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

INTEGRATED SYSTEMS DESIGN,
a Michigan limited liability company,

Plaintiff,

Case No. 23-203673-CB
Hon. Victoria Valentine

v

HAGER COMPANIES,

Defendants.

BUTZEL LONG, P.C.
Bernard J. Fuhs (P69621)
Quendale G. Simmons (P77896)
Attorneys for Plaintiff
150 W Jefferson, Suite 100
Detroit, Michigan 48226
(313) 225-7000
fuhs@butzel.com
simmonsq@butzel.com

MILLER, CANFIELD, PADDOCK and STONE, P.L.C.
Gerald J. Gleeson II (P53568)
Elyse K. Lisznyai (P84825)
Attorneys for Defendant
840 W Long Lake Road, Suite 150
Troy, Michigan 48098
(248) 879-2000
gleeson@millercanfield.com

CARMODY MACDONALD P.C.
Justin A. Welply *(Pro Hac Vice Admission)*
120 S Central Avenue, Suite 1800
St. Louis, Missouri 63105
Telephone: (314) 854-8600
jaw@carmodymacdonal.com
Attorneys for Defendant

OPINION AND ORDER GRANTING DEFENDANT HAGER COMPANIES' MOTION FOR SUMMARY DISPOSITION OR ALTERNATIVELY TO DISMISS BASED ON FORUM NON CONVENIENS

At a session of said Court held on
the 9th day of February 2024 in the
County of Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Defendant, Hager Companies'("Hager"), Motion for Summary Disposition under MCR 2.116 (C)(1),[1] which seeks to dismiss the Plaintiff, Integrated Systems Design's ("ISD"), Complaint. The Complaint alleges Breach of Contract (Count I), Account Stated (Count II), and Unjust Enrichment (Count III and pled in the alternative). The Court, having reviewed the court file and the briefs, considered the merits, and heard oral argument on January 24, 2024, being fully advised in the premises, for the reasons set forth below, Defendants' motion is GRANTED in whole.

STATEMENT OF FACTS & PROCEDURAL POSTURE

ISD is a Michigan limited liability company based in Oakland County. Hager is a Missouri Corporation whose primary place of business is in Missouri. Hager also operates a manufacturing facility in Montgomery, Alabama. On August 19, 2019, Hager entered into an agreement with ISD to purchase the design of, and equipment for, an automated storage and retrieval system ("ASRS") which Hager sought to address its distribution needs at its manufacturing plant in Montgomery, Alabama.[2] [Def's MSD, p 1]. The price for the ASRS the parties agreed to was $6,620,068.00. [Complaint, ¶ 9].

As part of the agreement, the parties determined that Alabama law would control should any dispute arise:

> **Governing Law.** The Agreement shall be interpreted and enforced in accordance with the substantive laws of the State of Alabama without regard to its conflicts of law principles. [Complaint, Exh A, p 53].

[1] In Hager's Motion, Hager fails to specify under which subrule it seeks summary disposition. The substance of the motion and brief indicate that it was brought under MCR 2.116(C)(1). The Court treats the motion accordingly. See *Black v Cook*, ___Mich App___ (2023) (Docket No. 360492); slip op at 3–4.

[2] Of note, neither party offers an explanation of how this agreement came about or how these two commercial actors became aware of each other. Hager describes the beginning of the parties' relationship: "On August 29, 2019, Hager accepted Plaintiff's proposal to install a warehouse system solution." [Def's MSD, p 3]. Similarly, ISD's complaint explains, "ISD and Defendant are parties to Sales Agreement #718RSS0491R07 . . . ." [Complaint , ¶ 7].

ISD alleges that beginning around December 2020, Hager began making partial payments on ISD's invoices and as of the time of the filing of this suit, Hager owes ISD $625,529.26. [Complaint, ¶¶ 11–21]. As a result, ISD filed the instant suit, alleging Breach of Contract (Count I), Account Stated (Count II), and Unjust Enrichment (Count III and pled in the alternative). Hager, in lieu of an answer, responds with this Motion, asserting that this Court does not have personal jurisdiction over Hager or, in the alternative, that this case be dismissed based on forum non conveniens.

