STATE OF MICHIGAN

COURT OF APPEALS

HUTCHINSON FTS, INC,

Plaintiff/Counter-Defendant,

v

C T CHARLTON ASSOCIATES, INC, and CTC DISTRIBUTION, INC,

Defendant/Counter-Plaintiffs/Third-Party Plaintiffs/Appellants

v

HUTCHINSON SOCIETE ANONYME, HUTCHINSON SOCIETE EN NOM COLLECTIF, HUTCHINSON TRANSFERENCIA de FLUIDOS MEXICO SA de CV, HUTCHINSON AUTOPARTES MEXICO SA de CV, JOHN DOE I, and JOHN DOE II,

Third-Party Defendants/Appellees.

UNPUBLISHED
August 26, 2010

No. 291300
Macomb Circuit Court
LC No. 06-3068-CK

Before: SHAPIRO, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

Third-party plaintiffs C.T. Charlton Associates, Inc. and CTC Distribution, Inc. (together, CTC),[1] appeal as of right from the trial court's grant of summary disposition to third-party defendants Hutchinson Societe Anonyme (SA), Hutchinson Societe En Nom Collectif (SNC) (collectively, the French Entities), Hutchinson Transferencia de Fluidos Mexico SA (Transferencia), and Hutchinson Autopartes Mexico SA de CV (Autopartes) (collectively, the

[1] Although CTC represents two companies, it will be treated grammatically as a singular entity.

Mexican Entities) based on a lack of jurisdiction. We reverse and remand for additional proceedings consistent with this opinion.

I. BACKGROUND

The underlying litigation arose following a dispute regarding payments alleged to be due pursuant to a contract (either the agreement or the consultancy agreement). CTC alleged that Hutchinson FTS, Inc. and various related French and Mexican entities had failed to pay CTC certain monies it was owed under the agreement.[2] The crux of this appeal is which Hutchinson entities are subject to the consultancy agreement.

CTC Distribution, Inc. and C. T. Charlton & Associates, Inc. are both Michigan corporations that provide warehousing and sales representative/consulting services to automotive parts suppliers. Christopher Charlton (Charlton) is the founder and owner of both companies.

Hutchinson FTS, Inc. (FTS) is the plaintiff and counter-defendant, but is not present in this appeal, as it and CTC have settled their claims against one another. It is a Delaware corporation with offices in Troy, Michigan and is the signatory on the consultancy agreement with CTC at issue in this case.

Jean-Pierre Joubert (Joubert) is Senior Vice President of Purchasing for SA and has various other roles in other Hutchinson companies. Joubert refers to the collective of Hutchinson companies as "the Hutchinson group," with various Hutchinson companies working together in "activities" such as the High Pressure Fluids Activity, for which Joubert was the Senior VP of the European companies from 1999 to 2001, and of all of the "group" companies worldwide through 2003. From February 2001 until April 2004, Joubert was chairman and sole director of FTS.

The various Hutchinson entities, including FTS, and the French and Mexican Entities are involved worldwide in the automotive industry, producing high-pressure (e.g. air conditioning) and low-pressure (e.g. brake hoses, engine cooling systems and fuel lines) hoses and assemblies for automobiles. Transferencia is pictured and labeled next to the high-pressure business discussion in Hutchinson's 2005 annual report, and the 2005 website for Hutchinson "Fluid Transfer Systems Low Pressure" lists 11 locations, including Autopartes and website for "Fluid Transfer Systems High Pressure" lists 12 locations, including both Transferencia and Autopartes. Screenshots from www.hutchinsonworldwide.com related to the "Fluid Transfer Systems" section lists locations as including SNC, Autopartes, Transferencia, and FTS.

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[2] CTC originally initiated arbitration in this matter, but FTS filed suit in the trial court seeking a declaratory ruling that the arbitration clause was ineffective. Thus, CTC had to file its claim against FTS as a counterclaim and file its claims against the French and Mexican Entities as a third-party complaint.

Third-party defendants assert that "Hutchinson Worldwide" does not exist as a separate entity. However, the 2005 Hutchinson annual report contains a logo for "Hutchinson Worldwide," and the Hutchinson web address is "www.hutchinsonworldwide.com."

II. PERSONAL JURISDICTION

CTC argues that the trial court erred when it concluded that there was no personal jurisdiction over the French and Mexican Entities and granted summary disposition. We review de novo a trial court's grant of summary disposition as well as its jurisdictional rulings. *W H Froh, Inc v Domanski*, 252 Mich App 220, 225; 651 NW2d 470 (2002). When reviewing motions brought pursuant to MCR 2.116(C)(1), we consider the documentary evidence submitted by the parties in the light most favorable to the non-moving party. MCR 2.116(G)(5); *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 427; 633 NW2d 408 (2001). "'All factual disputes for the purpose of deciding the motion are resolved in the plaintiff's (nonmovant's favor).'" *Vargas v Hong Jin Crown Corp*, 247 Mich App 278, 282; 636 NW2d 291 (2001), quoting *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). Although the plaintiff bears the burden of establishing jurisdiction, it "need only make a prima facie showing of jurisdiction to defeat a motion for summary disposition." *Froh*, 252 Mich App at 226.

A determination of personal jurisdiction requires this Court to engage in a two-part inquiry: 1) whether defendant's actions fall within the provisions of Michigan's long-arm statute, MCL 600.715; and 2) whether exercising jurisdiction comports with the mandates of due process. *Id.*

A. LONG-ARM STATUTE

We conclude that the French and Mexican Entities' actions fall within Michigan's long-arm statute. MCL 600.715 provides:

> 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.
>
> * * *
>
> (5) Entering into a contract for services to be performed or for materials to be furnished in the state by the defendant.

In this case, C.T. Charlton & Associates, Inc.[3] and FTS executed a consultancy agreement. The agreement provides:

> This Agreement is made this 1st day of March 2001, by and between HUTCHINSON FTS, Inc., a Delaware Corporation with offices at 1835 Technology Drive, Troy, Michigan 40803, represented by Mr. Paul H. Campbell, President and Chief Executive Officer, acting on its behalf and on behalf of the HUTCHINSON involved in General Motors Corporation ("GM"), Ford Motor Company ("FMC"), Fiat Auto ("FA"), and their subsidiaries, including but not limited to Land Rover, Volvo, Jaguar, and Saab, and their tier level suppliers including, but not limited to Delphi, Visteon, Valeo, and Behr (hereinafter referred to as "HUTCHINSON") on the one hand and, C.T. CHARLTON & ASSOCIATES, INC. . . . represented by Mr. Christopher Charlton, President, acting on its behalf . . . .

The scope of the agreement covered "the orders to be placed to HUTCHINSON by the three major U.S. car manufacturers GM, FMC, and FA either directly as Tier 1 or through the North American car components manufacturers acting as Tier 1." "HUTCHINSON" agreed to pay CTC a retainer of $20,000 per month, as well as a success fee of two percent "of the sales performed by HUTCHINSON for the GM, FMC, FA, their subsidiaries, and tier level supplier programs resulting in purchase orders obtained by HUTCHINSON during the terms of this Agreement plus six (6) months." Thus, although unsigned by any European entities, the agreement simply refers to "HUTCHINSON" and refers to European aspects of the company. The agreement is governed by Michigan law and provides for arbitration in Detroit. Although the original agreement was just for high-pressure business, a subsequent extension included low-pressure business.

Initially, looking just at the agreement, we disagree with the assertion that it is between FTS and CTC only. To read the agreement in that manner renders nugatory the language that FTS was acting "on its behalf and on behalf of the HUTCHINSON involved in" the various listed automotive companies. The only limitation in the language as to which HUTCHINSON entities are parties to the contract is that the entity must be "involved in" the business with the listed automotive companies. Thus, the agreement provides that to the extent that the French and Mexican Entities are "involved in" business with the listed automotive companies, they are parties to the agreement.

