

STATE OF MICHIGAN
COURT OF APPEALS

BAYONNE DEVELOPMENT II, LLC, and
CARL RASHID, a/k/a CARL RASHID JR.,

UNPUBLISHED
October 15, 2013

Plaintiffs-Appellees,

v

No. 309462
Wayne Circuit Court
LC No. 11-015422-CZ

SLS VENTURES, LLC,

Defendant-Appellant,

and

BAYONNE, LLC, LEONARD P. NADOLSKI,
LEN'S S CORPORATION, and LEN'S
INVESTMENT, LLC,

Defendants.

Before: M. J. KELLY, P.J., and WILDER and FORT HOOD, JJ.

PER CURIAM.

In this dispute arising from the ownership and management of a real estate business, defendant SLS Ventures, LLC appeals by leave granted the trial court's order denying its motion for summary disposition under MCR 2.116(C)(1). On appeal, we must decide whether the trial court erred when it determined that plaintiffs Bayonne Development II, LLC and Carl Rashid made a prima facie showing that this state's courts may properly exercise personal jurisdiction over SLS Ventures. We conclude that the trial court did not err when it concluded that SLS Ventures transacted business in Michigan and had sufficient contacts with Michigan to warrant the trial court's exercise of jurisdiction without offending due process. Accordingly, we affirm.

I. BASIC FACTS

Defendant Bayonne, LLC was originally organized under Florida law to develop real estate in Florida. However, at a later point, the members changed Bayonne's principal place of business and mailing address to Michigan. Rashid, who resides in Michigan, was one of Bayonne's members as was Bayonne Development¹, SLS Ventures, defendant Len's S Corporation, and defendant Len's Investment, LLC. Leonard P. Nadolski, who also resides in Michigan, served as Len's S Corporation's president and also controlled Len's Investment. Len's S Corporation served as Bayonne's managing member. SLS Ventures was organized under Ohio law.

Rashid and Bayonne Development eventually sued defendants over claims that they improperly terminated Rashid and Bayonne Development's ownership interests in Bayonne after Rashid and Bayonne Development failed to meet a capital call. The members caused Bayonne to make the capital call after Comerica Bank demanded payment on Bayonne's note. Rashid and Bayonne Development alleged that, under the governing agreements, SLS Ventures and Nadolski were obligated to pay the first \$2.5 million of Comerica's \$3 million demand and that Rashid's pro-rata share was \$5,000 (1% of the remaining \$500,000) and Bayonne Development's share was \$92,700 (18.54% of \$500,000). Despite this, defendants caused Bayonne to make an \$8.2 million capital call and claimed that Rashid's share was \$82,000, and Bayonne Development's share was \$1,520,280.

Rashid and Bayonne Development alleged that Nadolski and Len's S Corporation breached their duty of care, breached the obligation of good faith and fair dealing, and breached their fiduciary duties. They also alleged that each defendant breached the operating agreement, conspired to improperly deprive Rashid and Bayonne Development of their ownership in Bayonne, and breached "an executory accord" to settle the claims; they also requested declaratory relief concerning a release that Rashid signed and then rescinded as part of settlement negotiations.

SLS Ventures moved for summary disposition under MCR 2.116(C)(1). Specifically, it argued that the trial court could not exercise personal jurisdiction over it because it did not conduct business or own property in Michigan. The trial court determined that it could properly exercise personal jurisdiction over SLS Ventures and denied the motion.

This appeal followed.

¹ The trial court dismissed Bayonne Development's claims under MCR 2.116(C)(7); that order is not at issue on appeal.

II. PERSONAL JURISDICTION

A. STANDARD OF REVIEW

SLS Ventures argues that the trial court incorrectly denied its motion for summary disposition because SLS Ventures did not transact business in Michigan and this state's exercise of jurisdiction over SLS Ventures does not comport with due process. This Court reviews de novo a trial court's decision on a motion for summary disposition, including the legal question whether a court possesses personal jurisdiction. *Yoost v Caspari*, 295 Mich App 209, 219; 813 NW2d 783 (2012). When analyzing a motion under MCR 2.116(C)(1), courts consider the pleadings and evidence submitted by the parties in a light most favorable to the nonmoving party. *Id.* at 221. The allegations of the complaint are accepted as true to the extent they are not controverted by affidavits or other evidence. *Id.* at 221-222. If the parties present conflicting evidence, the factual disputes are resolved in the plaintiff's favor. *Id.* A prima facie showing of jurisdiction is sufficient to defeat a motion for summary disposition. *Id.*

B. LONG-ARM STATUTE

Whether a court possesses limited personal jurisdiction involves a two-step inquiry. *Yoost*, 295 Mich App at 222. This Court first determines if personal jurisdiction is authorized under Michigan's long-arm statute and, if it is authorized, this court then considers whether the exercise of jurisdiction comports with due process. *Id.* Under Michigan's long-arm statute, the courts of this state will have limited personal jurisdiction over an unincorporated association that—in relevant part—transacts “any business within the state” or does or causes “any act to be done, consequences to occur, in the state resulting in an action for tort.” MCL 600.735(1) and (2). The Legislatures use of the word “any” in the statute encompasses each and every transaction of business, however slight. *Yoost*, 295 Mich App at 229, citing *Sifers v Horen*, 385 Mich 195, 199 n 2, 188 NW2d 623 (1971).

