

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

J.M. LONGYEAR, LLC; and
STEPHEN J. HICKS,

Plaintiffs,

vs.

THEODORE P. ROSSI, individually
and on behalf of L&R, LLC,

Defendant.

Case No. 14-07083-CKB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER GRANTING DEFENDANT’S MOTION
FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(7)

A choice-of-venue provision brought this dispute from the Upper Peninsula to this Court, but Defendant Theodore Rossi contends that an arbitration clause obligates this Court to stay out of the dispute in deference to a pending arbitration proceeding. Selection of the proper forum turns upon the interplay between two documents: (1) the Amended and Restated Operating Agreement of L&R, LLC (“L&R Operating Agreement”); (2) a management agreement between The Rossi Group, LLC (“Rossi Group”) and L&R, LLC (“L&R”). The Court concludes that the L&R Operating Agreement – including its arbitration clause – governs this dispute, so the Court must grant summary disposition to Rossi under MCR 2.116(C)(7).

I. Factual Background

Defendant Rossi has moved for summary disposition under MCR 2.116(C)(7) on the theory that the plaintiffs’ claims all must be resolved through arbitration. “A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence[.]”

and if “such material is submitted, it must be considered.” Maiden v Rozwood, 461 Mich 109, 119 (1999). Nevertheless, “[t]he contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant.” Id. Accordingly, the Court shall limn the facts by starting with the complaint and then adjusting its allegations as required by all of the evidence submitted in connection with the motion for summary disposition.

Although Defendant Theodore Rossi resides in Connecticut, see Complaint, ¶ 1, he has been involved for years in the business of an Upper Peninsula saw mill owned and operated by Northern Hardwoods Operating Company, LLC (“Northern Hardwoods”). On February 3, 2012, Rossi sold a substantial interest in Northern Hardwoods to Plaintiff J.M. Longyear, LLC (“Longyear”), thereby splitting ownership of the saw mill. See Defendant’s Motion for Summary Disposition, Exhibit A (Membership Interest Purchase Agreement). By all accounts, Northern Hardwoods is a subsidiary of L&R, whose internal operations are governed by the L&R Operating Agreement that went into effect on February 3, 2012. See Motion for Partial Summary Disposition of Count I of Complaint, Exhibit 2 (L&R Operating Agreement). Consequently, Northern Hardwoods runs the saw mill under the auspices of L&R, which in turn operates under the ownership of Rossi and Longyear.

The Northern Hardwoods saw mill has received ancillary services “such as human resources, accounting,” and sales-force assistance from the Rossi Group pursuant to a management agreement executed on February 3, 2012, by the Rossi Group, L&R, and Northern Hardwoods. See Complaint, ¶ 12. But on June 20, 2014, Plaintiff Stephen Hicks – acting in his capacity as the manager of L&R appointed by Plaintiff Longyear¹ – exercised Longyear’s unilateral right to terminate the agreement

¹ L&R has two managers: Hicks appointed by Longyear and Rossi appointed by himself. See Complaint, ¶ 6; see also Motion for Partial Summary Judgment of Count I of Complaint, Exhibit 2 (L&R Operating Agreement, § 5.2).

with the Rossi Group for ancillary services.² That valid exercise of authority under the terms of both the management agreement and the L&R Operating Agreement created a vacuum. Specifically, the ancillary services had to be provided to Northern Hardwoods by somebody. Rossi took the position that, in the absence of an agreement between the equal-share owners of L&R, the Rossi Group had the right to continue providing ancillary services and billing Northern Hardwoods until the owners of L&R could break the deadlock. In contrast, Longyear claimed that the Rossi Group had no right to provide ancillary services in the wake of proper termination of the management agreement. Faced with an impasse, Defendant Rossi initiated an arbitration proceeding to break the deadlock, whereas Plaintiffs Longyear and Hicks filed a complaint in this Court. Now, at the inception of this litigation, Rossi has moved for summary disposition pursuant to MCR 2.116(C)(7), contending that the dispute must be resolved through arbitration, rather than litigation.

II. Legal Analysis

Defendant Rossi has correctly presented the request for arbitration in lieu of litigation as a motion for summary disposition under MCR 2.116(C)(7). See DeCaminada v Coopers & Lybrand, LLP, 232 Mich App 492, 495-496 & n 1 (1998). “If there is no factual dispute, whether a plaintiff’s claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide.” See RDM Holdings, Ltd v Continental Plastics Co, 281 Mich App 678, 687 (2008). “If a factual dispute exists, however, summary disposition is not appropriate.” Id. Applying these legal principles, the Court must determine which, if any, claims asserted by the plaintiffs must be resolved through arbitration.

² Both sides agree that, under section 4(c) of the management agreement and section 5.22 of the L&R Operating Agreement, Plaintiffs Longyear and Hicks had the power to take that action.

