This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1543

William M. Ross,
Appellant,

vs.

Dianne's Custom Candles, LLC, et al.,
Respondents.

Filed August 30, 2021
Affirmed
Florey, Judge

Hennepin County District Court
File No. 27-CV-20-1

Darron C. Knutson, New Brighton, Minnesota (for appellant)

Steven M. Cerny, Santi Cerny, PLLC, Minneapolis, Minnesota (for respondents)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this appeal from a summary judgment, appellant, a member of a limited-liability corporation (LLC), argues that the district court erred by (1) dismissing as derivative his claims challenging payments to other members; (2) dismissing other claims as barred by a six-year statute of limitations and declining to apply the continuing-violation doctrine; (3) dismissing his claims that respondents frustrated his reasonable expectations for his

ownership interest in the company or otherwise engaged in oppressive conduct toward him; and (4) declining to amend the scheduling order to allow for additional discovery. We affirm.

FACTS

Respondent Dianne's Custom Candles, LLC, (Candles) is a Minnesota-based company that manufactures, distributes, and sells custom-made candles. Respondent Dianne's Fundraising, LLC, (Fundraising) is a Minnesota-based company that helped nonprofit organizations raise money by supplying them with candles and other merchandise for sale in fundraising campaigns. Fundraising became inactive in 2007. Respondent Alan Lenzen held the majority interest and was a governing member of both businesses. Appellant William M. Ross owned a 35 percent share of Fundraising and was also a governing member. From 2004 to approximately early 2007, Ross's involvement with Fundraising was sales-focused. He was not involved in management activities during that time.

In late 2006 or early 2007, Lenzen approached Ross about the prospect of subsuming Fundraising's business into Candles. Ross alleges that Lenzen assured him he would receive increased earnings, to replace those lost when Fundraising became inactive, and would share in Candles's profitability and growth. Ross agreed, and in early 2007 exchanged his 35-percent ownership in Fundraising for a ten-percent ownership in Candles, where he began working as an employee in sales. According to the Candles Member Control Agreement, Lenzen owned 66 percent, Ross owned ten percent, and two other members had 19- and five-percent interests. In 2008, Candles redeemed the five-

percent ownership interest, which increased Ross's ownership interest to ten and a half percent.

In January 2007, Ross learned that Fundraising would be reporting 2006 taxable income attributed to him. He asked Lenzen to distribute enough cash from Fundraising to compensate him for his tax liability, but Lenzen declined. Ross signed a $52,662 promissory note, drafted by his accountant and payable to Fundraising, to offset his taxable income from Fundraising. Ross alleges that he and Lenzen orally agreed that Ross would never have to pay the note, but he has no documents, communications, or notes to support this allegation, and Lenzen does not recall any agreement to that effect. Ross has never paid Fundraising any principal or interest on the note.

Ross worked at Candles from 2007 to June 2010 as vice president of sales. After ending his employment, Ross returned his company computer, which he used to send company emails and store company price lists and product information, with a new hard drive. The record is unclear as to whether Ross ever returned the original hard drive. Ross also had paper copies of product lists, pricing lists, customer lists, and potential client lists that he stated he either returned or threw away. Ross explained that any retained client information after his resignation was "not on purpose to undermine [Candles]," but rather because there is "a lot of crossover" when working in the business for a long period of time.

Following Ross's separation from Candles in 2010, Lenzen demanded that Ross pay the promissory note in full. Ross refused to pay, referring to the prior agreement he made with Lenzen that he would not be required to pay. Ross began working in Galveston,

Indiana, as an independent contractor for a similar company, and also dealt directly with a professional-athletic-organization-licensed-merchandise supplier to make sales to Boy Scout organizations, an opportunity Candles had been actively pursuing for three years prior. Subsequently, from 2011-2018, Ross ran a division of a company that sold food products and candles for charitable fundraising.

