

March 1, 2024

**VIA FIRST CLASS MAIL
AND ELECTRONIC MAIL**

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The Hon. Richard E. Gardiner, Judge
Fairfax County Circuit Court
4110 Chain Bridge Road, 5th Floor
Fairfax, VA 22030

Case Name	<i>Joshua Everett Bushman, Administrator for the Estate of Calvin Van Pelt and Joshua Everett Bushman, Administrator for the Estate of Ersheen Elaiaiser v. Salvo Technologies, Inc. d/b/a 80P Builder, et al.</i>
Venue	Circuit Court of Virginia for Fairfax County
Case No.	CL2023-06260
Our File No.	GIBSON.074132

Dear Judge Gardiner,

Please see the enclosed courtesy copy of Okori, LLC's Motion for Reconsideration and Exhibits 1-3 that has also been submitted to the Court for filing.

Sincerely,



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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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

Plaintiff,

v.

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

Defendants.

Case No. CL2023-06260

* * * * *

MOTION FOR RECONSIDERATION

Defendant, Okori, LLC d/b/a 80P Builder (“*Okori*”), by special appearance, respectfully moves this Honorable Court pursuant to Rule 1:1 to reconsider its February 16, 2024 Order denying Okori’s Motion to Dismiss for Lack of Personal Jurisdiction, and in support thereof states:

1. On February 16, 2024, Okori made a special appearance before the Honorable Richard E. Gardiner for the purpose of objecting to this Court’s exercise of personal jurisdiction. At the end of Okori’s oral argument, Okori’s Motion to Dismiss for Lack of Personal Jurisdiction was denied. A week later, upon examining the same issue against the same complaint, Chief Judge Penney S. Azcarate refused to exercise specific personal jurisdiction over former co-defendant, Polymer80. Each of these Orders are attached as Exhibit 1.

2. The Court gave no reason for denying Okori’s motion. The Court neither explained which category of contact enumerated in Virginia’s long-arm statute reaches non-resident Okori given the allegations of facts pled in the Amended Complaint nor explained the way in which said contact with Virginia complies with the due process clause of the 14th Amendment. *Bergaust v. Flaherty*, 57 Va. App. 423, 436 (2011) (“[p]ersonal jurisdiction analysis is a two step process....”).

3. Based on the colloquy between the Court and counsel, it appears that the Court was content to exercise control over non-resident Okori because it is alleged that Okori operated an “interactive website[]” that “made the items available for sale to the public and sold these items to consumers in Virginia” including co-defendant, Zackary Burkard. See Exhibit 2, Transcript of Okori’s oral argument at pg. 9, line 2; pg. 12, lines 9-12; pg. 8, lines 15-16.

4. As such, it appears that the Court made its concern only whether the operation of the website for purposes of “generat[ing] sales in Virginia, among other states” fits within at least one of the enumerated categories set out in Virginia’s Long-Arm Statute—not whether its exercise of control over Okori is nonetheless constitutional. See Ex. 2 at pg. 11, line 11.

5. A week after Okori’s Motion to Dismiss was denied, Chief Judge Azcarate heard oral argument from Okori’s former co-defendant, Polymer80, in support of its Motion to Dismiss for Lack of Personal Jurisdiction, and opposition from Plaintiffs. Examining the same Amended Complaint against the same standards applicable to Okori’s Motion to Dismiss, the Court determined that it could not exercise specific personal jurisdiction over Polymer80.

6. From the bench, Chief Judge Azcarate pointed out to Plaintiffs’ counsel that “there’s cases that are clearly that just having a website is not enough for jurisdiction” and when Plaintiffs’ counsel pushed back claiming that the website in this case was “an interactive website”, Chief Judge Azcarate stated that “[e]very website is an interactive website.” See Exhibit 3, Transcript of Polymer80 oral argument at pg. 11, lines 15-22. From there, the Court went on to correctly articulate and apply the standard for determining whether specific personal jurisdiction is satisfied.

7. Chief Judge Azcarate explained that “when we look at specific jurisdiction, we have to look at long-arm jurisdiction in Virginia.” See Ex. 3 at pg. 23, lines 10-11. The Chief Judge explained:

[t]here's a three-prong test for [] due process. Number one, the extent to which the Defendant purposely availed itself of the privilege of conducting activities in the state. Number two, whether the Plaintiffs' claims arise out of those activities directed at the state, and [number three] whether the exercise of personal jurisdiction would be constitutionally reasonable.

