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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

MAYFRAN INTERNATIONAL INCORPORATED
Plaintiff

Case No: CV-18-895669

Judge: CASSANDRA COLLIER-WILLIAMS

ECO-MODITY, LLC
Defendant

JOURNAL ENTRY

87 DIS. W/O PREJ - FINAL

SPECIALLY-APPEARING DEFENDANT ECO-MODITY, LLC'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, FILED 05/23/2018, IS GRANTED. OPINION AND ORDER GRANTING MOTION TO DISMISS IS SIGNED AND ORDERED RECORDED. CASE HEREBY DISMISSED WITHOUT PREJUDICE. ORDER ATTACHED. OSJ. FINAL.

COURT COST ASSESSED TO THE PLAINTIFF(S).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

OSJ

Judge Signature

Date

FILED
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CLERK OF COURTS
CUYAHOGA COUNTY

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

**MAYFRAN INTERNATIONAL
INCORPORATED**

Plaintiff,

vs.

ECO-MODITY, LLC

Defendant.

Case No. CV-18-895669

JUDGE CASSANDRA COLLIER-WILLIAMS

FINAL OPINION AND ORDER

This matter came before the Court on Defendant Eco-Modity, LLC's (hereinafter "Defendant") Motion to Dismiss for Lack of Personal Jurisdiction filed on May 23, 2018. Plaintiff Mayfran International Incorporated (hereinafter "Plaintiff") filed its Memorandum in Opposition on June 12, 2018. Plaintiff filed its Reply memorandum in Support of its Motion to Dismiss for Lack of Personal Jurisdiction on June 22, 2018. For reasons set forth more fully below, this Court hereby GRANTS Defendant's Motion to Dismiss and dismisses this matter without prejudice.

Factual and Procedural Background

Pursuant to the attendant briefs and record, beginning in October, 2015, the parties entered into a series of contracts and revised contracts for Defendant to assist Plaintiff in the design, development and installation of automated recycling systems at Plaintiff's mattress recycling facilities in California. Plaintiff filed its First Amended Complaint on April 24, 2018

and alleges that it has satisfied all of its obligations under the contracts and Defendant have failed to pay the amounts owed on three (3) of the four (4) relevant contracts.

Paragraph 2 of Plaintiff's First Amended Complaint states that "Eco-Modity, LLC d/b/a Blue Marble Materials ("Blue Marble") is a limited liability company organized under the laws of the State of California. Mayfran does not know the members of Blue Marble." In paragraph 4 of Plaintiff's First Amended Complaint Plaintiff states that "Blue Marble transacted business in Ohio through repeated contact with Mayfran via telephone and email, over a period of years; the execution of multiple contracts with Mayfran; by accepting credit from an Ohio-based company; and repeated promises to pay Mayfran in Ohio."

Paragraph 7 states that "Blue Marble is in the business of operating mattress recycling centers in California pursuant to the Used Mattress Recovery and Recycling Act." This is a California state law. Further, Plaintiff avers that Defendant only intended to conduct business in other California locations. The entirety of Plaintiff's First Amended Complaint further details all of Defendant's California business (Fresno, San Leandro, Rickenbacker and Bandini).

Plaintiff sets forth three (3) claims for breach of contract and a claim for unjust enrichment. Plaintiff also states that jurisdiction is proper pursuant to Ohio Revised Code sections 2305.01 and 2307.382(A) as Defendant transacted business in Ohio as well as the Standard Terms and Conditions of Sale which was incorporated into each contract at issue in this case and sent to Defendant on or about May 2, 2017.

Applicable Law and Analysis

A. Ohio's Long Arm Statute

Pursuant to Civ. R. 12(B)(2) for a motion to dismiss, Ohio courts must employ a two-part test to determine whether a state court has personal jurisdiction over a non-resident defendant. In the first prong, the court “must determine if Ohio’s long-arm statute and civil rules” confer personal jurisdiction. *Med Express v. University of Colorado Denver*, 2015-Ohio-144. If Ohio’s long-arm statute applies, the court “must determine if application of personal jurisdiction would deprive the defendant of the right to due process of law under the Fourteenth Amendment to the United States Constitution.” *Id.* Where a nonresident defendant asserts the trial court lacks personal jurisdiction over his person, the plaintiff has the burden to establish the court’s jurisdiction. *Dahlhausen v. Aldred*, 187 Ohio App. 3d 536.

A court “may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person’s [t]ransacting any business in this state.” O.R.C. §2307.382(A)(1). To “transact” means to prosecute negotiations; to carry on business; to have dealings,” but the “mere solicitation of business by a foreign corporation does not constitute transacting business in Ohio.” *Id.* The mere existence of a contract with a forum resident does not confer personal jurisdiction. *Natl. City Bank v. Yevu*, 178 Ohio App. 3d 382. Instead, the nonresident’s ties with Ohio must create a “substantial connection,” which is a fact-based, case-by-case inquiry. *Dahlhausen*, 187 Ohio App. 3d at 544.

In this matter, when viewing the facts and resolving all reasonable inferences in the light most favorable to the Plaintiff this Court determines it may exercise personal jurisdiction over the Defendant. Pursuant to Ohio’s long arm statute the Defendant’s conduct falls within the broad language of R.C. 2307.382(A)(1). Although Defendant may not have known at the inception of its relationship with Plaintiff’s subcontractor that an Ohio affiliate, the subcontractor

did inform Defendant that Plaintiff was an Ohio engineering firm and that it could assist Defendant's business.

The negotiation of the contracts in this matter resulted in the parties exchanging numerous emails and phone calls between California and Ohio. This included allegedly accepting credit from this Ohio based company as well as repeated promises to pay Plaintiff in Ohio. These properly plead facts lead to a finding that the first prong of the personal jurisdiction analysis has been met based on caselaw interpreting R.C. 2307.382(A)(1).

B. Due Process

The second prong of the analysis is whether exercising jurisdiction would violate the Defendant's due process pursuant to the Fourteenth Amendment. To satisfy due process, "the nonresident generally must have certain minimum contacts...such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Walden v. Fiore*, 134 S. Ct. 1115 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310). The specific jurisdiction inquiry "focuses on the relationship among the defendant, the forum, and the litigation." *Walden*, 134 S. Ct. at 1121.

This inquiry involves a three part test: (1) the defendant "must purposefully avail himself of the privilege of acting in the forum state;" (2) the action "must arise from the defendant's activities there;" and (3) the defendant's activities "must have a substantial connection with the forum state to make the exercise of jurisdiction over the defendant reasonable." *Med Express v. University of Colorado Denver*, 2015-Ohio-144 at ¶ 19. "Several federal courts have declined to find that a defendant's mere purchase of goods from another state creates minimum contacts with that state for purposes of personal jurisdiction and have distinguished situations where the nonresident defendant is a buyer, as opposed to a seller. *Id.*

With regard to the first element of the due process analysis in this matter, purposeful availment, Defendant did not reach into Ohio to solicit business from Plaintiff. Defendant met Plaintiff's subcontractor, Kim Jaker of Harris West Equipment, Inc. (hereinafter "Harris Inc.") at a conference in Las Vegas, Nevada. Harris Inc. was Plaintiff's California based subcontractor and Defendant was communicating with a representative of Plaintiff in southern California for all of the relevant contracts at issue. Defendant did eventually learn that Harris Inc., was actually Plaintiff's California dealer and distributor. Based on these facts the court finds the contact with the Ohio plaintiff in this matter as fortuitous and random and that Defendant did not purposefully avail himself of the privilege of acting in Ohio.

The "arising from" requirement under the second prong is satisfied when the operative facts of the controversy arise from the Defendant's contacts with the state. *Southern Machine Co. v. Mohasco Indus.*, 401 F.2d 374 (6th Cir. 1968). In this case, the operative alleged facts of the controversy are such that Defendant failed to pay for goods and services forming the basis for breach of contract and unjust enrichment claims. Defendant's failure to pay has no direct connection to this state and certainly does not arise from its contact with the state. Therefore Plaintiff cannot establish the second prong of due process.

In analyzing "fair play and substantial justice" courts may evaluate many factors. There include 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. *Ky. Oaks Mall Co. v. Mitchell's Formal Wear*, 53 Ohio St. 3d 73.

In this matter the court takes judicial notice of the fact that Defendant was solely interested in conducting business in California under a California statute. California unquestionably has a far greater interest in adjudicating a dispute based upon a business it has enacted law to oversee. The burden on the Defendant and interstate interest in mattress recycling contract litigation greatly outweigh Plaintiff's interest in obtaining convenient relief. This finding does not interfere with Plaintiff's ability to obtain effective relief. The Court does not weigh these factors lightly and comes to the conclusion that Defendant maintained *de minimis* Ohio contacts and exercising personal jurisdiction over it would be unreasonable. Exercising jurisdiction over the Defendant would be random and arbitrary, and would violate the notions of fair play and substantial justice. *Kerger v. Dentsply Int'l, Inc.*, 2011-Ohio-84.

Conclusion

Defendant's Motion to Dismiss for Lack of Personal Jurisdiction is hereby GRANTED. Pursuant to Ohio Civ. R. 41(B)(4)(a), this case is hereby dismissed, without prejudice, for lack of personal jurisdiction and therefore not on the merits of this matter. Plaintiff may re-file its Complaint in the more appropriate forum state of California. Final.

IT IS SO ORDERED.


JUDGE CASSANDRA COLLIER-WILLIAMS