STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

SOLSTICE TECHNOLOGY COMPANY, LLC
and JOHN E. MCCLURE,

Plaintiffs,

Case No. 2014-1854-CK

vs.

MIDDLE FORK DEVELOPMENT SERVICES,
LLC, DAVID SCHAFFER, ROCHARD FONS,
PHILIP HAAN and MAXGO, LLC,

Defendants.
_____/

OPINION AND ORDER

Defendants Middle Fork Development Services, LLC ("Middle Fork"), Maxgo, LLC ("Maxgo") and David Schaffer have moved for summary disposition pursuant to MCR 2.116(C)(1). Plaintiffs have filed a response and request that the motion be denied.

Factual and Procedural History

In March 2012, Plaintiff John E. McClure ("Plaintiff McClure"), on behalf of Plaintiff Solstice Technology Company, LLC ("Solstice"), began negotiations regarding Solstice providing consulting services to Middle Fork. On May 3, 2012, a Strategic Consulting Agreement was executed in Michigan ("First Agreement"). The First Agreement provided that Solstice was to perform certain consulting services, as provided in the "Statement of Work" ("SOW 1") in exchange for $30,000.00. Solstice performed the services contained within SOW 1 and was paid $30,000.00.

The First Agreement also provided that the parties could agree on additional or revised statements of work which would outline new or revised services, pricing or other terms that

would become part of the First Agreement. In June 2012 Plaintiff McClure, on behalf of Solstice, and Defendant David Schaffer ("Defendant Schaffer"), on behalf of Middle Fork, had a telephone conversation in which Defendant Schaffer request that Plaintiff McClure provide additional consulting services related to obtaining a buyer for Middle Fork in exchange for $15,000.00 per month ("SOW 2").

From June 2012 to April 2013, Plaintiff McClure allegedly performed services in connection with SOW 2 including introducing Maxgo's representatives to Middle Forks representatives regarding a potential sale. On December 1, 2012, Solstice issued an invoice to Middle Fork for $21,000.00 in connection with SOW 2.

On December 14, 2012, Plaintiff McClure emailed Defendant Schaffer that he needed to be paid in order to continue to work. On the same day Defendant Schaffer emailed Plaintiff McClure and stated that Plaintiff McClure would be paid $350,000.00 for the successful sale of Middle Fork. The sale constituted statement of work 3 ("SOW 3").

On January 15, 2013, Solstice issued an additional invoice to Middle Fork for $18,750.00 in connection with SOW 2.

In or about May 2013 all of Middle Fork's shares were sold to MFD Acquisitions, a wholly owed subsidiary of Maxgo. However, Solstice has not been paid any of the $350,000.00 Middle Fork allegedly promised to pay upon the sale.

When Plaintiff McClure demanded payment of the $350,000.00,Maxgo's representatives allegedly admitted that the money was owed but refused to pay unless Plaintiff McClure, on behalf of Solstice, executed a new agreement allowing for payment over time. On June 25, 2013, a second consulting agreement ("Second Agreement") was executed. The Second Agreement contained a mutual release and also provided that Solstice would provide consulting

to Middle Fork in exchange for $350,000.00, paid over time. While Middle Fork made the first $50,000.00 payment on July 1, 2013, on September 5, 2013 Middle Fork's accountant informed Plaintiff McClure that Middle Fork would not be making the remaining payments. The only other payment made to Solstice was $15,000.00 on September 20, 2013.

On May 7, 2014, Plaintiff filed their complaint in this matter asserting claims for: Count I- Breach of the Second Agreement (Solstice v. Middle Fork), Count II-Fraud in the Inducement against all Defendants, Count III- Breach of the First Agreement (Solstice v Middle Fork), Count IV- Unjust Enrichment against all Defendants, and Count V- Equitable Accounting and Request for a Constructive Trust (All Plaintiffs v Middle Fork).

On June 27, 2014, Defendants filed their instant motion for summary disposition pursuant to MCR 2.116(C)(1). Plaintiffs have since filed a response. On August 4, 2014, the Court held a hearing in connection with the motion. At the conclusion of the hearing the Court took the matter under advisement. The Court has reviewed the materials submitted by the parties and is now prepared to render its decision.

Standard of Review

In reviewing a motion for summary disposition brought under MCR 2.116(C)(1), the court considers consider the pleadings and documentary evidence submitted by the parties in the light most favorable to the nonmoving party. MCR 2.116(G)(5). *WH Froh, Inc v Domanski*, 252 Mich App 220, 225-226; 651 NW2d 470 (2002). The plaintiff bears the burden of establishing jurisdiction over a defendant, but need only make a prima facie showing of jurisdiction to defeat a motion for summary disposition. *Id.*

Arguments and Analysis

In support of its motion, Defendants contend that this Court does not have jurisdiction over them, and therefore does not have jurisdiction in this case. In response, Plaintiff asserts that the Court has jurisdiction over Defendants under MCL 600.715 and MCL 600.705.

A state court may exercise limited personal jurisdiction over a foreign corporation if both parts of a two-step test are met. *Aaronson v Lindsay & Hauer Intern Ltd*, 235 Mich App 259; 262 597 NW2d 227 (1999). First, the court looks to the state's long-arm statute to determine if any the relationships described therein are present. *Id.*; see also MCL 600.705 and MCL 600.715. Second, the court must consider if imposing its jurisdiction over the foreign entity or individual would violate due process. *Aaronson, supra* at 264. To satisfy due process, a foreign defendant must "have certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.* citing *Int'l Shoe Co v Washington*, 326 US 310; 66 S Ct 154; 90 L Ed 95 (1945). Provided minimum contacts are found, the case must also arise out of the state contacts. *Aaronson, supra* at 267. Lastly, the state court must be a convenient forum in which to resolve the matter. *Id.* at 268. While it may not be overly burdensome on defendant to litigate in the foreign forum, 'the defendant has no constitutional entitlement to the best forum." *Id.* citing *World–Wide Volkswagen Corp v Woodson*, 444 US 286, 297; 100 S Ct 559; 62 L Ed 2d 490 (1980).

In this case, the Court will first address whether imposing jurisdiction in this case comports with due process. Whether sufficient minimum contacts exist between a nonresident defendant and Michigan to support exercising limited personal jurisdiction is determinable by a three-part test. First, the defendant must have purposefully availed itself 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 so substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable. *Moore v. McFarland*, 187 Mich App 214, 218, 466 NW2d 309 (1991).

In this case, Defendants have no offices or employees in Michigan, and there has not been any showing that Defendants, or their employees, have been in Michigan for the purpose of conducting business here. While it is unclear who initiated the discussions that ultimately led to the business relationship at issue, the United States Supreme Court has held that a plaintiff must show that the defendant at issue reached "out beyond one state and create[d] continuing relationships and obligations with citizens of another state." *Burger King Corp v Rudzewicz*, 471 US 462, 473; 105 S Ct 2174 (1985). In this case, Plaintiffs have failed to establish that Defendants reached out to Michigan to create a continuing relationship/obligation(s). As a result, Plaintiffs have failed to satisfy that standard set forth in *Burger King*.

Moreover, while it is undisputed that Plaintiffs were located in Michigan at all pertinent times and performed services in Michigan, the mere fact that Defendants entered into a contract with a Michigan corporation does not mean that they purposefully availed themselves of the "benefits and protections" of Michigan law. *Id.* Indeed, the First and Second Agreements provide that they will be interpreted and enforced utilizing either Texas of Kentucky law, which further evidences that Defendants did not intend to avail themselves of the benefits and protections of Michigan law.

Further, the remaining basis Plaintiffs cite in support of their contention that due process is satisfied in this case is that Plaintiff McClure was in Michigan at the time he initiated and/or received telephone calls and emails from Defendants. However, the Federal Circuit Courts and U.S. Supreme Court have consistently held that telephone conversations, emails and faxes are

secondary and ancillary factors that cannot alone provide the minimum contacts required by due process. *Scullin Steel Co v National Ry Utilization Corp*, 676 F2d 309, 314 (8th Cir 1982); *Burger King*, 471 US at 472, 105 S Ct at 2182-83; *Kerry Steel, Inc v Paragon Industries, Inc*, 106 F3d 147 (6th Cir 1997). For these reasons, the Court is convinced that Plaintiffs have failed to establish that Defendant purposefully availed themselves of Michigan law. Consequently, the Court need not address whether the statutory standards for long-arm jurisdiction are satisfied in this case as Defendants' motion must be granted on due process grounds.

Conclusion

Based on the foregoing, the Court is convinced that personal jurisdiction in the State of Michigan, in this Circuit Court, is improper under the law. Consequently, Defendants' motion for dismissal under MCR 2.116(C)(1) is GRANTED. The Court states this Opinion and Order resolves all pending matters, and closes the case. MCR 2.602(A)(3).

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: August 27, 2014

JCF/sr

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