

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

**MICHAEL WEBER and  
OR DIRECT, LLC,  
Plaintiffs,**

v.

**Case No. 14-143538-CZ  
Hon. James M. Alexander**

**WILLIAM DELANEY,  
Defendant.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendant’s motion for summary disposition. Plaintiff brought this suit to settle a dispute over the ownership of Plaintiff OR Direct, LLC. Plaintiff Michael Weber claims that he is the 100% owner, and Defendant claims that he owns 40% of the company.

Plaintiff Weber is a Michigan resident, OR Direct is a Michigan Limited Liability Company, and Defendant is an Arizona resident. Defendant now moves for summary disposition under MCR 2.116(C)(1) – arguing that Michigan lacks 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 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 Defendant. 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 600.705, which provides in relevant part:

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.

Plaintiff concludes that subsection (1) applies here because Defendant purposefully availed himself of the privilege of conducting business in Michigan.

In interpreting this section, our Court of Appeals has reasoned that “[a] single transaction may be sufficient to meet the ‘minimum contacts’ test,” and “[t]he word ‘any’ in MCL 600.705(1) means, according to the Supreme Court in *Sifers v Horen*, supra, just what it says. It includes each and every. It comprehends the slightest.” *Parish v Mertes*, 84 Mich App 336, 339-340; 188 NW2d 623 (1978), quoting *Sifers v Horen*, 385 Mich 195, 199 n 2; 188 NW2d 623 (1971).<sup>1</sup>

In his Motion, Defendant argues that he never performed any services for the parties’ business venture in Michigan, he never resided in Michigan, and he never transacted any business in Michigan.

In response, Plaintiffs claim that Defendant has: (1) visited Michigan on business, (2) contacted Mr. Weber about entering into the joint business venture, and (3) had preliminary discussions about regarding the formation of the proposed business. Each of these claims is supported by Plaintiff Weber’s affidavit.

Despite arguing that he never conducted business in Michigan, in his Reply Brief, Defendant admits that he did visit Michigan to meet with Weber regarding an unrelated business.<sup>2</sup> Rather, it appears that Defendant makes great effort to qualify his presence in Michigan as not relating to the joint business venture at issue in this case. But Plaintiff admits that he has conducted business in Michigan – albeit for other reasons.

And while Defendant argues that there are factual disagreements about the extent of Defendant’s transaction of business in Michigan, the Court is bound to resolve such disputes in

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<sup>1</sup> The *Oberlies* Court similarly reasoned when evaluating the equivalent statute pertaining to businesses, 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.

<sup>2</sup> Defendant claims that “the visit related to [his] prior work for two entirely different companies, Covidien and Integra.”

the non-movant's (Plaintiff's) favor. *Jeffrey*, 448 Mich at 184. As a result, the Court finds that Defendant's alleged contacts with Michigan constitute actions sufficient to meet the "transaction of any business" test for purposes of the present motion.<sup>3</sup>

## II. 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).

On this test, Plaintiffs offer only conclusory statements and minimal 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).

Generally, Plaintiffs claim that Defendant had email contact with Weber, a Michigan resident. They also claim that Defendant visited Michigan when working for a separate company selling the same product as the proposed joint venture.

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<sup>3</sup> The Court also notes the irony of Defendant's position – he claims that he is a member of Plaintiff OR Direct, a Michigan LLC, but somehow Michigan cannot exercise jurisdiction over him. This, despite MCL 600.705(6), which provides Michigan with limited personal jurisdiction over individuals "[a]cting as a director, manager, trustee, or other officer of a corporation incorporated under the laws of, or having its principal place of business within this state."

### 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).

As stated, Plaintiffs claim that Defendant had email contact with a Michigan resident and previously visited Michigan on unrelated business. The sole case that Plaintiffs rely on is *Fisher v Blackmore*, 325 F Supp 2d 810 (ED MI 2004), which they claim is “very similar.”

In *Fisher*, a Michigan resident sued a Massachusetts resident. The plaintiff claimed that both parties were shareholders in a Michigan Corporation – although defendant denied it. The plaintiff claimed that the defendant was diverting business from said company to another company that he solely owned. The defendant moved for dismissal based on lack of personal jurisdiction.

The *Fisher* Court analyzed the above factors and reasoned that the first element of the due-process test was satisfied based on the following facts: (1) the defendant entered Michigan on three separate occasions to attend meetings and conduct business related to the Michigan corporation, (2) on each of these occasions the Michigan LLC’s business was “extensively discussed,” (3) the defendant “allegedly received copies of federal tax returns filed by this Michigan entity for the purposes of filing his own individual tax returns,” and (4) the defendant

“contacted [the plaintiff] and allegedly requested that he be allocated a portion of [the Michigan corporation’s] business losses for personal tax purposes.” *Fisher*, 325 F Supp 2d at 815-816.

In this case, however, Plaintiffs only allege email correspondence, and except for two specific examples provided,<sup>4</sup> the subject matter of said correspondence is largely unclear. As a result, the Court finds that Plaintiffs fail to allege facts to make this case sufficiently analogous to *Fisher* for the Court to find that Plaintiffs have met their burden on this first element.

## 2. Defendant’s Activities in the State

Next, the Court considers whether the cause of action arises from Defendant’s activities in the state. 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.

In *Fisher*, the federal court concluded that this second element was met on allegations that the defendant “deliberately made false representations to [the plaintiff] regarding the potential profits of [the Michigan business] and the transfer of [the defendant’s] customer base into the Michigan entity.” *Fisher*, 325 F Supp 2d at 816. The Court further reasoned that these alleged misrepresentations “were made to induce [the plaintiff] to enter into a business

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<sup>4</sup> Plaintiff attaches only two emails between the parties – one dated February 18, 2014 and one dated September 3, 2014.

relationship with [the defendant], and resulted in [the plaintiff] directing the transfer of a significant amount of funds from a Michigan business to [the defendant].” *Id.*

But our case is distinguishable because Plaintiff fails to allege an adequate nexus between Defendant’s alleged contact with Michigan and their cause of action. Plaintiffs only allege largely nonspecific email exchanges between the parties. Defendant’s prior visits for unrelated businesses are too distant from the present claim to form a “natural and continuous sequence” that founded the basis for Plaintiff’s lawsuit. As a result, this part of the test is not met.

3. *Is Jurisdiction Reasonable?*

Finally, the Court finds that Defendant’s connections with Michigan also fail to 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.

As stated, Plaintiffs allege largely nonspecific email exchanges. On these allegations, the Court finds that Plaintiffs fail to allege adequate connections with Michigan to make the exercise of jurisdiction reasonable.

For all of the foregoing reasons, the Court finds that Plaintiff failed to make a prima facie showing that Defendant had sufficient minimum contacts with Michigan such that exercising jurisdiction over him would comport with due process. As a result, Defendant’s motion for summary disposition is GRANTED, and Plaintiff’s Complaint is DISMISSED without prejudice.

This Order is a Final Order the resolves the last pending claim and closes the case.

**IT IS SO ORDERED.**

April 15, 2015  
Date

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