

EXAMINERS' ANALYSIS OF QUESTION NO. 15

A. DIT's Motion

The circuit court should conclude that it has limited personal jurisdiction over DIT and thus deny DIT's motion for summary disposition.

"A plaintiff bears the burden of establishing jurisdiction over a defendant; however, the plaintiff need only make a prima facie showing of jurisdiction to defeat a motion for summary disposition." *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 427 (2001).

"Before a court may obligate a party to comply with its orders, the court must have in personam jurisdiction over the party." *Id.* "Jurisdiction over the person may be established by way of general personal jurisdiction or specific (limited) personal jurisdiction." *Electrolines, Inc v Prudential Assurance Co, Ltd*, 260 Mich App 144, 166 (2003). "The exercise of general jurisdiction is possible when a defendant's contacts with the forum state are of such nature and quality as to enable a court to adjudicate an action against the defendant, even when the claim at issue does not arise out of the contacts with the forum state." *Id.* A Michigan court can exercise general personal jurisdiction over a corporation if any of the following is true: (1) the corporation is incorporated under Michigan law, (2) the corporation consents to the court's exercise of jurisdiction over it (but such consent is "subject to the limitations provided in" MCL 600.745), or (3) the corporation "carr[ies] on . . . a continuous and systematic part of its general business within" Michigan. MCL 600.711 ("Corporations; general personal jurisdiction"); *Electrolines*, 260 Mich App at 166-167.

Here, DIT is neither a Michigan corporation nor do the facts bear any indication that it has consented to the circuit court's exercise of jurisdiction over it. Thus, the pertinent inquiry is whether DIT is subject to general personal jurisdiction because of "continuous and systematic" contacts with Michigan.

For a state court to exercise general personal jurisdiction over a foreign corporation on this basis, the corporation must have "affiliations with the State" that "are so continuous and systematic as to render [the foreign corporation] essentially at home in the forum State." *Daimler AG v Bauman*, ____ US ____; 134 S Ct 746, 761; 187 L Ed 2d 624 (2014) (quotation marks and citations omitted). This inquiry "calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide.

A corporation that operates in many places can scarcely be deemed at home in all of them." *Id.* at 762 n 20. It will be an "exceptional case" in which "a corporation's operations in a forum other than its formal place of incorporation or principal place of business might] be so substantial and of such a nature as to render the corporation at home in that State." *Id.* at 761 n 19.

Here, given the fairly limited nature of DIT's contacts with Michigan, the trial court will most likely decide that it cannot exercise general personal jurisdiction over DIT. The facts demonstrate that DIT (1) has distributed marketing materials "throughout Michigan," (2) awards an average of 900 degrees to Michigan residents each year (i.e., 9% of its annual average of 10,000 degrees), and (3) hosted a job fair in Detroit in December 2015. The court will most likely conclude that these contacts with Michigan are not so continuous and systematic as to render DIT essentially at home in Michigan.

But, even if it decides that it cannot exercise *general* personal jurisdiction over DIT, the circuit court should still conclude that it can exercise *limited* personal jurisdiction. "When a defendant's contacts with the forum state are insufficient to confer general jurisdiction, jurisdiction may be based on the defendant's specific acts or contacts with the forum state." *Electrolines*, 260 Mich App at 166.

When examining whether a Michigan court may exercise limited personal jurisdiction over a defendant, this Court employs a two-step analysis. First, this Court ascertains whether jurisdiction is authorized by Michigan's long-arm statute. Second, this Court determines if the exercise of jurisdiction is consistent with the requirements of the Due Process Clause of the Fourteenth Amendment. Both prongs of this analysis must be satisfied for a Michigan court to properly exercise limited personal jurisdiction over a nonresident.

Long-arm statutes establish the nature, character, and types of contacts that must exist for purposes of exercising personal jurisdiction. Due process, on the other hand, restricts permissible long-arm jurisdiction by defining the quality of contacts necessary to justify personal jurisdiction under the constitution. [*Yoost v Caspari*, 295 Mich App 209, 222-223 (2012).]

The long-arm statute applicable to corporations is MCL 600.715, which provides as follows:

"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.
- "2. The doing or causing any act to be done, or consequences to occur, in the state resulting in an action for tort.
- "3. The ownership, use, or possession of any real or tangible personal property situated within the state.
- "4. Contracting to insure any person, property, or risk located within this state at the time of contracting.
- "5. Entering into a contract for services to be performed or for materials to be furnished in the state by the defendant.

Here, the long-arm statute is satisfied in several respects. Pierrot's claims against DIT arise out of (1) DIT's transaction of business within the state (i.e., marketing, the job fair, and sale of a diploma), (2) the doing or causing to be done of an act and consequences that resulted in an action for tort, and (3) the entering into of a contract to provide Pierrot with a diploma to be furnished by DIT in Michigan.