STANDARD OF REVIEW

A. Personal Jurisdiction

Summary disposition may be granted where "[t]he court lacks jurisdiction over the person or property." MCR 2.116(C)(1). "The plaintiff bears the burden of establishing [personal] jurisdiction over the defendant[.]" *Yoost v Caspari*, 295 Mich App 209, 221 (2012) (citations and quotation marks omitted); *Lease Acceptance Corp v Adams*, 272 Mich App 209, 218 (2006). A motion for summary disposition based on the lack of personal jurisdiction is resolved based on the pleadings and the evidence, including affidavits. *Lease Acceptance Corp*, 295 Mich App at 218. To succeed against a pretrial motion to dismiss for lack of personal jurisdiction, a plaintiff need only make *a prima facie* showing. *Yoost v Caspari*, 295 Mich App at 221. "The plaintiff's complaint must be accepted as true unless specifically contradicted by affidavits or other evidence submitted by the parties." *Id*. "[W]hen allegations in the pleadings are contradicted by documentary evidence, the plaintiff . . . must produce admissible evidence of his or her prima facie case establishing jurisdiction." *Id.*

B. Forum Non Conveniens

The doctrine of *forum non conveniens* is the "discretionary power of a court to decline jurisdiction when convenience of parties and ends of justice would be better served if the action were brought and tried in another forum." *Radeljak v DaimlerChrysler Corp,* 475 Mich 598, 604 (2006) (citation omitted). The application of the doctrine falls within the discretion of the trial judge. *Cray v. General Motors*, 389 Mich 382, 395 (1973). A plaintiff's selected forum is ordinarily accorded deference unless the balance is strongly in favor of the defendant's proposed forum. *Anderson v. Great Lakes Dredge and Dock Co*, 411 Mich 619, 628–29 (1981). "[T]he ultimate inquiry is where trial will best serve the convenience of the parties [and the ends] of justice." *Cray*, 389 Mich at 391 (citation omitted).

ANALYSIS

A. Personal Jurisdiction

Jurisdiction over a defendant may be established by way of general personal jurisdiction or specific [limited] personal jurisdiction." *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 427 (2001). General jurisdiction exists when a defendant's contacts with the forum are of such a nature and quality that they subject the defendant to the court's jurisdiction, even when the claim at issue does not arise out of those same contacts with the forum state. *Glenn v TPI Petroleum Inc*, 305 Mich App 698, 706 (2014). By contrast, limited jurisdiction only exists when the plaintiff's cause of action arose out of the defendant's contacts with the forum state. *Id*. at 713.

Pursuant to MCL 600.711, a Michigan court may exercise general personal jurisdiction over a defendant-corporation if: (1) it is incorporated under the laws of Michigan; (2) the defendant has consented to personal jurisdiction in Michigan; or (3) the corporation "carr[ies] on… a continuous and systematic part of its general business within the state."

In contrast to general personal jurisdiction, the analysis for applying limited personal jurisdiction is more tailored to each individual defendant. Michigan courts undertake a two-part analysis when determining whether limited personal jurisdiction may be exercised over a non-resident defendant. *Glenn*, 305 Mich App at 711. First, the court considers whether jurisdiction is authorized by Michigan's long-arm statute. *Id.* Second, the court determines whether the exercise of personal jurisdiction comports with the requirements of the Fourteenth Amendment's Due Process Clause. *Id.* Both prongs must be satisfied in order for a court to exercise limited personal jurisdiction over a non-resident defendant. *Yoost v. Caspari*, 295 Mich App 209, 222 (2012).

Pursuant to Michigan's Long Arm Statute, MCL 600.715, "a sufficient basis of jurisdiction to enable a court of record of this state to exercise limited personal jurisdiction" exists when a corporation's acts "create any of the following relationships: (1)[t]he transaction of any business within the state" or "(2) [t]he doing or causing an act to be done, or consequences to occur, in the state resulting in an action for tort." In interpreting the language of MCL 600.715(1), the Michigan Court of Appeals has explained the phrase "transaction of any business:"

> "Transact" is defined as "to carry on or conduct (business, negotiations, etc.) to a conclusion or settlement." Random House Webster's College Dictionary (1997). "Business" is defined as "an occupation, profession, or trade ... the purchase and sale of goods in an attempt to make a profit." *Id.* Our Legislature's use of the word "any" to define the amount of business that must be transacted establishes that even the slightest transaction is sufficient to bring a corporation within Michigan's long-arm jurisdiction. [*Oberlies*, 246 Mich App at 430].

