable if he or she "neglect[s] to exercise that

> [a] director of a corporation shall act: (1) [i]n good faith; (2) [i]n a manner the director reasonably believes to be in the best interests of the corporation; and (3) [w]ith the care that an ordinarily prudent person in a like position would use under similar circumstances.

In *Shenker v. Laureate Education, Inc.*, this Court held that CA § 2-405.1 was the exclusive source of the directors' standard of care *only* when acting in their *managerial* capacity. 411 Md. 317, 339 (2009). According to *Shenker*, when directors step out of their managerial role to negotiate the price stockholders will receive for their shares in a cash-out merger, they act as fiduciaries to the stockholders and thereby assume the fiduciary duties of maximizing the price and disclosing all material information concerning the transaction. *Id.* at 336-39.[10]

The General Assembly took note of *Shenker* and amended CA § 2-405.1 in 2016 to clarify that the statute applies to all of the directors' conduct.[11]

---

degree of diligence and prudence in the management of the corporation . . . which ordinarily skillful and prudent men generally exercise in that situation"); *Williams v. Salisbury Ice Co.*, 176 Md. 13, 23 (1939) (requiring the plaintiff to produce proof of fraudulent conduct on behalf of the director to maintain an action against the corporation); *Warren v. Fitzgerald*, 189 Md. 476, 491 (1948) (returning to the fraud standard articulated in *Matthews v. Headley Chocolate Co.*); *Parish v. Md. & Va. Milk Producers Ass'n*, 250 Md. 24, 74 (1968) (explaining that corporate directors may be personally liable for loss of corporate funds due to "gross or culpable negligence").

[10] Noting that CA § 2-405.1(g) stated that "[n]othing in this section creates a duty of any director of a corporation enforceable otherwise than by the corporation or in the right of the corporation," the Court held that this bar against direct actions applied only to managerial activities subject to section 2-405.1's standard of care, but not to claims based on duties imposed by directors acting in a non-managerial role. *Shenker*, 411 Md. at 348-49.

[11] Section 2-405.1 provides that:

(a) In this section, "act" includes, as the context requires:

(1) An act, omission, failure to act, or determination made not to act; or

(2) To act, omit to act, fail to act, or make a determination not to act.

(b) This section applies to acts of an individual who:

(1) Is or was a director of a corporation; and

(2) Is acting or was acting in the individual's official capacity as a director of a corporation.

(c) A director of a corporation shall act:

(1) In good faith;

(2) In a manner the director reasonably believes to be in the best interests of the corporation; and

(3) With the care that an ordinarily prudent person in a like position would use under similar circumstances.

(d)(1) A director is entitled to rely on any information, opinion, report, or statement, including any financial statement or other financial data, prepared or presented by:

(i) An officer or employee of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(ii) A lawyer, certified public accountant, or other person, as to a matter which the director reasonably believes to be within the person's professional or expert competence; or

(iii) A committee of the board on which the director does not serve, as to a matter within its designated authority, if the director reasonably believes the committee to merit confidence.

(2) A director is not acting in good faith if the director has any knowledge concerning the matter in question which would cause the reliance to be unwarranted.

(e) A director who acts in accordance with the standard of conduct provided in this section shall have the immunity from liability described under § 5-417 of the Courts and Judicial Proceedings Article.

* * *

(g) An act of a director of a corporation is presumed to be in accordance with subsection (c) of this section.

(h) An act of a director of a corporation relating to or affecting an acquisition or a potential acquisition of control of the corporation or any other transaction or potential transaction may not be subject to a higher duty or greater scrutiny than is applied to any other act of a director.

Three observations about CA § 2-405.1 in its current form are relevant here. *First*, section 2-405.1 applies only to a current or former director acting in their "official capacity as a director of the corporation." CA § 2-405.1(b). This section does not, therefore, apply to stockholders or officers acting in their capacity as such.

Second, the General Assembly eliminated the distinction drawn by the Court in *Shenker* between managerial and non-managerial director duties by clarifying that section 2-405.1 is the "sole source" of directors' duties to the corporation and its stockholders "whether or not a decision has been made to enter into an acquisition or a potential acquisition of control of the corporation or enter into any other transaction involving the corporation." CA § 2-405.1(i).