Ross did not participate in the management or affairs of either Fundraising or Candles after his employment ended. Candles's governing documents state that profits and losses would be allocated to the members based on each member's ownership percentage each year. From 2008-2018, Ross paid for his tax liability based on his ownership interest in Candles, but received no disbursements or cash to cover the tax liabilities. Ross alleges that Lenzen provided other members of Candles sufficient funds to cover their tax liabilities through "salary or wages, interest payments on alleged loans to Candles, expense reimbursements, or profit distributions," and that respondents did this intentionally, in order "to inflict financial injury upon Ross and thereby force him to surrender his ownership interests in Candles and Fundraising." Neither Candles's nor Fundraising's corporate records and governing documents require them to make distributions to members or state that members are entitled to annual distributions.

Ross requested that respondents provide him information concerning the business affairs of Candles and Fundraising beyond the K-1 tax forms he received annually, but respondents failed to do so. In February 2018, Ross sent respondents two letters demanding "documentation and information concerning the organization documents, financial results, insider transactions, distributions and payments of profits and other items

bearing on the value of Ross's ownership interests in Candles and Fundraising and the rights and claims Ross may have arising from those ownership interests." Respondents state that they did not receive those letters.

In April 2018, Ross commenced an action (the first lawsuit) to compel respondents to provide documents and information on Fundraising and Candles going back 16 years. After filing a joint answer and counterclaim refusing to provide the requested information, respondents eventually produced some of the requested records, but denied having others. Respondents also declined to produce some documents based on their belief that Ross would use the information to compete with Candles and Fundraising and divert business away from them. The parties settled the first lawsuit in February 2019, although Ross contends that respondents did not provide complete information and documentation as required by the settlement agreement.

In December 2019, Ross commenced the present action, asking that the companies be dissolved or ordered to buy out his interest based on oppressive conduct under Minn. Stat. § 322C.0701, subds. 1, 2 (2020), or that he be awarded damages for breach of the fiduciary duty of good faith and fair dealing. Respondents moved for dismissal pursuant to Minn. R. Civ. P. 12.02(e). The district court dismissed all claims arising prior to November 18, 2013, as barred by the statute of limitations, as well as claims relating specifically to inappropriate or excessive amounts of company funds distributed to Lenzen and other members as improperly pleaded derivative claims.

Respondents moved for summary judgment on all remaining claims, which the district court granted. The district court denied Ross's motion to amend the scheduling order to extend the discovery completion date. This appeal follows.

DECISION

I. The district court did not err in dismissing as derivative Ross's claims challenging payments to other members.

This case requires us to review an order dismissing a complaint pursuant to Minn. R. Civ. P. 12.02(e) (stating that a complaint must be dismissed if it fails to state a claim upon which relief can be granted). We review de novo the district court's decision on a motion to dismiss, considering "only the facts alleged in the complaint, [and] accepting those facts as true." *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn. 2013) (citation and internal quotation marks omitted). The determination of whether shareholder claims are direct or derivative also presents a question of law subject to de novo review. *See, e.g.*, *Nw. Racquet Swim & Health Clubs, Inc. v. Deloitte & Touche*, 535 N.W.2d 612, 617 (Minn. 1995) (explaining that the question was "whether the trial court erred in concluding as a matter of law" that the investor's claims "are nonderivative").

As an entity distinct from its shareholders, a corporation holds a separate right to sue in its own name. *Singer v. Allied Factors, Inc.*, 13 N.W.2d 378, 380 (Minn. 1944). Thus, "Minnesota has long adhered to the general principle that an individual shareholder may not assert a cause of action that belongs to the corporation." *Nw. Racquet*, 535 N.W.2d at 617.

