

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

**REVSPRING, INC,
Plaintiff,**

v.

**Case No. 16-151932-CB
Hon. James M. Alexander**

**DOMINION LAW ASSOCIATES, PLLC,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant’s motion for summary disposition. The Court dispenses with oral argument pursuant to MCR 2.119(E)(3).

In its Complaint, Plaintiff claims that it provided automated collection letter production, mailing, and tracking services to Defendant on an open account under a written agreement. For each “sale,” Plaintiff claims that it invoiced Defendant under either payable-upon-receipt or due-within-30-days terms. Plaintiff claims that, despite providing all services requested and required under the parties’ agreement, Defendant has failed to fully pay for said services – leaving an outstanding balance of \$28,167.57.

To recover said amount, Plaintiff filed the present Complaint on claims of breach of contract, account stated, and unjust enrichment. In response, Defendant filed the present motion in lieu of an Answer – arguing that Michigan cannot exercise jurisdiction over it because it is a Virginia company that only does business in that state.

Defendant moves to dismiss the present lawsuit under MCR 2.116(C)(1), which 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 such a 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).

I. Jurisdiction

In its Complaint, Plaintiff claims that it is a Delaware corporation headquartered in Wixom, Michigan, and Defendant is a Virginia company that has transacted business in Michigan. The Complaint also alleges that venue is appropriate in this Court based on the consent thereto contained in an October 22, 2013 "Professional Services Agreement."

Indeed, 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 corporate defendant if it is incorporated in Michigan or if it consented to the court's exercise of jurisdiction. MCL 600.711.

Plaintiff's consent allegation is presumably founded on Paragraph XVIII of the Agreement, which provides (emphasis added):

JURISDICTION – Client further acknowledges that the validity, performance and construction of this Agreement shall be governed by the laws of the State of Michigan without regard to conflict of law principles, that this Agreement was entered into in Wixom, Michigan, and Client further consents, knowingly, voluntarily and intelligently, to the exclusive jurisdiction of the Courts of Oakland County, Michigan or the United States District Court, 52nd District Court of Michigan, at the sole election of RevSpring. **Any claims by Client arising out of or related to this Agreement must be brought no later than six months after**

it has accrued, however, this clause only applies to claims by Client against RevSpring and not to claims by RevSpring against Client.

Based on this final, bolded sentence, Defendant argues that the above Section does not apply in this case because Plaintiff RevSpring brought claims against Defendant – not the other way around as provided in the final sentence.

But the Court rejects Defendant’s overbroad reading of said final sentence. Rather, by using the term “this clause,” the clear intent was that only Defendant has a six-month period to bring claims against Plaintiff. But this clause does not, in any other way, limit or qualify the remainder of the “JURISDICTION” paragraph.

Further, Plaintiff responds that Defendant is not relieved of the Agreement simply because Defendant has new ownership. This is so because, Plaintiff claims, business has proceeded as usual. In fact, the Bill of Sale for Defendant provides that the new owner assumes the liabilities of the business. A simple change in ownership will not relieve a business of its obligations under contracts executed under a prior owner.

For these reasons and viewing any factual dispute in Plaintiff’s favor (*Jeffrey*, 448 Mich 178), the Court finds that Defendant has consented to Michigan’s exercise of jurisdiction as provided in the Engagement Agreement. For this reason, Defendant’s motion for summary disposition based on lack of personal jurisdiction is DENIED.¹

II. Forum Non Conveniens

Defendant next argues that, should the Court find Defendant is bound by the Professional Services Agreement, then jurisdiction is still improper under *forum non conveniens* and MCL

¹ Because the Court has so concluded, it need not address Michigan’s long-arm statute.

600.745. Indeed, the consent provision of MCL 600.711(2) expressly implicates MCL 600.745, which provides, in relevant part:

If the parties agreed in writing that an action on a controversy may be brought in this state and the agreement provides the only basis for the exercise of jurisdiction, a court of this state shall entertain the action if all the following occur:

...

(b) This state is a reasonably convenient place for the trial of the action.

