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2023 JUL 28 A 11: 24

JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOSHUA EVERETT BUSHMAN ADMINSTRATOR :  
FOR THE ESTATE OF CALVIN VAN PELT, et al., :

Plaintiffs, :

v. :

SALVO TECHNOLOGIES, INC. :  
d/b/a 80 P BUILDER, et al. :

Defendants. :


Case No: CL2023-06260

**DEFENDANT'S MOTION BY SPECIAL APPEARANCE  
TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

Pursuant to Supreme Court Rules 3:8 and 4:15, Defendant Salvo Technologies, Inc., moves by special appearance to dismiss all claims against it for lack of personal jurisdiction, for the reasons stated in the accompanying brief.

July 28, 2023

Respectfully submitted,

  
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*Counsel for Defendant Salvo Technologies, Inc. by Special Appearance*

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**BRIEF IN SUPPORT OF DEFENDANT SALVO'S MOTION TO DISMISS  
FOR LACK OF PERSONAL JURISDICTION**

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Plaintiffs bring this suit seeking to impose liability for a tragic teen shooting in Fairfax County on the companies alleged to have sold the parts that were ultimately assembled into the firearm used by the perpetrator of the crime. Defendant Salvo Technologies, Inc. (“Salvo”) moves, by special appearance, to dismiss all claims against it. Salvo is headquartered and based in Florida, not Virginia, and it has not taken—and cannot be held liable for—any action in the Commonwealth that would give rise to personal jurisdiction for the claims alleged.

**BACKGROUND**

This case arises out of a shooting by Zackary Burkard, a high-school student in Fairfax County, on April 25, 2021. On January 19, 2023, Burkard was convicted for the voluntary manslaughter of two other Fairfax County teenagers. The administrators of the two deceased’s estates allege that Burkard committed the crimes with a handgun that he assembled from parts he purchased on the website 80P Builder. Compl. ¶¶ 89, 97, 106–09 (Apr. 24, 2023). They allege that the sale of the parts from 80P Builder took place “[o]n or around February 1, 2021.” *Id.* at 89. They further allege that 80P Builder was formerly the trade name of named defendant BUL USA, LLC, which was a North Carolina limited liability company until it filed articles of dissolution on December 16, 2022. *Id.* ¶ 19.

In addition to Burkard himself and a Nevada corporation alleged to be in the supply chain of the firearm parts purchased by Burkard, *id.* ¶ 21, the Complaint also names as a defendant Salvo Technologies, LLC, (salvo llc is dissolved) *id.* ¶ 18. Salvo is a Florida corporation; it is chartered and headquartered in Florida. Decl. of Patrick Bass ¶ 2. On March 1, 2021, it entered into an Asset Purchase Agreement with Okori LLC, a North Carolina limited liability corporation that is not named as a party in this action, for the conveyance of certain assets. Bass Decl. ¶ 3; *see also* Asset

Purchase Agreement (Mar. 1, 2021), attached to Bass Decl. as Ex. 1 (hereinafter “APA”). The purchased assets include certain enumerated equipment, inventory, and property as well as Okori’s rights and intellectual property in the website 80P Builder. APA ¶ 1(a)–(c). BUL USA is not a party to Salvo’s APA with Okori, nor is it mentioned anywhere in the APA or included in any of the rights or liabilities conveyed in the APA. Salvo has no other contracts with BUL USA. Bass Decl. ¶ 5.

Salvo now moves, by special appearance, to dismiss all claims against it for lack of personal jurisdiction.

### ARGUMENT

On a motion to dismiss for lack of *in personam* jurisdiction, the burden falls to the plaintiffs to “establish a prima facie case of personal jurisdiction.” *Talenthunter LLC v. S. Co. Servs.*, 87 Va. Cir. 363, 2014 WL 3972897, \*2 (Va. Cir. Ct. 2014). “[O]nce jurisdiction has been challenged, the question is one for the judge with the burden on the plaintiff ultimately to prove the existence of a ground for jurisdiction by the preponderance of the evidence.” *Id.* (cleaned up). Dismissal is appropriate “if all of the alleged facts taken together fail to establish the existence of personal jurisdiction.” *Id.* Here, Salvo lacks any relevant contacts with Virginia and is therefore outside of the Court’s personal jurisdiction.

#### **I. Salvo Has Taken No Actions in Virginia that Would Justify the Assertion of Personal Jurisdiction.**

Determining whether personal jurisdiction exists,

is a two step inquiry. The first step . . . is to determine whether Virginia’s long-arm statute reaches the non-resident defendant given the cause of action alleged and the nature of the defendant’s Virginia contacts. The second step is to ensure that the exercise of *in personam* jurisdiction over a non-resident Defendant complies with the due process requirements of the Fourteenth Amendment to the United States Constitution.

*Davey Tree Expert Co. v. Jackson*, 69 Va. Cir. 350, 2005 WL 3789583, \*1 (Va. Cir. Ct. 2005) (cleaned up).

As relevant here, Virginia’s long-arm statute extends personal jurisdiction over any “cause of action arising from the [Defendant’s] . . . [t]ransacting any business in this Commonwealth,” or “[c]ausing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this Commonwealth.” VA. CODE § 8.01-328.1(A)(1), (4). This long-arm statute “is a single act statute requiring only one transaction in Virginia to confer jurisdiction on its courts.” *John G. Kolbe, Inc. v. Chromodern Chair Co.*, 211 Va. 736, 740 (1971). However, because the statute extends only “to a cause of action *arising from* the [defendant’s]” actions in the Commonwealth, that “single act” can confer personal jurisdiction *only* as to those claims that *arise from the Defendant’s in-state actions*. Indeed, paragraph C of Section 8.01-328.1 repeats the point for emphasis: “only a cause of action arising from acts enumerated in this section may be asserted against [a defendant].”

