

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

R&M FINANCING, LLC,

Plaintiff,

Case No. 25-211903-CB
Hon. Victoria A. Valentine

v

BREEZER HOLDINGS, LLC, a
Delaware limited liability company;
MAXIFY SOLUTIONS, INC., a Delaware
corporation; SIMIGON, INC., a Delaware
corporation; and SIMIGON LTD., an
Israeli company,

Defendants.

**OPINION AND ORDER GRANTING
PLAINTIFF'S MOTION TO FILE
FIRST AMENDED COMPLAINT**

At a session of said Court, held in the
County of Oakland, State of Michigan
May 20, 2025

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on the Plaintiff's Motion to File its First Amended Complaint. This Court has reviewed the pleadings filed by the parties and the motion and response. Oral argument was held on the above-entitled motion on April 2, 2025.

OPINION

I.

Overview

According to the Plaintiff's Proposed First Amended Complaint, the Plaintiff R&M Financing LLC ("Plaintiff") is a Michigan limited liability company, whose registered office is located in Michigan.¹ Defendant Maxify Solutions ("Maxify") is a Delaware corporation, with a registered office in North Carolina.² The Plaintiff previously alleged that Simigon Inc. is a Delaware corporation and Defendant Simigon Ltd. is formed under the laws of Israel.³ Defendant Breezer Holdings LLC ("Breezer"), which does business under the name Power Breezer, is a Delaware limited liability company with a registered office in North Carolina.⁴

On December 20, 2012, Defendant Breezer executed a Revolving Promissory Note to Plaintiff in the amount of one million dollars.⁵ Breezer subsequently executed four amendments to the Revolving Promissory Notes to the Plaintiff as holder: the First Amendment in the amount of \$4,000,000⁶; the Second Amendment in the amount of \$5,000,000⁷; the Third Amendment in the amount of \$8,000,000⁸ and Fourth Amendment in the amount of \$12,000,000.⁹

¹ Plaintiff's Motion to File its First Amended Complaint, Exhibit 2 Proposed First Amended Complaint ¶ 1.

² *Id.* ¶¶ 4, 7.

³ Complaint ¶¶ 3-4. The Plaintiff's Proposed First Amended Complaint alleges that Simigon Ltd. is formed under the laws of Israel (¶ 29), although it appears that the allegation that Simigon Inc. was formed under the laws of Delaware has been deleted.

⁴ Plaintiff's Motion to File its First Amended Complaint, Exhibit 2 Proposed First Amended Complaint ¶¶ 2-3.

⁵ *Id.* ¶ 60 and Exhibit L attached thereto.

⁶ *Id.*, Exhibit M.

⁷ *Id.*, Exhibit N.

⁸ *Id.*, Exhibit O.

⁹ *Id.*, Exhibit P.

The Plaintiff alleges that as of October 2020, Breezer owed the Plaintiff \$27,300,000.00 in principal and interest.¹⁰ The Plaintiff also alleges that in December 2021, it learned that Breezer transferred all of its assets to Maxify, thereby rendering Breezer insolvent.¹¹

The Plaintiff filed a prior suit against Breezer, Markima, LLC, and Mark Papak in December 2021 (the “2021 Litigation”).¹² On April 28, 2022, the Plaintiff filed its amended complaint in the 2021 Litigation against Breezer, Markima LLC, Blackwell Inc., and Mark Alan Papak. In 2024, the parties agreed to facilitate the 2021 litigation with former Judge James Rashid which was conducted in person at Judge Rashid’s offices in Farmington Hills, Michigan.¹³ As a result of the facilitation, the Plaintiff and the Defendants in the 2021 Litigation (along with non-parties Maxify and Raymond J. Nicholson Ventures LLC) agreed to a “Term Sheet” and an “Addendum.”¹⁴ The 2021 Litigation was thereafter dismissed pursuant to the stipulation of the parties in February 2024.

On January 3, 2025, the Plaintiff filed the present lawsuit against Breezer, Maxify, Simigon Inc. and Simigon Ltd., alleging wrongful failure to repay Breezer Loan #1 (Count I); wrongful failure to repay Breezer loan #2 (Count II); fraudulent transfer act against all defendants (Count IV); civil conspiracy to fraudulently convey assets (Count VI); and Breach of February 23, 2024 Term Sheet (Count VII).

