

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

HANTZ GROUP, INC. et al,

Plaintiffs,

v

Case No. 15-146862-CB

Hon. Wendy Potts

JASON VAN DUYN, et al,

Defendants.

OPINION AND ORDER RE: DEFENDANTS' MOTION FOR SUMMARY DISPOSITION
PURSUANT TO MCR 2.116(C)(4)

At a session of Court
Held in Pontiac, Michigan

On

MAY 02 2016

This matter is before the Court on Defendants' motion for summary disposition pursuant to MCR 2.116(C)(4) on the basis that the Court lacks subject matter jurisdiction of Plaintiffs' claims. Defendants argue that the Complaint in the instant action contains virtually the same allegations set forth in the Claim for Arbitration that was filed with the Financial Industry Regulatory Agency (FINRA).

The instant complaint contains counts for breach of contract, accounting, and civil conspiracy. On June 9, 2015, Hantz Financial Services, Inc., who is not a party to the instant action, filed a claim for arbitration with FINRA. Defendants argue that summary disposition is appropriate because the claim for arbitration is based on the very same acts alleged in the instant action. In response to the motion, Plaintiffs argue that the motion applies to a party not named in

the instant action—Hantz Financial Services—and that Defendants’ motion was previously granted by a predecessor court and overturned on appeal.

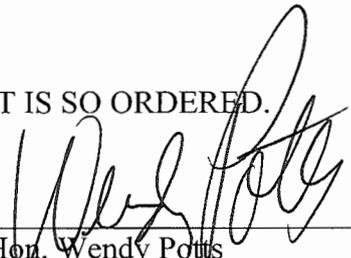
Defendant specifically moved for summary disposition pursuant to MCR 2.116(C)(4), claiming that the Court lacks jurisdiction over the subject matter of Plaintiff’s claims because of the arbitration claim that was filed with FINRA. However, where a party brings a summary disposition motion under the wrong subrule, the trial court may proceed under the appropriate subrule as long as neither party is misled. *Blair v Checker Cab Co*, 219 Mich App 667, 670-71; 558 NW2d 439 (1996), *lv den*, 456 Mich 919 (1997). The Court finds that this motion is more properly analyzed under MCR 2.116(C)(7), which provides “[e]ntry of judgment, dismissal of the action, or other relief is appropriate because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate or to litigate in a different forum, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.” MCR 2.116(C)(7).

A motion for summary disposition under (C)(7) tests whether a claim is barred. *Turner v Mercy Hosp & Health Services*, 210 Mich App 345, 349 (1995). Although a motion under (C)(7) is generally based on the pleadings, Plaintiff’s well-pleaded allegations are accepted as true and construed in Plaintiff’s favor unless the allegations are contradicted by documentary evidence. *Maiden v Rozwood*, 461 Mich 109, 119 (1999).

In support of their claim that the instant action is barred because the proper forum is FINRA arbitration, Defendants attach to their motion a Statement of Claim that was allegedly submitted to FINRA arbitration. The Statement of Claim is between Hantz Financial Services, Inc. and Jason Van Duyn, Justin Hulett, and Aquest Wealth Strategies, Inc. While claims may be barred by arbitration pursuant to MCR 2.116(C)(7), Hantz Financial Services, Inc., the

claimant in the FINRA arbitration, is not a party to the instant action. Defendants have failed to persuade the Court that the FINRA arbitration between Claimant Hantz Financial Services, Inc. and Respondents Jason Van Duyn, Justin Hulett, and Aquest Wealth Strategies, Inc. requires a dismissal of Plaintiffs' claims in the instant action. Accordingly, Defendants' motion is denied without prejudice.

Dated: MAY 02 2016

IT IS SO ORDERED.


Hon. Wendy Potts