

CAUSE NO. 2022-68763

HOUSTON SECURED DEVELOPMENT PARTNERS, LLC	§ § §	IN THE DISTRICT COURT OF
V.	§	HARRIS COUNTY, TEXAS
HSDP BAM, LLC and JOSEPH JACKSON	§ §	151ST JUDICIAL DISTRICT

**PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTION TO DISMISS FOR LACK
OF JURISDICTION BY SUBMISSION**

Plaintiff HOUSTON SECURED DEVELOPMENT PARTNERS, LLC respectfully asks this Court to deny Defendant’s Motion to Dismiss for the reasons set forth below:

I. SUMMARY OF RESPONSE

Defendant Joseph Jackson has asked this Court to dismiss the lawsuit “for lack of jurisdiction.¹” Jackson’s motion must be denied, because this dispute is not covered in its entirety by any arbitration agreement and because all of the parties to this suit did not agree to arbitration. Only one of three defendants (HSDP BAM, LLC) is a member of Houston Secured Development Partners, LLC and therefore only the claims against it could possibly be subject to arbitration, *if* the arbitration clause was enforceable. Further, Jackson’s motion must be denied because the arbitration clause is unconscionable and contrary to public policy and is therefore unenforceable, and because Defendants have breached the agreement prior to trying to enforce the arbitration clause.

¹ This Court clearly has jurisdiction over this matter since the amount in controversy exceeds the minimum jurisdictional limits of this Court, and the Defendants all reside or maintain their principal place of business in Harris County, Texas.

II. ARGUMENT AND AUTHORITIES

1. The claims in this dispute should not be compelled to arbitration.

“A party seeking to compel arbitration must first satisfy a two-pronged burden of proof: first, it must demonstrate the existence of a valid agreement to arbitrate the dispute, and second, it must prove that the claims asserted are within the scope of the agreement.” *IHS Acquisition No. 171, Inc. v. Beatty-Ortiz*, 387 S.W.3d 799, 805 (Tex. App. – El Paso 2012, no pet.).² Jackson has provided proof of neither validity nor enforceability of the Internal Dispute Resolution provisions contained in the Company Agreement for Houston Secured Development Partners, LLC, and has not met this burden. See Exhibit A, pages 19 through 22.

Defendant Joseph Jackson is not a member of Houston Secured Development Partners, LLC, and is not a party to the Operating Agreement. See Exhibit A. Neither is Baylor Asset Management, LLC. *Id.* The only defendant who is a party to the Operating

EXHIBIT B	
The following persons are the initial Members of the Company, and their Units are set forth below. This Exhibit will be amended from time to time to include past and current Members and their respective Membership Interests.	
<u>SPONSOR UNITS</u>	
<u>NAME</u>	<u>UNITS</u>
HSDP BAM, LLC	50.00
LTD Everyday, LP	19.5
VLJK, LP	19.5
DMI Securities, LLC	6.0
Dodson Business Management, Ltd.	5.0

² See also *In re Dillard Dept. Stores, Inc.*, 186 S.W.3d 514, 515 (Tex.2006); *In re AdvancePCS Health L.P.*, 172 S.W.3d 603, 605 (Tex.2005)(orig. proceeding); *Budd v. Max International LLC*, 339 S.W.3d 915, 918 (Tex. App.- Dallas 2011, no pet.).

Agreement is HSDP BAM, LLC.³ As such, there is no valid arbitration agreement which exists between Plaintiff Houston Secured Development Partners, LLC and Joseph Jackson, nor between Plaintiff and Baylor Asset Management, LLC.

Further, the issues and disputes that are before this court are clearly outside the scope of Article 10 of the Houston Secured Development Partners, LLC Operating Agreement. These provisions were clearly written to cover disputes “between the Members” or “between the Manager and one or more Members.” In this case, Baylor Asset Management, LLC entered into a contract with HSDP for the development and construction of real properties (*see* Exhibit B), then materially breached the contract by failing to comply with documentation requirements for reimbursement of expenses, and paying itself nearly \$4 million of the company’s \$5 million in capital. Defendant Joseph Jackson, who is also not a party to the Operating Agreement, facilitated this malfeasance by moving funds from HSDP’s accounts into Baylor Asset Management, LLC’s accounts, and without justification, and then confiscated the funds or used them to acquire and/or improve real property holdings owned by other companies Jackson operated. The claims and causes of action arising from that conduct are not within the scope of Article 10 of the Operating Agreement for Houston Secured Development Partners, LLC. Defendant’s motion must be denied.

