

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

CBX LAW, LLC d/b/a LATITUDE,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Case No.: 3:19-cv-00867
	)	
LEXIKON SERVICES, LLC,	)	Judge William L. Campbell, Jr.
	)	Magistrate Judge Jeffrey S. Frensley
<i>Defendant.</i>	)	

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**DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF ITS  
MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

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COMES NOW, Defendant Lexikon Services, LLC (“Lexikon”), by and through undersigned counsel, and respectfully files this Memorandum of Law in Support of its Motion to Dismiss Plaintiff’s Complaint. Defendant files its Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(2).

**INTRODUCTION**

This is a trade secret misappropriation case. Plaintiff initially filed its five-count Complaint in the Chancery Court for Williamson County, Tennessee. Defendant timely removed the case to this Court on the basis of federal question jurisdiction since Plaintiff’s primary claim is a violation of the Defend Trade Secrets Act.

Plaintiff is a Tennessee limited liability company. (Complaint, ¶ 4). Defendant is a Texas limited liability company. (Complaint, ¶ 5). Michael Murphy is the sole member of Defendant and a resident of Texas. (See Declaration of Michael Murphy, Exhibit A). In early 2019, Mr. Murphy and Plaintiff engaged in discussions about expanding Plaintiff’s business into Austin, Texas. (Complaint, ¶¶ 15-28). On or about February 25, 2019, Mr. Murphy ended negotiations.

(Complaint, ¶ 28). Thereafter, Mr. Murphy started Lexikon Services, LLC, on or about May 17, 2019. (Complaint, ¶ 30). Plaintiff now claims that Defendant has misappropriated Plaintiff's trade secrets. (Complaint, generally).

What Plaintiff's Complaint fails to allege are any facts showing that Defendant has subjected itself to jurisdiction in Tennessee. This is so, especially given the fact that Defendant did not exist as a business entity until months after negotiations ended between Mr. Murphy and Plaintiff.

For the reasons stated herein, Plaintiff's Complaint must be dismissed for lack of personal jurisdiction over Defendant.

## **ARGUMENT**

### **I. STANDARD OF LAW REGARDING MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION PURSUANT TO FED. R. CIV. P. 12(B)(2)**

The plaintiff bears the burden of demonstrating the Court's personal jurisdiction over the defendant. *Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 887 (6th Cir. 2002). If a plaintiff fails to establish a *prima facie* case of personal jurisdiction through the allegations in the complaint and evidence submitted in opposition to the motion to dismiss, a court may grant the motion on the basis of declarations alone. *Theunissen v. Matthews*, 935 F.2d 1454, 1458 (6th Cir. 1991). If the court holds an evidentiary hearing, the plaintiff must establish jurisdiction by a preponderance of the evidence. *Id.*

In this case, Plaintiff's Complaint fails to show that this Court has personal jurisdiction over Defendant. On that basis, Plaintiff's Complaint fails as a matter of law and must be dismissed in its entirety.

## II. PLAINTIFF'S COMPLAINT MUST BE DISMISSED BECAUSE THE COURT LACKS PERSONAL JURISDICTION OVER DEFENDANT

The Court lacks personal jurisdiction over Defendant because Defendant is a Texas limited liability company that has never had any contacts with the state of Tennessee (besides retaining counsel in this matter) or with Plaintiff. Exercising jurisdiction over Defendant would violate its well-established “liberty interest in not being subject to the binding judgments of a forum with which [it] has established no meaningful ‘contacts, ties, or relations.’” *Burger King Corp. v. Rudzewicz*, 471 US 462, 471-72 (1985) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

The authority of a court to exercise personal jurisdiction over an out-of-state defendant is limited by the Due Process Clause of the U.S. Constitution’s Fourteenth Amendment and Tennessee’s long-arm statute. *Bridgeport Music, Inc. v. Still N The Water Publ’g*, 327 F.3d 472, 477 (6th Cir. 2003) (a court sitting in Tennessee must determine whether the exercise of personal jurisdiction over a defendant comports with constitutional due process). “Personal jurisdiction can be either general or specific, depending on the nature of the contacts that the defendant has with the forum state.” *Bird*, 289 F.3d 865. As explained below, the Defendant’s contacts with Tennessee are insufficient to create either general or specific personal jurisdiction.

