

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

Joan Courts Glancy and Andrew R. Glancy,
in their capacities as Co-Trustees of the
Alfred R. Glancy III Irrevocable Trust u/t/a
dated October 24, 1974, as amended and restated,

Case No. 23- 201820 -CB
Hon. Victoria Valentine

Plaintiffs,

v.

Alfred R. Glancy, IV, an individual, and
Leigh Douglas-Glancy, an individual,

Defendants.

Mark G. Cooper (P52657)
James W. Rose (P66473)
Taft Stettinius & Hollister LLP
Attorneys for Plaintiff Joan Courts Glancy
27777 Franklin Road, Suite 2500
Southfield, MI 48034
(248) 351-3000
mcooper@taftlaw.com
jrose@taftlaw.com

Brian E. Etzel (P54905)
Wayne Walker (P51290)
Williams, Williams, Rattner & Plunkett, PC
Attorneys for Defendants Alfred R.
Glancy, IV and Leigh Douglas-Glancy
380 N. Old Woodward Ave., Suite 300
(248) 642-0333
bee@wwrplaw.com
wew@wwrplaw.com

Jeffrey T. Neilson (P30837)
Lipson Neilson PC
Attorneys for Plaintiff Andrew R. Glancy
3910 Telegraph Road, Suite 200
Bloomfield Hills, MI 48302
(248) 593-5000
JNeilson@lipsonneilson.com

OPINION AND ORDER REGARDING DEFENDANTS' MOTIONS FOR SUMMARY DISPOSITION

At a session of said Court held on the
20th day of November 2023 in the County of
Oakland, State of Michigan
PRESENT: HON. VICTORIA A. VALENTINE

This matter before the Court is on Defendants' Motion for Summary Disposition under MCR 2.116 (C)(1), which seeks to dismiss Plaintiff's complaint for lack of personal jurisdiction.

This Opinion and Order is entered without oral argument. MCR 2.1119(E)(3).

The Court, after reviewing the briefs and court file, and being otherwise fully advised in the premises, respectfully DENIES Defendants' motion for summary disposition for the reasons set forth below and as set forth in Plaintiffs' Response.

PERTINENT FACTS

It is undisputed that:

- Defendants reside in Atlanta Georgia and are husband and wife.¹
- Plaintiffs are co-trustees of the Alfred R. Glancy III Irrevocable Trust, who have conducted Trust business in Michigan.²
- The Trust is governed by Michigan law and has been administered in Michigan.³
- Over a period of years, Defendants obtained a series of loans from the Alfred R. Glancy, III Irrevocable Trust u/t/a dated October 24, 1972, as amended and restated ("Trust").⁴
- Defendant Aldred R. Glancy IV ("Rob") is a beneficiary of and borrower from the Trust.⁵
- On November 9, 2016, Defendants entered into an Agreement ("2016 Agreement") with the Trust, which acknowledged that Exhibit A attached thereto represented receipt of loans identified as "2013 Loan from ARG3," "2014 Loan from ARG3," and "2015 Loan from ARG3."⁶
- The "2016 Agreement" itemized and consolidated Defendants' underlying debts, which evidenced the total amount then owed by Defendant Borrowers to the Trust⁷ and acknowledged that Exhibit A to the Agreement correctly and accurately itemized the outstanding debts to the Trust as of November 9, 2016.⁸
- This 2016 Agreement contained a choice of law and choice of forum clause:

¹ Complaint, ¶ 3.

² Complaint ¶¶ 1& 2.

³ Plaintiff's MSD Exhibit A: 2nd Amended Trust article XV; Exhibit B: Affidavit ¶5.

⁴ Complaint, ¶ 10.

⁵ Complaint, ¶ 8.

⁶ Complaint, ¶¶ 15-16 and Tab 2 attached thereto.

⁷ Complaint, ¶ 18.

⁸ Complaint, ¶ 16.

11. This Agreement will be governed by and construed in accordance with the laws of the State of Michigan without giving effect to its conflict of laws provisions. Each party consents to and confers exclusive jurisdiction to enforce any of the rights or obligations under this Agreement or the transactions contemplated by it, in the state circuit court in Oakland County, Michigan and consents to and agrees that venue is proper and exclusive in such court.

