

VIRGINIA: IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOSHUA EVERETT BUSHMAN, ADMINISTRATOR FOR
THE ESTATE OF CALVIN VAN PELT and
JOSHUA EVERETT BUSHMAN, ADMINISTRATOR FOR
THE ESTATE OF ERSHEEN ELAIAISER,

Plaintiffs,

v.

Case No. 2023 06260

SALVO TECHNOLOGIES INC. d/b/a 80P BUILDER,
POLYMER80, INC., and ZACHARY BURKARD,

Defendants.

OBJECTION TO PERSONAL JURISDICTION AND MOTION TO DISMISS

COMES NOW Defendant Polymer80, Inc. (“Polymer80”), by special appearance of counsel and pursuant to Va. Code § 8.01-277.1, and hereby objects to this suit and moves to dismiss this action on the grounds that this Court lacks personal jurisdiction over Polymer80, for the reasons set forth below and contained in a subsequent brief in support that will be filed with the Court:

1. The personal jurisdiction inquiry is a two-step process. E.g., City of Va. Beach v. Roanoke River Basin Ass’n., 776 F.2d 484, 487 (4th Cir. 1985). The court must first determine whether the long arm statute provides for jurisdiction and then whether the exercise of personal jurisdiction would offend the Due Process Clause of the Fourteenth Amendment. Id. These two inquiries typically coalesce into one, however, because the Virginia Supreme Court has “construed the long-arm statute to extend in personam jurisdiction to the limits of due process.” Id.

2. “The burden of proving in personam jurisdiction rests with the plaintiff.” E.g., Superfos Invs., Ltd. v. FirstMiss Fertilizer, Inc., 774 F. Supp. 393, 397 (E.D. Va. 1991) (citing McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178 (1936)).

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3. Virginia’s long-arm statute authorizes personal jurisdiction “over a person, who acts directly or by an agent, as to a cause of action arising from” certain specifically enumerated activities in the Commonwealth. Va. Code Ann. § 8.01-328.1(A). The clause “arising from” has been narrowly construed. The “activities that support the jurisdictional claim must coincide with those that form the basis of the plaintiffs’ substantive claim.” City of Va. Beach v. Roanoke River Basin Ass’n, 776 F.2d 484, 487 (4th Cir. 1985).

4. Plaintiffs’ causes of action do not arise from any of the activities set forth in the long-arm statute. Nor does the Complaint sufficiently allege same. In fact, without responding to the merits of the allegations, it appears from the face of the Complaint that Plaintiffs allege Polymer80 sold the subject product to a dealer, not that Polymer80 sold the subject product directly to a Virginia consumer. *See, e.g.*, Compl. ¶¶ 71, 79–80.

5. Nor do Plaintiffs’ claims fall within the constitutional requirements of the Due Process Clause. Personal jurisdiction may constitutionally be asserted over a defendant only if the defendant has “purposefully established ‘minimum contacts’ in the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” RZS Holdings AVV v. PDVSA Petroleos S.A., 293 F. Supp. 2d 645, 650 (E.D. Va. 2003) (citations omitted) (quoting Int’l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). Two types of constitutionally permissible personal jurisdiction exist: (1) specific jurisdiction, and (2) general jurisdiction. Corry v. CFM Majestic Inc., 16 F. Supp. 2d 660, 663 (E.D. Va. 1998). To comply with the demands of due process, Plaintiffs must establish either specific or general jurisdiction.

6. Specific jurisdiction requires Plaintiffs to demonstrate that “the defendant ‘purposely directed his activities at residents of the forum,’ and that the plaintiffs’ claim arises out of the defendant’s forum-related activities.” RZS Holdings, 293 F. Supp. 2d at 651 (quoting Burger

King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985)). In other words, there must be a nexus between Polymer80's alleged in-state activities and the basis for Plaintiffs' claims. Ratliff v. Cooper Labs., Inc., 444 F.2d 745, 748 (4th Cir. 1971).

7. Plaintiffs' claims do not arise out of any such alleged forum-related activities by Polymer80. Nor does the Complaint sufficiently allege that Polymer80 purposely directed activities at Virginia residents and that Plaintiffs' claims arise out of Polymer80's alleged forum-related activities. Again, the Complaint notably alleges that Polymer80 sold the subject product to a dealer, not directly to a Virginia consumer. *See, e.g.*, Compl. ¶¶ 71, 79–80.

8. Where suit does not arise from the defendant's forum-related activities, the Court must determine whether it may exercise general jurisdiction. Nichols v. G.D. Searle & Co., 991 F.2d 1195, 1199 n.2 (4th Cir. 1993). "The threshold for satisfying the requirements for general jurisdiction is substantially greater than for specific jurisdiction." Corry v. CFN Majestic Inc., 16 F. Supp. 2d 660, 663 (E.D. Va. 1998). "[B]road constructions . . . [are] generally disfavored." Nichols, 991 F.2d at 1200.

9. To establish general jurisdiction, due process requires that a defendant's minimum contacts with a forum be "continuous and systematic," Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 416 (1984), and "fairly extensive," Nichols, 991 F.2d at 1200. Indeed, "the Fourth Circuit has made it clear that due process requires that a defendant's contacts with the forum state be tantamount to physical presence there." Harry & Jeanette Weinberg Found., Inc. v. ANB Inv. Mgmt. & Trust Co., 966 F. Supp. 389, 391-92 (D. Md. 1997) (emphasis added) (citations omitted). "Typically, courts assert general jurisdiction only over nonresidents who are essentially domiciled within the forum state" and "[t]he threshold for continuous and systematic contact

usually requires at least an office in the forum state.” Corry, 16 F. Supp. 2d at 663 (internal citation and quotations omitted).

10. Polymer80 does not have sufficient minimum contacts with Virginia to subject the company to general personal jurisdiction under the Due Process Clause. See, e.g., Int’l Shoe Co., 326 U.S. 310. Notably, Polymer80 is incorporated and headquartered in the State of Nevada, and the company does not have any offices or employees in Virginia.

11. Because Plaintiffs cannot establish personal jurisdiction under the long-arm statute, or specific or general jurisdiction under the Due Process Clause, this case should be dismissed.

12. Additionally, Defendant reserves the right to request additional discovery authorized by the Court to adjudicate Defendant’s objection to personal jurisdiction, consistent with Va. Code § 8.01-277.1(B)(3). This further discovery may include, among other topics, discovery related to product and component identification.

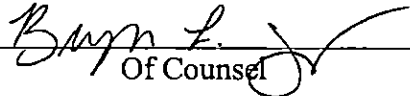
13. Defendant further asserts that it is unclear at this time whether there is even a viable theory of recovery that could possibly give rise to personal jurisdiction under Va. Code § 8.01-328.1 or the Due Process Clause. Thus, Defendant reserves the right to assert that there are additional reasons that the allegations in the Complaint are insufficient to support the exercise of personal jurisdiction over Polymer80.

14. In accordance with Rule 4:15(c) of the Rules of the Supreme Court of Virginia and the Fairfax County Circuit Court Motions Docket Procedures (“Fairfax Procedures”), Polymer80 intends to file a memorandum in support before the hearing on this Motion. Defendant asserts in good faith under paragraph 15 of the Fairfax Procedures that this Motion will require a brief in support that exceeds five double-spaced, typewritten pages. The parties will contact the Calendar Control Judge to obtain a briefing schedule and hearing date on this Motion.

WHEREFORE, Defendant prays for the foregoing reasons, and for any reason raised in the subsequent briefing and hearing on this matter, that the Court will dismiss this action for lack of personal jurisdiction, and for all other such relief as the Court may deem just and proper.

Respectfully submitted,

POLYMER80, INC.

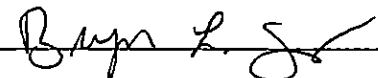
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing pleading was served via email and U.S. mail, postage fully prepaid thereon, this 27th day of July, 2023 to:

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