

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

VERIFY VALID, LLC,

Plaintiff,

vs.

MINDFUL INSIGHTS, LLC,

Defendant.

Case No. 14-07361-CKB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER GRANTING SUMMARY DISPOSITION
TO DEFENDANT MINDFUL INSIGHTS UNDER MCR 2.116(C)(6)

To select members of Parliament, the United Kingdom uses a system known as first past the post. Forum selection under Michigan law similarly turns upon primacy. Indeed, MCR 2.116(C)(6), which Defendant Mindful Insights, LLC (“Mindful Insights”) has invoked in requesting summary disposition here, requires the Court to dismiss a case if “[a]nother action has been initiated between the same parties involving the same claim.” Although Plaintiff Verify Valid, LLC (“Verify Valid”) fired the first shot on August 11, 2014, by seeking a declaratory judgment from this Court to block arbitration of the parties’ commercial dispute, Mindful Insights advanced the first claim for breach of contract in a lawsuit filed on August 13, 2014, in the Multnomah County Circuit Court in Oregon. Verify Valid responded in kind by amending its complaint to include a contractual challenge in this Court in December 2014, but Mindful Insights contends that its preexisting breach of contract claim prevents the Court from taking up the attack upon the contract in Verify Valid’s amended complaint. The Court agrees that Mindful Insights is entitled to summary disposition under MCR 2.116(C)(6), so the Court shall leave the parties to contest their competing claims in Oregon.

Pursuant to MCR 2.116(C)(6), the Court should grant summary disposition at the behest of the defendant when “[a]nother action has been initiated between the same parties involving the same claim.” “The court rule is a codification of the former plea of abatement by prior action.” Frohriep v Flanagan, 275 Mich App 456, 464 (2007), rev’d in part on other grounds, 480 Mich 962 (2007). Although “MCR 2.116(C)(6) does not require that all the parties and all the issues be identical[,]” JD Candler Roofing Co, Inc v Dickson, 149 Mich App 593, 598 (1986); see also Frohriep, 275 Mich App at 464, “to abate a subsequent action, the two suits must be based on the same or substantially same cause of action, and as a rule the same relief must be sought.” Frohriep, 275 Mich App at 464. Significantly, MCR 2.116(C)(6) “in no way limits the other action to those actions filed in courts of this state or federal courts located in this state.” See Valeo Switches and Detection Systems, Inc v EMCom, Inc, 272 Mich App 309, 319 (2006).

By all accounts, Plaintiff Verify Valid filed the first action between the competing parties in this Court on August 11, 2014. The complaint, however, sought only a “declaratory judgment of no agreement to arbitrate,” requesting that the Court “stay[] the improper arbitration proceedings” in progress and determine “that there is not an executed contract between the parties.” See Complaint, Request for Relief, ¶¶ A-B. On August 13, 2014, Defendant Mindful Insights filed a complaint in the Multnomah County Circuit Court, setting forth claims against Verify Valid for breach of contract and declaratory relief regarding the arbitrability of the dispute. See Defendant’s Brief in Support of Motion for Summary Disposition, Exhibit A. In other words, Count Two of that complaint raised the same issue presented in this Court, but Count One of that complaint presented an entirely new issue, *i.e.*, breach of contract, and demanded money damages. Then, on December 8, 2014, Mindful Insights filed a declaration in the Multnomah County Circuit Court disclaiming any right to arbitrate

the dispute. See id., Exhibit B. Finally, Verify Valid submitted an amended complaint in this Court on December 31, 2014, demanding a declaratory judgment that no valid contract exists between the parties.

As matters now stand, the propriety of arbitration is no longer in dispute.¹ Instead, Defendant Mindful Insights is pursuing monetary damages from Plaintiff Verify Valid in Oregon on a breach-of-contract claim, and Verify Valid is seeking a declaratory judgment in this Court to the effect that no contract exists between the parties. Without question, Mindful Insights launched the first salvo in the breach-of-contract dispute by presenting such a claim as Count One in its complaint filed on August 13, 2014, in Oregon.² To be sure, Verify Valid’s complaint and its amended complaint seek a declaration that no contract exists between the parties, but ““declaratory relief is a remedy, not a claim.”” Wiggins v Burton, 291 Mich App 532, 561 (2011). Thus, Mindful Insights presented the first breach-of-contract claim. Moreover, “as a general rule, to abate a subsequent action, the same relief must be sought in each action.” Frohriep, 275 Mich App at 465. Verify Valid’s complaint in this Court initially sought to resolve the issue of arbitrability through a declaratory judgment, which “is typically equitable in nature,” Adair v State of Michigan, 486 Mich 468, 490 (2010), and “not a damages remedy.” Mettler Walloon, LLC v Melrose Township, 281 Mich App 184, 221 (2008).

¹ The declaration renouncing arbitration filed by Mindful Insights in the Multnomah County Circuit Court has rendered moot the arbitrability issue. See General Motors Corp v Department of Treasury, 290 Mich App 355, 386 (2010) (discussing concept of mootness). Plaintiff Verify Valid insists that Defendant Mindful Insights never enjoyed a right to arbitrate, so its declaration had no effect because it gave up nothing. The Court’s mootness determination, however, does not depend upon whether Mindful Insights had a right to demand arbitration in the first instance. The mootness determination rests entirely upon the simple fact that, at this point, neither party is seeking arbitration as the method for resolving the parties’ dispute.

² In the context of MCR 2.116(C)(6), actions “are initiated in Michigan upon the filing of a complaint, and not upon service of process.” Fast Air, Inc v Knight, 235 Mich App 541, 544 (1999).

In contrast, Mindful Insights requested monetary damages for breach of contract and a declaratory judgment concerning arbitrability in its complaint filed in the Multnomah County Circuit Court in Oregon. Because that demand for declaratory relief has now become a vestigial appendage both in Oregon and in this Court, all that remains of the parties' dispute is a breach-of-contract contest that clearly started in the Oregon action.

The Court's analysis leads ineluctably to the conclusion that Defendant Mindful Insights has established a right to summary disposition under MCR 2.116(C)(6). The breach-of-contract claim for money damages filed by Mindful Insights in the Multnomah County Circuit Court in Oregon now frames the parties' only remaining dispute, and the declaratory-judgment request in Plaintiff Verify Valid's amended complaint is swimming in the wake of the Oregon action. Accordingly, the Court shall grant summary disposition in favor of Mindful Insights and dismiss Verify Valid's amended complaint, albeit without prejudice,³ in deference to the Oregon action pending in the Multnomah County Circuit Court.

IT IS SO ORDERED.

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

Dated: April 2, 2015



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

³ As our Court of Appeals has explained, "it might be appropriate, when dismissing a case under MCR 2.116(C)(6), to do so without prejudice in the event that the foreign court's jurisdiction is disputed, an issue such as forum non conveniens arises, or the case is dismissed on grounds other than the merits." Valeo Switches, 272 Mich App at 319.