

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

**FRED SHUART,
Plaintiff,**

v.

**Case No. 15-150663-CB
Hon. James M. Alexander**

**PACIFIC LIFE INS CO, ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendants Pacific Life’s, Cenogen Technologies’, Peter Harvey’s motions for summary disposition.

According to his First Amended Complaint, Plaintiff is the former president of Defendant ICOMM Corporation. And Defendant Peter Harvey is the Chairman of the Board of Defendant Cenogen, which owned and controlled ICOMM.

On June 5, 2003, at ICOMM’s request, Pacific Life issued an insurance policy for Plaintiff’s benefit – identifying Plaintiff as the insured and ICOMM as the owner. On September 3, 2003, Plaintiff alleges that he and ICOMM agreed that Plaintiff would be entitled to the cash value of the policy “[u]pon a sale of all the stock of [ICOMM], or substantially all of its assets.”

Plaintiff alleges that, on August 18, 2015, Pacific Life’s agent was notified that Plaintiff elected to receive the cash value of the policy. A month and a half later, on November 5, 2015, Plaintiff claims that “ICOMM sold all its stock or substantially all its assets.” Around the same time, despite his claimed entitlement to the cash value of the policy, Plaintiff alleges that Pacific

Life paid the cash value of the policy to ICOMM's attorney. Plaintiff alleges that Pacific Life did so upon the direction of Harvey "acting as ICOMM's Chairman."

Plaintiff then filed the present suit seeking payment of the \$113,000 cash value of the policy. To this end, Plaintiff alleged (Count I) an untitled count against Pacific Life, (Count II) breach of contract against ICOMM, and (Counts III and IV) two claims alleging fraudulent transfer.

Pacific Life now moves for summary disposition of Plaintiff's claims based on a failure to state a claim under MCR 2.116(C)(8). And Harvey and Cenogen move for summary disposition under MCR 2.116(C)(1) based on a lack of personal jurisdiction.

I. Pacific Life's (C)(8) Motion.

Pacific Life first moves for summary disposition under (C)(8), which tests the legal support for a plaintiff's claims. When analyzing such a motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dept of Corrections*, 439 Mich 158, 162-163; 483 NW2d 26 (1992). A (C)(8) motion may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* And, when deciding such a motion, the court considers only the pleadings. MCR 2.116(G)(5) (emphasis added).

Although untitled, Plaintiff claims that his Count I alleges a claim for tortious interference with a contract. In order to establish tortious interference with a contract or business advantage, a plaintiff must prove:

The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, . . . (3) an unjustified instigation of the breach by the defendant [and (4) damages]. *Health Call of Detroit v Atrium*

Home & Health Care Services, Inc., 268 Mich App 83, 89-90; 706 NW2d 843 (2005) (internal citations omitted).

Further, “[O]ne who alleges tortious interference with a contractual or business relationship must allege the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another.” *Feldman v Green*, 138 Mich App 360, 378; 360 NW2d 881 (1984). “A wrongful act per se is an act that is inherently wrongful or an act that can never be justified under any circumstances.” *Prysak v R L Polk Co.*, 193 Mich App 1, 12-13; 483 NW2d 629 (1992).

Further, Michigan Courts have long held that “defendants motivated by legitimate personal and business reasons are shielded from liability against this cause of action [tortious interference with a contractual or business relationship].” *Formall, Inc v Community Nat'l Bank*, 166 Mich App 772, 780; 421 NW2d 289 (1988); citing *Christner v Anderson, Nietzke & Co, PC*, 156 Mich App 330, 348-349; 401 NW2d 641 (1986). See also *Mino v Clio Sch Dist*, 255 Mich App 60, 78; 661 NW2d 586 (2003), quoting *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996) (“Where the defendant’s actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference.”).

Plaintiff alleges that Pacific Life tortiously interfered with his contract with ICOMM by paying the cash value of the insurance policy to ICOMM (as the owner of said policy). But Pacific Life’s contractual payment to the owner of said policy cannot possibly constitute a per se wrongful act and no reasonable fact-finder could so conclude.