Third, the General Assembly deleted subsection (g) from the prior version of the statute, which stated that "[n]othing in this section creates a duty of any director of a corporation enforceable otherwise than by the corporation or in the right of the corporation." The elimination of this subsection removed the impediment to a direct action against a director by a stockholder who suffers an injury distinct from that of the corporation.

(i) This section:

> (1) Is the sole source of duties of a director to the corporation or the stockholders of the corporation, whether or not a decision has been made to enter into an acquisition or a potential acquisition of control of the corporation or enter into any other transaction involving the corporation; and
> (2) Applies to any act of a director, including an act as a member of a committee of the board of directors.

As owners, stockholders participate in the economic success of the corporation. One way is through distributions.[12] Relevant here, a distribution is "[a] direct or indirect transfer of money . . . in respect of any of its shares[,]" CA § 2-301(a)(1)(i), and may be made in the form of a "declaration or payment of a dividend[,]" CA § 2-301(b)(1). Dividends must be "authorized by [a corporation's] board of directors . . . subject to any restriction in its charter and the limitations in [CA § 2-311]." CA § 2-309(b). For example, a corporation may not make a distribution if doing so would render the corporation unable to pay its bills as they come "due in the usual course of business." CA § 2-311(a)(1)(i).

When the board properly authorizes a dividend, unless a subordination agreement requires otherwise, the stockholder becomes a creditor on the same footing as the corporation's other creditors. CA § 2-311(d); *see also Heyn v. Fid. Tr. Co.*, 174 Md. 639, 646-49 (1938). Directors may, under certain circumstances, be held personally liable *to the corporation* for improperly authorizing dividends in violation of the standard of care set forth in CA § 2-405.1. CA § 2-312.

Against the foregoing backdrop, we turn to the causes of action asserted by Edward in his proposed amended complaint.

Count I – Oppression of Minority Stockholder

Edward alleged that petitioners engaged in "illegal, fraudulent and oppressive" conduct, entitling him to various forms of equitable relief short of Eastland's dissolution. In doing so, he invoked CA § 3-413, which establishes the statutory basis for involuntary

[12] Another way is through an increase in the value of the stock.

dissolution. Section 3-413(b)(2) provides that "any stockholder entitled to vote in the election of directors of a corporation may petition a court of equity to dissolve the corporation on grounds that . . . [t]he acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent."

Though the statute does not define oppression, this Court has described it as "adverse treatment of minority shareholders in a closely held corporation by those who wield power within the company." *Bontempo v. Lare*, 444 Md. 344, 365 (2015). The term "closely held corporation" is used to describe a corporation with certain defining attributes, namely, "(1) a small number of stockholders; (2) no ready market for the corporate stock; and (3) substantial majority stockholder participation in the management, direction, and operations of the corporation." *Edenbaum v. Schwarcz-Osztreicherne*, 165 Md. App. 233, 257 (2005) (citation omitted). Thus, stockholders of a closely held corporation often consider themselves co-owners with an active role in its management and an expectation of continued employment. *Id.*

Minority stockholders can be vulnerable to "freeze out" tactics of the majority stockholders. As the court explained in *Edenbaum*:

> [T]he very nature of a closely held corporation makes it possible for a majority shareholder to "freeze out" a minority shareholder, that is, "'deprive a minority shareholder of her interest in the business or a fair return on her investment.'" "The limited market for stock in a [closely held] corporation and the natural reluctance of potential investors to purchase a noncontrolling interest in a [closely held] corporation that has been marked by dissension can result in a minority shareholder's interest being held 'hostage' by the controlling interest, and can lead to situations where the majority 'freeze out' minority shareholders by the use of oppressive tactics."

165 Md. App. at 257-58 (internal citations omitted). The Court also noted that the "reasonable expectations view" of oppressive conduct:

> [r]ecogniz[es] that a minority shareholder who reasonably expects that ownership in the corporation would entitle him to a job, a share of the corporate earnings, and a place in corporate management would be 'oppressed' in a very real sense when the majority seeks to defeat those expectations and there exists no effective means of salvaging the investment.

Id. at 258 (citation omitted).

The Court in *Edenbaum* also observed that the sole remedy expressly provided under CA § 3-413 is involuntary dissolution. Due to the drastic nature of a corporate dissolution, however, the Court held that before ordering a dissolution, courts should first consider other equitable remedies to rectify the oppressive conduct. 165 Md. App. at 260-61. The Court identified a non-exhaustive list of such potential remedies.[13] *Id*.