If a shareholder asserts a cause of action belonging to the corporation, the shareholder must seek redress in a "derivative" action on behalf of the corporation. *Wessin v. Archives Corp.*, 592 N.W.2d 460, 464 (Minn. 1999). By doing so, the shareholder, in effect, steps into the corporation's shoes and seeks restitution that the shareholder could not demand as an individual. *In re UnitedHealth Grp. Inc. S'holder Derivative Litig.*, 754 N.W.2d 544, 550 (Minn. 2008) (quotation omitted). In bringing a derivative action, the shareholder must, among other things, comply with the procedural requirements of Minn. R. Civ. P. 23.09. *In re Medtronic, Inc. S'holder Litig.*, 900 N.W.2d 401, 406 (Minn. 2017). A direct claim, on the other hand, alleges an injury to a shareholder that is not shared by the corporation, and the procedural requirements of rule 23.09 are inapplicable. *Id.*

The Minnesota Supreme Court has distilled the direct-versus-derivative inquiry to two questions: (1) who suffered the alleged injury and (2) who would receive the benefit of any recovery. *Medtronic*, 900 N.W.2d at 408. When shareholders are injured only indirectly, the action is derivative; but when shareholders show an injury that is not shared with the corporation, the action is direct. *Id.* It is the *injury* itself that matters when making this determination, not the theory on which the claim is based. *Id.* at 407 (citing *Wessin*, 592 N.W.2d at 464.)

Respondents contend that the district court properly dismissed Ross's claim alleging that Candles paid excessive compensation and interest payments to Lenzen and the other members as an improperly pled derivative claim. Ross's argument is essentially that he alone has been singled out from the other members by not receiving any payments in the form of salary, interest, or distributions to cover his tax liabilities for his ownership interest.

Ross argues that because this loss is not shared by other members, his claim is direct and does not have to comply with Rule 23.09. He also argues that the relief he seeks, a mandatory purchase of his ownership interest at fair value under Minn. Stat. § 322C.0701 and damages for respondents' breach of fiduciary duties, is for his benefit alone. Ross does not cite any Minnesota case law in support of these arguments.

The district court determined that "to the extent that [Ross's] allegations relating to Lenzen's family members being paid excessive salaries and Lenzen taking inappropriate distributions are not already barred by the statute of limitations, these assertions are derivative claims."[1] The district court did not err by dismissing the improperly pleaded derivative claims under Rule 12.02(e). A stockholder may sue because the corporation is under the control of an alleged wrongdoer but, in doing so, must sue in a representative capacity for the benefit of the corporation, not for personal damages. *Wessin*, 592 N.W.2d at 464 (citing *Seitz v. Michel*, 181 N.W. 102, 105 (Minn. 1921)). The Minnesota Supreme Court has held that shareholder claims based on an alleged diversion of corporate funds are derivative claims. *Medtronic*, 900 N.W.2d at 408 (citing *Seitz*, 181 N.W. at 105). The supreme court reasoned that, although "the additional allegation of a conspiracy to 'freeze out' the plaintiff-shareholder 'may have been directed against the plaintiff [,] [the defendants'] acts resulted ultimately in the dissipation of corporate funds.'" *Id.* (quoting

[1] At the rule 12 motion hearing, the district court did not dismiss Ross's claims that he alone did not receive distributions to cover his tax liabilities from the corporation, explaining that Minnesota courts have allowed such claims as direct actions. *See e.g. Wessin*, 592 N.W.2d at 465 (contemplating a direct action "where a corporation paid all shareholders except one"). However, the district court later granted summary judgment on these claims for failure of proof.

Seitz, 181 N.W. at 106). Here, even if there was a conspiracy to freeze out Ross or he alone suffered a financial injury, the alleged injury as pleaded is to the corporation, whose funds were diverted.

For example, in *Blohm v. Kelly*, a minority shareholder alleged that a majority shareholder and sole officer and director "abused his position in the corporation by paying himself excessive compensation and by using corporate assets to discharge personal debts and debts of another business." 765 N.W.2d 147, 153 (Minn. App. 2009). This court held that "[i]f true, the alleged conduct reduced the assets of the corporation in the first instance. Corporate assets do not belong to the stockholders, but to the corporation." *Id.* (quotation omitted). The court found that the alleged distributions only indirectly injured the plaintiff, such that the plaintiff's injury was not "separate, distinct, and independent from the corporation's injury." *Id.* (citing *Wessin*, 592 N.W.2d at 464.) Thus, the court concluded that the alleged injury was primarily an injury to the corporation, and therefore, the plaintiff's claim was properly characterized as derivative, not direct. *Blohm*, 765 N.W.2d at 154.

