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

ORLEANS INTERNATIONAL, INC.,

Plaintiff,

v

Case No. 21-185568-CB
Hon. Michael Warren

TEJAS PREMUIM MEATS, LLC,

Defendant.

OPINION AND ORDER GRANTING
MOTION FOR SUMMARY DISPOSITION

At a session of said Court, held in the
County of Oakland, State of Michigan
October 6, 2021

PRESENT: HON. MICHAEL WARREN

OPINION

I
Overview

Plaintiff Orleans International, Inc. ("Orleans") is a Michigan wholesaler of meat products for sale and distribution to customers across the United States. Defendant Tejas Premium Meats, LLC ("Tejas") is a Texas Company operating a meat processing facility in Itasca, Texas. Orleans alleges that it incurred damages when beef products processed and packed by Tejas (referenced herein as "Batch 675") were rejected by Orleans'

customers because the interior lining of the boxes in which the products were packed adhered to the beef, making it unusable.

The Complaint alleges claims of Breach of Contract (Count I) and Quasi-Contract/Promissory Estoppel (Count II).

Before the Court is Tejas' Motion for Summary Disposition under MCR 2.116(C)(1) (lack of personal jurisdiction). Oral argument is dispensed as it would not assist the Court in its decision-making process.[1]

At stake in the Motion is whether the Plaintiff has met its burden of demonstrating that this Court has limited personal jurisdiction over the Defendant, a Texas company, which processed meat in Texas and provided it to another company based in Texas, and where the Plaintiff has otherwise failed to demonstrate that the Defendant had sufficient minimum contacts with Michigan to comply with due process? Because the answer is "no," the Motion for Summary Disposition is granted.

[1] MCR 2.119(E)(3) provides court with discretion to dispense with or limit oral argument and to require briefing. MCR 2.116(G)(1) specifically recognizes application of MCR 2.119(E)(3) to summary disposition motions. Subrule (G)(1) additionally authorizes courts to issue orders establishing times for raising and asserting arguments. This Court's Scheduling Order clearly and unambiguously sets the time for asserting and raising arguments, and legal authorities to be in the briefing – not to be raised and argued for the first time at oral argument. Therefore, both parties have been afforded due process as they each had notice of the arguments and an opportunity to be heard by responding and replying in writing, and this Court has considered the submissions to be fully apprised of the parties' positions before ruling. Because due process simply requires parties to have a meaningful opportunity to know and respond to the arguments and submissions which has occurred here, the parties' have received the process due.

II
The Complaint

The Complaint alleges generally that Tejas "is a limited liability company, and upon information and belief, is organized under the laws of the state of Texas, with its principal place of business at 3555 FM 67, Itasca, TX 76055."[2] It also alleges that:

> Tejas, upon information and belief, transacts business in the county of Oakland, state of Michigan, and on its website, www.tejas-premiummeats.com, it claims that "We prepare your products for delivery to the world."[3]

With regard to the relationship between Orleans and Tejas, the Complaint alleges that:

> Commencing in late 2018 or early 2019 Orleans and Tejas discussed, agreed and contracted for the production of beef products which, between Orleans and Tejas, was identified as "Batch 675" and consisted of 683 cases of 85/15 beef trimmings which had a weight of 41,101.8 lbs., and on February 27, 2019 Patty Compton, of Tejas, sent David Devito, of Orleans, a production summary and hot weights for Batch 675.[4]

Additionally, it alleges that:

> [T]he 85/15 beef trimmings, produced by Tejas, and sold by Orleans to customer(s), was rejected by the customer(s) as the boxes and packaging selected and utilized by Tejas failed, in many instances with the interior lining of the boxes adhering to the 85/15 beef trimmings, rendering the 85/15 beef trimmings contained therein unsaleable and inedible.[5]

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[2] Complaint ¶ 1.
[3] *Id.* at ¶ 3.
[4] *Id.* at ¶ 7.
[5] *Id.* at ¶ 11.