---

[13] The list of equitable remedies short of dissolution include:

(a) The entry of an order requiring dissolution of the corporation at a specified future date, to become effective only in the event that the stockholders fail to resolve their differences prior to that date;
(b) The appointment of a receiver, not for purposes of dissolution, but to continue the operation of the corporation for the benefit of all the stockholders, both majority and minority, until differences are resolved or "oppressive" conduct ceases;
(c) The appointment of a "special fiscal agent" to report to the court relating to the continued operation of the corporation, as a protection to its minority stockholders, and the retention of jurisdiction of the case by the court for that purpose;
(d) The retention of jurisdiction of the case by the court for the protection of the minority stockholders without appointment of a receiver or a "special fiscal agent";
(e) The ordering of an accounting by the majority in control of the corporation for funds alleged to have been misappropriated;

In *Bontempo v. Lare*, this Court adopted the reasonable expectations doctrine articulated in *Edenbaum* for assessing stockholder oppression claims. 444 Md. at 348. Under this doctrine, the dashed subjective hopes and desires of the stockholder will not sustain a claim for oppression. *Id.* at 366. Conduct is oppressive if it defeats objectively reasonable expectations that were "central" to the stockholder's decision to join the corporation. *Id.* This Court also endorsed *Edenbaum*'s requirement that before considering dissolution, courts should first consider less drastic equitable remedies. *Id*. at 368-70.

We cautioned, however, that "[a] court acting under CA § 3-413 to fashion a remedy less drastic than dissolution is not required to match its remedy to an expectation of the

---

(f) The issuance of an injunction to prohibit continuing acts of "oppressive" conduct and which may include the reduction of salaries or bonus payments found to be unjustified or excessive;
(g) The ordering of affirmative relief by the required declaration of a dividend or a reduction and distribution of capital;
(h) The ordering of affirmative relief by the entry of an order requiring the corporation or a majority of its stockholders to purchase the stock of the minority stockholders at a price to be determined according to a specified formula or at a price determined by the court to be a fair and reasonable price;
(i) The ordering of affirmative relief by the entry of an order permitting minority stockholders to purchase additional stock under conditions specified by the court;
(j) An award of damages to minority stockholders as compensation for any injury suffered by them as the result of "oppressive" conduct by the majority in control of the corporation.

Edenbaum, 165 Md. App. at 260-61.

Here, Edward's proposed amended complaint did not seek dissolution of Eastland, but rather various equitable remedies, including those drawn directly from the above list and adopted by this Court in *Bontempo* (specifically, remedies "b", "d", "f", and "e").

minority shareholder." *Id*. at 369. In *Bontempo*, the trial court found that the minority stockholder, though an at-will employee, had a reasonable expectation of continued employment. *Id.* at 357-58. But, although the trial court granted *other* equitable remedies for his defeated expectations, it declined to order the company to reinstate him or pay employment-related damages. *Id.* We held that because of his at-will status, his defeated expectation of continued employment did not require the trial court to order employment-related relief. *Id*. at 373-74.

We explained that the reasonable expectations inquiry is a means for "detecting oppression, but it does not dictate the relief that an equity court is to grant." *Id.* at 371. Thus, we stated: "To hold that the court abused its discretion and that [the minority stockholder] was entitled to employment-related relief—whether reinstatement or [monetary damages]—would be to convert a discretionary equitable remedy into a substantive legal right." *Id*. at 374. In other words, a minority stockholder's at-will status precludes him from asserting a legal entitlement to employment relief, but does not preclude him from seeking other forms of equitable relief. In fashioning relief, courts should consider a variety of factors and interests beyond the defeated expectations of the oppressed stockholder, including the interests of "other shareholders, its management, employees, and customers."[14] *Id*. at 370.

[14] Even if a minority stockholder of a closely held corporation alleges a reasonable expectation of continued employment at the time he became a stockholder and is subsequently terminated, it does not necessarily follow that the termination of his at-will employment would *alone* support an oppression claim and entitlement to equitable relief. Reasonable expectations notwithstanding, a minority stockholder who is employed at will

We turn now to petitioners' arguments on appeal. Citing the absence of allegations that Edward had an agreement that spelled out his rights as an employee or stockholder, petitioners argue that Edward alleged "nothing more than subjective hopes, desires, and disappointment." They argue that, in the absence of an agreement stating otherwise, Edward was an at-will employee and therefore not entitled to equitable relief under *Bontempo* and *Edenbaum*.

