



IT'S JURISDICTIONAL, MY DEAR WATSON: Business Court Considerations

By Ryan C. Plecha and Elizabeth L. Sokol

The Oakland County Business Court was established in 2013 as a division of the Oakland County Circuit Court “to create a specialized docket for the handling of business-related litigation.”¹ Hon. Martha Anderson and Hon. Michael Warren currently preside over the Oakland County Business Court. All of that is all old news and common knowledge, as the business court in Oakland County has been operating for over eight years, so why are we talking about the subject? Despite the fact that the business court has been in place for nearly a decade, it is helpful to refresh ourselves on a few seemingly basic factors regarding the specialized business court.

It is important to remember that business court jurisdiction is exactly that — jurisdictional — and not merely a decision to be made by the parties. Even today, Oakland County Circuit Court deals with having to reassign cases from business court to general civil and vice versa. This does not seem like a big deal, but with the incredibly high volume of cases in both courts,² filing cases in the appropriate court preserves judicial and administrative resources. In addition to filing your case in the right division of the court (business or general civil), it is also important to file your case in the right venue. Although the business court statute relies on the general venue provisions of MCL 600.1621 *et seq.* for determining venue, business disputes often provide some interesting considerations related to venue.

I. JURISDICTIONAL REQUIREMENTS

The business court was established pursuant to 2012 PA 333, which created a division of the circuit court³ with the stated purpose to “allow business or commercial disputes to be resolved with the expertise, technology, and efficiency required by the information age economy” and to “enhance the accuracy, consistency, and predictability of decisions in business and commercial cases.” Business court jurisdiction extends to “business and commercial disputes in which equitable or declaratory relief is sought or in which the matter otherwise meets circuit court jurisdictional requirements.”⁴

Assignment to the business court is mandatory “if all or part of the action includes a business or commercial dispute.”⁵ Business court jurisdiction extends to any case that involves a business or commercial dispute, even if “it also involves claims that are not business or commercial disputes, including excluded claims under section 803(3).”⁶ Thus, claims such as personal injury, product liability, family and probate matters, criminal cases, and certain real property, insurance disputes, and employment/civil rights claims that, standing alone, do not fall under the jurisdiction of the business court⁷ will be assigned to the business court when

coupled with claims under its jurisdiction.

In response to evidence that “unanticipated claims have been brought before the specialized court that technically fit under the current definitions but were not intended for such courts,”⁸ 2017 PA 101 clarified an apparent contradiction between the definition of a “business or commercial dispute” in MCL 600.803(1)(c) and the types of cases excluded from the business court’s jurisdictional reach at MCL 600.803(3). The amendment clarified that if a case is one of the enumerated exclusions, the fact that both parties are business entities will not otherwise establish business court jurisdiction. Further, the 2017 amendments specifically enumerated actions “involving the sale, merger, purchase, combination, dissolution, liquidation, organizational structure, governance, or finances of a business enterprise” as within its jurisdictional scope.⁹ Finally, the 2017 amendments recognized that “many commercial disputes request the court to issue a declaratory judgment addressing a particular issue or issues, or to award an injunction or some other equitable remedy.”¹⁰ While the former version of MCL 600.803(1) was limited to business disputes

where the amount in controversy exceeded \$25,000.00, under MCL 600.803(1) as amended, the business court may award equitable or declaratory relief, in addition to damages.

As with all other cases filed in circuit court, judicial assignment is by blind draw among the business court judges. Further, for cases that do not initially include business or commercial disputes but that through counterclaim, amendment, or another modification later include a business court claim, the entire complaint “must” be reassigned to the business court.¹¹ However, reassignment away from the business court is permissive for cases that have multiple claims “if the action ceases to include a business or commercial dispute.”¹² This gives the business court discretion to retain cases that may have resolved their business claims before final judgment (or perhaps by way of summary disposition) but have remaining outstanding claims. Review of assignments to the business court may be made

by motion to the chief judge of the circuit, and the chief judge’s determination “is not appealable to the court of appeals.”¹³

