

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

**JOSHUA EVERETT BUSHMAN, *
ADMINISTRATOR FOR THE ESTATE *
OF CALVIN VAN PELT, et al., ***

Plaintiffs, *

Case No. CL2023-06260

v. *

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

Defendants.

* * * * *

DEFENDANT OKORI, LLC D/B/A 80P BUILDER’S, REPLY, BY SPECIAL APPEARANCE, TO PLAINTIFFS’ OPPOSITION AND IN FURTHER SUPPORT OF ITS MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Defendant, Okori, LLC d/b/a 80P Builder (“*Okori*”), by special appearance, respectfully submits this Reply in further support of its Motion to Dismiss Plaintiffs’ Amended Complaint for lack of personal jurisdiction, and in response to Plaintiffs’ Opposition to Okori’s Motion to Dismiss, or in the Alternative, Requesting Jurisdictional Discovery.

1. Okori’s Motion to Dismiss should be granted because even if all of the factual allegations pled in the Amended Complaint are true, this Court should not reach the conclusion that Okori “transacted business within the Commonwealth of Virginia through its operation of the 80P Builder website.” Amend. Compl. at ¶ 20.

2. First, Plaintiffs fail to allege sufficient facts to demonstrate that the alleged online sale and shipment from North Carolina to Virginia around February 2021 qualifies as a transaction

of business in Virginia because of the 80P Builder website’s “Terms of Use”.¹ Plaintiffs’ position—that “Okori’s argument that ‘title to the kit transferred ... in North Carolina’ is based on the terms of use *currently* posted on the 80P Builder website, *not* the terms that were in effect as of February 2021”—defies logic. See Opp., pg. 4. The very fact that the September 12, 2023 Declaration states that “[t]he current terms of use are attached [to the Declaration] as Exhibit V”, *see* Decl., 20, and the document included as Exhibit V explicitly states that it was “last updated on: January 1, 2019” proves that those terms of use were in effect during February 2021.

3. Second, the allegations in the Amended Complaint do not satisfy the standards relied on by this Court for determining whether a nonresident defendant “has conceptually entered the State via the Internet for jurisdictional purposes.” *Mireskandari v. Daily Mail & Gen. Trust PLC*, 105 Va. Cir. 370, 377 (Va. Cir. Ct. 2020). Given this and the fact that decisions by the federal judiciary are not binding on this Court, Plaintiffs’ reliance on *Thousand Oaks Barrel Co. v. Deep S. Barrels*, 241 F. Supp. 708 (E.D. Va. 2017), and other district court cases, is misplaced. *See Gerben v. Edwards*, 106 Va. Cir. 286, 291 (Va. Cir. Ct. 2020) (citing *Toghill v. Commonwealth*, 289 Va. 220, 227 (2015)) (“while federal court decisions are considered persuasive authority in Virginia state courts, ‘such decisions are not binding precedent.’ ”). Further, the Amended Complaint at issue in *Thousand Oaks* contains allegations that are not part of the Amended Complaint at issue here. *See* 241 F. Supp. 3d at 715 (noting several specific allegations pled in the Amended Complaint and the defendant’s affidavit).

4. Third, this Court’s exercise of personal jurisdiction over Okori would not comport with the Due Process Clause because Plaintiffs have not sufficiently pled that Okori purposefully availed itself of the privilege of conducting business under the laws of the Commonwealth, nor

¹ Upon review of the moving party’s Motion to Dismiss, a typo was noticed in the block quote in that the word “passed” ought to say “passes”.

have Plaintiffs’ sufficiently pled that their claims against Okori arise out of Okori’s activities directed at the Commonwealth.

5. Finally, this Court’s exercise of personal jurisdiction would be unreasonable under the United States Constitution.

6. To the extent that Plaintiffs seek permission to conduct “jurisdictional discovery to determine the volume and nature of the transactions that Okori engaged in with Virginia residents” *see* Opp. at pg. 6, Okori respectfully requests that this Court deny such request. Not only is Plaintiffs’ request overreaching, but it also fails to consider the fact that Plaintiffs “need . . . [to] make a prima facie showing of jurisdiction” before a “Court will allow jurisdictional discovery.” *Dollar Tree Stores, Inc. v. Mt. Pac. Realty, LLC*, 86 Va. Cir. 206, 207 (Cir. Ct. 2013) (citing *Price v. Price*, 17 Va. App. 105 (1993)). Here, it is Okori’s position that Plaintiffs have not made such a showing, and therefore the Court should deny their request.

WHEREAS, Defendant Okori, LLC d/b/a 80P Builder, by special appearance, prays for the foregoing reasons, and for any other reason raised in its memorandum in support of its motion to dismiss and/or hearing on this matter, that this Honorable Court dismiss this action as against Okori for lack of personal jurisdiction, and award any and all just and further relief that this Court deems just and appropriate.

Respectfully Submitted,
OKORI, LLC d/b/a 80P Builder, by special appearance



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served via first-class mail, postage prepaid thereon, this **26th day of January, 2024** to:

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