Petitioners also argue that Edward "could not have had reasonable expectations in committing his capital to Eastland because he never alleged that he made such a commitment." They argue he never invested time or money in Eastland, but rather, "his family gave him shares."

Crediting Edward's allegations and the reasonable inferences drawn therefrom; we conclude that Edward's proposed amended complaint states a cause of action for stockholder oppression. To recap: Eastland is a family-owned and operated business founded by Edward's father. Only family members have been involved in Eastland's

---

might be subsequently terminated by the board of directors for legitimate business reasons that would not *alone* support an oppression claim. Such claims must be determined on the specific facts and circumstances of the case, which is why *Edenbaum* and *Bontempo* emphasize the flexibility and discretion courts of equity have in determining what, if any, remedies are appropriate. Here, we conclude only that the *totality* of the facts and circumstances alleged by Edward in his proposed amended complaint suffice to state a cause of action.

Notably, here, although Edward alleges a reasonable expectation of continued employment, he does not request the court to restore him to his former position or award him back-pay. The equitable relief he seeks short of dissolution appears to be directed at protecting his expectation of sharing in Eastland's profits.

management and operations, and until December 31, 2008, Edward's parents were the only stockholders.

Edward first worked for the company as a child. As an adult, he embarked on an engineering career but was soon recruited to Eastland by his father, with promises of employment, managerial responsibilities, and ownership. He joined the company, and was soon promoted to Vice-President and elected to the board of directors. Then, on December 31, 2008, as promised by his father, he became a stockholder of Eastland at the same time as his brother Oscar. He first received stock not from his family, as petitioners argue, but directly from Eastland following an amendment to its articles of incorporation that authorized the issuance of additional stock. That's also how Oscar first received stock. And, Edward received profit distributions the same way as the other stockholders did—through bonuses determined by Pricha.

Edward has alleged sufficient facts to support the reasonableness of his expectation that, by virtue of his status as a stockholder, he would have continued employment and managerial involvement in Eastland. It's reasonable for the founders of a family-owned business to structure their business and estate plan to pass along the business—both management and ownership—to the next generation in the family. It's also reasonable for a son who leaves a profession at his father's request to expect continued employment by the family-owned business, particularly when the period of employment predating the issuance of shares could be seen as the father's test of his son's commitment and dedication to the company. Put simply, based on the well-pleaded facts of the proposed amended complaint, Edward alleged a reasonable expectation—not legal entitlement, but

expectation—that continued employment and managerial input as a director would go along with stock ownership.

Edward likewise pleaded sufficient facts to support a reasonable expectation that he would receive his share of the distributable profits in accordance with his ownership percentage. As a general matter, one of the reasons for owning stock in the first place is to enjoy the fruits of its economic success. James J. Hanks, Jr., *Maryland Corporation Law* § 7.1, at 223 (1994, 2019 Supp.). That alone adds a measure of reasonableness to Edward's expectation.

Moreover, before Edward joined the company, his father explained to him the company's practice of paying out the company's profits in the form of bonuses rather than dividends. His father explained that this practice would continue after Edward became an owner, and it did. Edward detailed his total compensation from 2000 until his termination in 2018, including very specific amounts—down to the dollar—of compensation attributable to profit bonuses once he became a stockholder.

Until he left the company in August 2017, Pricha ran Eastland as its President and unilaterally determined the amount of the profit bonuses. After Pricha severed ties in 2017, the stockholders considered at the 2018 annual stockholders' meeting whether to abandon Pricha's practice of distributing profits through bonuses and instead distribute profits through dividends. That this topic made its way onto the agenda at this time makes sense. With Pricha gone, somebody had to decide whether, how, and in what amounts profits should be distributed to Eastland's stockholders. And, under Maryland law, that "somebody" is supposed to be the board of directors, CA § 2-309(b), and the "how" is

supposed to be by dividends, CA § 2-301. Although the stockholders apparently did not move to a dividend model, taken together, these allegations, if proven, support the inference that from the stockholders' perspective, the issue wasn't *whether* distributable profits would be paid, but *how* and *how much*.[15]

