

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

**CIBER GLOBAL, LLC,  
Plaintiff,**

v.

**Case No. 18-169391-CB  
Hon. James M. Alexander**

**MISHANT SHARMA,  
Defendants.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendant’s motion for summary disposition.

Plaintiff is a global information technology consulting company that provides various products and services in the information technology sector. Defendant is a former employee of Plaintiff. Defendant was hired by Ciber as an information technology consultant in 2013, at its customer site in Orlando, Florida. Defendant, upon accepting his position at Ciber signed an employment agreement. Said agreement contained non-competition and non-solicitation clauses. In its Complaint, Plaintiff alleges that Defendant was an employee of Ciber for five years, working primarily with Ciber’s client, “Disney.” Throughout his employment, Defendant gained specialized knowledge and experience regarding Plaintiff’s clients. In August 2018, Defendant resigned from his position with Plaintiff and accepted employment with a direct competitor.

On these general allegations, Plaintiff filed its Complaint on claims titled: (Count I) injunctive relief; and (Count II) breach of covenant not to compete.

Defendant now moves for summary disposition under MCR 2.116(C)(1), arguing that he is not subject to personal jurisdiction in Michigan. A (C)(1) motion tests whether the Court has personal jurisdiction over a defendant.

According to the Complaint, Plaintiff is a Michigan limited liability company, with its headquarters in Troy, Michigan. Defendant is an individual residing and working in Orange County, Florida.

As stated, a (C)(1) motion tests whether the Court has personal jurisdiction over a defendant. Plaintiff has the burden of establishing a prima facie showing of jurisdiction to avoid summary disposition. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). A court reviewing a (C)(1) motion must examine the affidavits, pleadings, depositions, admissions as well as any other documentation submitted by the parties. MCR 2.116(G)(5); *Jeffrey*, 448 Mich 178. All factual disputes are resolved in the non-movant's favor. *Id.* Whether a court has personal jurisdiction over a party is a question of law. *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 426; 633 NW2d 408 (2001).

Jurisdiction can be established by way of general personal jurisdiction or specific (limited) personal jurisdiction. *Oberlies*, 246 Mich App at 427. A court has general jurisdiction over a defendant if the defendant is present, domiciled, or consented to the court's exercise of jurisdiction. MCL 600.701. The parties do not appear to dispute that Michigan cannot exercise general personal jurisdiction over Defendant.

To determine whether the Court may exercise limited person jurisdiction, it "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*, 246 Mich App at 428.

### A. Long-Arm Statute

First, the Court must determine whether Defendant's activities fall within a provision of the long-arm statute, MCL 600.705,<sup>1</sup> which provides (in relevant part):

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.

Plaintiff argues that subsections (1) applies here. With respect to subsection (1), our Court of Appeals has reasoned that “[a] single transaction may be sufficient to meet the ‘minimum contacts’ test,” and “[t]he word ‘any’ in MCL 600.705(1) means, according to the Supreme Court in *Sifers v Horen*, supra, just what it says. It includes each and every. It comprehends the slightest.” *Parish v Mertes*, 84 Mich App 336, 339-340; 188 NW2d 623 (1978), quoting *Sifers v Horen*, 385 Mich 195, 199 n 2; 188 NW2d 623 (1971).<sup>2</sup>

In its Response, Plaintiff argues that, although Defendant has not been to Michigan, Defendant has transacted business within the state. Specifically, Plaintiff argues that Defendant purposefully availed himself to the privileges of conducting business in Michigan when he became employed with a company headquartered in Michigan. Plaintiff also cites to emails that Defendant sent to the human resources department, also located in Michigan. (P. Response Exhibit 1). Further, Plaintiff argues that Defendant received his compensation from Michigan,

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<sup>1</sup> MCL 600.705 concerns whether a court can exercise limited personal jurisdiction over an individual. MCL 600.715 concerns limited personal jurisdiction over a corporation. The language of these two statutes, however, is virtually identical for our purposes.

<sup>2</sup> The *Oberlies* Court similarly reasoned when evaluating the equivalent statute pertaining to businesses, MCL 600.715(1): “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.

and Plaintiff sponsored Defendant's H-1B visa using the Michigan address. (P. Response Exhibits 2, 3, and 4).

In his Reply Brief, Defendant argues that Plaintiff fails to identify any "business" Defendant transacted in Michigan. Specifically, Defendant argues that all the parties to the contract signed the same in Florida. And, the contract required all notices to be sent to Florida addresses. Further, Defendant was hired to work for Plaintiff through its Orlando office and worked for a customer in Orlando, Florida. As a result, Defendant argues that any business transacted by the parties took place solely in Florida. The Court agrees.

As stated, Michigan caselaw has consistently held the slightest contact sufficient to exercise jurisdiction – including over parties who never even set foot in Michigan. See *Kiever v May*, 46 Mich App 566; 208 NW2d 539 (1973) (holding that defendant's advertisement in a national publication circulated in Michigan and a telephone call with Michigan was enough) and *Aaronson v Lindsay & Hauer Intern Ltd*, 235 Mich App 259; 597 NW2d 227 (1999) (holding that plaintiff's initiation of and subsequent contacts with a Canadian corporation and said corporation's shipment of goods to Michigan was enough).

In this case, the Employment and Confidentiality Agreement was signed between Ciber and Defendant on April 4, 2013. The contract was executed by Defendant and Amanda Aubin, HR Rep (Defendant signed the agreement, Aubin did not). The contract required an address of both Ciber and Defendant. Ciber's listed address is as follows: CIBER, 201 E Pine Street Suite 300, Orlando, FL 32801. Defendant's address is as follows: 7220 Cardinal Cove Circle, Sanford, FL 32771.

The contract does not make any mention that Ciber is a Michigan company, that Defendant would be subject to jurisdiction in Michigan, or that Michigan law would apply to any

disputes. The contract does include a choice of law provision that provides the “agreement shall be interpreted and construed in accordance with the laws of the state in which the Company employs the Employee . . . .” As evidenced by the signature block on the agreement, and Plaintiff’s Verified Complaint, Defendant was hired by Ciber at Ciber’s site in Orlando, Florida. As such, Florida law would be applied to the contract, and any breaches thereof.

Plaintiff, in their argument to support a finding of jurisdiction relies on emails sent between Defendant and the human resources department. Plaintiff argues that is act sufficient to meet the minimum contacts requirement. The emails, however, provide no geographical identifiers. Nothing in the attached emails provides evidence that Defendant is contacting anyone in Michigan. The emails are between Defendant’s company email address, “HR-Ciberglobal@htcinc.com,” and Venu Vaishya at “venu.vaishya@htcinc.com.” Vaishya’s signature block only indicates that he is the VP, Human Resources, Ciber Global, LLC. It does not include his address.

Plaintiff also contends that Defendant transacted business within Michigan by receiving his compensation from Michigan. Further, Defendant’s H-1B Visa was sponsored by Plaintiff and included its Michigan address. To receive compensation, and his H-1B visa, Defendant did not have to have any contact with Michigan, and there is no evidence to support the same.

Based on the foregoing, Plaintiff cannot establish contact with Michigan which would constitute actions sufficient to meet the “any transaction of any business” test for purposes of the present motion. As such, the Court does not have jurisdiction over Defendant.

B. Comports with due process.

Assuming arguendo the Court found that Defendant had transacted business in Michigan, the next step in the analysis is determining whether Defendant had sufficient minimum

contacts with Michigan such that exercising jurisdiction over him would comport with due process “traditional notions of fair play and substantial justice.” *Oberlies*, 246 Mich App at 432-433, quoting *Intl Shoe Co v Washington*, 326 US 310, 316 (1945). This requires application of a three-part test:

**First**, the defendant must have purposefully availed himself 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. *Jeffrey*, 448 Mich at 186, quoting *Mozdy v Lopez*, 197 Mich App 356, 359; 494 NW2d 866 (1992) (emphasis added).

1. *Purposeful Availment*

Our courts have held that “purposeful availment” is “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 a passive availment of Michigan opportunities.” *Jeffrey*, 448 Mich at 187-188, quoting *Khalaf v Bankers & Shippers Ins Co*, 404 Mich 134, 153-154; 273 NW2d 811 (1978). Our courts have generally been liberal in finding purposeful availment. *See, e.g., Oberlies*, 246 Mich App at 434 (advertising in Michigan was sufficient for purposeful availment test).

As stated, Defendant was employed through Plaintiff’s Florida location, worked for a Florida client, and is being sued over his non-competition agreement by working for another Florida company. It cannot be said that Defendant engaged in “a deliberate undertaking to do or cause an act or thing to be done in Michigan.” Further, Defendant did not reach out to Michigan to take advantages of business opportunities.

For this reason, the Court concludes that Defendant did not purposefully avail himself of the privilege of doing business in Michigan.

## 2. *Defendants' Activities in the State*

Next, the Court considers whether the cause of action arises from the defendants' activities in the state. In *Oberlies*, the Court of Appeals cautioned that claims that are too attenuated from the defendant's activities in Michigan will not support a finding that jurisdiction here would comport with due process. *Oberlies*, 246 Mich App at 435.

Further, the U.S. Supreme Court instructs that entering into a contract with a resident of another jurisdiction is not sufficient by itself to meet the due process test. *Burger King Corp v Rudzewicz*, 471 US 462, 478 (1985). Rather, the defendant's activities in Michigan "must, in a natural and continuous sequence, have caused the alleged injuries forming the basis of the plaintiff's cause of action." *Oberlies*, 246 Mich App at 437. "Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State." *Burger King*, 471 US at 475.

In *International Shoe*, 326 US 310, the U.S. Supreme Court found that the presence of the defendant's sales person in the challenged state was sufficient to establish minimum contacts that comport with due process.

Again, the allegations of wrongdoing contained in Plaintiff's Complaint are entirely based in Florida. Accepting Plaintiff's complaint as true, Defendant was employed in Florida, Defendant was working with a client in Florida, and the alleged harm stems from Defendant accepting employment with a Florida competitor. The location of Plaintiff's headquarters and the fact that Defendant's paycheck contained a Michigan return address are the only connections to Michigan. These allegations are not sufficient to establish a natural and continuous sequence that proximately formed the basis for Plaintiff's Complaint. As a result, this second element is not met.

3. *Is Jurisdiction Reasonable?*

Finally, the Court finds that Defendant's connections with Michigan do not meet the final part of the test – whether its activities are “substantially” connected with Michigan such that jurisdiction is “reasonable.” *Jeffrey*, 448 Mich at 186.

Again, Plaintiff alleges that Defendant violated his non-competition by working for a direct competitor in Florida. Further, the employment agreement provides that Florida law will govern any disputes. As the drafter of the agreement, Plaintiff could have included Michigan as the choice of law and/or forum. They have not done so. Nothing in the record indicates that Michigan is a more convenient or reasonable forum for the parties than Florida would be. Based on the same, the Court finds that the exercise of jurisdiction in Michigan is unreasonable, and as a result, this final element is not met.

For all of the foregoing reasons, the Court finds that Defendant's motion for summary disposition based on lack of personal jurisdiction is GRANTED, and Plaintiff's complaint is dismissed in its entirety.

This is a final order that resolves the last pending claim and closes the case.

**IT IS SO ORDERED.**

February 27, 2019  
Date

/s/ James M. Alexander  
Hon. James M. Alexander, Circuit Court Judge