

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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L.S. BRINKER COMPANY, BRINKER TEAM  
CONSTRUCTION COMPANY, CITY CARPET  
& FLOORING, INC., UNIVERSAL GLASS &  
METALS, INC., and PERINI/L.S. BRINKER,

Plaintiffs-Appellees,

v

MGM GRAND DETROIT L.L.C., MGM GRAND  
RESORTS L.L.C., and MGM MIRAGE, INC.,

Defendants-Appellants.<sup>1</sup>

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UNPUBLISHED  
February 15, 2007

No. 270120  
Wayne Circuit Court  
LC No. 05-536367-CZ

Before: Cavanagh, P.J., and Murphy and Meter, JJ.

PER CURIAM.

Defendants appeal by leave granted the denial of their motion to dismiss for lack of personal jurisdiction. We reverse.

MGM Mirage (Mirage), a Delaware corporation, is the parent company of various subsidiaries, including MGM Grand Resorts (Grand Resorts), a Nevada corporation, MGM Grand Resorts Development (Grand Development), also a Nevada corporation, and MGM Grand Detroit (Grand Detroit), another Delaware corporation. Grand Detroit is building a casino complex in Detroit. In September 2002, it hired the Perini/Brinker joint venture as the contractor for the project. Although the contract identifies Grand Detroit and Perini/Brinker as the only parties and is signed by Benjamin Mammina on behalf of Grand Detroit and by Dave Agnello and Larry Brinker on behalf of Perini/Brinker, plaintiffs contend that the contract was with all defendants and Mammina signed the contract on behalf of all defendants. But, the contract gave Grand Detroit the right to terminate the contract “for any reason or for no reason” and Grand Detroit exercised that right in May 2005. Plaintiffs claim it did so in bad faith because it preferred to award the job to Tre Builders, a new company formed by Agnello, who left Perini/Brinker.

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<sup>1</sup> MGM Grand Detroit is not a party to this appeal which is brought only by MGM Grand Resorts and MGM Mirage who are referred to as “defendants” in this opinion.

Plaintiffs claim that while working on the project on behalf of Perini/Brinker, Agnello acquired all sorts of “confidential and proprietary trade secret information” which he had promised to keep confidential, but promptly “disclosed, revealed and made use of” it for defendants’ benefit. Plaintiffs assert that defendants violated the trade secrets act by using Perini/Brinker’s confidential information and that such use constituted conversion. They also maintain that by wrongfully terminating the contract with Perini/Brinker and entering into a new contract with Tre Builders, defendants tortiously interfered with Brinker’s and/or Perini/Brinker’s contracts or business relationships with the Brinker affiliates and that Mirage and Grand Resorts tortiously interfered with Brinker’s and/or Perini/Brinker’s contract or business relationship with Grand Detroit.

Plaintiffs allege that defendants are involved in the Detroit construction project and the decision to terminate Perini/Brinker’s contract and thus have usurped and made use of Perini/Brinker’s confidential information also. This allegation is premised in part on the fact that Mammina is a former officer of Mirage and a current officer of Grand Development. On June 14, 2005, Mammina wrote a “To Whom It May Concern” letter, purportedly directed toward Brinker and its affiliates, that was written on Mirage letterhead and signed by Mammina on behalf of Mirage. It states in pertinent part:

MGM Grand Resorts Development hereby authorizes the release of all records, documents and other valid information pertinent to the MGM Grand Detroit permanent casino project.

TRE Builders, acting as MGM Grand’s Project Manager, is to be granted complete access to review, scrutinize and/or remove any information that was developed and compiled during the earlier preconstruction phase of this project.

In response to plaintiffs’ complaint in this action, defendants filed a motion to dismiss for lack of personal jurisdiction, arguing that they did not conduct business in Michigan or have sufficient minimum contacts with Michigan. Although Mirage guaranteed some of Grand Detroit’s financial obligations, they argued, such guarantee did not afford a basis for exercising long arm jurisdiction because plaintiffs’ cause of action was unrelated to the guarantee. Plaintiffs responded that both the guarantee and the torts committed in the state by defendants were sufficient to enable the court to exercise long arm jurisdiction. Plaintiffs also cited information obtained on the Internet and in newspapers in which an officer of Mirage and Grand Resorts indicated that Mirage and Grand Resorts were involved in the development of the Detroit Casino.

After reviewing the evidence submitted, the trial court denied the motion to dismiss ruling, in pertinent part, that the June 14, 2005, letter written by Mammina, the senior vice-president of construction for MGM Mirage, which indicated that “MGM Grand Resort authorizes release of all records” illustrated that “MGM Grand Resorts Development and MGM Mirage does [sic] have sufficient contacts with the state of Michigan and with this cause of action to allow limited jurisdiction.” Defendants’ motion for reconsideration was denied and leave to appeal was sought, and granted by this Court.

On appeal, defendants argue that there was no valid basis for the trial court to assert either general personal jurisdiction or limited personal jurisdiction. After de novo review of this summary dismissal premised on an issue of law, we agree. See *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 426; 633 NW2d 408 (2001); *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

Personal jurisdiction is governed by statute. The statutes provide two bases by which Michigan courts can acquire personal jurisdiction over corporations: general or all-purpose jurisdiction, MCL 600.711, and limited or long-arm jurisdiction, MCL 600.715. The plaintiff bears the burden of proving that the court has personal jurisdiction over a defendant, “but 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).

First we consider the issue of general personal jurisdiction. General personal jurisdiction arises from certain relationships between the defendant corporation and the state. One such relationship is “[t]he carrying on of a continuous and systematic part of its general business within the state.” MCL 600.711(3). If such a relationship exists, “the state may exercise personal jurisdiction over the defendant even if the action is unrelated to the defendant’s contacts with the state without violating due process because the defendant’s contacts with the forum state are ‘continuous and systematic.’” *Neagos v Valmet-Appleton, Inc*, 791 F Supp 682, 686 (ED Mich, 1992).

Michigan’s courts have not defined what constitutes “a continuous and systematic part” of one’s general business. One panel of this Court suggested that relevant considerations are whether the defendant has a place of business, officers, employees, or bank accounts in this state. See *Oberlies*, *supra* at 428. In most cases, however, the courts look to the defendant’s conduct. See, e.g., *Helzer v F Joseph Lamb Co*, 171 Mich App 6, 11; 429 NW2d 835 (1988) (regularly bought and sold parts in Michigan and sent a courier here daily); *Lincoln v Fairfield-Nobel Co*, 76 Mich App 514, 518; 257 NW2d 148 (1977) (numerous mail-order sales to Michigan stores over a period of years, which sales were solicited by the defendant’s in-state sales force); *Kircos v Goodyear Tire & Rubber Co*, 70 Mich App 612, 614; 247 NW2d 316 (1976) (solicitation of sales by various methods, presence of a dealer in the state, earning an average of 2.78% of total revenues from Michigan customers, some of which were the state’s largest industries, during 1970-1974 and 1.67% of total revenues [\$32,117] in 1975); *June v Vibra Screw Feeders, Inc*, 6 Mich App 484, 492; 149 NW2d 480 (1967) (dozens of sales in Michigan throughout the year preceding the filing of the suit, which sales totaled over \$30,000); *Michigan Nat’l Bank v Quality Dinette, Inc*, 888 F2d 462, 464 (CA 6, 1989) (maintaining an independent sales agent in the state and solicitation of mail orders resulting in 400 sales over a two-year period [with at least one sale each month] that generated 3% of total sales).

And, we may consult dictionary definitions to ascertain the plain and ordinary meaning of words used in a statute. *People v Denio*, 454 Mich 691, 699; 564 NW2d 13 (1997). The word “continuous” is defined as “Uninterrupted; unbroken; not intermittent or occasional; so persistently repeated at short intervals as to constitute virtually an unbroken series. Connected, extended, or prolonged without cessation or interruption of sequence.” Black’s Law Dictionary (5th ed). The word “systematic” is defined as “having, showing, or involving a system, method, or plan” or “given to or using a system or method; methodical.” *Random House Webster’s College Dictionary* (1997). The examples cited above showed that the defendants in those cases

had a general plan for selling their goods in Michigan that was carried out on a regular basis. Here, the courts of this state would have general jurisdiction over defendants if they had a general plan for conducting gaming operations on a regular basis within the state.

Obviously if defendants own and operate the Detroit casino, they would be conducting “a continuous and systematic part of [their] general business” here. The press releases and newspaper articles submitted by plaintiffs (the admissibility of which has not been addressed) show that defendants are somehow affiliated with the casino operations, but do not indicate what type of business, if any, defendants actually conduct in this state and plaintiffs have not shown if defendants have a place of business, officers, employees, or bank accounts in this state. Whether ownership of a subsidiary located and conducting regular business operations in the forum state subjects the foreign parent corporation to jurisdiction is a question plaintiffs have not addressed. Based on the record evidence, we conclude that the trial court did not have general personal jurisdiction over defendants Mirage and Grand Resorts.