According to Edward, however, after he was terminated, Eastland stopped distributing profits through bonuses and refused to distribute profits through dividends. Instead, Vipa and Oscar drew excessive compensation and diverted corporate funds for personal use to reduce the company's profits. As a result of these actions, Edward was denied all economic benefits attendant to his stock ownership. These allegations suffice to state a viable cause of action for minority stockholder oppression under the standard articulated in *Edenbaum* and adopted in *Bontempo*.[16]

---

[15] We qualify "profits" with "distributable" intentionally. A corporation is not required to distribute profits. That decision is made by the board of directors and, like all board actions, is subject to the standard of care set forth in CA § 2-405.1. *Renbaum v. Custom Holdings, Inc.*, 386 Md. 28, 54 n.22, 55 (2005). The board of directors may determine, in the exercise of its business judgment, that some or all of the profits should be reserved for a variety of legitimate business purposes. *See* CA § 2-304.

[16] A few words about the Appellate Court's use of the concept of "*de facto* dividends." The Court framed the issue as "whether the *de facto* dividend claimed by [Edward], or the majority shareholders' refusal to expressly declare a dividend, could be an objectively reasonable expectation by him, according to the circumstances set out in the complaint." *Mekhaya*, 256 Md. App. at 519. The Court stated that although the Maryland statutes "do not recognize expressly a 'de facto' dividend," nor do they "foreclose such a dividend." *Id*.

Although, when considered in context, the Appellate Court's use of the phrase "*de facto* dividend" does not upend Maryland law, as petitioners argue, we believe such use was unnecessary to resolve the issue before the Court and we therefore discourage its use. By suggesting that the MGCL does not "foreclose such a dividend," the Court introduced

Should Edward prove his oppression claim at trial, the court may impose appropriate equitable relief short of dissolution, consistent with the principles expressed by this Court in *Bontempo*.[17] Accordingly, because the proposed amendment to Count I would not have

---

the possibility that Maryland law permits corporations to pay dividends outside of the statutory parameters of the MGCL. Therefore, nothing in this or the Appellate Court's opinion should be interpreted as altering or creating exceptions to the statutory framework governing the authorization and payment of dividends by Maryland corporations.

[17] In adjudicating this claim and, if it comes to that, in fashioning equitable relief, the court should differentiate between actions taken in an individual's official capacity as a director and those taken as a stockholder. As discussed above, actions taken by the board of directors are subject to the provisions of CA § 2-405.1. So, for example, if Tisnai, who is not alleged to be a stockholder, acted in his official capacity as a director, his conduct would be subject to section 2-405.1.

The analysis is more complicated with respect to Vipa and Oscar, who collectively own a majority of Eastland's stock *and* serve as directors. Section 2-405.1 applies to their conduct taken in their official capacity as directors, but not for wielding power enjoyed by virtue of their collective majority in stock ownership. In that regard, under Maryland law, "minority shareholders are entitled to protection against the fraudulent or illegal action of the majority. When a majority stockholder abuses its power, a minority stockholder is entitled to appropriate relief." *Lerner v. Lerner Corp.*, 132 Md. App. 32, 53 (2000) (internal citation omitted). When the majority stockholders are also board members—as is often the case in closely held corporations—conduct in violation of CA § 2-405.1 might also give rise to an oppression claim under CA § 3-413, and vice versa. Nevertheless, we do not rule out the possibility that certain conduct could be insulated from liability under CA § 2-405.1 *and*, at the same time, sustain an oppression claim under CA § 3-413. Because we are only concerned with the legal sufficiency of the proposed amended complaint, we will not speculate whether this is such a case.

Here, Edward alleges in conclusory fashion that Vipa's and Oscar's actions were taken as directors *and* as majority stockholders. Certain actions of which Edward complains are, in the absence of provisions of the articles of incorporation, bylaws, or stockholder agreements to the contrary, vested by the MGCL in the board of directors. When a stockholder complains of an action vested in the board of directors, unless the stockholder can allege facts which, if proven true, show that such actions were not taken by board of directors, then the plaintiff stockholder must allege facts that overcome the presumption afforded directors under CA § 2-405.1. Edward's proposed complaint does

been futile, the circuit court erred by dismissing Count I with prejudice and denying Edward leave to amend that count pursuant to his proposed amended complaint.