Here, Ross has alleged that funds were inappropriately taken and distributed to other shareholders. These funds are corporate assets that do not belong to Ross, but rather to the corporation; therefore, the injury alleged by Ross is an injury to the corporation, not a "separate, distinct, and independent" injury suffered by him individually. *Id.* at 153. Under these circumstances, a minority shareholder may bring suit against the majority shareholder only "in a representative capacity for the benefit of the corporation, and not for damages to him individually." *Wessin*, 592 N.W.2d at 464 (quotation omitted). Therefore, the

district court properly characterized Ross's claims as derivative claims belonging to the corporation.

II. The district court did not err in dismissing some claims as barred by a six-year statute of limitations.

Ross asserted two claims against Candles: oppressive conduct pursuant to Minn. Stat. § 322C.0701 and breach of the duty of good faith and fair dealing. Both are subject to a six-year statute of limitations. Minn. Stat. § 541.05, subd. 1 (2020). The statutory-limitation period begins to run when the cause of action accrues. Minn. Stat. § 541.01 (2020).

The parties do not dispute that the complaint in this matter was served on November 18, 2019, and that claims brought under Minn. Stat. § 322C.0701 and for breach of fiduciary duty must have been brought within six years after those claims accrued. Given that date of service, respondents argue that any allegations attempting to support Ross's claims that occurred prior to November 18, 2013, are barred by the statute of limitations.

Ross contends that Candles' argument is fundamentally flawed because the conduct alleged in the complaint constitutes a "pattern and practice of abuse and oppression to advance [respondents'] ultimate goal of forcing Ross to surrender his ownership interests in Fundraising and Candles for little or no consideration." Ross argues that all the acts he complains of were in the aid of respondents' sole purpose of driving him out of Candles and Fundraising. Therefore, he contends that the "continuing violation rule" should be applied to this case so that claims and events prior to November 18, 2013, are considered.

"The continuing violation doctrine is most commonly applied in discrimination cases involving wrongful acts that manifest over a period of time, rather than in a series of discrete acts." *Davies v. West Publ'g Co.*, 622 N.W.2d 836, 841 (Minn. App. 2001), *review denied* (Minn. May 29, 2001). But the doctrine has been applied outside the discrimination context. *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 30-31 (Minn. 1963) (trespass); *State Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 555 N.W.2d 908, 912 (Minn. App. 1996) (workers' compensation coverage), *review granted in part, decision modified*, 558 N.W.2d 480 (Minn. 1997). The doctrine allows a plaintiff's claims to be considered despite the expiration of the applicable statute of limitations when the alleged acts were continuing in nature and manifested over time rather than as a series of discrete acts. *Giuliani v. Stuart Corp.*, 512 N.W.2d 589, 595 (Minn. App. 1994); *see also Sigurdson v. Isanti County*, 448 N.W.2d 62, 66-67 (Minn. 1989). "When the doctrine is applied, the final act is used to determine when the statute-of-limitations period begins for the entire course of conduct." *Davies*, 622 N.W. 2d at 841 (citation omitted).

In *Davies*, members of a stock association alleged breach of fiduciary duties based on improper distributions and argued the continuing-violation doctrine should toll the six-year statute of limitations. *Id.* This court noted that "[n]o case has applied the continuing violation doctrine to a fact situation at all similar to this case," and declined to extend application of the doctrine to a claimed breach of fiduciary duty. *Id.* at 842. We concluded that "even if the continuing violation doctrine could apply here, because each distribution was a separate and distinct act that could have been challenged by respondents," not a

course of continuing conduct, "the doctrine does not toll application of the six-year statute of limitations." *Id.*

Ross cites to a slip opinion from the Iowa Court of Appeals that determined summary judgment was precluded on a claim for oppressive conduct when the alleged wrongs may have been a part of a scheme to freeze appellant out over an extended period, contending that the facts are similar. *Baur v. Baur Farms, Inc.*, 780 N.W.2d 249 (Iowa App. 2010). *Bauer* is not binding on this court, which has declined to extend the continuing-violation doctrine in similar cases. *See Davies*, 622 N.W.2d at 841. We likewise decline to do so here.

Furthermore, even if the continuing-violation doctrine did apply to Ross's claims, the events and allegations alleged prior to November 18, 2013, are separate, discrete acts to which the continuing-violation doctrine is inapplicable. In a thorough order, the district court explained:

> The lack of distributions in this matter were clearly similar to the *Davies* payments, as each decision to not distribute income to [Ross] was a separate action which [Ross] could have contested. Likewise, [Ross] could have brought suit to invalidate the [promissory note] after any demand from Lenzen or Fundraising. Similarly, the fact that [Ross] identifies several distinct examples in which [respondents] allegedly did not consult him in decision-making or managing the business . . . [as] evidence that these actions too were concrete, distinct actions in which [Ross] could have legally contested the actions. The same applies to the failure to provide demanded financial documents, for which [Ross] could have sued after each demand and failure to produce. Each of these singular instances offered their own opportunity for [Ross] to seek legal recourse, absent the presence of any of the other allegations [Ross] asserts. They are thus not a 'course of continuing conduct.'

We agree with the district court's analysis. Because the continuing-violation doctrine does not apply to the facts in this case, the district court did not err in concluding that any claim involving conduct or events that occurred prior to November 18, 2013, was barred by the statute of limitations.

III. The district court did not err in granting summary judgment to respondents.

Ross argues that the district court erred in finding that he failed to demonstrate that a genuine issue of material fact exists to support his claims that respondents frustrated his reasonable expectations for his ownership interest in Candles or otherwise engaged in oppressive conduct toward him.

On appeal from summary judgment, we review de novo whether there are any genuine issues of material fact and whether the district court erred in applying the law. *Ruiz v. 1st Fid. Loan Servicing, LLC*, 829 N.W.2d 53, 56 (Minn. 2013). "We view the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). A genuine issue of material fact exists when the evidence could lead a rational fact-finder to find for the nonmoving party. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

Under Minnesota Statute section 322C.0110, subdivision 1 (2020):

> [T]he operating agreement governs: (1) relations among the members as members and between the members of the limited liability company; (2) the rights and duties under this chapter of a person in the capacity of manager or governor; (3) the activities of the company and the conduct of those activities; and (4) the means and conditions for amending the operating agreement.

For a company that was formed before August 1, 2015, as was Candles, the language in the articles of organization, operating agreement, and member control agreement shall be considered the company's "operating agreement" for purposes of Minn. Stat. § 322C.1204, subd. 3(1)-(2) (2020).

In order for conduct to be considered "oppressive," conduct must be:

> unfairly prejudicial . . . because the conduct frustrated an expectation of the applicant member that:
>
> (i) is reasonable in light of the reasonable expectations of the other members;
>
> (ii) was material to the applicant's decision to become a member of the limited liability company or for a substantial time has been material during the member's continuing membership;
>
> (iii) was known to other members or that the other members had reason to know; and
>
> (iv) is not contrary to the operating agreement as applied consistently with the contractual obligation of good faith and fair dealing under section 322C.0409, subdivision 4.

Minn. Stat. § 322C.0102, subd. 18(a)(3)(i-iv) (2020).

"Conduct (1) includes words, action, inaction, and any combination of words, action, or inaction; and (2) is not oppressive solely by reason of a good faith disagreement as to the content, interpretation, or application of the company's operating agreement." *Id.*,(b)(1-2).

Both members and governors in a governor-managed company have an obligation of good faith and fair dealing:

> A member in a limited liability company shall discharge the member's duties and exercise any rights under this chapter or under the operating agreement consistently with the contractual obligation of good faith and fair dealing, including acting in a manner, in light of the operating agreement, that is honest, fair, and reasonable.

Minn. Stat. § 322C.0409, subds. 4, 8 (2020).

Courts often analyze the concept of reasonable expectations in relation to corporations under Minn. Stat. § 302A.751 (2020). Reasonable expectations can arise from agreements not expressly stated in a corporation's documents, including implicit agreements based on history and course of dealing. *Blum v. Thompson*, 901 N.W.2d 203, 220 (Minn. App. 2017) (citing *Gunderson v. Alliance of Computer Prof'ls*, 628 N.W.2d 173, 186 (Minn. App. 2001), *review granted, appeal dismissed* (Minn. Aug. 17, 2001)), *review denied* (Minn. Oct. 25, 2017); *Pedro v. Pedro*, 489 N.W.2d 798, 803 (Minn. App. 1992), *review denied* (Minn. Oct. 20, 1992).

"Oppressive conduct" as it pertains to members of a limited-liability company, includes an additional element that any member's reasonable expectation must be "material to the applicant's decision to become a member of the limited-liability company or for a substantial time has been material during the member's continuing membership" and "not contrary to the operating agreement as applied consistently with the contractual obligation of good faith and fair dealing under section 322C.0409, subdivision 4." Minn. Stat. § 322C.0102, subd. 18(a)(3). Accordingly, any reasonable expectations arising from outside Candles's governing documents must have been material to Ross's decision to

become a member or for a substantial time during his membership, and not be contrary to the operating agreement.

Ross raised only two allegations on appeal: his reasonable expectation for income, profit, and other economic benefit, and his reasonable expectation for attempting to secure information concerning Candles and Fundraising were frustrated by respondents' actions.

A. Reasonable expectations for income, profit, and other economic benefits

Ross argues that "Lenzen and the other members of Candles all receive cash income from the company in the form of interest, salaries, and bonuses, but Ross receives no cash, only a tax liability." He contends that "[n]o 'objectively reasonable' owner of a closely held business would have agreed to such an arrangement," and that "[t]he discretion given Candles' Board of Governors must be exercised in a fair and equitable manner, not as a weapon to inflict financial loss on Ross."

Here, the district court found that Ross had failed to show that there was a genuine issue of material fact, because (1) there was no right under the operating agreement to regular distributions or reimbursement for tax liability; (2) there was no evidence of agreements outside of the operating agreement for distributions or reimbursements; (3) there was no evidence that other members were receiving distributions to his sole exclusion; and (4) to the extent that distributions were made, Ross was not similarly situated because he was no longer employed by the companies: certain employees received employee compensation or interest payments on loans made to the company. Our independent review of the record compels us to agree with the district court's analysis.

Ross's argument that the district court erred by confining its analysis to the governing documents is also meritless. While Ross is correct in stating that written agreements are not dispositive because they do not reflect shareholder expectations based on understandings not reflected in the documents, *see Gunderson*, 628 N.w.2d at 186, in this case, the district court considered not only the governing documents but also whether any conversations or communications occurred that would have led Ross to reasonably expect cash payments or distributions from Candles.

We further decline to consider the foreign decisions cited by Ross that do not reflect Minnesota law. Because review of the record does not show that a genuine issue of material fact exists as to whether respondents frustrated Ross's reasonable expectations, we determine that the district court did not err in granting summary judgment on this claim.

B. Reasonable expectations for receiving information

Ross next argues that the facts "clearly create a question of fact over whether respondents punished and retaliated against Ross for exercising his rights under Minn. Stat. § 322C.0410 to obtain information in the Previous Litigation." Specifically, Ross points to the following facts and events: respondents (1) asserted meritless counterclaims against Ross and numerous defenses with no relation to Ross's claims; (2) refused to give Ross all of the information he requested for fear he might use it to compete; (3) failed to produce documents explaining Lenzen's alleged loans to Candles; and (4) retaliated with burdensome and frivolous claims and defenses. Ross does not cite to any caselaw in support of his argument; rather, he states that respondents breached their duty of good faith and fair dealing and failed to perform in a manner that is honest, fair, and reasonable.

