

STATE OF MICHIGAN
COURT OF APPEALS

CLAIRENE WILLIAMS,

Plaintiff-Appellant,

v

MEL FARR MOTORS, INC., TRIPLE M
FINANCING, INC., and MEL FARR LINCOLN
MERCURY,

Defendant-Appellees.

UNPUBLISHED
November 13, 2003

No. 241731
Wayne Circuit Court
LC No. 01-133714-CK

RICHARD D. BITZER and BARBARA WYNN,

Plaintiffs-Appellants,

v

MELVIN FARR, MEL FARR FORD OHIO, INC.,
MEL FARR INSURANCE AGENCY, MEL
FARR LINCOLN MERCURY DAYTON, MEL
FARR REAL ESTATE II, MEL FARR
COMPANY, MEL FARR LINCOLN MERCURY
OHIO, INC., MEL FARR ENTERPRISE, INC.,
TRIPLE M FINANCING COMPANY, TRIPLE M
FUNDING CORPORATION, FARR
GOLDSBERRY, INC., FARR SMITH, INC.,
HOWARD FARR, INC., HOWARD FARR, LLC,
and MEL FARR AIR, INC.,

Defendants-Appellees.

No. 241732
Wayne Circuit Court
LC No. 01-141151-CK

THERESA HOLMES,

Plaintiff-Appellant,

v

No. 241733
Wayne Circuit Court

Defendants-Appellees.

Before: Whitbeck, C.J., and Zahra and Donofrio, JJ.

PER CURIAM.

Plaintiffs Clairene Williams, Richard Bitzer, Barbara Wynn, and Theresa Holmes appeal as of right from a grant of summary disposition in favor of defendants. All three cases concern complaints related to plaintiffs' leasing of automobiles from either Mel Farr Lincoln Mercury – Ohio or Mel Farr Ford – Ohio. The cases were consolidated below for purposes of the summary disposition motion due to common jurisdictional issues. On appeal plaintiffs allege that the trial court erred when it dismissed the case for lack of jurisdiction. We find that the trial court did have subject matter jurisdiction over the case because plaintiffs' allegations are civil in nature and are within the circuit court's jurisdiction. And the circuit court had personal jurisdiction over the Michigan corporations and the individual Michigan defendant. But, while plaintiffs' have alleged contacts between the state of Michigan and the Ohio defendants, plaintiffs' causes of action against there foreign corporations did not arise out of the alleged contacts. Therefore, the trial court properly declined to exercise personal jurisdiction over the defendant foreign corporations because it would violate their right to due process. We affirm the trial court's dismissal regarding defendant foreign corporations but reverse the dismissal regarding all Michigan defendants. We affirm in part, reverse in part, and remand.

Each of the four plaintiffs entered into automobile leases with either Mel Farr Lincoln Mercury – Ohio or Mel Farr Ford – Ohio. Plaintiffs also purchased extended warranties for their respective vehicles. Thereafter, each plaintiff experienced mechanical problems and returned the vehicles in an attempt to recoup their deposits. Defendants refused to refund any money but offered to repair the vehicles. In each case, defendants' attempts to repair the vehicles failed and/or took excessive amounts of time. Plaintiffs filed complaints against defendants alleging violations of the Ohio Revised Code, fraudulent misrepresentation, and conversion of money. Plaintiff Holmes' complaint also contained a fourth count alleging breach of contract. The complaints less formally allege breach of warranty, fraudulent transfers, and the existence of a successor corporation.

All four plaintiffs are residents of Ohio and leased their vehicles in Ohio from Ohio corporations. Plaintiffs assert that defendants, if not Michigan residents or corporations, have sufficient minimum contacts to allow Michigan to exercise jurisdiction over them. Plaintiff's assert that defendant Mel Farr Motors, Inc., a Michigan corporation, transferred and commingled funds with defendant Ohio corporations. Plaintiffs argue that defendant Mel Farr Motors, Inc. is a successor corporation of defendant Ohio corporations doing business in Michigan and Ohio. Mel Farr, Sr. expressly denied this allegation.

Defendant Triple M Financing, Inc., is a Michigan corporation doing business in Michigan and Ohio. Defendants Mel Farr Lincoln Mercury – Ohio, Inc., and Mel Farr Ford – Ohio, Inc., are Ohio corporations but no longer conduct business and have no assets. Defendant Mel Farr Lincoln Mercury – Ohio transferred vehicle leases to defendant Triple M. Plaintiffs argue that the lease documents were held at the Michigan Triple M office and payments collected from that office. Defendants claim that copies of the lease documents were maintained at the Ohio office of Triple M and that the Ohio office collected payments. Plaintiffs allege that defendant Ohio corporations transferred assets to defendant Michigan corporation creating a successor corporation. Defendant Mel Farr denies the allegation that Mel Farr Motors, Inc., is a successor corporation.

Plaintiff Bitzer alleges that defendant Mel Farr is a resident of Michigan and conducts business in both Michigan and Ohio. This allegation is not denied in defendant's affidavit. Plaintiffs allege that the remaining corporate defendants in the Bitzer complaint are either Michigan corporations or Ohio corporations that have received transfers from defendant Mel Farr Lincoln Mercury – Ohio.

Defendants filed answers and affirmative defenses including lack of personal and subject matter jurisdiction to the complaints filed by plaintiffs Williams and Holmes. Defendants did not answer the complaints filed by plaintiffs Bitzer and Wynn. Defendants' then filed a motion to dismiss citing MCR 2.116(C)(1) and (C)(4). Defendants argued that the trial court lacked personal and subject matter jurisdiction over defendants.

Plaintiffs responded asserting that sufficient contacts existed allowing the trial court to exercise limited personal jurisdiction over defendants and further argued that defendants filed written general appearances and filed answers and affirmative defenses thereby submitting themselves to the trial court's jurisdiction. It should be noted that defendants entered written appearances pursuant to MCR 2.117(B) in plaintiff Williams' and plaintiff Holmes' cases, but did not file a written appearance or answer in plaintiff Bitzer or Wynn's case.

Defendants responded by arguing that the written appearances were filed to receive pleadings in response to a request from plaintiffs and that plaintiffs' argument concerning general appearances did not address the issue at hand as defendants were requesting relief based on lack of subject matter jurisdiction. After a hearing on defendants' motion to dismiss the trial court issued an order granting defendants' motion without prejudice against all four plaintiffs. It is from this order that plaintiffs appeal.

On appeal, plaintiffs argue that they made a prima facie showing of both personal and subject matter jurisdiction by alleging sufficient contacts between all defendants and Michigan to allow the trial court to exercise jurisdiction over defendants pursuant to MCL 600.705. Plaintiffs assert that those contacts include the transfer of leases to defendant Michigan corporation, Triple M, the subsequent transfer of the lease documents to Michigan, and the commingling of funds between defendant Ohio corporations and defendant Michigan corporations.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Whether a court has subject matter jurisdiction is a question of law reviewed de novo. *Atchison v Atchison*, 256 Mich App 531, 534; 664 NW2d 249 (2003). Whether a court has personal jurisdiction over a party is also a

question of law reviewed de novo. *Oberlies v Searchmont Resort*, 246 Mich App 424, 426; 633 NW2d 408 (2001).

Subject matter jurisdiction is the “power of a court to act and the authority of a court to hear and determine a case.” *Trost v Buckstop Lure Co*, 249 Mich App 580, 586; 644 NW2d 54 (2002) quoting *Grubb Creek Action Committee v Shiawassee Co Drain Comm’r*, 218 Mich App 665, 668-669; 554 NW2d 612 (1996). Whether a court has subject matter jurisdiction is determined by reference to the allegations; if it is apparent that the claim is in the *class* of cases within a court’s jurisdiction, then the court has subject matter jurisdiction over the claim. *Id.* According to MCL 600.605, “[c]ircuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given” to some other court or denied the circuit court by the constitution or a statute. See also *Bowie v Arder*, 441 Mich 23, 37-38; 490 NW2d 568 (1992). Our review reveals that the nature of plaintiffs’ claims are civil and accordingly are properly within the jurisdiction of the circuit court.

Defendants’ arguments alluding to improper venue and forum nonconveniens are separate issues from subject matter jurisdiction. An analysis of a court’s subject matter jurisdiction considers the allegations, and if those allegations are within the type of claims the court is authorized to hear and determine. The analysis does not depend on the location of witnesses, evidence, parties, or even what state’s law is to apply. MCL 600.605; *Trost, supra*, 249 Mich App 586. That violations of Ohio law are alleged does not divest the Michigan circuit court of its subject matter jurisdiction. Michigan courts can decide cases applying the law of another state where necessary. See, e.g., *Farrel v Ford Motor Co*, 199 Mich App 81; 501 NW2d 567 (1993) (Michigan court applies North Carolina law); *Hampshire v Ford Motor Co*, 155 Mich App 143; 399 NW2d 36 (1986) (Michigan court applies California law).

Although plaintiffs have successfully demonstrated subject matter jurisdiction, before a court can require a party to comply with its orders, it must be able to exercise personal jurisdiction over the party. *Oberlies, supra*, 246 Mich 427. Personal jurisdiction can be general or limited, depending on a party’s connections with the state. *Id.*, 427-428; MCL 600.701; MCL 600.705; MCL 600.711; MCL 600.715. A party can also consent to the jurisdiction of the court. MCL 600.701; MCL 600.711. In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(1), this Court “consider[s] the pleadings and documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *W H Froh, Inc v Domanski*, 252 Mich App 220, 225-226; 651 NW2d 470 (2002) citing MCR 2.116(G)(5). Plaintiffs “need only 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).

Defendant Mel Farr, Sr. is an individual. MCL 600.701(2) authorizes the courts of Michigan to exercise general personal jurisdiction over individuals domiciled in Michigan at the time process is served. Plaintiffs Bitzer and Wynn allege in their complaint that defendant Farr is a Michigan resident. Defendant Farr has not denied this allegation. Pursuant to MCL 600.701(2) we find that defendant Mel Farr, Sr. is subject to the jurisdiction of Michigan courts.

Defendant Mel Farr Motors, Inc., defendant Triple M Financing, Inc., and the remaining Michigan defendants are corporations. MCL 600.711(1) authorizes the courts of Michigan to exercise general personal jurisdiction over corporations incorporated under the laws of Michigan. Because defendant Mel Farr Motors, Inc. is a Michigan corporation, it is subject to the

jurisdiction of Michigan courts. Plaintiffs allege that defendant Triple M Financing, Inc. is a Michigan corporation. Plaintiffs Bitzer and Wynn also allege that all other Michigan defendants included in their complaint are Michigan corporations with offices in Michigan. We find that plaintiffs have made a prima facie showing that these Michigan corporations are also subject to the jurisdiction of Michigan courts.

Defendants Mel Farr Lincoln Mercury – Ohio and Mel Farr Ford – Ohio are foreign corporations to the state of Michigan. In addition to authorizing the court to exercise jurisdiction over corporations incorporated in Michigan and/or carrying on a continuous and systematic business within Michigan, MCL 600.711 also authorizes the court to exercise general personal jurisdiction over a corporation that consents to jurisdiction. Plaintiffs argued below that defendants Mel Farr Lincoln Mercury – Ohio and Mel Farr Ford – Ohio have submitted to the court’s jurisdiction in the Williams and Holmes cases because defendants in those two cases filed written appearances and filed answers and affirmative defenses.

Plaintiff Williams, on appeal, correctly cites *Penny v ABA Pharmaceutical Co (On Remand)*, 203 Mich App 178; 511 NW2d 896 (1993), for the principle that a party waives any *service of process* objection by filing an appearance and submitting an answer. *Id.*, 181-182. Plaintiff cited *Penny* below for the principle that defendants submit to a court’s jurisdiction by entering a general appearance and that “[g]enerally, any action on the part of a defendant that recognizes the pending proceedings, with the exception of objecting to the court’s jurisdiction, will constitute a general appearance.” *Id.*, 181-182. This Court in *Penny* added that “[o]nly two requirements must be met to render an act adequate to support the inference that there is an appearance: (1) knowledge of the pending proceedings and (2) an intent to appear.” *Id.*, 182, citing *Ragnone v Wirsing*, 141 Mich App 263, 265; 367 NW2d 369 (1985).

A reading of *Penny* reveals that plaintiff Williams has incorrectly attempted to use the language in *Penny* to implicate general personal jurisdiction questions. The Court in *Penny*, and the *Ragnone* case relied on by *Penny*, was specifically concerned with the waiver of service of process objections and not consent to personal jurisdiction in general. Therefore, *Penny* is not applicable to the present cases.

Instead, applicable court rules should be applied. MCR 2.117 allows a party to file a written appearance without conferring or enlarging the court’s jurisdiction over the party. MCR 2.117(A)(2). MCR 2.117(A)(2) states,

Filing an appearance without taking any other action toward prosecution or defense of the action neither confers nor enlarges the jurisdiction of the court over the party. An appearance entitles a party to receive copies of all pleadings and papers as provided by MCR 2.107(A). In all other respects, the party is treated as if the appearance had not been filed.

However, MCR 2.111(F)(3) states that a party’s “[a]ffirmative defenses must be stated in a party’s responsive pleading” And MCR 2.116(D)(1) states that a party must raise lack of personal jurisdiction in the “party’s first motion under this rule or in the party’s responsive pleading, whichever is filed first” Reading MCR 2.116(D) in conjunction with MCR 2.111(F) the court rules allow a defendant to include in its affirmative defenses the lack of

personal jurisdiction defense in the same answer to a complaint without thereby submitting the defendant to the court's jurisdiction.

MCR 2.117 protects parties from the jurisdictional consequences of filing an appearance only when a party takes no further defensive action. MCR 2.111(F) and MCR 2.116(D) require a party to raise the lack of personal jurisdiction as well as any affirmative defenses in the first responsive pleading. This Court employs the ordinary rules of statutory construction when interpreting the Michigan Court Rules. *Taylor v Anesthesia Associates of Muskegon, PC*, 179 Mich App 384, 386; 445 NW2d 525 (1989). The basic rule of statutory construction states that between two conflicting statutes, the more specific provision prevails. *In re Brown*, 229 Mich App 496, 501; 582 NW2d 530 (1998). The provisions of MCR 2.111(F) and MCR 2.116(D) that require certain defenses to be plead within the first responsive pleading or they are waived are more specific than the general "any other action toward" language found in MCR 2.117. Therefore, a responsive pleading that includes objections based on the lack of personal jurisdiction in its affirmative defenses does not by itself operate under MCR 2.117 to subject a party to the jurisdiction of Michigan courts.

In the Williams and Holmes cases, defendants, in addition to filing appearances under MCR 2.117, filed answers and affirmative defenses including the jurisdictional defenses. But the only defenses argued before and addressed by the trial court were lack of personal jurisdiction and lack of subject matter jurisdiction. Therefore, defendants in the Williams and Holmes cases did not subject themselves to the general personal jurisdiction of the trial court simply by filing written appearances and submitting answers and affirmative defenses which included and preserved their lack of personal jurisdiction defense.

A limited personal jurisdiction analysis is then necessary to determine whether the court could exercise personal jurisdiction over the defendant foreign corporations. An analysis of limited personal jurisdiction contains two main questions: (1) whether the defendant's actions fall within Michigan's long-arm statute and (2) if so, whether the court's exercise of jurisdiction is in accord with the Due Process Clause of the Fourteenth Amendment. *Starbrite Distributing, Inc v Excelda Mfg Co*, 454 Mich 302, 304; 562 NW2d 640 (1997); *W H Froh, Inc, supra*, 252 Mich App 226.

Michigan's long-arm statute governing the exercise of limited jurisdiction over corporations, MCL 600.715, states as follows:

The existence of any of the following relationships between a corporation or its agent and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise limited personal jurisdiction over such corporation and to enable such courts to render personal judgments against such corporation arising out of the act or acts which create any of the following relationships:

- (1) The transaction of any business within the state.
- (2) The doing or causing any act to be done, or consequences to occur, in the state resulting in an action for tort

(3) The ownership, use, or possession of any real or tangible personal property situated within the state.

(4) Contracting to insure any person, property, or risk located within this state at the time of contracting.

(5) Entering into a contract for services to be performed or for materials to be furnished in the state by the defendant.

The due process analysis contains three prongs: (1) whether the party purposely availed himself of the privileges of exploiting the state's business opportunities, (2) whether the cause of action arose from the party's activities in the state, and (3) whether the party's activities are substantially connected with the state so that the exercise of jurisdiction is reasonable. *W H Froh, supra*, 252 Mich App 227-228, quoting *Jeffrey, supra*, 448 Mich 185-186.

Even assuming that plaintiffs' allegations of commingling funds with Michigan defendants, the financing of leases through Triple M in Michigan, and transferring lease documents to Triple M in Michigan are enough to satisfy the transaction of business or ownership criteria of the long-arm statute, plaintiffs' causes of actions did not arise out of any of these contacts as required under the due process analysis. Plaintiffs allege conversion of funds, fraudulent misrepresentation, and violation of Ohio law stemming from the leasing process itself or lease performance. All such activities took place in Ohio. Plaintiffs' causes of action arose from activities taking place in Ohio, not Michigan. Therefore, the court's exercise of jurisdiction over defendant foreign corporations does violate the Due Process Clause and accordingly we affirm the trial court's order regarding the foreign corporations.

In addition to the jurisdiction arguments, plaintiffs claim that the trial court erred when it failed to place its findings of fact or reasons for dismissing plaintiffs' complaints on the record. Defendants counter that because plaintiffs failed to object to defendants' proposed written order as required under MCR 2.602(B)(3), plaintiffs should not be allowed to raise this issue on appeal. According to MCR 2.517(4), "[f]indings of fact and conclusions of law are unnecessary in decisions on motions unless findings are required by a particular rule." Nothing in the summary disposition rule, MCR 2.116, requires that specific findings of fact be placed on the record when granting or denying a motion to dismiss based on lack of jurisdiction. In any event, the trial court granted the motion "for the reasons stated on the record," apparently referring to defendant's arguments as placed on the record. The trial court, according to MCR 2.517(4), was not required to place findings of fact and conclusions of law on the record in its decision on defendants' motion to dismiss and we find no error.

In summary, plaintiffs' claims are civil in nature and within the class of cases the trial court has subject matter jurisdiction. As a resident of Michigan at the time process was served, defendant Mel Farr, Sr. is subject to the jurisdiction of Michigan courts. And as residents or corporations of the state of Michigan, the Michigan defendants are subject to the jurisdiction of Michigan courts. Therefore, we reverse the trial court's order regarding the Michigan defendants and remand the case to the trial court. Because plaintiffs' causes of action did not arise from defendant Ohio corporations' alleged contacts with Michigan, the Michigan court's exercise of

jurisdiction over the foreign defendants would violate the Due Process Clause and thus we affirm the trial court's order regarding the foreign defendants.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Brian K. Zahra

/s/ Pat M. Donofrio