

**STATE OF MICHIGAN
IN THE BUSINESS COURT FOR THE COUNTY OF LIVINGSTON**

STERLING COMMERCIAL CREDIT,
LLC and DALLAS INTERNATIONAL,
LLC,

Plaintiffs

v

HAMLETT ASSOCIATES, INC.,
Defendant

Case No. 21-31059-CB
Hon. Michael P. Hatty

**OPINION AND ORDER ON DEFENDANT’S
MOTION FOR SUMMARY DISPOSITION**

At a session of the 44th Circuit Court,
Held in the City of Howell, Livingston County,
on the 15th day of September, 2021.

THIS MATTER comes before this Court on Defendant’s Motion for Summary Disposition pursuant to MCR 2.116(C)(1). This Court, having reviewed the parties’ written briefs, having heard the parties’ oral arguments, being otherwise fully advised in the premises, and for the reasons stated herein, GRANTS Defendant’s Motion. Plaintiffs’ Complaint is hereby DISMISSED without prejudice for want of jurisdiction.

I

Plaintiff Sterling Commercial Credit, LLC (“Sterling”) is a Michigan company that makes loans and provides financial accommodations to small and mid-size businesses. One of the types of financial accommodations that Sterling provides is through factoring transactions. On August 27, 2014, Sterling entered into an Accounts Purchase and Security Agreement with non-party International Piping Solutions (“IPS”), pursuant to which IPS sold certain of its accounts receivable to Sterling (the “Factoring Agreement”). The Factoring Agreement between Sterling

and IPS contains a forum selection clause in favor of Livingston County, Michigan. On the same day Sterling and IPS executed the Factoring Agreement, Sterling assigned its rights to IPS's accounts to Plaintiff Dallas International, LLC ("Dallas," together with Sterling, the "Plaintiffs") (the "Assignment"). Under the Assignment, Sterling continued to act as Dallas's "administrative and payment agent with respect to the Agreement."

Defendant Hamlett Associates, Inc. ("Hamlett") is a construction services company incorporated under the laws of North Carolina, with its principal place of business in Climax, North Carolina. Hamlett was hired by another non-party, Unilever, to serve as general contractor on a project in North Carolina (the "Project"). Hamlett, in turn, hired IPS, a North Carolina entity, as a subcontractor to provide industrial pipe, valves, and fittings for the Project. Hamlett's contract with IPS was negotiated, executed, and performed entirely within the State of North Carolina, and all communications between Hamlett and IPS relating to the Project took place in North Carolina. Hamlett neither negotiated nor executed the Factoring Agreement or the Assignment, and is not a named party to either contract.

In 2019, Hamlett was notified as to the Factoring Agreement and was instructed it to remit payment to Sterling Credit Acceptance for IPS's services. Plaintiffs allege Hamlett failed to so remit such payments and Plaintiffs commenced this action, to Collect Account pursuant to MCL 440.9406 (Count I), Unjust Enrichment (Count II), and Declaratory Judgment (Count III). Hamlett responds with this Motion, asserting that this Court does not have personal jurisdiction.

II

A motion for summary disposition under MCR 2.116(C)(1) challenges whether a Michigan court has personal jurisdiction over a defendant. When a deciding a motion under this subrule, the allegations in the plaintiff's complaint must be accepted as true, unless specifically contradicted

by affidavits or other evidence submitted by the parties. *Yoost v Caspari*, 295 Mich App 209, 221; 813 NW2d 783 (2012), MCR 2.116(G)(2).

Personal jurisdiction over a defendant may be established by way of general or specific (limited) jurisdiction. *Glenn v TPI Petroleum Inc*, 305 Mich App 698, 706; 854 NW2d 509 (2014). 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 contacts with the forum state. *Id.* 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."

Michigan courts undertake a "two-step" analysis when determining whether limited personal jurisdiction may be exercised over a non-resident defendant. *Glenn* 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 due process clause of the Fourteenth Amendment. *Id.* Both prongs must be satisfied in order to exercise limited personal jurisdiction over a non-resident defendant. *Yoost* at 222.

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 MCL 600.715, the Michigan Supreme Court

has held that “[t]he word ‘any’ means just what it says. It includes ‘each’ and ‘every.’ It comprehends ‘the slightest.’” *Sifers v Horen* 385 Mich 195, 199 n 2, 188 NW2d 623 (1971).

Michigan employs a three-part test for determining whether the exercise of limited personal jurisdiction comports with the requirements of due process. *Glenn* 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.

III

A

First, it would appear that Plaintiffs assert this Court may have jurisdiction over Hamlett by way of the forum selection clause of the Factoring Agreement, pursuant to MCL 600.711(2). Otherwise, Plaintiff makes no argument that this Court has general personal jurisdiction over Hamlett. Thus, this Court will only address this argument relative to general personal jurisdiction.

When presented with a forum-selection clause, “Michigan courts have the initial jurisdiction to determine the threshold issue whether a party is bound by a contract, and, accordingly, any forum selection and choice-of-law provision in the contract. *Turcheck v Amerifund Fin, Inc*, 272 Mich App 341, 346; 725 NW2d 684, 688 (2006). “[A] contractual forum selection clause, though otherwise valid, may not be enforced against one not bound by the contract.” *Offerdahl v Silverstein*, 224 Mich App 417, 420; 569 NW2d 834 (1997). Hamlett’s argument on this point is straightforward: because the Factoring Agreement is an exclusive contract between Sterling and IPS, Hamlett, as a non-party, non-signatory, non-beneficiary to same, is not bound by its terms, nor subject to its forum selection clause.