On February 5, 2025, the Defendants filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(1) alleging that the Court lacks jurisdiction over the Defendants. In its Opinion and Order dated February 27, 2025, the Court held that the Plaintiff had not met its burden of

¹⁰ Plaintiff’s Motion to File its First Amended Complaint, Exhibit 2 Proposed First Amended Complaint ¶ 56.

¹¹ *Id.* ¶¶ 38-39.

¹² *R&M Financing, LLC v Breezer Holdings, LLC; Markima, LLC; and Mark Papak*, Oakland County Case No. 2021-191738.

¹³ Plaintiff’s Motion to File its First Amended Complaint, Exhibit 2 Proposed First Amended Complaint ¶ 46.

¹⁴ *Id.*, Exhibit E.

establishing a “prima facie showing of jurisdiction to defeat a motion for summary disposition” and granted the motion. Subsequently, the Plaintiff filed the present Motion to File its First Amended Complaint. The Plaintiff’s Proposed First Amended Complaint includes the following claims: Breach of Breezer Loan #1 (Count I), Breach/Non-Payment of Breezer Loan #2 (Count II), Violation of the Uniform Voidable Transfer Act Against All Defendants (Count III), Conspiracy to Fraudulently Convey Assets (Count IV), Breach of February 23, 2024 Term Sheet (Count V), Fraudulent Concealment (Count VI), Innocent Misrepresentation (Count VII), and Fraudulent Misrepresentation (Count VIII).¹⁵

II.

Standard of Review

Under MCR 2.118(A)(2), the trial court is directed to “freely” grant leave to amend a pleading “when justice so requires.” Leave to amend is “generally a matter of right rather than of grace.” *Bennett v Russell*, 322 Mich App 638, 647; 913 NW2d 364 (2018), quoting *In re Kostin Estate*, 278 Mich App 47, 52; 748 NW2d 583 (2008). “Trial courts have discretion to grant or deny motions for leave to amend, but leave should ordinarily be denied only for particularized reasons such as undue delay, bad faith or dilatory motive, repeated failures to cure by amendments previously allowed, or futility.” *Decker v Rochowiak*, 287 Mich App 666, 682; 791 NW2d 507 (2010) (citations and quotations omitted).

“An amendment is futile where, ignoring the substantive merits of the claim, it is legally insufficient on its face.” *Hakari v Ski Brule, Inc*, 230 Mich App 352, 355; 584 NW2d 345 (1998)(citations omitted). “A proposed amendment is also futile if summary disposition would be appropriately granted regarding the new claims, either when a party has not established a genuine

¹⁵ Plaintiff’s Motion to File its First Amended Complaint, Exhibit 2 Proposed First Amended Complaint.

issue of material fact regarding an element or when the undisputed facts establish that summary disposition would be appropriate.” *Zwiker v Lake Superior State Univ*, 340 Mich App 448, 484; 986 NW2d 427 (2022) (citations omitted).

III.

Personal Jurisdiction

In the Court’s prior opinion and order dated February 27, 2025, the Court concluded that based on the allegations in the Complaint, the Plaintiff did not meet its burden of establishing a prima facie showing of personal jurisdiction to defeat a motion for summary disposition under MCR 2.116(C)(1). However, the Court permitted the Plaintiff to file a motion for leave amend its complaint to comply with the applicable law and court rules. The Plaintiff filed the instant motion and attached its Proposed First Amended Complaint, which the Plaintiff alleges establishes the Court’s personal jurisdiction over the named defendants. The Defendants, in turn, allege that the proposed amendment would be futile because the Proposed First Amended Complaint does not cure the deficiencies noted in the Court’s February 27, 2025 Opinion and Order. Consequently, the Court must now examine the Proposed First Amended Complaint to evaluate whether it is sufficient to establish a prima facie case of either general personal jurisdiction or limited personal jurisdiction over the Defendants.

A. General Personal Jurisdiction

i. The Law of General Personal Jurisdiction

Under MCL 600.711 (corporations) or MCL 600.721 (partnerships and limited partnerships), the Court may exercise general personal jurisdiction over entities in the following circumstances:

- (1) The entity in question was incorporated or formed under the laws of Michigan.

(2) The entity consents to general jurisdiction subject to MCL 600.745.

(3) The entity carries on “a continuous and systematic part of its business within the state.”

