Michigan Court of Appeals Clarifies the Difference Between Statutes of Limitations and Repose, and Allows Minority Shareholder Oppression Lawsuit to Proceed

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Foster Swift Commercial Litigation News
July 14, 2015

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What's the difference between a statute of repose and a statute of limitations? To the plaintiffs in a case involving former employees of ePrize, LLC, it's the difference between having their claims barred and having them proceed in a case alleging minority shareholder oppression.

In ***Frank v. Linkner***, the plaintiffs were former employees of ePrize, some of whom were minority interest holders. All of the defendants were members of ePrize or had interests in one of its corporate members.

The dispute between the parties arose after almost all of ePrize's assets were sold in August 2012 for $120 million. Previously, the company raised capital from the defendant-members in 2007 and 2009 through the issuance of "Series B Notes," "Series C Units" and borrowing from a new entity called ePrize Priority, LLC. Accordingly, the defendants were not only members of the business, they were also creditors of it.

After the sale occurred, the proceeds of the sale were distributed in accordance with the company's "Fifth Operating Agreement," executed on March 1, 2009. The operating agreement included a "waterfall" provision that set forth the hierarchy of membership-interest payment priority, which first required distribution payments to Series C Units, followed by payments to ePrize Priority and holders of Series B Notes. Last in priority were common units - the interests held by the plaintiffs. None of the sale proceeds went to the plaintiffs.

The plaintiffs brought suit for minority shareholder oppression, alleging that the 2007 and 2009 recapitalizations were used by defendants to "expropriate economic value in the ePrize Companies from the minority members to themselves, and to set themselves up for shockingly excessive returns on investment."

The trial court ruled in favor of the defendants because the relevant statute, MCL 450.4515, served as a three-year statute of repose. Because the alleged wrongful acts occurred more than three years before the suit was filed, the trial court concluded that the plaintiffs' claims were time barred.

The Court of Appeals reversed, holding that MCL 450.4515(1)(e) was a statute of limitation, not of repose. The court explained the important distinction that 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." In other words, unlike a statute of limitations, a statute of repose can bar a claim before damages are incurred.

In this case, the plaintiff's claims did not accrue until the plaintiffs suffered damages. The damages at issue arose from the sale of the business and distribution of proceeds to defendants. Therefore, the limitations period commenced at that time, which was within three years of the filing of the lawsuit. The case was remanded for further proceedings in the trial court.

This case has important implications for business owners. Many businesses restructure or recapitalize over time, or take other actions, that can impact the rights of minority shareholders or interest holders and give rise to oppression claims. In light of *Frank*, there is now clarity regarding when such claims must be brought.