While "[l]ong-arm statutes establish the nature, character, and types of contacts that must exist for purposes of exercising personal jurisdiction," *Yoost*, 295 Mich App at 222, "[t]he Due Process Clause requires that the exercise of personal jurisdiction comport with 'traditional notions of fair play and substantial justice.'" *Oberlies*, 246 Mich App at 432–33 (quoting *Int'l Shoe Co v Wash Office of Unemployment Compensation & Placement*, 326 US 310, 316 (1945)). In *Jeffrey v Rapid*

American Corp, our Supreme Court explained that "[t]he primary focus of personal jurisdiction is on "reasonableness" and "fairness" . . . [e]ach case, therefore, must turn on its own merits." 448 Mich 178, 186 (1995). "When undertaking a due process analysis case by case, a court should examine the defendant's own conduct and connection with the forum to determine whether the defendant should reasonably anticipate being haled into court there" *W H Froh, Inc v Domanski*, 252 Mich App 220, 230 (2002).

Michigan employs a three-part test for determining whether the exercise of limited personal jurisdiction comports with the requirements of due process. *Glenn*, 305 Mich App at 713. "First, the defendant must have purposefully availed itself of the privilege of conducting activities in Michigan. *Id.* Second, the cause of action must arise from the defendant's activities in the State. *Id.* Third, the defendant's activities must be substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable. *Id.* Plaintiffs must satisfy all three considerations.

1. Hager's activity brings it under the reach of Michigan's long-arm statute.

In the instant case, Hager argues that that Court does not have general personal jurisdiction over the Defendant. [Def's MSD, p 6]. ISD appears to agree—the Court finds no argument in ISD's Response in favor of general personal jurisdiction. Both parties confine their argument to the issue of limited personal jurisdiction. This Court finds no general personal jurisdiction—accordingly, this Court cannot retain jurisdiction absent a finding of limited personal jurisdiction.

The Court's exercise of limited personal jurisdiction requires the satisfaction of both the Michigan long-arm statute and the constraints of the 14th Amendment's Due Process Clause. Applying Michigan's long arm statute, the Court finds—and the parties appear to agree—that Hager's activities with ISD satisfy the requirements of MCL 600.715(1). [Def's MSD, p 7 ("Hager does not dispute that the [long-arm] statute is met."; Pl's Response, p 7]. MCL 600.715(1)

authorizes limited personal jurisdiction over a party if they participate in the "transaction of any business within the state." The parties agree that as a result of the contract at issue, Hager sufficiently participated in the transaction of business within the state as to satisfy the long-arm statute.[3] Accordingly, the Court turns to the due process analysis.

2. *As exercise of jurisdiction over Hager does not comport with the tenets of due process, this Court may not properly exercise even limited personal jurisdiction over Hager.*

i. Purposeful Availment

Due process requires satisfaction of a three-part test. "First, the defendant must have purposefully availed itself to the privilege of conducting business activities in Michigan, thus invoking the benefits and protections of this state's laws." *Mozdy v Lopez*, 197 Mich App 356, 359 (1992). Our Supreme Court has described purposeful availment as

> something akin either to a deliberate undertaking to do or cause an act or thing to be done in Michigan or conduct which can be properly regarded as a prime generating cause of the effects resulting in Michigan, something more than a passive availment of Michigan opportunities. The defendant will have reason to foresee being "haled before" a Michigan court. *Khalaf v Bankers & Shippers Ins Co,* 404 Mich 134, 153–54 (1978).

"The defendant must deliberately engage in significant activities within a state or create 'continuing obligations between himself and residents of the forum' to the extent that 'it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.'" *Vargas v Hong Jin Crown Corp*, 247 Mich App 278, 285 (2001) (quoting *Burger King Corp v Rudzewicz,* 471 U.S. 462, 476 (1985)). "Jurisdiction . . . may not be avoided merely because the defendant did not *physically* enter the forum State . . . it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire

[3] Additionally, ISD provides affidavits from employees involved in this transaction which establish that Hager communicated with ISD employees who were in Michigan, [Pl's Response, Exh B]; and Hager remitted payments, per the agreement to a Michigan remittance. [Pl's Response, Exh C]. Here, communication with Michigan-based employees and sending payments to a Michigan address satisfies the long-arm statute of "any" business.

communications across state lines, thus obviating the need for physical presence within a State in which business is conducted." *Burger King Corp*, 471 U.S. at 476 (emphasis in original).

Here, Hager argues that a contract, with an out-of-state party, alone does not establish a defendant purposefully availed itself to the benefits and protections of a state. Hager recites that "something more than a passive availment of Michigan opportunities must exist that gives the defendant reason to foresee being haled before a Michigan court." *Five Bros Mortg Co Servs & Securing, Inc v McCue Mortg Co*, unpublished per curiam opinion of the Court of Appeals, issued January 19, 2017 (Docket No. 329888), p 6.[4] Hager argues that the conduct the Complaint describes is all directed to Alabama, "Plaintiff was submitting a proposal, sales agreement, and drawing to Hager employees located in Alabama . . . ." [Def's MSd, p 8]. Hager also argues that the alleged contract was not signed in Michigan and relies on case law that instructs that "a contract with an out-of-state party, by itself, cannot establish minimum contacts." *Lyons v Kinsel*, unpublished per curiam opinion of the Court of Appeals, issued April 25, 2017 (Docket No. 1495661), p 5 (citation omitted).[5] Regarding ISD's allegation that ISD sold and shipped equipment for Hager's Alabama project from Michigan, Haager simply argues that this is not purposeful availment but cites no authority. Finally, Hager argues that correspondence with ISD's management and personnel located in Michigan cannot be considered purposeful availment. See *King v Ridenour*, 749 F Supp 2d 648, 656 (ED Mich. 2010) ("Even simple correspondence and telephone calls to the forum that facilitate formation and performance of the contract are not enough.").

[4] The Court notes that Hager cites an unpublished opinion from the Michigan Court of Appeals without explaining Hager's reason for citing it or how it is relevant to the case. Also, Hager fails to provide a copy to the Court and assumedly to ISD. MCR 7.215(C)(1). While the Court notes this case may be persuasive, "[a]n unpublished opinion is not precedentially binding under the rule of stare decicis." *Id.*

[5] See note 4 of this opinion.

ISD responds that signing a contract with a Michigan based company, purchasing, and receiving equipment from ISD's Michigan facility, and communicating with ISD's personnel who were in Michigan, "collectively indicates that Hager established connections with Michigan and availed itself of the privilege of conducting activities in Michigan." [Pl's Response, p 9]. ISD cites three federal cases[6] for support which arise in the employment law context. *Id.* However, the Court finds these cases unpersuasive as they are factually distinguishable from the instant case.[7]

The Court of Appeals addressed 'purposeful availment' in *Five Bros Mortg Co Servs & Securing, Inc v McCue Mortg Co*,[8] while it is unpublished the facts are similar to the instant case as it addresses a foreign, corporate, defendant, who negotiates a contract outside of Michigan with a

[6] While decisions of lower federal courts may be persuasive, they are not binding. See *Abela v Gen Motors Corp*, 569 Mich 603 (2004).

[7] In *Kelly Servs v Eidnes,* 530 F Supp 2d 940 (ED Mich 2008) the court found that personal jurisdiction over the defendant, in part, because the defendant accessed a Michigan-based computer service and database network and had at least semi-regular contact with Michigan-based supervisors. Critically, the defendant had worked for the plaintiff for 12 years. *Id.* at 945. *Kelly* is distinguishable from the instant case as ISD does not allege that Hager accessed Michigan-based computer networks or databases, but more importantly, the defendant in *Kelly* worked for the plaintiff for 12 years, from 1995-2007. *Id.* at 945.

Next, ISD relies on *Superior Consulting Co v Walling,* 851 F Supp 839 (ED Michl 994) where the court found it had personal jurisdiction over the defendant, in part, because the defendant maintained contact with a Michigan-based office via telephone, voicemail, telefax, mail, and e-mail. However, in *Superior Consulting*, the defendant was employed by the plaintiff and the defendant traveled to Michigan to execute his employment contract and made multiple trips to Michigan for his job with the plaintiff. *Id.* at 844.

In *Santa Rosa Consulting, LLC v Arredondo*, the court found that it had limited personal jurisdiction over the defendant, in part, because the defendant's contract negotiations occurred via telephone and e-mail and that the defendant had frequent telephone and e-mail contact with employees in plaintiffs Michigan office. No 09-CV-13368, 2009 WL 5171837 (ED Mich Dec 22, 2009). However, similarly, in *Santa Rosa*, the defendant was employed by the plaintiff and the defendant traveled to Michigan to negotiate and sign his employment contract and was alleged to have committed fraud while in Michigan against the plaintiff. *Id.* at 4.

Finally, ISD cites to *Burger King, Burger King Corp v Rudzewicz* for the proposition that "[j]urisdiction in these circumstances may not be avoided merely because the defendant did not physically enter the forum State." 471 U.S. at 476.

[8] The Court relies on an unpublished opinion from the Michigan Court of Appeals. As observed above, "[a]n unpublished opinion is not precedentially binding under the rule of stare decicis." MCR 7.215(C)(1). Here, however, the Court finds the facts in *Five Bros* analogous to the instant case, and the Court of Appeals' application of the facts to the law instructive.

Michigan based plaintiff. *Five Bros Mortg Co Servs & Securing, Inc v McCue Mortg Co*, unpublished per curiam opinion of the Court of Appeals, issued January 19, 2017 (Docket No. 329888). This Court finds it persuasive and instructive. There, defendant, a Connecticut corporation with no presence in Michigan met plaintiff, a Michigan Corporation, at a real-estate industry convention in Texas. *Id.* at 1. While in Texas, the parties began discussing the possibility of defendant hiring plaintiff to perform services on properties (in Connecticut) owned by defendant. *Id.* Later, while both parties were in Connecticut, they formalized the arrangement by executing a contract. *Id.* The plaintiff performed services under the contract but when defendant failed to pay, plaintiff sued defendant for breach of contract in a Michigan court. The Defendant filed a motion for summary disposition under MCR 2.116(C)(1), arguing that the court did not have jurisdiction over defendant. *Id.* at 1–2. The trial court found limited personal jurisdiction under MCL 600.715(1) and that exercising jurisdiction over the defendant was reasonable and comported with the restrictions of due process. *Id.* at 3. For its due process analysis, the trial court relied heavily on the reasoning of a lower federal court. *Salom Enterprises, LLC v TS Trim Indus, Inc*. 464 F Supp 2d 676 (ED Mich, 2006).

In *Salom*, a lower federal court found purposeful availment where defendant, an Ohio Corporation, with no ties to Michigan, negotiated a purchase agreement with plaintiff, a limited liability company organized under Texas law, who had employees conducting business in Michigan. *Id.* The *Salom* court reasoned that defendant purposefully availed itself to the privilege of conducting activities in Michigan by contacting Michigan residents to negotiate the contract, entering into a contract with plaintiff, and making payments to plaintiff in Michigan—all while knowing that plaintiff had moved to Michigan. *Id.* at 685.

Relying on *Salom Enterprises*, the *Five Bros* trial court reasoned that defendant negotiated a contract with plaintiff knowing that plaintiff was located in Michigan, defendant knew it was obligated to send payments to Michigan, and defendant did send payments to Michigan. However, the Court of Appeals found the *Five Bros* trial court's reliance on *Salom Enterprises* misplaced. In reversing the trial court's order on grounds that Michigan courts did not have limited personal jurisdiction, the Court of appeals clarified:

> *Salom* is factually distinguishable. Unlike the present case, the defendant in *Salom* sought out the plaintiff to work on a project, and the defendant had also guaranteed that the plaintiff would purchase materials from another Michigan company. The defendant in *Salom* thus, **by its active conduct**, and unlike defendant here, **sought the privilege of doing business in Michigan**. Because the trial court relied on *Salom*, it **placed too much emphasis on defendant having negotiated an agreement and having placed orders with plaintiff knowing that plaintiff was located in Michigan**, and in finding purposeful availment based on these facts alone. Given our conclusion that plaintiff pursued a business opportunity with defendant in Texas and Connecticut, rather than defendant pursuing opportunities in Michigan, the trial court's reliance was misplaced. *Five Bros*, unpub op at 7 (citations omitted) (emphasis added).

Five Bros reiterates the "case by case" nature of the due process analysis and the emphasis courts should place on '"the defendant's own conduct and connection with the forum."' *Id.* (emphasis removed); quoting *W H Froh, 252* Mich App at 230.

