

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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E. JEROME MCCARTHY,

Plaintiff-Counterdefendant-  
Appellee,

v

LYLE W. MILLER,

Defendant-Counterplaintiff-  
Appellant.

UNPUBLISHED  
February 21, 2003

No. 231829  
Ingham Circuit Court  
LC No. 96-083948-CZ

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Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Defendant appeals by right the trial court's order of judgment in favor of plaintiff and the order denying defendant's motion for new trial or judgment notwithstanding the verdict (JNOV). We reverse and remand.

Defendant argues that as a former shareholder of Servco, Inc., plaintiff had no standing, either derivatively or individually, to pursue his claims of misappropriation of a corporate opportunity and assets and breach of fiduciary duty; thus, the trial court erred in denying his motion for summary disposition on this issue. We agree. A trial court's denial of a motion for summary disposition is reviewed de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Further, statutory interpretation is a question of law that is reviewed de novo on appeal. *Oakland County Bd of Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998).

In concluding that plaintiff had standing to bring this action, the trial court opined:

I feel that an investor in a closed corporation who allegedly finds out after disposing of his interest that an officer of that corporation misappropriated assets, and I use the term "allegedly" knowing that these things have yet to be proven, the question is – if it is a viable theory, I feel that such a person does have standing to assert that he has been damaged, and Count II clearly alleges specific misappropriations of corporate assets for personal use. Count III also alleges misappropriation of assets, although it's not quite clear to me exactly what it is that Count III is alleging that Count II is not alleging. Nevertheless, I think he has standing to bring those two claims.

The Michigan Business Corporation Act (MBCA) was enacted in 1972 “to provide for the organization and regulation of corporations [and] to prescribe their duties, rights, powers, immunities and liabilities . . . .” 1972 PA 284, preamble. Unless otherwise provided by the act or other law, the MBCA applies to every domestic and foreign corporation transacting business in Michigan, including close corporations (such as Servco).<sup>1</sup> MCL 450.1121; see, also, MCL 450.1103(c). One of the purposes of the MBCA is to “simplify, clarify, and modernize the law governing business corporations.” MCL 450.1103(a). Under the MBCA, a shareholder’s authority and standing to raise claims by means of a derivative action is defined by MCL 450.1492a, which provides:

A shareholder may not commence or maintain a derivative proceeding unless the shareholder meets all of the following criteria:

- (a) The shareholder was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time.
- (b) The shareholder fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.
- (c) The shareholder continues to be a shareholder until the time of judgment, unless the failure to continue to be a shareholder is the result of corporate action in which the former shareholder did not acquiesce and the derivative proceeding was commenced prior to the termination of the former shareholder’s status as a shareholder.

In this case, plaintiff has no standing to bring a derivative action under § 492a because he did not continue his status as a shareholder of the corporation as required by § 492a(c). Plaintiff sold his shares of stock to defendant in 1994 and has not sought to rescind the sale of the stock for purposes of possibly reinstating his status as a shareholder. Plaintiff’s failure to continue his status as a current shareholder is not the result of corporate action in which plaintiff did not acquiesce. In fact, plaintiff requested that defendant purchase his interests in Servco and fully participated in the valuation of his shares. Plaintiff is a former shareholder of Servco.

Plaintiff asserts that even if he has no standing to derivatively bring this action, he has standing to sue in his individual capacity. MCL 450.1489 creates a direct or individual cause of action and provides an independent and statutory basis for a cause of action. *Estes v Idea Engineering & Fabricating, Inc.*, 250 Mich App 270, 278, 283; 649 NW2d 84 (2002). MCL 450.1489 provides, in relevant part:

A shareholder may bring an action in the circuit court of the county in which the principal place of business or registered office of the corporation is located to

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<sup>1</sup> To the extent that plaintiff might be asserting a standing argument under the common law, we reject such argument. Comprehensive, specific, and detailed legislation, such as the MBCA, supersedes the common law pertaining to the same subject. See *In re Flury Estate*, 249 Mich App 222, 226-227; 641 NW2d 863 (2002).

establish that the acts of the directors or those in control of the corporation are illegal, fraudulent, or willfully unfair and oppressive to the corporation or to the shareholder.

MCL 450.1489 clearly provides that any direct or individual cause of action may also be brought by a shareholder.<sup>2</sup> Thus, plaintiff is still required to be a current shareholder rather than a former shareholder. “When interpreting statutory language, our obligation is to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute.” *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). MCL 450.1109(1) defines “shareholder” as a “person holding units of proprietary interest in a corporation . . . .”<sup>3</sup> The plain and ordinary language of the statute, i.e., “person holding units,” indicates that the shareholder must be a current shareholder. See *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999) (if the plain meaning of the language is clear, judicial construction is normally neither necessary nor permitted). “Holding” is defined as “the act of a person or thing that holds,” while “hold” is defined as “to have . . . .”<sup>4</sup> *Random House Webster’s College Dictionary* (1992), pp 638-639.<sup>5</sup> We conclude that the word “holding” as used in § 109(1) indicates something that is occurring in the present rather than the past. Moreover, in *Estes, supra* at 282, this Court stated, albeit in dicta, that “plaintiffs in a § 489 suit may only be current shareholders.”

To the extent that plaintiff relies on MCL 450.1541a to claim that he has standing to bring claims in his individual capacity, we reject the argument. A § 541a action seeks to redress wrongs to the corporation. *Estes, supra* at 282. In *Estes, supra* at 285, this Court stated that “a plaintiff in a § 541a action is a corporation suing for breach of a duty to the corporation or a shareholder suing derivatively on behalf of the corporation.” In the instant case, plaintiff is neither.

In light of our disposition of the above issue, we need not address defendant’s remaining arguments.

Because plaintiff lacked standing to bring his claims, we reverse and remand for entry of an order of JNOV on the basis that plaintiff has failed to state a claim on which relief can be granted. We do not retain jurisdiction.

/s/ Jane E. Markey  
/s/ Henry William Saad  
/s/ Michael R. Smolenski

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<sup>2</sup> A shareholder must suffer an injury separate and distinct from that suffered by other shareholders in order to maintain an individual action in his own right. *Christner v Anderson, Nietzke & Co, P C*, 433 Mich 1, 9; 444 NW2d 779 (1989).

<sup>3</sup> For purposes of MCL 450.1492a through MCL 450.1497, MCL 450.1491a(b) the act also defines “shareholder” as “a record or beneficial owner of shares and includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the owner’s behalf.”

<sup>4</sup> “Holding” is not defined in the MBCA.

<sup>5</sup> A court may consult dictionary definitions when determining statutory intent. *Koontz, supra*.