- Also on November 9, 2016, Defendants entered into and agreed to pay the Trust another loan in the principal amount of \$250,000 plus interest, fees, costs, expenses, and additional amounts.⁹ While this new promissory note provides that it is governed by Michigan law, it does not contain the choice of forum clause.
- To secure this November 2016, \$250,000 Promissory Note owing to the Trust, Defendant Leigh Douglas-Glancy, as Grantor, granted to Plaintiffs a Security Deed on property in Georgia.¹⁰
- Also on November 9, 2016, Defendant Rob along with the other beneficiaries of the Trust, executed a Waiver and Consent, thereby consenting to the Trust entering into the secured loan with Defendants.¹¹
- This Waiver and Consent, to which Defendant Rob signed, contains a Michigan choice-of-law and choice of forum clause.¹²
- Defendants defaulted on their obligations.
- On June 30, 2022, Defendants entered into a Renewal and Consolidation Promissory Note, (“Renewal Note”) where Defendants jointly and severally promised to repay the loans by paying the Trust the principal sum of \$1, 074, 181.30 plus interest and fees.¹³
- This June 30, 2022, Renewal Note provides:

This Note renews, consolidates, amends and restates in their entirety each of the notes and obligations owed by Borrowers to Holder and referenced in the Promissory Note Amortization Schedule - 2013, Promissory Note Amortization Schedule – 2014, Promissory Note Amortization Schedule – 2015, Promissory Note Amortization Schedule – January through October 2016, and Promissory Note Amortization Schedule – November 9, 2016, each attached as **Exhibit A**. This Note does not constitute a novation or extinguishment of the existing indebtedness evidenced by said promissory notes and said indebtedness is still outstanding.

⁹ Complaint, ¶ 17. and Tab 2, Exhibit B attached thereto.

¹⁰ Plaintiff’s MSD Exhibit C.

¹¹ Plaintiff’s MSD Exhibit C.

¹² Plaintiff’s MSD Exhibit C.

¹³ Complaint, ¶¶ 12, 19, 20, 21 and Tab 1 attached thereto.

- On September 7, 2022, the Trust filed a lawsuit based on the Borrowers' breaches and failures to pay the loaned funds. (Oakland County Case No. 22-196013-CB).¹⁴
- This lawsuit was dismissed on September 28, 2022.¹⁵
- On August 1, 2023, this second lawsuit was filed, which alleges one count of breach of contract with regard to the 2022 Renewal Note.
- Defendants now file this motion for summary disposition under MCR 2.116(C)(1), claiming lack of personal jurisdiction.

STANDARD OF REVIEW

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 plaintiff bears the burden of establishing [personal] jurisdiction over the defendant[.]” *Yost v Caspari*, 295 Mich App 209, 221 (2012) (citations and quotation marks omitted); *Lease Acceptance Corp*, 272 Mich App at 218. To succeed against a pretrial motion to dismiss for lack of personal jurisdiction, a plaintiff need only make a *prima facie* showing. *Yost v Caspari*, 295 Mich App at 221. “The plaintiff’s complaint must be accepted as true unless specifically 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.*

¹⁴ Complaint, ¶ 11.

¹⁵ See Court record.

ANALYSIS

Jurisdiction over the person may be established by way of general personal jurisdiction or specific (limited) personal jurisdiction." *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 427 (2001).

General Jurisdiction

"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. *Id.* MCL 600.701 allows for the state to exercise general personal jurisdiction over an individual when the individual is in the state at the time process is served, when the individual is domiciled in the state at the time process is served, or when the individual consents, subject to the limitations in MCL 600.745.¹⁶

Under MCL 600.701(3), a party may consent to Michigan jurisdiction. *Lease Acceptance Corp v Adams*, 272 Mich App 209, 219-20 (2006). A provision in a contract in which the parties agree to litigate their claims in Michigan is valid and enforceable. *Id*; *see also Offerdahl v Silverstein*, 224 Mich App 417, 419 (1997).

¹⁶ MCL 600.745(2) provides:

(2) 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:

- (a) The court has power under the law of this state to entertain the action.
- (b) This state is a reasonably convenient place for the trial of the action.
- (c) The agreement as to the place of the action is not obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means.
- (d) The agreement as to the place of the action is obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means.
- (e) It would for some other reason be unfair or unreasonable to enforce the agreement.

