STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

A PLUS PAINTING, LLC, a
Michigan Limited Liability Company,

Plaintiff,

Case No. 16-151640-CB
Hon. Wendy Potts

v

SUMMIT DEVELOPERS, INC. a
North Carolina Corporation and
WAL-MART REAL ESTATE BUSINESS
TRUST, a foreign entity,

Defendants.
_____/

OPINION AND ORDER RE: DEFENDANT WAL-MART REAL ESTATE BUSINESS TRUST'S MOTION FOR SUMMARY DISPOSITION FOR LACK OF PERSONAL JURISDICTION and DEFENDANT SUMMIT DEVELOPERS, INC.'S MOTION FOR SUMMARY DISPOSITION

At a session of Court
Held in Pontiac, Michigan
On
OCT 05 2016

For purposes of background, Defendant Summit Developers, a foreign corporation located in North Carolina, contracted with Plaintiff A Plus Painting, an Oakland County, Michigan business, for the performance of painting services located on a job site in Greenville, South Carolina. As alleged in the Complaint, Defendant Wal-Mart Real Estate Business Trust is a foreign entity doing business in Oakland County, Michigan. On September 7, 2016, the parties appeared for oral argument on the motions at which time the Court took the matters under advisement.

Defendant Walmart's motion for summary disposition

Defendant Wal-Mart Real Estate Business Trust (WREBT) now moves for summary disposition pursuant to MCR 2.116(C)(1) claiming that the Court lacks personal jurisdiction in the instant matter. Plaintiff has the burden of establishing a prima facie showing of jurisdiction. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). A Court reviewing a (C)(1) motion examines the pleadings, affidavits, and other documentation submitted by the parties in the light most favorable to the nonmoving party, and all factual disputes are resolved in the nonmovant's favor. MCR 2.116(G)(5); *Jeffrey, supra*. Allegations in the complaint are taken as true to the extent they are uncontroverted by the evidence. *Williams v Bowman Livestock Equipment Co*, 927 F2d 1128, 1130-1131 (CA 10, 1991). Further, 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).

"The existence of any of the following relationships between a corporation and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise general personal jurisdiction over the corporation and to enable such courts to render personal judgments against the corporation. (1) Incorporation under the laws of this state. (2) Consent, to the extent authorized by the consent and subject to the limitations provided in section 745. (3) The carrying on of a continuous and systematic part of its general business within the state." MCL 600.711.

WREBT alleges the Court lacks specific personal jurisdiction over WREBT and that the Court also lacks general jurisdiction over WREBT. In its motion, WREBT acknowledges that Michigan law permits the exercise of general jurisdiction over a non-consenting foreign corporation when the corporation has carried on a continuous and systematic part of its general

business in Michigan. See *Electrolines, Inc. v Prudential Assurance Company, Ltd.*, 260 Mich App 144, 166; 677 NW2d 874 (2003). As part of its response to WREBT's motion, Plaintiff submits evidence showing WREBT is registered with the Michigan Department of Licensing and Regulatory Affairs in Michigan as a foreign profit corporation, with a resident agent located in Oakland County.

In support of its arguments, WREBT cited to *Diamler AG v Bauman*, ___ US ___; 134 SCt 746; 187 LEd2d 624 (2014) alleging that general personal jurisdiction over a non-resident corporation is proper absent exceptional circumstances only in the state where such corporation is incorporated and where its principal place of business is located. *Diamler AG, supra* can be distinguished from the instant matter because the case involved a lawsuit in California, where independent automobile dealerships are located, for injuries allegedly caused by Mercedes-Benz Argentina that took place entirely outside of the United States. In *Diamler AG, supra*, neither Diamler nor Mercedes Benz USA was incorporated in California and neither had a principal place of business in Argentina. The Court held that jurisdiction was not proper in California. The Court finds that *Diamler AG, supra* is not applicable to the present set of facts. As alleged by Plaintiff, WREBT is an active foreign profit corporation in Michigan with a registered agent located in Oakland County, Michigan. The Court finds that Plaintiff has demonstrated a prima facie showing of this Court's jurisdiction over Defendant. *Jeffrey, supra.* Accordingly, WREBT's motion for summary disposition pursuant to MCR 2.116(C)(1) is denied.

