

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

**MORRELL, LLC,
Plaintiff,**

v.

**Case No. 20-180686-CB
Hon. James M. Alexander**

**HOIST LIFTRUCK MFG., LLC,
Defendant.**

**OPINION AND ORDER RE: DEFENDANT’S MOTION FOR SUMMARY
DISPOSITION PURSUANT TO MCR 2.116(C)(1) FOR LACK OF PERSONAL
JURISDICTION OR IN THE ALTERNATIVE TO DISMISS BASED ON THE
DOCTRINE OF *FORUM NON CONVENIENS***

This matter is before the Court on Defendant’s Motion for Summary Disposition Pursuant to MCR 2.116(C)(1) for Lack of Personal Jurisdiction or in the Alternative to Dismiss Based on the Doctrine of *Forum Non Conveniens*. The Court dispenses with oral argument pursuant to MCR 2.119(E)(3).

By way of background, the parties entered into a contract on or about August 3, 2017 wherein Plaintiff would manufacture and/or deliver engine and transmission cooler assemblies for certain lift trucks of Defendant. It is Plaintiff’s position that it substantially performed under the contract, however, Defendant improperly cancelled the parties’ contract and has failed and/or refused to make full payment of \$565,740.00 to Plaintiff. As a result, Plaintiff filed a Complaint against Defendant on April 7, 2020 on the following counts: (1) Account Stated; (2) Breach of Contract; and, (3) Unjust Enrichment.

In response, Defendant subsequently filed this Motion for Summary Disposition to dismiss the present lawsuit under MCR 2.116(C)(1), which tests whether the Court has personal jurisdiction over a defendant. Alternatively, Defendant is asking the Court to dismiss the Complaint based on the Doctrine of *Forum Non Conveniens*.

Here, Plaintiff has the burden of establishing a prima facie showing of jurisdiction to avoid summary disposition. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). A court reviewing such a motion must examine the affidavits, pleadings, depositions, admissions as well as any other documentation submitted by the parties. MCR 2.116(G)(5); *Jeffrey*, 448 Mich 178. All factual disputes are resolved in the non-movant's favor. *Id.* Whether a court has personal jurisdiction over a party is a question of law. *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 426; 633 NW2d 408 (2001).

In its Motion for Summary Disposition, Defendant indicates that the relationship between the parties spans approximately twenty-five years and throughout that relationship, Plaintiff and its employees have been based in Glendale Heights, Illinois. It is Defendant's position that it never owned, held or maintained any property, offices, employees, agents, or bank accounts in Michigan. Defendant also asserts that it never had a regular or continuing presence in Michigan. What is more, the entire business relationship between the parties took place in Illinois and Indiana.

As such, Defendant argues that the Court does not have general or limited jurisdiction over it. Moreover, the exercise of jurisdiction over Defendant would violate its due process rights. Alternatively, Defendant contends that the Court should dismiss this lawsuit under the Doctrine of *Forum Non Conveniens* since Defendant's alleged actions occurred outside of Michigan and all relevant witnesses and documents are in Illinois.

A. Jurisdiction

Michigan jurisdiction can be established by way of general personal jurisdiction or specific (limited) personal jurisdiction. *Oberlies*, 246 Mich App at 427. The Michigan legislature “has provided long-arm statutes to allow courts to take jurisdiction over nonresident corporations under theories of general and specific jurisdiction. MCL 600.711, 600.715. When analyzing whether it is proper to exercise personal jurisdiction over a defendant, we must determine whether the defendant's conduct falls within a provision of a Michigan long-arm statute and whether the exercise of jurisdiction comports with due process. Long-arm statutes delineate the nature, character, and types of contacts that must exist to exercise personal jurisdiction. Due process restricts permissible long-arm jurisdiction by defining the quality of contacts necessary to justify the exercise of personal jurisdiction over a defendant.” *Oberlies*, 246 Mich App at 427–28.

A court has general jurisdiction over a corporate defendant if it is incorporated in Michigan or if it consented to the court’s exercise of jurisdiction. MCL 600.711.¹ In this matter, the parties dispute whether this Court has personal jurisdiction over Defendant in consideration of the alleged forum-selection clause in the parties’ contract.