The evidence showed that Bayonne and some of its members had significant ties to Michigan. Rashid and Nadolski are both Michigan residents. In addition, Nadolski owned Len's Investment and is the sole shareholder in Len's S Corporation, which corporation served as Bayonne's managing member. Bayonne's principal place of business has been in Michigan since at least 2010. Because of these ties, Bayonne's members met to make decisions concerning Bayonne at meetings that were held in Michigan.

Indeed, SLS Ventures participated by telephone in the December 2009 meetings that were conducted in Michigan and resulted in the members approving the disputed capital call for \$8,200,000. James Frauenberg, who acted on SLS Venture's behalf, seconded the motion to approve the capital call and voted in favor of the motion. The members also voted to approve implementation of a provision “whereby the Company may recover a non-contributing Member's contribution in kind by acquiring all or any portion of the Member's Units.” Frauenberg seconded that motion and voted in its favor as well. SLS Ventures participation in Bayonne's management—including its participation in the meetings conducted in Michigan that

gave rise to the dispute at issue here—clearly constitutes the transaction of business within the meaning of MCL 600.735(1).²

Despite the broad interpretation that our Supreme Court applied to the phrase “any business” in *Sifers*, SLS Ventures contends that its participation in Bayonne’s management cannot constitute the transaction of business. It relies heavily on MCL 450.5008 for that proposition.

The Legislature provided that certain activities will not constitute the transaction of business in this state under MCL 450.5008(1). However, the Legislature also provided that the exceptions applied only “for purposes of this act.” *Id.* As our Supreme Court explained in the analogous context of a similar provision in the statutes governing corporations, the statutory provisions providing for jurisdiction differ substantially in policy and purpose from statutes limiting the types of business that may be conducted in this state without meeting certain requirements. See *Long Mfg Co, Inc v Wright-Way Farm Serv, Inc*, 391 Mich 82, 85-87; 214 NW2d 816 (1974). For that reason, the statutes must be read separately. *Id.* Moreover, the Legislature specifically stated that MCL 450.5008(1) does not apply “in determining the contacts or activities that may subject a foreign limited liability company” to this state’s process, taxation, or regulation. MCL 450.5008(2).

The trial court did not err when it determined that SLS Venture’s participation in Bayonne’s management constituted the transaction of business in this state.

C. DUE PROCESS

To determine whether the exercise of limited personal jurisdiction comports with due process, this Court examines three factors:

“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.” [*Yoost*, 295 Mich App at 223, quoting *Mozdy v Lopez*, 197 Mich App 356, 359; 494 NW2d 866 (1992).]

“The primary focus of personal jurisdiction is on ‘reasonableness’ and ‘fairness.’” *Jeffrey v Rapid American Corp*, 448 Mich 178, 186; 529 NW2d 644 (1995). Each case must be examined on its own merits and depends on the quality and nature of the business activities at issue in relation to fair and orderly administration of the laws. *Id.* at 186-187, quoting *Int’l Shoe Co v Washington*, 326 US 310, 319; 66 S Ct 154; 90 L Ed 95 (1945). It is the relationship between the defendant, the forum, and the litigation that is significant. *Jeffrey*, 448 Mich at 187. Courts

² Accordingly, we decline to address Rashid’s argument that the trial court erred in rejecting MCL 600.735(2) as an alternative basis for finding jurisdiction.

should review the defendant's own conduct to determine whether the defendant should reasonably anticipate being haled into court in the forum. *Id.*

The purposeful availment requirement ensures that a defendant is not haled into a foreign jurisdiction on the basis of contacts that are "random, fortuitous, or attenuated." *Id.* Under the first prong, the defendant "must deliberately engage in significant activities within a state, or create continuing obligations between himself and residents of the forum to the extent that it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well." *Vargas v Hong Jin Crown Corp*, 247 Mich App 278, 285; 636 NW2d 291 (2001) (internal marks omitted), quoting *Burger King Corp v Rudzewicz*, 471 US 462, 476; 105 S Ct 2174; 85 L Ed 2d 528 (1985).

