

500 Mich. 133
Supreme Court of **Michigan**.

Ivan FRANK, Jeffrey Dwoskin, Phillip D. Jacokes, Roy Krauthamer, Blake Adler, Matt Kovaleski, James Brunk, and **IJF Holdings, LLC**, Plaintiffs–Appellees,

v.

Joshua LINKNER, **Brian Hermelin**, Crackerjack, LLC, formerly known as ePrize, LLC, Crackerjack Holdings, LLC, formerly known as ePrize Holdings, LLC, **David Katzman**, **Gary Shiffman**, **Arthur Weiss**, Camelot-ePrize, LLC, **BH Acquisitions, LLC**, Daniel Gilbert, and Jay Farner, Defendants–Appellants.

Docket No. 151888

Calendar No. 4

Argued December 8, 2016

Decided May 15, **2017**

Synopsis

Background: Members brought action against other members in limited liability company (LLC), asserting claims for LLC member oppression, breach of contract, and breach of fiduciary duty after LLC sold substantially all of its assets and members received nothing for their common shares. The Circuit Court, Oakland County, **Colleen A. O'Brien, J.**, granted other members' motion for summary disposition. Members appealed. The Court of Appeals, **Murray, J.**, **310 Mich.App. 169, 871 N.W.2d 363**, reversed. Other members' application for leave to appeal was granted.

Holdings: The Supreme Court, **Markman, C.J.**, held that:

[1] three-year limitation period for actions seeking an award of damages for improper conduct by managers or members in control of LLC constituted “statute of limitations,” rather than statute of repose;

[2] cause of action for LLC member oppression accrued at the time that LLC manager substantially interfered with the interests of member as member, even if member had not yet incurred calculable financial injury; and

[3] members' actions for LLC member oppression accrued when LLC amended its operating agreement to subordinate members' common shares, rather than when LLC sold substantially all of its assets and members received nothing for their shares.

Affirmed in part, reversed in part, and remanded.

West Headnotes (22)

[1] Limitation of Actions

🔑 Liabilities Created by Statute

Limitation of Actions

🔑 Nature of harm or damage, in general

Provision of Limited Liability Company (LLC) Act, setting forth limitation period for actions seeking an award of damages for improper conduct by managers or members in control of LLC, provides alternative statutes of limitations, one based on the time of discovery of the cause of action and the other based on the time of accrual of the cause of action. **Mich. Comp. Laws Ann. § 450.4515(1)(e)**.

Cases that cite this headnote

[2] Limitation of Actions

🔑 Liabilities Created by Statute

A cause of action for limited liability company (LLC) member oppression accrues at the time an LLC manager has substantially interfered with the interests of a member as a member, even if that member has not yet incurred a calculable financial injury. **Mich. Comp. Laws Ann. § 450.4515(1)(e)**.

1 Cases that cite this headnote

[3] Appeal and Error

🔑 Cases Triable in Appellate Court

Limitation of Actions

🔑 Questions for Jury

The question whether a cause of action is barred by the applicable statute of limitations is one of law, which the Supreme Court reviews de novo.

[2 Cases that cite this headnote](#)

[4] Appeal and Error

🔑 [Cases Triable in Appellate Court](#)

The Supreme Court reviews de novo a trial court's decision regarding a summary disposition motion.

[3 Cases that cite this headnote](#)

[5] Appeal and Error

🔑 [Matters or Evidence Considered in Determining Question](#)

Appeal and Error

🔑 [Striking out or dismissal](#)

In reviewing whether a motion to dismiss a claim on the grounds that the claim is barred by the applicable statute of limitations was properly decided, the Supreme Court considers all documentary evidence and accepts the complaint as factually accurate unless affidavits or other appropriate documents specifically contradict it. [Mich. Ct. R. 2.116\(C\)\(7\)](#).

[2 Cases that cite this headnote](#)

[6] Appeal and Error

🔑 [Cases Triable in Appellate Court](#)

An issue of statutory interpretation is a question of law that is subject to review de novo.

[Cases that cite this headnote](#)

[7] Limitation of Actions

🔑 [Operation as to rights or remedies in general](#)

Three-year limitation period for actions seeking an award of damages for improper conduct by managers or members in control of limited liability company (LLC) constituted

“statute of limitations,” rather than statute of repose; limitation period ran from the date that the cause of action accrued, allowing plaintiff to toll running of the limitation period under fraudulent-concealment statute did not render the limitation period nugatory, and characterizing the limitation period as statute of limitations did not render it nugatory. [Mich. Comp. Laws Ann. §§ 450.4515\(1\)\(e\), 600.5855](#).

[Cases that cite this headnote](#)

[8] Limitation of Actions

🔑 [Causes of action in general](#)

Limitation of Actions

🔑 [Operation as to rights or remedies in general](#)

A statute of limitations is generally measured from the date a claim accrues, while a statute of repose is measured from some other particular event, such as the date of the last culpable act or omission of the defendant; moreover, a statute of repose cuts off the liability of a defendant, and it may thereby prevent a cause of action from ever accruing.

[1 Cases that cite this headnote](#)

[9] Limitation of Actions

🔑 [Operation as to rights or remedies in general](#)

A “statute of repose” prevents a cause of action from ever accruing when the injury is sustained after the designated statutory period has elapsed; a “statute of limitations,” however, prescribes the time limits in which a party may bring an action that has already accrued.