Next, we consider the issue of limited personal jurisdiction. Determining jurisdiction under the long-arm statute requires a two-part inquiry. “First, we ascertain if jurisdiction is authorized by MCL 600.715; MSA 27A.715 (Michigan’s long-arm statute). Second, we determine if the exercise of jurisdiction is consistent with the requirements of the Due Process Clause of the Fourteenth Amendment.” *Aaronson v Lindsay & Hauer Int’l Ltd*, 235 Mich App 259, 262; 597 NW2d 227 (1999).

The long-arm statute provides in 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.
- (2) The doing or causing any act to be done, or consequences to occur, in the state resulting in an action for tort. [MCL 600.715.]

Even if the defendant has a connection with the state creating a basis for jurisdiction under the long-arm statute, the court cannot exercise that jurisdiction unless doing so is consistent with due process requirements. *Green v Wilson*, 455 Mich 342, 348-351; 565 NW2d 813 (1997). Whether defendants have actually transacted any business in this state or undertook some action in this state (or undertook some action elsewhere that caused consequences to occur in this state) resulting in an action for tort is unclear. However, defendants themselves do not directly challenge the applicability of subsection 1 or 2, but focus instead on whether the exercise of limited jurisdiction comports with due process.

To determine whether a defendant has sufficient minimum contacts with Michigan, the courts apply a three-part test:

First, 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. Second, the cause of action must arise from the defendant's activities in the state. Third, the defendant's activities must be so substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable. [*Mozdy v Lopez*, 197 Mich App 356, 359; 494 NW2d 866 (1992).]

"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 passive availment of Michigan opportunities[, such that] [t]he defendant will have reason to foresee being 'haled before' a Michigan court." *Khalaf v Bankers & Shippers Ins Co*, 404 Mich 134, 153-154; 273 NW2d 811 (1978). Stated another way, the defendant must deliberately engage in significant activities in the state or create such continuing obligations between itself and the state's residents that it is reasonable to require the defendant to submit to the burden of litigation in the state. *Vargas v Hong Jin Crown Corp*, 247 Mich App 278, 285; 636 NW2d 291 (2001). The defendant's contacts with the forum state must be analyzed in terms of the defendant's own actions rather than the unilateral activity of others but the defendant's lack of a physical presence in the forum state is not determinative. *Witbeck v Bill Cody's Ranch Inn*, 428 Mich 659, 667-668; 411 NW2d 439 (1987). "So long as a commercial actor's efforts are 'purposefully directed' toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there." *Burger King Corp v Rudzewicz*, 471 US 462, 476; 105 S Ct 2174; 85 L Ed 2d 528 (1985).

In concluding that it acquired limited personal jurisdiction over defendants, the trial court relied on the June 14, 2005, letter written by Mammina. Evidence submitted indicates that Mammina is or was involved with Mirage and Grand Development; he apparently has no affiliation with Grand Resorts. Therefore, the letter does not establish minimum contacts between Grand Resorts and this state. It is unclear if Mammina transacts business on behalf of Mirage in Michigan or if such work is undertaken in Nevada. Even assuming Mammina wrote the letter in Michigan, plaintiffs' claims do not arise from the letter Mammina sent to them. Their claims arise from Grand Detroit's use of confidential information apparently leaked by Agnello and from Grand Detroit's decision to terminate its contract with Perini/Brinker and hire Agnello's company.

Statements made by John T. Redmond, president and CEO of MGM Grand Resorts, including: "We are pleased to be an integral part of" the casino project and that "We are very pleased that we and the executive branch of the City have reached fundamental agreement" on opening a casino are merely statements. They are not evidence of any specific activities Grand Resort undertook in Michigan. Again, plaintiffs' claims do not arise out of Grand Resorts' involvement in the casino venture or out of any agreement it may have entered into with the city. Finally, the agent who appeared before the Gaming Control Board appeared on behalf of Grand Development, not Mirage or Grand Resorts.

Because it appears that plaintiffs do not have any claims against defendants Mirage and Grand Resorts that arose out of any possible contacts those defendants may have with this state, we conclude that the trial court did not have limited personal jurisdiction over those defendants. Therefore, the trial court's denial of their motion to dismiss for lack of personal jurisdiction is reversed.

Reversed and remanded for entry of an order granting defendants' motion to dismiss for lack of personal jurisdiction. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ William B. Murphy

/s/ Patrick M. Meter