Regarding the subject forum-selection clause, Defendant argues that this term was imposed unilaterally by Plaintiff and was not agreed to by Defendant. Therefore, it is not a term of the parties’ contract under the UCC. Defendant states further that the clause never speaks to

¹ MCL 600.711 (Michigan’s general personal jurisdiction statute for corporations) provides: The existence of any of the following relationships between a corporation and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise general personal jurisdiction over the corporation and to enable such courts to render personal judgments against the corporation.

- (1) Incorporation under the laws of this state.
- (2) Consent, to the extent authorized by the consent and subject to the limitations provided in section 745.
- (3) The carrying on of a continuous and systematic part of its general business within the state.

when it was imposed upon or agreed to by Defendant. It is Defendant's position that the parties had an established course of dealing, providing for Illinois venue and law.

In opposition, Plaintiff argues that Defendant consented to be subject to the general personal jurisdiction of Michigan when it consented to the forum-selection clause in the parties' contract. On August 3, 2017, Plaintiff issued a written quotation to Defendant for the production and delivery of different types of engine and transmission cooler assemblies for Defendant's "T Series" terminal tractors. This quote included certain terms and conditions including Paragraph 13, which expressly denotes the parties' consent to submit to Michigan's jurisdiction. See Exhibit 1-A of Plaintiff's Response. Thereafter, Defendant issued a Purchase Order on August 4, 2017. Plaintiff notes that Defendant's Purchase Order did not contain any terms or conditions that were contrary to the quote. Plaintiff argues that the quote was the offer that was accepted via the Purchase Agreement; these two documents provide the material terms of the parties' contract for the sale of goods under the UCC.

"Before a contract can be completed, there must be an offer and acceptance." *Kloian v Domino's Pizza L.L.C.*, 273 Mich App 449, 452–53; 733 NW2d 766 (2006). In the case of *Challenge Mach. Co. v Mattison Mach. Works*, 138 Mich App 15, 22; 359 NW2d 232 (1984), the Court of Appeals determined that the price quotation was an offer and the purchase order, which was responsive to the price quotation, was a definite expression of acceptance to establish a contract. See also *Compass Auto. Grp., LLC v Denso Mfg. Tennessee, Inc.*, No. 12-10919, 2013 WL 655112, at *3 (E.D. Mich. Feb. 22, 2013).

Here, Plaintiff submitted a simple, three-page "T series production quote" to Defendant on August 3, 2017. On page two of the quote, Plaintiff expressly stated that the terms and conditions are outlined on the attached page. On the attached terms and conditions page, there is

a forum-selection clause in Paragraph 13, which provides as follows: “Buyer and the Company agree to submit to the jurisdiction of the appropriate State or Federal Court within Michigan for purposes of resolving any dispute or claim arising in connection with said transaction.” See Exhibit A-1 of Plaintiff’s Response.

In response to the quote, Defendant submitted a Purchase Order to Plaintiff on August 4, 2017. That Purchase Order did not include any contradictory terms or conditions to those outlined in the quote. See Exhibits 1-B and 3 of Plaintiff’s Response. As argued by Plaintiff, Defendant’s reliance upon MCL 440.2207 is misplaced because that statute concerns additional or different terms of acceptance. Here, the forum-selection clause was incorporated into the original quote and was never altered in any way by Defendant’s Purchase Order.

In the case of *Lease Acceptance Corp. v Adams*, 272 Mich App 209, 219–20; 724 NW2d 724 (2006), the Court of Appeals determined that parties may consent to submit themselves to the personal jurisdiction of a particular forum by entering into a contract with a forum-selection clause. As noted by Plaintiff, “[i]t is undisputed that Michigan's public policy favors the enforcement of contractual forum-selection clauses and choice-of-law provisions.” *Turcheck v Amerifund Fin., Inc.*, 272 Mich App 341, 345; 725 NW2d 684 (2006). Accordingly, and based upon the foregoing analysis, the Court finds that it has general personal jurisdiction over Defendant in consideration of the forum-selection clause in the parties’ contract.

B. Due Process

“The Due Process Clause requires that the exercise of personal jurisdiction comport with traditional notions of fair play and substantial justice. The constitutional touchstone of a due process analysis with respect to personal jurisdiction is whether the defendant purposely established the minimum contacts with the forum state necessary to make the exercise of jurisdiction over the defendant fair and reasonable. Courts employ a three-part test to determine

whether a defendant has minimum contact with Michigan to the extent that limited personal jurisdiction may be exercised in accordance with due process. 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.” *Oberlies*, 246 Mich App at 432–33. (Citations omitted).

“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 a passive availment of Michigan opportunities.” *Jeffrey*, 448 Mich 178 at 187–88. Our courts have generally been liberal in finding purposeful availment. *See, e.g., Oberlies*, 246 Mich App at 434.

In its motion, Defendant contends that enforcement of the forum-selection clause would not comport with due process because jurisdiction would be based solely on the location of Plaintiff’s headquarters. Defendant argues that neither the contract, nor the parties’ course of business dealings, establishes any minimum contacts in Michigan.

Specifically, Defendant argues that it never transacted business in Michigan, Plaintiff’s claims do not arise out of a tortious action, Defendant does not use or possess real or personal property in Michigan, Defendant does not provide insurance to any person or property in Michigan, and Defendant did not enter into a contract wherein services or materials were to be furnished in Michigan. Moreover, the alleged nonpayment by Defendant occurred in Illinois.

In opposition, Plaintiff contends that Defendant availed itself of the privilege of conducting activities in Michigan by soliciting Plaintiff for a quote and accepting that quote with

all of its terms and conditions, including the forum-selection clause. Plaintiff argues that its cause of action is substantially connected with Defendant's breach of the parties' contract. Moreover, Plaintiff argues that Defendant will not be deprived of their day in court by the enforcement of the contract's forum-selection clause.

In this Opinion, the Court has found that it has general personal jurisdiction over Defendant in light of the forum-selection clause. "State and federal courts are virtually uniform in the conclusion that enforcement of a forum selection clause that was validly entered into does not violate due process as long as a party will not be deprived of its day in court." *Lease Acceptance Corp. v Adams*, 272 Mich App 209, 229; 724 NW2d 724 (2006). "And where forum-selection provisions have been obtained through freely negotiated agreements and are not unreasonable and unjust, their enforcement does not offend due process." *Lease*, 272 Mich App at 230.

Prior to issuing its Purchase Order, Defendant had the opportunity to review the three-page quote, which included the forum-selection clause as Paragraph 13 out of the 18 paragraphs that outlined the various terms and conditions. The following day, Defendant issued its Purchase Order, which did not alter any of the terms and conditions set forth in the quote. Defendant could have negotiated or attempted to change the terms provided in the quote, but it did not do so. Thus, the Court finds that the enforcement of this contract between the parties does not violate Defendant's due process rights. Further, Defendant will not be deprived of its day in Court in the State of Michigan.

C. Doctrine of *Forum Non Conveniens*

If the Court finds a basis to exercise jurisdiction in this matter, Defendant asserts that the Court should decline under the Doctrine of *Forum of Non Conveniens*. Defendant argues that Michigan is an inconvenient forum since the witnesses and sources of proof are in Illinois.

“Forum non conveniens is defined as the discretionary power of court to decline jurisdiction when convenience of parties and ends of justice would be better served if action were brought and tried in another forum.” *Radeljak v Daimlerchrysler Corp*, 475 Mich 598, 604; 719 NW2d 40 (2006), quoting Black's Law Dictionary (6th ed.). “[T]he ultimate inquiry is where trial will best serve the convenience of the parties [and the ends] of justice.” *Id.* at 605, quoting *Cray v General Motors Corp*, 389 Mich 382, 396; 207 NW2d 393 (1973), and *Koster v American Lumbermens Mutual Casualty Co*, 330 US 518, 527 (1947). The decision whether to grant or deny such a motion is within this Court’s discretion. *Radeljak*, 475 Mich 598 at 604.

“The Michigan Supreme Court articulated criteria to aid a trial court in determining whether to deny jurisdiction on the basis of forum non conveniens...Under *Cray*, a trial court must consider the plaintiff's choice of forum and weigh carefully the relative advantages and disadvantages of jurisdiction and the ease of and obstacles to a fair trial in this state. The *Cray* factors are divided into three groups:”²

1. The private interest of the litigant.
 - a. Availability of compulsory process for attendance of unwilling and the cost of obtaining attendance of willing witnesses;
 - b. Ease of access to sources of proof;
 - c. Distance from the situs of the accident or incident which gave rise to the litigation;
 - d. Enforceability of any judgment obtained;
 - e. Possible harassment of either party;
 - f. Other practical problems which contribute to the ease, expense and expedition of the trial;
 - g. Possibility of viewing the premises.
2. Matters of public interest.
 - a. Administrative difficulties which may arise in an area which may not be present in the area of origin;
 - b. Consideration of the state law which must govern the case;
 - c. People who are concerned by the proceeding.

² *Lease*, 272 Mich App 209 at 226–27.

3. Reasonable promptness in raising the plea of *forum non conveniens*.³

1. *Private Interest*

With regard to the first factor, “[t]he private interest of the litigant,” Defendant argues that the witnesses and sources of proof are in Illinois. Defendant also contends that its alleged actions, which are the subject of Plaintiff’s lawsuit, did not occur in Michigan. In fact, Defendant has no connection with Michigan whatsoever.

Conversely, Plaintiff argues that the forum-selection clause prevails or at a minimum, Plaintiff’s selection of a forum is ordinarily accorded deference under a *forum non conveniens* analysis. The Court agrees. Additionally, Plaintiff alleges that Defendant has a connection to Michigan since it issued invoice payments to Michigan and solicited Mark Garrett, Plaintiff’s president, to travel from Michigan to Indiana and Illinois. Plaintiff also asserts that Defendant purchased coolers that were integrated into tractors that it sold in Michigan.

Plaintiff contends further that the Michigan border is less than 40 miles from Defendant’s manufacturing facility in Indiana. Moreover, all electronic documents can be accessible anywhere and Mr. Garrett, a likely witness, is in Michigan. As asserted by Plaintiff, the argument that Illinois would be more convenient is not the same as whether Michigan would be reasonably convenient.

2. *Public Interest*

With respect to the second factor, Defendant argues that there is no public interest burdening this Court to litigate this matter when the dispute has little connection to Michigan. Plaintiff, on the other hand, maintains that the forum-selection clause should be enforced. The Court observes that the public interest is best served by the enforcement of a valid contract.

³ *Radeljak*, 475 Mich 598 at 606; *Cray*, 389 Mich 382 at 396.

3. Reasonable Promptness

Finally, and in relation to the last factor, “[r]easonable promptness in raising the plea of *forum non conveniens*,” Defendant raised its lack of personal jurisdiction and *forum non conveniens* arguments in the present summary disposition motion (filed in lieu of an Answer).

In consideration of the subject forum-selection clause, the Court observes that the consent provision of MCL 600.711(2) expressly implicates MCL 600.745, which provides, in relevant part:

(2) If the parties agreed in writing that an action on a controversy may be brought in this state and the agreement provides the only basis for the exercise of jurisdiction, a court of this state shall entertain the action if all the following occur:

- (a) The court has power under the law of this state to entertain the action.
- (b) This state is a reasonably convenient place for the trial of the action.
- (c) The agreement as to the place of the action is not obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means.
- (d) The defendant is served with process as provided by court rules.

Based upon the forum-selection clause of the parties’ contract, the Court finds that it has the authority as the Business Court to entertain this action. The Court further finds that Michigan is a reasonably convenient place for trial of the action in consideration of the proximity of Michigan to Illinois. The Court agrees with Plaintiff that any discoverable electronic documents can be easily accessed and distributed among the parties. In reality, COVID-19 has severely limited any in-person litigation and so proceeding with this litigation in Michigan will not result in any greater burden than a scenario where both parties are in Michigan. Should Plaintiff’s president, Mark Garrett be called as a witness, he is also located in Michigan.

Additionally, Defendant has not made any allegations as to misrepresentation, duress, the abuse of economic power, or other unconscionable means in the execution of the parties’ contract, nor has Defendant alleged improper service. Finally, dismissal under the Doctrine of

Forum Non Conveniens is within the Court's discretion and the Court finds that the dismissal of this lawsuit is not warranted.

For the foregoing reasons, Defendant's Motion for Summary Disposition Pursuant to MCR 2.116(C)(1) for Lack of Personal Jurisdiction or in the Alternative to Dismiss Based on the Doctrine of *Forum Non Conveniens* is DENIED.

IT IS SO ORDERED.

July 28, 2020
Date

/s/ James M. Alexander
Hon. James M. Alexander,
Circuit Court Judge