[Cases that cite this headnote](#)

[10] Statutes

🔑 [Clarity and ambiguity; multiple meanings](#)

When the language of a statute is clear, it is presumed that the Legislature intended the meaning expressed therein.

Cases that cite this headnote

[11] Statutes

🔑 Language

The Legislature is presumed to understand the meaning of the language it enacts into law; each word of a statute is presumed to be used for a purpose, and a court may not assume that the Legislature inadvertently made use of one word or phrase instead of another.

Cases that cite this headnote

[12] Limitation of Actions

🔑 In general;what constitutes discovery

The common-law “discovery rule” provides that a claim does not accrue until a plaintiff knows, or objectively should know, that he has a cause of action and can allege it in a proper complaint.

Cases that cite this headnote

[13] Limitation of Actions

🔑 Nature of harm or damage, in general

Limitation of Actions

🔑 Concealment of Cause of Action

While the two-year limitation period for actions seeking an award of damages for improper conduct by managers or members in control of a limited liability company (LLC) does not commence until a plaintiff discovered or reasonably should have discovered the cause of action, the running of the three-year limitation period for those same actions can only be tolled pursuant to the fraudulent-concealment statute if a plaintiff did not discover and reasonably would not have discovered the cause of action and the plaintiff can prove that the defendant committed affirmative acts or misrepresentations that were designed to prevent subsequent discovery. **Mich. Comp. Laws Ann. §§ 450.4515(1)(e), 600.5855.**

Cases that cite this headnote

[14] Limitation of Actions

🔑 Nature of harm or damage, in general

Limitation of Actions

🔑 Concealment of Cause of Action

The three-year limitation period for actions seeking an award of damages for improper conduct by managers or members in control of a limited liability company (LLC) bars a claim if the defendant did not fraudulently conceal the claim and no other tolling mechanism applies, even if the plaintiff did not discover and reasonably would not have discovered the cause of action during that period. **Mich. Comp. Laws Ann. §§ 450.4515(1)(e), 600.5855.**

Cases that cite this headnote

[15] Limitation of Actions

🔑 Liabilities Created by Statute

Limitation of Actions

🔑 Nature of harm or damage, in general

Under the statute of limitations for actions seeking an award of damages for improper conduct by managers or members in control of a limited liability company (LLC), a plaintiff must bring a claim within two years after he or she discovers or reasonably should have discovered a claim or within three years after accrual, whichever occurs first. **Mich. Comp. Laws Ann. § 450.4515(1)(e).**

Cases that cite this headnote

[16] Limitation of Actions

🔑 Liabilities Created by Statute

Limitation of Actions

🔑 Nature of harm or damage, in general

The Limited Liability Company (LLC) Act provides alternative statutes of limitations, requiring a plaintiff to bring a claim seeking monetary damages for LLC member oppression within two years after discovery of the cause of action or three years after accrual of the cause of action, whichever occurs first. **Mich. Comp. Laws Ann. § 450.4515(1)(e).**

[Cases that cite this headnote](#)

[17] Limitation of Actions

[Liabilities Created by Statute](#)

Limited liability company (LLC) members' cause of action for LLC member oppression accrued at the time that LLC manager substantially interfered with the interests of members as members, even if members had not yet incurred calculable financial injury; the actionable harm, within meaning of the general rule for claim accrual, was substantial interference with interests of members as members, monetary damages was just one of many potential remedies for the harm, and action for monetary damages had same accrual date than actions involving other remedies. **Mich. Comp. Laws Ann. § 450.4515(1)(e)**, 600.5827.

[1 Cases that cite this headnote](#)

[18] Limitation of Actions

[Liabilities Created by Statute](#)

Unlike an action for tortious injury to a person, an action for limited liability company (LLC) member oppression does not necessarily accrue when a plaintiff incurs a calculable financial injury; instead, it accrues when a plaintiff incurs the actionable harm, i.e., when defendants' actions allegedly interfered with the interests of a plaintiff as a member, making the plaintiff eligible to receive some form of relief for improper conduct by managers or members in control of the LLC. **Mich. Comp. Laws Ann. § 450.4515**.

[1 Cases that cite this headnote](#)

[19] Limitation of Actions

[Causes of action in general](#)

The term “wrong” referred to in statute setting forth the general rule for claim accrual specifies the date on which the defendant's breach harmed the plaintiff. **Mich. Comp. Laws Ann. § 600.5827**.

[1 Cases that cite this headnote](#)

[20] Limitation of Actions

[Liabilities Created by Statute](#)

Once a plaintiff proves that a manager of a limited liability company (LLC) engaged in an action or series of actions that substantially interfered with his or her interests as a member, the harm has been incurred, and therefore the LLC member oppression claim has accrued; under the general rule for claim accrual, this is true regardless of the time when monetary damages result. **Mich. Comp. Laws Ann. § 450.4515(1)(e)**, 600.5827.

[Cases that cite this headnote](#)

[21] Limitation of Actions

[Liabilities Created by Statute](#)

Limited liability company (LLC) members' actions against other members for LLC member oppression accrued when LLC amended its operating agreement to subordinate members' common shares, rather than when LLC sold substantially all of its assets and members received nothing for their shares; act of subordinating members' shares was the alleged willfully unfair and oppressive act that interfered with members' interests as members, members could have sought remedy at that point, and subsequent liquidation that occurred was only relevant to the extent that members could recover monetary damages. **Mich. Comp. Laws Ann. § 450.4515(1)(e)**.

[Cases that cite this headnote](#)

[22] Limitation of Actions

[Liabilities Created by Statute](#)

Additional damages resulting from the same harm do not reset the accrual date or give rise to a new cause of action for improper conduct by a manager in control of a limited liability company (LLC). **Mich. Comp. Laws Ann. § 450.4515**.

[Cases that cite this headnote](#)

*577 BEFORE THE ENTIRE BENCH

Opinion

OPINION

Markman, C.J.

[1] [2] This case involves a cause of action for member oppression within a limited liability company (LLC) under [MCL 450.4515](#). Specifically, this Court granted leave to appeal to consider: “(1) whether [MCL 450.4515\(1\)\(e\)](#) constitutes a statute of repose, a statute of limitations, or both; and (2) when the plaintiffs' cause of action accrued.” *Frank v. Linkner*, 499 [Mich.](#) 859, 876 N.W.2d 551 (2016). We hold that [MCL 450.4515\(1\)\(e\)](#) provides alternative statutes of limitations, one based on the time of discovery of the cause of action and the other based on the time of accrual of the cause of action. We further hold that a cause of action for LLC member oppression accrues at the time an LLC manager has substantially interfered with the interests *578 of a member as a member, even if that member has not yet incurred a calculable financial injury. Accordingly, plaintiffs' actions accrued here when ePrize LLC (ePrize) amended its operating agreement on March 1, 2009, to subordinate plaintiffs' common shares and not in 2012 when ePrize sold substantially all of its assets. We affirm in part and reverse in part the judgment of the Court of Appeals and remand to the trial court for further proceedings consistent with this opinion.

I. FACTS AND HISTORY

Defendant ePrize was founded by defendant Joshua Linkner in 1999 as a [Michigan](#) LLC specializing in online sweepstakes and interactive promotions. Plaintiffs are former employees of ePrize who acquired ownership units in ePrize. Plaintiffs allege Linkner orally promised them that their interests in ePrize would never be diluted or subordinated. In 2005, plaintiffs' shares in ePrize were converted into shares in ePrize Holdings, LLC (ePrize Holdings), whose sole assets were its ownership units in ePrize.¹ In 2007, ePrize ran into financial difficulties and required an infusion of cash. To remedy this problem, ePrize obtained \$28 million in loans in the form of “B

Notes” from various defendant-members of ePrize and other investors; plaintiffs were not invited to participate in these investments. In 2009, ePrize remained struggling to meet its loan obligations and therefore issued new “Series C Units.” These units were offered to various investors, including those who had obtained B Notes.² In exchange for the Series C Units, investors were required, among other things, to make capital contributions, guarantee a portion of a \$14.5 million loan from Charter One Bank, and convert their B Notes into “Series B Units.”

On March 1, 2009, ePrize executed its fifth operating agreement (the Operating Agreement). Pursuant to the Operating Agreement, both the Series C and Series B Units carried distribution priority over the common units held by plaintiffs. The Operating Agreement further provided that if the company were ever sold, Series C Units would receive the first \$68.25 million of any available distribution. On August 20, 2012, ePrize sold substantially all of its assets and, pursuant to the Operating Agreement, distributed nearly \$100 million in net proceeds to the holders of Series C and Series B Units.³ Plaintiffs received nothing for their common shares.

On April 19, 2013, plaintiffs brought various claims against defendants, including claims for LLC member oppression, breach of contract, and breach of fiduciary duty. The trial court granted defendants' motion for summary disposition, concluding that plaintiffs' claims were untimely. The Court of Appeals reversed. *Frank v. Linkner*, 310 [Mich.App.](#) 169, 871 N.W.2d 363 (2015). The Court of Appeals first determined *579 that the “gravamen” of plaintiffs' claims was for member oppression under [MCL 450.4515](#) and analyzed the timeliness of their claims accordingly.⁴ *Id.* at 181–182, 871 N.W.2d 363. Next, the Court held that the three-year limitation period in [MCL 450.4515\(1\)\(e\)](#) constitutes a statute of limitations, rather than a statute of repose, because the limitation period refers to the duration of time within which a plaintiff may bring a claim after the cause of action has accrued. *Id.* at 183–186, 871 N.W.2d 363. Finally, the Court held that plaintiffs' claims did not accrue until 2012, when ePrize sold substantially all of its assets, because until that sale plaintiffs had not incurred a calculable financial injury and any damage claim before that time would have been “speculative.” *Id.* at 188–190, 871 N.W.2d 363. Accordingly, the Court concluded that

plaintiffs' claims were timely filed before the expiration of the three-year limitation period. *Id.* at 172, 871 N.W.2d 363.

II. STANDARD OF REVIEW

[3] [4] [5] [6] Pursuant to MCR 2.116(C)(7), a party may move to dismiss a claim on the grounds that the claim is barred by the applicable statute of limitations. “The question whether a cause of action is barred by the applicable statute of limitations is one of law, which this Court reviews de novo. This Court also reviews de novo a trial court's decision regarding a summary disposition motion.” *Seyburn, Kahn, Ginn, Bess, Deitch and Serlin, P.C. v. Bakshi*, 483 Mich. 345, 354, 771 N.W.2d 411 (2009). “In reviewing whether a motion under MCR 2.116(C)(7) was properly decided, we consider all documentary evidence and accept the complaint as factually accurate unless affidavits or other appropriate documents specifically contradict it.” *Kuznar v. Raksha Corp.*, 481 Mich. 169, 175–176, 750 N.W.2d 121 (2008). An issue of statutory interpretation is a question of law that is subject to review de novo. *Putkamer v. Transamerica Ins. Corp.*, 454 Mich. 626, 631, 563 N.W.2d 683 (1997).