The exercise of general jurisdiction is only possible when a defendant’s contacts with the forum state are of such nature and quality as to enable a court to adjudicate an action against the defendant, even when the claim at issue does not arise out of the contacts with the forum. *Helicopteros Nacionales de Colombia, SA v Hall*, 466 US 408, 414, n 9, 415-416; 104 S Ct 1868; 80 L Ed 2d 404 (1984). In order to satisfy the “continuous and systematic part of its business” prong of the test for general jurisdiction, the defendant’s connection to Michigan must be substantial. *Shah v. Nu-Kote Int’l, Inc*, 898 F Supp 496, 501 (ED Mich, 1995), *aff’d*, 106 F3d 401 (CA 6, 1997). Some factors that the Court of Appeals has considered when evaluating whether the foreign company has carried on a “continuous and systematic part of its general business in this state” include whether it operates a physical facility or place of business in Michigan, whether it has officers or employees in Michigan, and whether it maintains a bank account in Michigan. *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 428; 633 NW2d 408 (2001). The Court may also consider the defendant’s solicitation of sales in the state, sales presence, purchases, and actual sales in the state. *Larsen Servs, Inc v Nova Verta USA, Inc*, unpublished per curiam opinion of the Court of Appeals, issued May 14, 2013 (Docket No. 306280), p 3.

ii. The Plaintiff has Not Met its Burden of Establishing that the Court can Exercise General Personal Jurisdiction over the Named Defendants

As an initial matter, none of the Defendants were formed or incorporated in Michigan, so jurisdiction is not warranted pursuant to MCL 600.711(1). Additionally, the Plaintiff has not shown that any of the Defendants have consented to jurisdiction in Michigan through a contractual forum selection clause, so MCL 600.711(2) is also inapplicable. The Plaintiff argues that its

Proposed First Amended Complaint establishes general jurisdiction over the Defendants in this action under MCL 600.711(3) through the following alleged acts of the Defendants:

- Defendant Maxify “actively transacts and solicits business in the state of Michigan, advertising and selling its Power Breezer products.”¹⁶
- Defendant Maxify distributes its products through Grainger, a large industrial supplier, and Grainger’s website lists Power Breezers as available through Grainger’s Madison Heights, Michigan location.¹⁷
- As recently as August 2024, Maxify placed Power Breezer Air Cooling units at Elbel Field at the University of Michigan.¹⁸
- As recently as October 2024, Ofir Baharav circulated an investment memorandum to Breezer investors on behalf of Defendant Maxify Solutions, Inc., Defendant Breezer, and Defendant Simigon, Ltd. seeking \$5,000,000 in investment funds and representing that Defendant Simigon, Inc. is financially sound.¹⁹
- In July 2024, Defendants requested that Plaintiff (among others) guaranty \$2,000,000 in loans to Defendants from their factoring concern.²⁰
- Defendant Breezer obtained loans from Plaintiff (a state of Michigan entity) and the money was wired from a Chase Bank account in Michigan to Defendant Breezer’s account.²¹
- Defendants agreed to facilitation in the 2021 Litigation and actively participated in the facilitation by meeting in person at Judge Rashid’s offices in Farmington Hills, Michigan, ultimately signing the Term Sheet in February 2024 which contemplated the possibility that the case would be refiled.²²
- The Defendants provided information, financial data, and documents to the Auditor specified in the Term Sheet (ResX-A Michigan entity).²³

¹⁶ Plaintiff’s Motion to File its First Amended Complaint, Exhibit 2 Proposed First Amended Complaint ¶ 12.

¹⁷ *Id.* ¶ 13.

¹⁸ *Id.* ¶ 14.

¹⁹ *Id.* ¶ 15.

²⁰ *Id.* ¶ 124.

²¹ *Id.* ¶ 34.

²² *Id.* ¶¶ 22-24.

²³ *Id.* ¶¶ 18-19 and Exhibit E.

Even if the allegations in the Proposed First Amended Complaint are true (which the Defendants dispute), they do not establish that the Defendants carry on a “continuous and systematic part of [their] general business in this state.” The Plaintiff’s proposed complaint does not, for example, allege that the Defendants maintain a physical presence in the state, have officers or employees in the state, hold bank accounts in the state, or otherwise engage in a substantial portion of their business in Michigan so as “to render them essentially at home in the forum State.” See *Goodyear Dunlop Tires Operations, SA v Brown*, 564 US 915, 919; 131 S Ct 2846; 180 L Ed 2d 796 (2011); *Oberlies*, 246 Mich App at 428.