SLS Ventures invested in Bayonne with individuals who were Michigan residents and with entities that were operated from Michigan. Although Bayonne was organized under Florida law, SLS Ventures and the other members caused it to change its principal place of business to Michigan and then participated in its management from Michigan. The minutes of the meetings in November and December 2009 indicate that they were held in Michigan even though some members elected to participate by telephone. Bayonne's communications were also kept in Nadolski's office in Michigan and Comerica Bank originated the note that ultimately gave rise to the capital call from its Detroit office and all of Bayonne's dealings with Comerica were through that same office. Thus, there is evidence that SLS Ventures purposefully engaged in business activities in this state that invoked the benefits and protections of this state's laws and created obligations between SLS Ventures and residents of this state.

Nevertheless, SLS Ventures argues that a non-resident's mere ownership of all or part of a company located in a forum does not constitute "purposeful availment." SLS Ventures relies on the decision in *Dean v Motel 6 Operating LP*, 134 F3d 1269, 1273-1274 (CA 6, 1998). In that case, the plaintiff (Dean) sued multiple entities in Motel 6's chain of corporate owners in Kentucky. Accor, a French joint stock company, was the highest in the chain. Dean sought to have the federal court in Kentucky exercise jurisdiction over Accor. The Sixth Circuit Court rejected the contention that a holding company could be subjected to jurisdiction in Kentucky on the basis of acts taken by a separate entity:

. . . Dean would have this court exercise jurisdiction over Accor because of the activity of Motel 6 Operating. Although Accor does have a controlling interest in Motel 6 Operating, a company does not purposefully avail itself merely by owning all or some of a corporation subject to jurisdiction. *See Keeton v Hustler Magazine, Inc*, 465 US 770, 781 n 13; 104 S Ct 1473; 79 L Ed 2d 790 (1984) (jurisdiction over a corporation does not necessarily result in jurisdiction over holding company that owns it); *Shaffer v Heitner*, 433 US 186, 216; 97 S Ct 2569; 53 L Ed 2d 683 (1977) (ownership of shares does not constitute purposeful availment); *American Greetings Corp v Cohn*, 839 F2d 1164, 1170 (CA 6, 1988). Dean must provide sufficient evidence for us to conclude that Accor is being brought into court for something that it has done, not for something that Motel 6 Operating has done. [*Dean*, 134 F3d at 1273-1274.]

Here, Rashid is not trying to hale SLS Ventures into court for something that Bayonne alone did; he has alleged that SLS Venture took wrongful actions as one of Bayonne's members during meetings that were held in Michigan and that resulted in harm to a Michigan resident. As such, *Dean* is inapposite.

SLS Ventures similarly relies on the decision in *Kerry Steel, Inc v Paragon Indus, Inc*, 106 F3d 147, 151 (CA 6, 1997), for the principle that entering into a contract with a Michigan resident does not alone establish sufficient minimum contacts. However, the present case does not involve an isolated transaction, but rather an ongoing relationship between SLS Ventures, Michigan residents, and a business that operated out of Michigan. We agree with the trial court that SLS purposefully availed itself of the privilege of conducting activities in Michigan through its active participation in Bayonne's business.

We also cannot agree with SLS Venture's contention that Rashid failed to establish the second prong. Rashid and Bayonne Development alleged that SLS Ventures conspired with Nadolski, a Michigan resident, and the entities that he controlled to conceal the amount of the payment actually demanded by Comerica Bank and to make an unnecessarily high capital call in order that they might obtain Rashid and Bayonne Development's ownership interests in Bayonne without cost. Bayonne's principal place of business was in Michigan, and the minutes from the December 2009 meeting show that it took place in Michigan. It was at that meeting that the alleged conspirators approved the decision to make the capital call at issue and decided to establish a forfeiture provision in the event that a party failed to meet the call. SLS Ventures did not have to be physically present in Michigan in order to actively participate in bringing the motions and casting the votes that are at the center of this case.

Finally, SLS Ventures also contends that the third prong was not satisfied. The third prong requires that SLS Venture's activities be substantially connected with Michigan to make the exercise of jurisdiction reasonable. This prong examines the burden on the defendant in light of various other relevant factors:

“the forum State's interest in adjudicating the dispute; the plaintiff's interest in obtaining convenient and effective relief, at least when that interest is not adequately protected by the plaintiff's power to choose the forum; the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies. . . . [Citations omitted.]” [*Starbrite Distributing, Inc v Excelda Mfg Co*, 454 Mich 302, 313; 562 NW2d 640 (1997), quoting *World-Wide Volkswagen Corp v Woodson*, 444 US 286, 292; 100 S Ct 559; 62 L Ed 2d 490 (1980).]

In addressing this prong, SLS Ventures merely reiterates its position that its connections with Michigan are insubstantial. For the reasons previously explained, the connections between SLS Ventures, through its active participation in Bayonne's business, make the exercise of jurisdiction reasonable and fair.

III. CONCLUSION

The trial court did not err when it determined that it could properly exercise personal jurisdiction over SLS Ventures. Consequently, it did not err when it denied SLS Venture's motion under MCR 2.116(C)(1).

Affirmed. As the prevailing party, Rashid may tax his costs. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood