

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

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CELLERE, LLC, a Michigan corporation,

Plaintiff,

v

File No. 09-27336-CK  
HON. PHILIP E. RODGERS, JR.

SITE ACQUISITIONS, INC., d/b/a SAI  
COMMUNICATIONS, a Massachusetts  
corporation,

Defendant.

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Attorney for Defendant

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**DECISION AND ORDER GRANTING  
DEFENDANT'S MOTION FOR SUMMARY DISPOSITION**

This is a breach of contract action. The Plaintiff, a Michigan corporation, entered into a Services Agreement with the Defendant, a Massachusetts corporation, whereby the Plaintiff agreed to provide construction work on various cellular phone towers being constructed in West Virginia. In lieu of an Answer, the Defendant filed a Motion for Summary Disposition, pursuant to MCR 2.116(C)(1) and (C)(4), challenging the Court's jurisdiction.

The Court heard the oral arguments of counsel on September 8, 2009. The Court found that it has subject matter jurisdiction. Everyone agreed that the Court does not have general personal jurisdiction over the Defendant, but the question remained whether the Court has limited personal jurisdiction over the Defendant. The Court gave the parties 14 days to submit supplemental briefs. Supplemental briefs have been filed.

The Court dispenses with further oral argument, pursuant to MCR 2.119(E)(3), and issues this written decision and order. For the reasons stated herein, the Defendant's motion is granted.

### Standard of Review

The plaintiff bears the burden of establishing jurisdiction over the defendant, *Mozdy v Lopez*, 197 Mich App 356, 359; 494 NW2d 866 (1992), but need only make a prima facie showing of jurisdiction to defeat a motion for summary disposition. *Williams v Bowman Livestock Equip Co*, 927 F2d 1128, 1131 (CA 10, 1991); *Calphalon Corp v Rowlette*, 228 F3d 718, 721 (6th Cir 2000); *Serras v First Tennessee Bank Nat'l Ass'n*, 875 F2d 1212, 1214 (6th Cir 1989); *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). The affidavits, together with any other documentary evidence submitted by the parties, must be considered by the court. MCR 2.116(G)(5). *Jeffrey v Rapid American Corp*, 448 Mich 178, 187; 529 NW2d 644 (1995); *Mozdy v Lopez*, 197 Mich App 356, 359-360; 494 NW2d 866 (1992). All factual disputes for the purpose of deciding the motion are resolved in the plaintiff's (nonmovant's) favor. See *Wiles v BE Wallace Products Corp*, 25 Mich App 300, 303-305; 181 NW2d 323 (1970); *Bowman Livestock* at 1130.

### Analysis

Before a court may obligate a party to comply with its orders, the court must have in personam jurisdiction over the party. Whether a court has personal jurisdiction over a party is a question of law. *Poindexter v Poindexter*, 234 Mich App 316, 319; 594 NW2d 76 (1999). For the exercise of personal jurisdiction to be valid, it must meet both state statutory and federal constitutional requirements. *World-Wide Volkswagen Corp v Woodson*, 444 US 286; 100 S Ct 559; 62 L Ed 2d 490 (1980); *Int'l Shoe v Washington*, 326 US 310; 66 S Ct 154; 90 L Ed 95 (1945); *Calphalon*, 228 F3d at 721; *Serras*, 875 F2d at 1216.

Jurisdiction over the person may be established by way of general personal jurisdiction or specific (limited) personal jurisdiction. See *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644, 648 (1995) and *Kircos v Goodyear Tire & Rubber Co*, 70 Mich App 612, 613-614; 247 NW2d 316 (1976). The exercise of general jurisdiction is possible when a defendant's contacts with the forum state are of such nature and quality as to enable a court to adjudicate an action against the defendant, even when the claim at issue does not arise out of the contacts with the forum. *Helicopteros Nacionales de Colombia, SA v Hall*, 466 US 408, 414, n 9, 415-416; 104 S Ct 1868; 80 L Ed 2d 404 (1984). When a defendant's contacts with the forum state are insufficient to confer general jurisdiction, jurisdiction may be based on the

defendant's specific acts or contacts with the forum. *Witbeck v Bill Cody's Ranch Inn*, 428 Mich 659, 665; 411 NW2d 439 (1987).

