

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

SIGRID VALK-FEENEY,

Plaintiff,

Case No. 13-08742-CBB

vs.

HON. CHRISTOPHER P. YATES

WILLIAM J. BECK; DAVID N. KRAKER;
GINSAN LIQUIDATING COMPANY, LLC;
THREE MILE ROAD, LLC; DELTA EQUITY
ADVISORS; and DELTA EQUITY ADVISORS,
LLC, jointly and severally,

Defendants.

OPINION AND ORDER GRANTING IN PART, AND DENYING IN
PART, DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

Plaintiff Sigrid Valk-Feeney has a remarkable ability to turn around struggling companies. In 2006, she began working with Defendants William Beck and David Kraker. Then, in June 2008, the three of them formed Defendant Ginsan Liquidating Company, LLC (“GLC”) to buy a distressed company, and Valk-Feeney assumed the role of internal manager at GLC. That arrangement sowed the seeds of disagreement among Valk-Feeney, Beck, and Kraker. Although the three maintained a business relationship until 2013, Valk-Feeney regarded her compensation as grossly inadequate, especially after she began assisting additional clients besides GLC. In February 2013, Valk-Feeney renounced her business relationship with Beck and Kraker and accepted full-time employment with another company. Several months later, Valk-Feeney filed this suit seeking relief on a wide variety of claims. In response to the defendants’ request for summary disposition, the Court concludes that many of those claims must be resolved through arbitration, but some must be litigated.

I. Factual Background

The defendants have moved for summary disposition under MCR 2.116(C)(7) on the theory that Plaintiff Valk-Feeney's claims must be resolved by 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.

In 2006, Defendants Beck and Kraker invited Plaintiff Valk-Feeney to join them in a business relationship as Defendant Delta Equity Advisors ("DEA") for the purpose of handling turn-around consulting work in West Michigan.¹ See Complaint, ¶ 11. In late 2007, DEA obtained a contract with Ginsan Industries, Inc. ("Ginsan") for the purposes of restructuring the organization and selling the business at a favorable price. See Complaint, ¶ 12. DEA encountered difficulties in finding a buyer for Ginsan, so the three participants in DEA formed Defendant GLC in June 2008 to purchase and operate Ginsan. See Complaint, ¶ 13. Although Valk-Feeney held only a ten-percent interest in GLC, see id., Beck – as the majority owner of GLC² – enlisted Valk-Feeney "to spend 100% of her time" on GLC's efforts at Ginsan. See Complaint, ¶ 14.

¹ Plaintiff Valk-Feeney has described DEA as a partnership that existed from 2006 to 2013, see Complaint, ¶ 3, but the defendants disagree with that characterization. They note that Defendant Beck formed a single-member entity in 2007 known as Delta Equity Advisors, LLC. See Brief in Support of Defendants' Motion for Summary Disposition, Exhibit L.

² Defendant Beck held a majority interest of 80 percent in GLC, and Defendant Kraker held a ten-percent interest in GLC. See Complaint, ¶ 13.

While Plaintiff Valk-Feeney worked for Defendant GLC at Ginsan beginning in June 2008, Defendant Beck set her compensation. Valk-Feeney apparently voiced concerns to Beck about the level of compensation she received, but Beck assured her that “she ‘would make it back later.’” See Complaint, ¶ 14. In 2010, Valk-Feeney made a transition from working exclusively for GLC to a broader portfolio that included consulting services for other DEA clients. See id., ¶¶ 16-17. Valk-Feeney received payments from Defendant Delta Equity Advisors, LLC (“DEA-LLC”) for that work for one client in the summer of 2010, see Supplemental Brief in Support of Defendants’ Motion for Summary Disposition, Exhibit Q, and subsequently directly from that client. See id., Exhibits R & S (invoices and check register). Valk-Feeney’s work for a second client yielded two small payments from DEA-LLC in 2012.³ See id., Exhibit U. In sum, Valk-Feeney received compensation from a variety of sources, including GLC, DEA-LLC, and at least one DEA client before she severed her relationship with DEA in February of 2013.