See Ex. 3 at pg. 27, lines 17-22; pg. 28, lines 1-3.

8. Under the first-prong, Chief Judge Azcarate articulated several “purposeful availment factors” such as:

[1] whether the Defendant maintained offices or agents in the state; ...[2] whether the Defendant maintained property in the state; ...[3] whether the Defendant reached into the state to solicit or initiate business; ...[4] whether the Defendant deliberately engaged in significant or long-term business activities in the state; ...[5] whether a choice of law clause selects the law of the state; ...[6] whether the Defendant made in-person contact with a resident of the state regarding the business relationship; ...[7] whether the relevant contracts required performance of duties in the state; and, ...[8] the nature, quality and extent of the parties' communications about the business being transacted.

See Ex. 3 at pg. 28, lines 15-22; pg. 29, lines 1-6.

9. Chief Judge Azcarate specifically pointed out that “Polymer80’s only contact with Virginia is through occasional sales through its website. Every factor – every other factor weighs against finding purposeful availment.” See Ex. 3 at pg. 29, lines 7-10. As such, the Chief Judge decided that “...Polymer80 did not purposefully avail itself of the protection of Virginia’s laws...”, and that the other two prongs (Number Two and Number Three stated in para. 7 above) were likewise not satisfied as to Polymer80. See Ex. 3 at pg. 31, lines 9-11.

10. Ultimately, Chief Judge Azcarate concluded the Court could not exercise personal jurisdiction over Polymer80, and granted its Motion to Dismiss. See Ex. 3 at pg. 31, line 18.

11. Applying this same analysis, to the same complaint as it relates to Okori, requires the same result: a rejection of personal jurisdiction. This is because, even if the Court is satisfied that Okori transacted business in the Commonwealth, Plaintiffs have not shown that Okori

purposefully availed itself of the privilege of conducting activities in Virginia. For instance, Plaintiffs do not allege that Okori maintained offices or agents in Virginia, or that it owned property in Virginia. Likewise, Plaintiffs have not shown that Okori solicited or initiated business with Defendant Burkard in Virginia. Even the choice of law provision found in the 80P Builder website's Terms of Use provides for another forum.

12. Since here too the first-prong is not satisfied; namely, that Okori "did not purposefully avail itself of the protection of Virginia's laws", Okori respectfully requests that this Court reconsider its decision to exercise control over it. See Ex. 3 at pg. 31, lines 9-11.

WHEREFORE, for all the above stated reasons, and those in Okori's Objection and Motion to Dismiss, Memorandum in Support of its Motion to Dismiss and Reply to Plaintiffs' Opposition, which are fully incorporated herein by reference, Defendant Okori, LLC respectfully requests that this Honorable Court reconsider its February 16, 2024 Order denying Okori's Motion to Dismiss for Lack of Personal Jurisdiction and grant its Motion to Dismiss.

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 electronic mail and File & ServeXpress on this **1st day of March 2024** to:

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EXHIBIT 1

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOSHUA EVERETT DUSHAN)
Plaintiff/Complainant, ADMINISTRATOR

Vs.

Law/Fiduciary/Chancery No. CC-2023-6260

SALVO TECH. INC et al,
Defendant/Respondent,

ORDER

This case came to be heard on the 16th day of FEB, 2024, on the ~~Plaintiff's /~~
~~Complainant's /~~ Defendant's / ~~Respondent's~~ motion TO DISMISS.

Upon the matters presented to the Court at the Hearing it is,
ADJUDGED, ORDERED, and DECREED as follows:

PERSONAL
MOTION TO DISMISS FOR LACK OF JURISDICTION
IS DENIED

Entered, this 16th day of February, 2024.

Richard E. Gardiner
JUDGE RICHARD E. GARDINER

Seen and objected to _____:

[Signature]
Counsel for Plaintiff/Complainant ~~DEFENDANT~~
Diane DiBlasio
USB #90925

Seen and Agreed _____:

[Signature]
Counsel for Defendant/Respondent
PLAINTIFF
Edward L. Weiner
USB #10571

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.

DISMISSAL ORDER

This matter came before the Court on February 23, 2024, upon Polymer80, Inc.'s Objection to Personal Jurisdiction and Motion to Dismiss. The Court received written submissions and oral argument. For the reasons stated on the record and in the motion papers, and for good cause shown, the Court FINDS that it lacks personal jurisdiction over Polymer80, Inc. Accordingly,


It is hereby ORDERED that the Motion is GRANTED and this case is DISMISSED as to Defendant Polymer80, Inc.

