

STATE OF MICHIGAN
COURT OF APPEALS

PETER J. SARKESIAN, P.C.,

Plaintiff-Appellant,

v

JOEL PONDELIC,

Defendant-Appellee,

MADISON CAPITAL CORPORATION and
MARIO DOMINGO,

Defendants.

UNPUBLISHED

December 15, 1998

No. 205363

Oakland Circuit Court

LC No. 96-513500 CK

Before: Smolenski, P.J., and McDonald and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(1) for lack of personal jurisdiction. We affirm.

We review the trial court's jurisdictional rulings de novo. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). The plaintiff has the burden of establishing jurisdiction over the defendant, but need only make a prima facie showing of jurisdiction to overcome a motion for summary disposition. *Jeffrey, supra*, 448 Mich 184. The court must consider the documentary evidence submitted by the parties, and all factual disputes must be resolved in favor of the plaintiff for the purpose of deciding the motion. MCR 2.116(G)(5); *Jeffrey, supra*, 448 Mich 184.

When deciding whether the circuit court may exercise limited personal jurisdiction over defendant, the court must consider (1) whether the defendant's acts fall within the applicable long-arm statute, and (2) whether the exercise of jurisdiction over the defendant comports with due process. *Starbrite Distributing, Inc v Excelda Mfg Co*, 454 Mich 302, 304; 562 NW2d 640 (1997).

Michigan's long-arm statute, MCL 600.705; MSA 27A.705, provides in pertinent part as follows:

The existence of any of the following relationships between an individual or his 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 the individual and to enable such courts to render personal judgment against the individual or his representative arising out of an act which creates 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.

The Michigan Supreme Court has construed the statute to reach the broadest scope of jurisdiction consistent with due process safeguards. *Schnieder v Linkfield*, 389 Mich 608, 616; 209 NW2d 225 (1973).

After reviewing the evidence presented, we conclude that plaintiff did not meet its burden of establishing facts sufficient to warrant the exercise of limited personal jurisdiction over defendant. Plaintiff is a Michigan law firm. Defendant Pondelik is a Connecticut resident and president of Madison Capital Corporation (Madison), a Delaware corporation. Plaintiff sought damages for defendant's alleged breach of contract regarding fees for legal services provided in Michigan with respect to the acquisition of certain corporate assets located in Michigan. Madison's participation in the acquisition was evidenced by a letter of intent executed by defendant Pondelik in his capacity as a corporate officer of Madison. The joint operating agreement and the letter of intent relied upon by plaintiff clearly indicate that defendant Pondelik was acting as president of Madison, and on behalf of Madison, when those documents were executed. Moreover, the retainer letter drawn up by plaintiff contradicts plaintiff's position that the firm was retained to represent defendant Pondelik individually. The letter states that plaintiff's services were engaged by Mario Domingo and Madison. The letter is signed by Domingo on behalf of Madison. Defendant Pondelik is not mentioned in the letter. Defendant Pondelik's contacts with Michigan in his capacity as president of Madison are insufficient to establish limited personal jurisdiction over defendant individually. Accordingly, we conclude that plaintiff failed to demonstrate that defendant Pondelik, individually, engaged in any conduct sufficient to satisfy the long-arm statute.

Furthermore, the exercise of limited personal jurisdiction over defendant does not meet the requirements of due process. A court may not exercise limited personal jurisdiction over a non-resident defendant "under circumstances that would offend 'traditional notions of fair play and substantial justice.'" *Asahi Metal Industry Co, Ltd v Superior Court of California, Solana Co*, 480 US 102, 113; 107 S Ct 1026; 94 L Ed 2d 92 (1987); *Int'l Shoe Co v Washington*, 326 US 310, 316; 66 S Ct 154; 90 L Ed 95 (1945). The nonresident defendant must have purposefully established "minimum contacts" with Michigan for the court to determine that the exercise of jurisdiction is fair. *Jeffrey, supra*, 448 Mich 185; *Comm'r of Ins v Albino*, 225 Mich App 547, 559; 572 NW2d 21 (1997). "[I]t is the relationship of the defendant, the forum, and the litigation that is significant." *Shaffer v Heitner*, 433 US 186, 204; 97 S Ct 2569; 53 L Ed 2d 683 (1977); *Jeffrey, supra*, 448 Mich 187. "The defendant's own conduct and connection with the forum must be examined in order to determine whether the defendant should reasonably anticipate being haled into court there." *World-Wide*

Volkswagen v Woodson, 444 US 286, 292; 100 S Ct 559; 62 L Ed 2d 490 (1980); *Jeffrey*, *supra*, 448 Mich 187.

Plaintiff has not presented any evidence other than the self-serving affidavit of its principal shareholder to indicate that defendant, individually, purposefully established minimum contacts with Michigan. Plaintiff's own retainer letter and itemized bill for legal services show that the firm was retained by Madison, not by defendant individually. Moreover, there was no evidence that Mario Domingo, who signed the retainer on behalf of Madison, had either actual or apparent authority to bind defendant individually. Plaintiff further argues that the choice-of-law provision in the letter of intent evidences defendant's intent to purposefully avail himself of the privilege of conducting activities in Michigan. The choice of law clause was expressly limited to disputes over the letter itself. Choice-of-law provisions, standing alone, are not sufficient to confer limited personal jurisdiction. *Burger King Corp v Rudzewicz*, 471 US 462, 482 n 1; 105 S Ct 2174; 85 L Ed 2d 528 (1985); *Starbrite*, *supra*, 454 Mich 318 n 5. Furthermore, the letter was executed by defendant in his representative capacity only. The letter of intent does not establish a basis for exercising jurisdiction over defendant.

Finally, plaintiff claims that defendant intentionally or negligently misrepresented his ability and intent to pay plaintiff's fees. This claim, however, is indistinguishable from plaintiff's breach of contract claim. Michigan law does not recognize a tort action for failure to pay for services rendered. *Courtright v Design Irrigation, Inc*, 210 Mich App 528, 530; 534 NW2d 181 (1995).

Thus, there is no basis for extending long-arm jurisdiction under either subsection (1) or (2) of the long-arm statute. Accordingly, the trial court did not err in granting summary disposition pursuant to MCR 2.116(C)(1).

Affirmed.

/s/ Michael R. Smolenski
/s/ Gary R. McDonald
/s/ Martin M. Doctoroff