III. ANALYSIS

A. THREE-YEAR LIMITATION PERIOD

[7] The first issue presented is whether the three-year limitation period set forth in MCL 450.4515(1)(e) constitutes a statute of limitations or a statute of repose.⁵ How it is properly characterized is relevant because the Court of Appeals has held that the latter, unlike the former, cannot be tolled pursuant to the fraudulent-concealment statute, MCL 600.5855. *Baks v. Moroun*, 227 Mich.App. 472, 486–490, 576 N.W.2d 413 (1998), overruled in part on other grounds by *Estes v. Idea Engineering & Fabricating, Inc.*, 250 Mich.App. 270, 649 N.W.2d 84 (2002).

The Michigan Limited Liability Company Act, MCL 450.4515(1), provides:

A member of a limited liability company may bring an action ... to establish that acts of the managers or members ... are illegal or fraudulent or constitute willfully unfair and oppressive conduct.... If the member establishes grounds for relief, the circuit court may issue an order or grant relief as it considers appropriate, including, but not limited to, an order providing for any of the following:

* * *

*580 (e) An award of damages to the limited liability company or to the member. An action seeking an award of damages must be commenced within 3 years after the cause of action under this section has accrued or within 2 years after the member discovers or reasonably should have discovered the cause of action under this section, whichever occurs first.

Defendants contend that the three-year limitation period constitutes a statute of repose while the two-year limitation period constitutes a statute of limitations. The Court of Appeals rejected this contention, concluding instead that MCL 450.4515(1)(e) contains two alternative statutes of limitations, one predicated upon *discovery* of the cause of action and the other predicated upon *accrual* of the cause of action. We agree with the Court of Appeals.

[8] [9] A “statute of limitations” is a “law that bars claims after a specified period; specifically], a statute establishing a time limit for suing in a civil case, based on the date when the claim *accrued*.” *Black's Law Dictionary* (10th ed.) (emphasis added). In contrast, a “statute of repose” is a “statute barring any suit that is brought after a specified time *since the defendant acted*....” *Id.* (emphasis added). That is, a statute of limitations is generally measured from the date a claim accrues, while a statute of repose is measured from some other particular event, such as “the date of the last culpable act or omission of the defendant.” *CTS Corp. v. Waldburger*, 573 U.S. —, 134 S.Ct. 2175, 2182, 189 L.Ed.2d 62 (2014). Moreover, a statute of repose cuts off the liability of a defendant, and it may thereby “prevent[] a cause of action from ever accruing.” *O'Brien v. Hazelet & Erdal*, 410 Mich. 1, 15, 299 N.W.2d 336 (1980). In sum, “[a] statute of repose prevents a cause of action from ever accruing when the injury is sustained after the designated statutory period has elapsed. A statute of limitation[s], however, prescribes the time limits in which a party may bring an action

that has already accrued.” *Sills v. Oakland Gen. Hosp.*, 220 Mich.App. 303, 308, 559 N.W.2d 348 (1996), citing *O'Brien*, 410 Mich. at 15, 299 N.W.2d 336.

[10] MCL 450.4515(1)(e) provides in part, “An action seeking an award of damages must be commenced within 3 years after the cause of action under this section has accrued....” (Emphasis added.) “When the language of a statute is clear, it is presumed that the Legislature intended the meaning expressed therein.” *Epps v. 4 Quarters Restoration LLC*, 498 Mich. 518, 529, 872 N.W.2d 412 (2015). Given that the three-year limitation in MCL 450.4515(1)(e) clearly runs from the date the cause of action has accrued, absent any indication to the contrary, we presume the Legislature intended the three-year limitation period to constitute a statute of limitations.

Defendants argue that this Court's decision in *Detroit Gray Iron & Steel Foundries, Inc. v. Martin*, 362 Mich. 205, 106 N.W.2d 793 (1961), supports their argument that the three-year limitation period in MCL 450.4515(1)(e) constitutes a statute of repose. In our judgment, however, *Detroit Gray Iron* calls into question this argument and provides an apt illustration of the distinction between a statute of limitations and a statute of repose. In *Detroit Gray Iron*, this Court addressed a provision in the Michigan general corporation act (MGCA) that provided:

“No director or directors shall be held liable for any delinquency under this section after 6 years from the date of such delinquency, or after 2 years from the time when such delinquency is discovered by one complaining thereof, *581 whichever shall sooner occur.” [*Id.* at 215, 106 N.W.2d 793 (citation omitted).]

The plaintiffs in *Detroit Gray Iron* argued that the limitation periods in this provision applied only to a director's fiduciary obligations as set forth in the MGCA and not to the enforcement of other common-law rights; therefore, the statute of limitations for suits alleging a director's breach of a common-law duty could be tolled pursuant to the fraudulent-concealment statute. *Id.* at 213–214, 106 N.W.2d 793. We rejected that argument, holding that the limitation periods in the MGCA applied to these claims and noting that under the act a plaintiff “must sue within 2 years of its discovery of the wrong or within 6 years of its occurrence, whichever sooner occurs, or forever bear the loss.” *Id.* at 218, 106 N.W.2d 793.

Assuming arguendo that *Detroit Gray Iron* can be interpreted as holding that the six-year limitation period in the MGCA constitutes a statute of repose, this holding does not support defendants' position that the three-year limitation period in MCL 450.4515(1)(e) constitutes a statute of repose. The six-year limitation period in the MGCA ran from the date of *delinquency*, which refers to the date on which defendant's “violation of a law or duty” occurred. *Black's Law Dictionary* (10th ed.). Because the limitation period ran from the date of a particular wrongful act by a defendant, it constituted a statute of repose. *CTS Corp.*, 573 U.S. at —, 134 S.Ct. at 2182. In contrast, the three-year limitation period in MCL 450.4515(1)(e) runs from the date of “accrual” of the cause of action and therefore constitutes a statute of limitations. *Sills*, 220 Mich.App. at 308, 559 N.W.2d 348. Accordingly, defendants' reliance on this Court's decision in *Detroit Gray Iron* is misplaced.⁶

Defendants also argue that despite the use of the word “accrue,” the three-year limitation period constitutes a statute of repose. They note that an LLC member-oppression claim is distinct from other claims in that it can arise out of a series of actions, rather than just a single action. See MCL 450.4515(2) (“[W]illfully unfair and oppressive conduct’ means a *continuing course of conduct* or a significant action or *series of actions* that substantially interferes with the interests of the member as a member.”) (emphasis added). Accordingly, they argue that in order to create a statute of repose for a claim that matures only after a *sequence* of events, the limitation period must necessarily be understood to commence upon “accrual” of the action.

[11] This is simply not so. If the Legislature had intended to make the three-year period a statute of repose, it could have defined a period that runs from a defendant's final act of “illegal or fraudulent or ... willfully unfair and oppressive conduct toward the [LLC] or the member.” MCL 450.4515(1). Instead, the three-year period runs from the date the cause of action “accrues.” MCL 450.4515(1)(e). The Legislature is “presumed to understand the meaning of the language it enacts into law.... Each word of a statute is presumed to be used for a purpose.... *582 The Court may not assume that the Legislature inadvertently made use of one word or phrase instead of another.” *Robinson v. Detroit*, 462 Mich. 439, 459, 613 N.W.2d 307 (2000). Because the three-year period runs from “accrual,” rather than from a wrongful act of

the defendant, we must presume the Legislature intended it to constitute a statute of limitations. See *CTS Corp. v. Waldburger*, 473 U.S. at —, 134 S.Ct. at 2182.

Finally, defendants argue that considering the two-year limitation period in conjunction with the three-year limitation period in MCL 450.4515(1)(e) indicates that the latter constitutes a statute of repose. MCL 450.4515(1)(e) provides that a plaintiff must bring a claim for damages within three years of accrual or two years after discovery of the cause of action, whichever “occurs first.” Thus, the two-year limitation period shortens the amount of time within which a plaintiff must bring a claim by providing only two years after discovery to bring a claim, even if that period terminates sooner than three years after accrual. Therefore, defendants contend, if the three-year limitation period constitutes a statute of limitations, it is rendered nugatory, as that limitation period will never apply given that the two-year limitation period will always occur first. MCL 450.4515(1)(e); *Johnson v. Recca*, 492 Mich. 169, 177, 821 N.W.2d 520 (2012) (“[C]ourts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory.”) (quotation marks and citation omitted).

[12] This argument presumes that if the three-year limitation period constitutes a statute of limitations, it is necessarily subject to the common-law discovery rule. That rule provides that “a claim does not accrue until a plaintiff knows, or objectively should know, that he has a cause of action and can allege it in a proper complaint.” *Trentadue v. Buckler Automatic Lawn Sprinkler Co.*, 479 Mich. 378, 389, 738 N.W.2d 664 (2007). Similarly, the two-year limitation period in MCL 450.4515(1)(e) commences only when a plaintiff “discovers or reasonably should have discovered the cause of action under this section[.]” Thus, if the three-year limitation period is subject to the common-law discovery rule, the action would accrue at the same time the member discovered or reasonably should have discovered the cause of action. Accordingly, the three-year and two-year limitation periods would always commence at the same time and the former would obviously never apply, because the two-year limitation period would always “occur[] first.” MCL 450.4515(1)(e).

[13] However, *Trentadue* held that “courts may not employ an extrastatutory discovery rule to toll accrual....” *Trentadue*, 479 Mich. at 391–392, 738 N.W.2d 664.

Accordingly, defendants' initial assumption that the common-law discovery rule would necessarily apply to the three-year limitation period if it constituted a statute of limitations is without grounding. Instead, accrual of the three-year limitation period is governed by statutory law. MCL 600.5827 provides that a claim generally accrues “at the time the wrong upon which the claim is based was done....” This Court has held that the “wrong” in MCL 600.5827 is “the date on which the defendant's breach harmed the plaintiff, as opposed to the date on which defendant breached his duty.” *Moll v. Abbott Laboratories*, 444 Mich. 1, 12, 506 N.W.2d 816 (1993), citing *Connelly v. Paul Ruddy's Equip. Repair & Serv. Co.*, 388 Mich. 146, 200 N.W.2d 70 (1972). However, the running of a statutory period of limitations may be tolled pursuant to the fraudulent- *583 concealment statute, MCL 600.5855, which provides:

If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

Allowing a plaintiff to toll the running of the three-year limitation period under MCL 600.5855 does not render the three-year limitation period nugatory. Although similar, there is a consequential difference between the commencement of the two-year limitation in MCL 450.4515(1)(e) and the period of tolling pursuant to MCL 600.5855. As discussed earlier, the two-year limitation period commences when a plaintiff “discovers or reasonably should have discovered the cause of action under this section[.]” By contrast, tolling pursuant to MCL 600.5855 requires a plaintiff to show that the defendant “fraudulently conceal[ed] the existence of the claim or the identity of any person who is liable for the claim[.]” Accordingly, while the two-year limitation period does not commence until a plaintiff discovered or reasonably should have discovered the cause of action, the

running of the three-year limitation period can only be tolled if a plaintiff did not discover and reasonably would not have discovered the cause of action *and* the plaintiff can “prove that the defendant committed affirmative acts or misrepresentations that were designed to prevent subsequent discovery.” *Sills*, 220 Mich.App. at 310, 559 N.W.2d 348.