Here, Plaintiff argues that, as alleged in the Complaint, Defendants consented to jurisdiction by virtue of the “2016 Agreement,” which consolidated the underlying debts, and which contained the following choice of law and choice of forum provision:¹⁷

11. This Agreement will be governed by and construed in accordance with the laws of the State of Michigan without giving effect to its conflict of laws provisions. Each party consents to and confers exclusive jurisdiction to enforce any of the rights or obligations under this Agreement or the transactions contemplated by it, in the state circuit court in Oakland County, Michigan and consents to and agrees that venue is proper and exclusive in such court.

On June 30, 2022, Defendants and the Trust entered into the 2022 Renewal Note to repay the loans.¹⁸ Under this 2022 Renewal Note, Defendant Borrowers renewed, consolidated, amended, and restated each of the referenced promissory notes and obligations owed by them and referenced in the Promissory Note and Amortization Schedules dated 2013, 2014, 2015 and 2016:¹⁹

This Note renews, consolidates, amends and restates in their entirety each of the notes and obligations owed by Borrowers to Holder and referenced in the Promissory Note Amortization Schedule - 2013, Promissory Note Amortization Schedule – 2014, Promissory Note Amortization Schedule – 2015, Promissory Note Amortization Schedule – January through October 2016, and Promissory Note Amortization Schedule – November 9, 2016, each attached as **Exhibit A**. This Note does not constitute a novation or extinguishment of the existing indebtedness evidenced by said promissory notes and said indebtedness is still outstanding.

As a result, Plaintiffs argue that Defendants expressly consented to jurisdiction in this Court by virtue of the June 30, 2022, Renewal Note, which renewed and incorporated the terms of the “2016 Agreement” that contained a forum selection clause.

¹⁷ Complaint, Tab 2 attached thereto.

¹⁸ Plaintiff’s MSD Exhibit B ¶16: Affidavit of Joans Court Glancy.

¹⁹ Complaint ¶ 19, Tab 1 attached thereto.

Defendants argue, however, that while the 2022 Renewal Note renewed, consolidated, restated and amended all previous *note obligations*, it failed to expressly incorporate the forum selection provision contained in the 2016 "Agreement." The Court agrees with Defendants that the language in the 2022 Renewal Note does NOT incorporate the terms of the 2016 Agreement, which contained the forum selection provision. Rather, the 2022 Renewal Note renewed, consolidated, restated, and amended the previous notes and obligations as referenced in the 2013, 2014, 2015 and 2016 Promissory Note and Amortization Schedules attached to the 2022 Renewal Note as Exhibit A; it did not incorporate or attach the previous 2016 Agreement that contained the choice of forum.

"Absent an ambiguity or internal inconsistency, contractual interpretation begins and ends with the actual words of a written agreement. ..[Courts] examine the language of the contract according to its plain and ordinary meaning." *Innovation Ventures, LLC v Liquid Mfg, LLC*, 499 Mich 491, 507 (2016). It "has long been the law in this state that courts are not to rewrite the express terms of contracts." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 199-200 (2008).

And, as Defendants further argue:

"[i]f Plaintiffs really intended all of the previous procedural provisions to carry over to the 2022 Note, they would not have specifically included the choice of law provision. which states that the 2022 Note "shall be governed by the laws of the State of Michigan." The same choice of law provision appears in previous note obligations and agreements. The choice of forum provision, however, is notably missing from the 2022 Note and this Court should not rewrite the parties' agreement to include the choice of forum

provision in Oakland County. The 2022 Note is a negotiated document, and this Court should not rewrite it.²⁰

Lastly, Plaintiffs' complaint does not allege a count for breach of the 2016 Agreement; rather it contains only one count-breach of the 2022 Renewal and Note.

Based on the above, the Court finds that it does not have general personal jurisdiction.

Limited Jurisdiction under Michigan's Long Arm Statute

"A [limited] personal jurisdiction analysis 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 v Caspari*, 295 Mich App 209, 222 (2012).