Specifically, with regard to the breach of contract claim, the Complaint alleges, in relevant part:

> That at all times relevant herein, as described above, there existed express contractual agreements between Orleans and Tejas, for Tejas to produce and provide fresh, chilled and/or frozen 85/15 beef products, in accord with the order placed by Orleans' as documented by communications between the parties and the actual performance of the parties.
>
> That at all times relevant Tejas did fail and refuse to perform its obligations under the express contractual agreement between it and Orleans and Tejas, as documented by communications between the parties and the actual performance of the parties, and did provide 85/15 beef trimmings boxed and packaged in boxes, selected solely by Tejas, which did not properly store and/or protect the 85/15 beef trimmings, as the interior lining of the boxes adhered to the 85/15 beef trimmings, rendering the 85/15 beef trimmings contained therein unsaleable and inedible.[6]

With regard to the promissory estoppel claim, the Complaint alleges:

> That at all times relevant herein, as described above, Tejas promised to produce and sell to Orleans, directly and/or indirectly as a Broker, specific fresh, chilled and/or frozen beef products, at an agreed upon price, as documented by communications between the parties and the actual performance of the parties, identified by Tejas and Orleans as Batch 675, 85/15 beef trimmings.
>
> That when Tejas made said representations and/or promises to Orleans it knew, or should have known, that said representations and/or promises would induce Orleans to accept the representations and/or promises made, and rely upon them and arrange with Orleans' customers to purchase the fresh, chilled and/or frozen beef products, upon the terms and conditions agreed to, from the Batch 675, 85/15 beef trimmings produced by Tejas for Orleans.

[6] *Id.* at ¶¶ 19-21.

> Notwithstanding the representations and/or promises made by it Tejas, Tejas did materially breach such representations and/or promises by its production and delivery of 85/15 beef trimmings in packaging and/or boxes that failed to adequately store and/or protect the 85/15 beef trimmings as the inner linings of said packaging and/or box adhered to the 85/15 beef trimmings, as described above, rendering the same unsaleable and inedible, directly and proximately resulting in damages to Orleans in the amount of $49,392.39 caused by the failure of the packaging and boxes selected for use solely by Tejas.[7]

III
Arguments

Tejas argues that it has not consented to jurisdiction in this Court and that there is no general or limited personal jurisdiction under Michigan's long arm statute. Tejas also argues that any exercise of personal jurisdiction would not comport with due process. In support of its motion, Tejas has attached an affidavit of Robert Kevin Griffin, the manager of Tejas.[8]

According to Tejas, it does not transact any business in Michigan. Additionally, Tejas argues that "at no time did Tejas ever enter into a contractual relationship with Orleans or purposefully reach out beyond Texas into Michigan." Tejas states that it does not sell products in Michigan, enter into contracts to perform services in Michigan, and does not advertise in Michigan.[9] According to Tejas, it does not generally purchase or sell meat products and that its business is only to "process and package meat products in

[7] Complaint ¶¶ 24-26.

[8] See Exhibit 1 to Defendant's Motion.

[9] *Id.* at p 2.

Texas for its customers."[10] Tejas asserts that Orleans purchased the beef products at issue in this case from MGM Cattle Company ("MGM"), a Texas company.[11] MGM shipped cattle to Tejas for processing and on or about February 20, 2019, the beef was processed by Tejas.[12] After processing, the beef products were packaged in boxes manufactured by another entity, DanHil Containers, and sent to freezer storage at an independent storage company in Texas.[13] MGM paid Tejas for the processing and packaging on or about February 28, 2019.[14]

Orleans does not argue that Tejas is subject to the general jurisdiction of Michigan courts, but asserts that Tejas is subject to the limited jurisdiction under MCL 600.715. In support of this argument, Orleans references emails which it claims shows "recurrent contacts" between Orleans and Tejas regarding Batch 675.[15] Specifically, Orleans asserts that Tejas involved Orleans in the initial production process of Batch 675; that Tejas interceded with the carboard box supplier on behalf of Orleans; and that Tejas submitted a loss claim to its insurer on behalf of Orleans.[16]

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[10] *Id.*
[11] *Id.* at p 3.
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] See Exhibit 1 to Plaintiff's response.
[16] Plaintiff's Response at p 13.