Accordingly, the Proposed First Amended Complaint does not establish that the Court has general jurisdiction over the Defendants pursuant to MCL 600.711 and/or MCL 600.721.

B. Limited Personal Jurisdiction and Due Process

The Court may also exercise limited personal jurisdiction over foreign corporations pursuant to Michigan’s long-arm statute (MCL 600.715 and 600.725) under specific circumstances. However, even if jurisdiction is authorized under MCL 600.715 or 600.725, the exercise of jurisdiction must still be consistent with the Due Process Clause of the Fourteenth Amendment. *Oberlies*, 246 Mich App at 432. Here, the Plaintiff argues that its Proposed First Amended Complaint establishes limited personal jurisdiction over the Defendants, but the Defendants argue that it does not, and therefore, the proposed amendment would be futile.

i. The Law Regarding Limited Personal Jurisdiction and Due Process

MCL 600.715 provides for limited or specific jurisdiction in the following circumstances:

The existence of any of the following relationships between a corporation or its agent and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise limited personal jurisdiction over such corporation and to enable such courts to render personal judgments against such

corporation arising out of the act or acts which create any of the following relationships:

- (1) The transaction of any business within the state.
- (2) The doing or causing any act to be done, or consequences to occur, in the state resulting in an action for tort.
- (3) The ownership, use, or possession of any real or tangible personal property situated within the state.
- (4) Contracting to insure any person, property, or risk located within this state at the time of contracting.
- (5) Entering into a contract for services to be performed or for materials to be furnished in the state by the defendant.

Under MCL 600.715(1), a Michigan court may exercise limited or specific jurisdiction over a corporation to adjudicate claims that arise out of its contacts within this state when the corporation transacts any business within the state. The use of the word “any” in the statute “establishes that even the slightest transaction is sufficient to bring a corporation within Michigan’s long-arm jurisdiction.” *Oberlies*, 246 Mich App at 430. Indeed, “[t]he standard for deciding whether a party has transacted any business under § 600.715[1] is extraordinarily easy to meet. The only real limitation placed on this [long arm] statute is the due process clause.” *Id.* (citation and quotation marks omitted).

In addition to meeting the statutory requirements for limited jurisdiction, the exercise of personal jurisdiction must also comport with principles of due process. The focus of the due process analysis is whether the defendant “purposely established the minimum contacts with the forum state necessary to make the exercise of jurisdiction over the defendant fair and reasonable.” *Id.* at 433. A three-part test is used to determine whether the exercise of limited personal jurisdiction comports with due process:

First, the defendant must have purposefully availed himself of the privilege of conducting activities in Michigan, thus invoking the benefits and protections of this state's laws. Second, the cause of action must arise from the defendant's activities in the state. Third, the defendant's activities must be substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable.

[*Id.* (citations and quotation marks omitted).]

The “‘purposeful availment’ requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of ‘random,’ ‘fortuitous,’ or ‘attenuated’ contacts or of the unilateral activity of another party or a third person[.]” *Burger King Corp v Rudzewicz*, 471 US 462, 475; 105 SCt 217; 485 LEd2d 528 (1985)(citations omitted). To have purposely availed itself of Michigan law, 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; 636 NW2d 291 (2001) (quotation marks omitted). There must be a degree of foreseeability to a defendant that his “conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.” *World-Wide Volkswagen Corp v Woodson*, 444 US 286, 297; 100 SCt 559; 62 LEd2d 490 (1980). The Due Process Clause also “gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.” *Id.* However, “the constitutional touchstone remains whether the defendant purposefully established ‘minimum contacts’ in the forum.” *Rudzewicz*, 471 US at 474.

However, even where a defendant purposefully avails itself of the forum jurisdiction, the connection between the plaintiff's cause of action and the defendant's contacts with the state must

not be “so attenuated that it is unreasonable to exercise jurisdiction over [the] defendant in this case.” *Oberlies*, 246 Mich App at 435. Thus, for “limited personal jurisdiction to attach, the cause of action must arise from the circumstances creating the jurisdictional relationship between the defendant and the foreign state.” *Id.* (citation and quotation omitted). In other words, the defendant’s activities in Michigan must, “in a natural and continuous sequence, have caused the alleged injuries forming the basis of the plaintiff’s cause of action.” *Id.* at 437.

