

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

AZA POOLED REAL ESTATE, LLC,

Plaintiff,

v

Case No. 2015-141393-CZ

Hon. Wendy Potts

LAURENCE H. SMITH, et al,

Defendants.

OPINION AND ORDER RE: NAPO LIMITED'S MOTION TO SET ASIDE DEFAULT
AND FOR SUMMARY DISPOSITION BASED UPON LACK OF PERSONAL
JURISDICTION

At a session of Court
Held in Pontiac, Michigan

On
JAN 26 2016

The matter is before the Court on Defendant Napo Limited's motion to set aside a default and for summary disposition of Plaintiffs' claims under MCR 2.116(C)(1) on the ground that the Court lacks jurisdiction over Napo. Plaintiffs have the burden of establishing a prima facie showing of jurisdiction. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). The Court examines the pleadings, affidavits, and other documentation submitted by the parties in the light most favorable to the nonmoving party, and all factual disputes are resolved in the nonmovant's favor. MCR 2.116(G)(5); *Jeffrey, supra*. 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). The Court is exercising its discretion to decide the motion without a hearing. MCR 2.119(E)(3).

The Court does not have general jurisdiction over Napo because Plaintiffs did not serve Napo in Michigan, Napo did not consent to jurisdiction, and Napo does not engage in continuous and systematic business in Michigan. MCL 600.731. At issue is whether the Court can exercise limited personal jurisdiction, which exists if (1) Napo's conduct falls within a provision of Michigan's long-arm statute and (2) the exercise of jurisdiction comports with due process. *Oberlies, supra* at 428.

Long-arm jurisdiction exists if Napo transacted "any business within the state." MCL 600.715(1). Napo entered into an agreement to purchase Plaintiffs' interest in S-H Maui Development II, LLC and Grupo Familia Development, LLC. The negotiations and execution of the agreement occurred at least in part in Michigan because Plaintiffs and their agents, as well as Defendant Laurence Smith and his agents, who were involved in the agreement negotiations, are located in Michigan. Our courts interpret the long-arm statute broadly such that the "slightest transaction" of business is sufficient to bring a party within Michigan's long-arm jurisdiction. *Oberlies, supra* at 430. Because Napo transacted some business in Michigan, the long-arm statute is satisfied.

The next question is whether Napo has sufficient minimum contacts with Michigan such that exercising jurisdiction comports with due process. *Oberlies, supra* at 432-433. To make this determination, the Court applies a three-part test:

- (1) Napo must have purposefully availed itself of the privilege of conducting activities in Michigan.
- (2) The cause of action must arise from Napo's activities in the state.
- (3) Napo's activities must be substantially connected with Michigan. [See *Jeffrey, supra* at 186.]

Purposeful availment exists if Napo engaged in "a deliberate undertaking to do or cause an act or thing to be done in Michigan." *Jeffrey, supra* at 187-188. Plaintiffs allege that Napo knew or should

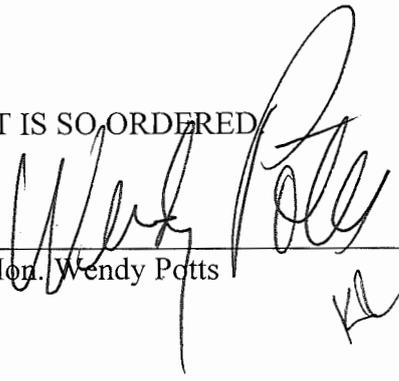
have known it was negotiating an agreement with Michigan-based entities and their Michigan-based agents. The agreement, including early drafts, identified Plaintiffs as the sellers and stated that they are located in Michigan. Although Napo claims that its agents never traveled to Michigan for this agreement, Napo and its agents regularly communicated with Plaintiffs, who were in Michigan. Napo claims that neither Smith nor his attorney represented Napo, however, Plaintiffs allege and provide some evidence that Napo used Smith and his Michigan-based counsel to communicate with Plaintiffs. These allegations and evidence are sufficient to show a deliberate undertaking to cause a contract to be formed, at least in part, in Michigan. Thus, Napo purposefully availed itself of the privilege of conducting activities in Michigan.

As for whether Plaintiffs' claims arise from Napo's activities in Michigan, Plaintiffs allege that Napo breached the agreement that was partially negotiated here. Because the agreement that Napo is alleged to have breached and the other parties to the agreement have substantial connections to Michigan, Plaintiffs' claims arise from Napo's activities here.

Regarding the final part of the test – whether Napo has substantial connections to Michigan such that jurisdiction is reasonable – the allegations and evidence presented show that Napo willingly and knowingly negotiated and entered into an agreement with Michigan-based entities and used other parties located in Michigan to assist in those contract negotiations. Further, Plaintiffs allege that Napo breached the agreement by failing to pay, which would have involved sending money to Michigan. Thus, exercising jurisdiction over Napo would be reasonable.

For all of these reasons, the Court concludes that exercising limited personal jurisdiction over Napo comports with due process. Therefore, the Court denies Napo's request to set aside the default and denies the motion to dismiss Plaintiffs' claims for lack of personal jurisdiction.

IT IS SO ORDERED



Hon. Wendy Potts

Dated:

JAN 26 2016