The doctrine of judicial immunity protects litigants from torts that arise from a person's participation in the judicial process for statements made in relation to or in connection with the case at issue as a matter of public policy. *See, i.e., Mahoney v. Hagberg*, 712 N.W.2d 215, 219-20 (Minn. App. 2006), *aff'd*, 729 N.W.2d 302 (Minn. 2007). Therefore, Ross's allegations that point to the respondents' conduct in the first lawsuit that led to the settlement agreement is improper. Ross has not established a genuine issue of material fact as to whether respondents' conduct was oppressive or a breach of the duty of good faith and fair dealing. Respondents had a right to bring counterclaims and affirmative defenses as part of the legal process and were not required at the pleading stage to have all the necessary facts to support their assertions. As the district court noted, "there is nothing in the record to suggest these actions were anything but parties utilizing various legal avenues available to them in a lawsuit."

In regard to respondents' refusal to provide Ross with certain documents, pursuant to Minnesota Statutes section 322C.0410, subdivision 2(3),[2] an entity is allowed to decline to provide information requested by a member. Here, respondents asserted a belief that Ross could unlawfully compete with Candles and Fundraising by using the requested information and intended to use the information to divert business. Ross stated that his purpose for requesting the records was to "assess fully the value of his ownership interest

[2] Minn. Stat. § 322C.0410, subd. 2(3), states: "Within ten days after receiving a demand pursuant to clause (2), item (ii), the company shall in a record inform the member that made the demand: (i) of the information that the company will provide in response to the demand and when and where the company will provide the information; and (ii) if the company declines to provide any demanded information, the company's reasons for declining."

in [Fundraising and Candles] and to judge the extent of the injuries [Lenzen has] inflicted upon him." But Ross did not request a ruling on whether he was wrongfully refused the documents and cites to nothing in either the governing documents or conversations with other members that establishes an expectation that respondents would not exercise this right of refusal. As the district court noted, Ross "cannot logically argue that he reasonably expected [respondents] to merely accept his assertions of purpose and provide all information requested without utilizing a legal avenue that allows for such a withholding."

Based on this record, Ross has not established a genuine issue of material fact as to whether respondents' conduct was oppressive or a breach of the duty of good faith and fair dealing. Therefore, the district court did not err in granting summary judgment to respondents on this claim.

IV. The district court did not abuse its discretion by declining to amend the scheduling order.

Ross argues the district court abused its discretion by declining to amend the scheduling order to give Ross more time to obtain discovery. A district court may amend a scheduling order on a showing of good cause. Minn. R. Civ. P. 16.02. "Except in unusual circumstances, a motion to extend deadlines under a scheduling order shall be made before the expiration of the deadline." Minn. R. Gen. Prac. 111.04. A district court has broad discretion in scheduling matters, and we will not reverse its decision absent an abuse of that discretion. *Mercer v. Andersen*, 715 N.W.2d 114, 123 (Minn. App. 2006).

Ross contends that "[t]he passage of the deadline for completion of fact discovery before entry of the Court's Order on the Rule 12 Motions and before [respondents] were

required to serve an Answer to the Complaint was good cause for amending the Scheduling Order to extend the date for the close of fact discovery." But, the district court found that Ross had not been diligent in meeting the Scheduling Order deadline or in requesting an extension before the discovery deadline expired. Further, the district court noted that Ross knew of the extent of respondents' challenges and had time before the scheduled hearing date on respondents' rule 12 motion to request an amendment to the scheduling order. Thus, the district court concluded that "[Ross] was not diligent in attempting to meet the Scheduling Order's requirements and no other good cause has been established to grant a motion to extend its deadlines." Because this conclusion is supported by the record, it was not an abuse of the district court's discretion.

Affirmed.