

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

**DHIA KALLO,
Plaintiff,**

v.

**Case No. 13-137914-CB
Hon. James M. Alexander**

**RONNIE KALLO,
Defendant.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant’s motion for summary disposition, or in the alternative, to change venue. Plaintiff and Defendant are shareholders in a business that sells liquor, beer, wine, and groceries in Lincoln Park, Michigan. In his Complaint, Plaintiff alleges that Defendant has withdrawn significant amounts of cash from the company bank accounts and used the same for his personal use. Plaintiff also alleges that, despite the business’s profitability, Defendant failed to distribute earnings to Plaintiff. As a result, Plaintiff filed the present Complaint on claims of: (1) minority shareholder oppression, (2) breach of fiduciary duty, (3) conversion, (4) usurpation of corporate opportunity, (5) injunctive relief, and (6) an accounting.

Apparently, Plaintiff has made such claims several times before. It appears that the parties previously had three separate cases in Wayne County Circuit that involved similar allegations and the same request for relief. Each of these cases ended in a Consent Order for arbitration. As a result and in his first responsive pleading, Defendant filed the present motion seeking summary disposition, or in the alternative, a change of venue to Wayne County.

Defendant seeks summary disposition under MCR 2.116(C)(1) and (C)(7). A (C)(1) motion tests whether the Court has personal jurisdiction over a defendant. Plaintiff has the burden of establishing a prima facie showing of jurisdiction to avoid summary disposition. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). A (C)(7) motion tests whether a claim is barred, among other grounds, by an agreement to arbitrate. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

Defendant first argues that the Court lacks personal jurisdiction over this matter because Plaintiff previously consented to the jurisdiction of Wayne County – citing the June 2, 2008 Orders for Arbitration, which provide: “IT IS FURTHER ORDERED that this Court shall retain jurisdiction solely for the purpose of enforcing this Order and any award entered by the arbitrator.”

Defendant also argues that Plaintiff already consented to binding arbitration of the present allegations because the 2008 Orders provide: “IT IS FURTHER ORDERED that in the event any claims have not been brought in the pleadings to date, all parties shall have the right to amend their pleadings to bring forth any they may have.”

As Plaintiff points out, however, the present Complaint involves only claims of wrongdoing that post-date the Wayne County Complaints. As a result, the allegations of this Complaint are not addressed by the June 2008 Orders for Arbitration. The 2008 Orders contain no indication that the parties agreed to resolve later-arising claims in the same manner. Similarly, the 2008 Orders only address potential claims “to date,” (June 2, 2008) and Plaintiff’s present Complaint contains no such claims.

Additionally, to the extent that Defendant wishes to use the above provision of the 2008 Orders as a venue-selection clause, the Court rejects the same. This is because such clauses have

been found to be unenforceable in Michigan as venue is controlled solely by statute. *See Omne Financial Inc v Shacks Inc*, 460 Mich 305 (1999) and *Shiroka v Farm Bureau General Insurance Company of Michigan*, 276 Mich App 98 (2007). Under MCL 600.1621(a), venue is proper in “[t]he county in which a defendant resides,” and Defendant resides in Oakland County. As a result, venue is proper in this Court.

For the many foregoing reasons, Defendant’s motion for summary disposition, or in the alternative to change venue, is DENIED.

IT IS SO ORDERED.

April 2, 2014
Date

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