

STATE OF MICHIGAN
COURT OF APPEALS

In re CARACO PHARMACEUTICAL
LABORATORIES, LTD., SHAREHOLDER
LITIGATION.

JOSEPH ALESSI, SANJEEV ARORA, MADHU
ARORA and SARAH ARORA,

Plaintiffs-Appellants,

v

CARACO PHARMACEUTICAL
LABORATORIES, LTD., GURPARTAP SINGH
SACHDEVA, FOLSOM F. BELL, TIMOTHY S.
MANNEY, EDDIE MUNSON, SUN
PHARMACEUTICAL LABORATORIES, LTD.,
and SUN PHARMA GLOBAL, INC.,

Defendant-Appellees,

and

SUDHIR V. VALIA, SAILESH T. DESAI,
JITENDRA N. DOSHI and DILIP S. SHANGHVI,

Defendants.

Before: MARKEY, P.J., and SAWYER and WILDER, JJ.

PER CURIAM.

Plaintiffs appeal by leave granted an order of the trial court granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(8) and denying plaintiffs leave to amend their complaint. We reverse.

On appeal, the only question before this Court is whether the trial court abused its discretion when it denied plaintiffs leave to amend their complaint. “This court reviews a trial court’s decision regarding amendment of a complaint pursuant to MCR 2.116(I)(5) for an abuse of discretion.” *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 138; 676 NW2d 633 (2003). A trial court abuses its discretion when it reaches a result falling outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388;

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719 NW2d 809 (2006). “This Court reviews de novo questions concerning the interpretation of statutes and court rules.” *Tinman v Blue Cross & Blue Shield of Michigan*, 264 Mich App 546, 555; 692 NW2d 58 (2004).

The trial court granted summary disposition in favor of defendants under MCR 2.116(C)(8). When a trial court grants a motion for summary disposition under MCR 2.116(C)(8), (9), or (10), “the court *shall* give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified.” MCR 2.116(I)(5) (emphasis added). “The term ‘shall’ denotes a mandatory rather than a discretionary course of action.” *Liggett Restaurant Group, Inc*, 260 Mich App at 138. A motion to amend should ordinarily be granted unless it would be futile. *Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 647 (1997). Additionally, a motion to amend could be denied for a particularized reason such as bad faith or dilatory motive on the part of the moving party, repeated failures to cure prior deficiencies in the pleadings, or undue prejudice to the opposing party if the motion were granted. *Id.*

In *Liggett*, the trial court granted summary disposition in the defendants’ favor pursuant to MCR 2.116(C)(8). *Liggett Restaurant Group*, 260 Mich App at 132. The trial court denied the plaintiff’s request for leave to amend its complaint under MCR 2.116(I)(5) as an effort in futility. *Id.* On appeal, this Court agreed with the plaintiff that the trial court had abused its discretion by denying leave to amend the complaint, opining:

In denying [the] plaintiff’s request to file a motion to amend its complaint, the trial court simply concluded that any amendment of [the] plaintiff’s complaint would be futile. While the better practice would have been for [the] plaintiff to file a motion for leave to amend, we note that there was no basis for the trial court’s decision in this instance. A determination of futility must be based on the legal insufficiency of the claim on its face. Because [the] plaintiff had yet to identify the proposed claim, there was no basis for the trial court’s determination that it was legally insufficient. Accordingly, the trial court abused its discretion in this regard. [*Liggett Restaurant Group*, 260 Mich App at 139 (citations omitted).]

This Court reversed the trial court’s decision denying leave to amend the complaint, and remanded the case to give the plaintiff the opportunity to amend its complaint. *Id.* at 130, 139.

The facts in this case are, for all essential purposes, identical to those presented in *Liggett*. Defendants here were granted summary disposition pursuant to MCR 2.116(C)(8). The trial court responded to plaintiffs’ request for leave to amend the complaint as follows:

You know what, I tell ‘ya, it’s hard for me to imagine amendments to the complaint that would suffice, I really don’t see it. The four counts in the complaint alleged breach of fiduciary duty. I just don’t see it. And I think what I’ll do is I’m going to deny the request to amend the complaint. But what you can do is request reconsideration of my decision and you can file a brief and I’ll look at it and then the defendants can respond to it and I’ll make a decision without any oral argument on the case. And that’s the way I’m going to handle that.

Thus, just as occurred in *Liggett*, the trial court denied plaintiffs' request to file an amended complaint, finding any potential amendment insufficient, without first having reviewed a proposed amended complaint. Although the trial court might have found "it[] hard . . . to imagine amendments to the complaint that would suffice," the trial court abused its discretion by denying plaintiffs the opportunity to provide legally sufficient allegations in an amended complaint, as plaintiffs should, in most instances, be permitted to do under MCR 2.116(I)(5).

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ David H. Sawyer
/s/ Kurtis T. Wilder