

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

**THOMAS VESTEVICH, DDS, P.C.
PROFIT SHARING TRUST,
Plaintiff,**

v.

**Case No. 15-150716-CZ
Hon. James M. Alexander**

**CAROLYN REA STILL TRUST, and ING BANK,
FSB, n/k/a CAPITAL ONE, N.A.,
Defendants.**

OPINION AND ORDER REMOVING CASE FROM BUSINESS COURT

On December 21, 2015, Plaintiff filed a Complaint for Declaratory Relief and/or Reformation of Deed¹, seeking reformation of the legal description of certain realty as well as declaratory relief regarding Parcel B of that subject realty. Since the action did not qualify as a business or commercial dispute as defined by MCL 600.8035(1), the Court entered an Order Removing Case from Business Court on December 29, 2015. Thereafter, Carolyn Rea Still, Trustee of the Carolyn Rea Still Trust, filed a Verified Counterclaim on January 14, 2016. A Notice of Assignment to the Business Court was then filed on February 2, 2016 for the reason that monetary damages have been requested in the Counterclaim. The Notice claims that “all of the parties are business enterprises.” MCL 600.8031(c)(i).

This Court has an obligation to question sua sponte its jurisdiction over the subject matter of an action. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 399; 651 NW2d 756 (2002). Subject matter jurisdiction is determined by the allegations in the pleadings. *Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 587-588; 644 NW2d 54 (2002).

¹ Plaintiff filed a Second Amended Complaint for Declaratory Relief and/or Reformation of Deed on February 19, 2016.

“An action shall be assigned to a business court if all or part of the action includes a business or commercial dispute” in which the amount in controversy exceeds \$25,000.00. See MCL 600.8035(1) and (3).

The statute defines a business or commercial dispute as:

- (i) An action in which all of the parties are business enterprises.
- (ii) An action in which 1 or more of the parties is a business enterprise and the other parties are its or their present or former owners, managers, shareholders, members, directors, officers, agents, employees, suppliers, or competitors, and the claims arise out of those relationships.
- (iii) An action in which 1 of the parties is a nonprofit organization, and the claims arise out of that party's organizational structure, governance, or finances.
- (iv) An action involving the sale, merger, purchase, combination, dissolution, liquidation, organizational structure, governance, or finances of a business enterprise. [MCL 600.8031(1)(c)].

MCL 600.8031(1)(b) delineates a business enterprise as “a sole proprietorship, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, for-profit and not-for-profit corporation or professional corporation, business trust, real estate investment trust, or any entity in which a business may lawfully be conducted in the jurisdiction in which the business is being conducted.”

In the present action, Counter-Plaintiff, Carolyn Rea Still, has not provided any factual allegations to support the contention that she can be classified as any type of business entity set forth within the definition of a business enterprise under MCL 600.8031(1)(b). Therefore, the Court finds that Counter-Plaintiff does not qualify as a business enterprise within the language and/or meaning of the statute.

As a result, her Counterclaim does not include a business or commercial dispute as defined by MCL 600.8035(1) or as claimed by Plaintiff under MCL 600.8031(1)(c)(i) in the February 2, 2016 Notice of Assignment. Moreover, there are no allegations in the Counterclaim

from which the Court could conclude that jurisdiction is proper under § 8031(1)(c)(ii), (iii) or (iv).

For this reason, the Counterclaim is also excluded from business court jurisdiction and the Court orders the case reassigned to the general civil docket of the Honorable Leo Bowman.

IT IS SO ORDERED.

March 24, 2016
Date

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