

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

GOCH & SONS TOWNG, INC.,
a Michigan Corporation,

Case No. 23-199508-CB
Hon. Victoria A. Valentine

Plaintiff,

vs.

J-MAC TREE AND DEBRIS, LLC, a Michigan
limited liability company, JEFFREY
MADISON, an individual, and DEH
DISASTER RECOVERY, LLC, a Georgia
limited liability company,

Defendants.

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**OPINION AND ORDER REGARDING DEFENDANT DEH DISASTER
RECOVERY LLC'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR
2.116(C)(1) AND MCR 2.116(C)(8)**

At a session of said Court held on
the 25th day of May 2023 in the County
of Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Defendant DEH DISASTER RECOVERY LLC’S(“DEH”) Motion for Summary Disposition under MCR 2.116(C)(1) and MCR 2.116(C)(8). The Court, having reviewed the pleadings as well as the motion, response and reply filed by the parties, and for the reasons stated below, dispenses with oral argument under MCR 2.119(E)(3) and GRANTS DEH’s motion under MCR 2.116(C)(1).¹

FACTUAL OVERVIEW

On February 3, 2021, the Michigan State Police responded to a traffic incident involving a 2019 Kenworth tractor and crane, which was traveling at a high rate of speed, and which resulted in a collision with a bridge and a rollover crash.² It is undisputed that on that date, DEH did not own the tractor. Rather, the vehicle was owned and operated by Defendant J-Mac Tree and Debris, LLC (“J-Mac”) and Defendant Jeffrey Madison (“Madison”).³ The police engaged the services of Plaintiff, Goch & Sons Towing Inc to recover, tow, transport, and store the tractor.⁴

Plaintiff alleges that upon its arrival, the vehicle had leaked hazardous materials to which Plaintiff responded by recovering the spills and preventing their migration, which allegedly reduced costs by avoiding the involvement of the Michigan Department of Environmental Quality.⁵ Plaintiff also alleges that its net cost for the recovery and towing, along with the scene clean-up and accrued storage costs amount to an outstanding balance of \$62,745.00.⁶ And Plaintiff

¹ Because the motion is granted under MCR 2.116(C)(1), it need not be addressed under MCR 2.116(C)(8).

² ¶¶9-10 of Plaintiff’s Complaint.

³ ¶11 of Plaintiff’s Complaint.

⁴ ¶9 of Plaintiff’s Complaint.

⁵ ¶¶ 12-13 of Plaintiff’s Complaint.

⁶ ¶16 of Plaintiff’s Complaint & Exhibit A attached to Complaint: 2/3/2021 invoice.

further claims that “Defendant’s materials, platforms, boxes and supplies remain in storage to this day, with storage costs accruing at a contractual rate of \$95.00 per day.”⁷

As to Defendant DEH’s involvement/subsequent ownership of the truck, Paragraph 18 of Plaintiff’s complaint alleges:

18. That Defendant Madison has asserted that ownership of the vehicle was transferred to DEH and has provided the attached unsigned bill of sale as evidence of the transfer. **Exhibit B.**

Exhibit B attached to Plaintiff’s Complaint, however, is not an “unsigned bill of sale” between Defendant Madison, the owner of the tractor, and DEH. Rather, Plaintiff’s Exhibit B is a release, hold harmless agreement, and agreement to pay for storage signed by Defendant *Madison*, the owner of the vehicle:

⁷ ¶17 of Plaintiff’s Complaint.

EXHIBIT B

Bill of Sale Release Form

Goch & Sons Towing, Inc

1821 Trombly

Detroit, Michigan 48211

I, Jeffrey Madison am the owner or owners agent (attorney or court appointed legal representative ONLY) of the following vehicle.

Tow Ticket: 407923

Year: 2019 Make: Kenworth Model: T800
Color: Green Vin: 223343 License Plate: 1Bco 7201

I request that Goch & Sons Towing, Inc., release the aforementioned vehicle to:

Name of Person or Insurance Company:

(Authorized licensed carrier, repair shop, or insurance company)

I hereby indemnify and hold harmless Goch & Sons Towing, Inc. for any and all liability that may arise from releasing the vehicle to the person or insurance company appointed above. Storage will continue from this day forward at the rate for \$95.00 per calendar day until vehicle is picked up.