The crucial inquiry for purposes of limited personal jurisdiction is whether the exercise of personal jurisdiction over DIT is consistent with the demands of due process. Because

the due process analysis focuses on broad, somewhat malleable concepts of "reasonableness" and "fairness," it is fact-specific and "[e]ach case . . . must turn on its own merits." *Jeffrey v Rapid American Corp*, 448 Mich 178, 186 (1995).

The "constitutional touchstone" of the due process inquiry "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." *City of Fraser v Almeda Univ*, 314 Mich App 79, 88 (2016). A three-prong analysis is employed to determine whether sufficient minimum contacts exist:

"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*, 448 Mich at 186.]"

"[P]urposeful 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." *Khalaf v Bankers & Shippers Ins Co*, 404 Mich 134, 153-154 (1978).

"[F]oreseeable effects alone are not purposeful availment." *Id.* at 155. "[W]hen a party reaches out beyond one state and creates continuing relationships and obligations with citizens of another state, the party has availed itself of the privilege of conducting business there[.]" *City of Fraser*, 314 Mich App at 89.

"[I]t is the relationship of the defendant, the forum, and the litigation that is significant." *Jeffrey*, 448 Mich at 187. In other words, "[t]he 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." *Id.*

Even after "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." *Id.* at 188-189. Due consideration should be paid, when appropriate under the circumstances of the individual case, to:

"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.* at 188-189.1]"

Applying these principles to the facts presented, the most likely outcome -- albeit not the only one -- is that the trial court will decide that its exercise of limited personal jurisdiction over DIT is consistent with the constraints of due process.

First, the trial court will likely conclude that DIT has purposefully availed itself of the privilege of conducting activities in Michigan. DIT deliberately took steps to market its degree programs in Michigan, held a job fair in Detroit, and sold a significant amount of its degrees to Michigan residents. In doing so, it reached out beyond North Dakota and created continuing relationships and obligations with citizens of Michigan. See *City of Fraser*, 314 Mich App at 89 ("By accepting applications and payments from plaintiff's employees through its website, even after learning that they lived in Michigan -- and subsequently continuing to transact business with those employees in Michigan by awarding them degrees, mailing diplomas to Michigan addresses, and offering additional alumni products and services -- defendant purposefully availed itself of the privilege of conducting activities in Michigan").

Second, and as noted under the long-arm analysis, the trial court should conclude that Pierrot's claims arise out of DIT's activities in Michigan.

Finally, the trial court will also determine that DIT's activities were substantially connected with Michigan to make the exercise of limited personal jurisdiction over DIT both reasonable and consistent with notions of fair play and substantial justice. There is nothing in the facts clearly implicating either the interstate judicial system's interest in obtaining the most efficient resolution of controversies or the shared interest of the several states in furthering fundamental substantive social policies. Similarly, the facts provide neither evidence nor even an allegation that adjudication in Michigan poses a substantial burden to DIT. Contrastingly, Michigan has a clear interest in adjudicating the dispute, and plaintiff certainly has an interest in such adjudication. Finally, the facts provide no basis to conclude that DIT has presented a compelling case that the presence of some other considerations render jurisdiction unreasonable.

In sum, the circuit court should decide that its exercise of personal jurisdiction over DIT is warranted and thus deny DIT's motion for summary disposition.

B. Dirk's Motion

Because Dirk filed a general appearance and failed to raise the personal jurisdiction defense in his first responsive pleading, the circuit court should conclude that it has general personal jurisdiction over Dirk and that he has waived any argument to the contrary.

A Michigan court can exercise general personal jurisdiction over persons present in Michigan at the time process is served on them, MCL 600.701, and "[a] general appearance waives all questions of the service of process, and is equivalent to a personal service," *Nelson v McCormick*, 334 Mich 387, 390 (1952). In other words, "[t]he entering of a general appearance by the principal defendant gives the court jurisdiction *in personam*." *Id.* at 389. Moreover, "[j]urisdictional irregularities are waived by a general appearance." *Ovavez v Patrons' Mutual Fire Ins Co*, 233 Mich 305, 308 (1925). See also *Fisher v Fisher*, 224 Mich 147, 149-150 (1923) ("There can be no question that one who

enters a general appearance or files an answer or plea in a pending cause thereby submits himself to the jurisdiction of the court[.]"); *Teran v Rittley*, 313 Mich App 197, 208 (2015) (holding that by "voluntarily enter[ing] his appearance in th[e] action," a defendant had submitted to the lower court's jurisdiction over his person, and further noting that he had "waived any challenge to the court's personal jurisdiction over him when he failed to raise it in his first responsive pleading.").

Here, Dirk filed a general appearance and an answer denying the allegations of Pierrot's complaint, and Dirk failed to assert lack of personal jurisdiction as a defense in his initial responsive pleading. Thus, Dirk has submitted to the court's exercise of jurisdiction over him, and he has waived any argument that the court's exercise of jurisdiction over him is improper.