“[T]he plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant’s conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him.” *Walden v Fiore*, 571 US 277, 285-286; 134 S Ct 1115 (2014). “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*, 247 Mich App at 285 (quoting *Rudzewicz*, 471 US at 476). “‘Minimum contacts’ analysis looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” *Walden*, 571 US at 285.

With these principles in mind, the Court must first consider whether the Plaintiff’s Proposed First Amended Complaint permits the Court to exercise limited personal jurisdiction under Michigan’s long-arm statute, and if so, whether the exercise of limited jurisdiction over the Defendants would comport with due process.

ii. First Prong-Long Arm Statute

In Paragraph 34 of the Proposed First Amended Complaint, the Plaintiff alleges that the Court has jurisdiction over the Defendants pursuant to MCL 600.715, although the Plaintiff does not specify which subsection of the statute is relevant. Based on the allegations in Paragraph 34, it

appears that the Plaintiff is claiming the Court may exercise jurisdiction pursuant to MCL 600.715(1) because the Defendants have engaged in “the transaction of any business in this state,” MCL 600.715(2) because the Defendants acted and caused consequences to occur in Michigan which resulted in an action for tort, and MCL 600.715(5) because the Defendants entered into a contract for services to be rendered and materials to be furnished in Michigan. The specific allegations detailed in Paragraph 34 are:

- Defendant Breezer obtained loans from the Plaintiff (a Michigan entity), and the money was transferred from the Plaintiff’s Chase Bank account in Michigan.²⁴
- Defendants Maxify and Simigon, Inc. solicited investments from Michigan residents.²⁵
- Defendant Maxify sells and distributes Breezer products in Michigan through Grainger and other distributors.²⁶
- Defendants Breezer and Maxify participated in the 2021 lawsuit and entered into the Term Sheet, through which they agreed to provide the appointed auditor access to their financial books and records.²⁷ Defendants Breezer and Maxify also entered into a Confidentiality and Non-Disclosure Agreement with the auditor that contained a Michigan choice of law provision.²⁸
- Defendants committed the torts of fraudulent concealment by concealing material facts about the comingling and transfers of Defendants’ entities assets in an effort to deceive Plaintiff into entering into the Term Sheet and committing fraud by making misrepresentations as to the financial health of Defendant entities.²⁹

The Court addresses the arguments for limited jurisdiction under MCL 600.715(1), MCL 600.715(2) and MCL 600.715(5) below.

²⁴ Plaintiff’s Motion to File its First Amended Complaint, Exhibit 2 Proposed First Amended Complaint ¶ 34(A).

²⁵ *Id.* ¶ 34(G).

²⁶ *Id.* ¶ 34(C).

²⁷ *Id.* ¶ 34(B) & (E).

²⁸ *Id.* ¶ 34(F).

²⁹ *Id.* ¶ 34(D).

1. The Transaction of any Business in this State

The Plaintiff first asserts that the Court may exercise limited personal jurisdiction over Defendant Breezer because it obtained loans from a Michigan entity and the money was thereafter wired from a Michigan Chase Bank account. The Plaintiff also asserts that the parties communicated regarding the loans through Mark Papak, a resident of the state of Michigan who held the Power of Attorney for the Plaintiff's principal (Nicholson).³⁰

The allegations in this case are similar to those at issue in *Parish v Mertes*, 84 Mich App 336; 269 NW2d 591 (1978), in which the Court of Appeals found the defendant (an Illinois resident) was subject to a Michigan court's limited jurisdiction regarding a promissory note made with a Michigan resident:

[T]he loan agreement and the promissory note state that the place of payment was at plaintiff's home in Detroit, Michigan. Together with the telephone calls, this contact, looked at qualitatively if not quantitatively, is sufficient to confer jurisdiction over defendants on Michigan courts. Defendants signed the agreement and the promissory note knowing the place of payment was Michigan. They should reasonably have expected that they would be subject to jurisdiction in Michigan as long as adequate notice and the opportunity to be heard were provided.

[*Parish*, 84 Mich App at 342].

Likewise, in the instant case, the Plaintiff alleges the loan transactions bring Defendant Breezer within the Court's limited jurisdiction pursuant to MCL 600.715(1) because the lender was a Michigan entity, the lender's principal was a Michigan resident, the loans were communicated with and through Mark Papak (a resident of the state of Michigan), and the money originated from a Michigan bank account. Under MCL 600.715(1) and *Parish*, this is sufficient to establish limited jurisdiction over Defendant Breezer "arising out of the act or acts" which

³⁰ Plaintiff's Motion, p 3.

establish it transacts business in this state. Because the acts which establish Defendant Breezer's connection to the state of Michigan (the loans) are also the basis for the lawsuit (specifically the breach of contract claims related to the loans), MCL 600.715(1) is satisfied and the Plaintiff has demonstrated that a statutory basis exists for the Court to exercise its limited jurisdiction over Defendant Breezer in connection with the loans (Counts I and II of the Proposed Amended Complaint).

2. Defendants Acted and Caused Consequences to Occur in Michigan

The Plaintiff also alleges that the Defendants are subject to this Court's jurisdiction under subsection (2), "the doing or causing any act to be done, or consequences to occur, in the state resulting in an action for tort." Thus, either the tortious conduct or the injury must occur in Michigan. *WH Froh, Inc v Domanski*, 252 Mich App 220, 229; 651 NW2d 470 (2002) (interpreting the analogous statutory requirements for limited personal jurisdiction over individuals).

Here, the Plaintiff has alleged that the Defendants undertook acts in Michigan in connection with the facilitation of the 2021 Litigation that resulted in torts, namely the fraudulent concealment of intercompany transfers of money (Count VI of the Proposed First Amended Complaint), innocent misrepresentation regarding the disclosure of Maxify financials (Count VII of the Proposed First Amended Complaint), and fraudulent misrepresentation regarding Maxify's financials and contracts (Count VIII of the Proposed First Amended Complaint). Because the Plaintiff has alleged that the representations and/or concealment of the relevant information were "made in person, face-to-face to Plaintiff's representatives in Farmington Hills, Michigan,"³¹ they have sufficiently alleged that a statutory basis exists for the Court's exercise of limited personal jurisdiction under MCL 600.715(2).

³¹ Plaintiff's Motion to File its First Amended Complaint, Exhibit 2 Proposed First Amended Complaint ¶ 149.

Regarding the causes of action relating to the Defendants’ alleged fraudulent transfers (Counts III and IV),³² the Plaintiff has not alleged that the *actions* underlying these claims took place in Michigan, but rather that the *consequences* occurred in Michigan because the Plaintiff’s attempts to collect on its loans have been hindered. Indeed, in *WH Froh*, the Court of Appeals concluded that when the defendants in that case made false representations and assurances that the plaintiffs would be paid on a weekly basis and the plaintiff did not receive the promised payments and went out of business, the injury to the plaintiff occurred in Michigan. *WH Froh*, 252 Mich App at 230. Similarly, in this case, the Plaintiff has alleged that the fraudulent transfers between corporate entities have moved and/or concealed the assets of Defendant Breezer in an attempt to defraud the Plaintiff.³³ Any resulting injury to the Plaintiff, therefore, took place where the Plaintiff is located—in Michigan. Consequently, the Plaintiff has sufficiently alleged that a statutory basis exists for the Court to exercise jurisdiction pursuant to MCL 600.715(2).

3. *Contract for Services to be Performed or Materials to be Furnished in Michigan*

Finally, the Plaintiff has also alleged that the Defendants have breached the February 23, 2024 Term Sheet (Count V of the Proposed Amended Complaint). The Plaintiff has alleged that the parties engaged in a facilitation in February 2024 in an attempt to resolve the 2021 Litigation, and that the facilitation took place in Farmington Hills, Michigan.³⁴ The Term Sheet was executed on February 23, 2024 as a result of that facilitation. The Addendum to the Term Sheet was also executed on February 23, 2024. In the Term Sheet and Addendum, Defendants Breezer and Maxify

³² Under Michigan law, an action for tort under MCL 600.715(2) includes an action provided for by statute. *Black v Rasile*, 113 Mich App 601, 604; 318 NW2d 475 (1980). Consequently, even though the Plaintiff’s claim for fraudulent transfer is brought under the Uniform Voidable Transactions Act, the allegations of fraudulent transfer are within the scope of MCL 600.715(2). *In re Barrocco*, 506 BR 482, 486 (Bankr ED Mich, 2014) (“Thus, it follows that fraudulent transfer sounds in tort under Michigan law”).