[14] [15] Considering these limitation periods in tandem, characterizing the three-year limitation period as a statute of limitations does not render it nugatory. A plaintiff has two years from the time he or she “discovers or reasonably should have discovered the cause of action” to bring a claim. MCL 450.4515(1)(e). However, a plaintiff cannot bring a claim three years after accrual of the cause of action, even if he or she did not discover and reasonably would not have discovered the cause of action during that period. MCL 600.5855. But if the plaintiff can show *fraudulent concealment*, he or she will still have two years within which to bring the claim from the time he or she discovers or reasonably should have discovered the claim, even if that happens more than three years after accrual. *Id.* In other words, the three-year limitation period bars a claim if the defendant did not fraudulently conceal the claim and no other tolling mechanism applies, even if the plaintiff did not discover and reasonably would not have discovered the cause of action during that period.⁷ As a result, concluding that the three-year limitation period constitutes a statute of limitations does not render it nugatory. Rather, a plaintiff must bring a claim within two years after he or she discovers or reasonably should have discovered a claim or within three years after accrual, whichever occurs first.

[16] In sum, because the three-year limitation period in MCL 450.4515(1)(e) runs from the date the cause of action accrues, it is properly understood as a *584 statute of limitations.⁸ Read as a whole, MCL 450.4515(1)(e) provides alternative statutes of limitations, requiring a plaintiff to bring a claim seeking monetary damages for LLC member oppression within two years after discovery of the cause of action or three years after accrual of the cause of action, whichever occurs first.

B. ACCRUAL

[17] The second issue presented concerns when plaintiffs' causes of action for LLC member oppression accrued.

As discussed earlier, the relevant statute, MCL 600.5827, provides:

Except as otherwise expressly provided, the period of limitations runs from the time the claim accrues. The claim accrues at the time provided in [MCL 600.5829 to MCL 600.5838], and in cases not covered by these sections the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results.

This Court has held that the date of the “wrong” referred to in MCL 600.5827 is “the date on which the defendant's breach harmed the plaintiff, as opposed to the date on which defendant breached his duty.” *Moll*, 444 Mich. at 12, 506 N.W.2d 816, citing *Connelly*, 388 Mich. at 150, 200 N.W.2d 70 (1982). Therefore, in order to determine when plaintiffs' actions for LLC member oppression accrued, this Court must determine the date on which plaintiffs first incurred the harms they assert. The relevant “harms” for that purpose are the actionable harms alleged in a plaintiff's cause of action.

Plaintiffs allege that defendants engaged in “member oppression” pursuant to MCL 450.4515, which provides that a court may grant relief to a member of an LLC if the member can show:

- (1) ... [t]he acts of the managers or members in control of the [LLC] are illegal or fraudulent or constitute willfully unfair and oppressive conduct.... If the member establishes grounds for relief, the circuit court may issue an order or grant relief as it considers appropriate, including, but not limited to, an order providing for any of the following:
 - (a) The dissolution and liquidation of the assets and business of the limited liability company.
 - (b) The cancellation or alteration of a provision in the articles of organization or in an operating agreement.
 - (c) The direction, alteration, or prohibition of an act of the limited liability company or its members or managers.

(d) The purchase at fair value of the member's interest in the limited liability company, either by the company or by any members responsible for the wrongful acts.

(e) An award of damages to the limited liability company or to the member....

(2) As used in this section, “willfully unfair and oppressive conduct” means a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the member as a member.... The term does not include conduct or actions that are permitted by the articles of organization, an operating agreement, another agreement to which the member is a *585 party, or a consistently applied written company policy or procedure.

In summary, [MCL 450.4515\(1\)](#) provides a cause of action for members of an LLC when the managers' actions are “illegal or fraudulent or constitute willfully unfair and oppressive conduct toward the limited liability company or the member.” “[W]illfully unfair and oppressive conduct” means a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the member as a member.” [MCL 450.4515\(2\)](#). Once a plaintiff has “establishe[d] grounds for relief” by proving that a defendant has engaged in one of these prohibited behaviors, “the circuit court may issue an order or grant relief as it considers appropriate, including, but not limited to,” monetary damages. [MCL 450.4515\(1\)](#). Thus, the “harm” that is actionable under [MCL 450.4515](#) is the “substantial [] interfer[ence] with the interests of the member as a member.” The statute then enumerates a variety of remedies that a court might provide to a plaintiff once he or she has shown that the defendant substantially interfered with the plaintiff's interests as a member.