Plaintiff bears the burden of demonstrating the Court’s personal jurisdiction over Defendant, but it has not and cannot do so in this case. *See Theunissen v. Matthews*, 935 F.2d 1454, 1458 (6th Cir. 1991). Due process requires that a court may exercise personal jurisdiction over a non-resident defendant only if the plaintiff establishes that the defendant has “certain minimum contacts with [the forum] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Youn v. Track, Inc.*, 324 F.3d 409, 417–18 (6th Cir. 2003) (quoting *Int’l Shoe*, 326 U.S. at 316). “In a diversity action, the law of the forum state dictates

whether personal jurisdiction exists, subject to constitutional limitations.” *Intera Corp. v. Henderson*, 428 F.3d 605, 615 (6th Cir.2005). Under Tennessee’s long-arm statute, a Tennessee court may exercise jurisdiction over an out-of-state defendant on “[a]ny basis not inconsistent with the constitution of this state or of the United States.” Tenn. Code Ann. § 20–2–214(6).

**A. General Personal Jurisdiction**

General personal jurisdiction exists over an out-out-state defendant for “any and all claims against them when their affiliations with the state are so ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Goodyear Dunlop Tires Operations, SA v. Brown*, 564 U.S. 915, 919 (2011) (citation omitted). General jurisdiction over the Defendant does not exist because, far from being “at home” in Tennessee, Defendant has had zero contact with the state. In support, Defendant’s sole member, Michael Murphy, states:

- Defendant is a Texas limited liability company with its principal and sole place of business in Austin, Texas. (*See* Declaration of Michael Murphy, Exhibit A).
- Defendant has no customers in Tennessee, has never conducted business in Tennessee, and has not registered with the State to operate in Tennessee. *Id.*
- Defendant does not advertise or otherwise solicit business in Tennessee. *Id.*
- Defendant has never had a physical presence in Tennessee. *Id.*
- Defendant has not consented to service of process in Tennessee. *Id.*
- The sole member of Defendant, Michael Murphy, is a citizen of the State of Texas and resides in Austin, Texas. *Id.*
- No officer or employee of Defendant is a citizen of Tennessee. *Id.*
- No officer, member, or employee of Defendant has ever entered Tennessee on behalf of the company. *Id.*
- Defendant has never had any contact with Plaintiff (besides being sued by Plaintiff). *Id.*

Given the complete lack of contacts with Tennessee, Defendant is not subject to the Court's general jurisdiction. The United States Supreme Court has consistently rejected general jurisdiction over out-of-state corporations with much more significant contact with the forum state. *See, e.g., BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1559 (U.S. 2017) (finding no general personal jurisdiction over BNSF in Montana even though the railroad "has over 2,000 miles of railroad track and more than 2,000 employees in Montana"); *Daimler Ag v. Bauman*, 571 U.S. 117 (2014) (rejecting general personal jurisdiction over Daimler in California for a claim arising from out-of-state events even though Daimler had significant and continuous contacts and business in California); *Goodyear*, 564 U.S. 915 (2011) (holding that conducting general business through the stream of commerce in the forum state "does not establish the 'continuous and systematic' affiliation necessary to empower North Carolina courts to entertain claims unrelated to the foreign corporation's contacts with the State"); *Helicopteros Nacionales de Colombia, SA v. Hall*, 466 U.S. 408, 416 (1984) (no personal jurisdiction in Texas over a foreign company whose "contacts with Texas consisted of sending its chief executive officer to Houston for a contract-negotiation session; accepting into its New York bank account checks drawn on a Houston bank; purchasing helicopters, equipment, and training services from Bell Helicopter for substantial sums; and sending personnel to Bell's facilities in Fort Worth for training"). Having had *no* contact with Tennessee, much less Plaintiff, there is no basis for general personal jurisdiction over Defendant.