In response, Plaintiffs argue that Hamlett is bound to the Factoring Agreement as an intended third-party beneficiary. To create an intended third-party beneficiary, a contract must contain “an express promise to act to benefit the third party.” *Dynamic Const Co v Barton Malow Co*, 214 Mich App 425, 428; 543 NW2d 31 (1995). In support of this argument, Plaintiffs cite ten provisions of the contract they claim reflects Hamlett’s third-party beneficiary status. The Court has reviewed these provisions finds that they do not express any intention to benefit Hamlett. *Schmalfeldt v North Pointe Ins Co*, 469 Mich 422, 429 (2003).

B

Relative to limited personal jurisdiction, Plaintiffs assert that Hamlett transacted business in this state by conducting business with IPS, which was a party to the Factoring Agreement. However, this Court disagrees. To the contrary, Hamlett does not maintain any offices in Michigan, does not lease or own any real property in the Michigan, does not have any employees in Michigan, does not have any bank accounts in Michigan, and has never performed construction work in Michigan. Further, Hamlett conducted all relevant activity related to the Project in the State of North Carolina, only communicated with IPS in relation to the Project from North Carolina, and does not have any contract or relationship with the Plaintiffs in Michigan. Although the threshold for transacting business for purposes of the long-arm statute includes “even the slightest act of business,” such a threshold has not been met in this case.

Plaintiffs argue that Hamlett’s mere continuation of its business relationship with IPS, after being advised that payments owed to IPS should be sent to Plaintiffs in Michigan, constituted purposeful availment of the privilege of conducting business in Michigan. This Court disagrees. It is undisputed that Hamlett played no part in negotiating or executing the Factoring Agreement.

Therefore, an argument that Hamlett, through its own conduct, created an obligation to pay Plaintiffs in Michigan is without merit.

Further, Plaintiffs' argument that a tort action satisfying the long-arm statute arises under MCL 440.9406 is also without merit. An "assignee [here, Plaintiffs] stands in the shoes of an assignor [IPS] and acquires the same rights the assignor possessed." *First of America v. Thompson*, 217 Mich App 581, 587; 552 NW2d 516 (1996). IPS, and therefore Plaintiffs, possessed only a contractual right to payment for the work IPS performed. Failure to pay under a properly performed contract gives rise only to a claim for breach of contract. *Courtright v. Design Irrigation, Inc.*, 210 Mich App 528, 530; 534 NW2d 181 (1995). Thus Plaintiffs, as assignees under MCL 440.9406, cannot recover in tort for Hamlett's alleged failure to pay. Plaintiffs cite no case to the contrary. Further, Plaintiffs' claims for declaratory relief or unjust enrichment are not actions in tort. See *Wright v Genesee Cnty*, 504 Mich 410, 419 (2019) and *Adair v State*, 486 Mich 468, 490 (2010).

C

Finally, this Court agrees with Hamlett that even if Plaintiffs could satisfy Michigan's long-arm statute, this Court's exercise of personal jurisdiction over it would violate due process.

The Court begins with a discussion of purposeful availment. In order for Hamlett to have "purposefully availed" itself of the privilege of conducting activities in Michigan, it must have "deliberately engage[d] in significant activities within [the] state, or create[d] continuing obligations between [it]self and residents of the forum." *Vargas v Hong Jin Crown Corp*, 247 Mich App 278, 285; 636 NW2d 291 (2001). Hamlett points out that, although the Factoring Agreement between Plaintiffs and IPS may have required Hamlett to make payments to the Michigan-based Plaintiffs, it is well-established that a "defendant's contacts with the forum state must be analyzed in terms of the defendant's own actions rather than the unilateral activity of another party or a third

person.” *Vargas* at 247. Because IPS unilaterally negotiated and executed the Factoring Agreement with Plaintiffs, without Hamlett’s involvement or input, Hamlett cannot be deemed to have purposefully availed itself of the privileges of conducting activity in Michigan.

Turning to the second prong of the due process analysis, whether Plaintiffs’ claims arise out of Hamlett’s business activities in Michigan, Hamlett did not actively seek out Plaintiffs, or any other business activity in Michigan, and the mere fact that Hamlett was asked to send payment to Michigan is insufficient to confer specific personal jurisdiction.

The final prong of the due process analysis is whether exercising jurisdiction over Hamlett is reasonable under the circumstances. This Court holds that it is not. First, the United States Supreme Court has held that the existence of a contract is not enough to satisfy due process and support a finding of limited personal jurisdiction. *Burger King Corp v Rudzewicz*, 471 U.S. 462, 478-79 (1985). Here, where the only basis for asserting personal jurisdiction over Hamlett is the existence of a third-party contract it did not execute, Hamlett’s activities are not so “substantially connected to Michigan,” so as to make the exercise of personal jurisdiction reasonable.

IV

This Court finds that it lacks jurisdiction over Defendant, GRANTS Defendant’s Motion for Summary Disposition, and DISMISSES Plaintiffs’ complaint without prejudice. This is a final order that closes this case.

IT IS SO ORDERED.



Michael P. Hatty
Circuit Court Judge