When analyzing whether it is proper to exercise personal jurisdiction over a defendant, the court must determine whether the defendant's conduct falls within a provision of a Michigan long-arm statute and whether the exercise of jurisdiction comports with due process. *Oberlies v Searchmont Resort, Inc.*, 246 Mich App 424; 633 NW2d 408 (2001); *Green v Wilson*, 455 Mich 342, 351; 565 NW2d 813 (1997); *Aaronson v Lindsay & Hauer Int'l Ltd*, 235 Mich App 259, 262; 597 NW2d 227 (1999). The long-arm statute delineates the nature, character and types of contacts that must exist to exercise jurisdiction. *Green* at 348. Due process restricts permissible long-arm jurisdiction by defining the quality of contacts necessary to justify the exercise of personal jurisdiction over a defendant. *Id.*

In the instant case, the jurisdictional facts are largely undisputed. The Plaintiff is a Michigan corporation with its principal place of business in Michigan. The Defendant is a Massachusetts corporation with its principal place of business in New Hampshire. The Defendant contacted the Plaintiff because the Plaintiff was putting up cellular towers in West Virginia and the Defendant's client, ATT, wanted space on those towers. All negotiations were conducted by phone and no one from the Defendant corporation traveled to Michigan to meet with the Plaintiff. The parties ultimately entered into a Services Agreement which they each executed in their own home state. The Services Agreement provided that the Plaintiff would perform construction services in response to specific work authorizations. The Agreement was for an indefinite term with provisions for early termination. The Plaintiff provided services in West Virginia. The Defendant paid the Plaintiff for its services by mail. The payments were made through the Defendant's bank in New Hampshire. The only contested issue is whether the Services Agreement established a long-term, on-going relationship between the parties.

The applicable Michigan long-arm statute for limited personal jurisdiction of a foreign corporation is MCL § 600.715 which 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 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 the 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.

Pursuant to this statute, the “transaction of *any* business within the state” by a corporation is “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.” See *Sifers v Horen*, 385 Mich 195; 188 NW2d 623 (1971). The phrase, “any business within the state” has been very broadly interpreted. The term “any” includes “each” and “every” and comprehends even “the slightest” business transactions. *Id* at 199, n 2.

The Defendant contends that it does not conduct business in Michigan, specifically “because Michigan is outside of the normal Northeastern/Mid-Atlantic United States work region for Site Acquisitions.” It claims that the subject Services Agreement did not establish a long-term, on-going relationship between the parties. It relies on two personal injury cases, *Oberlies, supra* and *Green, supra* to support its position that the Court does not have personal jurisdiction over it. In *Oberlies*, a Michigan resident was injured at a Canadian ski facility and brought a personal injury action against a Canadian corporation that owned the facility, alleging she was injured when she was thrown to the ground as a result of being negligently loaded onto a ski lift. The defendant brought a motion for summary disposition arguing that the court did not have jurisdiction over the defendant. The plaintiff argued that the court had jurisdiction because defendant directed its marketing and advertising efforts toward Michigan residents. The trial court granted summary disposition for the defendant on the basis that it lacked personal jurisdiction over defendant. The Court of Appeals affirmed holding that: (1) defendant’s in-state advertising fell within state’s long-arm jurisdiction, but (2) the connection

between the plaintiff's personal injury action and defendant's in-state advertising was so attenuated that it was unreasonable to exercise jurisdiction over the defendant.

In *Green, supra*, Michigan motorists were injured in an automobile accident which occurred in Canada. Their vehicle collided with a Canadian resident who had allegedly become intoxicated at bars in Michigan. They brought an action against the Canadian resident, and also asserted dramshop claims against bars. The trial court granted a motion to dismiss for all defendants, and plaintiffs appealed. The Court of Appeals reversed, 211 Mich App 140; 535 NW2d 233. Appeal was granted, and the Supreme Court held that: (1) the state's long-arm statute did not allow exercise of jurisdiction over a Canadian resident because his tortious act and its consequences did not occur in Michigan, but (2) under circumstances, resulting lack of compliance with name-and-retain provision of dramshop act did not require dismissal of the claims against the bars.

In these and other similar personal injury actions against foreign individuals or corporations that had virtually no contacts with Michigan, the courts have consistently held that they lacked limited personal jurisdiction because the defendants did not have the requisite contacts with the state. In contract actions, however, the courts have been more likely to find that they have limited personal jurisdiction. The Plaintiff here relies upon such contract cases and contends that it is sufficient that the Defendant hired a Michigan corporation over the phone that received payment in Michigan. It contends the parties established an ongoing relationship and relies on the following contract cases in which the United States Supreme Court found there was jurisdiction over out-of-state corporate defendants.