Count II – Breach of Fiduciary Duty

Edward alleges that, as directors of Eastland, Oscar, Vipa, and Tisnai owe fiduciary duties to Eastland and its stockholders. He also alleges that Oscar and Vipa, as majority stockholders, owe him fiduciary duties as well. The factual basis for Edward's breach of fiduciary duty claim is essentially the same as his oppression claim, specifically, Oscar's and Vipa's excessive compensation, diversion of corporate funds for personal use, and taking of profits without paying Edward his rightful share.

Petitioners argue that Edward has improperly sued in his individual capacity for injuries allegedly suffered by the corporation. To pursue this claim, they argue, Edward was required to bring a derivative claim on behalf of Eastland, not a direct claim against Vipa, Oscar, and Tisnai. Petitioners also argue that Edward hasn't pleaded sufficient facts to overcome the presumption under CA § 2-405.1 that the directors, in deciding whether to authorize dividends, complied with the standard of care.

We will briefly dispense with petitioners' argument that Edward has not alleged facts to overcome section 2-405.1's presumption. A presumption is just that—a

---

not clarify whether the actions he complains of were taken by the board of directors or by Vipa and Oscar without proper authorization from the board. Ordinarily, this lack of specificity could give rise to a motion to dismiss or, perhaps, a motion for more definite statement. However, for the same reasons discussed below in connection with our discussion of Count II, Edward's allegations suffice at the pleading stage to overcome the presumption afforded under CA § 2-405.1, so the lack of specificity does not render his pleading defective. Whether he can adduce the evidence in discovery to prove those allegations and overcome that presumption is not before us.

presumption. If Edward had alleged only that the company was profitable and the board refused to authorize a dividend, such a bare allegation would not overcome the presumption. But he has alleged more than that. In a nutshell, Edward has alleged that the directors have permitted Oscar and Vipa to loot the company by taking corporate funds for personal use. He also alleges that they have excluded him from sharing in the company's profits while allowing Oscar and Vipa to take profits through excessive compensation. At the pleading stage, these allegations suffice to overcome section 2-405.1's presumption that the directors complied with the standard of care.

We agree with petitioners, however, that Edward has not stated direct claims for breach of fiduciary duties for compensatory damages against Oscar, Vipa, and Tisnai for the alleged excessive payments (compensation or otherwise) made to Vipa and Oscar. Edward argues that he is entitled to pursue a direct claim because section 2-405.1 expressly acknowledges that directors owe duties to stockholders. And he also argues that he has a direct claim under the common law rule that majority stockholders owe fiduciary duties to minority stockholders. *See Lerner v. Lerner Corp.*, 132 Md. App. 32, 53 (2000) ("A majority stockholder in a close corporation owes a fiduciary obligation not to exercise that control to the disadvantage of minority stockholders."). Although both statements correctly articulate the law—indeed Edward's proposed amended complaint faithfully parrots the standard of care under section 2-405.1 and *Lerner v. Lerner's* articulation of the majority stockholders' duty to minority stockholders—the defects in his pleading lie elsewhere.

First, the cases addressing the fiduciary duties owed by majority stockholders to minority stockholders do not hold that such duties give rise to direct actions for compensatory damages. Rather, *Lerner*, which observed that minority stockholders were entitled to "protection against the fraudulent or illegal action of the majority[,]" involved, among other things, a claim for rescission of a reverse stock split that effectively eliminated a minority stockholder. 132 Md. App. at 53. In describing such fiduciary duties, *Lerner* relied on *Mottu v. Primrose*, 23 Md. 482, 496-98 (1865), which also involved a claim in equity to invalidate the board of directors' attempt to extend their term in office. *Lerner*, 132 Md. App. at 53. *Lerner* also relied on *Baker v. Standard Lime & Co.*, 203 Md. 270, 274-77 (1953), which involved a claim by minority stockholders for various forms of equitable relief, not compensatory damages, arising out of amendments to the corporate charter, the authorization of preferred stock, purchase and retirement of common stock, and a stock split. *Lerner*, 132 Md. App. at 53. And finally, *Lerner* relied on *Twenty Seven Trust v. Realty Growth Investors*, 533 F. Supp. 1028, 1029 (D. Md. 1982), which involved a federal securities claim. *Lerner*, 132 Md. App. at 53. In *Twenty Seven Trust*, the court relied on Maryland law's recognition of the majority stockholder's duties to the minority stockholders to establish that the breach of such duties gives rise to claims for equitable relief by minority stockholders. 533 F. Supp. at 1034-35. Thus, under the circumstances alleged by Edward here, recourse for the majority stockholder's breach of fiduciary duties would lie in his oppression count.

