

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

CHRISTINA BELLAS and MAKE-UP LLC,

Plaintiffs,

Case No. 2013-3577-CK

vs.

RICHARD KNILL and KARL SOMMER,

Defendants.

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OPINION AND ORDER

Defendants have filed a motion for summary disposition pursuant to MCR 2.116(C)(7).

Factual and Procedural History

In 2012, Plaintiff Christina Bellas (“Plaintiff”) and Defendants jointly formed Plaintiff Make-Up LLC (“Make-Up”). When Make-Up was formed Plaintiff and Defendants executed an operating agreement (the “Agreement”).

On September 6, 2013, Plaintiffs filed their complaint in this matter seeking dissolution of Make-Up, as well as declaratory and injunctive relief. On October 7, 2013, Defendants filed the instant motion for summary disposition as their first responsive pleading.

Standard of Review

MCR 2.116(C)(7) permits summary disposition where the claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action. In reviewing a motion under MCR 2.116(C)(7), the Court accepts as true the plaintiff's well-pleaded allegations,

construing them in the plaintiff's favor. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 600; 609 NW2d 203 (2000). The Court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed or submitted by the parties when determining whether a genuine issue of material fact exists. *Id.* Where a material factual dispute exists such that factual development could provide a basis for recovery, summary disposition is inappropriate. *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 736; 613 NW2d 383 (2000). Where no material facts are in dispute, whether the claim is barred is a question of law. *Id.*

Arguments and Analysis

In their motion, Defendants contend that this matter was improperly filed with this Court because the Agreement requires this matter to be submitted to binding arbitration. The Agreement provides in pertinent part:

Article XIII Arbitration

Any dispute or controversy arising under this Agreement between the Managers and/or Members shall be settled by arbitration in accordance with the then existing Rules of the American Arbitration Association. Such arbitration shall be conducted at the request of any such party before three (3) arbitrators...Any such [arbitration] award shall be binding upon the parties hereto... In determining any question, matter or dispute between them, the arbitrators shall apply the provisions of this Agreement, without varying therefrom in any respect...

In their response, Plaintiffs contend that the arbitration clause does not apply to their claims because they seek equitable relief. Specifically, Plaintiffs assert that MCL 450.4802 reserves the task of dissolving a limited liability company to the “circuit court for the county in which the registered office...is located.” This issue, in the context of partnerships, has been addressed by the Michigan Court of Appeals in *Armoudlian v Zadeh*, 116 Mich App 659; 323 NW2d 502 (1982).

In *Armoundlian*, the parties' relationship was governed by a partnership agreement that contained an arbitration provision. Nevertheless, plaintiffs contended that the trial court had erred in ruling that their suit for dissolution was subject to arbitration in light of statutory authority providing the circuit court with jurisdiction over partnership dissolution. The Court of Appeals held:

We view this contention as faulty inasmuch as there is nothing within the act to indicate that such jurisdiction is intended to be exclusive. Under M.C.L. § 449.31; M.S.A. § 20.31, dissolution by court decree is only one of a number of methods or causes of dissolution. A partnership may be dissolved pursuant to the mutual agreement of the partners. See *e.g.*, *Brand v Elledge*, 101 Ariz. 352, 419 P2d 531 (1966). If partners are permitted to dissolve and terminate a partnership through their own private settlement and accounting, it follows that they may agree to an alternative nonjudicial mechanism to accomplish the same end. *Cf. Norton v. Hayden*, 129 Mich. 374, 88 N.W. 876 (1902). Arbitration is an acceptable forum for resolving partnership dissolution disputes. The trial court correctly granted accelerated judgment with regard to the claims for dissolution.

While this case involves a limited liability rather than a partnership, the reasoning set forth in *Armoundlian* remains persuasive. Just as MCL 449.31 provides only some of the methods for dissolving a partnership, MCL 450.4802 provides only one of many avenues available to dissolve a limited liability company. Indeed, MCL 450.4801 provides that judicial dissolution is one of multiple avenues for dissolving a limited liability company. Accordingly, the Court is convinced that Plaintiffs' contention that their dissolution claim cannot be submitted to arbitration is without merit.

Plaintiffs also contend that even if their dissolution claim is subject to binding arbitration, their injunctive and declaratory claims may be maintained with this Court. In support of their position, Plaintiffs rely on Article XIII, Sec. 43 of the Agreement, which provides:

Specific Performance. Each Member agrees with the other Members that the other Members would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with the specific terms and that monetary damages would not provide an adequate remedy in such event.

Accordingly, it is agreed that, in addition to any other remedy to which the nonbreaching Members may be entitled, at law or in equity, the nonbreaching Members shall be entitled to injunctive relief to prevent breaches of this Agreement and, specifically, to enforce the terms and provisions of this Agreement in any action instituted in any court of the United States or any state thereof having subject matter jurisdiction thereof.

Accordingly, Article XIII, sec. 43 provides an exception to the general rule requiring that all disputes be submitted to binding arbitration. Further, as a court of general equity jurisdiction, this Court, as a circuit court, has subject-matter jurisdiction to issue a declaratory ruling and/or injunction. Const 1963, art. 6, § 13; MCL 600.605; MSA. 27A.605; *Consumers Power Co v Public Service Comm*, 415 Mich 134, 144, 327 NW2d 875 (1982); *State ex rel Ingham Co Prosecutor v. American Amusement Co, Inc*, 71 Mich App 130, 135, 246 NW2d 684 (1976). Accordingly, pursuant to Article XIII of the agreement, Plaintiffs may maintain their injunctive claims in this Court to the extent that they seek injunctive relief to “prevent breaches of [the Agreement] and, specifically, to enforce the terms and provisions of [the Agreement].” The remainder of their claims must be submitted to binding arbitration as required by the arbitration clause in the Agreement.

Conclusion

For reasons as stated above, Defendants’ motion for summary is GRANTED, IN PART and DENIED, IN PART. Plaintiffs’ claim for dissolution is DISMISSED as it must be submitted to binding arbitration as provided in the Agreement. Defendants’ motion for summary disposition of Plaintiffs’ injunctive and declaratory claims is DENIED to the extent that Plaintiffs seek injunctive relief to prevent breaches of the Agreement and, specifically, to enforce the terms and provisions of the Agreement. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: November 22, 2013

JCF/sr

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