Here, the Complaint alleges that Hager "signed certain agreements . . . with ISD—a Michigan headquartered company based in Oakland County Michigan." [Complaint, ¶ 4]. The Defendant characterizes the beginning of the business relationship between the parties as "[o]n August 29, 2019, Hager accepted Plaintiff's proposal to install a warehouse system solution." [Def's MSD, p 3]. ISD fails to demonstrate that Hager sought out ISD in Michigan, solicited—from Michigan—the proposal which Hager eventually accepted to build the ASRS, or signed the agreement in Michigan. This Court recognizes that the parties did not 'spontaneously contract'—

or enter into a contract without some prior dealings—and that a contract is "'ordinarily but an intermediate step serving to tie up prior business negotiations . . . .'" *Burger King*, 471 US at 479 (quoting *Hoopeston Canning Co v Cullen*, 318 US 313, 316 (1943)). However, signing an agreement does not establish that Hager, "by its active conduct," reached out to Michigan, "beyond his own state," or purposefully availed itself "of the privilege of exploiting the other state's business opportunities." *WH Froh*, 252 Mich App at 230 & 231.

Because Hager did not purposefully avail itself to Michigan when it signed the agreement at the center of this dispute, this Court places less emphasis on the other contacts that ISD raises. See *Five Bros*, unpub op at 7. ISD argues that Hager also received equipment "[sold and shipped . . . from its Michigan facility . . . communicated with ISD's management and personnel located in Michigan . . ." and received invoices from, and remitted payment to, ISD in Michigan. [Pl's Response, pp 8–9]. The Court finds these contacts to be "random," "fortuitous," and "attenuated;" not the result of an affirmative action taken by Hager and directed at Michigan. *Burger King* 471 US at 475 (quoting *Keeton v. Hustler Magazine, Inc.,* 465 U.S. 770, 774 (1984)). Simply put, the agreement occasioned Hager's communication with, sending payment to, and receiving goods from Michigan. But contacts which resulted from the agreement cannot be attributed to Hager where Hager did not deliberately engage Michigan when it entered the agreement. See *Five Bros*, unpub op at 7. Accordingly, the Court finds that Hager has not "purposefully availed itself to the privilege of conducting business activities in Michigan" and has not invoked the "benefits and protections of this state's laws." *Mozdy v. Lopez*, 197 Mich App 356, 359 (1992).

ii. Arising from Defendant's activities

"Second, the cause of action must arise from the defendant's activities in the state." *Mozdy v Lopez*, 197 Mich App 356, 359 (1992). "[F]or limited personal jurisdiction to attach, the cause of action must arise from circumstances creating the jurisdictional relationship between the defendant and the foreign state." *Oberlies,* 246 Mich App 424, 435 (2001) (quotation omitted).

The Defendant simply argues:

> Plaintiffs claims center around non-payment of invoices mailed to Hager's out-of-state offices for equipment shipped to Alabama. It is at best a stretch to characterize this alleged nonfeasance as in-state activity. [Def's MSD, p 9].

Hager cites no authority for its position. ISD recites that "[t]he only requirement to establish this prong of the due process test is that 'the cause of action, of whatever type, have a substantial connection with the defendant's in-state activities.'" *AlixPartners, LLP,* 133 F Supp 3d at 959 (internal citations omitted). ISD then argues that "[a] cause of action for breach of contract relative to agreements that were negotiated and executed via telephone calls, letters, and e-mails to a Michigan-based company naturally arises from Hager's activities in Michigan." [Pl's Response, pp 10–11].

Our Court of Appeals weighed similar facts in *Five Bros*, where a Connecticut defendant entered into a contract with a Michigan plaintiff then failed to pay under the contract. *Five Bros Mortg Co Servs & Securing, Inc v McCue Mortg Co*, unpublished per curiam opinion of the Court of Appeals, issued January 19, 2017 (Docket No. 329888), p 1. Regarding the defendant's failure to pay, the Court reasoned that

> [p]laintiff's cause of action arose from defendant's alleged failure to pay monies owed to plaintiff. Defendant's failure to pay occurred in Connecticut, where defendant is located and conducts all of its business, rather than Michigan, where plaintiff was awaiting payment. "When undertaking a due process analysis case by case, a court should examine *the defendant's own conduct* and connection with the forum to determine whether the defendant should reasonably anticipate being haled

> into court there." *Five Bros*, unpub op at 7 (citations omitted) (emphasis in original).

Here, applying the reasoning of the Court of Appeals and weighing the "defendant's own conduct," Hager's alleged breach of contract of failure to pay occurred in Alabama, or possibly Missouri, where Hager would have sent payment from, not in Michigan. Accordingly, this Court finds that the cause of action does not arise from Hager's activities in Michigan.

iii. Reasonableness

Third, the defendant's activities must be substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable." *Mozdy v Lopez*, 197 Mich App 356, 359 (1992).

> A state has an important interest in providing its residents with a convenient forum for injuries inflicted by nonresident corporations. Moreover, it is unfair to the plaintiff to allow a nonresident corporation to escape jurisdiction for injuries directly resulting from its purposeful availment of forum-based business opportunities. "[T]he Due Process Clause may not be readily wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed." *Jeffrey*, 448 Mich at 189 (citations omitted).

Here, ISD sent its proposal to Alabama, the contract contemplated a warehouse in Alabama, and the ASRS was shipped to, and built, in Alabama. Additionally, Hager and ISD agreed that Alabama law would apply. As Hager never reached into Michigan, it would be unreasonable to expect Hager to be forced to defend in this forum. While Michigan has an interest in providing residents, such as ISD, a forum to seek to a remedy for their alleged injuries, here, it is unreasonable to exercise jurisdiction over Hager as Hager did not avail itself of the privilege of conducting business in Michigan.

Michigan employs a three-part test for determining whether the exercise of limited personal jurisdiction comports with the requirements of due process. *Glenn*, 305 Mich App at 713. As none

of the three parts are met, the exercise of limited personal jurisdiction over Hager would not comport with the requirements of due process. Accordingly, this Court cannot retain jurisdiction.

B. Forum Non Conveniens

Hager also argues that Michigan is not a convenient place to litigate this case—forum non conveniens.[9] A court may refuse to hear a case on the basis of the doctrine of forum non conveniens even though it otherwise may have jurisdiction. *Cray v Gen Motors Corp*, 389 Mich 382, 395 (1973). "The principle of *forum non conveniens* establishes the right of a court to resist imposition upon its jurisdiction although such jurisdiction could properly be invoked." *Radeljak v. Daimlerchrysler Corp.*, 475 Mich 598, 604 (2006) (citation omitted). The application of forum non conveniens "lie[s] within the discretion of the trial judge." *Id.* A plaintiff's selection of a forum is ordinarily accorded deference. *Id.*

Case law instructs that the following factors be considered:

1. The private interest of the litigant.

    a. Availability of compulsory process for attendance of unwilling and the cost of obtaining attendance of willing witnesses;

    b. Ease of access to sources of proof;

    c. Distance from the situs of the accident or incident which gave rise to the litigation;

    d. Enforcibility [sic] of any judgment obtained;

    e. Possible harassment of either party;

    f. Other practical problems which contribute to the ease, expense and expedition of the trial;

    g. Possibility of viewing the premises.

2. Matters of public interest.

[9] The Court proceeds with the forum non conveniens analysis in the event that Michigan courts *do* have jurisdiction over Hager.

a. Administrative difficulties which may arise in an area which may not be present in the area of origin;

b. Consideration of the state law which must govern the case;

c. People who are concerned by the proceeding.

3. Reasonable promptness in raising the plea of *forum non conveniens.*

[*Cray, supra* at 396, 207 N.W.2d 393.]

Here, the Court concludes that the *Cray* factors favor litigating this dispute in Alabama. Weighing the private interests of the litigants, the following factors favor an Alabama forum: Ease of access to sources of proof; Distance from the situs of the accident or incident which gave rise to the litigation; and Possibility of viewing the premises. The neutral factors: Enforcibility [sic] of any judgment obtained; Possible harassment of either party. Michigan is favored by one factor: Availability of compulsory process for attendance of unwilling and the cost of obtaining attendance of willing witnesses. Here the Court agrees with the ISD, that while Hager asserts that Alabama will be more convenient for witnesses, ISD actually procures a list of potential Michigan witnesses.

Weighing matters of public interest, the Court cannot foresee any "administrative difficulties" in either forum. As the agreement contains a Choice of Law Provision which selects Alabama law to govern any dispute, this factor favors Alabama. People of both forums have concern for the outcome of the litigation, accordingly this factor is neutral. Matters of Public interest do not favor either party as both forums are equal.

Finally, the Court weighs the "reasonable promptness in raising the plea of *forum non conveniens*." Hager raised forum non conveniens at the earliest opportunity. As the private interests of the litigants, and reasonable promptness of raising forum non conveniens favor Hager, while matters of public interest favors neither party, this Court finds the *Cray* factors favor litigating this case in Alabama.

ORDER

Based on the foregoing, the Defendant's Motion for Summary Disposition is GRANTED.

IT IS SO ORDERED.

This is a final order and closes the case.

/s/Victoria A. Valentine

02/09/24