The evidence shows that both SA and SNC are "involved in" the business with the various automotive companies. As to SNC, it admitted that its sales to FTS were low-pressure hose parts, and the extension expressly added low-pressure business. Accordingly, SNC's providing component parts to FTS for low-pressure hose business makes SNC "involved in" the sales to the various automotive companies. As for SA, it is the parent company of Transferencia and Autopartes, which both directly provide parts to GM as evidenced by various purchase

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[3] The parties later assigned the agreement from C.T. Charlton & Associates, Inc. to CTC Distribution, Inc.

orders that were produced. By creating these subsidiary companies to provide parts that are covered by the agreement, SA is "involved in" the business with the automotive companies.

There was also direct evidence that the Mexican Entities were subject to the agreement, as CTC provided copies of purchase orders between the Mexican Entities and GM, some of which fall during the period of the agreement, for products that are arguably covered by the agreement. Moreover, the purchase orders with GM provide a basis for jurisdiction under MCL 600.715(1).

The Mexican Entities argue that they could not have been covered by the agreement because SA purchased Autopartes only one month prior to the execution of the agreement and Autopartes is only involved in the body-sealing business, and because Transferencia was not formed until after the agreement was terminated. The fact that Autopartes existed at the time of the agreement and was "involved in" business with GM automatically makes it a party to the agreement under its explicit language. Furthermore, CTC presented evidence that the Hutchinson website listed Autopartes as both a high-pressure and low-pressure company, and that it entered into contracts with GM to provide parts covered by the agreement, which at the very least, created a strong inference that Autopartes did more than body-sealing and was, in fact, in the business of providing parts for high and low-pressure hoses.

As for Transferencia, although it was formed after the agreement and the extension were executed, there is no language in the agreement or extension that limits it to those Hutchinson entities that existed at the time the agreement was formed. Rather, it explicitly provides that the agreement is on behalf of all those entities "involved in" the business with the various automotive companies. Without any limiting language, there is no reason to conclude that Transferencia is not a party to the agreement.

The French Entities argue that they are necessarily excluded from the agreement because Joubert required Charlton to remove references to SA. The record does not support this argument. The relevant March 12, 2001 fax provides that Joubert "wish[ed] to replace 'on behalf of Hutchinson' by 'on behalf of the Hutchinson Fluid Transfer Activity – High Pressure' (referred to as 'Hutchinson' in the Agreement)." The record evidence indicates that Hutchinson Fluid Transfer Activity – High Pressure is not synonymous with FTS. Hutchinson's website for "Fluid Transfer Systems High Pressure" lists 12 locations, including both Transferencia and Autopartes and Joubert's own affidavit stated that he was Senior VP of the European companies that were part of the High Pressure Fluids Activity. Thus, there is a factual question as to whether the French and Mexican Entities were intended to be parties to the agreement.

The French Entities also assert that SA is simply a holding company that does not conduct any business. However, Charlton presented evidence to the contrary, showing that SA's own documents represented Joubert as its "Senior Vice-President-Purchasing," which implies more than simply a holding company. Further, even if SA is simply a holding company,[4] that

[4] Although the trial court held that SA was simply a holding company, it erred in doing so, as CTC's evidence created an outstanding question of fact on this matter and the trial court may not (continued…)

status does not prevent it from transacting business. Indeed, as the parent company of various other corporations, it must conduct *some* business. Therefore, its status as a holding company does not preclude a finding that Joubert negotiated on its behalf to have CTC help it generate business for its subsidiary corporations.

