

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

JULIE ELLEN NEWMAN, et al,

Plaintiffs,

v

Case No. 15-146394-CZ
Hon. Wendy Potts

ELAINE KAREN LIPSCHUTZ, et al,

Defendants.

OPINION AND ORDER RE: PLAINTIFFS' MOTION REQUESTING JUDICIAL
DETERMINATION REGARDING SUBJECT MATTER JURISDICTION UNDER MCL
600.8035

At a session of Court
Held in Pontiac, Michigan

JUL 1st 2015

This case arises from a family dispute over a loan extended by Defendant JPMorgan Chase Bank, N.A., purportedly for the purpose of financing business operations of Defendant MALAK Equities, LLC and other family owned businesses. Plaintiff the Julie Ellen Winkelman Revocable Living Trust (Julie Trust) is a member of MALAK. Plaintiffs' complaint alleges, among other claims, that MALAK converted and conspired with other Defendants to convert Plaintiffs' property. Plaintiffs also claim that MALAK breached a promissory note. Plaintiffs assert several other claims against Defendants, and Defendants, in turn, assert various counterclaims against Plaintiffs as well as cross claims and third-party claims. In particular, MALAK asserts claims against the Julie Trust for breach of MALAK's operating agreement and breach of fiduciary duty.

When Plaintiffs filed this action in April 2015 they believed that the case was properly filed in the general civil docket because none of their claims involved a business or commercial dispute as MCL 600.8031(1)(c). The case was initially assigned to Judge Rudy Nichols. However, JPMorgan filed its answer to the complaint on May 25th along with a Notice of Assignment to Business Court claiming that this is 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.” MCL 600.8031(1)(c)(ii). The case management office reassigned the case to this Court.

On June 8th, Plaintiffs filed this motion asking the Court to determine whether the case falls within business court jurisdiction. The Court issued an order stating that it would decide the jurisdiction motion without a hearing, MCR 2.119(E)(3), and allowed other parties an opportunity to respond to the motion. At the time, there were a few other nondispositive motions filed and noticed for hearing that the Court held in abeyance pending its decision on this motion.

The Court determines subject matter jurisdiction by the allegations in the complaint. *Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 587-588; 644 NW2d 54 (2002). Business court jurisdiction is limited to actions in which “all or part of the action includes 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)]

Plaintiffs are correct that this action did not have identifiable business or commercial dispute when it was originally filed. Neither Plaintiff is a “business enterprise” as defined by § 8031(1)(b), and the only Defendants that are business enterprises are MALAK and JPMorgan. The Julie Trust is a member of MALAK, and while it is possible that one or more of Plaintiffs’ claims against MALAK could fall under § 8031(1)(c)(ii), Plaintiffs’ claims against MALAK did not necessarily arise from the Julie Trust’s relationship with MALAK. The Court finds no error in Plaintiffs’ conclusion that this case, at the outset, did not fall under business court jurisdiction.

Unlike other matters in which subject matter jurisdiction is present or lacking solely based on the allegations in the original complaint, *Trost, supra*, a case that does not fall initially fall under business court jurisdiction can acquire that jurisdiction based on allegations in subsequent pleading:

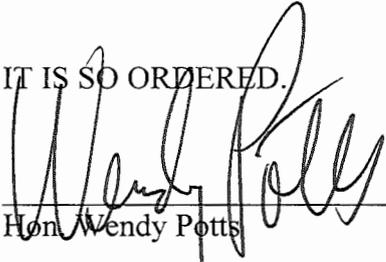
An action that does not initially include a business or commercial dispute but that subsequently includes a business or commercial dispute as a result of a cross-claim, counterclaim, third-party complaint, amendment, or any other modification of the action shall be reassigned by blind draw to a business court after the action is modified to include a business or commercial dispute as prescribed by the plan submitted under section 8033(1) or (2), as applicable. [MCL 600.8035(6)]

As noted above, after Plaintiffs filed their complaint, the case quickly expanded by incorporation of several cross, counter, and third-party claims, including MALAK’s claims that the Julie Trust breached MALAK’s operating agreement and breached fiduciary duties. These two claims alone fall squarely within § 8031(1)(c)(ii) because they are between a business enterprise and its current member and arise from that relationship. Further, JPMorgan asserts third-party claims against another business enterprise, LW Family Investments, LLC, which fall within § 8031(1)(c)(i). Plaintiffs assert that JPMorgan’s claims lack merit, however, this assertion is

irrelevant to determining subject matter jurisdiction. “If it is apparent from the allegations that the matter alleged is within the class of cases with regard to which the court has the power to act, then subject-matter jurisdiction exists.” *Trost, supra* at 586. Because MALAK’s and JPMorgan’s claims bring this case within business court jurisdiction, this Court has authority to act on the case and JPMorgan’s notice of business court jurisdiction was proper. If the Court subsequently dismisses the claims that brought the case within business court jurisdiction, the Court is not divested of jurisdiction, *Trost, supra*, although it would then have discretion to reassign the case to the general civil docket. See MCL 600.8035(5).

For all of these reasons, the Court concludes that this action falls within business court jurisdiction. The Court will issue a scheduling order for the pending motions for summary disposition. All other pending nondispositive motions may be renoticed and reprecipied on or after July 22, 2015.

Dated: JUL 10 2015

IT IS SO ORDERED.


Hon. Wendy Potts