**B. Specific Personal Jurisdiction**

There is also no basis for the Court to exercise specific personal jurisdiction over Defendant in this action. Specific personal jurisdiction over a nonresident corporate defendant requires "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend

‘traditional notions of fair play and substantial justice.’” *Int’l Shoe*, 326 U.S. at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

The Sixth Circuit established a three-part test to determine whether the exercise of specific jurisdiction complies with due process:

First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

*S. Mach. Co. v. Mohasco Indus.*, 401 F.2d 374, 381 (6th Cir. 1968). The plaintiff is required to satisfy all three parts of the test. *Id.* If a plaintiff fails to satisfy a single part of the test, plaintiff's assertion of personal jurisdiction fails. *Id.*

Whether a defendant “has purposefully availed itself of the privilege of transacting business in Tennessee” is “the sine qua non” for personal jurisdiction. *Air Prods. & Controls, Inc. v. Safetech Int’l, Inc.*, 503 F.3d 544, 550-51 (6th Cir. 2007) (quotation omitted). Purposeful availment is “something akin to a deliberate undertaking,” which is a deliberate effort by a defendant to direct its activities toward, and to make contact with, the forum. *Bridgeport*, 327 F.3d at 478. Purposeful availment exists “when the defendant’s contacts with the forum state proximately result from actions by the defendant himself that create a substantial connection with the forum state.” *Id.* The causes of action at issue must have a “substantial connection” to the defendant’s deliberate efforts to make contact with the forum. *Bird*, 283 F.3d at 875.

Further, “mere injury to a forum resident is not a sufficient connection to the forum.” *Bulso v. O’Shea*, 2017 U.S. Dist. LEXIS 19977, at \*5 (M.D. Tenn 2017) (Crenshaw, C.J.), *aff’d* by 730 Fed. App’x 347 (6th Cir. 2018). “The analysis must look to the defendant’s contacts with the forum state itself, not the defendant’s contacts with the persons who reside there.” *Id.*

Here, Plaintiff does not allege purposeful availment by Defendant. Indeed, there has been no contact by Defendant with Tennessee of any kind that would support specific personal jurisdiction. Even the alleged actions by Defendant occurred exclusively *outside* Tennessee. That fact alone eliminates the possibility of specific personal jurisdiction. *See BNSF*, 137 S. Ct. at 1558 (“Because neither Nelson nor Tyrrell alleges any injury from work in or related to Montana, only the propriety of general jurisdiction is at issue here.”); *Goodyear*, 564 U.S. 915 (“Because the episode-in-suit, the bus accident, occurred in France, and the tire alleged to have caused the accident was manufactured and sold abroad, North Carolina courts lacked specific jurisdiction to adjudicate the controversy.”) Additionally, Plaintiff’s Complaint admits that Lexikon was not formed until May 17, 2019, which is *after* Michael Murphy ended negotiations with Plaintiff on February 25, 2019. (Complaint, ¶¶ 28-30). Plaintiff’s own pleadings shows that it is a legal impossibility that Defendant subjected itself to any type of jurisdiction in Tennessee.

Plaintiff has failed to allege any facts in its Complaint that would permit the exercise of specific personal jurisdiction over Defendant. And since Defendant has no contacts with Tennessee, there is no basis for the Court to exercise general or specific jurisdiction over Defendant in this action.

### **CONCLUSION**

For the foregoing reasons, Plaintiff’s Complaint must be dismissed.

Respectfully submitted,

/s/Bennett J. Wills  
Bennett J. Wills (#034831)  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 3rd day of October 2019, a copy of the foregoing Memorandum of Law in Support of its Motion to Dismiss Plaintiff's Complaint was served on the following attorneys via the Court's electronic filing system:

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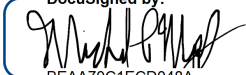


10. No officer, member, or employee of Defendant has ever entered Tennessee on behalf of Defendant.

11. Defendant has never had any contact with Plaintiff (besides this lawsuit).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3rd day of October 2019.

DocuSigned by:  
  
BEAA70C1ECD048A...

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Michael Murphy

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 3rd day of October 2019, a copy of the foregoing Declaration of Michael Murphy was served on the following attorneys via the Court's electronic filing system:

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