

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

**ALEXANDERS POLISH AMERICAN
RESTAURANT, INC., ET AL.,**

Plaintiffs,

v

**Case No. 2019-172577-CB
Hon. Martha D. Anderson**

CITY OF SOUTH LYON, ET AL.,

Defendants.

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AMENDED OPINION AND ORDER REMOVING CASE FROM BUSINESS COURT

On March 18, 2019, Plaintiffs filed the present Complaint, primarily alleging that Defendants have violated Plaintiffs' due process rights by intentionally delaying the hearing for Plaintiffs' appeal of the zoning variance decision. The matter was initially assigned to the Honorable Rae Lee Chabot, who entered an Order of Assignment to the Business Court – indicating that this is a business or commercial dispute because all of the parties are business enterprises. See MCL 600.8031(1)(c)(i). Consequently, this matter was reassigned to the Business Court.

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).

Business court jurisdiction is limited to actions involving a “business or commercial dispute.” MCL 600.8035(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 one or more of the parties is a business enterprise and the other parties are its or their present or former owners, managers, shareholders, members of a limited liability company or a similar business organization, directors, officers, agents, employees, suppliers, guarantors of a commercial loan, 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.
- MCL 600.8031(1)(c).

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

In the present action, Defendant City of South Lyon identifies itself as a Michigan municipal corporation. The Court observes that the Honorable Shalina D. Kumar, Chief Judge of the Oakland County Circuit Court, recently removed a case, namely Coeus, LLC v City of Walled Lake, et al. Case Number 2018-170030-CB, from Business Court on the grounds that: (1) municipal corporations are not typically contemplated to be a part of the Business Court with some exceptions; and, (2) the case at hand does not involve a true business dispute.¹

Likewise, this Court finds that the present lawsuit – involving the administrative handling of Plaintiffs’ zoning variance proposal - does not involve a true business dispute. In the context of this action, the Court will not consider the municipal corporation, namely the City of South Lyon,

¹ On March 28, 2019, Judge Kumar entered the Order Granting Motion for Determination of Walled Lake Defendants, which granted the motion for the reasons stated by the Court on the record of March 27, 2019.

as a business enterprise within the language and/or meaning of MCL 600.8031(1)(b). Further, Defendants City of South Lyon Planning Commission and City of South Lyon Zoning Board of Appeals do not classify themselves as any type of business entity set forth within the definition of a business enterprise under the statute.

As a result, this action does not constitute a business or commercial dispute as defined by MCL 600.8031(1)(c)(i) or MCL 600.8035(1). Moreover, there are no allegations in the Complaint from which the Court could conclude that jurisdiction is proper under § 8031(1)(c)(ii) or (iii).

For these reasons, the lawsuit is excluded from business court jurisdiction and the Court respectfully orders the case to be re-coded CZ and reassigned back to the general civil docket of the Honorable Rae Lee Chabot.

This Amended Opinion and Order Removing Case from Business Court hereby supersedes the original Opinion and Order Removing Case from Business Court, dated April 17, 2019.

IT IS SO ORDERED.

April 18, 2019
Date

/s/ Martha D. Anderson
Hon. Martha D. Anderson
Chief Circuit Judge Pro Tem