Second, to the extent Edward alleges that the board of directors duly authorized Eastland to distribute profits to its stockholders (however couched) and Edward did not

receive his rightful share, then his claim for compensatory damages would be against Eastland, as the party statutorily responsible for making that payment. CA § 2-311(d); *see also Heyn*, 174 Md. at 646-49 (characterizing an unpaid distribution as a debt of the corporation). Edward did not name Eastland as a defendant in Count II.

Third, to the extent Oscar and Vipa misused corporate funds, either by taking excessive compensation, taking distributions in excess of their rightful share, or by pocketing corporate funds for personal use, the injury was sustained by the corporation, not Edward personally. *See Mona*, 176 Md. App. at 705. Edward, as a minority stockholder, did not suffer an injury distinct from Eastland's that could sustain a claim for compensatory damages, which is the only remedy Edward sought in Count II. As a result and because he did not sue derivatively on behalf of Eastland, the court properly dismissed this count.[18] *Id*.

In *Waller v. Waller*, this Court discussed the importance of distinguishing between claims belonging to the individual (direct claims) and claims belonging to the corporation:

> It is a general rule that an action at law to recover damages for an injury to a corporation can be brought only in the name of the corporation itself acting through its directors, and not by an individual stockholder though the injury may incidentally result in diminishing or destroying the value of the stock. The reason for this rule is that the cause of action for injury to the property of a corporation or for impairment or destruction of its business is in the corporation, and such an injury, although it may diminish the value of the capital stock, is not primarily or necessarily a damage to the stockholder, and hence the stockholder's derivative right can be asserted only through the corporation. The rule is advantageous not only because it avoids a multiplicity of suits by the various stockholders, but also because any damages so recovered will be available for the payment of debts of the

[18] Because the issue is not before us, we do not address whether such a claim would lie if Edward sought equitable remedies instead of compensatory damages.

> corporation, and, if any surplus remains, for distribution to the stockholders in proportion to the number of shares held by each.
>
> Generally, therefore, a stockholder cannot maintain an action at law against an officer or director of the corporation to recover damages for fraud, embezzlement, or other breach of trust which depreciated the capital stock or rendered it valueless. Where directors commit a breach of trust, they are liable to the corporation, not to its creditors or stockholders, and any damages recovered are assets of the corporation, and the equities of the creditors and stockholders are sought and obtained through the medium of the corporate entity. . . . The rule is applicable even when the wrongful acts were done maliciously with intent to injure a particular stockholder. It is immaterial whether the directors were animated merely by greed or by hostility toward a particular stockholder, for the wrongdoing affects all the stockholders alike.

187 Md. 185, 189-91 (1946) (citations omitted).

A direct action is appropriate only where the board has breached a duty owed directly to the shareholder and the shareholder has suffered "an injury that is separate and distinct from any injury suffered either directly by the corporation or indirectly by the stockholder because of the injury to the corporation." *Oliveira v. Sugarman*, 451 Md. 208, 240, 244-45 (2017) (quoting James J. Hanks, Jr., *Maryland Corporation Law* § 7.12(b), at 276.18). Otherwise, the claim belongs to the corporation, and if the directors improperly fail to pursue it, stockholders may pursue a derivative claim on the corporation's behalf.[19]

[19] Ordinarily, directors have the sole discretion to initiate litigation to enforce a corporate right. *Werbowsky*, 362 Md. at 599. A derivative action is "an extraordinary equitable device," *id.*, which "place[s] in the hands of the individual shareholder a means to protect the interests of the corporation from the misfeasance and malfeasance of 'faithless directors and managers,'" *Danielewicz v. Arnold*, 137 Md. App. 601, 626 (2001) (quoting *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541, 548 (1949)). Because Edward did not assert a derivative claim, we need not address or summarize the procedural steps and requirements of such claims.