On September 13, 2013, Plaintiff Valk-Feeney filed a complaint against the defendants that contains seven separate claims accompanied by several theories of damages. The defendants filed a motion for summary disposition on October 15, 2013, asserting that all of Valk-Feeney’s claims must be resolved through arbitration, rather than litigation. After a round of briefing and argument, the two sides agreed to submit supplemental briefs in order to fine-tune their positions. Now, after reviewing the initial briefs and the supplemental submissions, the Court can address the propriety of arbitration as the method for resolving Valk-Feeney’s claims.

³ The parties have all referred to a third client, see Complaint, ¶¶ 21-23, and the defendants contend that DEA-LLC paid Plaintiff Valk-Feeney for her work with that client, but the Court cannot find purported “Exhibit V” to the defendants’ supplemental brief that supposedly memorializes those payments. According to the complaint, Valk-Feeney ultimately accepted full-time employment with that client in February 2013 when she left DEA. See Complaint, ¶ 24.

II. Legal Analysis

The defendants have properly presented their demand 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 678, 687 (2008). “If a factual dispute exists, however, summary disposition is not appropriate.” Id. Applying these principles, the Court must determine which, if any, claims asserted by Plaintiff Valk-Feeney must be resolved by arbitration.

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.*,” Rembert, 235 Mich App at 131, and recently reaffirmed that policy in its adoption of 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. E.g., Rooyakker & Sitz, PLLC v Plante & Moran, PLLC, 276 Mich App 146, 156 (2007); Omega Constr Co, Inc v Altman, 147 Mich App 649, 655 (1985). Although arbitration “is a matter of contract” and a party “cannot be required to arbitrate an issue which he has not agreed to submit to arbitration[,]” Kaleva-Norman-Dickson School Dist No 6 v Kaleva-Norman-Dickson School Teachers’ Ass’n, 393 Mich 583, 587 (1975), 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 the 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 arbitrability of Plaintiff Valk-Feeney’s claims that arise from her tenure with GLC must be assessed by reference to the arbitration provision contained in the GLC operating agreement,⁴ which states in pertinent part as follows:

Any dispute regarding interpretation or enforcement of any of the parties’ rights or obligations hereunder shall be resolved by binding arbitration according to the rules of the American Arbitration Association in the Michigan county where the Company’s principal office is located. . . . Proceeding to arbitration and obtaining an award thereunder shall be a condition precedent to the bringing or maintaining of any action in any court with respect to any dispute arising under this Agreement, except for the institution of a civil action of a summary nature where the relief sought is predicated on there being no dispute with respect to any fact.

See Brief in Support of Defendants’ Motion, Exhibit A (GLC Operation Agreement, ¶ 11.12). The claims advanced by Valk-Feeney as to her involvement with GLC – minority shareholder oppression (Count One); breach of fiduciary duties (Count Three); conversion (Counts Four and Five); unjust enrichment (Count Six); and civil conspiracy (Count Seven) – all fall within the arbitration clause of the GLC operating agreement and are not expressly exempted from arbitration by the terms of that

⁴ Because Plaintiff Valk-Feeney undoubtedly was a member of GLC, see Complaint, ¶ 13, she cannot escape the reach of GLC’s operating agreement, including its arbitration requirement.

operating agreement. See Nestorovski Estate, 283 Mich App at 202. Consequently, each of Valk-Feeney’s claims arising from her tenure with GLC must be resolved by arbitration, see Hall v Stark Reagan, PC, 493 Mich 903, 903 (2012) (order of summary reversal), so the defendants are entitled to summary disposition pursuant to MCR 2.116(C)(7) on each of those claims.⁵

Plaintiff Valk-Feeney has additionally pleaded claims arising from her work for several of the unnamed entities for which she was paid, at least in part, by DEA-LLC. Those claims, of course, cannot be ordered to arbitration on the basis of the GLC operating agreement. Although Michigan law disfavors “segregating disputed issues ‘into categories of “arbitrable sheep and judicially-triable goats[,]”” Nestorovski Estate, 283 Mich App at 202-203, no agreement containing any arbitration clause applies to Valk-Feeney’s work on behalf of the unnamed entities. The disputes between the defendants (who characterize DEA as a single-member LLC in which Plaintiff Valk-Feeney has no ownership interest) and Valk-Feeney (who regards DEA as a partnership) have no bearing upon the arbitrability of Valk-Feeney’s claims concerning her efforts on behalf of the unnamed clients.⁶ As our Supreme Court recently reaffirmed, “[t]he preference for arbitration . . . is triggered only if the

