

STATE OF MICHIGAN
COURT OF APPEALS

DEW INVESTMENTS and ROBERT J. STEPHAN,

UNPUBLISHED
May 23, 1997

Plaintiffs-Appellants,

v

No. 192188
Kent Circuit Court
LC No. 95-2726-CK

FIRST SECURITY FINANCIAL f/k/a EBBCO
INTERNATIONAL INSURANCE,

Defendant-Appellee.

Before: Taylor, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order dismissing their action, under MCR 2.116(C)(1), on the ground that the trial court lacked personal jurisdiction over defendant. We reverse and remand.

Defendant First Security is a holding company, located in the Cayman Islands, for the purpose of engaging in the business of insurance, reinsurance and counter-insurance of all kinds. Plaintiff DEW Investments (“DEW”) is a Michigan partnership, operating out of Kent County, and plaintiff Robert Stephan is a Michigan Citizen.

Plaintiffs filed a complaint against defendant in Kent Circuit Court, alleging that defendant breached certain contracts. In their complaint, plaintiffs alleged that defendant and DEW entered into an active shareholder agreement (“DEW agreement”) wherein defendant agreed to pay DEW the “Net Underwriting Profit Earned” by defendant on business assumed by defendant associated with DEW, or an affiliate of DEW. Plaintiffs also alleged that defendant and Stephan entered into a similar active shareholder agreement (“Stephan agreement”). Under these agreements, plaintiffs, active shareholders of defendant, would sell group insurance policies issued by INA Insurance Company (“INA”), in Michigan. A subsidiary of defendant would then reinsure INA under an existing agreement for a fee, a portion of which would be paid to plaintiffs after defendant was compensated for administrative costs and losses associated with being the insurer.

Defendant filed a motion to dismiss plaintiffs' complaint, pursuant to MCR 2.116(C)(1) and (3), arguing that the circuit court lacked personal jurisdiction over defendant and that the service of process had been insufficient. Defendant later filed a renewed motion to dismiss, pursuant to MCR 2.116(C)(1), arguing only that the circuit court lacked personal jurisdiction over defendant. In support of its motion, defendant offered the affidavit of its treasurer, Frank Bento. Bento averred that: defendant does not own any property in Michigan; defendant is not registered to conduct business in Michigan; defendant does not employ any persons in Michigan; defendant does not engage in administration or management functions in Michigan; defendant is not authorized to engage in the insurance business practice in Michigan; defendant does not have agents or offices in Michigan; defendant does not advertise or solicit business in Michigan; and, the agreements between plaintiffs and defendant were negotiated, drawn up, and executed in the Cayman Islands.

In response, plaintiffs offered the affidavits of William Hill, a partner of DEW, and Augustine Igwe, defendant's attorney. Hill averred the following: that the agreements were negotiated, drafted, and executed in Michigan; that, in April 1987, Richard Mazur, who is defendant's controlling shareholder, board chairman and chief officer, visited Hill's Grant Rapids office and described a plan wherein DEW could profit from defendant's business of reinsuring group insurance policies; that Mazur invited Hill to attend defendant's board meeting in Detroit to learn more about the arrangement; that, in August 1987, Hill, at Mazur's invitation, attended defendant's shareholder's meeting in Detroit; that, in October 1987, DEW met defendant in Madison Heights to execute the agreements which are the subjects of this action; that, at this meeting, DEW and Thomas Mangold, a director of defendant, and August Igwe, defendant's attorney and employee, executed the DEW agreement; that as a result of the agreement, from 1987 through 1992, DEW received thousands of dollars for performing services in Michigan; and, that, in 1987, defendant made a series of agreements to insure persons and risks in Michigan.

Igwe averred that, in October 1987, he met with DEW on behalf of defendant in Madison Heights. Igwe stated that at this meeting defendant and DEW executed the DEW agreement. Igwe made no declarations regarding the Stephan agreement.

Plaintiffs argue that the trial court erred in finding that it lacked personal jurisdiction over defendant under MCL 600.715(1); MSA 27A.715(1). We agree. Whether a court has personal jurisdiction over a party is a question of law, which this Court reviews de novo. *Jodway v Kennametal, Inc.*, 207 Mich App 622, 632; 525 NW2d 883 (1994). The plaintiff bears the burden of establishing jurisdiction over the defendant, but only has to make a prima facie showing of jurisdiction to defeat a motion for summary disposition. *Jeffrey v Rapid American Corp.*, 448 Mich 178, 184; 529 NW2d 644 (1995). The affidavits, together with any other documentary evidence submitted by the parties, must be considered by the court. MCR 2.116(G)(5); *Jeffrey, supra*. All factual disputes for the purpose of deciding the motion are resolved in the nonmovant's favor. *Id.*

In deciding whether personal jurisdiction may be asserted, a court must generally conduct a two-step inquiry: the first step is to determine whether exercising personal jurisdiction would violate the Due Process Clause; the second step is to determine whether the exercise of personal jurisdiction over

the individual nonresident defendants is authorized by the Michigan long arm statute, MCL 600.705; MSA 27A.705. *Id.*; *Comm'r of Insurance v Arcilio*, 221 Mich App 54, 72; ___ NW2d ___ (1997).

The Due Process Clause of the Fourteenth Amendment protects an individual's liberty interest in not being subject to the binding judgments of a forum with which the person has established no meaningful "contacts, ties, or relations." *Int'l Shoe Co v Washington*, 326 U S 310, 316, 319 n7 13; 66 S Ct 154; 90 L Ed 95 (1945). A court may acquire personal jurisdiction over a nonresident when the nonresident defendant's relationship with the forum is such that it is fair to require the defendant to appear before the court. *Id.* It is fair to require a defendant to appear before the court when the defendant possesses "minimum contacts" with the forum so that maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *Id.*

The Michigan Supreme Court has stated the relevant considerations in determining whether sufficient minimum contacts exist to justify the exercise of limited personal jurisdiction over a nonresident defendant:

[O]ur analysis in this case has three prongs: (1) the defendant must be found to have purposefully availed itself of the privilege of conducting activities in Michigan, (2) the cause of action must arise from those activities, and (3) the exercise of jurisdiction must be reasonable. [*Jeffrey, supra* at 186, 197.]

However, "[t]he primary focus of personal jurisdiction is on 'reasonableness' and 'fairness.' Each case, therefore, must turn on its own merits." *Id.* at 186. It is the relationship of the defendant, the forum, and the litigation which is significant. *Id.* at 187.

Taking the prongs in order, we now consider whether the first prong has been satisfied. With respect to interstate contractual obligations, the United States Supreme Court has emphasized that 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. *Travelers Health Ass'n v Virginia*, 339 U S 643, 647; 70 S Ct 927; 94 L Ed 1154 (1950). In other words, jurisdiction may be properly exercised over a corporate defendant when it reaches beyond its own state and purposefully avails itself of the privilege of exploiting forum-based business opportunities. *Jeffrey, supra*. In examining what it means to purposefully avail oneself of Michigan opportunities, the Court stated:

A "purposeful availment" is something 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. The defendant will have reason to foresee being "haled before" a Michigan court. [*Id.* at 187-188.]

In this case, defendant entered into agreements with DEW, a partnership, domiciled in Michigan and subject to Michigan law, and Stephan, who is a resident of Michigan and subject to Michigan law.

Defendant deliberately reached out beyond the borders of its own jurisdiction and sought out business relationships with plaintiffs. Defendant's controlling shareholder, who is defendant's board chairman and chief officer, visited a DEW partner in Grand Rapids, Michigan. During this meeting, defendant's agent described the agreements and invited the DEW partner to another meeting. Resolving all factual disputes in the plaintiffs' favor, *id.* at 184, there is also evidence that plaintiffs and defendant actually negotiated and executed the agreements themselves in Michigan. There is ample evidence that defendant purposefully sought out business relationships with plaintiffs such that defendant could expect to be "haled before a Michigan court." *Id.* at 188.

The second prong is easily disposed of because the cause of action in this case arose out of the contractual activities connecting defendant to Michigan. This leaves the third prong: whether the exercise of personal jurisdiction over the defendant is reasonable. In undertaking this analysis, the focus is on the defendant, the forum, and the litigation. *Id.* at 200.

Much of the evidence used when examining the first prong of the test is also relevant here. Defendant should have reasonably anticipated being brought into this state's courts when it sought out business relationships with plaintiffs in Michigan, to be performed in Michigan. Having voluntarily sought out those business relationships, defendant may not use due process as a shield to avoid its interstate obligations. Compare *Mozdy v Lopez*, 197 Mich App 356, 361; 494 NW2d 866 (1992) (where this Court ruled that the exercise of personal jurisdiction over the defendants was unreasonable because there was no evidence for the plaintiff's assertion that the defendants had actively and purposefully solicited business in the state). We therefore conclude that plaintiffs have established sufficient minimum contacts to survive summary disposition.

Where, as here, the threshold requirement of minimum contacts is satisfied, a court must then determine whether the exercise of personal jurisdiction comports with fair play and substantial justice. *Jeffrey, supra* at 188-189; *Arcilio, supra* at 73. Factors that are relevant to this inquiry include the burden on the defendant, the forum state's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several states in furthering fundamental substantive social policies. *Id.* at 189. In order to defeat jurisdiction, a defendant who has purposefully directed its activities at forum residents must present a compelling case that the presence of some other considerations render jurisdiction unreasonable. *Id.*

Here, the burden on defendant in litigating in Michigan is insubstantial. The evidence revealed that defendant's officers often travel to Michigan for business purposes. In particular, defendant acknowledged that it delegates its reinsurance responsibilities to a subsidiary that is incorporated and located in Michigan. Also, Igwe, defendant's attorney, is a resident of Michigan. Furthermore, Michigan has an undeniable interest in seeing that contracts entered into with Michigan residents, negotiated in Michigan, and for services to be performed in Michigan, are enforced. Under the circumstances of this case, plaintiffs' interest in obtaining a convenient and effective relief can best be served by litigating in Michigan. Defendant has failed to present a compelling case that jurisdiction is

unreasonable. *Id.* Accordingly, the circuit court's exercise of personal jurisdiction over defendant pursuant to this state's long arm statute would not offend due process.

Having decided that an assertion of jurisdiction would be constitutionally permissible in this case, we now consider whether doing so would be supported by Michigan's long arm statute, MCL 600.715(1); MSA 27A.715(1). Michigan's long arm statute has been interpreted to grant the broadest basis for jurisdiction consistent with due process. *Arcilio, supra*. Therefore, where it is found that personal jurisdiction does not offend due process, it consequently cannot violate this state's long arm statute. *Id.*

MCL 600.715(1); MSA 27A.715(1) provides that:

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.

The phrase "transaction of any business" in MCL 600.715(1); MSA 27A.715(1) is construed as broader than "doing business." *Sifers v Horen*, 385 Mich 195, 199; 188 NW2d 623 (1971). "The word 'any' means just what it says. It includes 'each' and 'every'. . . . It comprehends 'the slightest.'" *Id.* at 199 n 2.

Plaintiffs made a prima facie showing that defendant conducted the "slightest" act of business in Michigan. Plaintiffs offered the affidavits of a partner of DEW, who averred that the agreements were negotiated, drafted, and executed in Michigan. Defendant's attorney also averred that defendant and DEW executed the DEW agreement in Michigan. Again, although defendant offered evidence that the agreements were signed in the Cayman Islands, all factual disputes for the purpose of deciding the motion to dismiss are resolved in plaintiffs' favor. *Jeffrey, supra* at 184. In addition, because plaintiffs' action is premised upon their allegations of breaches of the agreements, plaintiffs made a prima facie showing that their claims arose out of defendant's contact with Michigan. Plaintiffs made a prima facie case that defendant's contact with Michigan was sufficient to fall within Michigan's long arm statute.

Reversed and remanded. We do not retain jurisdiction.

/s/ Harold Hood

/s/ Roman S. Gibbs