

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

**SERVICE FIRST LOGISTICS, INC.,
Plaintiff,**

v.

**Case No. 19-174259-CB
Hon. James M. Alexander**

**JACOB BLUST and NATIONAL
LOGISTICS SERVICE, LLC,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendants' motion for summary disposition.

According to Plaintiff's Complaint, Plaintiff is in the business of providing transportation logistics services to customers across the United States. Defendant Blust was employed with Plaintiff from approximately May 2014 through August 2015. In consideration of his employment, Defendant Blust signed an Employment Agreement in May 2015, which contained non-competition and non-solicitation clauses.

Plaintiff alleges that Defendant Blust began working for Defendant National Logistics Service, LLC (NLS) in May 2016, in violation of his Employment Agreement. Plaintiff further alleges that while working for NLS, Blust solicited Plaintiff's customers. As a result of Defendants' actions, Plaintiff contends it has and will continue to suffer damages.

On these general allegations, Plaintiff filed its Complaint on claims titled: (Count I) breach of contract (Blust); (Count II) misappropriation of trade secrets (Blust); (Count III) tortious interference with contractual relations (NLS); (Count IV) misappropriate of trade

secrets; violation of Michigan Uniform Trade Secrets Act, MCL 445.1901 et seq (Blust); (Count V) unfair competition (Blust and NLS); and (Count VI) injunctive relief.

As stated, Defendants now move for summary disposition under MCR 2.116(C)(1), arguing that they are 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 corporation and maintains a place of business in Oakland County. Defendant Jacob Blust is an individual who maintains a primary residence in Hamilton County, Ohio. And Defendant NLS is a New Mexico limited liability company that conducts business throughout Oakland County.

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 corporate defendant if it is incorporated in Michigan, if it consented to the court's exercise of jurisdiction, or if it engages in systematic and continuous business within the state. MCL 600.711¹.

¹ MCL 600.711 (Michigan's general personal jurisdiction statute for corporations) provides:

First, Blust argues, despite the forum-selection clause, this Court is not a reasonably convenient place for the trial in this action. Specifically, Blust argues that Michigan is an inconvenient forum because he is an Ohio resident, the contract was entered into in Ohio, Blust was employed only in Plaintiff's Ohio office, the events that give rise to the case occurred in Ohio, and all evidence and witnesses are located in Ohio. Further, Blust argues that the forum-selection clause was obtained through the abuse of economic power and unconscionable means.

Based on the same, Blust argues that since the facts of this case do not satisfy MCL 600.745, the forum-selection clause should not be enforced.² As such, Blust argue that the case should be dismissed due to lack of jurisdiction.

Plaintiff does not seem to contest that the Court can exercise general personal jurisdiction over Blust pursuant to the forum-selection clause in his Employment Agreement. Indeed, Plaintiff states that it "does not assert general jurisdiction over Defendants." Instead, Plaintiff argues that the Defendants are subject to specific personal jurisdiction.

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

The existence of any of the following relationships between a corporation and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise general personal jurisdiction over the corporation and to enable such courts to render personal judgments against the corporation.

- (1) Incorporation under the laws of this state.
- (2) Consent, to the extent authorized by the consent and subject to the limitations provided in section 745.
- (3) The carrying on of a continuous and systematic part of its general business within the state.

² MCL 600.745, provides, in relevant part:

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 defendant is served with process as provided by court rules.

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 Defendants’ activities fall within a provision of the long-arm statute, MCL 600.715,³ which provides (in relevant part):

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.

Plaintiff argues that subsections (1) and (5) apply 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).⁴

With respect to subsection (2), our Supreme Court has reasoned that:

³ 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.

⁴ 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.

Section 705 does not delineate specific types of acts that suffice for purposes of subsection 2. The only guidance it provides is that the “act” or “consequences of the act” must “result in an action for tort.” A plain language reading of these words reveals that either the tortious conduct or the injury must occur in Michigan. *Green v Wilson*, 455 Mich 342, 352; 565 NW2d 813 (1997).

In its Response, Plaintiffs argue that, although Blust did not physically work in Michigan, he was employed by a Michigan company, entered into an Employment Agreement that contained a forum-selection clause identifying Oakland County, Michigan as the forum for any proceedings, interacted with Michigan employees, received a paycheck through Michigan, and his actions caused harm to a Michigan corporation (Plaintiff’s Exhibit A). As it relates to Defendant NLS, Plaintiff argues that it knew or should have known of Blust’s contractual obligations to Plaintiff. Further, Plaintiff argues that NLS tortuously interfered with Plaintiff’s contracts, led to a breach of a Michigan contract, and caused harm to a Michigan corporation that was felt in Michigan.

To support its position, Plaintiff relies on *Ajuba Int’l, LLC v Saharia*, 871 F Supp 2d 671 (ED Mich 2012). In *Ajuba*, the defendants argued that the court did not have jurisdiction because whatever injury was done, was only done in India, and that there were no facts to demonstrate that the plaintiff suffered harm in Michigan. *Id.* at 681. The *Ajuba* Court ultimately held,

Upon considering Plaintiffs' factual allegations under the appropriate standard of review, the Court finds they have satisfied their burden of showing that Defendants have engaged in conduct that has caused tortious injury in Michigan. Defendants are alleged to have misappropriated Ajuba International's trade secrets and confidential information and tortiously interfered with its contracts and business relationships, thereby causing consequences in Michigan resulting in an action for tort. *Id.*

To the contrary, Defendant argues that none of the enumerated relationships in MCL 600.705 or MCL 600.715 are applicable in this matter. Specifically, Defendants argue that all of

the underlying facts took place in Ohio and that Blust never transacted business within Michigan. Further, Defendants argue that the fact a Michigan corporation was eventually injured does not translate into the harm occurring in Michigan such that jurisdiction is established.

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).

As it relates to Blust, although there may be some factual dispute, the same must be resolved in favor of the nonmovant’s party for purposes of this motion. It is undisputed that Blust accepted an internship, executed an Employment Agreement with Plaintiff, a Michigan corporation, and receive his compensation through an internal payroll system located in Michigan (Plaintiff’s Exhibit A, ¶19). The Employment Agreement provided (in relevant part), “any action, suit, or proceeding with respect to or arising out of this Agreement shall be brought in Oakland County, Michigan” (Plaintiff’s Exhibit A2). Further, Plaintiff states that Blust was required to “interact and cooperated” with Plaintiff’s team, the majority of which were in Michigan. (Plaintiff’s Exhibit A, ¶18). Based on the foregoing, Blust had sufficient contact with Michigan for this Court to exercise jurisdiction.

As it relates to NLS, similar to *Ajuba*, Plaintiff alleges that NLS to have tortiously interfered with its contractual relationships and engaged in unfair competition, thereby causing consequences in Michigan resulting in an action for tort. As such, in applying *Ajuba*, Plaintiff

has satisfied its burden of showing that NLS engaged in conduct that has caused tortious injury in Michigan such that the Court can exercise jurisdiction over NLS pursuant to Michigan's long-arm statute.

B. Comports with due process.

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, Plaintiff and Blust entered into a contractual employment relationship. The Employment Agreement contains both a choice-of-law and a forum-selection clause that provides:

This Agreement is made and entered into the State of Michigan. This Agreement shall be interpreted and enforced under the laws of the State of Michigan, and any action, suit or proceeding with respect to or arising out of this Agreement shall be brought in the Oakland County, Michigan, or the United States District Court for the Southeast District of Michigan. (Plaintiff's Exhibit A2, ¶K).

Based on the same, Michigan law would be applied to the contract, and any breaches thereof. Further, Blust agreed to jurisdiction in a Michigan Court. As such, Blust invoked the benefits and protections of Michigan's laws.

As such, the Court concludes that Blust engaged in "a deliberate undertaking to do or cause an act or thing to be done in Michigan." Further, the Court concludes that Blust invoked "the benefits and protections" of Michigan's laws. For these reasons, the Court concludes that Blust did purposefully avail himself of the privilege of doing business in Michigan.

Although NLS argues that in light of the lack of contacts with Michigan, it would be "unfair to subject NLS to the jurisdiction of the Michigan courts," it does not support its assertion with any law. Although not binding on the Court, Plaintiff argues that the proposition in *Knight Capital Partners, Corp v Henken AG & CO, KGaA*, 257 F Supp 3d 853 (ED Mich 2017) should be applied to this case. The *Knight* Court held that "defendants' tortious conduct alone, intentionally directed into the forum state, and producing harmful effects felt there, was enough to establish" that plaintiff pleaded facts supporting purposeful availment. *Id.* at 865-66.

Here, like *Knight*, Plaintiff has pleaded facts supporting purposeful availment. Specifically, Plaintiff has pleaded that NLS knew of Plaintiff's contractual relations with Blust and its customers and intentionally interfered with the same. Further, Plaintiff has pleaded that

both Blust and NLS have engaged in unfair competition. As a result of Defendants' wrongful conduct, Plaintiff argues, it has suffered damage felt in Michigan. Based on the same, Plaintiff has pleaded sufficient facts to support that NLS did purposefully avail itself through a deliberate undertaking to do or cause an act to be done in Michigan or conduct which can be properly regarded as a prime generating cause of the effects resulting 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 salesperson in the challenged state was sufficient to establish minimum contacts that comport with due process.

In the instant case, accepting Plaintiff's Complaint as true, Defendants engaged in intentional tortious conduct directed at a Michigan corporation with the effects felt in Michigan, creating a "substantial connection" with Michigan. These allegations are sufficient to establish a

natural and continuous sequence that proximately formed the basis for Plaintiff's Complaint. As a result, this second element is met.

3. Is Jurisdiction Reasonable?

Finally, the Court finds that Defendant's connections with Michigan may 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.

In this case, the Court finds that jurisdiction is reasonable. In this case, Michigan does have an interest in adjudicating the dispute. Specifically, the Complaint alleges that a Michigan corporation was harmed by tortious conduct of a former employee (who arguably consented to Michigan jurisdiction) and his new employer. Although Defendants may be burdened by continued litigation in this Court, this is outweighed by Plaintiff's interest in obtaining convenient and effective relief.

Based on the foregoing, Michigan is a convenient and reasonable forum for the parties to litigate their dispute. Based on the same, the Court finds that the exercise of jurisdiction in Michigan would be reasonable. As such, the third element is met.

Therefore, based on the foregoing, the Court finds that Defendants' motion for summary disposition pursuant to (C)(1) is DENIED.

IT IS SO ORDERED.

November 6, 2019
Date

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