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

GENERAL MEDICINE OF ILLINOIS
NURSE PRACTIONERS, P.C.,
Plaintiff,

v. **Case No. 14-142801-CB**
Hon. James M. Alexander

ARFINA ALBRECHT,
Defendant.
_____/

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant's Motion for Summary Disposition pursuant to MCR 2.116(C)(1). Under the terms of a March 22, 2013 employment agreement, Plaintiff employed Defendant as a nurse practioner to provide professional services at several Illinois medical facilities. Contained within the employment agreement was a forum-selection clause as well as a covenant-not-to-compete. Unfortunately, Defendant's employment was terminated just under a year later when Plaintiff lost its contract with the medical facility where the Defendant worked.

The current dispute arose when Defendant allegedly breached the covenant not-to-compete clause of the employment agreement, which stated that Defendant was not to compete with any of Plaintiff's competitors located within a one-mile radius of any Plaintiff contracted facility or client.

It is undisputed that Plaintiff is an Illinois medical service corporation operating under the umbrella of its parent corporation which is headquartered in Oakland County, Michigan. It is

also undisputed that Defendant is a resident of the State of Illinois and has never performed services in the State of Michigan.

Defendant now brings the present motion – claiming that it is entitled to summary disposition because the court lacks personal jurisdiction over the Defendant.

I. General Personal Jurisdiction

Defendant moves for summary disposition under MCR 2.116(C)(1), which 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 at 183. 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 was present or domiciled in Michigan when process was served or if the defendant consented to the court's exercise of jurisdiction. MCL 600.701. In this case, both parties agree that Defendant's services were performed solely at a facility in the State of Illinois and at no time did Defendant offer her services at a Michigan facility. Therefore, limited personal jurisdiction is not at issue here, and this Court cannot exercise limited personal jurisdiction over the Defendant.

Instead, at issue is whether the forum-selection clause of the employment agreement is valid and enforceable as to comply with the consent requirement for general personal jurisdiction. In Michigan,

> any of the following relationships between an individual 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 individual or his representative and to enable such courts to render personal judgments against the individual or representative. MCL 600.701.

In relevant part, general personal jurisdiction may be exercised when the defendant has consented to personal jurisdiction, but the exercise of this power is subject to limitations provided in MCL 600.745. "…. [P]arties may agree, even advance to litigation, to submit to the personal jurisdiction of a particular forum." *See Burger King Corp v Rudzewicz*, 471 US 462, 472; 105 S Ct 2174; 85 L Ed 2d 528 (1985). Here, the Defendant consented to Michigan jurisdiction when she executed her employment agreement on March 22, 2013.

II. Limitations of General Personal Jurisdiction

Since the Defendant consented to the terms of the contract and more specifically – the forum selection clause – the Court must next determine whether there are any limitations under MCL 600.745 to prevent the Court from exercising jurisdiction over the Defendant. The Defendant concedes that the only basis for this Court to exercise jurisdiction over the Defendant is "an invalid contract forum selection clause cited and relied upon by Plaintiff."

Defendant argues that the contractual forum selection clause, which provides Oakland County, Michigan as the choice of forum, is invalid under two subsections of MCL 600.745, and thus limits the exercise of general personal jurisdiction. These relevant sections are:

(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. MCL 600.745(2)(b)-(c).

More specifically, Defendant argues that "because the parties, witnesses, and facilities in this case all exist exclusively in the State of Illinois, it is clear that Michigan is not a 'reasonably convenient place for trial of the action' and thus fails … under MCL 600.745(2)(b)." Defendant then goes on to incorrectly apply the forum non-conveniens "Cray Factors" to this case.

Plaintiff argues that the forum selection clause is valid and enforceable because the Defendant not only consented in writing that she agreed to the contractual terms, but she also had the document in her possession for three weeks. Thus, Defendant had ample time to make an informed decision regarding the employment offer. Plaintiff argues that "the forum selected is not inconvenient for the reason that all the Plaintiff's payroll records, accounting records, contracts, and business operations are located in Oakland County, Michigan." This Court agrees.

Defendant next argues that under MCL 600.745, the agreement was one of adhesion and "was obtained by misrepresentation, the abuse of economic power, or other unconscionable means." Defendant states the employment agreement was not discussed, presented, or reviewed during the interview process with the Defendant before she was offered and verbally accepted the position with Plaintiff. But there is no evidence of this assertion, and it is simply irrelevant to the issue at hand. Plaintiff argues that there is no evidence that Plaintiff misrepresented the terms of the contract and provides supporting evidence that the Defendant did, in fact, have the contract in her possession for several weeks before agreeing to the terms and executing the contract. Given the evidence presented and the emails evidencing negotiation and open communication between the parties, it is clear that the agreement in question was not the result of "misrepresentation, duress, abuse of economic power, or other unconscionable means."

Therefore, the Court concludes that Plaintiff has made a prima facie showing of this Court's general personal jurisdiction over Defendant, and the Court DENIES Defendants' Motion for Summary Disposition under MCR 2.116(C)(1).

IT IS SO ORDERED

January 14, 2015 /s/ James M. Alexander

Date Hon. James M. Alexander, Circuit Court Judge