

STATE OF MICHIGAN
IN THE OAKLAND COUNTY CIRCUIT COURT

EQUITYEXPERTS.ORG SOUTHERN, LLC

Plaintiff

Vs

24-207688-CB

Hon, Victoria Valentine

CANYON GATE CINCO RANCH

Defendant

DeMarte Law, PLLC
By: Katrina DeMarte (P81476)
Counsel for Equity Experts
39555 Orchard Hill Pl Ste 600
Novi, MI 48375
313-509-7047
katrina@demartelaw.com

Lippitt O'Keefe, PLLC
By: Brian D. O'Keefe (P39603)
Counsel for Canyon Gate
370 E. Maple Road, Third Floor
Birmingham MI 48009
248-646-8292
bokeefe@lippittokeefe.com

Zausmer, P.C.
Bryan R. Padgett (P72948)
Marsha E. Harris (P81388)
Co-Counsel for Canyon Gate
32255 Northwestern Hwy Ste 225
Farmington Hills MI 48334
248-851-4111
Bpadgett@zausmer.com
Mharris@zausmer.com

Weingarden Law, PLLC
By: Harvey R. Weingarden (P31534)
Co-Counsel for Canyon Gate
370 E. Maple Road, Third Floor
Birmingham MI 48009
248-723-1650
hweingardenlaw@gmail.com

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

At a session of said Court held on
the 5th day of September 2024 in the County
of Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Defendant CANYON GATE CINCO RANCH'S Motion for Summary Disposition under MCR 2.116(C)(1).¹ The Court, having reviewed the pleadings as well as the motion, response and reply filed by the parties, having heard oral argument, and for the reasons stated below, respectfully DENIES Defendant's motion under MCR 2.116(C)(1).

FACTUAL OVERVIEW

Plaintiff, EquityExperts.org Southern, LLC ("Equity"), provides various services to homeowners and condominium associations located both within and outside Michigan.² It conducts business and is headquartered in the County of Oakland, State of Michigan.³

Defendant, Canyon Gate Cinco Ranch (the "Association") is a condominium association, which is located in and has a registered office in Fort Bend County, in the State of Texas⁴. The Association does not own, use, or possess real property in the State of Michigan, nor does it advertise, maintain an office, provide services, or furnish materials there.⁵ The Association claims it only transacts business in Texas--not in Michigan.⁶

Equity's Complaint alleges that the Association sought out Equity to provide services to the Association.⁷ As a result, on November 16, 2018, Equity and the Association entered into a Collection Agreement and Release ("Agreement"), which was extended by subsequent amendments, whereby Equity agreed to provide the Association with collection services in an attempt to collect unpaid assessments from certain property owners, which were located in

¹ While Defendant references MCR 2.116(C)(8), it attaches an Affidavit to its Motion. The Motion, therefore, will be addressed under MCR 2.116(C)(1).

² Complaint, ¶ 6; Declaration ¶ 8 of Jacqueline Galafaro ("Declaration") attached to Plaintiff's Response.

³ Complaint, ¶1.

⁴ Complaint, ¶4

⁵ Defendant's MSD Exhibit A ¶¶ 5-7: Affidavit of Hugh Durlam, the Association's President. ("Affidavit").

⁶ Declaration ¶¶ 22-23

⁷ Complaint, ¶7.

Texas.⁸ It is undisputed that the Agreement was remotely signed by all parties.⁹ And while it contains a choice of law clause, it does not contain a choice of forum clause: “This Agreement shall be construed in accordance with, and be governed by, the laws of the state in which Association is located.”¹⁰

According to Equity, all work it performed, which was at the request of the Association, was performed in Michigan.¹¹ Similarly, all monies it collected for the Association were received and processed in Michigan.¹²

Pursuant to the sworn Declaration of Jacqueline Galofaro, Equity’s Vice President and General Counsel, Equity performed the following collection services in and from Michigan, at the request of the Association:

- Drafting and mailing of all correspondence, including letters and emails
- Balance reconciliation and ledger reviews
- Owner reconciliation
- Property ownership scrubs
- Bankruptcy scrubs
- Military scrubs
- Skip-tracing
- Account review and processing
- Preparation of mailings and notices
- Due diligence & response to homeowner/association inquiries
- Update balance and payment records
- Receive, process, and receive payments
- Dispute reviews and responses
- Verification of debts
- Public records review
- Obtain legal counsel for the Association in necessary venues
- Review of legal and governing documents
- Coordinate with attorneys, board presidents, recorder's offices
- Location research
- Continuous telephone contacts
- Research/review of accounts

⁸ Complaint, ¶11; Declaration ¶24 and Exhibit A attached to Declaration; Affidavit ¶

⁹ Declaration, ¶ 25; Affidavit, ¶9.

¹⁰ Exhibit A (“Agreement”) attached to Declaration.

¹¹ Complaint, ¶8.

¹² Complaint, ¶9.

Validate communication methods - phone numbers, address, emails, etc.
Work out resolutions on accounts/balances
Calculating and drafting payment plans/settlement documents,
Review of deeds, lien holders, mortgage holders, and property value records
Obtain copies of filed liens and communications with lien holders
Verification of disputes and waivers with the Association
Coordinate with various vendors
Phone outreach
Monitor accounts¹³

Equity alleges that on October 5, 2023, the Association terminated the Agreement and demanded the suspension and termination of all files placed with Equity, causing those files to be returned to the Association.¹⁴ Equity further alleges that pursuant to the terms of the Agreement, and upon an agreed-upon fee schedule and any amendments to the same, payment in full for all uncollected amounts became due on November 5, 2023,¹⁵ which amounts to \$112,533.06, exclusive of interest, costs, and attorneys' fees.¹⁶

Equity filed its Complaint against the Association, alleging breach of contract and unjust enrichment, seeking \$112,533.06, exclusive of interest, costs and attorney fees.

The Association brings this motion for summary disposition under MCR 2.116(C)(1), arguing that this Court does not have limited personal jurisdiction.¹⁷ The Association contends that it neither conducts any activities in Michigan, nor has a physical presence there, traveled to Michigan for business with Equity, or engaged in continuous and systematic business within the state. It further argues that Equity was to provide the Association with collections of delinquent condominium owners, all of whom are located in Texas; that the parties' Agreement indicates that the law of Texas applies; and that Equity was actually doing business in Texas.

¹³ Declaration, ¶¶33 and 36.

¹⁴ Complaint, ¶ 14.

¹⁵ Complaint, ¶ 15.

¹⁶ Complaint, ¶ 16.

¹⁷ Plaintiff's Complaint alleges only limited personal jurisdiction under MCL 600.715, not general jurisdiction.

Equity argues that the Association sought to hire Equity due to Equity's niche business model in the association collection industry and that Equity performed a wide range of services for the Association, which were requested by the Association, and which took place from Equity's Michigan office. Equity, therefore, argues that because the Association knowingly engaged with Equity, a Michigan company, from whom the Association sought services, the Association purposefully availed itself to Michigan's jurisdiction.

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 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 under Michigan's long arm statute, this Court has limited personal jurisdiction over the Association, a condominium association corporation whose registered office

is in Texas.¹⁸ Limited personal jurisdiction “involves a two-fold inquiry: (1) does defendant's acts fall within the applicable long-arm statute, and (2) does the exercise of jurisdiction over 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. In its analysis, the Court must keep in mind that Equity “bears the burden of establishing jurisdiction over” the Association, but Equity “need only make a prima facie showing of jurisdiction to defeat a motion for summary disposition.” *WH Froh*, 252 Mich App at 226.

1st Prong- Long Arm Statute

Under inquiry one, Michigan’s long arm statute over corporations provides as follows:

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. MCL 600.715.
- (5) *Entering into a contract for services to be performed or for materials to be furnished in the state by the defendant.* MCL 600.715. (Emphasis added).

In *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 430 (2001), the Court of Appeals found that under the purview of section one, “[t]he phrase ‘transaction of any business’ is not defined in the statute. Therefore, it is proper to rely on dictionary definitions in determining the

¹⁸ Complaint ¶2

meaning of that provision. ‘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.” (internal citations omitted).

The *Oberlies* Court 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 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” 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])). *Oberlies*, 246 Mich App at 430.

Here, the Court determines that, under the broad interpretation of “transaction of any business,” the Association’s engagement with Equity, which is based and conducts business in Michigan, meets the criteria of Michigan’s long-arm statute, MCL 600.715(1). The Association entered into an Agreement with Equity, sent its files to Michigan,¹⁹ where Equity performed all services and processed payments,²⁰ and utilized Equity’s client portal in Michigan for real-time file updates.²¹ Accordingly, the Court concludes that Equity satisfied the relatively “easy” requirement of establishing that the Association transacted any business within the state under

¹⁹ Declaration ¶ 28.

²⁰ Complaint, ¶ 8; Declaration ¶ 32.

²¹ Declaration ¶ 39.

MCL 600.715(1).²²

Nevertheless, this Court's exercise of jurisdiction must still comport with the due process prong.

2nd Prong-Due Process

"The Due Process Clause of the Fourteenth Amendment 'does not contemplate that a state may make a binding judgment in personam against an individual or a corporate defendant with which the state has no contacts, ties, or relations.'" *Witbeck v Bill Cody's Ranch Inn*, 428 Mich 659, 666 (1987). Due process restricts permissible long-arm jurisdiction by defining the quality of contacts necessary to justify personal jurisdiction under the constitution. *Yoost v Caspari*, 295 Mich App at 222-223. "The 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 432-433, quoting *Int'l Shoe Co v Wash Office of Unemployment Compensation & Placement*, 326 US 310, 316; 66 S Ct 154; 90 L Ed 95 (1945). "The constitutional touchstone of a due process analysis with respect to personal jurisdiction 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." *Oberlies*, 246 Mich App at 433 (quotation marks omitted). 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 itself 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. *Starbrite Distributing, Inc v Excelda Manufacturing Co*, 454 Mich 302, 309 (1997).