The French and Mexican Entities all assert that neither Joubert nor FTS had the authority to negotiate on their behalf. However, CTC produced affidavits evidencing that Joubert purported to represent all of the worldwide Hutchinson entities involved in the low and high-pressure hose business and personally negotiated the contract on their behalf. Thus, although Joubert negotiated the agreement and Campbell executed it, Charlton believed all of the Hutchinson entities were clients of CTC. Indeed, Charlton's affidavit indicates that Joubert purported to represent all of the worldwide Hutchinson entities involved in the low and high-pressure hose business and personally negotiated the contract on their behalf.

The various documents certainly suggest that Joubert was negotiating on behalf of more than FTS, given the presentations made to the various companies referenced worldwide locations, the January 24, 2002 email from Campbell to Charlton indicates that Charlton was helping "Hutchinson HP" both in the US and in Europe and provides that Charlton "may want to consider having Campbell suggest a more active role of CTC in Europe as Joubert is personally focused on getting additional business particularly in Germany," and the March 24, 2004 email from FTS to CTC regarding changes to the agreement indicated that Campbell was "still in discussion *with France* on the contract."

CTC also provided a March 2, 2001 fax Joubert sent to Charlton stating that the agreement was to be between "CTC and Hutchinson for convenience purposes (payments), *and for our global Activity : Fluid Transfer HP* (emphasis added)." The fax further provides that CTC's success "will enable me to recommend CTC to my automotive colleagues : fluid transfer LP, and/or body sealings, transmissions, anti-vibration, precision moulding." The letterhead on the fax is for "Transfert de Fluides (H.P.); Fluid Transfer Systems (H.P.)" but has the "Hutchinson Worldwide" logo and includes a mailing address for Hutchinson Flexibles Automobiles S.N.C. Subsequent faxes sent to Charlton from Joubert also contained this same variety of Hutchinson company listings and logos.

Taking this evidence in the light most favorable to CTC as the nonmoving party, there is sufficient evidence of a factual question as to whether Joubert and FTS were acting as agents and whether they had actual or apparent authority to enter into the agreement on behalf of the French and Mexican Entities. Viewing the content of the correspondence, as well as the letterhead it came on, in conjunction with Joubert's affidavit that stated he was the senior vice president of the Hutchinson European companies involved in this High Pressure Fluids Activity through 2001, and all of the Hutchinson companies worldwide involved in the High Pressure Fluids Activity through 2003, there is a strong inference that Joubert was negotiating the contract on behalf of all Hutchinson companies engaged in high-pressure hose business.

(…continued)

make findings of fact on a motion for summary disposition. *In re Handelsman*, 266 Mich App 433, 437; 702 NW2d 641 (2005).

The trial court erred in relying solely on the fact that the French and Mexican Entities were not signatories to the agreement, ignoring that they could be bound by the terms of the agreement based on agency. Furthermore, assuming the trial court concluded that there was no agency, it erred in making that conclusion on summary disposition. It was required to take the facts in the light most favorable to CTC. With prima facie evidence that the French and Mexican Entities were parties to the agreement, they entered into a contract for services to be performed in Michigan and, therefore, meet MCL 600.715(5).

Finally, regardless of the agency argument, the French Entities conceded that SNC has sales in Michigan. Although they argue that these sales are "insufficient" for personal jurisdiction, such an evaluation is more properly considered in light of due process. As this Court recognized in *Aaronson v Lindsay & Hauer Intern Ltd*, 235 Mich App 259; 597 NW2d 227 (1999), "the term '"any" means just what it says. It includes "each" and "every" [business transaction].'" *Id.* at 263, quoting *Sifers v Horen*, 385 Mich 195, 199 n 2; 188 NW2d 623 (1971). It encompasses even "'the slightest'" transaction. *Sifers*, 385 Mich at 199 n 2. Therefore, SNC's concession that it has sales and revenue generated in Michigan required a finding by the trial court that the requirements of MCL 600.715(1) were met as to SNC.

Utilizing the broad construction of "any," the negotiations between Joubert and Charlton, including telephone calls, faxes and emails, the face-to-face meeting in France, and ultimately FTS's execution of a contract that on its face appears to include the French Entities, were sufficient to satisfy the requirements of MCL 600.415(1). See *Aaronson*, 235 Mich App at 263.