Summit Developers, Inc.'s motion for summary disposition

Defendant Summit Developers also moves for summary disposition challenging the Court's personal jurisdiction over Summit. The parties do not argue that the Court can exercise

general personal jurisdiction over Defendant. Thus, the Court need only analyze limited personal jurisdiction. To determine whether the Court may exercise limited personal jurisdiction, it "must determine whether the defendant's conduct falls within a provision of Michigan's long-arm statute and whether the exercise of jurisdiction comports with due process." *Oberlies*, 246 Mich App at 428.

Defendant argues that Summit did not consent to jurisdiction in Michigan and that the Court lacks jurisdiction under MCL 600.745, but does not analyze jurisdiction under Michigan's long arm statute. Limited personal jurisdiction exists if (1) Defendant's conduct falls within a provision of Michigan's long-arm statute and (2) the exercise of jurisdiction comports with due process. *Id.* Under MCL 600.715(1), long-arm jurisdiction exists if Defendant transacts any business within the state. Our courts interpret the long-arm statute broadly such that the "slightest transaction" of business is sufficient to bring a party within Michigan's long-arm jurisdiction. *Id.* at 430. The contract between Plaintiff, a Michigan limited liability company, and Summit is attached to Summit's motion for summary disposition. This contract establishes that Defendant engaged in "the slightest transaction," of business sufficient to bring Summit within Michigan's long-arm jurisdiction. The Court finds that the parties' contract meets the "transaction of any business" test.

The next question is whether Summit has sufficient minimum contacts with Michigan such that exercising jurisdiction comports with due process. *Oberlies*, *supra* at 432-433. To make this determination, the Court applies a three-part test:

(1) Defendant must have purposefully availed itself of the privilege of conducting activities in Michigan.

(2) The cause of action must arise from Defendant's activities in the state.

(3) Defendant's activities must be substantially connected with Michigan.

See *Jeffrey*, 448 Mich at 186.

Purposeful availment exists if Summit engaged in "a deliberate undertaking to do or cause an act or thing to be done in Michigan." *Id.* at 187-188. Intentional contacts and communication with Michigan residents or a Michigan corporation is sufficient to show purposeful availment. *WH Froh, Inc v Domanski*, 252 Mich App 220, 231; 651 NW2d 470 (2002). 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).

There is no dispute that Summit communicated with Plaintiff at least one time and entered into a contract for services, thus Defendant purposefully availed itself of the privilege of doing business with a Michigan company. 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. Accordingly, the Court finds that Plaintiff has pled facts and there is sufficient evidence that Summit purposefully availed itself of the privilege of doing business in Michigan.

The next element is 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). In the Complaint, Plaintiff alleges that Summit and A Plus entered into a subcontract to complete painting at a Walmart located in Greenville, South Carolina. A Plus now argues that Summit has failed to and refuses to pay A Plus the amount due and owing pursuant to the contract for the

improvement of the property. Further, the contract between A Plus and Summit stated, in part, "[t]he Contractor employs the Subcontractor as an independent contractor, to furnish all labor, material, equipment, insurance and any and all taxes there on to perform, the following part of the work on the project, under the general limits and subject to the approval of the Contractor." The Court finds that Summit's contact with Plaintiff is sufficient to establish this second part of the test.

The final question the Court must address whether jurisdiction is reasonable. 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 178. Summit purposefully directed its activities at Plaintiff such that the exercise of jurisdiction here is reasonable. The Court concludes that Plaintiff has made a prima facie showing of this Court's jurisdiction over Defendant. *Jeffrey, supra.* Accordingly, Summit's motion for summary disposition under (C)(1) is denied.

As to the other issues raised in the parties' motions, those may be brought in a separate motion if the parties are unable to resolve their dispute upon the issuance of this opinion and order.

IT IS SO ORDERED.

Dated: OCT 0 5 2016

Hon. Wendy Potts