Plaintiffs argue that their claims did not accrue until they first incurred a calculable financial injury after ePrize sold substantially all of its assets in 2012. They cite this Court's decision in [Connelly](#), 388 [Mich.](#) at 151, 200 N.W.2d 70, in support of the argument that their actions did not accrue until they incurred a calculable financial injury. In [Connelly](#), the plaintiff brought an action for damages for personal injury resulting from an industrial accident. *Id.* at 148, 200 N.W.2d 70. This Court held that “[i]n the case of an action for damages arising out of tortious injury to a

person, the cause of action accrues when all of the elements of the cause of action have occurred and can be alleged in a proper complaint,” including monetary damages. *Id.* at 150–151, 200 N.W.2d 70. In the instant case, plaintiffs argue that no monetary damages occurred before 2012 when the company was liquidated, and therefore their causes of action for member oppression did not accrue until 2012.

[18] However, plaintiffs' argument conflates monetary damages with “harm.” While the actionable harm in a claim for tortious injury to a person typically consists of some personal injury inflicted by another that is remedied by monetary damages, see, e.g., [Connelly](#), 388 [Mich.](#) at 150–151, 200 N.W.2d 70—the actionable harm for a member-oppression claim under [MCL 450.4515](#) consists of actions taken by the managers that “substantially interfere with the interests of the member as a member,” and monetary damages constitute just one of many potential remedies for that harm. [MCL 450.4515\(1\)](#) (“If the member establishes grounds for relief, the circuit court may issue an order or grant relief as it considers appropriate, including, but not limited to, an order providing for any of the following....”).⁹ Accordingly, unlike an action for tortious injury to a person, an action for LLC member oppression does not necessarily accrue when a plaintiff incurs a calculable financial injury. Instead, it accrues when a plaintiff incurs the actionable harm under [MCL 450.4515](#), i.e., when defendants' actions allegedly interfered with the interests of a plaintiff as a member, making the plaintiff eligible to receive some form of relief under [MCL 450.4515\(1\)](#).

[19] [20] *586 The Court of Appeals erred by focusing on the availability of monetary damages, rather than on when plaintiffs incurred “harm.” [MCL 600.5827](#) states that, unless otherwise provided by statute, “the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results.” And, as explained previously, “the term ‘wrong’ ... specifie[s] the date on which the defendant's breach harmed the plaintiff....” [Moll](#), 444 [Mich.](#) at 12, 506 N.W.2d 816. Once a plaintiff proves that a manager engaged in an action or series of actions that substantially interfered with his or her interests as a member, the “harm” has been incurred, and therefore the claim has accrued. Under [MCL 600.5827](#), this is true regardless of the time when monetary damages result. Thus, even if plaintiffs did not incur a calculable financial injury until

2012, their actions could still have accrued at an earlier date if their interests as members had been the subject of substantial interference.

To the extent that the Court of Appeals believed that an action for monetary damages has a different accrual date than an action involving another remedy under MCL 450.4515(1), the language of MCL 450.4515(1)(e) refutes this notion. MCL 450.4515(1)(e) provides in part: “An action seeking an award of damages must be commenced within 3 years after the cause of action *under this section* has accrued or within 2 years after the member discovers or reasonably should have discovered the cause of action *under this section*, whichever occurs first.” (Emphasis added.) That is, a cause of action “*under this section*” accrues when a manager has substantially interfered with a member's interests as a member. Had the Legislature intended to create an accrual date for a claim for monetary damages that was distinct from the accrual date for other forms of relief, the three-year and two-year limitation periods would run when a cause of action “*seeking an award of damages*” has accrued or been discovered. Plaintiffs' claims for monetary damages accrued at the same time as plaintiffs' claims for other forms of relief, at the time defendants' conduct substantially interfered with their interests as members.

C. APPLICATION

[21] [22] The alleged substantial interference with plaintiffs' interests as members in this case took place when their shares were subordinated in 2009. Plaintiffs allege that defendants' subordination of their shares violated MCL 450.4515 because defendants had promised that their shares would not be subordinated and defendants subsequently engaged in secretive self-dealing to ensure they profited at the expense of plaintiffs. The act of subordinating plaintiffs' shares constitutes the alleged “willfully unfair and oppressive act” that interfered with plaintiffs' interests as members. At *that* point plaintiffs could have sought a remedy under MCL 450.4515(1), including cancellation of provisions of the operating agreement, prohibition of enforcement of those provisions, or a buyout. MCL 450.4515(1)(b) through (d). The subsequent liquidation that occurred was only relevant to the extent plaintiffs could recover monetary damages. Additional damages resulting from the same harm do not reset the accrual date or give rise to a

new cause of action. See *Connelly*, 388 Mich. at 151, 200 N.W.2d 70; *Larson v. Johns–Manville Sales Corp.*, 427 Mich. 301, 315, 399 N.W.2d 1 (1986). Accordingly, plaintiffs' actions accrued in 2009 at the point at which they could first have sought a remedy under MCL 450.4515 based on the substantial interference with their interests as members, not in 2012 when they first incurred a calculable financial injury.

*587 Plaintiffs argue that they are alleging a “series of actions” that substantially interfered with their rights. Although the amendment of the Operating Agreement constituted one action in interference with plaintiffs' rights, the “series of actions” was incomplete until the shares were ultimately sold. Thus, plaintiffs assert, because the “series of actions” that substantially interfered with their interests as members did not culminate until the company was eventually liquidated, that liquidation was when their claims accrued.