As for the Mexican Entities, both Autopartes and Transferencia have entered into multiple sales agreements with GM. These contracts by themselves are sufficient to constitute "transacting business" in Michigan. Accordingly, even without the agency argument, MCL 600.715(1) is met.

B. DUE PROCESS

Whether the assertion of limited personal jurisdiction over the French and Mexican Entities is consistent with due process is a more difficult inquiry. Although a defendant's activities may place it within one of the provisions of MCL 600.715, limited personal jurisdiction may not be exercised over the defendant unless to do so does not offend due process concerns. *Froh*, 252 Mich App at 227. "[D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that maintenance of the suit does not offend 'traditional notions of fair plan and substantial justice.'" *Int'l Show Co v Washington*, 326 US 310, 316; 66 S Ct 154; 90 L Ed 2d 95 (1945) (citation omitted).

A court must apply a three-prong test to make a determination of whether sufficient minimum contacts exist between a party and Michigan to permit Michigan to exercise limited personal jurisdiction over that party:

> First, the defendant must have purposefully availed itself 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 actions must be so substantially

connected with Michigan to make the exercise of jurisdiction over the defendant reasonable. [*Starbrite Distrib, Inc v Excelda Mfg Co*, 454 Mich 302, 309; 562 NW2d 640 (1997) (quotations and citations omitted).]

1. PURPOSEFUL AVAILMENT

A nonresident defendant can be deemed to have purposefully availed itself of the benefits and protections of a foreign sovereign when they "deliberate[ly] undertak[e] 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 at 187-188 (quotation and citation omitted). The contacts must be more than "random, fortuitous, or attenuated contacts."

The French and Mexican Entities rely heavily on the fact that they have no physical presence in Michigan. However, "'[j]urisdiction may not be avoided simply because the corporate defendant has never physically been present in the forum state.'" *Starbrite*, 454 Mich at 311 n 7, quoting *Jeffrey*, 448 Mich at 188.

> "It is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence in a State in which business is conducted. So long as a commercial actor's efforts are 'purposefully directed' toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there." [*Jeffrey*, 448 Mich at 188 quoting *Burger King Corp v Rudzewicz*, 471 US 462, 476; 105 S Ct 2174; 85 L Ed 2d 528 (1985).]

Based on the record, we conclude that the French and Mexican Entities contacts with Michigan were sufficient to constitute purposeful availment.

First, based on the prima facie showing of agency, the French and Mexican Entities are parties to the agreement. The agreement provides that Michigan is the governing law and the arbitration provision provides that venue would be in Detroit, Michigan. Thus, the French and Mexican Entities had a reason to "foresee being 'haled before' a Michigan court." *Jeffrey*, 448 Mich at 187 (quotation marks and citation omitted). Moreover, there is nothing random, fortuitous, or attenuated about the contacts. Charlton testified that he negotiated the agreement with Jean-Pierre Joubert in person while Charlton was in Paris and that Joubert "actually crafted this agreement." The documentary evidence shows that Joubert directly communicated with Charlton in Michigan by telephone, fax, and e-mail, and invited him to France to negotiate a long-term contract seeking the services of CTC, a Michigan company. That Charlton went to France rather than Joubert coming to Michigan is inapposite. Joubert actively employed telephone and electronic communications to negotiate and eventually consummate the agreement, even if Joubert was not the ultimate signatory. See *Burger King*, 471 US at 476. The communications were not merely directly aimed at Michigan, but directly aimed at CTC, a specific company clearly located in Michigan. Based on these discussions, Joubert helped create continuing obligations between the French and Mexican Entities and CTC. See *Starbrite*, 454 Mich at 311.

Additionally, even assuming Joubert only negotiated on behalf of SA, SNC still purposefully availed itself of doing business in Michigan by selling over $4.6 million in low-pressure hose parts to FTS over the five-year period that the agreement was active. The French Entities argue that this is insufficient because the sales were simply to a Hutchinson affiliate. This is a distinction without a difference. The French Entities want FTS to be an "affiliate" when it serves their purpose, but argue strenuously that FTS is an entirely separate company when it comes to whether they can be considered parties to the agreement. The fact is, SNC is a completely separate entity from FTS and has purposefully availed itself of Michigan law by setting up a system whereby it provides component parts for low-pressure hose and sells them to FTS. SNC's contacts with FTS are deliberate and intentional and can hardly be considered random, fortuitous, or attenuated.

Furthermore, Autopartes and Transferencia purposefully availed themselves of doing business in Michigan by entering into multiple contracts with GM to sell low and high-pressure parts. The Mexican Entities argue that these sales are inapplicable because they are to a third-party and not to a party to the agreement. However, these sales are directly covered by the agreement because they are to one of the listed automotive companies, making the actions by the Mexican Entities the precise activities covered under the agreement. The Mexican Entities have purposefully availed themselves of Michigan law by setting up a system whereby they sell component parts for high and low-pressure hose to GM, a Michigan company, which sales are explicitly covered under the agreement. These contacts are deliberate and intentional and can hardly be considered random, fortuitous, or attenuated.

Thus, the French and Mexican Entities have established their "presence" in Michigan and purposefully availed themselves of transacting business within Michigan.

2. CAUSE OF ACTION MUST ARISE FROM THE CONTACTS WITH THE STATE

The second due process requirement is that the cause of action must arise from the "circumstances creating the jurisdictional relationship between the defendant and the foreign state." *Oberlies*, 246 Mich App at 435; MCL 600.715.

Looking first at SA, Joubert arguably negotiated the agreement on SA's behalf. SA is also arguably a party to the agreement. CTC's claims arise out of unpaid commissions they allege they are owed under that agreement. Additionally, even assuming that SA is not a party to the agreement, it is the parent company of Transferencia and Autopartes and, therefore, benefits directly from the agreement. As the parent company, the evidence permits the inference that SA created a plan under which it attempted to keep Charlton from receiving its due commissions by creating companies other than FTS that would supply products to the various automotive companies. CTC alleged unjust enrichment claims against the French Entities to the extent that they were deemed not parties to the contract. Accordingly, CTC's claims stem directly from SA's activities with respect to the sale of high and low-pressure hoses covered by the agreement.

As to SNC, it admitted that its sales to FTS were low-pressure hose parts. The French Entities argued that these sales cannot create jurisdiction because the agreement covered only high-pressure business. Although that may have been true of the original agreement, the extension expressly added low-pressure business. SNC's providing component parts to FTS for low-pressure hose business makes SNC "involved in" the business with the various automotive

companies. Thus, SNC's contacts with Michigan, providing component parts to FTS, are directly related to CTC's claim that it was not properly paid based on all of the sales made to the automotive companies under the agreement.

As for the Mexican Entities, as discussed above, there is a question of fact as to whether they are parties to the agreement. Both Transferencia and Autopartes have contracts with GM that fall during the period the agreement was in force and, therefore, are directly related to CTC's claims. That is, CTC claims that is was not paid commissions due under the agreement based on these sales. Additionally, even assuming that they are not parties to the contract, the evidence permits the inference that Transferencia and Autopartes were created precisely to prevent CTC from receiving commission that would otherwise have been due under the agreement. CTC alleged unjust enrichment claims against the Mexican Entities to the extent that they were deemed not parties to the contract. Accordingly, CTC's claims stem directly from the Mexican Entities' with respect to the sales of high and low pressure hose sales covered by the agreement.

Accordingly, we conclude that the second prong for due process has been met.

3. WHETHER IT IS REASONABLE FOR MICHIGAN TO EXERCISE LIMITED PERSONAL JURISDICTION

The final prong of the due process inquiry is whether asserting in personam jurisdiction would offend "traditional notions of fair play and substantial justice." *Int'l Show Co*, 326 US at 316.

Since the French and Mexican Entities purposefully directed their business at CTC in Michigan, the French and Mexican Entities "must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." *Burger King*, 471 US at 477.

The French and Mexican Entities argue that subjecting a foreign entity to suit in Michigan would be unreasonable. In light of the agreement language, we disagree. As parties to the agreement, they all agreed to Michigan law and to arbitrate in Detroit. Although no venue provision exists for litigation, it is reasonable to presume that if the parties were willing to arbitrate in Michigan, subject to Michigan law, there is no more increased burden to have them litigate here, particularly where it was the alleged agent, FTS, that removed the case from arbitration and instigated the litigation. Had this been arbitration, there would have been no question of jurisdiction in Michigan. Accordingly, we see nothing unreasonable about requiring the French and Mexican Entities to litigate in Michigan. Additionally, as CTC points out, the circuit court already has experience with the parties and issues in this litigation, making it reasonable to require the remainder of the claims to be litigated here, rather than having the parties start over in a foreign jurisdiction. Finally, Michigan does have a stake in the outcome, as it has an interest in making certain that contracts that are executed in Michigan are honored, particularly where the contract explicitly states it is to be construed under Michigan law. We fail to see how France and Mexico are better jurisdictions for construing claims arising under a contract that is governed by Michigan law. Indeed, requiring duplicative litigation in two foreign countries over a contract whose resolution turns on the application of Michigan law seems a waste of everyone's resources.

Having found all three prongs of the due process inquiry were met, we conclude that exercising jurisdiction over the French and Mexican Entities is consistent with due process. Accordingly, we hold that the trial court erred in granting summary disposition to the French and Mexican Entities.

However, we are mindful that CTC has not *proven* agency. Rather, the evidence merely permits the *inference*, which creates a factual dispute and renders summary disposition inappropriate. Nevertheless, because the question of jurisdiction is a question of law, this case presents something of a paradox where a factual question prevents the courts from rendering a decision on a question of law. Moreover, the French and Mexican Entities should not be required to go forward with a trial on the merits if, in fact, there is no agency and, therefore, no jurisdiction. Accordingly, consistent with MCR 2.116(I)(3), we remand this case to the trial court for a bench trial solely on the issue of agency.[5] After trial, if the trial court determines that Joubert had express or apparent authority to negotiate on behalf of SA, as its senior vice president of purchasing, or on behalf of the French and Mexican Entities as the senior vice president of the worldwide Hutchinson companies involved in the High Pressure Fluids Activity, then there is jurisdiction over the French and Mexican Entities. Alternatively, jurisdiction over the French and Mexican Entities is also established if the trial court determines that FTS had the express or apparent authority to bind all Hutchinson entities involved in business with the listed automotive industries. In either case, the parties should proceed to trial on CTC's claims. If, however, the trial court determines after this bench trial that there was no agency, then it may grant summary disposition to the French and Mexican Entities pursuant to MCR 2.116(C)(1).

Because we are remanding for a bench trial on the issue of agency and whether Joubert and FTS had the authority to bind the French and Mexican Entities, we hold that the trial court shall permit limited discovery, including depositions, into these limited areas.

III. CONCLUSION

Because we find that CTC made a prima facie showing of jurisdiction sufficient to overcome summary disposition, we reverse the trial court's grant of summary disposition in favor of the French and Mexican Entities. However, because there are still outstanding fact questions as to agency and authority as they relate to jurisdiction, we remand for limited discovery and a bench trial on that issue and for any other additional proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ Kathleen Jansen
/s/ Pat M. Donfrio

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[5] MCR 2.116(I)(3) permits a trial court to hold a bench trial to determine disputed issues of fact in motions based on MCR 2.116(C)(1), among others.