³³ Plaintiff’s Motion to File its First Amended Complaint, Exhibit 2 Proposed First Amended Complaint ¶ 102.

³⁴ *Id.* at ¶¶ 43-44.

agreed to provide certain financial information to an auditor and to pay the auditor's reasonable fees.³⁵ After the auditor was selected, Maxify and Breezer subsequently executed a Confidentiality and Non-Disclosure Agreement with the auditor (ResX PC) which stated that Michigan law would govern any dispute over the Agreement.³⁶ The Term Sheet and Addendum required Breezer and Maxify to "furnish" financial data to the auditor, who was located in Michigan, and the agreement contemplated that the auditor would be providing services in Michigan. Consequently, the Court may exercise personal jurisdiction over the Defendants pursuant to MCL 600.715(5).

iii. Second Prong-Due Process Analysis

As noted above, the Plaintiff has established a prima facie statutory basis for the Court's limited jurisdiction against each of the named Defendants. This is not the end of the inquiry, however, because the Court must ensure that the exercise of its limited jurisdiction comports with due process. *Witbeck v Bill Cody's Ranch Inn*, 428 Mich 659, 666; 411 NW2d 439 (1987) ("The Due Process Clause of the Fourteenth Amendment does not contemplate that a state may make binding a judgment in personam against an individual or a corporate defendant with which the state has no contacts, ties, or relations").

I. Purposeful Availment

The first requirement in the three-part test to ensure that due process is satisfied is that the defendant must have "purposefully availed itself of the privilege of conducting activities in Michigan, thus invoking the benefits and protections of this state's laws." *Starbrite Distrib, Inc v Excelda Mfg Co*, 454 Mich 302, 309; 562 NW2d 640 (1997) (citation omitted). Our courts have held that "purposeful availment" is "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

³⁵ *Id.*, Exhibit E.

³⁶ *Id.*, Exhibit G.

cause of the effects resulting in Michigan, something more than a passive availment of Michigan opportunities.” *Jeffrey v Rapid Am Corp*, 448 Mich 178, 187; 529 NW2d 644 (1995) (quoting *Khalaf v Bankers & Shippers Ins Co*, 404 Mich 134, 153-154; 273 NW2d 811 (1978)).

In the instant action, Defendant Breezer purposefully availed itself of the privilege of transacting business in Michigan when it sought and obtained loans from the Plaintiff, a Michigan entity. Per the Court of Appeals in *Parish*, this is sufficient to satisfy the due process requirements:

Defendants signed the agreement and the promissory note knowing the place of payment was Michigan. They should reasonably have expected that they would be subject to jurisdiction in Michigan as long as adequate notice and the opportunity to be heard were provided. Defendants should not have been startled that a Michigan court saw fit to assert jurisdiction over them. Fair play permits this state’s courts to assert such jurisdiction.

[*Parish*, 84 Mich App at 342 (citation omitted)]

Additionally, for the torts that were alleged to have been committed at the in person facilitation, namely the fraudulent concealment of intercompany transfers of money (Count VI of the Proposed First Amended Complaint), innocent misrepresentation regarding the disclosure of Maxify financials (Count VII of the Proposed First Amended Complaint), and fraudulent misrepresentation regarding Maxify’s financials and contracts (Count VIII of the Proposed First Amended Complaint), due process is satisfied because the Defendants’ corporate representatives allegedly perpetrated these wrongs while physically present in Michigan. *See Walden v Fiore*, 571 US 277, 286; 134 SCt 1115; 188 L Ed 2d 12 (2014) (“A forum State’s exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that creates the necessary contacts with the forum”).

Additionally, for the Plaintiff’s fraudulent transfer causes of action (Counts III and IV) which are based on conduct that occurred outside of Michigan but injured the Plaintiff in Michigan,

the Supreme Court established the “effects test” in its 1984 decision *Calder v Jones*, 465 US 783, 104 SCt 1482, 79 LEd2d 804 (1984).

Courts have applied *Calder’s* “effects” test to assess personal jurisdiction over an intentional tortfeasor whose contacts with the forum otherwise do not satisfy the requirements of due process under the traditional test. In such cases, personal jurisdiction may be proper if the forum is the “focus” of the defendant’s tortious conduct. Unlike the traditional test, the *Calder* “effects” test requires a plaintiff to plead facts establishing that: (1) the defendant committed an intentional tort; (2) the plaintiff felt the brunt of the harm in the forum; and (3) the defendant expressly aimed his tortious conduct at the forum.

[*Hasson v FullStory, Inc*, 114 F4th 181, 187 (CA 3, 2024) (citations and quotations omitted)]

Here, the Plaintiff has alleged that the Defendants perpetrated intentional torts, namely the fraudulent transfer of assets and the conspiracy to fraudulently convey assets, that the Plaintiff was harmed in Michigan, and that the Defendants aimed their tortious conduct at the Plaintiff in Michigan. Consequently, the *Calder* effects test is satisfied.

Finally, for the breach of contract claim related to the Term Sheet, the Defendants’ corporate representative traveled to Michigan to negotiate the agreement and agreed to provide financial information to a Michigan auditor and pay for the auditor’s services. Additionally, the Defendants entered into a separate confidentiality agreement with the auditor that stated it would be governed by the law of Michigan. Consequently, the Defendants have “purposefully availed [themselves] of the privilege of conducting activities in Michigan” and invoked “the benefits and protections of this state’s laws.” *Starbrite Distrib*, 454 Mich at 309.

Accordingly, the Court finds that the “purposeful availment” requirement of the due process test is satisfied.

2. *Causes of Action Arise from Defendants’ Activities in Michigan*

As already discussed at length above, each of the causes of action in the proposed amended complaint arise from the Defendants' activities in Michigan. The first two causes of action for breach of the loan agreements (Counts I and II) arise from Defendant Breezer's lending arrangement with the Plaintiff, a Michigan entity, and its receipt of funds from Michigan. The causes of action related to the fraudulent transfers (Counts III and IV) arise from the Defendants' intentional acts that were allegedly aimed at injuring the Plaintiff in Michigan. The breach of contract claim related to the Term Sheet (Count V) arises from an agreement that was negotiated while the Defendants' representatives were physically present in Michigan. Finally, the torts related to the Defendants' conduct at the in-person facilitation arise directly from the Defendants' representative's conduct while at the facilitation in Michigan.

Consequently, the second requirement in the due process analysis is satisfied.

3. Jurisdiction is Reasonable

The third element in the due process test requires that the exercise of jurisdiction be reasonable. "In determining whether Michigan's exercise of personal jurisdiction qualifies as reasonable, the burden on the defendant is a primary concern, but, in appropriate cases, it should be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute; the plaintiff's interest in obtaining convenient and effective relief, at least when that interest is not adequately protected by the plaintiff's power to choose the forum; the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies...." *WH Froh*, 252 Mich App at 232–33.

In this case, the Plaintiff alleges that the Defendants purposefully directed their activities at the Plaintiff, a Michigan entity. "Michigan has a substantial interest in providing effective means

of redress for its citizens who allege that an out-of-state individual or entity has defrauded them.”
Id. at 233.

Additionally, the Plaintiff litigated a prior iteration of this case against Defendant Breezer for many years in this Court, and the Plaintiff agreed to dismiss the 2021 Litigation based on the Term Sheet entered into with Defendant Breezer and (then non-party) Maxify that was premised on the understanding that the Plaintiff would refile the case if the parties did not reach a settlement. The Defendants’ attempt to raise these jurisdictional arguments at the eleventh hour is neither fair nor reasonable. Substantial judicial resources have been spent in attempting to resolve this dispute, and therefore, its continued jurisdiction satisfies the third element of the due process test.

Consequently, because the Plaintiff has established a prima facie case that this Court’s exercise of personal jurisdiction has a valid statutory basis and satisfies due process, the filing of its proposed First Amended Complaint would not be futile.

ORDER

Based upon the foregoing Opinion:

The Plaintiff’s Motion to File its First Amended Complaint is GRANTED.

The seal of the 6th Circuit Court is circular, featuring an eagle with wings spread, perched on a shield. The text "SEAL OF THE 6TH CIRCUIT COURT" is inscribed around the top inner edge, and "ONE COURT OF JUSTICE" is at the bottom. The signature line is positioned over the seal.
/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 5/20/25