

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

**CONTROLWORKS, LLC, a Michigan limited liability company, and JACQUELINE RUBASKY,**

**Plaintiffs,**

**-v-**

**Case No. 15-002728-CB**

**SCOTT CHARLES KOCHAN; ROBERT F. ALDWORTH; CONTROLWORKS, LLC, a Florida limited liability company; iTRONIX TECHNOLOGIES, LLC, a Delaware limited liability company; UNDERDOG RACING DEVELOPMENT, LLC, a Maryland limited liability company; and STEVEN DOPLER,**

**Defendants.**

**Hon. Daniel P. Ryan** 15-002728-CB  
FILED IN MY OFFICE  
WAYNE COUNTY CLERK  
6/16/2015 3:47:49 PM  
CATHY M. GARRETT  
/s/ Michelle Howard

---

**OPINION**

This case is before the Court on Defendant Robert Aldworth, ControlWorks, LLC, iTronix Technologies, LLC, Underdog Racing Development, LLC, and Steven Dopler's Motion for Summary Disposition pursuant to MCR 2.116(C)(1). For the reasons stated below, the Court will deny the motion.

**1. Facts and Procedural History**

Defendant Scott Kochan and Plaintiff Jacqueline Rubasky were married in 1992. Plaintiff ControlWorks Michigan was started by Kochan and Rubasky in Michigan in 1995. ControlWorks Michigan's primary business was providing engine management systems, consisting of computer hardware and software to control engines to provide peak performance for purposes including, but not limited to, racing. Kochan was the primary software and hardware designer for ControlWorks Michigan, and Rubasky was the primary marketing

executive. Kochan and Rubasky separated in 2008 and Kochan filed for divorce in California on December 22, 2009. The divorce case is still pending in California.

Rubasky and ControlWorks Michigan filed this lawsuit on March 3, 2015, asserting that defendants conspired to misappropriate the business of ControlWorks Michigan. Rubasky's 13 count complaint includes, among others, claims of tortious interference with a contract, tortious interference with business relations, misappropriation and/or conversion of trade secrets, and infringement and/or conversion of common law trademarks, service marks, and trade dress. Defendants, excluding Kochan, then filed the instant motion for summary disposition, arguing that the Court lacks personal jurisdiction.

## **2. Standard of Review**

Defendants bring their motion for summary disposition pursuant to MCR 2.116(C)(1). When reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(1), the court considers the pleadings and documentary evidence submitted by the parties in the light most favorable to the nonmoving party. MCR 2.116(G)(5). "The plaintiff bears the burden of establishing jurisdiction over the defendant, but may only make a prima facie showing of jurisdiction to defeat a motion for summary disposition." *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). The plaintiffs' complaint must be accepted as true unless specifically contradicted by affidavits or other evidence submitted by the parties. *Patterson v Kleiman*, 447 Mich 429, 343 n 6; 526 NW2d 879 (1994). Thus, when allegations in the pleadings are contradicted by documentary evidence, the plaintiff may not rest on mere allegations but must produce admissible evidence of his prima facie case establishing jurisdiction. *Mozdy v Lopez*, 197 Mich App 356, 361; 494 NW2d 866 (1992).

### **3. Analysis**

Defendants argue that this Court lacks personal jurisdiction and the claims against them should therefore be dismissed.

The Court in *Yoost v Caspari*, 295 Mich App 209, 222; 813 NW2d 783 (2012), summarized the protocol for reviewing the jurisdictional issues presented here:

The plaintiff bears the burden of establishing personal jurisdiction over the defendant. Prior to trial, however, when a motion to dismiss for lack of jurisdiction is decided on the basis of affidavits and other written materials, the plaintiff need only make a prima facie showing. The allegations in the complaint must be taken as true to the extent they are uncontroverted by the defendant's affidavits. If the parties present conflicting affidavits, all factual disputes are resolved in the plaintiff's favor, and the plaintiff's prima facie showing is sufficient notwithstanding the contrary presentation by the moving party.

When determining whether a Michigan court may exercise limited personal jurisdiction over a defendant, the Court employs a two-step analysis. *Jeffrey, supra* at 184-185. First, the Court ascertains whether jurisdiction is authorized under Michigan's long-arm statutes. Second, the Court determines if the exercise of jurisdiction is consistent with the requirements of due process. *Electronics, Inc v Prudential Assurance Co, Ltd*, 260 Mich App 144, 167; 677 NW2d 874 (2003).

MCL 600.705 and MCL 600.715 provide for limited personal jurisdiction over individuals and corporations and provide in pertinent part:

#### **MCL 600.705 Limited personal jurisdiction over individuals.**

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.

**MCL 600.715 Corporations; limited personal jurisdiction.**

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.