³ The Operating Agreement provides that there are five Sponsor Unit members, and a large number of individual Preferred Unit members, who are individual investors. *See* Exhibit A (at PDF page 115). It is undisputed that Joseph Jackson is *not* a holder of Preferred Units in HSDP.

2. The arbitration clause as applied to the disputes before this court is unconscionable and therefore unenforceable, and is against public policy.

A trial court's determination of whether to enforce an arbitration agreement is a question of law, specifically one of contract interpretation, as "a court may invalidate an arbitration agreement based on 'generally applicable contract defenses' like fraud or unconscionability." *Kindred Nursing Centers, L.P. v. Clark*, 137 S. Ct. 1421(2017). Plaintiff would show that the ADR provisions are unenforceable under state contract law and are contrary to public policy. "Courts may consider both procedural and substantive unconscionability of an arbitration clause in evaluating the validity of an arbitration provision." *In re Halliburton Co.*, 80 S.W.3d 566, 572 (Tex. 2002). Procedural unconscionability relates to the making or inducement of the contract, focusing on the facts surrounding the bargaining process. *Delfingen US-Tex., L.P. v. Valenzuela*, 407 S.W.3d 791, 798 (Tex. App. – El Paso 2013, no pet.). Substantive unconscionability refers to the fairness of the arbitration provision itself. *Id.* at 797. The critical inquiry in a substantive unconscionability analysis is "whether the arbitral forum... is an adequate and accessible substitute to litigation, a forum where the litigant can effectively vindicate his or her rights." *In re Olshan Found. Repair Co., LLC*, 328 S.W.3d 883, 894 (Tex. 2010).

The formation of Houston Secured Development Partners, LLC (and hence the Operating Agreement between its members), as well as the entry into a Development and Construction Contract with Baylor Asset Management, LLC, were materially induced by Joseph Jackson's representations that he was qualified to manage a \$5 million investment fund, that he had successfully managed another investment fund conducting similar business, and that he had decades of success in the real estate market in Houston.

Plaintiff has now learned that the other investment fund is in Chapter 7, Plaintiff's capital is gone, and Baylor Asset Management, LLC has received millions of dollars in cash transfers from Plaintiff's bank accounts while Mr. Jackson and his solely owned LLCs have been acquiring and improving real estate holdings throughout the Houston area, often under construction permits pulled by Baylor Asset Management, LLC. This lawsuit is complex and will involve significant discovery. Based on the current circumstances, wherein the Defendants did not wholly comply with the document production requirements of the Temporary Restraining Order issued, and have made zero progress towards compliance with the document production requirements of this Court's Temporary Injunction, we expect that discovery may include the necessity of Court intervention from time to time. This complex dispute - only a small part of which is arguably subject to the Internal Dispute Resolution Procedures contained in the HSDP Operating Agreement, should be litigated in district court where all parties will have a fair opportunity to conduct discovery and have their claims considered by this Court.

Additionally, Section 10's requirement that the parties attend mediation three times before proceeding to arbitration is unconscionable on its face as it would require the parties to incur excessive unreasonable cost and expense, and would unreasonably delay a final resolution of the disputes that are now before this Court. However, the Operating Agreement requires the parties to attend these three mediations all administered by the American Arbitration Association, which charges its own fees on top of the mediators' fees. Harris County has a plethora of highly skilled, well qualified mediators who would be suitable to assist the parties in trying to negotiate a settlement;

requiring these parties to restrict their mediation efforts to the AAA rules and procedures is not in their best interest, and will unduly and unreasonably increase the cost of the ADR efforts and will also cause unreasonable delays. as it is likely to increase the cost of mediation and reduce the potential for a successful outcome.

Further, Arbitration of this dispute would be far more expensive than traditional litigation. Under the AAA rules, the cost of merely filing for arbitration is around \$7,700 and the final fee is around \$8,475; these fees do not include the arbitrator(s)' fees.⁴ Arbitration of this case will not eliminate the need for discovery and depositions, as well as likely motion practice; it will just make it more expensive. One of the primary purposes of alternate dispute resolution is to avoid expenses and delays and aid the parties in reaching an agreement more efficiently than through the litigation process.⁵ The AAA process does not serve those interests for this particular case.