I hereby furnish the following identifying information:

Full Legal Name: Jeffrey Madison

Address: 89193 Northwestern Hwy Suite 651

City, State & Zip Code: Southfield MI 48034

Home Phone #: _____ Cell Phone #: 248-546-5672

I hereby state affirm that I am the duly authorized owner or owner's agent of the above aforementioned vehicle and I am properly requesting the release of this vehicle to me under penalty of law.

Date: 3/26/21 Signature: X Jeffrey Madison

Attached to Plaintiff's Response, however, is the **unexecuted** purported Bill of Sale between Defendant Madison and DEH:

BILL OF SALE

I, Jeff Madison / J- Mac Tree & Debris (seller), in consideration of Thirty Thousand dollars (\$ 30,000.00), do hereby sell, transfer and convey to DEH Disaster Recovery LLC (buyer), the following vehicle:

Make: Kenworth Year: 2019
Model: Construction VIN: 1NKDLP0X9KR223343

I, the undersigned seller, do sell the above-described vehicle to the buyer for the amount shown and certify that all of the information provided in this Bill of Sale is true and accurate to the best of my knowledge.

I, the undersigned buyer, acknowledge receipt of this Bill of Sale and understand there is no guarantee or warranty, expressed or implied, with respect to the above-described property. It is also understood that the above-stated vehicle is sold in "as is" condition.

Dated this 1ST day of December, 20021.

Seller Name: (Printed) <u>Jeff Madison</u>	Buyer Name: (Printed) <u>DEH Disaster Recovery LLC</u>
Seller Signature: _____	Buyer Signature: _____
Driver's License #: _____ State: _____	Driver's License #: _____ State: _____
Street Address: <u>14390 Wyoming St</u>	Street Address: <u>10133 Highway 42</u>
City: <u>Detroit</u> State: <u>MI</u> ZIP: <u>48238</u>	City: <u>Ft Valley</u> State: <u>GA</u> ZIP: <u>31030</u>
Phone #: _____	Phone #: _____

Plaintiff fails to provide supporting evidence or an affidavit from Defendant Madison attesting to the facts surrounding the *unexecuted* bill of sale of the truck to DEH. DEH, however, does provides an affidavit of Dodd Hartley, DEH's sole member who avers, under oath, to the facts surrounding DEH's subsequent purchase of the truck.⁸ Contrary to Plaintiff's generic allegations, Mr. Hartley specifically avers that no one from DEH ever spoke with anyone from J-Mac; all of the dealings for the purchase went through Canary Tree Service in Florida; DEH

⁸ Exhibit H attached to DEH's Reply.

purchased the truck from Canary Tree Service (a Florida company), at which time the truck was physically located in *Florida*; DEH did not purchase the crane or any other attachments or property attached to the truck; and DEH contracted with a Georgia company to transport the truck from Florida to Georgia.⁹

Plaintiff filed its complaint against Defendants Madison, J-Mac Tree, and DEH alleging:

- breach of contract against J-Mac Tree and Madison; and
- quantum meruit and unjust enrichment against all defendants.

DEH now brings this motion for summary disposition, arguing that Plaintiff's claims of quantum meruit and unjust enrichment against it should be dismissed because this Court does not have personal jurisdiction over DEH and because Plaintiff failed to state a claim against DEH. For the reasons set forth below, the Court agrees with DEH that the Court does not have personal jurisdiction over DEH.¹⁰

STANDARD OF REVIEW

Summary disposition may be granted where “[t]he court lacks jurisdiction over the person or property.” MCR 2.116(C)(1). 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 v Adams*, 272 Mich App 209, 218 (2006). “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*, 272 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*

⁹ Exhibit H, ¶¶ 14-18, attached to DEH’s Reply.

¹⁰ As previously noted, because the motion is granted under MCR 2.116(C)(1), the Court need not address the motion under MCR 2.116(C)(8).

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. (emphasis added).

ANALYSIS

At issue is whether this Court has limited personal jurisdiction over DEH under Michigan’s long arm statute.¹¹ Limited personal jurisdiction “involves a two-fold inquiry: (1) do the defendant’s acts fall within the applicable long-arm statute, and (2) does the exercise of jurisdiction over the defendant comport with the requirements of due process.” *W. H Froh, Inc v Domanski*, 252 Mich App 220, 226 (2002). “Both prongs of this analysis must be satisfied for a Michigan court to properly exercise limited personal jurisdiction over a nonresident.” *Yoost v Caspari*, 295 Mich App at 222. Under inquiry one, the long-arm statutes, MCL 600.705(1) (individual),¹² MCL

¹¹ Plaintiff’s Response fails to address whether the Court has general personal jurisdiction.

¹² MCL 600. 705 provides:

The existence of any of the following relationships between an individual or his agent and the state shall enable a court of record of this state to exercise limited personal jurisdiction over the individual:

- (1) The transaction of any business within the state.
- (2) The doing or causing an act to be done, or consequences to occur, in the state resulting in an action for tort.
- (3) The ownership, use, or possession of real or tangible personal property situated within the state.
- (4) Contracting to insure a person, property, or risk located within this state at the time of contracting.
- (5) Entering into a contract for services to be rendered or for materials to be furnished in the state by the defendant.
- (6) Acting as a director, manager, trustee, or other officer of a corporation incorporated under the laws of, or having its principal place of business within this state.
- (7) Maintaining a domicile in this state while subject to a marital or family relationship which is the basis of the claim for divorce, alimony, separate maintenance, property settlement, child support, or child custody.

600.715(1) (corporation),¹³ MCL 600.735(1) (partnership)¹⁴ provide that the transaction of any business within the state or that “the ownership, use, or possession of any property situated within the state” constitute a sufficient basis for jurisdiction. See MCL 600.705(3) (individual), MCL 600.715(3) (corporation), and MCL 600.735(3) (partnership).

The Court of Appeals has given that phrase ‘transaction of any business’ a broad interpretation, stating “that 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 v Searchmont Resort, Inc.*, 246 Mich App 424, 430 (2001), citing *Sifers v Horen*, 385 Mich. 195, 199, n. 2 (1971) (stating that M.C.L. § 600.715(1) refers to “each” and “every” business transaction and contemplates even “the slightest”

¹³ MCL 600.715 provides:

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:

- (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.

¹⁴ MCL 600. 735 provides:

The existence of any of the following relationships between a partnership or limited partnership or an agent thereof 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 partnership or limited partnership:

- (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.

act of business in Michigan), and *Viches v MLT, Inc.*, 127 F Supp2d 828, 830 (ED Mich, 2000) (Judge Paul Gadola stating: “The 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.’” [citation omitted]).

Here, however, Paragraph 4 of Plaintiff’s complaint admits that DEH “is a Georgia limited liability company which transacts business in and whose principal place of business is 10133 Highway 42 South, Fort Valley, Georgia:”

4. Defendant DEH Disaster Recovery, LLC is a Georgia limited liability company which transacts business in and whose principal place of business is 10133 Highway 42 South, Fort Valley, Georgia.

5. This claim arises out of a transaction or occurrence which originated in Detroit, Wayne County on February 3, 2021.

And as to DEH transacting *any* business in Michigan, Plaintiff vaguely alleges:

18. That Defendant Madison has asserted that ownership of the vehicle was transferred to DEH and has provided the attached unsigned bill of sale as evidence of the transfer. **Exhibit B.**

Again, Exhibit B attached to the Complaint is not an “unsigned bill of sale”; rather it is a signed release, hold harmless agreement and agreement to pay for storage signed by **Defendant Madison**. Further, the Bill of Sale attached to Plaintiff’s Response is a purported **unexecuted** Bill of Sale allegedly between Jeff Madison/J-Mac Tree and DEH. While Plaintiff has failed to provide any corroborating evidence or affidavit attesting to the fact that Madison, who is domiciled in Michigan,¹⁵ directly sold the vehicle to DEH, DEH provides Dodd Hartley, DEH’s sole member’s sworn affidavit.¹⁶ Mr. Hartley avers, *inter alia*, that DEH purchased the truck, which was

¹⁵ ¶3 of Plaintiff’s Complaint.

¹⁶ See Exhibit H, attached to DEH’s Reply.

physically located in *Florida*, from Canary Tree Service (a Florida company); that DEH did not purchase the crane or any other attachments or property attached to the truck; that DEH contracted with a Georgia company to transport the truck from Florida to Georgia.¹⁷ He avers that:

2. If sworn as a witness, I can and will testify competently to the facts stated herein.
3. I am the sole member of DEH Disaster Recovery, LLC.
4. DEH is a Georgia limited liability company with its principal place of business at 10133 Highway 42 South, Fort Valley, Georgia.
5. DEH does not conduct any business in the State of Michigan and does not have any office in the State of Michigan.
6. DEH does not own or possess any property within Michigan.
7. Neither DEH's owner nor any employees have ever come to Michigan for business (or personal) purposes.
8. DEH has never provided any services in Michigan and it does not advertise or solicit business from Michigan residents.
9. DEH was never incorporated under Michigan law and does not consent to jurisdiction in Michigan.
10. DEH has never purposely availed itself of any of the protections afforded by Michigan law, nor did DEH anticipate being haled into a court in Michigan.

¹⁷ See Exhibit H, attached to DEH's Reply.

11. DEH did not own, or have any ownership interest in, the 2019 Kenworth truck (VIN 1NKDLPOX9KR223343) on February 3, 2021, nor any attachments to that truck.

12. DEH did not have any “personal property” in GOCH & SONS TOWING, INC.’s (“GOCH & SONS”) possession on February 3, 2021 or at any time.

13. DEH learned from Justin Hartman at Canary Tree Service (a Florida company) that the 2019 Kenworth truck was for sale in or around May of 2021 and decided to purchase the truck on November 30, 2021.

14. At that time DEH decided to purchase the 2019 Kenworth truck, the truck was physically located in Jacksonville, Florida.

15. No one from DEH contacted or even spoke with anyone from J-Mac Tree and Debris, LLC (J-Mac”); all of the dealings for the purchase of the 2019 Kenworth truck went through Canary Tree Service in Florida.

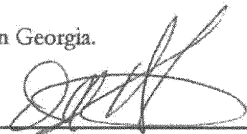
16. DEH drafted and delivered a check to Canary Tree Service on or around December 2, 2021 in the amount of \$30,000 to purchase the 2019 Kenworth truck (the cab and chassis, only).

17. DEH did not purchase the crane which was previously attached to the truck, or any other attachments or property formerly part of the truck.

18. DEH contracted with Moncrief Repair Services (a Georgia company) to transport the 2019 Kenworth truck from Jacksonville, Florida to Roberta, Georgia on December 2, 2021. (Invoice, **Exhibit 1**).

19. DEH never contracted with or otherwise engaged GOCH & SONS to provide any services whatsoever to DEH and DEH was not aware of any alleged services provided by GOCH & SONS to J-Mac until receiving this lawsuit through the mail in Georgia.

Further affiant sayeth not.

/s/ 
Dodd Hartley

In addition, Plaintiff’s vague claim that DEH owns or possesses property located within Michigan is also refuted by Mr. Hartley, who avers that “DEH does not own or possess any

property within Michigan,”¹⁸ and avers that “DEH did not purchase the crane which was previously attached to the truck, or any other attachment or property formerly part of the truck.”¹⁹

In fact, DEH’s only connection with the State of Michigan is that it purchased a truck with a Michigan title. However,

- DEH did not directly purchase the truck from Madison or J-Mac, who are located in Michigan.
- The truck was physically located in Florida when it was purchased by DEH.
- DEH purchased the truck from a Florida Company; it had no communications J-Mac.
- DEH then had the truck shipped from Florida to Georgia.
- DEH has no property located in Michigan.
- DEH purchased only the truck; it did not purchase the crane or other attachments.

Based on the above, the Court finds that Plaintiff failed to sustain its burden of establishing jurisdiction of Defendant under Michigan’s long arm statute. Plaintiff failed to make out a *prima facie* showing that DEH transacted any business within the State or owns or possesses any property within the State. Rather, Plaintiff’s vague allegations were contradicted by documentary evidence, including Mr. Hartley’s sworn affidavit.

Because Plaintiff failed to satisfy the first prong, the Court need not address the due process prong. “Both prongs of this analysis must be satisfied for a Michigan court to properly exercise limited personal jurisdiction over a nonresident.” *Yoost v Caspari*, 295 Mich App at 222. “[W]e need not consider whether the exercise of limited personal jurisdiction over [Defendant] Asher comports with due process because we conclude that [Plaintiff] Zalcborg failed to establish a *prima facie* case against Asher that satisfied MCL 600.705.” *Yoost v Caspari*, 295 at 223. DEH’s Motion under MCR 2.116(C)(1) is GRANTED.

¹⁸ See ¶16 of Exhibit H, attached to DEH’s Reply.

¹⁹ See ¶17 of Exhibit H, attached to DEH’s Reply.

DEH's request for sanctions is respectfully DENIED.

IT IS SO ORDERED.

This Order does NOT resolve the last pending matter and does NOT close the case.

DATED:

