

STATE OF MICHIGAN
COURT OF APPEALS

LEASE CORPORATION OF AMERICA,

Plaintiff-Appellant,

v

MILAZZO ENTERPRISES, INC., SAL
MILAZZO, JANET MILAZZO and JOANNE
MILAZZO, a/k/a JOANNE LEVINSKY,

Defendants-Appellees.

UNPUBLISHED
February 20, 2001

No. 214273
Oakland Circuit Court
LC No. 98-003626-CK

Before: Bandstra, C.J., and Saad and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of dismissal which granted summary disposition in favor of defendants in this breach of contract action. We affirm in part and vacate in part.

Plaintiff first argues that the trial court improperly considered the affidavit of defendant Sal Milazzo because it was unsigned and did not conform to MCR 2.119(B)(1). Where affidavits considered in determining a motion for summary disposition violate the court rules, there must be a showing of prejudice due to the noncompliance or any error is harmless. *Hubka v Pennfield Twp*, 197 Mich App 117, 119-120; 494 NW2d 800 (1992), rev'd on other grounds 443 Mich 864 (1993).

The affidavit did not conform to MCR 2.119(B)(1) as it did not affirmatively state that Sal Milazzo could testify competently to the facts stated in the affidavit. *Hubka, supra* at 119. However, if the contents of an affidavit show that the affiant fits the requirements of MCR 2.119(B)(1), the error is harmless. *Id.* at 120. Here, Sal Milazzo stated that he was the secretary and shareholder of Milazzo Enterprises and had personal knowledge of the facts stated in the affidavit. Within the affidavit, Sal Milazzo discussed his business dealings with plaintiff. A review of the affidavit reflects that Sal Milazzo would be competent to testify as to the facts stated. Therefore, the error was harmless.

Similarly, we find plaintiff's other argument for the rejection of the affidavit, that the affidavit was unsigned by Sal Milazzo at the time of the motion hearing on August 19, 1998, to be without merit. MCR 2.114(C) allows for the prompt signing of documents, including

affidavits, which are filed with the court but unsigned, upon notice to the party or attorney. Here, the omission was corrected by Sal Milazzo on his own initiative and before plaintiff could bring the deficiency to Sal Milazzo's attention. Thus, Sal Milazzo's affidavit was properly considered. MCR 2.114(C). Further, plaintiff cannot show prejudice as the signed affidavit was the same as the original affidavit, which plaintiff received with the motion for summary disposition and had an opportunity to review. Any error in considering the unsigned affidavit was corrected by Sal Milazzo's filing of the signed affidavit before the omission was brought to his attention by plaintiff and, further, was harmless.

Plaintiff next argues that the trial court erred in granting summary disposition under MCR 2.116(C)(1) for various reasons. This Court reviews jurisdictional rulings de novo. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). "The plaintiff bears 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.* (citations omitted). The trial court must consider all affidavits and other documentary evidence presented by the parties pursuant to MCR 2.116(G)(5). All factual disputes are to be resolved in the plaintiff's favor. *Id.*

Plaintiff's main argument is that the trial court erred in granting summary disposition on the basis of its factual determination that the parties had not come to a meeting of the minds and, therefore, the lease was not valid.¹ We agree with plaintiff that the trial court inappropriately decided factual questions about which there was genuine dispute in finding that the contract was invalid.

Nonetheless, we affirm the order granting summary disposition against plaintiff, even assuming, without deciding,² that the contract is valid. See *Phinney v Perlmutter*, 222 Mich App 513, 532; 564 NW2d 532 (1997) (order of trial court will not be reversed when it reaches the right result for the wrong reason). Plaintiff relies primarily on the provision of the contract purporting to establish jurisdiction by the consent of the parties. However, a Michigan statute provides that such consent provisions will be enforced only if Michigan "is a reasonably convenient place for the trial of the action." MCL 600.745(2)(b); MSA 27A.745(2)(b); see *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992) ("Parties cannot give a court jurisdiction by stipulation where it otherwise would have no jurisdiction.").

We conclude, based on the uncontested portions of the record, that it would not be "reasonably convenient" to try this action in Michigan. At issue here is whether the radios that

¹ In addition, plaintiff argues that the trial court improperly concluded that there were insufficient contacts between defendants and Michigan to satisfy due process concerns. However, that determination was without effect as the trial court went on to consider whether jurisdiction could be found under Michigan's long arm statutes. We conclude below that there is no statutory jurisdiction and need not, thus, consider whether application of the statute to provide jurisdiction over defendants would violate the requirements of due process. See, generally, *Jeffrey, supra* at 184-185.

² We suggest no opinion as to the validity of the contract, which may be tested if this action is filed in a court with appropriate jurisdiction.

plaintiff supplied to defendants for their use in Illinois worked properly and according to the parties' contract. Evidence and witnesses regarding this and related issues are to be found in Illinois, either in defendants' records or from its employees or from the records and employees of the Illinois agent that plaintiff used to negotiate and secure the lease contract with defendants. Other than undertaking an obligation to send lease payments to Michigan, defendant simply had no contact with Michigan during or as a result of this transaction and, as a result, Michigan is not "reasonably convenient" for an action arising from this transaction.³

We vacate the opinion and order of the trial court to the extent that it determined that the lease between plaintiff and defendants was not valid. We affirm the decision of the trial court granting summary disposition to defendants on jurisdictional grounds.

/s/ Richard A. Bandstra
/s/ Henry William Saad
/s/ Patrick M. Meter

³ Further and for the same reasons, to the extent that plaintiff argues that there is statutory jurisdiction here because defendant transacted business in Michigan, MCL 600.705(1), 715(1); MSA 27A.705(1), 715(1), we reject that argument.