

STATE OF MICHIGAN
COURT OF APPEALS

U.K. ACQUISITION COMPANY,
Plaintiff-Appellant,

UNPUBLISHED
April 11, 2006

v

KAREN LIGHTFOOT,
Defendant-Appellee.

No. 265590
Oakland Circuit Court
LC No. 05-063788-CB

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(1) for lack of personal jurisdiction in plaintiff's action seeking damages for tortious interference with a contract. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This lawsuit concerns a contract originally executed between Gary Benfield, a British artist, and a London company, London Contemporary Art (LCA), under which Benfield was to produce and sell original paintings to LCA so that LCA could create prints for distribution worldwide. The agreement was assigned to plaintiff, a Delaware corporation, which exercised an option to extend the contract. According to plaintiff, the Benfield contract was then assigned to its parent corporation, Park West Galleries, Inc., a Michigan corporation headquartered in Southfield.¹ Benfield subsequently terminated his relationship with plaintiff and Park West, and plaintiff sued him in Florida for breach of contract.²

Plaintiff then brought the instant action against defendant, a resident of London, England, alleging that she tortiously interfered with Benfield's contract. Plaintiff alleges that defendant, Benfield's girlfriend, accompanied Benfield to Southfield in November 2004 when he went there to meet with Albert Scaglione, an agent of plaintiff and Park West, to discuss his contract.

¹ Plaintiff does not appeal from that portion of the trial court's order denying its motion to amend its complaint to add Park West as a party plaintiff.

² In the ongoing Florida litigation, Benfield apparently maintains that the contract is not enforceable because, under English law, it is not assignable without the consent of both parties, and that his signature was forged on hundreds of prints.

Scaglione testified via affidavit that while in Southfield, defendant told him that she had decided that Benfield was not happy with his contract and would not renew it when it expired, and that she had retained attorneys who opined that the contract was not enforceable.

On appeal, plaintiff argues that the trial court erred in granting summary disposition in favor of defendant on the ground of lack of personal jurisdiction. This Court reviews de novo the grant or denial of a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). Likewise, whether a trial court has personal jurisdiction over a party is a question of law, which we review de novo. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). Although the plaintiff bears the burden of establishing jurisdiction over the defendant, it need only make a prima facie showing of jurisdiction to defeat a motion for summary disposition. *Id.* The court must consider affidavits and other documentary evidence submitted by the parties. MCR 2.116(G)(5). “All factual disputes for the purpose of deciding the motion are resolved in the plaintiff’s (nonmovant’s) favor.” *Jeffrey, supra*.

A court may exercise limited jurisdiction over a defendant if the cause of action alleged arises out of or is related to the defendant’s contacts with the forum. *Helicopteros Nacionales de Colombia, SA v Hall*, 466 US 408, 414 n 8; 104 S Ct 1868; 80 L Ed 2d 404 (1984); see also MCL 600.705 and MCL 600.715. A two-step inquiry is applied in analyzing whether the exercise of limited personal jurisdiction over a given defendant is proper. First, the defendant must come within the terms of the applicable long-arm statute. Second, the exercise of limited personal jurisdiction must comport with due process. *Starbrite Distributing v Excelda Mfg Co*, 454 Mich 302, 304; 562 NW2d 640 (1997); *Green v Wilson*, 455 Mich 342, 347; 565 NW2d 813 (1997); *Jeffrey, supra* at 184-185.

Plaintiff contends that limited personal jurisdiction is conferred under MCL 600.705(2), which provides:

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:

* * *

(2) The doing or causing an act to be done, or consequences to occur, in the state resulting in an action for tort.

Under this subsection, “either the tortious conduct or the injury must occur in Michigan.” *Green, supra* at 352.

Viewing plaintiff’s complaint and affidavit in the light most favorable to plaintiff, it may be gleaned that defendant did an act or caused an act to be done, or consequences to occur, in Michigan, resulting in an action for tort. See *WH Froh, Inc v Domanski*, 252 Mich App 220, 229-230; 651 NW2d 470 (2002). Accordingly, plaintiff has set forth sufficient facts to bring defendant within the ambit of § 705(2).

Nevertheless, we conclude that defendant lacks such “minimum contacts” with this state as would support the assertion of personal jurisdiction over her so as to comport with due process. “[A] state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist ‘minimum contacts’ between the defendant and the forum State.” *World-Wide Volkswagen Corp v Woodson*, 444 US 286, 291; 100 S Ct 559; 62 L Ed 2d 490 (1980), citing *International Shoe Co v Washington*, 326 US 310, 316; 66 S Ct 154; 90 L Ed 95 (1945). The requirement of minimum contacts performs two related functions: “It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States[,] through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.” *World-Wide Volkswagen*, *supra* at 291-292.

A three-pronged test is applied to determine whether sufficient minimum contacts exist between a defendant and the forum state to justify the exercise of limited personal jurisdiction:

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. [*Jeffrey*, *supra* at 186.]

The first criterion of this test, “purposeful availment,” is “‘the *sine qua non* for in personam jurisdiction.’” *LAK, Inc v Deer Creek Enterprises*, 885 F2d 1293, 1295 (CA 6, 1989) (citation omitted). 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.” *Jeffrey*, *supra* at 187-188 (internal quotation marks and citation omitted). A mere “collateral relation to the forum State” is insufficient, *World-Wide Volkswagen Corp*, *supra* at 299; rather, what is required is “the kind of substantial relationship with the forum state that invokes, by design, ‘the benefits and protections of its laws,’” *LAK, Inc*, *supra* at 1300, quoting *Hanson v Denckla*, 357 US 235, 253; 78 S Ct 1228; 2 L Ed 2d 1283 (1958). The defendant’s contacts with the forum state must “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 L Ed 2d 528 (1985) (citation omitted), such that the defendant should “‘have reason to foresee being ‘haled before’ a Michigan court,” *Jeffrey*, *supra* at 188, quoting *Khalaf v Bankers & Shippers Ins Co*, 404 Mich 134, 153-154; 273 NW2d 811 (1978). This requirement ensures that a defendant will not be subject to the jurisdiction of a forum solely as a result of “random, fortuitous, or attenuated contacts.” *Burger King Corp*, *supra* at 475.

We conclude that defendant did not “purposefully avail” herself of Michigan opportunities when she accompanied Benfield to Michigan for his meeting with the representative of a *Delaware* corporation concerning *Benfield’s* contract with that corporation. Such contacts are not of the sort that would create a lasting relationship with the State of Michigan or that would “invoke[], by design, ‘the benefits and protections’” of Michigan’s laws. *LAK, Inc*, *supra* at 1300, quoting *Hanson*, *supra* at 253. Defendant herself had no business relationship to foster in Michigan; nor did she come to Michigan to create any continuous or

substantial consequences in this state. Where the only motivating factor behind defendant's visit to Michigan was her personal relationship with Benfield, her contacts with Michigan are of the "passive availment" variety and cannot be said to justify the exercise of personal jurisdiction over her.

Moreover, the exercise of personal jurisdiction over defendant would not be reasonable. Even if minimum contacts exist, under the third prong of the due process test it still must be determined whether the exercise of limited personal jurisdiction is reasonable; that is, whether it comports with notions of fair play and substantial justice. *Jeffrey, supra* at 188-189; *WH Froh, supra* at 232. Factors 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." *Jeffrey, supra* at 189, citing *World-Wide Volkswagen, supra* at 292.

In the case at bar, the burden on defendant in being required to defend a lawsuit in Michigan is substantial. Defendant resides in England and has no family, property, business relationships, or any other interest in Michigan. Moreover, defendant will presumably be required to travel to Florida in connection with the breach of contract lawsuit that—by plaintiff's choice—is pending there. We cannot conceive of any interest that Michigan has in adjudicating this dispute, which concerns a contract between a foreign plaintiff and a foreign artist and includes no Michigan parties whatsoever. Plaintiff has little, if any, interest in obtaining "convenient and effective relief" in Michigan, since it is a Delaware corporation with no resident agent in Michigan. The interstate judicial system's interest weighs in favor of a finding of no personal jurisdiction over defendant in light of the ongoing litigation in Florida.

Defendant's mere presence in Michigan, combined with her alleged communications to Scaglione regarding Benfield's unhappiness with his contract, are not sufficient minimum contacts with the state. Rather, these contacts appear to be precisely the type of "random, fortuitous, or attenuated contacts" that cannot be considered "purposeful availment" of Michigan opportunities. *Burger King, supra*. See also *Calphalon Corp v Rowlette*, 228 F3d 718 (CA 6, 2000); *Witbeck v Bill Cody's Ranch Inn*, 428 Mich 659; 411 NW2d 439 (1987).

Affirmed.

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra