

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

ROBERT McGEE,

Plaintiff,

v.

Case No: 2014-140029-CK

Hon. Wendy Potts

FERNDALE HISTORY SOCIETY, et al,

Defendants.

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OPINION AND ORDER RE: DEFENDANT JEAN SPANG'S MOTION FOR  
SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(7)

At a session of Court  
Held in Pontiac, Michigan

On

JUL 09 2014

In July 2013, Plaintiff Robert McGee secured a contract with Arcadia Publishing to write and publish a history of the City of Ferndale. The agreement listed McGee and Defendant Jean Spang as the “author” of the book. According to McGee, Spang and the other individual Defendants are board members or otherwise associated with the Defendant Ferndale Historical Society. McGee claims that Defendants initially agreed to allow him to access and use FHS materials for his book, but later thwarted his efforts and coerced Spang to repudiate the Arcadia agreement. McGee further claims that as a result of Defendants’ actions, McGee was unable to fulfill his obligations to the publisher and Arcadia terminated the agreement. McGee filed this action in April 2014 alleging that Defendants breached an agreement to provide him with resources and access to FHS’s materials. McGee further alleges that Defendants tortiously

interfered with his publishing contract, engaged in misrepresentation or fraud, and breached various fiduciary duties. McGee also asserts a promissory estoppel theory regarding his lack of access to FHS materials and asks the Court to dissolve FHS's nonprofit corporation status based on the individual Defendants' alleged illegal and fraudulent conduct.

As her first response to the complaint, Spang moves the Court to dismiss McGee's claims against her under MCR 2.116(C)(7), which tests whether a claim is barred as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118-120 (1999). The parties stipulated to the Court deciding this motion without a hearing. MCR 2.119(E)(3).

Spang first asserts that McGee's claims are barred by an arbitration provision in the Arcadia agreement. Whether a dispute is arbitrable is a generally question of law for the Court. *Madison District Public Schools v Myers*, 247 Mich App 583, 594; 637 NW2d 526 (2001). In determining a dispute's arbitrability, the Court considers whether (1) there is a valid arbitration agreement; (2) the dispute arguably falls within the scope of the arbitration agreement; and (3) the dispute is expressly exempted from arbitration by the terms of the agreement. *Madison Schools, supra* at 594-595. There is no dispute that McGee and Spang are both parties to the Arcadia agreement and that it contains a facially valid provision requiring arbitration of "any controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity thereof . . ." Further, there is nothing within the Arcadia agreement that expressly exempts this dispute from arbitration. Thus the first and third elements of the arbitration analysis are satisfied.

At issue is whether McGee's claims in this case arise out of or relate to the Arcadia agreement. Although Spang asserts that all of the allegations in McGee's complaint "relate to" Spang's performance of the Arcadia agreement, review of the complaint does not support her

position. Certainly, some of the factual allegations pertain to Spang's performance under and repudiation of the Arcadia agreement. However, most of McGee's claims are only tangentially linked to that contract. The breach of contract, promissory estoppel, and misrepresentation theories are premised on a separate agreement in which Defendants allegedly promised to allow McGee to use FHS materials to complete his book. The breach of fiduciary duty and dissolution claims are premised on the individual Defendants alleged improper and illegal conduct as FHS directors and officers. The only claim that is directly related to the Arcadia agreement is Count II alleging tortious interference with the agreement. However, because Spang was a party to that agreement, she cannot be liable for tortiously interfering with it. See *Lawsuit Financial, LLC v Curry*, 261 Mich App 579, 593; 683 NW2d 233 (2004).

Because McGee has not asserted any theory or claim against Spang relating to her performance or breach of the Arcadia agreement or her status as a party to that agreement, his claims do not arise from or relate to the agreement. Arbitration is a matter of contract, and the Court cannot require McGee to submit to arbitration a dispute that he did not agree to arbitrate. *Arrow Overall Supply Co v Peloquin Enterprises*, 414 Mich 95, 98; 323 NW2d 1 (1982). Because the arbitration provision of the Arcadia agreement is inapplicable to this action and there is no other evidence that McGee agreed to submit these claims to arbitration, the claims are not barred on this ground.

Spang also asserts that McGee agreed in the Arcadia contract to bring any action against her in a South Carolina state or federal court. However, this argument similarly fails because the forum selection provision is incorporated in the same clause as the arbitration agreement. Reading the clause as a whole, McGee and Spang agreed to bring any disputes arising from or

relating to the Arcadia agreement in a South Carolina court. Because McGee's claims against Spang do not arise from or relate to the agreement, the forum selection clause does not apply.

Even if the forum selection clause did apply to McGee's claims against Spang, the Court agrees with McGee that it should not be enforced because South Carolina is a substantially less convenient place for trying this dispute. See MCL 600.745(3)(c); *Turcheck v Amerifund Financial, Inc*, 272 Mich App 341, 348; 725 NW2d 684 (2006). The only connection between this case and South Carolina is that Arcadia, who is not a party to this dispute, is based in that state. All of the parties live or conduct business in Ferndale, any nonparty witness to these events would likely be from Ferndale, and any documents or records involved are likely kept in Ferndale. Further, forcing McGee to bring his claims against Spang in South Carolina would result in a bifurcated action with his claims against the remaining Defendants continuing in Michigan. Thus, even if Spang and McGee agreed to bring all disputes in a South Carolina court, litigating this case in South Carolina would make no sense whatsoever. Thus, the forum selection clause is unenforceable as to McGee's claims in this case.

In her final argument, Spang asks the Court to award her \$1,000 in damages for McGee's alleged violation of Michigan's Social Security Number Privacy Act, MCL 445.81, et seq. The Act states that a person shall not intentionally publically display more than four sequential digits of an individual's social security number. MCL 445.83(1)(a). The Act allows an individual to bring a civil action against a person who knowingly violates it. MCL 445.86. However, Spang has not filed a counterclaim or otherwise brought a civil action against McGee in this case. The Court's authority to act is limited to actual cases or controversies, and it cannot render a decision before a claim has actually been asserted. See *Menominee County Taxpayers Alliance, Inc v Menominee County Clerk*, 139 Mich App 814, 819-820; 362 NW2d 871 (1984). Because Spang

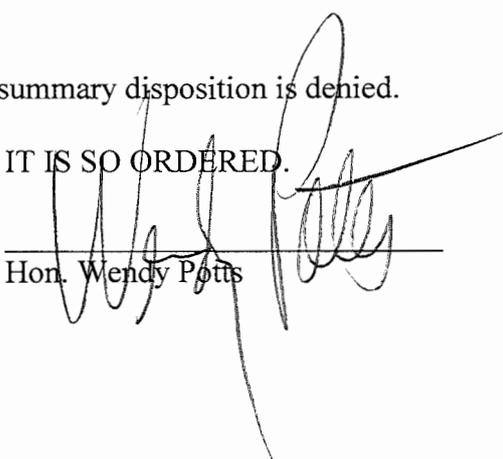
has not asserted any claim for violation of the Social Security Number Privacy Act, her request for damages under that Act is moot.

For all of these reasons, Spang's motion for summary disposition is denied.

IT IS SO ORDERED.

Dated:

JUL 09 2014

  
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Hon. Wendy Potts