

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PAUL GRAHAM, et al,

Plaintiffs,

v

Case No. 13-135081-CB

Hon. Wendy Potts

FELLOWSHIP FOR STRENGTHENING  
THE FUTURE OF FAMILIES, et al,

Defendants.

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OPINION AND ORDER RE:  
INDIVIDUAL DEFENDANTS' MOTION TO DISMISS  
AND  
DEFENDANT FELLOWSHIP FOR STRENGTHENING THE FUTURE OF FAMILIES'  
MOTION TO DISMISS AMENDED COMPLAINT  
AND  
PAUL GRAHAM AND JOHN SUSIN'S CROSS-MOTION FOR SUMMARY  
DISPOSITION

At a session of Court  
Held in Pontiac, Michigan

On  
FEB 13 2014

In 2006, Defendant Fellowship for Strengthening the Future of Families hired Alpine Systems Engineering to design and construct a broadband system for the town of Hanksville, Utah. Plaintiffs Paul Graham and John Susin allege that Alpine assigned its interest in the agreement to them. Plaintiffs further allege that Fellowship breached the broadband agreement and a separate website development agreement by failing to pay Alpine. Plaintiffs filed this action on July 15, 2013 alleging breach of contract and quantum meruit claims against Fellowship. Plaintiffs also allege that members of Fellowship's board, who are the individual Defendants in this case, committed fraud and misappropriated grant money intended to pay for

Alpine's services. Plaintiffs also claim that Defendant Donald Foutz committed fraud, was negligent, and interfered with Alpine's contract.

Defendants move to dismiss Plaintiffs' claims on several grounds under MCR 2.116(C)(7), which tests whether a claim is barred as a matter of law. A motion under (C)(7) is decided on the pleadings, unless the parties submit evidence contradicting the allegations in the pleadings. *Turner v Mercy Hosp & Health Services*, 210 Mich App 345, 349 (1995). If there are no material factual disputes, whether a claim is barred is a question of law. *Id.* Plaintiffs oppose Defendants' motions and filed their own dispositive motion under MCR 2.116(C)(10), which tests the factual support for their claims. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).

As a threshold matter, the Court must determine whether this case is properly assigned to Business Court. 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)]

Although the complaint does not clearly allege the basis for Business Court jurisdiction, Plaintiffs filed with their complaint a Notice of Assignment to the Business Court in which they claim that this dispute falls under § 8031(1)(c)(ii). Plaintiffs allege that Defendant Fellowship is a non-profit corporation, which would place it within the definition of a business enterprise. See MCL 600.8031(1)(b). Alpine, the purported assignor of Plaintiffs' claims, also appears to be a business enterprise. Had Alpine brought this action, there would be no question that the case falls within Business Court jurisdiction. However, Plaintiffs are not business enterprises and the Business Court statute does not address whether an assignee of a business enterprise is entitled to bring an assigned claim in Business Court. Because it is not clear whether this is a business dispute and a plausible argument can be made for Business Court jurisdiction, the Court will not transfer the matter to the General Civil Docket.

Turning to the merits of the parties' motions, Fellowship raises an issue in its reply brief and response to Plaintiffs' motion that is potentially dispositive: whether the Court lacks personal jurisdiction over Defendants. As alleged in the complaint, all of the individual Defendants are residents of Utah and Fellowship is a Utah non-profit organization with a principal place of business in Utah. Although Donald Foutz admits to traveling to Michigan in connection with the agreement between Alpine and Fellowship, there is no evidence that the other individual Defendants have any contacts with Michigan. Further, the agreement on which Plaintiffs base their claims contains a forum selection clause stating that any litigation arising out of the agreement must be brought in Wayne County, Utah.

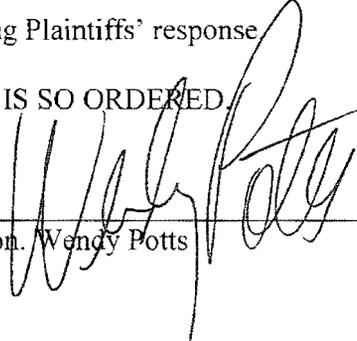
Fellowship asserts that Defendants do not have sufficient minimum contacts with Michigan such that the exercise of personal jurisdiction comports with due process. See *Oberlies*

*v Searchmont Resort, Inc*, 246 Mich App 424, 433; 633 NW2d 408 (2001). Whether this Court has personal jurisdiction over Defendants is a question of law, *Oberlies, supra* at 426, and Plaintiffs have the burden of establishing a prima facie showing of jurisdiction. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). Because the personal jurisdiction arguments were raised for the first time in a response to Plaintiffs' motion, the Court will allow Plaintiffs to file a brief addressing whether (1) this Court has personal jurisdiction over Defendants, and (2) the forum selection clause requires Plaintiffs to bring their claims in Utah. Plaintiff's response is limited to ten pages, exclusive of exhibits, and must be filed by February 21, 2014. The Court will issue an opinion after receiving Plaintiffs' response

IT IS SO ORDERED.

Dated:

FEB 13 2014

  
Hon. Wendy Potts