

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

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CMA DESIGN & BUILD, INC., d/b/a CMA  
CONSTRUCTION SERVICES, INC.,

UNPUBLISHED  
December 15, 2009

Plaintiff-Appellee,

v

WOOD COUNTY AIRPORT AUTHORITY,

No. 287789  
Macomb Circuit Court  
LC No. 2008-002043-CK

Defendant-Appellant.

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Before: Gleicher, P.J., and Fitzgerald and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from a default judgment awarding plaintiff \$59,242.66. Defendant argues that the trial court lacked personal jurisdiction over it and should have dismissed the action rather than enter a default judgment against it. We vacate the default judgment and remand for further proceedings with respect to jurisdiction. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

**I. Facts and Procedural History**

Plaintiff filed a complaint on May 8, 2008, alleging that it is headquartered in Michigan and that it entered into a contract with defendant to demolish and replace certain structures at defendant's Ohio facility. The complaint alleged that defendant failed to pay \$40,000 that was due under the contract, and sought recovery under theories of breach of contract, unjust enrichment or quantum meruit, and negligent or intentional misrepresentation. The parties' contract and a certificate of liability insurance were attached to the complaint.

Defendant did not file an answer and a default was entered against it for failure to appear. On August 13, 2008, defendant entered a limited appearance "solely for the purpose of challenging jurisdiction." On August 15, 2008, plaintiff moved for entry of a default judgment in the amount of \$59,242.66. On August 21, 2008, defendant filed a motion to set aside the default and to dismiss the case for lack of personal jurisdiction. Defendant alleged that it did not do any business in Michigan.

At a hearing on plaintiff's motion on August 25, 2008, plaintiff argued that defendant had conducted business in this state sufficient to give the court personal jurisdiction over it, because "any change order, insurance policies that had to be granted, requests, waivers, anything came

out, had to come out of Michigan because that is where we are headquartered.” Counsel for defendant unsuccessfully asked the trial court to adjourn the hearing for a week, when the motion to dismiss was scheduled to be heard. The trial court granted plaintiff’s motion for a default judgment and denied defendant’s motion to dismiss for lack of personal jurisdiction, but advised defendant that it could further pursue the latter issue with a motion for reconsideration.

The trial court did not explain any basis for its finding of personal jurisdiction. The default judgment states that the court has personal jurisdiction under MCL 600.711 and MCL 600.715, and that defendant’s motion to set aside the default and to dismiss were both denied “because this Court has determined that sufficient minimum contacts exist for this Court to exercise personal jurisdiction over the Defendant . . . .”

## II. Analysis

On appeal, defendant argues the trial court lacked personal jurisdiction over it and should have dismissed the action, rather than enter a default judgment.

### A. Standard of Review

This Court reviews de novo a trial court’s jurisdictional rulings. *Electrolines, Inc v Prudential Assurance Co, Ltd*, 260 Mich App 144, 166; 677 NW2d 874 (2003); *Lease Acceptance Corp v Adams*, 272 Mich App 209, 218; 724 NW2d 724 (2006). The burden to establish jurisdictional facts is on the plaintiff. *Hillsdale Co Dep’t of Social Services v Lee*, 175 Mich App 95, 97; 437 NW2d 293 (1989). The plaintiff “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). A motion for summary disposition asserting a lack of personal jurisdiction is resolved on the basis of the pleadings and the evidentiary support submitted by the parties. *Hillsdale Co Dep’t of Social Services, supra*, p 96.

### B. Personal Jurisdiction

Personal jurisdiction may be established by way of general personal jurisdiction or specific (limited) personal jurisdiction. *Electrolines, supra*, p 166. A court may exercise general personal jurisdiction over a corporation on the basis of incorporation under the laws of this state, consent, or the “carrying on of a continuous and systematic part of its general business within the state.” MCL 600.711. Although the default judgment cited MCL 600.711 as a basis for the court’s personal jurisdiction over defendant, there is no evidentiary support for any of the relationships specified in the statute. On appeal, plaintiff does not rely on MCL 600.711 as a basis for affirming the trial court’s decision.

Whether a court may exercise limited personal jurisdiction over a defendant depends on a two step-analysis. *Electrolines, supra*, p 167. This Court must examine whether jurisdiction is authorized by Michigan’s long-arm statute and whether the exercise of jurisdiction is consistent with the requirements of the Due Process Clause of the Fourteenth Amendment. *Id.*, p 167; *Jeffrey, supra*, pp 184-185.

Michigan’s long-arm statute for limited personal jurisdiction over a corporation is MCL 600.715, which 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.

MCL 600.715(1) “contemplates even ‘the slightest’ act of business in Michigan.” *Oberlies v Searchmont Resort, Inc.*, 246 Mich App 424, 430; 633 NW2d 408 (2001). In *Oberlies*, this Court observed that “[t]he standard for deciding whether a party has transacted any business under [MCL 600.715(1)] is extraordinarily easy to meet. The only real limitation placed on this . . . statute is the due process clause.” (Citations and internal quotation marks omitted.)

If a defendant’s connection with the state creates a basis for jurisdiction under the long-arm statute, jurisdiction may be extended as far as due process permits. *Green v Wilson*, 455 Mich 342, 348-351; 565 NW2d 813 (1997) (Kelly, J.), 357 (Weaver, J.). “Courts employ a three-part test to determine whether a defendant has ‘minimum contacts’ with Michigan to the extent that limited personal jurisdiction may be exercised in accordance with due process.” *Oberlies, supra*, p 433.

“First, the defendant must have purposefully availed himself 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, supra*, p 186, quoting *Mozdy v Lopez*, 197 Mich App 356, 359; 494 NW2d 866 (1992).]

“Once the threshold requirement of minimum contacts is satisfied, a court must still consider whether the exercise of personal jurisdiction comports with fair play and substantial justice.” *Jeffrey, supra*, pp 188-189.

Factors that may be weighed in appropriate cases include the burden on the defendant, the forum state’s interest in adjudicating the dispute, the plaintiff’s interest in obtaining convenient and effective relief, 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. These factors may sometime serve to establish the reasonableness of jurisdiction on a lesser showing of minimum contacts. To defeat jurisdiction, a defendant who has purposefully directed its activities at forum residents must present a compelling case that the presence of some other considerations render jurisdiction unreasonable. [*Id.* (citations omitted).]

### C. Application

The trial court erred in determining that the pleadings and exhibits before it established that defendant had sufficient minimum contacts with Michigan such that the court's exercise of personal jurisdiction comported with due process. The only evidence before the court was the parties' contract and the certificate of insurance. In *Burger King Corp v Rudzewicz*, 471 US 462, 478-479; 105 S Ct 2174; 85 L Ed 2d 528 (1985), the Supreme Court explained that a contract alone is insufficient to establish the requisite minimum contacts to satisfy due process:

At the outset, we note a continued division among lower courts respecting whether and to what extent a contract can constitute a "contact" for purposes of due process analysis. If the question is whether an individual's contract with an out-of-state party *alone* can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot. The Court long ago rejected the notion that personal jurisdiction might turn on "mechanical" tests, or on "conceptualistic . . . theories of the place of contracting or of performance[.]" Instead, we have emphasized the need for a "highly realistic" approach that recognizes that a "contract" is "ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." It is these factors—prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing—that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum. [Citations omitted.]

At the motion hearing, plaintiff's counsel asserted that defendant had transacted business in the state because "any change orders, insurance policies that had to be granted, requests, waivers, anything [that] came out, had to come out of Michigan because that is where we are headquartered." On appeal, plaintiff asserts that "the bulk of the day-to-day decisions, approvals, and various other activities were accomplished in Michigan by either phone, fax or email between the Parties, as the construction work was being conducted." However, these facts were not alleged in the complaint nor did plaintiff present any evidence to support them. The evidence then before the court did not establish a basis for personal jurisdiction over defendant. We note, however, that the trial court made its ruling in the context of addressing plaintiff's motion for entry of a default judgment, while defendant's separate motion to dismiss for lack of personal jurisdiction was still pending, and that plaintiff's time to file a response to defendant's motion had not yet expired under MCR 2.116(C)(1). Under these circumstances, it would be premature for this Court to fully resolve the jurisdictional issue at this juncture. Instead, plaintiff should have an opportunity to develop its arguments and evidence on the question of jurisdiction before that issue is definitively resolved. However, it was improper for the trial court to enter a default judgment without a sufficient showing of personal jurisdiction over defendant. Accordingly, we vacate the default judgment and remand for further proceedings with respect to the issue of personal jurisdiction.<sup>1</sup>

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<sup>1</sup> We disagree with plaintiff that defendant waived the issue of personal jurisdiction by failing to adequately develop its arguments before the trial court. Defendant thoroughly briefed its  
(continued...)

Vacated and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Elizabeth L. Gleicher

/s/ E. Thomas Fitzgerald

/s/ Kurtis T. Wilder

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(...continued)

challenge to the court's personal jurisdiction in its "Motion to Set Aside Default and to Dismiss Based on Lack of Personal Jurisdiction."