Plaintiffs are correct that “willfully unfair and oppressive conduct” means either “a significant action *or series of actions* that substantially interferes with the interests of the member as a member.” MCL 450.4515(2) (emphasis added). However, the alleged substantial interference with plaintiffs' interests as members consists of the *subordination* of their shares, not the ultimate sale of ePrize and the distribution of the proceeds of that sale. The distribution of the proceeds of the sale was done in *conformity* with the Operating Agreement and would not have breached plaintiffs' interests as members *absent* the prior subordination of their shares. See MCL 450.4515(2) (stating that willfully unfair and oppressive conduct “does not include conduct or actions that are permitted by ... an operating agreement”). Accordingly, defendants allegedly substantially interfered with plaintiffs' interests as members when the Operating Agreement was amended on March 1, 2009, to subordinate their shares, and plaintiffs' actions thus accrued on that date, even if they did not incur a calculable financial injury until 2012.

Because plaintiffs' actions accrued on March 1, 2009, the three-year limitation period in MCL 450.4515(1)(e) on claims for monetary damages expired before plaintiffs filed suit on April 19, 2013.¹⁰ Accordingly, plaintiffs' claims for monetary damages are barred unless they can show on remand that defendants “fraudulently conceal[ed] the existence of the claim or the identity of any person who is liable for the claim[.]” MCL 600.5855. The

trial court should determine on remand whether plaintiffs are entitled to tolling of their claims for damages under this provision.

IV. CONCLUSION

We hold that [MCL 450.4515\(1\)\(e\)](#) prescribes alternative statutes of limitations, one based on accrual of the action and the other on discovery of the action. We further hold that a cause of action for LLC member oppression accrues when a manager has substantially interfered with the interests of the member as a member, even if that member has not yet incurred a calculable financial injury. Because defendants here allegedly substantially interfered with plaintiffs' interests as members on March 1, 2009, when the company amended its Operating Agreement to subordinate plaintiffs' shares, this is the date on which

plaintiffs' actions accrued. Accordingly, plaintiffs' actions for damages under [MCL 450.4515\(1\)\(e\)](#) are barred by the three-year statute of limitations unless plaintiffs are entitled to tolling, e.g., pursuant to [MCL 600.5855](#). Therefore, we affirm in part and reverse in part the judgment of ***588** the Court of Appeals and remand to the trial court for further proceedings consistent with this opinion.

Brian K. Zahra, Bridget M. McCormack, David F. Viviano, Richard H. Bernstein, Joan L. Larsen, Kurtis T. Wilder

All Citations

500 Mich. 133, 894 N.W.2d 574

Footnotes

- 1 Plaintiff Ivan Frank worked at ePrize from 2001–2010, serving as ePrize's senior vice president beginning in 2005. As part of his employment, Frank obtained approximately 1% of all shares in ePrize and ePrize Holdings. Accordingly, unlike the other plaintiffs, Frank maintained shares in ePrize after 2005.
- 2 With the exception of Frank, who invested approximately \$4,200 in exchange for Series C Units, none of the plaintiffs was invited to purchase Series C Units.
- 3 It is unclear from the record exactly how much ePrize received in exchange for the sale of these assets. Plaintiffs claim ePrize was sold for \$140 million, while the Court of Appeals states that it was sold for \$120 million. However, the exact amount of the sale is largely immaterial, as it is undisputed that after paying its debts ePrize possessed approximately \$100 million for distribution to its investors and plaintiffs received nothing for their common shares.
- 4 Neither party contests this conclusion, so we decline to address the issue.
- 5 Neither party argues that the two-year limitation period also set forth in [MCL 450.4515\(1\)\(e\)](#) constitutes a statute of repose.
- 6 Defendants also rely on the Court of Appeals' decision in [Baks](#), 227 Mich.App. 472, 576 N.W.2d 413, overruled in part on other grounds by [Estes](#), 250 Mich.App. 270, 649 N.W.2d 84. In [Baks](#), the Court of Appeals characterized an analogous provision in [MCL 450.1541a](#) as a statute of repose. *Id.* at 480, 485, 486, 576 N.W.2d 413. The Court of Appeals in the instant case held that [Baks](#)' characterization was "conclusory" and therefore that it was not bound by it. [Frank](#), 310 Mich.App. at 186–188, 871 N.W.2d 363. Because this Court is not bound by [Baks](#), we need not opine on whether it constituted binding precedent upon the Court of Appeals.
- 7 The trial court can determine on remand the applicability of tolling mechanisms such as the fraudulent-concealment statute.
- 8 We note that this conclusion is consistent with two federal court opinions addressing this same issue, although they do not constitute binding authority. See [Techner v. Greenberg](#), 553 Fed.Appx. 495, 502–506 (C.A. 6, 2014); [Virginia M. Damon Trust v. Mackinaw Fin. Corp.](#), unpublished opinion of the United States District Court for the Western District of Michigan, issued January 2, 2008 (Case No. 2:03-cv-135), pp. 9–10, 2008 WL 53230.
- 9 Other potential remedies include the dissolution of the LLC, the cancellation or alteration of a provision of the operating agreement, and the direction, alteration, or prohibition of an act by the LLC or its managers. [MCL 450.4515\(1\)\(a\) through \(c\)](#).
- 10 Plaintiffs argue that their claims for nonmonetary relief are not governed by [MCL 450.4515\(1\)\(e\)](#), but rather by a six-year statute of limitations. See [Estes](#), 250 Mich.App. at 284 n. 9, 649 N.W.2d 84; [MCL 600.5813](#). Additionally, defendants argued in their original motion for summary disposition that certain individual plaintiffs lacked standing to bring suit because they only held interests in ePrize Holdings rather than ePrize. Because these issues were not addressed by

the trial court or the Court of Appeals, we decline to address them here and instead leave them for the trial court to address on remand.

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