

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

**STEPHEN SKALNEK,
Plaintiff,**

v.

**Case No. 16-152352-CB
Hon. James M. Alexander**

**RICHARD SKALNEK and
CLEAN CARS COMPANY, INC,
Defendants.**

OPINION AND ORDER RE: MOTION TO DISMISS

This matter is before the Court on Defendant’s motion for summary disposition and to compel arbitration. The Court dispenses with oral argument pursuant to MCR 2.119(E)(3).

Plaintiff and Defendant Richard Skalnek are the sole shareholders of Skalnek Ford – an auto dealership in Lake Orion. Plaintiff owns 49.997% of the stock, and Richard owns 50.003%.

According to Plaintiff’s Complaint, the parties were involved in previous litigation over claims that Richard abused his majority ownership of the dealership to Plaintiff’s detriment. And Plaintiff generally makes similar claims in this case – suing on claims of (Count I) shareholder oppression, (Counts II and III) breach of fiduciary duty, (Count IV) declaratory judgment, (Count V) unjust enrichment, and (Count VI) seeking a buy-out of the dealership.

Because of their long history of disagreements, in August 2010, the parties entered into an “Agreement Regarding Retention by Skalnek Ford, Inc of Third Party to Resolve Certain Disputes.”

This Agreement provides, in relevant part, that “[e]ither party may submit a dispute for resolution by [Robert Weller] or subsequently-named third party only after that party has made a good faith effort to resolve the dispute with the other party.”

Defendants now move for summary disposition based on this clause – arguing that it requires the parties to submit Plaintiff’s present claims to arbitration. To this end, Defendants seek summary disposition under MCR 2.116(C)(7), which tests whether a claim is barred, among other grounds, by an agreement to arbitrate. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

In Michigan, “a ‘question of arbitrability’ is an issue for judicial determination unless the parties unequivocally indicate otherwise.” *Gregory J Schwartz & Co v Fagan*, 255 Mich App 229, 232 (2003), citing *Howsam v Dean Witter Reynolds, Inc*, 537 US 79; 123 S Ct 588; 154 L Ed 2d 491 (2002). Further, MCL 691.1686(1) provides that “[a]n agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.”

Further, “[t]he court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.” MCL 691.1686(2). Michigan courts have consistently reasoned that “our Legislature and our courts have strongly endorsed arbitration as an inexpensive and expeditious alternative to litigation.” *Rembert v Ryan’s Family Steak Houses, Inc*, 235 Mich App 118,133; 596 NW2d 208 (1999). As a result, “any doubts about the arbitrability of an issue should be resolved in favor of arbitration.” *DeCaminada v Coopers & Lybrand*, 232 Mich App 492, 499; 591 NW2d 364 (1998).

As stated, Defendants’ motion is based on a provision found in paragraph 2 of the Dispute Resolution Agreement, which provides that either party “**may** submit a dispute for resolution” by a third-party. (emphasis added).

In response to Defendant’s motion, Plaintiff argues that the above arbitration provision is permissive, not mandatory. In support, Plaintiff cites to the use of the word “may,” rather than “shall.” While Plaintiff may have chosen to bring the present disputes to resolution by the third party, Plaintiff instead chose to file the present suit instead. The Court agrees.

When the parties agreed to use the word “may,” they created a permissive arbitration provision. Indeed, “[i]t is . . . well recognized that ‘may’ is permissive and ‘shall’ mandatory.” *Moore v Parole Bd*, 379 Mich 624, 641; 154 NW2d 437 (1967).¹

Because the parties’ Agreement provides that either party **may** submit the dispute to arbitration, the Court finds that the arbitration provision is permissive. Plaintiff filed the present lawsuit, thereby exercising its choice to resolve through the court system. The Court will not interfere with Plaintiff’s choice.

For the foregoing reasons, Defendants’ motion is DENIED.

IT IS SO ORDERED.

May 23, 2016
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge

¹ See also *Goldstone v Bloomfield Tp Pub Library*, 268 Mich App 642, 657; 708 NW2d 740, 749 (2005), aff’d 479 Mich 554; 737 NW2d 476 (2007) (reasoning “the term ‘may,’ which has historically been interpreted to be discretionary, as opposed to the term ‘shall,’ which is universally recognized as requiring mandatory adherence.”).