

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

DONNA IMPORT INC
Plaintiff

NO. 2022-196204-CB

V

HON. VICTORIA VALENTINE

SILK RD WHOLESALER & DIST
Defendant

ORDER

**At a session of Court
held in Oakland
County, Michigan
on 11/16/2022**

Defendant's moves for Motion for Summary Disposition under MCR 2.116(C)(1) claiming the Court lacks jurisdiction over Defendant. The issue is whether the Court has limited personal jurisdiction over Defendant.

Plaintiff is a Michigan corporation that sold pallets of spices to Defendant, an LLC located in New Jersey. The spices were shipped to New Jersey. Defendant allegedly paid up-front for the shipment via American Express and then disputed the credit card payment. Plaintiff filed this lawsuit. Defendant now files this Motion to which it attaches the Affidavit of Defendant's Mr. Ali Mohammed, who alleges that neither he, nor any agent, or officer of Defendant Silk Road has

been to Michigan. Mr. Mohammed also alleges that all of transactions took place in New Jersey.¹

Plaintiff attaches the Affidavit of Plaintiff's owner Mr. Kashat,² who avers:

2. My company has done business regularly with Silk Road Wholesaler & Distributors, LLC.
3. We have done business with each other for almost 2 years.
4. A while back, I decided not to do business with Silk Road because of a past business dispute.
5. In an attempt to rehash our relationship, Silk Road's member, Ali, reached out to me and asked whether or not we could restore the business relationship.
6. To my present regret, I agreed and shipped him over 3 pallets of "Allspice Whole" after he promised to pay me up front for the spice.
7. I sent him the spice, he appeared to pay up front with his American Express Card, but he then disputed the charge.
8. This is not the first time that I have had an issue with Ali and Silk Road.
9. I personally know that Silk Road does do business in Michigan and has done business with me and my company for almost 2 years now.

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 burden of establishing jurisdiction is on the plaintiff. MCR 2.116(G)(5); *Lease Acceptance Corp*, 272 Mich App at 218. "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). To succeed against a pretrial motion to dismiss for lack of personal jurisdiction, a plaintiff need only make a *prima facie* showing. *Id.* "The plaintiff's complaint must be accepted as true unless specifically

¹ Exhibit A, attached to Defendant's Brief.

² Exhibit E, attached to Plaintiff's Brief in Response.

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.*

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*, 295 Mich App at 222.

Under inquiry 1, the Court finds that Defendant’s acts fall within the applicable long-arm statute. MCL 600.705(1) (individual),³ MCL 600.715(1) (corporation),⁴ and MCL 600.735(1)

³ 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.

⁴ MCR 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.

(partnership)⁵ all provide that the transaction of **any** business within the state constitutes a sufficient basis for jurisdiction.

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” 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, Plaintiff is a Michigan corporation with whom Defendant allegedly initiated communication via text messages,⁶ and with whom Defendant entered into an agreement whereby Plaintiff would supply pallets of spices to Defendant. Plaintiff’s affidavit avers that the parties conducted business together previously for two years.⁷

⁵ 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.

⁶ Exhibit A, attached to Plaintiff’s Brief in Response.

⁷ Exhibit E, ¶¶ 3& 9, attached to Plaintiff’s Brief in Response

The Court finds that Plaintiff sustained its burden of establishing jurisdiction of Defendant under Michigan's long arm statute; Plaintiff has made out a prima facie showing of jurisdiction to defeat Defendant's Motions by establishing the transaction of *any* business within the state. See *WH Froh*, 252 Mich App at 226.

Further, the Court finds that Plaintiff has carried its burden of satisfying the second inquiry-that the exercise of jurisdiction over the Defendant comports with the requirement of due process. Due process limits the power of a state court to render a valid personal judgment against a nonresident defendant. *Shaffer v Heitner*, 433 US 186, 204 (1977); *Kulko v Superior Court of California*, 436 US 84, 91 (1978). There must be both: adequate notice that suit has been brought. *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 313 (1950); *Krueger v Williams*, 410 Mich 144, 158 (1981), and "Minimum contacts" between the state and the defendant. *Int'l Shoe Co v Washington*, 326 US 310, 316 (1945); *Jeffrey v Rapid American Corp*, 448 Mich 178, 185-186 (1995).

The Michigan Supreme Court identified a three-part test for determining minimum contacts in *Jeffrey*, 448 Mich at 186:

- (1) The defendant must purposefully avail himself of the privilege of acting in the forum state;
- (2) The cause of action must arise from the defendant's activities in the forum state; and
- (3) The defendant's acts must have a substantial enough connection with the forum state to make the exercise of jurisdiction reasonable.

"Whether jurisdiction is proper under the minimum contacts test does not depend on the weight of the factors individually. Rather, the primary focus when analyzing personal jurisdiction should be on "'reasonableness' and 'fairness.'" Whether the relationship between the

defendant, the forum, and the litigation allows personal jurisdiction over a defendant must be analyzed by the courts case by case.” *Oberlies*, 246 Mich App at 433 (internal citations omitted). “Purposeful availment’ means something akin to either a deliberate undertaking to do or cause an act or thing to be done in Michigan or conduct that properly can be regarded as a prime generating cause of resulting effects in Michigan. Something more than a passive availment of Michigan opportunities must exist that gives the defendant reason to foresee being haled before a Michigan court. A defendant need not have been physically present in a state for limited personal jurisdiction to exist in that state.” *WH Froh*, 252 Mich App at 231 (internal citations omitted).

A state has an important interest in providing its residents with a convenient forum for injuries inflicted by nonresident corporations. *McGee v Int’l Life Ins Co*, 355 US 220, 223, 78 SCt 199, 201, 2 LEd2d 223 (1957). Moreover, it is unfair to the plaintiff to allow a nonresident corporation to escape jurisdiction for injuries directly resulting from its purposeful availment of forum-based business opportunities. “[T]he Due Process Clause may not be readily wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed.” *Jeffrey* at 189.

Here, Plaintiff attached text messages,⁸ which evidence that *Defendant reached out* to Plaintiff in Michigan to renew their previous relationship. And Defendant entered into an agreement with Plaintiff, a Michigan corporation, which Plaintiff claims resulted in a breach of the agreement and damages to Plaintiff. The Court finds that Defendant purposefully availed itself of the privilege of acting in the forum state. Thus, the first prong of the due process analysis- purposeful availment- militates in favor of exercising limited personal jurisdiction over Defendant.

⁸ Exhibit A, attached to Plaintiff’s Brief in Response.

The Court also finds that these facts satisfy the second and third prong of the due process analysis. Here, Plaintiff's claims relate to Defendant's alleged failure to pay for pallets. Therefore, Plaintiffs' claims and alleged damages arise from Defendants' contacts with Michigan. These claims "arise from" the agreement reached between Plaintiff, a Michigan corporation, which allegedly Defendant breached, and which was initiated by Defendant through text messages.

The Court finds that Defendants' acts had a substantial enough connection with the forum state to make the exercise of jurisdiction reasonable, especially since Defendant reached out to Plaintiff to initiate and renew their previous 2-year relationship. And, to defeat jurisdiction, Defendant, who purposefully directed its activities at Plaintiff, the forum resident, failed to present a compelling case that the presence of some other considerations render jurisdiction unreasonable. See *Jeffrey*, supra 448 Mich at 189.

In conclusions. the Court finds that (1) The Defendant purposefully availed itself of the privilege of acting in the forum state; (2) the cause of action arose from the Defendant's activities in the forum state; and (3) Defendant's acts have a substantial enough connection with the forum state to make the exercise of jurisdiction reasonable. *Jeffrey v Rapid American Corp*, 448 Mich 178, 185-186 (1995).

Based on the above and the record developed thus far, Plaintiff carried its burden, of "a prima facie showing of jurisdiction to defeat Defendant's motion for summary disposition under MCR 2.116(C)(1). See *W H Froh*, 252 Mich App at 226.

Therefore, Defendant's Motion for Summary Disposition is DENIED.

IT IS SO ORDERED.

This is not a final order and does not close out the case.



/s/Victoria A. Valentine