

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

**UNITED SHORE FINANCIAL SERVICES, LLC,
Plaintiff,**

v.

**Case No. 14-143594-CK
Hon. James M. Alexander**

**LENDING BEE, INC, ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on two motions for summary disposition that collectively cover all Defendants. Plaintiff is a mortgage wholesaler that contracted with Defendant Lending Bee for mortgage broker services. Under the terms of the April 19, 2012 Wholesale Broker Agreement, Lending Bee presented residential mortgage loan packages to Plaintiff for funding.

The Broker Agreement also required Lending Bee, in relevant part, to reimburse Plaintiff for losses on the loans when there was a defect in the loan's origination (regardless of cause) or if Plaintiff was required to repurchase the loan from a secondary-market investor (such as Fannie Mae or Freddie Mac).

In its Complaint, Plaintiff claims that Lending Bee presented some 74 prospective borrowers for residential mortgage funding. Plaintiff ultimately funded these loans and subsequently sold them on the secondary mortgage loan market. Of these loans, fifteen were later determined to be submitted on packages containing fraudulent or inaccurate borrower information. These "fraudulent loans" totaled \$4,210,180. Plaintiff claims that it was (or will be) forced to repurchase these fraudulent loans from the secondary market investors, which resulted

in substantial damages that Lending Bee was contractually required to reimburse. Because Lending Bee failed to do so, Plaintiff filed the present action.

Despite what would appear to be a simple breach of contract action, Plaintiff sued Lending Bee on claims of breach of contract, fraud, conversion, conspiracy, specific performance, promissory estoppel, and unjust enrichment. And Plaintiff also named Lending Bee's individual owners (Boris Dorfman, Vladimir Isperov, and Aleksandr Shekhtman) as Defendants. And Plaintiff also named other companies owned by these individuals (LBC Capital Income Fund, Save Home USA, and Pacific Trust Escrow) as Defendants. All Defendants are California residents or corporations.

Defendants Pacific Trust and all remaining Defendants now move separately for summary disposition under MCR 2.116(C)(1) – arguing that Michigan lack personal jurisdiction.

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 present, domiciled, or incorporated in Michigan when process was served **or if the defendant consented to the court's exercise of jurisdiction.** MCL

600.701; MCL 600.711. In this case, it is undisputed that Lending Bee consented to this Court's jurisdiction when it entered into the April 19, 2012 Wholesale Broker Agreement, which contained a contractual Michigan forum-selection clause at paragraph 6.16. Such clauses are routinely enforced in Michigan. *Turcheck v Amerifund Fin, Inc*, 272 Mich App 341, 345; 725 NW2d 684 (2006).

Because Lending Bee consented to jurisdiction in Michigan, Defendants' summary request with respect to it is DENIED.

With respect to the remaining Defendants, Plaintiff fails to allege the existence of any express contract containing a Michigan forum-selection clause. Plaintiff also fails to contend that this Court can otherwise exercise general personal jurisdiction over the remaining Defendants. As a result, this Court need only analyze limited 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 statute and whether the exercise of jurisdiction comports with due process." *Oberlies*, 246 Mich App at 428.

I. Long-Arm Statute

First, the Court must determine whether the remaining Defendants' activities fall within a provision of the long-arm statute, MCL 600.715,¹ 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 MCL 600.715 concerns limited personal jurisdiction over a corporation, and MCL 600.705 concerns limited personal jurisdiction over an individual. The language of these two statutes is virtually identical.

(1) The transaction of any business within the state.

Plaintiff concludes that subsection (1) applies here as all remaining Defendants purposefully availed themselves of the privilege of conduction activities in Michigan.

The *Oberlies* Court reasoned the meaning of 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.

With respect to this requirement, Plaintiff offers little by way of reasoning. And what Plaintiff does offer is directed solely at Lending Bee. While Plaintiff often refers collectively to Defendants, Lending Bee’s actions are not automatically imputed upon the remaining Defendants. And Plaintiff, for the most part, ignores the distinction between Lending Bee – who consented to Michigan jurisdiction, and the remaining California Defendants.

Plaintiff does argue, however, that Defendant Pacific Trust conducted business in Michigan when it acted as Plaintiff’s Settlement Agent on 29 separate loan transactions. Specifically, Plaintiff claims that Pacific Trust “sent documents for review to [Plaintiff] in Michigan, receiv[ed] closing instruction and documents from [Plaintiff] in Michigan, complied with closing instructions from [Plaintiff] and returned the executed documents to [Plaintiff] in Michigan, and receiv[ed] payment from [Plaintiff] in Michigan . . . on 29 separate occasions.”²

And Pacific Trust does not dispute these alleged contacts. Rather, in its Reply Brief, Pacific Trust argues that Plaintiff has not established that it did anything wrong that requires it to be included in this lawsuit. Pacific Trust claims that it “was not a party to” the Lending Bee Broker Agreement that forms the basis for Plaintiff’s claims. While this may prove to be true, it

² Plaintiff claims that this number includes 6 of the 15 alleged fraudulent transactions.

does not address whether Pacific Trust transacted any business in Michigan – the focus of the present motion for summary disposition.

In its Reply to Plaintiff’s Response, Pacific Trust appears to transform its (C)(1) motion based on lack of personal jurisdiction into one brought under (C)(8) based on a failure to state a claim. While Pacific Trust may ultimately file such a motion, it is not before the Court at this time. The present issue is whether the Court can exercise personal jurisdiction over Pacific Trust.

Although Pacific Trust does not dispute Plaintiff’s alleged contacts, to the extent that there are factual disputes over Pacific Trust’s transaction of business in Michigan, the Court is bound to resolve such disputes in the non-movant’s (Plaintiff’s) favor. *Jeffrey*, 448 Mich at 184. As a result, the Court finds that Pacific Trust’s alleged contacts with Michigan constitute actions sufficient to meet the “transaction of any business” test for purposes of the present motion.

With respect to the remaining Defendants, however, the Court finds that Plaintiff fails to establish a prima facie showing that these Defendants transacted any business within Michigan. As a result, summary disposition is properly granted with respect to Defendants Boris Dorfman, Vladimir Isperov, Aleksandr Shekhtman, LBC Capital Income Fund, and Save Home USA, and Plaintiff’s Complaint as to these Defendants only is DISMISSED without prejudice.

II. Comports with due process.

The next step in the analysis is determining whether Pacific Trust had sufficient minimum contacts with Michigan such that exercising jurisdiction over it 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).

On this test, however, Pacific Trust offers no true analysis. Michigan law is clear that, "A party may not merely announce a position and leave it to [the] Court to discover and rationalize the basis for the claim." *National Waterworks, Inc v International Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007).

As stated, Plaintiff claims that Pacific Trust "sent documents for review to [Plaintiff] in Michigan, receiv[ed] closing instruction and documents from [Plaintiff] in Michigan, complied with closing instructions from [Plaintiff] and returned the executed documents to [Plaintiff] in Michigan, and receiv[ed] payment from [Plaintiff] in Michigan . . . on 29 separate occasions."

And, also as stated, Pacific Trust does not deny these claims.

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).

On this issue, Plaintiff claims that Defendant undertook to do business in Michigan on 29 separate occasions that included multiple contacts each time. While, admittedly, both parties offer minimal analysis on this part of the test, the Court finds that Plaintiff's uncontested allegations sufficiently establish that Pacific Trust purposefully availed itself of the privilege of doing business in Michigan when it entered into 29 separate transactions with Plaintiff.

2. *Defendant's Activities in the State*

It is undisputed that Pacific Trust is not a Michigan corporation, nor does it have a Michigan office. And Plaintiff does not allege that a Pacific Trust representative came to Michigan for any reason. 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.

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*, *supra* at 475.

Again, based on the Plaintiff's unrefuted allegations, the Court finds that Pacific Trust's activity in Michigan is sufficient to establish the second part of the test.

3. *Is Jurisdiction Reasonable?*

Finally, the Court finds that Defendant's connections with Michigan also 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. Pacific Trust acted as Plaintiff’s Closing Agent on over two dozen transactions – making it reasonable for Michigan to exercise jurisdiction over it.

For all of the foregoing reasons, the Court finds that Pacific Trust had sufficient minimum contacts with Michigan such that exercising jurisdiction over it would comport with due process.

Conclusion

In summary, the Court concludes that Plaintiff has failed made a prima facie showing of this Court’s jurisdiction over Defendants Boris Dorfman, Vladimir Isperov, Aleksandr Shekhtman, LBC Capital Income Fund, and Save Home USA. As a result, those Defendants’ motion for summary disposition is GRANTED, and Plaintiff’s Complaint as to these Defendants only is DISMISSED without prejudice.

With respect to Defendants Lending Bee and Pacific Trust Escrow, however, Defendants’ motions are DENIED.

IT IS SO ORDERED.

April 1, 2015
Date

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