In *McGee v Int'l Life Ins Co*, 355 US 220; 78 S Ct 199; 2 L Ed 2d 223 (1957), a California resident had life insurance through a Texas insurance company. When he died, the insurance company refused to pay benefits to his surviving spouse. The only contact the life insurance company had with California was the issuance of this single life insurance policy and the acceptance of premiums from this California resident. It never had an agent or office in California and did not issue any other policies or perform any other business there. The lawsuit stemmed from the contract issued in California. The California court based its jurisdiction on a California statute which subjects foreign corporations to suit in California on insurance contracts with residents of that State even though such corporations cannot be served with process within California's borders.

The United States Supreme Court upheld the California court's exercise of limited personal jurisdiction over the Texas life insurance company, saying:

It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State. Cf. *Hess v Pawloski*, 274 US 352; 47 S Ct 632, 71 L Ed 1091; *Henry L Doherty & Co v Goodman*, 294 US 623; 55 S Ct 553; 79 L Ed 1097; *Pennoyer v Neff*, 95 US 714, 735; 24 L Ed 565. The contract was delivered in California, the premiums were mailed from there and the insured was a resident of that State when he died. It cannot be denied that California has a manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims. These residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant State in order to hold it legally accountable. When claims were small or moderate individual claimants frequently could not afford the cost of bringing an action in a foreign forum—thus in effect making the company judgment proof. Often the crucial witnesses—as here on the company's defense of suicide—will be found in the insured's locality. Of course there may be inconvenience to the insurer if it is held amenable to suit in California where it had this contract but certainly nothing which amounts to a denial of due process. Cf. *Travelers Health Ass'n v Commonwealth of Virginia ex rel State Corp Comm*, 339 US 643; 70 S Ct 927; 94 L Ed 1154. There is no contention that respondent did not have adequate notice of the suit or sufficient time to prepare its defenses and appear. [*McGee, supra* at 223-224.]

Thus, the Court found that the California statute provided the plaintiff with a California forum to enforce whatever substantive rights she might have against the defendant. At the same time respondent was given a reasonable time to appear and defend on the merits after being notified of the suit. *Id.*

In *Burger King v Rudzewicz*, 471 US 462, 463; 105 S Ct 2174, 2177; 471 US 462 (1985), a franchisor brought an action in Florida against a Michigan franchisee alleging breach of franchise obligations and trademark infringement. The Supreme Court held that the exercise of long-arm jurisdiction over the Michigan franchisee in Florida did not offend due process. The rationale for the Court's ruling was:

(a) A forum may assert specific jurisdiction over a nonresident defendant where an alleged injury arises out of or relates to actions by the defendant *himself* that are purposefully directed toward forum residents, and where jurisdiction would not otherwise offend "fair play and substantial justice." Jurisdiction in these circumstances may not be avoided merely because the defendant did not *physically* enter the forum. *Id.* at 471-476.

(b) An individual's contract with an out-of-state party cannot *alone* automatically establish sufficient minimum contacts in the other party's home forum. Instead, the prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing, must be evaluated to determine whether a defendant purposefully established minimum contacts within the forum. *Id.* at 477-478.

(c) Here, appellee established a substantial and continuing relationship with appellant's Miami headquarters, and received fair notice from the contract documents [which contained a provision that Florida would be the forum for any disputes] and the course of dealings that he might be subject to suit in Florida. The District Court found that appellee is an "experienced and sophisticated" businessman who did not act under economic duress or disadvantage imposed by appellant, and appellee has pointed to no other factors that would establish the *unconstitutionality* of Florida's assertion of jurisdiction. *Id.* at 479-486.

With respect to interstate contractual obligations, the courts have consistently held that parties who "reach out beyond one state and create continuing relationships and obligations with citizens of another state" are fairly subject to regulation and sanctions in the other state for the consequences of their activities. *Travelers Health Ass'n v Virginia*, 339 US 643, 647; 70 S Ct 927; 94 L Ed 1154 (1950).

In *MCNIC Oil & Gas Co v IBEX Resources Co, LLC*, 23 F Supp 2d 729 (ED Mich 1998), an oil and gas company brought an action against a limited liability company retained to acquire, manage, and operate oil and gas leases, the company's president, and the corporation of which the president was also president, seeking an accounting, injunctive relief, and damages for breach of contract and breach of fiduciary duty, as well as a declaratory judgment as to the rights of the parties. Defendants moved to dismiss for lack of personal jurisdiction. The plaintiff did not allege that defendants engaged in any on-going in-state activities upon which general jurisdiction might obtain. Instead, plaintiff alleged its cause of action "arises out of or is related to" the defendants' conduct within Michigan. The Court had to determine whether specific jurisdiction existed over each defendant.

This Court will look to Michigan's long-arm statutes to determine whether specific personal jurisdiction exists over each defendant. With respect to defendant Jeffrey J. McDougall, sued in his individual capacity, jurisdiction must be ascertained through reference to Michigan's long-arm statute regarding specific jurisdiction over individuals. Section 600.705 of the Michigan Compiled Laws provides that personal jurisdiction will attach if a cause of action arises out of an individual's "transaction of any business within the state."

Mich Comp Laws § 600.705(1). **This phrase, “any business within the state” has been very broadly interpreted. The term “any” includes “each” and “every” and comprehends even “the slightest” business transactions. See *Sifers v Horen*, 385 Mich 195, 199 n 2; 188 NW2d 623 (1971).**

With respect to personal jurisdiction over defendant JMA Resources, Inc., this Court must look to Michigan’s long-arm statute regarding specific jurisdiction over corporations. Just as with respect to specific jurisdiction over individuals, Section 600.715 of the Michigan Compiled Laws provides that **personal jurisdiction will attach if a cause of action arises out of a corporation’s “transaction of any business within the state.”** MCL § 600.715(1). [Emphasis added].<sup>1</sup>

In summary, in contract cases, where a foreign corporation contracts with a Michigan individual or entity, personal jurisdiction attaches when a cause of action arises out of the foreign corporation’s “transaction of *any* business within the state.” MCL § 600.715.

Viewing the evidence presented by the parties in a light most favorable to the Plaintiff, the Court finds for purposes of this decision that the Defendant, a foreign corporation, contacted the Plaintiff in Michigan and hired Plaintiff, knowing it was a Michigan corporation, to provide services on cellular towers it was constructing in West Virginia. It is irrelevant that all of the parties’ contacts were by telephone or that the Defendant never traveled to Michigan or met with the Plaintiff in Michigan. By “reach[ing] out beyond one state and creat[ing] continuing relationships and obligations with citizens of another state,” the Defendant became “fairly subject to regulation and sanctions in the other state for the consequences of their activities.” *Sifers v Horen*, 385 Mich 195, 199 n 2; 188 NW2d 623 (1971). Thus, this Court has limited personal jurisdiction under MCL § 600.715. But, would the Court’s exercise of jurisdiction over this Defendant offend due process?

The Court must apply a three-part federal constitutional analysis to determine whether an exercise of jurisdiction satisfies the requirements of due process:

First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant’s activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over

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<sup>1</sup> In addition, the Court noted that there were forum selection clauses contained in the three principal agreements in *MCNIC*.



the defendant reasonable. [*Int'l Technologies Consultants, Inc v Euroglas SA*, 107 F3d 386, 395 (6th Cir 1997) (quoting *Mohasco*, 401 F2d at 381). See also *LAK, Inc*, 885 F2d at 1299.]

In *W H Froh, Inc v Domanski*, 252 Mich App 220, 230-233; 651 NW2d 470 (2002), the Court set forth the steps in a proper due process analysis:

When undertaking a due process analysis case by case, a court should examine the defendant's own conduct and connection with the forum to determine whether the defendant should reasonably anticipate being haled into court there. With respect to the first prong of the due process analysis, a defendant may submit himself to the jurisdiction of another state by reaching beyond his own state and purposefully availing himself of the privilege of exploiting the other state's business opportunities. *Jeffrey [v Rapid American Corp*, 448 Mich 178, 187; 529 NW2d 644 (1995).] '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. *Khalaf v Bankers & Shippers Ins Co*, 404 Mich 134, 153-154; 273 NW2d 811 (1978). A defendant need not have been physically present in a state for limited personal jurisdiction to exist in that state. *Jeffrey, supra* at 188, 529 NW2d 644.

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The second prong of the due process analysis requires that the cause of action must arise from the defendant's activities in the state.

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The third prong of the due process analysis considers whether the defendant's activities were substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable, i.e., whether Michigan's exercise of jurisdiction comports with traditional notions of fair play and substantial justice. *Starbrite, supra* at 312-313, 562 NW2d 640; *Jeffrey, supra* at 188-189, 529 NW2d 644. In determining whether Michigan's exercise of personal jurisdiction qualifies as reasonable, the burden on the defendant is a primary concern, but, in appropriate cases, it should be considered in light of other relevant factors, including 'the forum State's interest in adjudicating the dispute; the plaintiff's interest in obtaining convenient and effective relief, at least when that interest is not adequately protected by the plaintiff's power to choose the forum; the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies . . . ." [*Starbrite Distributing, Inc v Excelda Mfg Co*, 454 Mich 302, 313; 562 NW2d 640 (1997),

quoting *World-Wide Volkswagen Corp v Woodson*, 444 US 286, 292; 100 S Ct 559; 62 L Ed 2d 490 (1980).]

To defeat jurisdiction, a defendant who purposely has directed his activities at a forum's residents must present a compelling case that the presence of other considerations render the forum's exercise of jurisdiction unreasonable. *Starbrite, supra*; *Jeffrey, supra* at 189, 529 NW2d 644.

Thus, this Court must answer three questions under the due process analysis: (1) has the Defendant purposefully availed itself of the privilege of conducting activities in Michigan; (2) does the cause of action arise from the Defendant's activities in the state; and (3) are the Defendant's activities so substantially connected with Michigan that they make the exercise of jurisdiction over the defendant reasonable? *Aaronson, supra* at 265. In *Burger King, supra* at 475, the Supreme Court explained:

Where the defendant 'deliberately' has engaged in significant activities within a State, or has created 'continuing obligations' between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by 'the benefits and protections' of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well. [ *Id* at 475-476; 562 NW2d 640 (citations omitted).]

Here, the Defendant did not engage in significant activities within Michigan or create continuing obligations between itself and residents of Michigan. Instead, the Defendant, a Massachusetts corporation, sought out, contacted and hired the Plaintiff, a Michigan corporation. All contacts and negotiations between the parties were by telephone, the Services Agreement was signed by both parties in their respective states, the work was performed in West Virginia, and the Plaintiff was paid by mail. Therefore, the Plaintiff has failed to satisfy its burden of making a prima facie showing that the Defendant purposefully established minimum contacts with Michigan which will satisfy due process.

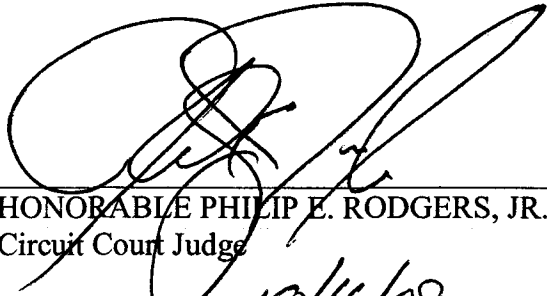
In these same respects, this case is distinguishable from the other contract cases discussed above. In *McGee*, for example, the parties were not on an equal footing. The plaintiff was an individual who would have been at a significant disadvantage if she was required to pursue her claim against the defendant insurance company in a foreign jurisdiction. Plus, there was a state statute establishing jurisdiction over insurance companies that insured residents of California. By the same token, in *Burger King*, jurisdiction was not premised

solely on the fact that the parties were parties to a franchise agreement. Instead, it was significant that the parties had a long-term, on-going relationship and that the franchise agreement contained a negotiated forum provision.

In the instant case, the Defendant foreign corporation entered into a contract with a Michigan resident corporation for the Michigan corporation to provide services in another state in response to specific work authorizations whenever a work authorization was issued by the Defendant and accepted by the Plaintiff. There was no obligation on the part of the Defendant to issue any particular number of work authorizations within any prescribed period of time. The Services Agreement could be terminated "upon the completion of all outstanding Work Authorizations by 30 days' prior written notice to the other party." The Defendant had no other contacts with the state of Michigan. Therefore, the Court believes its exercise of personal jurisdiction over the Defendant corporation would be unreasonable; it would offend traditional notions of fair play and substantial justice. The Defendant's motion for summary disposition brought pursuant to MCR 2.116(C)(1) should be and hereby is granted.

IT IS SO ORDERED.

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



HONORABLE PHILIP E. RODGERS, JR.  
Circuit Court Judge

Dated: \_\_\_\_\_

10/16/09