The Commonwealth’s courts have repeatedly enforced this limit on their jurisdiction. In *Gallop Leasing Corp. v. Nationwide Mutual Ins. Co.*, 418 S.E.2d 341 (Va. 1992), for example, the Virginia Supreme Court held that Gallop, a car leasing company, could not be hailed into the Commonwealth’s courts in a declaratory judgment action by Nationwide Mutual seeking to declare one of its car insurance policies—covering a car leased from Gallop—void based on misrepresentations allegedly made by the insured (the lessor of the car). While the Supreme Court assumed “that Gallop did transact business in Virginia as contemplated in Code § 8.01–328.1(A)(1),” given that the alleged misrepresentations giving rise to the claim were made by *the lessor* rather than *Gallop*, it found no *in personam* jurisdiction “because Nationwide did not assert

a cause of action *arising from* any acts of Gallop in Virginia.” *Id.* at 341–42. There are many other cases to the same effect. *See, e.g., Sultanhan Hali Ticaret Ve Sanayii Ltd., Sti. v. Pazyryk, Inc.*, 45 Va. Cir. 220, 1998 WL 972145, \*1 (Va. Cir. Ct. Mar. 23, 1998) (“[W]hen jurisdiction is based solely on the long-arm statute the only cause of action which may be asserted is that which arises from the nonresident’s transaction of business in the State.”); *City of Va. Beach v. Roanoke River Basin Ass’n*, 776 F.2d 484, 488 (4th Cir.1985) (“The difficulty with the city’s assertion of jurisdiction under the long-arm statute is its inability to show a cause of action arising from the Governor’s acts in Virginia.”); *Chedid v. Boardwalk Regency Corp.*, 756 F. Supp. 941, 943 (E.D. Va. 1991) (“[I]t is evident that Virginia’s General Assembly used the phrase ‘arising from’ to require that there be a causal link between the acts relied on for personal jurisdiction and the cause of action asserted.”).

Here, none of the causes of action alleged in the Complaint arise out of any of Salvo’s acts within Virginia, for the simple reason that the alleged sale of the firearm parts to Burkard took place *before* Salvo had acquired any interest in 80P Builder. The Complaint alleges that the sale took place “[o]n or around February 1, 2021.” Compl. ¶ 89. Yet the Asset Purchase Agreement that is the source of Salvo’s interest in 80P Builder was executed (and took effect) several weeks later, on March 1, 2021. *See* APA ¶ 6. Accordingly, none of Plaintiffs’ claims arise out of any action taken by Salvo in Virginia, and there is no personal jurisdiction under Code § 8.01-328.1.<sup>1</sup>

## **II. BUL USA’s Actions in Virginia Cannot Be Attributed to Salvo.**

Just as Salvo itself has taken no actions in Virginia that give rise to Plaintiffs’ claims, the actions of Defendant BUL USA cannot be attributed to Salvo in an attempt to supply the missing

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<sup>1</sup> For the reasons explained in BUL USA’s motion to dismiss—which apply *a fortiori* to Salvo—asserting personal jurisdiction would be inconsistent with the Due Process Clause as interpreted by the U.S. Supreme Court in *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021).

connection with the Commonwealth. For Salvo has no relationship with BUL USA. The Asset Purchase Agreement underlying Salvo's interest in the 80P Builder Website is with Okori LLC, not BUL USA, and it does not mention BUL USA, include BUL USA, or give Salvo any interest in BUL USA. See Bass Decl. ¶¶ 4–5 & APA . Nor is Salvo party to any other contract or agreement with BUL USA. Accordingly, there is no basis for attributing BUL USA's actions in Virginia to Salvo.

**III. Salvo Does Not Have Successor Liability for the Actions of the Previous Owners of 80P Builder.**

Finally, even if BUL USA were a party to Salvo's Asset Purchase Agreement with Okori, the actions of the previous owners and operators of 80P Builder—including the sale of the handgun parts at issue—could not be attributed Salvo, because Salvo did not assume the liabilities of those prior owners. The general rule in Virginia is that “a corporation that purchases the assets of another corporation is not liable for the debts and contingent liabilities of the selling corporation.” *Blizzard v. Nat'l R.R. Passenger Corp.*, 831 F. Supp. 544, 547 (E.D. Va. 1993); see also *City of Richmond, Va. v. Madison Mgmt. Grp., Inc.*, 918 F.2d 438, 450 (4th Cir. 1990); *Augusta Lumber Co. v. Broad Run Holdings, LLC*, 71 Va. Cir. 326, 2006 WL 2578632, \*2 (Va. Cir. Ct. 2006).

In order to hold a purchasing corporation liable for the obligations of the selling corporation, it must appear that (1) the purchasing corporation expressly or impliedly agreed to assume such liabilities, (2) the circumstances surrounding the transaction warrant a finding that there was a consolidation or *de facto* merger of the two corporations, (3) the purchasing corporation is merely a continuation of the selling corporation, or (4) the transaction is fraudulent in fact.

*Harris v. T.I., Inc.*, 243 Va. 63, 70 (1992). There is no basis for applying any of these exceptions here, and so Salvo cannot be held liable now for a sale by 80P Builder's previous owners that was completed before it acquired any interest in the website. That sale thus cannot be relied upon to justify the assertion of personal jurisdiction over Salvo.

July 28, 2023

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I certify that on this 28th day of July 2023 a true copy of the foregoing Motion By Special Appearance to Dismiss for Lack of Personal Jurisdiction and accompanying Brief in Support was served by electronic mail and US Mail to:

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