

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

**CHARLES SNELL a/k/a DETROIT CHARLIE
and IBGM, LLC,
Plaintiffs,**

v.

**Case No. 15-148334-CB
Hon. James M. Alexander**

**DEJA TRIMBLE a/k/a DEJ LOAF, ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on two motions for summary disposition that, together, cover all Defendants. Defendants Deja Trimble, Michael Brinkley, and Joy Hailey move for summary disposition of Plaintiff’s Complaint based on a contractual forum-selection clause. And Defendants Damien Granderson and Davis, Shapiro, Lewit, Grabel, Leven, Granderson & Blake, LLP move to dismiss based on lack of personal jurisdiction.

According to their Complaint, Plaintiffs claim that Plaintiff Charles Snell invested substantial time, money and resources to develop the talent of and manage rising hip-hop artist Defendant Deja Trimble into a successful entertainer and recording artist who goes by the name “Dej Loaf.” For example, Plaintiffs claim they played “an integral role” in helping Trimble secure a recording contract (“Furnishing Agreement”) with Columbia Records (a Division of Sony Must Entertainment).

Plaintiffs also claim that Snell “paid for the majority of Trimble’s breakthrough project, ‘Sell Sole,’ and the song that put her on the map, ‘Try Me.’” Together, Snell and Trimble

formed Plaintiff IBGM, LLC, through which Snell would conduct his artist management and talent-development business.

The Furnishing Agreement is between IBGM and Sony. In connection with entering into the Agreement, Plaintiffs claim that IBGM was represented by Defendant Damien Granderson of Defendant law firm Davis Shapiro.

Plaintiffs claim that, as Trimble's talent came into greater demand, they "brought on Defendants Michael Brinkley . . . and Joy Haley . . . to co-manage Trimble and to join IBGM as equal partners." Despite the parties' agreement, Plaintiff claims that Brinkley and Hayley began to "misappropriate Trimble's talent away from Snell and IBGM." Plaintiff claims that Trimble consented to Brinkley and Haley's misconduct and informed her record label that IBGM was no longer her furnishing agent.

Defendant law firm Davis Shapiro, who formerly represented Plaintiff IBGM in the Columbia deal, then "advised Sony that IBGM no longer held the rights to furnish Trimble's recording services." Plaintiffs claim that "Davis Shapiro then began represented Trimble adverse to IBGM," including "making demands and asserting claims against IBGM on behalf of Trimble." It appears that said demands and claims relate to Trimble's decision to part ways with Plaintiffs.

Plaintiffs claim that this conduct is the basis for the present lawsuit, and "Plaintiffs have suffered damages based on the full value of the Furnishing Agreement, Trimble's touring revenues, merchandising revenues, music publishing revenues, revenues from Trimble's public appearances, revenues for sponsorships, and all other revenues earned by Trimble within the entertainment industry."

Plaintiffs ten-count Complaint alleges claims of breach of contract, unjust enrichment, tortious interference, breach of fiduciary duty, aiding and abetting, and conversion claims.

I. Trimble, Brinkley, and Haley’s motion based on forum-selection clause.

First, Defendants Trimble, Brinkley, and Haley move for summary disposition based on a contractual forum-selection clause. Such motions are properly considered under MCR 2.116(C)(7), which tests when a party argues that a claim is barred, among other grounds, by “an agreement to . . . litigate in a different forum.”

“It is undisputed that Michigan’s public policy favors the enforcement of contractual forum-selection clauses and choice-of-law provisions.” *Turcheck v Amerifund Fin, Inc*, 272 Mich App 341, 345; 725 NW2d 684 (2006).

Michigan’s Revised Judicature Act, at MCL 600.745(3), provides (in relevant part): “If the parties agreed in writing that an action on a controversy shall be brought only in another state and it is brought in a court of this state, the court shall dismiss or stay the action, as appropriate.”

Defendants base their motion on a provision found in the “Form Agreement” that accompanied the Furnishing Agreement. Paragraph 10.08 of the Form Agreement provides (emphasis removed): “The New York Courts (state and federal), shall have sole jurisdiction of any controversies regarding this agreement; and action or other proceeding which involves such a controversy shall be brought in those courts in New York County and not elsewhere.”

In their Response, Plaintiffs claim: (1) that the Form Agreement was never executed by the parties, (2) the only parties who signed and should bound by the Agreement are IBGM and Sony (and none of the Defendants), (3) the forum-selection clause was not specifically adopted, and (4) there is no dispute over the agreement implicating the forum-selection clause.

With respect to Plaintiffs' first argument, as Defendants point out, the Furnishing Agreement specifically incorporates the Form Agreement by reference. In fact, this incorporation and reference is the very first provision of the Furnishing Agreement (at page 1) and provides (emphasis added):

Reference is made to the standard form exclusive recording agreement of Columbia Records, a Division of Sony Music Entertainment, 550 Madison Avenue, New York, New York 10022-3211 ("Sony"), attached hereto as Exhibit A (the "Form Agreement").

