

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

**JEREMY SASSON,
Plaintiff,**

v.

**Case No. 14-143337-CK
Hon. James M. Alexander**

**LRE HOLDINGS, LLC and
MICHAEL V. FADDIS, JR.,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant’s motion for summary disposition. Under the terms of a November 20, 2012 “Securitized Loan Document & Equity Distribution” (“Investment Agreement”), Plaintiff agreed to invest \$100,000 in Defendant LRE Holdings in exchange for 51% of Class A preferred equity in the company. The \$100,000 investment was to be made in several stages, but the share transfer was to be completed upon Plaintiff’s initial \$40,000 payment on the date of the agreement. Plaintiff was also supposed to gain exclusive control over LRE with this investment.

In his Complaint, Plaintiff claims that he paid \$40,000 on November 20, 2012, but LRE failed to (1) issue or release 51% equity to Plaintiff, (2) grant Plaintiff exclusive control over it, or (3) repay Plaintiff’s \$40,000 investment. As a result, Plaintiff sued LRE on a breach of contract claim (Count I), and alleged fraud (Count II) against both LRE and its CEO, Michael Faddis.

In response to Plaintiff's Complaint, Defendants filed the present motion for summary disposition – arguing that Michigan lacks personal jurisdiction, and even if Michigan can exercise personal jurisdiction, the investment document contains a mandatory arbitration provision – such that this case is properly ordered into arbitration.

To their end, Defendants now moves for summary disposition under MCR 2.116(C)(1) or (C)(7). 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, supra*. 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).

A (C)(7) motion which tests whether a claim is barred, among other grounds, by an agreement to arbitrate. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

I. Personal Jurisdiction

Defendants first argue that this Court lacks personal jurisdiction because LRE is a Delaware LLC that has never conducted business in Michigan and Mr. Faddis is a Florida resident.

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 is present, domiciled, or consented to the court's exercise of

jurisdiction. MCL 600.701. The parties do not argue that Michigan can exercise general personal jurisdiction over 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.

A. Long-arm statute.

First, the Court must determine whether 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) The transaction of any business within the state.

Plaintiff argues that subsection (1) applies here because both LRE and Mr. Faddis transacted business in Michigan within the meaning of the statutes.

The *Oberlies* Court interpreted the meaning of MCL 600.715(1) as follows: “Our Legislature’s use of the word ‘any’ to define the amount of business that must be transacted

¹ MCL 600.715 concerns limited personal jurisdiction over a corporation such as LRE. MCL 600.705 concerns whether a court can exercise limited personal jurisdiction over an individual. The language of these two statutes, however, is virtually identical for our purposes.

establishes that even the slightest transaction is sufficient to bring a corporation within Michigan's long-arm jurisdiction." *Oberlies*, 246 Mich App at 430.²

To establish that Defendant engaged in "the slightest transaction," Plaintiff attaches his affidavit, claiming that Mr. Faddis traveled to Oakland County from June 21 and 24, 2012 and again from November 16 and 19, 2012 "to meet with [him] and induce [him] to enter into the Agreement. Specifically, Faddis sought an investment in LRE."

Plaintiff then provides specific details about these the locations and subject of these Michigan meetings. Plaintiff also attached a November 18, 2012 email from Mr. Faddis to Plaintiff and Henry Sasson that appears to express gratitude for a meeting about the investment.

Mr. Faddis does not deny coming to Michigan on these dates, but characterizes the meetings as a "social visit" and "cursory and preliminary talks between old friends." In his affidavit, Mr. Faddis also admits that the parties "had general conversations about Mr. Sasson potentially being an investor in LRE."

When deciding such a motion, the Court is bound to resolve factual disputes in the non-movants' (Plaintiff's) favor. *Jeffrey*, 448 Mich at 184. As a result, the Court finds that Mr. Faddis's visits to Michigan to seek an investment from Plaintiff constitutes action sufficient to meet the "transaction of any business" test.

² In support, the *Oberlies* Court cited "*Sifers v Horen*, 385 Mich 195, 199 n2; 188 NW2d 623 (1971) (stating that MCL 600.715(1) refers to 'each' and 'every' business transaction and contemplates even 'the slightest' act of business in Michigan), and *Viches v MLT, Inc*, 127 F Supp 2d 828, 830 (ED Mich, 2000) (Judge Paul Gadola stating: 'The standard for deciding whether a party has transacted any business under § 600.715 1 is extraordinarily easy to meet. 'The only real limitation placed on this long arm statute is the due process clause.' citation omitted)." *Oberlies*, 248 Mich App at 430.

B. Comports with due process.

The next step in the analysis is determining whether Defendant 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).

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).

Plaintiff claims that Mr. Faddis’s Michigan visit to seek investment in LRE was sufficient to establish this element. The Court agrees. Defendant traveled to Michigan two times over several days to seek an investment from Plaintiff in LRE.³ These activities satisfy this element.

³ In *International Shoe*, 326 US 310, the US Supreme Court found that the presence of the defendant’s sales person in the challenged state was sufficient to establish minimum contacts that comport with due process.

2. *Defendant's Activities in the State*

The next element considers whether the defendant's activities in the forum state are "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 . . . where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State." *Burger King Corp v Rudzewicz*, 471 US 462, 475 (1985).

The Court finds that Mr. Faddis's multiple Michigan visits seeking an investment in LRE is sufficient to establish this second part of the test.

3. *Is Jurisdiction Reasonable?*

Finally, the Court finds that Defendants' connections with Michigan meet the final part of the test – whether its activities are "substantially" connected with Michigan such that jurisdiction is "reasonable." *Jeffrey*, 448 Mich 178.

Mr. Faddis purposefully directed his activities at Michigan such that the exercise of jurisdiction here is reasonable.

C. Conclusion on Jurisdiction.

In sum, the Court concludes that Plaintiff has made a prima facie showing of this Court's jurisdiction over Defendants. As a result, Defendant's Motion for Summary Disposition under (C)(1) is DENIED.

II. Arbitration

In the alternative to their (C)(1) motion, Defendants seek summary disposition under MCR 2.116(C)(7), which tests whether a claim is barred, among other grounds, by an agreement to arbitrate. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

In Michigan, “a ‘question of arbitrability’ is an issue for judicial determination unless the parties unequivocally indicate otherwise.” *Gregory J Schwartz & Co v Fagan*, 255 Mich App 229, 232 (2003), citing *Howsam v Dean Witter Reynolds, Inc*, 537 US 79; 123 S Ct 588; 154 L Ed 2d 491 (2002). Further, MCL 691.1686(1) provides that “[a]n agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.”

Further, “[t]he court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.” MCL 691.1686(2). Michigan courts have consistently reasoned that “our Legislature and our courts have strongly endorsed arbitration as an inexpensive and expeditious alternative to litigation.” *Rembert v Ryan’s Family Steak Houses, Inc*, 235 Mich App 118,133; 596 NW2d 208 (1999). As a result, “any doubts about the arbitrability of an issue should be resolved in favor of arbitration.” *DeCaminada v Coopers & Lybrand*, 232 Mich App 492, 499; 591 NW2d 364 (1998).

Defendants’ motion is based on a provision found in paragraph 12 of the Investment Agreement. The provision provides (in full):

All claims demands, disputes, controversies, differences, or misunderstandings between the parties relating to this Securitized Loan Document shall be settled by arbitration, in accordance with the rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator or arbitrators may be entered and enforced in any court having jurisdiction.

In response, Plaintiff only argues that the arbitration agreement is only enforceable as to LRE because Faddis only signed as a corporate representative and not in his individual capacity. The Court agrees. The parties' dispute concerns Plaintiff's investment in LRE, which falls squarely within the arbitration provision.

Under the Uniform Arbitration Act, "If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim." MCL 691.1687(7).

Because Plaintiff's dispute with LRE is subject to arbitration, the Court finds it appropriate to stay the remainder of the case pending arbitration on this issue. Once the arbitration with respect to Plaintiff's dispute with LRE is concluded, Plaintiff's case with respect to Michael Faddis may proceed (unless the parties agree to also submit said claim to arbitration).

The parties must notify the Court within 28 days of the final arbitration report.

IT IS SO ORDERED.

May 20, 2015
Date

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