⁵ Plaintiff Valk-Feeney’s complaint in places conflates claims against GLC and another entity she calls “Three Mile Road, LLC.” See, e.g., Complaint, ¶¶ 26-27, 46-51, 53-57, 70-72. In fact, the entity’s actual name is 3611 Three Mile Road, LLC, see Brief in Support of Defendants’ Motion for Summary Disposition, Exhibit O (Operating Agreement, ¶ 1.2), and Valk-Feeney appears to own a ten-percent interest in that entity. See Complaint, ¶¶ 5 & 72. That entity’s operating agreement contains an arbitration clause virtually identical to the clause in GLC’s operating agreement, see id. (Operating Agreement, ¶ 11.12), so Valk-Feeney’s claims against 3611 Three Mile Road, LLC, must be resolved by arbitration. Accordingly, the defendants’ award of summary disposition pursuant to MCR 2.116(C)(7) applies to all claims involving 3611 Three Mile Road, LLC.

⁶ The defendants have supplied the Court with the “Operating Agreement for Delta Equity Advisors, LLC.” See Brief in Support of Defendants’ Motion for Summary Disposition, Exhibit L. That submission appears to undercut Plaintiff Valk-Feeney’s DEA partnership theory, but it offers no support for the defendants’ demand for arbitration of Valk-Feeney’s claims relating to her work on behalf of the unnamed clients.

parties agree to arbitrate.”” Macomb County v AFSCME Council 25 Locals 411 and 893, 494 Mich 65, 81 n 47 (2013). Here, the DEA-LLC operating agreement identifies Defendant Beck as “the sole member of the Company,” see Brief in Support of Defendants’ Motion for Summary Disposition, Exhibit L (Operating Agreement, ¶ 1.3), rendering Valk-Feeney beyond the reach of that operating agreement. Moreover, that operating agreement contains no arbitration clause whatsoever, see id., so the defendants cannot repair to that document to demand arbitration of Valk-Feeney’s claims that relate to her work for the unnamed clients of DEA-LLC. With regard to those claims, there simply is no arbitration agreement between the two sides, so the Court lacks authority to send those claims to arbitration. See Nestorovski Estate, 283 Mich App at 202. Consequently, the Court must deny the defendants’ motion for summary disposition under MCR 2.116(C)(7) with respect to Plaintiff Valk-Feeney’s claims arising from her work for the unnamed clients of DEA, whether that entity is a single-member LLC or a partnership.⁷

III. Conclusion

Because Plaintiff Valk-Feeney has ownership interests in Defendants GLC and 3611 Three Mile Road, LLC, which function under operating agreements with sweeping arbitration provisions, Valk-Feeney’s claims concerning those two entities must be resolved through arbitration. Thus, the defendants shall be awarded summary disposition under MCR 2.116(C)(7) on all of those claims. In contrast, Valk-Feeney’s claims against DEA – whether as a partnership or a single-member LLC

⁷ In addressing those claims, the Court’s initial task will involve resolution of the threshold issue concerning the nature of DEA. Specifically, Plaintiff Valk-Feeney must convince the Court that a partnership could exist contemporaneously with the single-member LLC created by Defendant Beck on April 10, 2007, as “Delta Equity Advisors, LLC.” See Brief in Support of Defendants’ Motion for Summary Disposition, Exhibit L. Needless to say, the existence of DEA-LLC makes the Court particularly skeptical of Valk-Feeney’s partnership theory.

– cannot be ordered to arbitration because no agreement contemplates such a result. Accordingly, the Court must deny the defendants’ request for summary disposition pursuant to MCR 2.116(C)(7) on all of Valk-Feeney’s claims involving DEA, whatever that entity may be.

IT IS SO ORDERED.

Dated: May 19, 2014



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