1. Whether defendants' acts fall within the applicable long-arm statute

Michigan courts may exercise limited personal jurisdiction over individuals under MCL 600.705, which provides:

The existence of any of the following relationships between an individual or his agent and the state shall constitute a sufficient basis of jurisdiction to enable a court of record of this state to exercise limited personal jurisdiction over the individual and to enable the court to render personal judgments against the individual or his representative arising out of an act which creates any of the following relationships:

- (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.

²⁰ Defendants' Reply, pp 2-3.

(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.

Although “the phrase ‘transaction of any business’ is not defined in the statute[,] our Court of Appeals has given that phrase 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, 188 N.W.2d 623 (1971) (stating that M.C.L. § 600.715(1)²¹ refers to “each” and “every” business transaction and contemplates even “the slightest” act of business in Michigan), and *Viches v. MLT, Inc.*, 127 F.Supp.2d 828, 830 (E.D.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, Defendant Rob’s affidavit acknowledges that he engaged in a telephone discussion and exchanged e-mails with Mr. Coughlin, one of the Trust attorneys, in connection with the 2022 Renewal Note at issue.²² Defendant Leigh Douglas-Glancy did not have such communications. Nevertheless, both Defendants executed the 2022 Renewal Note, agreeing that it is governed by

²¹ MCL 600.715(1) is identical to MCL 600.705(1).

²² Defendants’ MSD Exhibit B ¶14: Aldred Glancy IV (Rob)’s Affidavit.

Michigan and promising “to pay to the order of the . . . Trust . . . at 40 Underdown, Ann Arbor, Michigan 48105 or such other place as [Trust] Holder may designate in writing, the principal sums of \$1,074,181.30 plus interest . . .”²³ Further both Defendants had entered into a series of promissory notes with the same Michigan Trust. Viewing the evidence in the light most favorable to Plaintiffs, the Court finds that Plaintiffs made out a *prima facie* showing of jurisdiction to defeat Defendants’ Motion. See *W H Froh*, 252 Mich App at 226. Plaintiffs sustained their burden of establishing that Defendants transacted “any” business within the State of Michigan.

2. **Whether the exercise of jurisdiction over the defendants comport with the requirements 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). “The “constitutional touchstone” of a due process analysis with respect to personal jurisdiction is whether the defendant purposely established the minimum contacts with the forum state necessary to make the exercise of jurisdiction over the defendant fair and reasonable.” *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 433 (2001). In *Jeffrey v. Rapid American Corp*, 448 Mich 178, 186 (1995) our Michigan Supreme Court identified a three-part test for determining minimum contacts:

- (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.

²³ Complaint, Tab 1 attached thereto.

“[Michigan’s] ‘long-arm’ statutes extend jurisdiction to the maximum limits permitted by due process.” *Northern Ins Co of New York v B Elliott, Ltd*, 117 Mich App 308, 316 (1982), citing *Sifers v Horen*, 385 Mich 195, 199 (1971). “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.’” *Oberlies*, 248 Mich App at 433, quoting *Jeffrey*, 448 Mich at 186. 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 at 433 (internal citations omitted).

Purposeful Availment

“‘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.” *W H Froh*, at 231 (intern citations omitted). “The defendant must deliberately engage in significant activities within a state, or create continuing obligations between himself and residents of the forum to the extent that it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.” *Vargas v. Hong Jin Crown Corp*, 247 Mich App 278, 285 (2001) (quotation marks and citation omitted).

Here, Defendants executed the 2022 Renewal Note, agreeing that it is governed by Michigan law and promising “to pay to the order of the . . . Trust . . . at 40 Underdown, Ann Arbor, Michigan 48105 or such other place as [Trust] Holder may designate in writing, the principal sums of \$1,074,181.30 plus interest”²⁴ The Trust, to whom Defendants promised to pay, is a Michigan Trust and its trustees are Michigan residents. And the 2022 Renewal Note consolidated, amended, and reinstated Defendants’ other obligations owed to the Michigan Trust, as referenced in the attached Promissory Note Amortization Schedules for 2013, 2014, 2015, and 2016. Based on the above, the Court finds this was not a “one shot” transaction and agrees with Plaintiffs that there is nothing “random,” “fortuitous,” or “attenuated” about Defendants’ contacts with the State of Michigan. Defendants could reasonably have expected to be haled before a Michigan court in the event they defaulted on the series of Promissory Notes owed to the Michigan Trust. And, because Defendants had this continuous relationship with the Trust for many years, the case of *Kerry Steel, Inc v Paragon Industries, Inc* 106 F 3d 147 (6th Cir 1997), upon which Defendants rely, is distinguishable.