Defendants Dopler and Aldworth argue that they have absolutely no ties to Michigan. They assert that they were not present in the state when process was served, have never had a domicile in Michigan, and have not consented to personal jurisdiction of the state over them. They also assert that they have never transacted any business in Michigan and none of the elements required for general or limited personal jurisdiction over an individual apply. They further argue that their companies, Controlworks Florida, iTronix and URD are not incorporated under the laws of this state, have not consented to jurisdiction over them, have not transacted any business within Michigan, and have never entered into any contract for services to be performed or for materials to be furnished in Michigan, and none of the requirements for general or limited jurisdiction are otherwise applicable.

In response, plaintiffs point out that their complaint alleges intentional torts against all defendants. Because plaintiffs' claims sound in tort, plaintiffs may establish jurisdiction by showing that the individuals and corporations did or caused an act to be done, or caused consequences to occur, that resulted in an action for tort. MCL 600.705(2); MCL 600.715(2).

Plaintiffs allege that in July of 2005, Controlworks Michigan issued a proposal to an earlier incarnation of URD to develop a product line called UCON. Dopler was involved in the discussions concerning the proposal. The deal for UCON ultimately "fizzled" according to Dopler. In 2009, Dopler formed the present URD and bought part of the original URD's business and assets. According to Dopler, he then "dusted off the original URD UCON Flex X-1 plan and put it into effect and the result was that the UCON Flex we have now made by a new company called iTronix Technologies." Plaintiffs allege that Kochan reached an agreement with Dopler to continue developing UCON "in house" in exchange for an interest in URD and/or iTronix. While it is disputed whether Kochan was a partner in these businesses, it is undisputed that Kochan received compensation for work he did for URD and iTronix.

Given the above facts, the Court finds that plaintiffs have established that this Court has personal jurisdiction over Dopler, URD, and iTronix under the long-arm statutes. Plaintiffs have evidence that Dopler and URD knowingly engaged with a Michigan company to develop the UCON product line, and the present claims arise from that act. Dopler then "dusted off" those plans and hired Kochan, Controlworks Michigan's lead designer, and caused URD to market and iTronix to manufacture the UCON product, all without compensating Controlworks Michigan. The actions of Dopler, URD, and iTronix resulted in tort claims, the consequences of which were felt in Michigan by the Michigan plaintiffs.

Robert Aldworth is the sole owner of defendant Controlworks, LLC (Controlworks Florida). Notably, Controlworks Florida has the same legal name as Controlworks Michigan. According to plaintiffs, Controlworks Florida was formed, in part, to provide parts to iTronix. Plaintiffs allege that Kochan provided Controlworks Florida with access to Controlworks Michigan's website, which Controlworks Florida used as its own, with the same trademarks, service marks, copyrights and trade dress. Controlworks Florida also used Controlworks Michigan's federal employment identification number. Plaintiffs allege that Controlworks Florida passed itself off as the same company to Controlworks Michigan's vendors, obtaining pricing and other benefits it would not otherwise have been able to obtain. Given the evidence and allegations that Controlworks Florida appropriated part of Controlworks Michigan's business by buying from Controlworks Michigan's suppliers and sold those parts to defendants URD and iTronix, which had allegedly appropriated other parts of the business, the Court finds that plaintiffs have established jurisdiction under Michigan's long-arm statutes. That is, there is evidence that Aldworth and Controlworks Florida engaged in acts which consequences were felt in Michigan and resulted in an action for tort.

Having determined that plaintiffs have established personal jurisdiction over defendants under Michigan's long-arm statutes, the Court must next determine whether the exercise of jurisdiction in this case comports with due process.

In *Yoost, supra* at 223, the Court stated the three-part test for determining if exercising limited personal jurisdiction comports with due process: (1) 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; (2) the cause of action must arise from the

defendant's activities in the state, and (3) the defendant's activities must be substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable.

A defendant is deemed to have "purposefully availed himself of the privilege of conducting activities in Michigan" if it deliberately undertook to do or cause an act to be done in Michigan or engaged in "conduct which can be properly regarded as a prime generating cause of the effects resulting in Michigan. . . ." *Jeffrey, supra* at 187-188. Further, it is the relationship of the defendant, this state, and the litigation that is significant. "The defendant's own conduct and connection with the forum must be examined in order to determine whether the defendant should reasonably anticipate being haled into court there." *Id* at 187.

As set out above, plaintiffs have alleged that defendants participated in a conspiracy to appropriate Controlworks Michigan's business, including interfering with business relations, misappropriating trade secrets, infringement of trademarks, service marks, and trade dress. Defendants all allegedly engaged in conduct which was a prime generating cause of effects felt in Michigan by plaintiffs. *Id* at 187-188. Further, given the allegations that defendants all conspired to steal the business, trade secrets, trademarks, service marks, and trade dress of a Michigan corporation, they could all reasonably have anticipated being haled into court in Michigan, where the effects of their alleged misconduct was felt.

Based on the foregoing, the Court finds that plaintiffs have made a prima facie showing of jurisdiction. Accordingly, the Court will deny defendants' Motion for Summary Disposition.

/s/ Daniel P. Ryan  
\_\_\_\_\_  
Circuit Judge

**DATED:** 6/16/15