

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

**DAVID CORBETT and
PLUTO HOLDINGS, LLC,
Plaintiffs,**

v.

**Case No. 16-152662-CB
Hon. James M. Alexander**

**TIMOTHY HOLMES,
Defendant.**

OPINION AND ORDER RE: MOTION FOR SUMMARY DISPOSITION

This matter is before the Court on Defendant’s motion for summary disposition and sanctions. This is a business divorce. Plaintiff David Corbett and Defendant are 50/50 shareholders in Plaintiff Pluto Holdings and non-party Pluto Post Productions. The parties are currently involved in an arbitration proceeding regarding Pluto Post. While said arbitration was pending, Plaintiff filed the current action regarding Pluto Holdings.

Both companies’ Operating Agreements contain mandatory arbitration provisions. Defendant now moves for summary disposition, in part, based on the same.¹ Defendant does so under MCR 2.116(C)(7), which tests whether a claim is barred, among other grounds, by an agreement to arbitrate.

Michigan law is well-established that “a court must construe and apply unambiguous contract

¹ Defendant also requests summary under MCR 2.116(C)(6), (C)(8), and (C)(10), but these need not be addressed. This is so because, if the arbitration provision is valid, it would be improper for this Court to consider the merits of Plaintiffs’ claims under (C)(8) or (C)(10) – as the same would be properly decided by said panel. And the Court will not consider the (C)(6) request because the pending arbitration involves a different (albeit related) company. There

provisions as written.” *Rory v Cont’l Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). Further, “[a] contract must be interpreted according to its plain and ordinary meaning.” *Holmes v Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008). “Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court.” *Holmes v Holmes*, 291 Mich App at 594.

Further, 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). 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.” And “[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).

Article 10.16 of Pluto Holdings’ April 30, 2007 Operating Agreement provides:

Any dispute arising under this Operating Agreement, or any dispute arising in connection with the operation of the Company or any act of a Member, shall be submitted to final, exclusive, binding arbitration by three (3) arbitrators, one of whom shall be named by each of the contesting parties. The third arbitrator shall be selected by the first two (2) arbitrators. The hearings shall be conducted in Oakland County, Michigan, in accordance with the expedited commercial arbitration rules of the

American Arbitration Association. Entry of judgment on such award may be made in any court of competent jurisdiction.

Plaintiffs' Complaint alleges claims for: (Count I) dissolution under Article 8.2 of the Operating Agreement; (Count II) breach of the Operating Agreement; and (Count III) conversion based on Defendant's alleged violation of the Operating Agreement. In other words, Plaintiffs' Complaint stems solely from the Operating Agreement of Pluto Holdings.

In fact, Plaintiffs so admit in their Response to Defendant's motion – "This action involves the narrow issue of the liquidation and dissolution of Pluto Holdings." Plaintiffs similarly admit that dissolution upon a member withdrawal, as the case here, is the subject of a specific contractual provision of said Operating Agreement – "Pursuant to the company's Operating Agreement, if a member withdraws, the company must be liquidated and dissolved."²

In response to Defendant's motion, Plaintiffs oddly claim that "because there is no dispute under the Operating Agreement, no allegation of wrongdoing as to the parties, and the Operating Agreement is silent as to the method of liquidating the properties, . . . the arbitration clause is not applicable in this case." The Court does not follow this argument.

There is a dispute over the Operating Agreement. Plaintiffs have alleged three claims; as previously stated, each of said claims is specifically founded on a dispute under the Operating Agreement.

Because Pluto Holdings' April 30, 2007 Operating Agreement is valid and binding and contains a broad arbitration provision that governs this dispute, this matter is appropriately resolved through arbitration under Article 10.16 of said Agreement. As a result, Defendant's motion to

² Article 8 of the Operating Agreement.

compel arbitration is GRANTED.³

Under the Uniform Arbitration Act, “If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.” MCL 691.1687(7).

Under this statute, this matter is stayed pending a final determination by the arbitration panel. The parties must notify the Court within 28 days of the final arbitration report.

Defendants may file an appropriate motion for costs and attorney fees.

IT IS SO ORDERED.

July 20, 2016
Date

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

³ Because the Court has done so, it need not consider any of Defendant’s other bases for summary.