“‘Forum non conveniens’ is defined as the ‘discretionary power of court to decline jurisdiction when convenience of parties and ends of justice would be better served if action were brought and tried in another forum.’” *Radeljak v Daimlerchrysler Corp*, 475 Mich 598, 604; 719 NW2d 40 (2006), quoting Black's Law Dictionary (6th ed.). The decision whether to grant or deny such a motion is within this Court’s discretion. *Id.* But the plaintiff’s choice of forum is accorded deference, and a party’s residence in Michigan is not dispositive. *Id.*

“‘[T]he ultimate inquiry is where trial will best serve the convenience of the parties [and the ends] of justice.’” *Id.* at 605, quoting *Cray v General Motors Corp*, 389 Mich 382, 396; 207 NW2d 393 (1973), and *Koster v American Lumbermens Mutual Casualty Co*, 330 US 518, 527 (1947).

The Court should analyze this motion based on the factors set out in *Cray* and readopted in *Radeljak*:

1. The private interest of the litigant.
 - a. Availability of compulsory process for attendance of unwilling and the cost of obtaining attendance of willing witnesses;
 - b. Ease of access to sources of proof;
 - c. Distance from the situs of the accident or incident which gave rise to the litigation;
 - d. Enforceability of any judgment obtained;
 - e. Possible harassment of either party;
 - f. Other practical problems which contribute to the ease, expense and expedition of the trial;

- g. Possibility of viewing the premises.
2. Matters of public interest.
 - a. Administrative difficulties which may arise in an area which may not be present in the area of origin;
 - b. Consideration of the state law which must govern the case;
 - c. People who are concerned by the proceeding.
 3. Reasonable promptness in raising the plea of *forum non conveniens*. *Radeljak*, 475 Mich at 605-606; *Cray*, 389 Mich 382 at 396.

1. *Private Interest*

With regard to the first factor, “[t]he private interest of the litigant,” Defendant argues that it has no employees or offices in Michigan. Defendant also argues that Plaintiff may need to seek authorization of a Virginia Court in order to serve any subpoena.

In response, Plaintiff argues that Defendant has failed to identify any specific witnesses that would be impacted by litigating in Michigan. Further, Plaintiff’s witnesses are all in Michigan, and Plaintiff provided the services contracted by Defendant in Michigan. Plaintiff also claims that a Michigan Judgment would be enforceable in Virginia (and vice versa).

2. *Public Interest*

With regard to the second factor, “matters of public interest,” neither party makes any arguments, and said factor does not appear to favor either state.

3. *Reasonable Promptness*

Finally, regarding the last factor, “Reasonable promptness in raising the plea of *forum non conveniens*,” Defendant raised lack of personal jurisdiction and *forum non conveniens* in the present motion (filed in lieu of an Answer).

Considering the *Cray* factors, the Court finds that this case is appropriately litigated in Michigan. This case involves a Michigan company providing services in Michigan.

Further, the notion that forum non conveniens applies when the parties agreed to a forum-selection clause was recently rejected by the United States Supreme Court in *Atlantic Marine Constr Co v United States Dist Court*, ___ US ___; 134 S Ct 568, 582; 187 L Ed 2d 487 (2013). The *Atlantic Marine* Court reasoned “[w]hen parties agree to a forum-selection clause, they waive the right to challenge the preselected forum as inconvenient or less convenient for themselves or their witnesses, or for their pursuit of the litigation.” *Id.* at 582.

This is so, as the Court reasoned, because “[w]hatever ‘inconvenience’ [the parties] would suffer by being forced to litigate in the contractual forum as [they] agreed to do was clearly foreseeable at the time of contracting.” *Id.*; quoting *The Bremen v Zapata Off-Shore Co*, 407 US 1, 17-18; 92 S Ct 1907; 32 L Ed 2d 513 (1972).

The *Atlantic Marine* Court concluded:

When parties have contracted in advance to litigate disputes in a particular forum, courts should not unnecessarily disrupt the parties’ settled expectations. A forum-selection clause, after all, may have figured centrally in the parties’ negotiations and may have affected how they set monetary and other contractual terms; it may, in fact, have been a critical factor in their agreement to do business together in the first place. In all but the most unusual cases, therefore, “the interest of justice” is served by holding parties to their bargain. *Id.* at 583.

The Supreme Court’s reasoning is sound, and Defendant otherwise fails to convince the Court that Michigan would be substantially less convenient place for this litigation. As a result, Defendant’s motion based on forum non conveniens is similarly DENIED.

IT IS SO ORDERED.

June 27, 2016
Date

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