The lack of an appealable right in an order of assignment to the business court does not completely divest the Michigan Court of Appeals of any consideration of business court jurisdiction — only consideration of the order of assignment itself. However, there are only a few cases from the appellate court that address the scope of business court jurisdiction. In what appears to be the only published case to date — *In re Rhea Brody Living Tr.*, 321 Mich. App. 304, 309; 910 N.W.2d 348 (2017)¹⁴ — the Court of Appeals rejected the notion that the establishment of the business court divested a probate court of subject-matter jurisdiction to adjudicate claims relating to removal of a trustee and reversal of certain decisions made by the trustee involving the family businesses. The court noted that matters under the Estates and Protected Individuals Code are exempt under MCL 600.803(3). “To the extent the petition involved transactions of the Brody family businesses or existing contracts, these matters arose only tangentially to the central

Notice of Business Court Implementation

A Business Court docket will begin in the Oakland County Circuit Court on June 3, 2013. The Supreme Court appointed Judge Wendy Potts and Judge James Alexander to preside over the Business Court. All Business Court cases must be eFiled and will be assigned by blind draw to either Judge Potts or Judge Alexander.

Beginning June 3 and thereafter, the party filing a complaint must give written notice with the initial pleading that the case qualifies for the Business Court. Parties are encouraged to attach the *Notice of Assignment to the Business Court* form to the complaint (or responsive pleading if the case qualifies for the Business Court but was not noticed as such in the initial complaint, or if the counterclaim qualifies the case as a Business Court case). The *Notice of Assignment to the Business Court* form may be found at <http://www.oakgov.com/courts/businesscourt/Documents/ocbc01.pdf>.

A case must be assigned to the Business Court if:

1. The amount in controversy is greater than \$25,000, AND
2. All or part of the action includes a business or commercial dispute.

A business or commercial dispute is any of the following:

1. An action in which all of the parties are business enterprises.
2. An action in which 1 or more of the parties are business enterprises and the other parties are its or their present or former:

a) Owners	f) Officers
b) Managers	g) Agents
c) Shareholders	h) Employees
d) Members	i) Suppliers
e) Directors	j) Competitors

 NOTE: The claim must arise out of any of the above relationships.
3. 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.
4. An action involving the sale, merger, purchase, combination, dissolution, liquidation, organizational structure, governance, or finances of a business enterprise.

Please see MCL 600.803(2) to see the types of actions that business or commercial disputes include, and MCL 600.803(3) to see the types of actions that business or commercial disputes exclude.

For more information, please see the Business Court page on the Circuit Court's website at <http://www.oakgov.com/courts/businesscourt>.

issue of Robert's breach of fiduciary duty as trustee of the Rhea Trust. Cathy's petition clearly fell within the range of matters specifically excluded from the definition of 'business or commercial dispute' under the business court statute."¹⁵

Finally, forum selection clauses cannot be used to invoke or avoid business court jurisdiction. In *Bowie v. Arder*, 441 Mich. 23, 50; 490 N.W.2d 568 (1992), the Court of Appeals reiterated the long-standing principle that "circuit courts do not have jurisdiction in matters in which jurisdiction is given exclusively by constitutional provision or by statute to another court." This principle forms the basis for the more recent ruling in *Superior Hotels, LLC v. Mackinaw Twp.*, 282 Mich. App. 621, 639; 765 N.W.2d 31 (2009), that "the converse applies" and "parties cannot by their stipulation deprive the [appropriate court] of jurisdiction." While it remains to be seen if attempts to "contract in" or "contract out" of business court jurisdiction would be upheld on appeal, it seems rather unlikely, given this precedent.

II. VENUE CONSIDERATIONS


The statutory establishment of the jurisdictional parameters of the business court expressly incorporate existing venue provisions.¹⁶ Despite the venue provision in the business court statute, venue for business court matters is really business as usual and is governed by MCL 600.1601 *et seq.* The case law reveals a few primary areas of contention, including (1) the appropriate venue provision to be used in a particular case; (2) what it means to "conduct business" in a particular county; and (3) application of forum selection clauses in business court cases.

In many business court cases, multiple claims are pursued in a single action and on both sides of the proverbial "v," which can lead to a dispute on the applicable venue provision. The Court of Appeals has weighed in on this issue, holding that "if one of the causes of action pleaded in a multiple cause of action complaint is based on tort, regardless of whether damages sought are for personal injury, property damage, or wrongful death," the tort venue provisions of MCL 600.1629 control the appropriate venue.¹⁷ Such venue precedent is extremely important to determine venue with cases that mix tort, contract, and other causes of action, which is quite common in the specialized business courts.

It is very likely that venue in business court cases will depend on whether a defen-

dant is deemed to "conduct business" in a particular county pursuant to MCL 600.1621. To satisfy the "conduct business" language of the statute, there must be "a true business connection between the defendant and the selected venue."¹⁸ The business activity of a defendant in a particular county should be systematic or continuous. More specifically, "conducting business does not include the performance of acts merely incidental to the business in which the defendant is ordinarily engaged."¹⁹ Further, a defendant's mere stock ownership in a subsidiary corporation that did business in a particular county is not sufficient to establish that the defendant conducted business in a particular county. Of course, in any venue dispute, the burden is on the plaintiff to present evidence to establish that a defendant conducts business in a particular county to satisfy the requirement of the statute.²⁰

Remember that business court judges will likely strictly construe contractual provisions regarding venue. In one particular case, Judge Potts (retired) refused to enforce what was alleged to be a forum selection clause for the purpose of determining venue. In so doing, Judge Potts found that the alleged forum selection clause only referred to "jurisdiction" and did not deal with venue specifically.²¹ For all attorneys drafting and attempting to rely on contractual language to determine venue, you must do so expressly and specifically.

In sum, business court jurisdiction and venue provisions, while seemingly straightforward, can offer practitioners who are not well versed in its parameters a challenge. However, as more business court cases work their way through the appellate process and offer more guidance, these foundational issues should achieve more clarity. 



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Footnotes:

1. Administrative Order 2013-03, Oakland County Circuit Court.
2. In 2020, approximately 10,206 cases were pending in general civil court and 1,604 cases in the business court, plus another 3,821 pending criminal cases. (Sixth Circuit Court of Oakland County Summary — 2020 Court Caseload Report.)
3. Circuits with only one or two judges are exempt, per MCL 600.8033(1).
4. MCL 600.8035(1).
5. MCL 600.8035(3).
6. *Id.*
7. MCL 600.8031(3).
8. House Legislative Analysis, SB 333 (August 3, 2017).
9. MCL 600.8031(2)(a).
10. Senate Legislative Analysis, SB 333 (June 27, 2017).
11. MCL 600.8035(6).
12. MCL 600.8035(5).
13. MCL 600.308(3); MCL 600.8035(7). See *Hart v. State*, 506 Mich. 857; 946 N.W.2d 285, reconsideration den 506 Mich. 932; 949 N.W.2d 273 (2020) (Clement, J., concurring) (explaining that MCL 600.308 "allows appeals from these latter sorts of 'final orders' [with the exception of business court assignments, which are not appealable at all]").
14. Judgment vacated on other grounds, 501 Mich. 1094; 912 N.W.2d 175 (2018).
15. *In re Rhea Brody Living Tr.*, 321 Mich. App., at 311.
16. MCL 600.8035(2).
17. *Angelucci v. Dart Props*, 301 Mich. App. 209, 217; 836 N.W.2d 219 (2013) (citing MCL 600.1641).
18. *Hills & Dales General Hospital v. Pantig*, 295 Mich. App. 14, 23; 812 N.W.2d 793 (2011).
19. *Id.* (internal citation omitted).
20. *Johnson v. Simongton*, 184 Mich. App. 186, 190; 457 N.W.2d 129 (1990).
21. *Avio, Inc. v. Integrated Lifestyles, Inc.*, Case No. 2015-1477786-CB (Oakland County, Potts, 2015).