

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

**WESTBLOOMFLY, LLC,
Plaintiff,**

v.

**Case No. 16-152382-CB
Hon. James M. Alexander**

**THE ADVENTURE PARK AT WEST BLOOMFIELD, LLC, ET AL,
Defendants.**

OPINION AND ORDER RE: MOTION FOR SUMMARY DISPOSITION

This matter is before the Court on Defendant’s motion for summary disposition and to compel arbitration. Plaintiff owns a 19% interest in Defendant Adventure Park at West Bloomfield, which operates a climbing and zipline course in West Bloomfield. Defendant Outdoor Venture Group Holdings is a 76% owner of Adventure Park and, Plaintiff claims, is the holder of the Park’s books and records. And Defendant Bahman Azarm is the Administrative Director of the Park, who Plaintiff claims, controls the Park’s books and records.

In November 2015, Plaintiff sent a written request to Defendant seeking copies of the following information:

1. A detailed accounting of the costs and expenses for the construction of the W. Bloomfield Ariel Park (the “Park”);
2. The books and records related to the costs, expenses and operations in connection with the Park and the Company from its opening/inception through the date hereof, including all general ledgers and journal entries (digital or otherwise);
3. Monthly check registers of the Company, including any information contained in QuickBooks or other digital formats;
4. All bank statements of the Company;

5. All information related to any loans or borrowing for or involving the Company or the funds of the Company; and
6. All information on future sales, discounted sales, or on-line sales related to the Park.

Plaintiff made said request pursuant to Michigan's Limited Liability Company Act, at MCL 450.4503, which provides:

- (1) Upon written request of a member, a limited liability company shall send a copy of its most recent annual financial statement and its most recent federal, state, and local income tax returns, and any other returns or filings the limited liability company has submitted or is required to submit to any federal, state, local, or other governmental taxing authority, to the member by mail or electronic transmission.
- (2) Upon reasonable request, a member may obtain true and full information regarding the current state of a limited liability company's financial condition.
- (3) Upon reasonable written request and during ordinary business hours, a member or the member's designated representative may inspect and copy, at the member's expense, any of the records a limited liability company is required to maintain under section 213,¹ at the location where the records are kept.
- (4) Upon reasonable written request, a member may obtain other information regarding a limited liability company's affairs or may inspect, personally or through a representative and during ordinary business hours, other books and records of the limited liability company, as is just and reasonable.
- (5) A member may have a formal accounting of a limited liability company's affairs, as provided in an operating agreement or whenever circumstances render it just and reasonable.

¹ MCL 450.4213 provides:

A limited liability company shall keep at its registered office or principal place of business in this state all of the following:

- (a) A current list of the full name and last known address of each member and manager.
- (b) A copy of the articles or restated articles of organization, together with any amendments to the articles.
- (c) Copies of the limited liability company's federal, state, and local tax returns and reports, if any, for the 3 most recent years.
- (d) Copies of any financial statements of the limited liability company for the 3 most recent years.
- (e) Copies of operating agreements.
- (f) Copies of records that would enable a member to determine the members' relative shares of the limited liability company's distributions and the members' relative voting rights.

Plaintiff claims, however, that Defendants have refused to provide any of the requested information. As a result, Plaintiff filed the present suit solely seeking to compel Defendants to produce said information.

Defendants now move for summary disposition based on an arbitration provision found in the Park's Operating Agreement. Defendants do so 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 response, Plaintiff seeks summary disposition under (I)(2).

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).

Defendants' motion is based on a provision found at paragraph 12.5 of the agreement, which provides (in relevant part):

any claim, controversy or dispute arising out of or relating to this Agreement or any interpretation or breach thereof or performance thereunder, including any dispute concerning the scope of this arbitration provision ("Dispute"), will be settled by submission to final, binding and non-appealable arbitration . . . for determination.

Based on this provision, Defendants argue that Plaintiff's claim for copies of financial records should be submitted to binding arbitration.

In response to Defendants' motion, Plaintiff argues that the above arbitration provision does not apply to its statutory request for financial information.

Indeed, Defendants do not cite any provision of the Operating Agreement that provides that Plaintiff, as a Park member, is entitled to access to the financial information requested in its November 2015 written demand. As a result, the Court cannot conclude that Plaintiff's claim is one that arises out of the Operating Agreement. Rather, Plaintiff's claim arises under the statute.

Further, the information sought by Plaintiff appears reasonable within the meaning of the MCL 450.4503. Plaintiff holds a 19% ownership interest in the Adventure Park and should be afforded complete access to the company's financial information.

For all of the above reasons, the Court DENIES Defendants' motion for summary disposition based on an agreement to arbitrate and GRANTS Plaintiff's motion for summary disposition. Plaintiff is entitled to the information sought in its November 2015 written request, which Defendants must provide within 21 days.

This Order is a Final Order that resolves the last pending claim and closes the case.

IT IS SO ORDERED.

July 6, 2016
Date

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