C

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

FIVE BROTHERS MORTGAGE
COMPANY SERVICES AND
SECURING, INC.,

Plaintiff,

Case No. 2015-340-CB

vs.

THE MCCUE MORTGAGE COMPANY,

Defendant.
_____/

OPINION AND ORDER

Defendant has moved for summary disposition pursuant to MCR 2.116(C)(1). Plaintiff has filed a response and requests that the motion be denied.

I. Factual and Procedural History

Plaintiff is a Michigan corporation that provides property inspection, preservation, and maintenance services to mortgage lenders, investors, and loan servicers throughout the United States. In April 2011, the parties executed a "Contract for Field Services and Inspections" ("Agreement"). Pursuant to the Agreement, Defendant hired Plaintiff to perform inspection and preservation services on numerous properties Defendant held or serviced. The parties operated under the Agreement until May 2014 when Defendant terminated the Agreement.

On January 30, 2015, Plaintiff filed its complaint in this matter. In its complaint, Plaintiff asserts two counts of breach of contract. On March 27, 2015, Defendant filed its instant motion for summary disposition pursuant to MCR 2.116(C)(1) based on its

assertion that this Court lacks personal jurisdiction over it. On April 20, 2015, Plaintiff filed its response and requests that the motion be denied. On April 22, 2015, Defendant filed a reply brief in support of its motion. On May 26, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

In reviewing a motion for summary disposition brought under MCR 2.116(C)(1), the court considers consider the pleadings and documentary evidence submitted by the parties in the light most favorable to the nonmoving party. MCR 2.116(G)(5). *WH Froh, Inc v Domanski*, 252 Mich App 220, 225-226; 651 NW2d 470 (2002). The plaintiff bears the burden of establishing jurisdiction over a defendant, but need only make a prima facie showing of jurisdiction to defeat a motion for summary disposition. *Id.*

III. Arguments and Analysis

In support of its motion, Defendant contends that this Court does not have personal jurisdiction over it, and therefore does not have jurisdiction in this case. In response, Plaintiff asserts that the Court has limited personal jurisdiction over Defendant under MCL 600.715(1).

A state court may exercise limited personal jurisdiction over a foreign corporation if both parts of a two-step test are met. *Aaronson v Lindsay & Hauer Intern Ltd*, 235 Mich App 259; 262 597 NW2d 227 (1999). First, the court looks to the state's long-arm statute to determine if any the relationships described therein are present. *Id.*; see also MCL 600.715. Second, the court must consider if imposing its jurisdiction over the foreign entity would violate due process. *Aaronson,* 235 Mich App at 264. To satisfy due process, a foreign defendant need only "have certain minimum contacts with [the

forum state] it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.* citing *Int'l Shoe Co v Washington*, 326 US 310; 66 S Ct 154; 90 L Ed 95 (1945). Provided minimum contacts are found, the case must also arise out of the state contacts. *Aaronson,* 235 Mich App at 267. Lastly, the state court must be a convenient forum in which to resolve the matter. *Id.* at 268. While it may not be overly burdensome on defendant to litigate in the foreign forum, 'the defendant has no constitutional entitlement to the best forum." *Id.* citing *World–Wide Volkswagen Corp v Woodson*, 444 US 286, 297; 100 S Ct 559; 62 L Ed 2d 490 (1980).

The Court first looks to the state's long-arm statute to determine if jurisdiction exists. Under MCL 600.715(1), "the transaction of any business within the state" constitutes a sufficient basis for limited personal jurisdiction." The Michigan Court of Appeals has held that the use of the work '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 v Searchmont Resort, Inc.*, 246 Mich App 424, 430; 633 NW2d 408 (2001). Indeed, the Court in Oberlies held that "the only real limitation placed on this long arm statute is the due process clause." Id. Accordingly, the Court will now address whether asserting jurisdiction over Defendant in this matter comports with due process.

Whether sufficient minimum contacts exist between a nonresident defendant and Michigan to support exercising limited personal jurisdiction and satisfy due process is determinable by a three-part test. *Moore v. McFarland,* 187 Mich App 214, 218, 466 NW2d 309 (1991) First, the defendant must have purposefully availed itself of the privilege of conducting activities in Michigan, thus invoking the benefits and protections

of this state's laws. *Id.* Second, the cause of action must arise from the defendant's activities in the state. *Id.* Third, the defendant's activities must be so substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable. *Id.*

A. Purposeful Availment

"Purposeful availment" is found when "the defendant's contacts with the forum state 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, 105 S Ct 2174, 85 Led 2d 528 (1985). "This purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts, or of the unilateral activity of another party or a third person. " *Id.* at 475. On the other hand, "parties who reach out beyond one state and create continuing relationships and obligations with citizens of another state are subject to regulation and sanctions in the other State for the consequences of their activities." *Id. at 471.*

The United States District Court for the Southern District Court, in *Salom Enterprises, LLC v TS Trim Industries, Inc.*, 464 F Supp 2d 676, 684-85 (2006), in examining the United States Supreme Court's decision in *Burger King,* explained:

> The Supreme Court explained in *Burger King v Rudzewicz* that the purposeful availment requirement addresses the protection provided by the Due Process Clause of an individual's liberty interest in not being subjected to binding judgments of a foreign jurisdiction absent "fair warning" that its activity may bring them within the authority of those courts. *Burger King,* 471 U.S. at 471–72. In the context of limited personal jurisdiction, this "fair warning requirement is satisfied if the defendant has purposefully directed his activities at residents of the forum ... and the litigation results from alleged injuries that arise out of or relate to those activities." *Id.* at 472. As concerns interstate contractual obligations, the

> Court "emphasized that parties who reach out beyond one state and create continuing relationships and obligations with citizens of another state are subject to regulations and sanctions in the other state for the consequences of their activities." *Id.* at 473. In other words, when a nonresident defendant purposefully directs its activities at residents of the forum state, he opens the door to the assertion of jurisdiction. *Id.* However, it is the *defendant's* purposeful action that is determinative: "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state." *Id.* at 474.

In *Salom*, the Court held that the plaintiff had alleged sufficient facts to show purposeful availment by the defendant where the defendant negotiated and contracted with a corporation it knew was in Michigan while knowing that doing so would require it to pay money to the Michigan corporation. *Salom*, 464 F Supp 2d at 685.

In this case, as in *Salom*, Defendant negotiated with Plaintiff, an entity that it knew was based in Michigan, as is evidenced by the fact that Plaintiff's address appears in bold in the first paragraph of the Agreement. (*See* Plaintiff's Exhibit A.) Moreover, Defendant had knowledge that it would be obligated to make payments to Plaintiff under the Agreement (Id. at ¶2.) Indeed, Defendant has made numerous payments to Plaintiff since the Agreement was executed. (*See* Plaintiff's Exhibit C, Plaintiff's Account Receivable Records.) Based on these contacts, the Court is convinced that Plaintiff has established sufficient contacts to establish that Defendant has purposefully availed itself of the privilege of conducting activities in Michigan.

B. Action Arise from Defendant's Contacts with Michigan.

Both of Plaintiff's claims arise from Defendant's alleged failure to satisfy its obligation under the Agreement. In *Salom*, the Court held that a plaintiff's breach of contract claims arose from the defendant's contracts with Michigan where the claims were based on a contract that defendant negotiated with a Michigan corporation, and

required defendant to make payments to the corporation in Michigan. *Salom*, 464 F Supp 2d at 686-87.

In this case, as in *Salom*, Defendant negotiated the Agreement with Plaintiff while knowing that Plaintiff operated out of Michigan, placed orders to Plaintiff via email and directed numerous payments to Plaintiff. As was the case in *Salom*, Plaintiff's claims arise from Defendant's alleged failure to comply with the terms of the contract it formed with a Michigan corporation, and pursuant to which it performed for a prolonged period of time. Consequently, the Court is satisfied that Plaintiff's claims arise from Defendant's contacts with Michigan.

C. Reasonableness of Exercising Jurisdiction

"The third part of the test under the Due Process Clause requires the plaintiff to show that 'the acts of the defendant or consequences caused by the defendant ... have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.'" *Salom*, 464 F Supp 2d at 687, quoting *Neogen Corp v Neo Gen Screening, Inc.*, 282 F.3d 883 at 890 (6th Cir 2002). "The reasonableness of asserting jurisdiction is assessed by considering 'the burden on the defendant, the interest of the forum state, the plaintiff's interest in obtaining relief, and the interest in other states in securing the most efficient resolution of controversies.'" *Salom*, 464 F Supp 2d at 687, quoting *CompuServe, Inc. v Patterson,* 89 F3d 1257, 1268 (6th Cir.1996) (internal quotation omitted).

The Court is convinced that the burden on Defendant in litigating in this forum is reasonable given the fact that the Defendant negotiated and executed a contract with an entity that it knew was based in Michigan. Further, Defendant engaged Plaintiff's

services in numerous transactions over their business relationship and made numerous payments to Plaintiff knowing that Plaintiff was based in Michigan. (*See* Plaintiff's Exhibit C.) This forum has an interest in adjudicating the claims of the entities organized under its laws. Moreover, Plaintiff manifestly has an interest in obtaining relief in this forum. While the Court recognizes that Defendant will be burdened to the extent that its witnesses likely reside in Connecticut, the same burden would be levied on Plaintiff if it were forced to prosecute its claims in Connecticut. For these reasons, the Court is satisfied that exercising jurisdiction is reasonable.

Conclusion

Based on the foregoing, the Court is convinced that personal jurisdiction in the State of Michigan, in this Circuit Court, is proper under the law. Consequently, Defendant's motion for dismissal under MCR 2.116(C)(1) is DENIED. The Court states this Opinion and Order neither resolves all pending matters, nor closes the case. MCR 2.602(A)(3).

IT IS SO ORDERED.

Date: AUG 03 2015

Kathryn A. Viviano

Hon. Kathryn A. Viviano, Circuit Court Judge