Forum State Activities

The Court finds that Plaintiffs’ breach of contract count arises from Defendants’ default of the obligations they owe under the 2022 Renewal Note to the Michigan Trust and that Plaintiff’s cause of action arises from the Defendant’s activities in the forum state.²⁵ Defendants entered

²⁴ Complaint, Tab 1 attached thereto.

²⁵ The Court agrees with Defendants that Defendant Rob’s participation in a Michigan arbitration in which he is the Claimant does not relate to Plaintiffs’ cause of action in this matter. Rather, it relates to an arbitration dispute regarding Cottage 48, a family home. For purposes of determining minimum contacts “the cause of action must arise from the defendant’s activities in the forum state.” *Jeffrey v Rapid American Corp*, 448 Mich at 186. “[F]or limited personal jurisdiction to attach, the cause of action must arise from circumstances creating the jurisdictional relationship between the defendant and the foreign state.” *Oberlies*, 246 Mich App at 435 (quotations omitted).

into a series of loans with the Michigan Trust, which Defendants failed to repay. The 2022 Renewal Note entitles the Trust to recoup any losses it incurs as a result of Defendants' nonpayment by offsetting such losses against Defendant's Rob's eventual share of Michigan trust assets.²⁶ Therefore, the Court agrees with Plaintiffs that "[b]ecause the Trust is a Michigan trust that will eventually be administered and make distributions in Michigan under Michigan law, by Michigan trustees, this is yet another way in which Plaintiffs' claims are related to, and arise out of, Defendants' activities in Michigan."²⁷

Reasonableness

Finally, under the third prong of the test, "defendant's activities must be substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable." *Oberlies*, 246 Mich App.at 433 (quotation marks and citations omitted). In *Sullivan v LG Chem Ltd*, 79 F4th 651, 674 (6th Cir 2023) the Sixth Circuit Court of Appeals stated that:

[W]hen we find purposeful availment and relatedness, "an inference arises that this third factor is also present. We "must consider several factors in this context, including 'the burden on the defendant, the interest of the forum state, the plaintiff's interest in obtaining relief, and the interest of other states in securing the most efficient resolution of controversies. The district court correctly determined that the exercise of personal jurisdiction would be reasonable and would not offend the "traditional notions of fair play and substantial justice. (internal quotations and citations omitted).

Here, Defendants entered into promissory notes from 2013-2016, agreeing to repay the Michigan Trust. They also entered into the 2022 Renewal Note, to which they agreed is to be governed by Michigan law. And they had previously entered into the 2016 Agreement wherein they consented to jurisdiction in Michigan. Michigan certainly has an interest in resolving this

²⁶ Complaint, Tab 1, p 1 ¶14.

²⁷ Plaintiffs' Response, p 16.

dispute in light of the fact that the 2022 Renewal Note is to be governed by Michigan law and, as Plaintiffs argue, will impact the Michigan Trust. While Defendants argue that they should not be required to cross the country to defend themselves in a Michigan Court, Defendants nevertheless entered into this 2022 Renewal Agreement as well as the other promissory notes and the 2016 Agreement to which they had consented to jurisdiction in Michigan. Further, while Defendant Rob's arbitration in Michigan does not relate to the issues in this case, it does reflect that he has litigated and is litigating other lawsuits in Michigan, suggesting that doing so is not too burdensome. Therefore, the Court concludes that its exercise of jurisdiction over defendants is reasonable.

CONCLUSION

Based on the above, the Court finds that it does not have general jurisdiction over Defendants.

The Court further finds that it does have limited jurisdiction because: (1) the defendants purposefully availed themselves of the privilege of acting in the forum state; (2) the cause of action arose from the defendants' activities in the forum state; and (3) defendants 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).

Defendants' Motion is therefore DENIED.

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

IT IS SO ORDERED.



/s/Victoria A. Valentine

DATED 11/20/23