IV
Summary disposition of the Complaint pursuant to MCR 2.116(C)(1) is warranted

A
Standard of Review

A motion for summary disposition alleging lack of personal jurisdiction is resolved based on the pleadings and the evidentiary support, if any, then filed in the action or submitted by the parties. MCR 2.116(C)(1); MCR 2.116(G)(3) and (G)(5). Allegations in the complaint must be taken as true to the extent they are uncontroverted by affidavits or documentary evidence submitted by the defendant. Evidence supporting the motion must be submitted only "when the grounds asserted do not appear on the face of the pleadings . . . ." MCR 2.116(G)(3)(a). Submitted affidavits and/or other documentary evidence "shall only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion." MCR 2.116(G)(6).

The burden of establishing the necessary jurisdictional facts is on the plaintiff, but the plaintiff need only make a *prima facie* showing of jurisdiction to defeat a motion for summary disposition. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184 (1995). To establish a *prima facie* showing of personal jurisdiction, where, as here, a defendant has supported its motion with substantively admissible evidence, the plaintiff may not stand on its pleadings, but rather, must set forth, by affidavit or other documentary evidence, specific facts showing that the court has jurisdiction. See MCR 2.116(G)(5); *Jeffrey,* 448 Mich at 184.

Further, the submitted affidavits and/or other documentary evidence "shall only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion." MCR 2.116(G)(6). "All factual disputes for the purpose of deciding the motion are resolved in the plaintiff's (non-movant's) favor." *Jeffrey*, 448 Mich at 184. The question of whether a court has personal jurisdiction over a party is a question of law. *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 426 (2001).

B
Applicable Law

Personal jurisdiction is governed by statute. Michigan courts can acquire personal jurisdiction over individuals and corporations: general ("all purpose") jurisdiction under MCL 600.701 (individuals) and MCL 600.711 (corporations), or limited ("long arm" or "specific") jurisdiction under MCL 600.705 (individuals) and MCL 600.715 (corporations).

1
General Jurisdiction

The general jurisdiction statute, MCL 600.701, provides:

> The existence of any of the following relationships between an individual and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise general personal jurisdiction over the individual or his representative and to enable such courts to render personal judgments against the individual or representative.
>
> **(1)** Presence in the state at the time when process is served.

(2) Domicile in the state at the time when process is served.

(3) Consent, to the extent authorized by the consent and subject to the limitations provided in section 745.

In this case, the Plaintiff is not arguing that there is general jurisdiction under either MCL 600.701 or MCL 600.711. Rather, it argues that this Court has limited personal jurisdiction over the Defendant under MCL 600.715.

2

Long Arm and Specific Jurisdiction

"Limited" or "specific" jurisdiction exposes a defendant to suit in the forum state only as to those claims that "arise out of or relate to" the defendant's contact with the forum. See, e.g., *Columbia, SA v Hall,* 466 US 408, 414-415 (1984); *Witbeck v Bill Cody's Ranch Inn,* 428 Mich 659, 665 (1987).

Michigan employs a two-step analysis when examining whether the State may exercise limited personal jurisdiction over a defendant under MCL 600.715, namely (1) whether the defendant's conduct falls within a provision of the long-arm statute, MCL 600.715, and (2) whether the exercise of jurisdiction comports with due process. See, e.g., *Green v Wilson,* 455 Mich 342, 347 (1997), citing *Starbrite Distributing Inc v Exceda Mfg Co*, 454 Mich 302, 304 (1997). "Long-arm statutes establish the nature, character and types of contacts that must exist for purposes of exercising personal jurisdiction." *Green*, 455 Mich

at 348. "Due process, on the other hand, restricts permissible long-arm jurisdiction by defining the quality of contacts necessary to justify personal jurisdiction under the constitution." *Id.* [17] Further, although Michigan's long arm statute is "coextensive" with due process, the coextensive nature of Michigan's long-arm jurisdiction - i.e., the due process inquiry - becomes pertinent and necessary "only if the particular acts or status of a defendant first fit within a long-arm statute provision." *Green,* 455 Mich at 350-351.

