

## ANSWER TO QUESTION NO. 2

Donald will not succeed in a motion for summary disposition under MCR 2.116(D)(1). A civil defendant must make a claim that the court lacks personal jurisdiction over him in his first motion for summary disposition or in his first responsive pleading, whichever is first. MCR 2.116(D)(1). Although Donald did not do so in his July 22, 2009 responsive pleading, Donald may amend his pleading once as a matter of course, as long as it is done within 14 days of serving the pleading. MCR 2.118(A)(1). An amended pleading may introduce a defense that otherwise would be waived. *Harris v Lapeer Public School System*, 114 Mich App 107 (1982). Accordingly, he may amend his responsive pleading to question the trial court's personal jurisdiction over him. He has one week remaining to do so as a matter of course, beyond which he must seek either Potine's consent or leave from the court before he can amend his complaint. MCR 2.118(A)(2).

Nevertheless, Donald's personal jurisdiction claim still must fail. It is true that Donald neither lives in Michigan, nor was served with process in Michigan. Accordingly, the courts of Michigan do not have general jurisdiction over Donald. MCR 600.701. However, because the alleged tort occurred in Michigan, Michigan courts have *limited* personal jurisdiction over Donald to render a personal judgment against Donald arising out of his alleged negligence. MCL 600.705(2). Therefore, this cause of action is appropriately brought in a Michigan court.

Donald's claim that the Ingham circuit court does not have subject-matter jurisdiction is meritorious. A party may raise the issue of a court's lack of subject-matter jurisdiction at any time during the proceedings, MCR 2.116(D)(4), so Donald does not need to amend his responsive pleading to include this ground for relief. The Ingham circuit court does not have subject-matter jurisdiction over Potine's lawsuit. Rather, the district courts have exclusive jurisdiction in civil actions when the amount in controversy does not exceed \$25,000. MCL 600.8301(1). Accordingly, this civil action can only be pursued in district court.

Finally, Donald's claim that the statute of limitations has passed is also likely to be meritorious. Donald must raise his statute of limitations defense in his first responsive pleading. He must, therefore, amend his July 22, 2009 pleading to raise this issue. Donald may amend his responsive pleading once as a matter of course, as long as it is done within 14 days of serving the

pleading. MCR 2.118(A)(1). He has one week remaining to do so as a matter of course, beyond which he must seek either Potine's consent or leave from the court to amend his complaint. MCR 2.118(A)(2).

In Michigan, the statute of limitations for tort actions involving injury to property is 3 years. MCL 600.5805(10). Because the alleged negligence occurred on May 4, 2005, the statute of limitations bars any action commenced on or after May 5, 2008. Potine's action is untimely, and therefore Donald is entitled to summary disposition on this basis.