

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

STEPHEN J.P. OLIVER & ASSOCIATES,
LTD., a Virginia Corporation, d/b/a SJPO
ASSOCIATES LTD.,

Plaintiff,

v

File No. 06-25116-CK
HON. PHILIP E. RODGERS, JR.

LPR ENERGY, LLC, a foreign corporation,

Defendant.

Jonathan R. Moothart (P40678)
Attorney for Plaintiff

L. Kent Walton (P25123)
Jeffrey J. Noorman (P57568)
Attorneys for Defendant

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Co-Counsel for Defendant

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

This contract action was filed on March 15, 2006. In lieu of an Answer, the Defendant filed a Motion for Summary Disposition, pursuant to MCR 2.116(C)(1), challenging the jurisdiction of the Michigan courts over the Defendant. The Court heard the oral arguments of counsel on June 12, 2006 and gave the Plaintiff additional time to produce facts sufficient to establish that this Court has jurisdiction over the Defendant. After discovery aimed at determining jurisdictional facts and by stipulation of the parties, the Plaintiff's supplemental brief was due on September 1, 2006 and the Defendant's supplemental brief was due on September 8, 2006. Supplemental briefs have been filed.

The Court has entertained the parties' oral argument and, after having reviewed the briefs and exhibits submitted, issues this written decision and order. For the reasons stated herein, the Defendant's motion is denied.

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). A plaintiff bears the burden of establishing jurisdiction over a defendant; however, 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; 529 NW2d 644 (1995). In reviewing a motion for summary disposition brought under MCR 2.116(C)(1), the court considers the documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *Jeffrey, supra; Mozdy v Lopez*, 197 Mich App 356, 359-360; 494 NW2d 866 (1992).

Before a court may obligate a party to comply with its orders, the court must have in personam jurisdiction over the party. Jurisdiction over the person may be established by way of general personal jurisdiction or specific (limited) personal jurisdiction. See *Jeffrey, supra*, 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).

Our Legislature has provided long-arm statutes to allow courts to take jurisdiction over nonresident corporations under theories of general and specific jurisdiction. MCL §§ 600.711 and 600.715. When analyzing whether it is proper to exercise personal jurisdiction over a defendant, we 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. *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). Long-arm statutes delineate the nature, character, and types of contacts that must exist to exercise personal jurisdiction. *Green, supra* 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 this case, the Plaintiff relies upon deposition testimony that is attached to his brief which he contends shows that (1) LPR solicited Oliver as a consultant; (2) the lion's share of his work was done in Michigan; and (3) it was the amount and not the existence of the bills that troubled LPR.¹ The Plaintiff maintains his reliance upon *Shellcast, Inc v Mechanical Equipment Co Inc*, 38 Mich App 182; 195 NW2d 913 (1972).

In *Shellcast*, a Michigan corporation brought an action against a Louisiana corporation to recover the balance due on the manufacture and shipment of certain investment castings for desalinization equipment owned by the defendant.

The trial court held that the court obtained jurisdiction over defendant by virtue of MCLA §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.

It was the plaintiff's position that jurisdiction was established under sub-sections (1), (3), and (5) of the statute. Under the contract defendant maintained a proprietary interest in all of the tools used in the manufacturing process. Defendant conceded that it was the owner of the tools. The tools were, in fact, sent to defendant at one point due to a change in specifications. Defendant then returned the tools after they had been altered.

¹ Whether the Defendant was dissatisfied with the amount of the Plaintiff's bill is not relevant to the jurisdictional issue.

Since defendant was the owner of all of the tools that were used to manufacture the parts which were sold to defendant, the Court of Appeals affirmed, saying:

[I]t is our opinion that jurisdiction is established under subsection (3) of the statute. It was defendant's tools that made it possible for plaintiff to fill defendant's orders and carry out its part of the contract. Without the tools there could have been no production and, therefore, no contract. We therefore have the cause of action arising directly out of the ownership of the tools by defendant which is sufficient, in our opinion, to establish jurisdiction [under subsection (3).]

The Court did not address whether there was jurisdiction under any other subsection of §600.715.

The Defendant in the instant case argues that Defendant "has not conducted business in Michigan." And, "[t]here is no written contract, or any other documentation, whatsoever, to suggest that an agreement existed that Plaintiff would, or should, be paid for services purportedly provided to Defendant regarding the Kentucky property."² Defendant relies upon the deposition testimony attached to Plaintiff's supplemental brief to support its contention that it never conducted business in Michigan and on *Oberlies v Searchmont Resort, Inc.*, 246 Mich App 424; 633 NW2d 408 (2001); *MCNIC Oil & Gas Co v IBEX Resources Co, LLC*, 23 F Supp2d 729 (ED Mich 1998); and *Vargas v Hong Jin Crown Corp*, 247 Mich App 278; 636 NW2d 291 (2001).

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.

² Whether there was an agreement by Defendant with Plaintiff to pay Plaintiff for his services is not relevant to the jurisdictional issue. The Court must view the documentary evidence submitted by the parties in a light most favorable to the Plaintiff as the nonmoving party.

In *MCNIC*, which does *not* support the Defendant's position herein, 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's cause of action "arises out of or is related to" the defendants' conduct within Michigan. See *Conti v Pneumatic Prods Corp*, 977 F2d 978, 981 (6th Cir 1992). Therefore, the Court had to determine whether specific jurisdiction exists over each defendant.

The first step in the inquiry is whether the requirements of due process have been met. See *Jeffrey v Rapid Am. Corp*, 448 Mich 178; 529 NW2d 644 (Mich 1995). This inquiry asks whether defendants have established such "minimum contacts" with the forum state, "that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co v Washington*, 326 US 310, 316; 66 S Ct 154; 90 L Ed 95 (1945). This standard is satisfied, and a defendant is subject to in personam jurisdiction, when contacts with the "forum State are such that [the defendant] should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp v Woodson*, 444 US 286, 297; 100 S Ct 559; 62 L Ed 2d 490 (1980). **With respect to interstate contractual obligations, 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). [Emphasis added].

Thus, the Court held that it had personal jurisdiction over defendants, saying:

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].³

In *Vargas v Hong Jin Crown Corp*, 247 Mich App 278; 636 NW2d 291 (2001), a Michigan minor motorcyclist brought a personal injury action against a South Korean helmet manufacturer after he suffered severe head injuries. The trial court denied summary judgment for the manufacturer. The manufacturer appealed. The Court of Appeals held that the manufacturer did not have minimum contacts sufficient to establish personal jurisdiction even though the minor motorcyclist's father had purchased the helmet in Michigan and the minor was injured in Michigan. The Defendant, a South Korean company, manufactured the helmet in South Korea and sold helmets in the United States to distributors located in California, Massachusetts and Wisconsin. The distributors then sold the helmets to individual stores throughout the country. The manufacturer did not advertise or specifically seek to place its helmets in Michigan.

This Court believes that *Oberlies* and *Vargas* are distinguishable because both of those cases involved personal injury actions against foreign corporations that had virtually no contacts with Michigan, even though in one case the defendant advertised in Michigan or in the other the defendant's product ended up in Michigan. *MCNIC* and *Sifers*, two contract cases, on the other hand, are controlling. In those cases, as in the instant case, a foreign corporation contracted with a Michigan individual or entity to provide services. In those cases, personal jurisdiction attached because a cause of action arose out of the foreign corporation's "transaction of *any* business within the state." MCL § 600.715.

Viewing the documentary evidence in a light most favorable to the Plaintiff, the Court finds for purposes of this decision that the Plaintiff is a consultant who works in the state of Michigan. The Defendant, a foreign corporation, contacted the Plaintiff in Michigan and retained him to provide consulting services, knowing that those services would be performed in Michigan. The Defendant had data and information shipped to the Plaintiff in Michigan for

³ In addition, the Court noted that there were forum selection clauses contained in the three principal agreements in *MCNIC*.

analysis. The Plaintiff's work was performed in Michigan. It is irrelevant that all of the parties' contacts were by telephone and parcel post 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).

The Court must next consider whether the exercise of personal jurisdiction over defendant would offend due process.

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.

* * *

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

* * *

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.

The Court has found that the Defendant purposely sought out, recruited and hired one of Michigan’s citizens to provide professional services on a project located in Kentucky. The Court has further found that Michigan has an interest in providing an effective means of redress for its citizens. *Aaronson v Lindsay & Hauer Int’l Ltd*, 235 Mich App 259, 267; 597 NW2d 227 (1999). Given that the defendant currently resides in Colorado and the project for which Plaintiff provided consulting services is located in Kentucky, along with some of the witnesses, Michigan appears to be a reasonable forum for adjudicating the case.

In light of these considerations and defendant’s failure to present any compelling reasons why this Court’s exercise of personal jurisdiction would be unreasonable, the Court concludes that its exercise of jurisdiction in this case would not offend traditional notions of fair play and substantial justice.

In the Defendant’s untimely Second Supplemental Brief, the Defendant argues that, if the Court finds that it has personal jurisdiction, it must engage in a forum non-conveniens analysis to determine whether Michigan is the right place to bring this case and that, even a cursory analysis clearly establishes the inconvenience to the Defendant and the existence of more appropriate forums. The Defendant relies upon the recent case of *Lease Acceptance v Scott Adams, et al.*, Court of Appeals August 31, 2006 (Docket Nos. 255487 and 256582).

In *Lease Acceptance*, on remand, the Court of Appeals was ordered “to address the appropriate standard of review for determining whether Michigan ‘is a reasonably convenient place for the trial of the action’ within the meaning of MCL 600.745(2)(b).” MCL § 600.745(2)(b) pertains to agreements as to jurisdiction and states, in pertinent part, as follows:

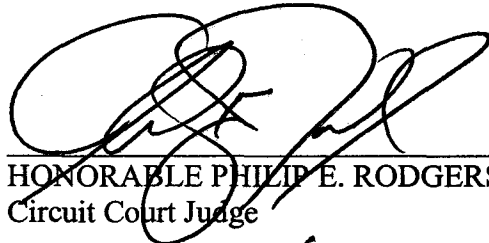
If the parties agreed in writing that an action on a controversy may be brought in this state and the agreement provides the only basis for the exercise of jurisdiction, a court of this state shall entertain the action if all the following occur:

* * *

(b) This state is a reasonably convenient place for the trial of the action.

This statute clearly does not apply in the instant case because the parties did not “agree in writing that an action may be brought in this state” and such an agreement does not provide “the only basis for the exercise of jurisdiction.” Furthermore, contrary to the Defendant’s representations, nowhere in *Lease Acceptance* does the court say that the analysis required by MCL § 600.745(2)(b) is required in every interstate contract case, regardless of whether there is a written contract with a forum or choice of laws provision.

The Defendant’s motion for summary disposition should be and hereby is denied.
IT IS SO ORDERED.


HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 10/11/06