1
Michigan's Long-Arm Statute

MCL 600.715 specifies the five relationships sufficient to constitute a basis of personal jurisdiction to enable courts of record in the State of Michigan to exercise limited personal jurisdiction and to enable such courts to render personal judgments against corporations:

> (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 rendered or for materials to be furnished in the state by the defendant. [MCL 600.715]

[17] Simply put, Michigan's long arm statutes are constrained by the "outer boundary" of due process. *Green v Wilson*, 455 Mich 342, 350 (1997).

In this case, Orleans argues, as a basis for jurisdiction under MCL 600.715, that Tejas transacted business in Michigan. See MCL 600.715(1). Orleans asserts that emails between Orleans and Tejas amount to the transaction of "any" business under the statute. Orleans presents a series of emails to support its contention that Tejas involved Orleans in the initial production of "Batch 675" (the allegedly defective batch) and that Tejas "interceded" with the box supplier and submitted an insurance claim with its carrier on behalf of Orleans.[18]

"Our Legislature's use of the word 'any' to define the amount of business that must be transacted establishes that even the slightest transaction is sufficient to bring a corporation within Michigan's long-arm jurisdiction." *Oberlies*, 246 Mich App at 430 citing *Sifers v Horen*, 385 Mich 195, 199 n 2 (1971) and *Viches v MLT, Inc,* 127 F Supp 2d 828, 830 (ED Mich 2000).[19]

However, even under the "extraordinarily easy" standard of MCL 600.715(1) it is questionable whether the emails relied on by the Plaintiff establish the "transaction of any business within the state." The first email from a Tejas representative is dated February 27, 2019 and simply references a production summary for Batch 675.[20] In emails

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[18] Plaintiff's Response at p 13. Orleans has apparently abandoned any argument that Tejas transacts business in Michigan based upon the allegation in the Complaint that Tejas' website states that "We prepare your products for delivery to the world."

[19] The court in *Viches* noted that "[t]he standard for deciding whether a party has transacted any business under § 600.715(1) is extraordinarily easy to meet." *Viches*, 127 F Supp 2d at 830 (citations omitted).

[20] See Plaintiff's Exhibit 1 at p 1. The Plaintiff also attaches copies of releases it sent to Tejas so that the product would be released from storage to third party transport companies for transport to customers of Orleans. See Plaintiff's Exhibit 1 at pp 2-8.

beginning in November 2019 and ending in October 2020, representatives of Tejas correspond with representatives of Orleans regarding the packing problem with Batch 675.[21] The communications made by Tejas to Orleans were in the context of resolving the problems with the packing, not in the context of transacting business in Michigan. See, e.g. *Clapper v Freeman Marine Equipment, Inc*, unpublished per curiam opinion of the Court of Appeals, issued June 16, 2000 (Docket No. 211139), p 4 (communications made to rectify a problem with a product "do not constitute the transaction of business with the state for purposes of § 715(1).")

In any event, even if Tejas' email correspondence can be said to constitute the transaction of business in Michigan, the exercise of jurisdiction over Tejas in this matter would not comport with the requirements of due process.

2
Due Process

Due process requires that a defendant have certain minimal contact with the state so that the suit does not offend the traditional notions of fair play. *Internat'l Shoe Co v Washington*, 326 US 310 (1945); *Keifer v May*, 46 Mich App 566 (1973). A single transaction in Michigan may be sufficient to meet the "minimum contacts" requirement articulated by the United States Supreme Court in *Intern'l Shoe*. A critical inquiry here whether the Defendant had sufficient minimum contacts with Michigan such that the exercise of

[21] *Id.* at pp 20-135.

jurisdiction by Michigan courts would comport with "traditional notions of fair play and substantial justice." *Oberlies*, 246 Mich App at 432-433, quoting *Int'l Shoe Co v Washington*, 326 US at 316. The Michigan Supreme Court has explained the applicable three-part test to answer the inquiry:

> **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. [*Jeffery*, 448 Mich at 186 (citation omitted) (emphasis added).]

a
Purposeful Availment

> A "purposeful availment" is something akin either to a deliberate undertaking to do or cause an act or thing to be done in Michigan or conduct which can be properly regarded as a prime generating cause of the effects resulting in Michigan, something more than passive availment of Michigan opportunities. The defendant will have reason to foresee being "haled before" a Michigan court. [*Jeffery*, 448 Mich at 187-188 quoting *Khalaf v Bankers & Shippers Ins Co*, 404 Mich 134, 153-154.]

"Contacts with a forum state that are merely 'random,' 'fortuitous,' or 'attenuated' may not be the basis for haling a defendant into a foreign jurisdiction." *Oberlies*, 246 Mich App at 434 quoting *Burger King Corp v Rudzewicz*, 471 US 462, 475 (1985). Based on the allegations in the Complaint, the contacts with Michigan appear random, fortuitous, and attenuated.

Still, the Plaintiff relies on *Starbrite Distributing Inc v Excelda Mfg Co*, 454 Mich 302, 304 (1997), in support of its argument that Tejas purposefully availed itself of the privilege of conducting activities in Michigan. However, *Starbrite* is readily distinguishable. In *Starbrite*, defendant P.D. George Company ("P.D. George") was a Delaware Company doing business in Missouri. P.D. George sold Golden Teak Oil to Excelda Manufacturing Company ("Excelda"), a Michigan Corporation. Excelda diluted the teak oil and made shipments to Starbrite Distributing, Inc. ("Starbrite"), a Florida corporation. After an alleged defect arose in the teak oil, Starbrite sued Excelda and P.D. George in Michigan alleging breach of contract and breach of warranty. Excelda filed a cross-claim against P.D. George. In response to the claim and the cross-claim, P.D. George filed a motion for summary disposition under MCR 2.116(C)(1) on the basis of the lack of personal jurisdiction. *Starbrite*, 454 Mich at 304-305. The trial court denied the motion and the Court of Appeals reversed. In considering whether the Court of Appeals properly found that the exercise of personal jurisdiction was improper, the Michigan Supreme Court first determined that the requirements of the Michigan long-arm statute were satisfied. *Id.* at 306-308.[22] The Court then went on to determine whether P.D. George had "sufficient minimum contacts with Michigan to support the exercise of limited personal jurisdiction." *Id.* at 308. In considering the due process requirement of "purposeful availment" the Court found that P.D. George's contacts with Michigan were not "random, fortuitous or attenuated." *Id.* at 310. In support of this conclusion, the court

[22] The subsection of the long-arm statute at issue in *Starbrite* was subsection 5 which provides that "[e]ntering into a contract for services to be performed or for materials to be furnished in the state by the defendant" is a relationship that constitutes s sufficient basis of jurisdiction. See MCL 600.715(5).

noted that P.D. George deliberately sold and arranged for the shipping of teak oil to Excelda in Michigan. *Id.* at 310. The Court further noted that "although it did not actively solicit business in Michigan, and did not maintain a physical presence in Michigan, representatives of P.D. George made telephone calls to Excelda regarding the ordering and purchasing of the concentrated teak oil *before the time that the problem with the defective goods arose.*" *Id.* at 310-311 (emphasis added). The court specifically highlighted that "[t]he contacts that we rely on in arriving at our decision are the telephone calls and the periodic shipment of goods into Michigan over several months." *Id.* at 311 n 9. The Court did not rely on the visit to Michigan made by a representative of P.D. George in an effort to settle the dispute over the defective goods. *Id.*

In this case, there are no allegations that Tejas sold or shipped products to Michigan or conducted any activity in Michigan prior to the complaints. To the contrary, Tejas only acted in Texas. The Plaintiff argues that jurisdiction is proper in Michigan because emails establish that "[t]here is no question but that Tejas had purposefully availed itself of an opportunity to do business in Michigan as when it undertook to involve Orleans in Batch 675 and thereafter when it undertook to act on behalf of Orleans in regard to the loss Orleans sustained."[23] But Orleans does not specify what Tejas did to involve Orleans in the production of Batch 675. Perhaps this is a reference to the email from Tejas dated February 27, 2019 sending Orleans a production summary for Batch

[23] See Plaintiff's Response at p 15.

675.[24] The Plaintiff does not explain how sending a production report is purposeful availment, that is, "a deliberate undertaking to do or cause an act or thing to be done in Michigan or conduct which can be properly regarded as a prime generating cause of the effects resulting in Michigan."[25] See *Jeffery*, 448 Mich at 187-188. Perhaps this is so because it is not purposeful availment.

Moreover, to the extent that Tejas undertook actions to resolve the dispute regarding the packaging (either by contacting the box manufacturer or its own insurance company), it was not purposefully availing itself of Michigan opportunities. These were actions taken after the problem with the products occurred and was discovered. Conduct made in an effort to settle a dispute over defective goods does not purposeful availment make. *Starbrite*, 454 Mich at 311 n 9.

b
Cause of Action

The second factor in the due process inquiry is whether the cause of action arose from the Defendant's activities in Michigan. *Id.* at 312. "It is fundamental that for limited personal jurisdiction to attach, the cause of action must arise from the circumstances

[24] The Court makes this assumption but notes that it is not this Court's job "to discover and rationalize the basis" for the Plaintiff's claims. *Wolfe v Wayne-Westland Community Schools*, 267 Mich App 130, 139 (2005).
[25] To the extent that Orleans is relying on shipping releases emailed from Orleans to Tejas, the Plaintiff does not explain how its sending releases to Tejas supports a finding of "purposeful availment." Again, it is not up to this Court to rationalize the basis for the Plaintiff's arguments. Moreover, "[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 third person." *Vargas v Hong Jin Crown Corp*, 247 Mich App 278, 286 (2001) citing *Witbeck v Bill Cody's Ranch Inn,* 428 Mich 659, 667-668 (1987).

creating the jurisdictional relationship between the defendant and the foreign state." *Oberlies*, 246 Mich at 435 (quotation marks and citation omitted).

The causes of action alleged in the Complaint are breach of contract and promissory estoppel (quasi-contract) based upon the improper packaging of Batch 675. However, as was noted previously, the email correspondence that Orleans relies on to establish jurisdiction relationship between Tejas and Michigan occurred after any alleged breach of contract or promise had occurred.[26] Orleans' causes of action are alleged to have arisen from the defective processing/packaging and not from the jurisdictional conduct alleged, i.e, the efforts to remedy the packaging problem. See e.g. *Lafarge Corp v Altech Environment, USA*, 220 F Supp 2d 823, 830 (ED Mich, 2002) (plaintiff's cause of action for breach of contract and warranties in connection with defective equipment did not arise from defendant's contact with the state where that contact was the defendant's presence in Michigan to make repairs to the equipment after the contract was executed and the equipment was installed.)

Based on the foregoing, Orleans has not demonstrated that its alleged causes of action arose from Tejas' conduct in Michigan.

[26] See emails referenced on pp 15-16 of Plaintiffs' Response.

c
Reasonableness of Exercise of Jurisdiction

Under the third prong of the due process inquiry, "[o]nce the threshold requirement of minimum contacts is satisfied, a court must still consider whether the exercise of personal jurisdiction comports with fair play and substantial justice." *Jeffery*, 448 Mich at 188-189. In making the determination whether the exercise of jurisdiction is reasonable "[t]he burden on the defendant is a primary concern, but, in appropriate cases, it should be considered in light of other relevant factors. . . ." *Starbrite*, 454 Mich at 313. Other factors include the forum state's interest in adjudicating the dispute and "the plaintiff's interest in obtaining convenient and effective relief, at least where that interest is not adequately protected by the plaintiff's power to choose the forum." *Id.*

Since the exercise of limited personal jurisdiction is improper under the first two factors in the due process inquiry, there is no need to address this factor. Nevertheless, the Defendant would be significantly burdened by defending this action in Michigan where presumably the evidence and witnesses it would rely on to support its defense are in Texas. This burden is not offset by this state's interest in adjudicating this dispute nor is there any indication that the Plaintiff cannot find effective relief outside of Michigan.

ORDER

Based on the foregoing Opinion, the Defendant's Motion for Summary Disposition under MCR 2.116(C)(1) is GRANTED.

This Order resolves the last pending claim and closes the case.