

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PETER KLEIN and PAULA KLEIN

Plaintiffs,

v

Case No. 16-152449-CB
Hon. James M. Alexander

**PATRICK M. SIMASKO, SIMASKO
SIMASKO SIMASKO P.C., and CRAIG
MYERS,**

Defendants.

OPINION AND ORDER REMOVING CASE FROM BUSINESS COURT

On April 12, 2016, Plaintiffs filed their Complaint, alleging that they have suffered damages as a result of Defendants' advice concerning financial planning. Plaintiffs' Complaint alleges counts of breach of fiduciary duty, legal malpractice, negligence, breach of contract, silent fraud, and civil conspiracy. Contemporaneous with the filing of the Complaint, Plaintiffs filed a Notice of Assignment to the Business Court – claiming that this is a business or commercial dispute because “one or more of the parties is a business enterprise and the other parties are its or their present or former owners, managers, shareholders, members, directors, officers, agents, employees, suppliers, or competitors, and the claims arise out of those relationships.” See MCL 600.8031(1)(c)(ii).

This Court has an obligation to question sua sponte its jurisdiction over the subject matter of an action. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 399; 651 NW2d 756 (2002). Subject matter jurisdiction is determined by the allegations in the pleadings. *Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 587-588; 644 NW2d 54 (2002).

Business court jurisdiction is limited to actions involving a “business or commercial dispute.” MCL 600.8035(3). The statute defines a business or commercial dispute as:

- (i) An action in which all of the parties are business enterprises.
- (ii) An action in which 1 or more of the parties is a business enterprise and the other parties are its or their present or former owners, managers, shareholders, members, directors, officers, agents, employees, suppliers, or competitors, and the claims arise out of those relationships.
- (iii) An action in which 1 of the parties is a nonprofit organization, and the claims arise out of that party's organizational structure, governance, or finances.
- (iv) An action involving the sale, merger, purchase, combination, dissolution, liquidation, organizational structure, governance, or finances of a business enterprise. [MCL 600.8031(1)(c)].

In the present action, Plaintiffs have not provided any factual allegations to support their contention that they are present or former owners, managers, shareholders, members, directors, officers, agents, employees, suppliers, or competitors of Simasko Simasko & Simasko, PC under MCL 600.8031(1)(c)(ii). Rather, Plaintiffs personally retained the Simasko law firm for the purpose of providing legal advice and preparing estate planning documents. As such, the Court finds that this action does not qualify as a business or commercial dispute as defined by MCL 600.8035(1) or as claimed by Plaintiffs under MCL 600.8031(1)(c)(ii). Moreover, MCL 600.8031(3)(a) excludes certain types of disputes from business court jurisdiction such as malpractice actions.

For all of these reasons, this action is excluded from business court jurisdiction and the Court orders the case reassigned to the general civil docket.

The case code will be changed to CZ unless the parties stipulate otherwise.

IT IS SO ORDERED.

April 28, 2016
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge