

STATE OF MICHIGAN
COURT OF APPEALS

COMPUTER METHODS CORP.,

Plaintiff-Appellant,

v

TECHNOLOGY INTEGRATION GROUP, INC.,
DAVID HURN, MICHAEL LANGFORD, JEFFREY
BRUNS, RICHARD TALLMAN, DONNA
LIOTTA, WILLIAM JOHNSON and LISA
DIMENT,

Defendants-Appellees,

and

JEFFREY BROZOVICH and TODD BALK,

Defendants-Not Participating.

Before: Cavanagh, P.J., and White and Young, Jr., JJ

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' joint motion for summary disposition pursuant to MCR 2.116(C)(1) for lack of jurisdiction. We affirm.

Plaintiff, a Michigan corporation, filed a complaint alleging that it employed the individual defendants, who were Illinois residents, to provide computer software consulting services for a number of plaintiff's customers and that in the course of performing these services, the individual defendants developed a relationship of trust and confidence with plaintiff's customers, obtained information concerning the customers' methods of operation and the customers' special needs and requirements and, while still employed by plaintiff or shortly thereafter, solicited plaintiff's customers' business and formed a new company named Technology Integration Group, Inc.¹ Plaintiff alleged that defendants

UNPUBLISHED

August 4, 1998

No. 199828

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usurped the business and business opportunities that plaintiff had and would have continued to have with its customers.

In lieu of an answer, defendants filed a joint motion for summary disposition pursuant to MCR 2.116(C)(1), alleging that they did not have the requisite minimum contacts with Michigan to support the exercise of limited personal jurisdiction. The circuit court granted defendants' motion.

Plaintiff argues that defendants directly, or indirectly through their coconspirators, had sufficient contacts with Michigan to support the exercise of limited personal jurisdiction. We disagree.

Jurisdictional rulings are reviewed by this Court de novo. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). The plaintiff has the burden of establishing jurisdiction over the defendant, but need only make a prima facie showing of jurisdiction to defeat a motion for summary disposition. *Id.* Affidavits and other documentary evidence submitted by the parties must be considered, and all factual disputes resolved in the nonmovant's favor. *Id.*

Michigan may exercise limited personal jurisdiction under its long-arm statute if two things are established: (1) the rules of statutory construction must support the exercise of jurisdiction over the defendant; and (2) the exercise of limited personal jurisdiction may not violate the Due Process Clause of the Fourteenth Amendment. *Starbright Dist v Excelda Mfg Co*, 454 Mich 302, 304; 562 NW2d 640 (1997). Plaintiff alleged jurisdiction over the individual defendants under MCL 600.705; MSA 27A.705, and over the corporate defendant under MCL 600.715; MSA 27A.715, on the basis that defendants transacted business within the state.² The phrase "any business" has been interpreted broadly to include even the slightest transactions. *Sifers v Horen*, 385 Mich 195, 199 n 2; 188 NW2d 623 (1971). The lack of physical presence is not an impediment to asserting jurisdiction over a non-resident defendant. *Witbeck v Bill Cody's Ranch Inn*, 428 Mich 659, 668; 411 NW2d 439 (1987).

Michael Juchno's affidavit, the only documentary evidence plaintiff attached to its response to defendants' motion, does not support that defendant corporation, an Illinois corporation located in and doing business in Illinois, or its agents, transacted business within the state of Michigan. Nor have we found such support elsewhere in the record. Plaintiff thus failed to make out a prima facie showing of jurisdiction over defendant corporation. *Jeffrey, supra*, 448 Mich at 184.

Regarding the individual defendants, Juchno's affidavit stated that several made trips to Michigan to discuss business, faxed or caused to be faxed expense reports to plaintiff in Michigan, prepared and submitted to plaintiff their business plans and projections for the Chicago office, ordered supplies for the Chicago office from Michigan that were delivered to a defendant while the defendant was in Michigan, and communicated via telephone, voice mail, and fax with plaintiff in Michigan. Assuming arguendo that these activities satisfied section one of the long-arm statute, we nonetheless conclude that the individual defendants did not have sufficient minimum contacts with Michigan to support the exercise of limited personal jurisdiction.

The constitutional inquiry whether the exercise of personal jurisdiction would violate the Due Process Clause focuses on whether the defendant purposefully established minimum contacts in the

forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Starbrite, supra*, 454 Mich at 308-309. In determining whether sufficient minimum contacts exist between a defendant and Michigan, the Court must apply a three-pronged test: (1) 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; (2) the cause of action must arise from the defendant's activities in the state; and (3) the defendant's activities must be so substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable. *Id.* at 309. The purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of a random, fortuitous, or attenuated contacts. *Id.* at 310. The defendant's own conduct and connection with the forum must be examined in order to determine whether the defendant should reasonably anticipate being haled into court there. *Jeffrey, supra* 448 Mich at 187. Where the defendant deliberately has engaged in significant activities with a State, or has created 'continuing obligations' between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by 'the benefits and protections' of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well. *Starbrite, supra* at 310, quoting *Burger King Corp v Rudzewicz*, 471 US 462, 475-476; 105 S Ct 2174; 85 L Ed 2d 528 (1985).

The individual defendants worked for plaintiff in Illinois serving Illinois clients, and are not Michigan residents. Although they were employees of a Michigan corporation, they did not reach out to Michigan; rather, plaintiff affiliated with them to reach the Illinois market. The telephone, fax, and other communications between plaintiff and its Illinois employees, and the occasional visits to Michigan by some of the defendants to attend company functions do not constitute "purposeful availment" by defendants of the privilege of doing business in Michigan. Further, the cause of action does not arise out of these activities.

We are not persuaded by plaintiff's reliance on *Superior Consulting Co v Walling*, 851 F Supp 839 (ED Mich, 1994) and *Lanier v American Board of Endodontics*, 843 F 2d 901 (CA 6, 1998). In *Lanier*, the defendant Board purposefully availed itself of the privilege of doing business in Michigan by undertaking to certify a Michigan dentist. "The Board sought both to acquire a Michigan resident's fees... and to extend its influence and prestige in Michigan as the principal national determiner of special competence for the practice of endodontics." 843 F 2d at 911. And, while there is, indeed, some similarity between *Superior Consulting* and the instant case, the level of contacts in *Superior Consulting* exceeded those involved here. Further, in *Superior Consulting*, the employment contract contained a choice of law provision expressly stating that Michigan law governed. The district court found this significant in determining whether defendant purposefully invoked the benefits and protections of Michigan law.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Helene N. White
/s/ Robert P. Young, Jr.

¹ Defendants maintain that their relationships with plaintiff's Illinois customers preceded defendants' association with plaintiff.

² MCL 600.705; MSA 27A.705 provides in pertinent part:

The existence of any of the following relationships between an individual or its 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.

* * *

MCL 600.715; MSA 27A.715 provides in pertinent part:

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.

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