

STATE OF MICHIGAN
COURT OF APPEALS

KMART CORPORATION,

Plaintiff-Appellant,

v

909 GROUP, BELLEVUE HOLDING
COMPANY and REGIS INSURANCE
COMPANY,

Defendants-Appellees.

UNPUBLISHED
November 9, 2001

No. 226161
Oakland Circuit Court
LC No. 99-017827-CK

Before: Doctoroff, P.J., and Wilder and Schmucker*, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(1) for lack of personal jurisdiction. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff is a Michigan corporation. Defendants Bellevue Holding Company (Bellevue) and Regis Insurance Company (Regis) are foreign corporations and defendant 909 Group is a foreign partnership. Plaintiff entered into a lease agreement to lease property owned by Bellevue and 909 Group. The property is located in Philadelphia, Pennsylvania.

Plaintiff brought this action after defendants refused to indemnify and/or defend it in relation to three premises liability claims brought against it for slip and falls that occurred at the leased premises. Plaintiff alleged that the lease agreement required defendants to maintain the common areas of the property leased by plaintiff. Plaintiff also alleged that defendants were required to obtain insurance coverage for the property, naming plaintiff as an additional insured. Plaintiff alleged claims of breach of contract based on defendants' refusal to indemnify and/or defend plaintiff, failure to properly maintain the common areas and failure to obtain insurance coverage naming plaintiff as an additional insured.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(1) for lack of personal jurisdiction. They submitted affidavits stating that they were not Michigan corporations or partnerships and conducted no business in Michigan. In response to defendants' motion,

* Circuit judge, sitting on the Court of Appeals by assignment.

plaintiff submitted an affidavit that after defendants executed the lease agreement and addenda, plaintiff's representatives executed the lease agreement and addenda in Michigan.

The trial court granted defendants' motion. Although it found that defendants fell within the long-arm statutes, MCL 600.725 and MCL 600.715, because they had transacted minimal business in Michigan, it found that the exercise of jurisdiction over defendants did not satisfy due process. Plaintiff argues that the trial court's conclusion that it does not have personal jurisdiction over defendants is erroneous. We disagree.

The court's ruling regarding jurisdiction is reviewed de novo. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). The plaintiff has the burden of establishing that the court has jurisdiction over the defendant and must make only a prima facie showing of jurisdiction to overcome a motion for summary disposition. *Id.*, citing *Modzy v Lopez*, 197 Mich App 356, 359; 494 NW2d 866 (1992) and *Williams v Bowman Livestock Equip Co*, 927 F2d 1128, 1130 (CA 10, 1991). The *Bowman Livestock* court explained:

The plaintiff bears the burden of establishing personal jurisdiction over the defendant. Prior to trial, however, when a motion to dismiss for lack of jurisdiction is decided on the basis of affidavits and other written materials, the plaintiff need only make a prima facie showing. The allegations in the complaint must be taken as true to the extent they are uncontroverted by the defendant's affidavits. If the parties present conflicting affidavits, all factual disputes are resolved in the plaintiff's favor, and the plaintiff's prima facie showing is sufficient notwithstanding the contrary presentation by the moving party. [*Bowman Livestock*, *supra* 927 F2d 1130-1131.]

In deciding a motion for summary disposition brought pursuant to MCR 2.116(C)(1) on the basis that the court lacks personal jurisdiction over the defendant, the court considers all affidavits and documentary evidence submitted by the parties, MCR 2.116(G)(5), and the facts are considered in the plaintiff's favor. *Jeffrey*, *supra*.

The court must determine whether the exercise of limited personal jurisdiction (1) falls within the terms of the long-arm statute and (2) is consistent with due process. *Witbeck v Bill Cody's Ranch Inn*, 428 Mich 659, 665-666; 411 NW2d 439 (1987). The defendants are corporations and a partnership.

The applicable statutory provisions, MCL 600.715(1) and MCL 600.725(1), provide for the exercise of limited personal jurisdiction over such entities "arising out of the act or acts which create any of the following relationships: (1) The transaction of any business within the state." For purposes of the long-arm statute, "the transaction of any business" means each and every business transaction. *Sifers v Horen*, 385 Mich 195, 199 n 2; 188 NW2d 623 (1971). The word "any" comprehends "the slightest." *Id.*

Regis submitted an affidavit stating that it does not conduct business in Michigan. Plaintiff alleged only that it believes Regis conducts business in Michigan. However, Regis was not a party to the lease agreement. Plaintiff failed to present evidence to contradict the evidence submitted by Regis. Thus, plaintiff has failed to make a prima facie showing that the court has long-arm jurisdiction over Regis.

As to the remaining defendants, plaintiff alleged that they conducted business in Michigan. Defendants submitted an affidavit contradicting the allegation. In response, plaintiff submitted an affidavit stating that after defendants executed the lease agreement and addenda, plaintiff executed the documents in Michigan. Defendants have not offered contradictory evidence. Considering the breadth of the “transaction of any business” element of the long-arm statute, we find that the defendants’ entering into a lease agreement with plaintiff under these circumstances constitutes the transaction of business in Michigan. Therefore, defendants fall within the long-arm statute.

Next, the exercise of limited personal jurisdiction over defendants must satisfy due process. A three-pronged test must be applied to determine whether sufficient minimum contacts exist between a defendant and Michigan to support the Michigan courts’ exercise of limited personal jurisdiction:

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 substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable. [*Jeffrey*, 448 Mich 186, quoting *Modzy v Lopez*, 197 Mich App 356, 359; 494 NW2d 866 (1992).]

“The primary focus of personal jurisdiction is on ‘reasonableness’ and ‘fairness.’” *Id.*

Plaintiff has failed to satisfy its burden of demonstrating that the court has personal jurisdiction over defendants. While it submitted evidence that it executed the lease and addenda in Michigan after Bellevue and 909 Group executed the documents, it has not submitted any evidence regarding defendants’ contacts with this state. The only evidence of any correspondence between the parties consists of letters written by plaintiff and addressed to defendants. However, this shows plaintiff’s contact with defendants and the State of Delaware, not defendants’ contacts with Michigan. Thus, plaintiff has failed to satisfy its burden of making a prima facie showing that defendants purposefully established minimum contacts with Michigan. The trial court properly granted defendants’ motion for summary disposition.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Kurtis T. Wilder
/s/ Chad C. Schmucker