

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

FIFTH THIRD BANK,

Plaintiff,

v

Case No. 2015-146077-CK

Hon. Wendy Potts

MERRY KELLY, et al,

Defendants.

OPINION AND ORDER RE: BUSINESS COURT JURISDICTION

At a session of Court
Held in Pontiac, Michigan

JUN^{On} 1 2015

This action to collect on a promissory note came before the Court on Defendants Merry Kelly and Harold R. Chappell III's motion to set aside a default. However, on closer examination of the complaint, the Court questions whether this case is properly assigned to Business Court jurisdiction. The Court has an obligation to take notice of 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.

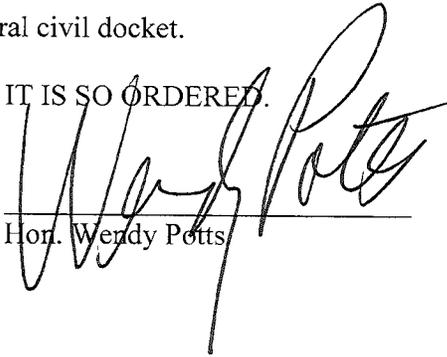
- (iii) An action in which 1 of the parties is a nonprofit organization, and the claims arise out of that party's organizational structure, governance, or finances.
- (iv) An action involving the sale, merger, purchase, combination, dissolution, liquidation, organizational structure, governance, or finances of a business enterprise. [MCL 600.8031(1)(c)]

Fifth Third submitted with its complaint a notice of assignment to business court claiming that this is a business or commercial dispute because it “involves the sale, merger, purchase, combination, dissolution, liquidation, structure, governance, or finances of a business enterprise.” See MCL 600.8031(1)(c)(iv). However, Fifth Third did not allege any facts in its complaint to support this claim. The complaint has no allegation of any business enterprise involved in this transaction. The note and other loan documents attached to the complaint state that the borrowers are Mary Kelly and Harold Chappell and do not identify any business enterprise that was a borrower or otherwise associated with the debt.

Because Fifth Third fails to allege any factual allegations that would fall under § 8031(1)(c)(iv), and neither the parties nor the claims fall under any of the other categories in § 8031(c), the case does not involve a business or commercial dispute, the Court lacks jurisdiction, and the Court orders the case reassigned to the general civil docket.

Dated: JUN 1 2015

IT IS SO ORDERED.



Hon. Wendy Potts