

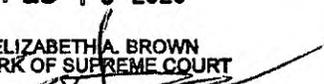
IN THE SUPREME COURT OF THE STATE OF NEVADA

FIRST PECOS, LLC; AND LEON A.
GREENBLATT, III,
Appellants,
vs.
MICHAEL V. SHUSTEK; VESTIN
REALTY MORTGAGE II, INC.; AND
BRIGHTON HOLDINGS, LLC,
Respondents.

No. 88681

FILED

FEB 10 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order of dismissal in a civil action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Appellants First Pecos, LLC and Leon Greenblatt, III (First Pecos) sued respondent Michael Shustek on three counts, claiming that Shustek wrongfully deprived it of the value of its shares in Vestin Realty Mortgage II, Inc. (Vestin). Shustek was the majority shareholder of Vestin and, according to First Pecos, extracted value out of Vestin for his personal enrichment. First Pecos further claims that Shustek subsequently orchestrated a cash-out merger between Vestin and another company he controlled, effectively squeezing First Pecos out. First Pecos claims that Shustek's "looting" of Vestin resulted in lower-value Vestin cash-out shares. First Pecos sued Shustek to recover the difference between the cash-out share value it received and what the value it asserts the cash-out share would have been without Shustek's misdealing. The district court dismissed First Pecos's complaint pursuant to NRCP 12(b)(5), finding that First Pecos alleged derivative claims and that First Pecos, as a former shareholder, did not have standing to bring derivative claims. The district

court also dismissed First Pecos's unjust enrichment claim on the ground that Shustek took the value of the shares from First Pecos, and unjust enrichment would apply only if First Pecos had voluntarily given that value to Shustek. We conclude that the district court erred in dismissing the complaint, and thus, we reverse and remand for further proceedings.

When reviewing a dismissal for failure to state a claim under NRCP 12(b)(5), we “recognize all factual allegations” in the complaint as true, and “draw all inferences in” the plaintiff's favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). All legal conclusions are reviewed de novo. *Id.* The motion to dismiss will stand only if it “appears beyond a doubt that [First Pecos] could prove no set of facts, which, if true, would entitle it to relief.” *Id.*

As Vestin was incorporated in Maryland, we apply Maryland law to determine whether First Pecos stated a viable claim.¹ *See Black v. Eighth Jud. Dist. Ct.*, 141 Nev., Adv. Op. 18, 567 P.3d 326, 330 (2025) (applying the law of the state of incorporation to a dispute over whether claims were direct or derivative).

First Pecos's claims were direct

Both parties agree that First Pecos lacks standing to bring a derivative claim. First Pecos argues that it brings only direct claims because the injury alleged, the inadequate cash-out share value, is distinct from any injury Vestin suffered as a result of Shustek's actions. Shustek

¹First Pecos argues Nevada law applies to the unjust enrichment claim. As First Pecos offers no caselaw supporting that contention, we decline to address it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

retorts that the only injury First Pecos suffered was a diminution of Vestin stock value—a prototypical derivative injury.

Dissatisfied shareholders may pursue either a direct action or a derivative action against a corporation’s majority shareholder. *Bontempo v. Lare*, 90 A.3d 559, 578 (Md. Ct. Spec. App. 2014). A derivative action is brought by a shareholder on behalf of the corporation and seeks to “enforce a corporate right” against “faithless directors and managers.” *Boland v. Boland*, 31 A.3d 529, 548 (Md. 2011) (citation modified). In contrast, a direct action “is appropriate only where the board has breached a duty owed directly to the shareholder and the shareholder has suffered an injury that is separate and distinct from any injury suffered . . . by the corporation.” *Eastland Food Corp. v. Mekhaya*, 301 A.3d 308, 331 (Md. 2023) (citation modified).

Normally, a drop in share value affects both a corporation and its shareholders equally and thus gives rise to a derivative claim. *Oliveira v. Sugarman*, 152 A.3d 728, 747-48 (Md. 2017). Maryland courts, however, have held that an inadequate cash-out merger share price is a direct injury. *E.g., Shenker v. Laureate Educ., Inc.*, 983 A.2d 408, 425 (Md. 2009), *abrogated on other grounds by statute*. This is because, regardless of whether a shareholder receives a “higher or lower price,” the corporation’s interests are “in no way implicated.” *Id.* Here, First Pecos alleged that it received an inadequate cash-out merger share price. *Per Shenker*, the only Maryland case dealing with this issue, this was a direct injury.

We are unpersuaded by Shustek’s argument that the Maryland legislature’s statutory abrogation of *Shenker* affects the application of *Shenker* to this case. *Shenker* also held that corporate directors, at times, owed shareholders common law fiduciary duties in addition to the fiduciary

duties imposed by § 2-405.1 of the Maryland Corporations and Associations Code. *Id.* at 422. In response, the Maryland legislature amended § 2-405.1 to clarify that the statute was the exclusive source of directors' duties. *Eastland Food Corp.*, 301 A.3d at 322. We do not believe that the abrogation of *Shenker* on these grounds affects its holding on direct injuries. Whether a director owes certain common law duties is a separate inquiry from whether an injury is direct or derivative. Statutorily altering a director's duties does not change the nature of a particular injury to shareholders. Classifying an injury as direct or derivative only reflects the distinctness of a shareholder's injury from a corporation's injury; altering, or even removing, the underlying duty has no bearing on that difference. We thus hold that the district court erred in ruling that this was a derivative action.

First Pecos stated an unjust enrichment claim

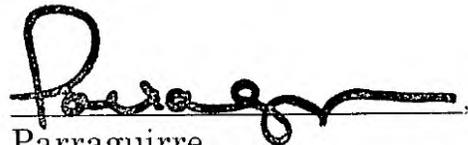
First Pecos also challenges the district court's separate dismissal of the unjust enrichment claim. The district court dismissed First Pecos's unjust enrichment claim because unjust enrichment "anticipates someone giving something to the other side as opposed to the taking of it," and here Shustek took the benefit from First Pecos.

There are three elements of unjust enrichment: (1) a plaintiff confers a benefit upon the defendant; (2) the defendant knows about the benefit; and (3) the defendant's retention of the benefit, without payment, would be inequitable "under such circumstances." *Hill v. Cross Country Settlements, LLC*, 936 A.2d 343, 351 (Md. 2007). Although unjust enrichment claims are "notoriously difficult to define," *id.* (citation modified), a defendant may be unjustly enriched solely by benefitting from the "loss suffered by the [plaintiff]," *Berry & Gould, P.A. v. Berry*, 757 A.2d 108, 113 (Md. 2000) (citation modified). Such was First Pecos's theory here: by improperly lowering the value of its cash-out shares, Shustek unjustly

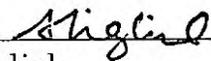
retained that value for himself. As Maryland law permits First Pecos's unjust enrichment claim, we hold that the district court erred in dismissing it.²

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND for further proceedings.


_____, J.
Parraguirre


_____, J.
Bell


_____, J.
Stiglich

cc: Hon. Susan Johnson, District Judge
James A. Kohl, Settlement Judge
Kaempfer Crowell/Las Vegas
Lewis Brisbois Bisgaard & Smith LLP/Baltimore
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Womble Bond Dickinson (US) LLP/Las Vegas
Eighth District Court Clerk

²Shustek argues several other factual disputes that we need not address in the context of reviewing an order granting a motion to dismiss. See *Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672 (providing that we “recognize all factual allegations” in the “complaint as true” in reviewing an order of dismissal).