Claims for excessive compensation and other misuses or diversions of corporate funds belong to the corporation, not the stockholders. In *Mona v. Mona Electric Group, Inc.*, where the majority stockholder allegedly used excessive compensation to reduce profits and deprive dividends to the minority stockholder, the Appellate Court explained:

> What [the minority stockholder] does not adequately address, however, is how the injury for which he sought damages—the alleged overpayment of compensation to [the majority stockholder] by the company—was personal to him. It does not follow that, merely because [the company] has two shareholders, . . . an overpayment of compensation to [the majority stockholder] is a loss to [the minority stockholder]. [The majority stockholder's] compensation was paid to him by [the company] for his role as an officer of the company. Any wrongful overpayment by the company of compensation to an officer is at most a loss to the company.

176 Md. App. at 705.

The distinction between direct and derivative claims preserves the allocation of duties and responsibilities entrusted to the board of directors under the MGCL. As discussed above, the board's managerial oversight responsibilities include setting executive compensation and declaring dividends. If directors violate the standard of care imposed by CA § 2-405.1 in either of these functions, the injury would be to the corporation because such payments would deprive *the corporation* of funds that could have been deployed for other legitimate business purposes. Thus, if the recovery is had by the corporation instead of the individual stockholder, the corporation's board of directors would then be required to exercise its managerial discretion, consistent with the standards set forth in CA § 2-405.1, to determine what to do with the recovered funds. Such judgment should be based on the facts and circumstances that exist at the time the recovered funds are received. For example, the board could decide to pay dividends, reserve funds for

future expansion, or raise executive pay. In contrast, a direct action by Edward, if successful, would transfer *corporate* funds from the majority stockholders to the minority stockholder in circumvention of the board of directors' oversight responsibilities, which fails to remedy the injury to Eastland. *See, e.g.*, *Bontempo v. Lare*, 217 Md. App. 81, 128-30 (2014), *aff'd*, 444 Md. 344 (2015). Claims of this nature, therefore, belong to the corporation, not to the minority stockholder.

Because Edward did not have a viable direct claim for compensatory damages and did not pursue Count II as a derivative claim on Eastland's behalf, the circuit court correctly dismissed Count II of the complaint with prejudice and without leave to amend.

Count III – Unjust Enrichment

A cause of action for unjust enrichment consists of three elements: "(1) [a] benefit conferred upon the defendant by the plaintiff; (2) [a]n appreciation or knowledge by the defendant of the benefit; and (3) [t]he acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value." *Berry & Gould, P.A. v. Berry*, 360 Md. 142, 151 (2000) (internal quotation marks and citation omitted); *see also Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 295 (2007) (identifying the same three elements). Damages in an unjust enrichment action are measured by the gain to the defendant and not by the loss to the plaintiff. *Mogavero v. Silverstein*, 142 Md. App. 259, 276 (2002). This is so because an unjust enrichment claim "is not aimed at compensating the plaintiff, but at forcing the defendant to disgorge benefits that it would be unjust for him to keep." *Hill*, 402 Md. at 296.

Edward's claim for unjust enrichment against Oscar and Vipa is predicated on the same facts supporting his breach of fiduciary duty claim. The result is the same, and for the same reason: the benefits of excessive compensation and funds for personal use came at the corporation's expense, not Edward's directly. Accordingly, having asserted Count III in his individual capacity instead of derivatively on Eastland's behalf, the circuit court did not err in dismissing Count III with prejudice and without leave to amend.

CONCLUSION

Edward's proposed amended complaint set forth sufficient facts to state a claim for stockholder oppression under Maryland law. The proposed amended complaint did not, however, allege sufficient facts to support Edward's direct causes of action for breach of fiduciary duty and unjust enrichment. Accordingly, we shall remand the case to the Appellate Court with instructions to remand the case to the circuit court for further proceedings consistent with this opinion.

JUDGMENT OF THE APPELLATE COURT OF MARYLAND AFFIRMED IN PART AND REVERSED IN PART. CASE REMANDED TO THE APPELLATE COURT WITH INSTRUCTIONS TO REMAND TO THE CIRCUIT COURT FOR HOWARD COUNTY. 50 PERCENT OF THE COSTS TO BE PAID BY PETITIONERS, AND 50 PERCENT TO BE PAID BY RESPONDENT.