²² Because the Court finds that the requirements under MCL 600.715(1) have been satisfied, it need not address MCL 600.715(5).

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 (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 (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 (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.* (quotation cleaned up). 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 v Hong Jin Crown Corp*, 247 Mich App 278 (2001) quoting *Burger King Corp v Rudzewicz*, 471 US 462, 476 (1985). "'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.

Defendant's lack of purposeful availment is fatal to the Court's exercise of personal jurisdiction. *King v Ridenour*, 749 F Supp 2d 648, 657 (ED Mich, 2010); see *LAK Inc v Deer Creek Enters*, 885 F2d 1293, 1303 (6th Cir 1989) (noting where "purposeful availment" test is unmet, it is unnecessary to address other two minimum contacts factors as each "is an independent requirement, and failure to meet any one of the three means that personal jurisdiction may not be invoked.").

With these principles in mind, the Court must consider each of the above factors, which are essential to the analysis of due-process concerns.

With regard to the first factor, the Court finds that the Association "purposefully availed" itself "of the privilege of conducting activities in Michigan[.]" *Starbrite Distributing, Inc v Excelda Manufacturing Co*, 454 Mich 302, 309 (1997). Equity claims that the Association reached out to Equity, a Michigan company, because of Equity's deferred-fee model.²³ Equity was to provide the

²³ Declaration, ¶¶ 9,13 and 30-31.

Association with collection services, which Equity performed in Michigan.²⁴ From 2018 through the termination, the Association placed a total of 106 files for collection with Equity.²⁵ By contacting and contracting with Equity, a Michigan company, the Association has “knowingly availed itself of the privilege of conducting business in Michigan. “*See Salom Enterprises, LLC v TS Trim Industries, Inc*, 464 F Supp2d 676, 685 (ED Mich 2006).

If Equity had initiated the commercial relationship by soliciting the Association, the Court’s conclusion may be different. But by reaching out to Equity to establish this relationship and to then subsequently send Equity 106 files, the Association engaged in contacts with Michigan that were “not ‘random,’ ‘fortuitous,’ or attenuated,’ but [were] the result of deliberate conduct that amounts to purposeful availment.” *Air Products and Controls, Inc v Safetech Int’l, Inc*, 503 F3d 544, 551 (6th Cir 2007).

The second prong of the due-process analysis for personal jurisdiction focuses upon whether Equity’s breach-of-contract claim “arises from” the Association’s “contacts with the forum state.” See *Air Products*, 503 F3d at 553. Here, the breach-of-contract claim “arises from” the Association’s contacts with Michigan because the Agreement itself was the direct result of the Association’s request for services performed by Equity for which the Association did not pay in full. The Court finds this is a clear example of a claim arising from a defendant’s contacts with the forum state. Accordingly, the second prong of the due-process analysis supports the exercise of limed personal jurisdiction over the Association in this case.

Finally, the Association’s “activities were substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable[.]” *Starbrite*, 454 Mich at 312-313. In today’s integrated economy, a party to a 5-year ongoing commercial relationship cannot seriously

²⁴ Declaration, ¶ 33.

²⁵ Declaration, ¶ 40.

object to being haled into court in the other party's home state to address claims for breach of a commercial contract. Indeed, due process protects a defendant against the exercise of long-arm jurisdiction arising from "an isolated transaction" initiated by the plaintiff. See *Kerry Steel, Inc v Paragon Industries, Inc*, 106 F3d 147, 151 (6th Cir 1997). However, the Due Process Clause of the Fourteenth Amendment does not protect a defendant who actively engages a collection agency in another state to perform services, enters into a long-term commercial agreement with that agency for approximately five years, sends 106 files to the agency in Michigan, and then fails to pay for the services rendered. Accordingly, the Court concludes that the third factor weighs heavily in favor of exercising limited personal jurisdiction over the Association in this case.

ORDER

Based on the preceding Opinion, the Court finds that Equity has met its burden of establishing "a prima facie showing of jurisdiction to defeat a motion for summary disposition" under MCR 2.116(C)(1). See *WHFroh*, 252 Mich App at 226. Should further record development challenge the factual basis of this conclusion, the Court may revisit the Association's objection to the exercise of limited personal jurisdiction. However, given the current record, the Court deems the exercise of limited personal jurisdiction over the Association permissible.

IT IS HEREBY ORDERED that Defendant's Motion for Summary Disposition is DENIED under MCR 2.116(C)(1). Defendant shall have 14 days from this Order to file its response to the Complaint.

IT IS SO ORDERED.

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



DATED: 9/5/24