

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

SCODELLER CONSTRUCTION, INC.,

Plaintiff,

v

Case No. 2015-149139-CB
Hon. Wendy Potts

ANTHONIO AGUILAR, and
MICHIGAN JOINT SEALING, INC.,

Defendant.

_____ /

OPINION AND ORDER RE: BUSINESS COURT JURISDICTION

At a session of Court
Held in Pontiac, Michigan

On

OCT 07 2015

On September 16, 2015, Plaintiff filed the present Complaint, seeking injunctive relief against Defendants from further violations of the Aguilar Non-Compete Agreement. Within the Complaint, Plaintiff claimed that this matter should be assigned to the business court pursuant to LOA 2013-3.

The parties appeared before the Court on September 30, 2015 on Plaintiff's motion for preliminary injunction. Upon review of the case file that day, the Court questioned whether or not this action is business court eligible for the reason that Plaintiff's Verified Complaint has not alleged an amount in controversy exceeding \$25,000.00. As such, the Court ordered Plaintiff to file a supplemental brief on the issue of jurisdiction. Plaintiff timely submitted its Supplemental Brief Regarding Jurisdiction, however, Plaintiff did not directly address the amount in controversy other than to say within footnote 1 that it believes that damages caused by MJS

exceed \$25,000.00. Plaintiff noted further that damages for a breach of a non-compete and confidentiality agreement are difficult to measure, particularly for each individual former employee¹.

This Court has an obligation to question sua sponte 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” in which the amount in controversy exceeds \$25,000.00. See MCL 600.8035(1) and (3). The phrase “amount in controversy” refers to the amount of damages claimed. *Szyszlo v Akowitz*, 296 Mich App 40, 51; 818 NW2d 424 (2012).

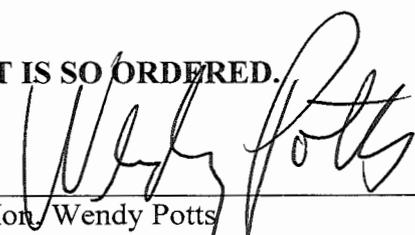
It is clear that Plaintiff’s Complaint does not include a claim for monetary damages exceeding \$25,000.00 as required by MCL 600.8035(1). Yet, Plaintiff’s Supplemental Brief Regarding Jurisdiction indicates that damages have been suffered.

Pursuant to MCR 2.118(A)(2), “a party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires.”

In the interest of justice, the Court grants leave for Plaintiff to amend its Complaint to include an amount in controversy exceeding \$25,000.00 – if damages are in fact claimed in excess of \$25,000.00. Plaintiff shall have seven (7) days from the date of this Opinion and Order to file its Amended Complaint.

Dated: **OCT 07 2015**

IT IS SO ORDERED.



Hon. Wendy Potts

¹ The Court observes for the record that this is one of three cases involving former Scodeller employees who have allegedly violated their non-compete agreements by accepting employment with Michigan Joint Sealing, Inc.