For all of these reasons, Plaintiff asserts that it would be both procedurally and substantively unconscionable to compel this lawsuit to arbitration under Section 10 of the Operating Agreement.

3. Defendants have materially breached the Dispute Resolution Procedures, warranting a denial of Jackson's motion.

Finally, a material breach of an arbitration agreement by the party attempting to enforce it can justify a refusal to compel arbitration. See *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 940 (4th Cir. 1999) (holding that Hooters had materially breached its obligations

⁴ See AMERICAN ARBITRATION ASSOCIATION: *Administrative Fee Schedules*, available at: https://www.adr.org/sites/default/files/Commercial_Arbitration_Fee_Schedule_1.pdf

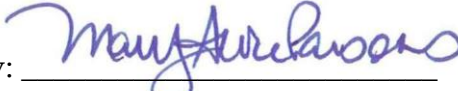
⁵ See U.S. DEPARTMENT OF LABOR: *Alternative Dispute Resolution*, available at: <https://www.dol.gov/general/topic/labor-relations/adr#:~:text=With%20the%20exception%20of%20binding,other%20authority%20decide%20the%20case.>

under the arbitration agreement, excusing food server plaintiffs from their obligation to arbitrate their claim). *See also Tri-Star Petrol Co. v. Tipperary Corp.*, 107 S.W.3d 607 (Tex. App. – El Paso 2003, pet. denied) (holding that a material breach of an arbitration agreement was sufficient to justify a refusal to order re-arbitration). The Company Agreement requires that all parties “**shall use their best efforts** to settle any dispute among the members. Plaintiff has tried for months to resolve the disputes that underlie their causes of action in this case, but the Defendants have refused to cooperate. After securing the Temporary Restraining Order, Plaintiff has tried schedule a mediation; Defendants have refused to cooperate. Additionally, the Defendants have refused to provide the documentation required by the Temporary Restraining Order, have not served any disclosures as required by Rule 194, and have not yet produced a single page of information required by this Court’s Temporary Injunction. Defendants’ refusal to allow Plaintiff access to the books and records of its own operations is not in good faith, and prevents any real ability to resolve the pending disputes. Mr. Jackson, in filing his motion to dismiss, is attempting to selectively enforce dispute resolution provisions that he has already chosen not to follow! This Court is squarely within its authority to deny Mr. Jackson’s attempt to compel arbitration.

WHEREFORE, Plaintiff HOUSTON SECURED DEVELOPMENT PARTNERS, LLC, respectfully requests that this Court deny Defendant JOSEPH JACKSON’s Motion to Dismiss for Lack of Jurisdiction by Submission, and grant such other and further relief to which it may be justly entitled.

Respectfully submitted,

THE PARSONS LAW FIRM

By: 

Mary Alice Parsons

State Bar No. 00791409

mary@parsonslawtexas.com

Colton B. Kiernan

State Bar No. 24132061

colton@parsonslawtexas.com

4545 Bissonnet Street, Suite 104

Bellaire, Texas 77401

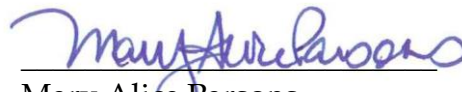
Telephone: (713) 955-4878

Facsimile: (713) 589-2454

**COUNSEL FOR PLAINTIFF
HOUSTON SECURED DEVELOPMENT
PARTNERS, LLC**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading was served upon all counsel of record via transmission to a certified electronic filing manager and electronic filing service provider pursuant to Texas Rule of Civil Procedure 21a(a)(1), on the 16th day of December, 2022.



Mary Alice Parsons

Automated Certificate of eService

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Shanna McClain on behalf of Mary Alice Parsons
Bar No. 00791409
shanna@parsonslawtexas.com
Envelope ID: 71086499
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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Mary AliceParsons		mary@parsonslawtexas.com	12/16/2022 11:34:12 AM	SENT
Shanna HillMcClain		shanna@parsonslawtexas.com	12/16/2022 11:34:12 AM	SENT
Warren Muhammad	7089500	warren@wfmlawfirm.com	12/16/2022 11:34:12 AM	ERROR