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STATE OF MICHIGAN

IN THE 20th CIRCUIT COURT FOR THE COUNTY OF OTTAWA

414 Washington Street
Grand Haven, Michigan 49417
(616) 846-8320
* * * * *

EAGLE DESIGN & TECHNOLOGY, INC.,
a Michigan corporation,
Plaintiff,

v

GREENBERG, GRANT & RICHARDS, INC.,
a Texas corporation, and **JASON MICHAEL ROSADO**, an individual,
Defendants.
_____/

OPINION AND ORDER on MOTION FOR SUMMARY DISPOSITION
File No. 13-03550-CZ

Hon. Jon A. Van Allsburg

At a session of said Court, held in the Ottawa County
Courthouse in Grand Haven, Michigan, on March 12, 2014
PRESENT: HON. JON A. VAN ALLSBURG, CIRCUIT JUDGE

Defendants Greenberg, Grant & Richards, Inc. (GGR) and Jason Rosado filed a timely motion for summary disposition pursuant to MCR 2.116(C)(1) on the grounds that this court lacks personal jurisdiction over defendants. The court agrees, and their motion is granted.

Plaintiff Eagle Design and Technology, Inc. (Eagle Design) filed a complaint against GGR and Mr. Rosado that arose from plaintiff's engagement of GGR in September 2012 to collect amounts due to plaintiff from Innovative Metal Components (Innovative), a Texas company. Plaintiff alleges that Innovative owed it $119,684.11. It also alleges that GGR and Mr. Rosado, whose job title was "Commercial Litigation Coordinator and Legal Forwarder," failed to act promptly to file suit to collect the amounts due and, consequently, lost the chance to collect on a judgment against Innovative. In addition to the negligence claims against both defendants, plaintiff claims breach of contract, innocent misrepresentation, and fraud against GGR.

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In reviewing a motion for summary disposition brought under MCR 2.116(C)(1), the court must consider the pleadings and documentary evidence submitted by the parties in the light most favorable to the nonmoving party. MCR 2.116(G)(5), *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 427; 633 NW2d 408 (2001). 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. *WH Froh, Inc v Domanski*, 252 Mich App 220, 225-26; 651 NW2d 470 (2002). As the Court of Appeals explained in *Yoost v Caspari*, 295 Mich App 209; 813 NW2d 783 (2012):

> "The plaintiff's complaint must be accepted as true unless specifically contradicted by affidavits or other evidence submitted by the parties. Thus, when allegations in the pleadings are contradicted by documentary evidence, the plaintiff may not rest on mere allegations but must produce admissible evidence of his or her prima facie case establishing jurisdiction." *Id.*, at 221 [citations omitted].

Plaintiff alleges that this court has limited personal jurisdiction over both defendants under Michigan's long-arm statutes, which confer jurisdiction over persons, MCL 600.705(1), and corporations, MCL 600.715(1), that has a relationship with Michigan arising out of "[t]he transaction of any business within the state."

Under the terms of MCL 600.715(1) and MCL 600.705(1), even the slightest transaction is sufficient to bring a corporation or person within Michigan's long-arm jurisdiction. *Oberlies, supra* at 430. But while the standard for deciding whether a party has transacted any business is extraordinarily easy to meet, the Due Process Clause in the Fourteenth Amendment to the United States Constitution limits the reach of the long-arm statute. The Due Process Clause requires that the exercise of personal jurisdiction comport with "traditional notions of fair play and substantial justice." *Int'l Shoe Co v Washington,* 326 US 310, 316; 66 S Ct 154; 90 L Ed 95 (1945). A court has personal jurisdiction over a person or corporation only if the defendant purposely established the minimum contacts with the forum state necessary to make the exercise of jurisdiction over the defendant fair and reasonable. *Oberlies, supra,* at 433, citing *Burger King Corp v Rudzewicz,* 471 US 462, 474; 105 S Ct 2174; 85 L Ed 2d 528 (1985).

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As the Court of Appeals explained in *Oberlies, supra,* "Courts employ a three-part test to determine whether a defendant has "minimum contacts" with Michigan to the extent that limited personal jurisdiction may be exercised in accordance with due process." *Id.*, at 433.

> "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." *Id.*

The *Oberlies* court also explained that jurisdiction, under the minimum contacts test, "does not depend on the weight of the factors individually. Rather, the primary focus when analyzing personal jurisdiction should be on 'reasonableness' and 'fairness.'" *Id.* (citation omitted).

With respect to GGR, plaintiff's claim that this court has jurisdiction is based on allegations, supported by an affidavit and documents, showing that GGR has done business with Eagle Design on several collection matters, that some of GGR's collection matters involved companies based in Michigan, and that GGR originally solicited Eagle Design's business by making a cold call to the plaintiff's vice president in Michigan. Plaintiff alleges in its complaint that Mr. Rosero has conducted business in Michigan because he has personally handled debt collection matters for Eagle Design, including collection actions against Michigan companies, and personally corresponded with Eagle Design's vice president.

Plaintiff's evidence is sufficient to state a prima facie case that GGR has purposefully availed itself of the privilege of conducting activities in Michigan by soliciting plaintiff's business through a cold call and by engaging in collection actions in Michigan. The other factors do not, however, support the exercise of jurisdiction by this court over the parties' dispute.

In *Oberlies,* the plaintiff had been injured at a Canadian ski resort that advertised extensively in Michigan. The *Oberlies* court examined in detail the standards to apply in determining whether the second step of the three-part test is met. It concluded that "in order for a foreign defendant to be compelled to defend a suit brought in Michigan where the defendant's contacts with Michigan are limited solely to advertising aimed at Michigan residents, the

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defendant's instate advertising activities must, in a natural and continuous sequence, have caused the alleged injuries forming the basis of the plaintiff's cause of action." *Id.* at 437.

Plaintiff argues that its cause of action arose from the defendant's activities in the state in that its engagement of GGR to collect a debt from a Texas company arose out of its long-standing business relationship with GGR and GGR's continued solicitation and transaction of debt collection business in Michigan over an extended period of time for Eagle Design. While there is evidence that, in addition to GGR's solicitation of business in Michigan, it conducted some of its collection work in Michigan, plaintiff's claim in this matter did not arise from GGR's activities in Michigan. The matter arose from collections work in Texas that Eagle Design contacted GGR to perform. GGR's duties to plaintiff, and its alleged breach of contract, negligence, and fraud, did not originate from defendant's activities in Michigan. Instead, the alleged wrongs, the damages allegedly incurred, and every relevant occurrence connecting those events, occurred in Texas.

The pleadings and documentary evidence also fail to support plaintiff's contention that the defendant's activities in this matter were substantially connected with Michigan, making the exercise of jurisdiction over GGR reasonable. Plaintiff does not provide any evidence that the engagement of GGR to collect from Innovative involved any activities by GGR with Michigan. Its only contacts were phone calls, email, and other correspondence between plaintiff and GGR. The documents show that plaintiff contacted GGR to undertake this collections work by sending GGR an "Account Placement Form." GGR did not sign the form. It received plaintiff's request for services in its home state of Texas and responded to it in Texas. All the work GGR performed on the Innovative collection account was performed in Texas, including its retention of a Texas law firm on plaintiff's behalf to sue for the amount due. Thus, it would be unreasonable for this court to exercise jurisdiction over GGR in this case.

As to Mr. Rosado, his connections with Michigan are even more attenuated. While plaintiff's pleadings allege that he conducted business in Michigan, this allegation is not specifically supported by any evidence. Moreover, even if the first part of the three-part test was satisfied, the second and third criteria were not met, and it would be unreasonable to exercise jurisdiction over Mr. Rosado in this case.

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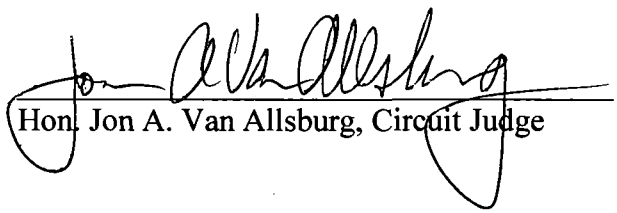
For these reasons, defendants' motion to dismiss this case pursuant to MCR 2.116(C)(1) is GRANTED. Defendants' request for attorney fees and costs is DENIED.

IT IS SO ORDERED. This is a final order that closes the case.

Dated: March 12, 2014



Hon. Jon A. Van Allsburg, Circuit Judge