For this reason and viewing all well-pled allegations as true and construing them a light most favorable to Plaintiff, the Court finds that Plaintiff’s Count I for tortious interference is so clearly unenforceable as a matter of law that no factual development could possibly justify

recovery. As a result, Pacific Life's motion for summary disposition is GRANTED under (C)(8) and Plaintiff's Count I is DISMISSED.¹

II. Harvey's and Cenogen's (C)(1) Motions.

Next, Defendants Harvey and Cenogen move for summary disposition under MCR 2.116(C)(1) – arguing that Michigan lacks personal jurisdiction because Harvey is an Illinois resident and Cenogen has no Michigan connection.

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 at 184. 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 Harvey or Cenogen. As a result, the 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

¹ Because the Court has so ruled, it need not address Pacific Life's duty argument.

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 600.705 for individuals and MCL 600.715 for corporations. Section 705 provides, in relevant part (emphasis added):

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.
- ...
- (5) Entering into a contract for services to be rendered or for materials to be furnished in the state by the defendant.
- (6) Acting 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.

Plaintiff argues that subsections (1), (2), (5), and (6) above apply to Harvey.

With respect to Cenogen, MCL 600.715 similarly provides, in relevant part (emphasis added):

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.
- (2) The doing or causing any act to be done, or consequences to occur, in the state resulting in an action for tort.
- . . .
- (5) Entering into a contract for services to be performed or for materials to be furnished in the state by the defendant.

Plaintiff argues that subsections (1), (2), and (5) above apply to Cenogen.

With respect to subsection (1) of both statutes, 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).²

In his Response, Plaintiff claims that both Harvey and Cenogen transacted business in Michigan. In his Affidavit, Plaintiff claims that

Harvey regularly had telephone conversations and correspondence with [him] in Michigan regarding the business of ICOMM including the acquisition of and the closing of other related businesses, complying with his request to send him money from ICOMM, negotiating bank loans for ICOMM, directing me to hire his son Robert Harvey, and threatening to fire me.

With respect to Cenogen, Plaintiff claims in his Affidavit that “Cenogen filed tax returns listing its place of business in Farmington Hills, Michigan and its tax preparer was in Farmington Hills, Michigan.” And Plaintiff attaches said document as an exhibit.

² 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.

In its Reply Brief, Cenogen disputes Plaintiff's factual allegations.³ But, as stated, all factual disputes are resolved in the non-movant's favor. *Jeffrey*, 448 Mich at 184.

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).

Taking Plaintiff's allegations as true, the Court finds that Harvey's and Cenogen's alleged contacts with Michigan constitute actions sufficient to meet the "any transaction of any business" test for purposes of the present motion.

B. Comports with due process.

Although neither party addresses it, the next step in the analysis is determining whether Defendants Harvey and Cenogen 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).

³ There is no Reply Brief on Harvey's behalf in the court file.

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, Plaintiff claims that Defendants Harvey and Cenogen contacted Plaintiff in Michigan for business purposes. Plaintiff further claims that Cenogen is the parent corporation of ICOMM, which is Cenogen’s sole asset. Harvey is listed as ICOMM’s CEO on a December 2, 2015 filing with the Michigan Department of Licensing and Regulatory Affairs. Plaintiff also claims that Harvey held himself out in Michigan as the Chariman of ICOMM when he requested Pacific Life to distribute the cash value of the insurance policy to his attorney. While Defendants dispute these allegations, 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 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 both Defendants Harvey and Cenogen 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 the 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*, 471 US 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 Harvey (acting as ICOMM's Chairman or CEO) or Cenogen directed Pacific Life to disburse the cash value of the insurance policy.

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*, 448 Mich at 186.

Accepting Plaintiff's allegations as true, 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.

For all of the foregoing reasons, the Court finds that Defendants Harvey's and Cenogen's motions for summary disposition based on lack of personal jurisdiction is DENIED.⁴

IT IS SO ORDERED.

May 18, 2016
Date

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

⁴ Because the Court has determined that it has limited personal jurisdiction over these Defendants, it need not address the parties' remaining arguments.