In Michigan, our legislature “has expressed a strong public policy favoring private voluntary arbitration, and our courts have historically enforced agreements to arbitrate disputes.” Rembert v Ryan’s Family Steak Houses, Inc, 235 Mich App 118, 127-128 (1999). Our legislature “significantly advanced the public policy favoring arbitration in 1961 when it enacted the Michigan arbitration act, (MAA), MCL 600.5001 *et seq*,” *id.* at 131, and recently reaffirmed that commitment to arbitration in 2013 when it adopted the Uniform Arbitration Act, MCL 691.1681, *et seq*. Additionally, a steady stream of decisions from our Court of Appeals reflects our jurisprudential commitment to arbitration. See, e.g., Rooyakker & Sitz, PLLC v Plante & Moran, PLLC, 276 Mich App 146, 156 (2007). To be sure, arbitration is a matter of contract, so “[t]he preference for arbitration . . . is triggered only if the parties agree to arbitrate.” Macomb County v AFSCME Council 25 Locals 411 and 893, 494 Mich 65, 81 n47 (2013). But there nonetheless exists “a presumption of arbitrability ‘unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.’” Amtower v William C Roney & Co, 232 Mich App 226, 235 (1998). Indeed, “[a]ny doubts about arbitrability of an issue should be resolved in favor of arbitration.” City of Huntington Woods v Ajax Paving Indus, Inc, 196 Mich App 71, 75 (1992); see also Amtower, 232 Mich App at 235.

Our Court of Appeals has held that a “three-part test applies for ascertaining the arbitrability of a particular issue: ‘1) is there an arbitration agreement in the contract between the parties; 2) is the disputed issue on its face or arguably within the contract’s arbitration clause; and 3) is the dispute expressly exempted from arbitration by the terms of the contract.’” In re Nestorovski Estate, 283 Mich App 177, 202 (2009). Here, the management agreement contains no arbitration provision, but the L&R Operating Agreement includes an arbitration clause that states: “All disputes arising under

this Agreement, or among the Members as to matters involving the Company, may be submitted to arbitration[.]” See Motion for Partial Summary Judgment of Count I of Complaint, Exhibit 2 (L&R Operating Agreement, § 12.2). This provision seems to sweep within its ambit all disputes regarding the operations of L&R and its affiliated companies, including Northern Hardwoods. But Plaintiffs Longyear and Hicks argue that that arbitration provision has no application to this dispute because the disagreement here has arisen under the management agreement, rather than the L&R Operating Agreement, and the arbitration clause simply provides that a dispute “may” – rather than must – “be submitted to arbitration.” The Court shall address these two arguments in turn.

The plaintiffs’ reliance upon the management agreement – as opposed to the L&R Operating Agreement – as the basis for this dispute finds no support in the record. First, Defendant Rossi is not even a party to the management agreement, but he manifestly is a party to the L&R Operating Agreement. Because the plaintiffs have chosen to pursue this action against Rossi, the Court must presume that the outcome of the case turns upon the interpretation of some agreement to which Rossi is a party. Second, the plaintiffs’ complaint relies heavily upon the L&R Operating Agreement in setting forth claims for breach of contract. See Complaint, Count 2 (alleging breach of Section 5.19 of the L&R Operating Agreement) & Count 7 (alleging breach of sections 5.18 and 5.19 of the L&R Operating Agreement). Third, by unilaterally terminating the management agreement, the plaintiffs rendered that agreement inoperative, leaving only the L&R Operating Agreement to form the basis for dispute resolution. Accordingly, the Court concludes that the parties’ dispute must be governed by the L&R Operating Agreement, as opposed to the management agreement.

The L&R Operating Agreement provides that “[a]ll disputes arising under this Agreement, or among the Members as to matters involving the Company, *may* be submitted to arbitration to be administered by the American Arbitration Association.” See Motion for Partial Summary Judgment

of Count I of Complaint, Exhibit 2 (L&R Operating Agreement, § 12.2 (emphasis added)). In the plaintiffs' view, this language simply permits the parties to the L&R Operating Agreement to resort to arbitration if they all agree to do so. In contrast, Defendant Rossi asserts that any party to the L&R Operating Agreement has the right to demand arbitration. As a matter of Michigan law, "the term 'may' denotes permissive action," see Wilcoxon v City of Detroit Election Comm'n, 301 Mich App 619, 631 (2013), but that general principle does not resolve the dispute about arbitrability in cases where one contracting party demands arbitration while the other party opposes arbitration. Instead, the Court must look to decisions applying Michigan law in such circumstances when the arbitration clause at issue provides that the parties "may" submit their disputes to arbitration. Courts that have faced this issue have uniformly concluded that such a provision mandates arbitration if either party to a contract demands that form of dispute resolution, both as a general matter, see United States v Bankers Ins Co, 245 F3d 315, 320-321 (4th Cir 2001) (collecting cases), and as a matter of Michigan law. See Detroit Edison Co v Burlington Northern and Santa Fe Railway Co, 442 F Supp 2d 387, 390-391 (ED Mich 2006). Thus, the Court must afford any party to the L&R Operating Agreement the right to demand arbitration. Because Defendant Rossi has expressly demanded arbitration, the Court must grant summary disposition in Rossi's favor under MCR 2.116(C)(7) and require that the parties' dispute proceed through the arbitration process.³

III. Conclusion

For all of the reasons set forth in this opinion, the Court must grant Defendant Rossi's motion for summary disposition under MCR 2.116(C)(7), and thereby permit the arbitration process to run its course. The L&R Operating Agreement manifestly governs this dispute, and the arbitration clause

³ If the plaintiffs disagree with the arbitration award, they can seek to vacate the award under MCR 3.602(J) or request modification or correction of the award pursuant to MCR 3.602(K).

in that document dictates that the Court must stay its hand – at least for the time being – in deference to the arbitration process invoked by Defendant Rossi.

IT IS SO ORDERED.

This is a final order that resolves the last pending claim and closes the case.

Dated: October 14, 2014



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge