

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

**NATIONAL CENTER FOR FACULTY
DEVELOPMENT & DIVERSITY, LLC,
Plaintiff,**

v.

**Case No. 15-147470-CB
Hon. James M. Alexander**

**ROXANNE DONOVAN, ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendants’ motion for summary disposition. According to its Complaint, Plaintiff provides faculty mentoring and coaching services and programs to a number of universities and colleges and individual faculty members. Plaintiff claims that the content of its services, programs, and materials have been developed over many years and at great expense.

Defendants are former faculty mentors or coaches who contracted with Plaintiff to provide said services to Plaintiff’s clients. Plaintiff further claims that each Defendant was required to execute a document titled “Non-Disclosure/Confidentiality/Non-Compete Agreement” prior to a Michigan training seminar. These agreements do not contain Michigan forum-selection clauses, and although titled as such, do not appear to have express non-competition clauses.

Plaintiff filed the present suit on claims that Defendants left Plaintiff’s employ and started a competing business “using [Plaintiff’s] materials, programs, products and services.” As

a result, Plaintiff alleges that Defendants are using Plaintiff's confidential information for their own commercial purposes and personal gain.

On these general allegations, Plaintiff brought claims for (Count I) Breach of Contract; (Count II) Unjust Enrichment; (Count III) Civil Conspiracy; and (Count IV) Declaratory Relief.

Defendants now move for summary disposition under MCR 2.116(C)(1) – arguing that Michigan lacks personal jurisdiction because Defendants are Georgia, Texas, and Iowa residents, respectively.

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 dispute that Michigan cannot 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.

I. Long-Arm Statute

First, the Court must determine whether 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.
- (2) The doing or causing an act to be done, or consequences to occur, in the state resulting in an action for tort.

Plaintiff argues that subsections (1) and (2) apply here, and the Court will address each in turn.

With respect to subsection (1), 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).¹

In their Motion, Defendants argue that each of them: (1) were offered and accepted their coaching opportunities outside of Michigan; (2) provided said coaching services outside of

¹ 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.

Michigan; (3) were employed in their home states, not Michigan; and (4) performed coaching by telephone and computer with clients located outside of Michigan.

In response, Plaintiff specifically points to Defendants' travel to Michigan for training purposes in June 2013. Plaintiff claims that, on June 25, 2013, "Defendants arrived in Michigan for a three-day training workshop and seminar with [it] to prepare them for their roles as . . . coaches and mentors." Plaintiff paid for Defendants' flights, meals, and accommodations.

At that time, Plaintiff alleges that Defendants received three hours of training on June 25, eight hours on June 26, and three hours on June 27, 2013. This training, Plaintiff claims, "largely consisted of Defendants being taught [Plaintiff's] core programs and materials and how to teach those programs and materials." And, in anticipation of said training, each Defendant executed the aforementioned "Non-Disclosure/Confidentiality" Agreement.²

Following this training, Plaintiff claims that Defendants continued to have contact with Plaintiff's Michigan personnel and reported to Plaintiff's CEO, Dr. Kerry Ann Rockquemore. And Defendants were paid by Plaintiff in Michigan.

While Defendants do not dispute Plaintiff's allegations regarding this Michigan training visit, they argue that said visit occurred between one and two years after Plaintiff hired Defendants.³ Defendants argue that Plaintiff sought them in their home states and provided them materials outside of Michigan. As a result, Defendants claim, they "did not seek to do business in Michigan and made no effort to have any contact with Michigan."

Defendants concentrate on the notion that Plaintiff "instructed the defendants to come to Michigan for a Coach Retreat [during] the course of their employment." Defendants also argue

² Defendant Roxanne Donovan executed the Agreement on May 25, 2013; Defendant Joycelyn Moody executed the Agreement on June 13, 2013; and Defendant Shanna Benjamin executed the Agreement on June 1, 2013.

³ Defendants claim that Donovan was hired in 2011, and Moody and Benjamin in 2012.

that they “did not perform any work in Michigan,” and they “were already well versed in plaintiff’s materials for more than one year prior to the seminar.”

In other words, Defendants appear to argue that there should be a temporal element to contacts necessary to establish the transaction of any business within the meaning of the statute. And because Defendants’ Michigan training occurred after they were already Plaintiff employees, their June 2013 Michigan training visit carries no consequence.

But Defendants do not cite any authority in support of the proposition that the Michigan training (occurring one-to-two years after their hire) is somehow exempt from consideration for purposes of Michigan’s long-arm statute just because it occurred after they were already employed. 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).

This argument is also inconsistent with the general notion that Michigan’s long-arm statute extends “to the farthest limits permitted by due process.” *Sifers*, 385 Mich at 199.

Michigan caselaw has consistently held the slightest contact sufficient to exercise jurisdiction – including over parties who never even set foot in Michigan. See *Kiever v May*, 46 Mich App 566; 208 NW2d 539 (1973) (holding that defendant’s advertisement in a national publication circulated in Michigan and a telephone call with Michigan was enough) and *Aaronson v Lindsay & Hauer Intern Ltd*, 235 Mich App 259; 597 NW2d 227 (1999) (holding that plaintiff’s initiation of and subsequent contacts with a Canadian corporation and said corporation’s shipment of goods to Michigan was enough).

In this case, Defendants came to Michigan for purposes of training in Plaintiff’s business. Although this training occurred one-to-two years after Plaintiff hired Defendants, the Court finds

that said contacts are sufficient to meet the overwhelmingly broad transaction of “any” business in Michigan. As a result, the Court finds that Defendants’ alleged contacts with Michigan constitute actions sufficient to meet the “any transaction of any business” test for purposes of the present motion.⁴

II. Comports with due process.

The next step in the analysis is determining whether Defendants had sufficient minimum contacts with Michigan such that exercising jurisdiction over them 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

⁴ With respect to MCL 600.705(2), Defendants argue that they committed no tort in Michigan. On this point, the Court agrees. Plaintiff does not point to a single alleged tort **committed in Michigan**. While Plaintiff alleges a tort, it is unclear when and where Plaintiff alleges that said tort was committed. As a result, MCL 600.705(2) cannot serve as a basis for Michigan’s exercise of jurisdiction.

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, Plaintiff claims that Defendants came to Michigan for training that resulted in Defendants' obtaining the very materials that they later chose to improperly use when creating their competing business. And while Defendants dispute this characterization, claiming that they already had the knowledge, the Court is bound to resolve all factual disputes in the non-movant's (Plaintiff's) favor. *Jeffrey*, 448 Mich at 184.

In so doing, the Court must find that Defendants' Michigan travel and interactions with Plaintiff were a "deliberate undertaking" that was a "prime generating cause" of the allegations in the Complaint, such that Defendants could foresee being "haled before a Michigan court." *Jeffrey*, 448 Mich at 188.

As a result, the Court concludes that Defendants purposefully availed themselves of the privilege of doing business in Michigan.

2. *Defendants' Activities in the State*

Next, the Court considers whether the cause of action arises from Defendants' 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.

Further, the U.S. Supreme Court instructs that entering into a contract with a resident of another jurisdiction is not sufficient by itself to meet the due process test. *Burger King Corp v Rudzewicz*, 471 US 462, 478 (1985). 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 *International Shoe*, 326 US 310, the U.S. 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.

Again, Plaintiff claims that the Michigan training introduced Defendants to much of the confidential materials and techniques that they allegedly stole to use in the formation of their competing business. These allegations are sufficient to establish a natural and continuous sequence that proximately formed the basis for Plaintiff's Complaint. As a result, this second element is met.

3. *Is Jurisdiction Reasonable?*

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

Defendants chose to provide services for a Michigan company and came to Michigan for training and proprietary materials belonging to a Michigan company.

On this issue, Defendants offer no real analysis – instead, concentrating on the argument that the present action does not arise out of their contacts with Michigan. But the Court has concluded otherwise.

The Court finds no reason to conclude that the exercise of jurisdiction in Michigan is unreasonable, and as a result, this final element is met.

Conclusion

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

IT IS SO ORDERED.

September 2, 2015
Date

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