This letter, supplemented by the Form Agreement, will constitute the binding agreement between you and Sony regarding your furnishing the services of Dej Loaf (the "Artist") as a recording artist. In the event any conflict between the Form Agreement and the provisions described below, the provisions described below shall control.

You and Sony agree to expeditiously prepare and execute a more formal agreement (the "Supplemental Agreement") and to negotiate in good faith with respect to the provisions (other than those set forth below) to be included therein. The Supplemental Agreement will include all of the provision of the Form Agreement which have been incorporated herein by reference or which are specifically referred to herein, and shall otherwise be in the form of the Form Agreement, except in such respects as provided for below or as you and Sony shall otherwise agree in writing. You and Sony hereby further agree that any delay or failure to complete the Supplemental Agreement shall not in any manner impede or compromise the enforceability and effectiveness of this agreement. If you and Sony, each acting in good faith, are unable to reach an agreement regarding the terms of the Supplemental Agreement, then this letter supplemented by the applicable terms of the Form Agreement will constitute a binding agreement. Unless specifically provided to the contrary below, all terms defined in the Form Agreement will have the same meanings when used below.

The Furnishing Agreement was executed by Columbia Records and Defendant IBGM (of which, Snell and Trimble are members). Contemporaneous with its execution, Defendant Trimble executed an "Artist's Assent and Guaranty," which provides that she "assents to the execution of the Agreement and agreed to be bound by all grants, restrictions, and other provisions of the Agreement relating to the Artist." (Paragraph 1.(b)).¹

¹ Brinkley and Haley did not sign the agreement.

While Plaintiffs claim that the Form Agreement is of no consequence because it was not specifically executed, this argument ignores long-standing Michigan law: “Where one writing references another instrument for additional contract terms, the two writings should be read together.” *Forge v Smith*, 458 Mich 198, 207; 580 NW2d 876, 881 (1998), citing *Whittlesey v Herbrand Co*, 217 Mich 625, 628; 187 NW 279 (1922) (reasoning “[i]n a written contract a reference to another writing, if the reference be such as to show that it is made for the purpose of making such writing a part of the contract, is to be taken as a part of it just as though its contents had been repeated in the contract.”).

In this case, the Furnishing Agreement specifically references the Form Agreement and incorporates its terms therein. Although the Furnishing Agreement provides that the parties may, in the future, execute a Supplemental Agreement, it is undisputed that they did not do so. As a result, the Furnishing and Form Agreements, together, control.

Plaintiffs also argue that “the only terms of the Form Agreement which have been incorporated into the Furnishing Agreement are the ‘applicable terms’ – those which are specifically referenced in the Furnishing Agreement,” citing the following provision: “If you and Sony, each acting in good faith, are unable to reach an agreement regarding the terms of the Supplemental Agreement, then this letter **supplemented by the applicable terms** of the Form Agreement will constitute a binding agreement.” (emphasis added).

But, as stated, this sentence comes near the end of the Furnishing Agreement’s first provision (as reproduced in its entirety above). When read in whole, it is apparent that the “applicable terms” referred to in the last sentence means those not conflicting with the terms of the Furnishing Agreement. Two paragraphs earlier, the Furnishing Agreement provides: “In the

event any conflict between the Form Agreement and the provisions described below, the provisions described below shall control.”

This is the only way to harmoniously read these provisions. Michigan law is well-established that “a court must construe and apply unambiguous contract provisions as written.” *Rory v Cont’l Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). As often repeated by our Supreme Court, “courts must ... give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory.” *Knight Enterprises v Fairlane Car Wash*, 482 Mich 1006; 756 NW2d 88 (2008); quoting *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003).

The Furnishing Agreement begins “This letter, supplemented by the Form Agreement, will constitute the binding agreement between you and Sony regarding your furnishing the services of Dej Loaf (the “Artist”) as a recording artist.” If the Court were to accept Plaintiffs’ interpretation – that only specifically identified provisions of the Form Agreement are incorporated – then this provision would be “surplusage or nugatory.” The two would conflict.

But, as stated, if the Court interprets “applicable terms” as those which are unconflicting with specific provisions of the Furnishing Agreement, then no provisions are rendered surplusage or nugatory. This is the Court’s interpretation.

Plaintiffs next claim that paragraph 19.10 of the Form Agreement provides that “This agreement shall not become effective until executed by all proposed parties hereto,” and no parties executed it. Therefore, Plaintiffs argue that the Form Agreement is not effective.

But this argument also ignores longstanding law as cited above, when the Form Agreement was specifically reference and incorporated into the Furnishing Agreement, it was executed as part of the Furnishing Agreement.

Plaintiffs next argue that Defendants have no standing to enforce the forum-selection clause because only Sony and Plaintiff IBGM signed the Furnishing Agreement. But Defendants do not dispute that Trimble is a member of IBGM or that she signed, individually, the “Artist’s Assent and Guaranty,” which provides that she “assents to the execution of the Agreement and agreed to be bound by all grants, restrictions, and other provisions of the Agreement relating to the Artist.” (Paragraph 1.(b)).

As stated, however, the co-moving Defendants Brinkley and Haley undisputedly did not sign in any capacity. As a result, they are not bound by its terms or the forum-selection clause.

With respect to Trimble, there’s another problem – Plaintiffs argue that this case does not involve a controversy regarding the Furnishing Agreement. Rather, Plaintiffs claim, reference to the Furnishing Agreement in the Complaint “is to describe the events leading up to this litigation and to describe a portion of the damages suffered by Plaintiffs.” In other words, Plaintiffs do not have a problem with the Furnishing Agreement – other than being squeezed out of the proceeds flowing from it. And that, Plaintiffs claim, is not a controversy involving the Furnishing Agreement. The Court agrees.

While part of Plaintiffs’ alleged damages flow from the Furnishing Agreement, the present case is not a controversy about the Furnishing Agreement itself. As a result, Defendants’ motion for summary disposition based on the contractual forum-selection clause is DENIED.

II. Granderson’s and Davis Shapiro’s motion based on lack of personal jurisdiction.

Next, Defendants Granderson and Davis Shapiro seek to dismiss Plaintiffs’ Complaint against them based on a lack of 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 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.

First, the Court must determine whether Defendants' activities fall within a provision of the long-arm statute, MCL 600.705,² 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

² MCL 600.705 concerns whether a court can exercise limited personal jurisdiction over an individual. MCL 600.715 concerns limited personal jurisdiction over a corporation. The language of these two statutes, however, is virtually identical for our purposes.

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.

Plaintiffs argue that subsections (1) and (2) apply here. The Court will note that Plaintiffs concede that Defendants were not physically present in Michigan.

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).³

Defendant Granderson is a New York licensed attorney and member of Defendant law firm Davis Shapiro, whose offices are in Beverly Hills, California and New York, New York. In their Motion, Defendants argue that: (1) they were retained in California; and (2) the recording contract was negotiated and executed in New York. Plaintiff does not dispute these things.

In response, Plaintiff argues that Defendants transacted business in Michigan when it emailed and telephoned Plaintiff in Michigan regarding the Sony negotiations and deal and other record company negotiations.

Plaintiff further argues that, with respect to subsection (2), Defendants’ breach of their fiduciary duties to Plaintiffs caused consequences in Michigan – the cancellation of the Sony

³ 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.

furnishing agreement. But Plaintiffs offer little reasoning in support of their claims regarding both subsections.

In support of their argument, Plaintiffs (in part) cite *Sifers*, 385 Mich 195 for the proposition that **any contact** is enough. But, in *Sifers*, the defendant attorney appeared in Michigan to lecture at a seminar, where he was approached by the plaintiff's Michigan attorney to discuss a possible Kentucky wrongful death claim. The attorneys subsequently met with the plaintiffs in Detroit to prepare their case. Based on these facts, our Supreme Court held that there was a sufficient basis to find that the Kentucky attorney transacted business in Michigan.

In this case, however, Defendants never came to Michigan. They were not hired in Michigan, but were retained by Trimble in California. The negotiations and record deal were signed in New York. And although Defendants forwarded negotiation updates to Plaintiffs in Michigan, the Court does not find this sufficient to find that Defendants transacted business here. As a result, the Court rejects Plaintiff's reliance on MCL 600.705(1).

Next, Plaintiff argues that Defendants' breach of their fiduciary duties to Plaintiffs caused consequences in Michigan – the cancellation of the Sony furnishing agreement – which damaged Plaintiffs. But *Sifers* warned of such a broad reading of MCL 600.705(2), reasoning: “The statute does not mean, and cannot consistently with due process provisions mean, that any time an act occurs affecting a Michigan resident there are consequences in the state, granting jurisdiction over the tortfeasor.” *Sifers*, 385 Mich at 206.

But this is precisely what Plaintiff argues – he was affected by an out-of-state Defendants' actions in another state. Somehow, Plaintiff claims, this satisfies MCL 600.705(2). The Court disagrees. And Plaintiff cites no binding authority supporting this position.

Just as our Supreme Court reasoned in *Sifers*, the Court finds that our out-of-state Defendants' actions in another state cannot, alone, satisfy MCL 600.705(2).

Because the Court has found that Defendants' conduct does not fall within the long-arm statute, it need not analyze whether the exercise of jurisdiction comports with due process.

In sum, the Court concludes that Plaintiff has failed to make a prima facie showing of this Court's jurisdiction over Damien Granderson and Davis, Shapiro, Lewit, Grabel, Leven, Granderson & Blake, LLP. As a result, these Defendants' Motion for Summary Disposition under (C)(1) is GRANTED, and Plaintiffs' Complaint only as to these Defendants is DISMISSED.

IT IS SO ORDERED.

December 16, 2015
Date

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