ENTERED this 23 day of Feb., 2024.



Penney S. Azcarate, Chief Judge

WE ASK FOR THIS:



Kevin L. Keller (VSB No. 30731)
Patrick D. Blake (VSB No. 45194)
Jason E. Ohana (VSB No. 82485)
Bryn L. Clegg (VSB No. 96923)

2/23/24 cc: TJ AHing

DISMISSAL ORDER

Joshua Everett Bushman, Administrator for The Estate of Calvin Van Pelt and
Joshua Everett Bushman, Administrator for The Estate of Ersheen Elaiaiser

v.

Salvo Technologies Inc. d/b/a 80p Builder, Polymer80, Inc., and Zachary Burkard

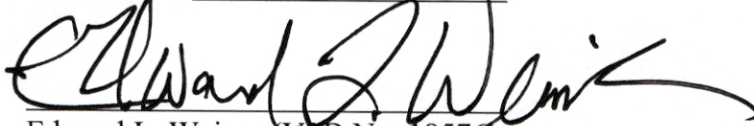
Case No. 2023 06260

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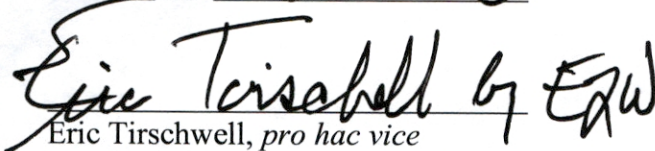
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DISMISSAL ORDER

Joshua Everett Bushman, Administrator for The Estate of Calvin Van Pelt and
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v.

Salvo Technologies Inc. d/b/a 80p Builder, Polymer80, Inc., and Zachary Burkard

Case No. 2023 06260

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EXHIBIT 2

In the Matter of:

Joshua Bushman Estate of Calvin Van Pelt, et al

vs

Salvo Technologies Inc. et al

HEARING

February 16, 2024



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**On Behalf of Defendant Salvo Technologies, Inc.,
d/b/a 80P Builder:**

(No appearance.)

On Behalf of Defendant Polymer80, Inc.:

(No appearance.)

On Behalf of Defendant BUL USA, LLC:

(No appearance.)

* * * * *

C O N T E N T S

WITNESS

DIRECT CROSS REDIRECT RECROSS

(None.)

* * * * *

E X H I B I T S

FOR IDENTIFICATION IN EVIDENCE

(None.)

* * * * *

P R O C E E D I N G S

(Whereupon, the Court Reporter was first duly sworn by the Court.)

THE COURT: All right. This is Joshua Bushman, et al. versus Salvo Technologies, et al., CL-2023-6260.

Mr. Weiner is for the Plaintiff and --

MS. DiBLASIO: Diane DiBlasio for Okori, LLC.

THE COURT: All right. Very good.

MS. DiBLASIO: Good morning, Your Honor.

THE COURT: And this is here this morning on objection to personal jurisdiction of Defendant Okori.

MR. WEINER: It is, Your Honor.

THE COURT: All right.

MS. DiBLASIO: Go ahead.

MR. WEINER: Well, that's Ms. DiBlasio's motion.

Your Honor, last week you did allow us to renew our motion for recusal. We did submit that.

Very briefly, Your Honor, our position is precisely because you are a judge of such highly respected integrity, we respectfully ask you to pass this case over

1 to one of the other 14 judges here in the circuit to avoid
2 any possibility -- but certainly Your Honor would have to
3 appreciate that a reasonable person could feel that there
4 is some prejudice.

5 And that's all I have to say.

6 THE COURT: Well, I want to -- I reviewed your
7 renewed motion. And you've added a couple of facts. I'm
8 not going to go through the whole thing like I did last
9 time. My comments from last week stand.

10 But I did want to respond to one thing here
11 because I'm -- I'm distressed that you have indicated
12 something which is not true.

13 And that is you -- on the very -- next to last
14 page it says that, "There are indications that Your Honor
15 continues to be publicly connected to gun rights advocates
16 and advocacy and to the NRA."

17 And you cite two examples in footnote 6. One
18 is that I presented at a CLE seminar.

19 That had absolutely nothing to do with the
20 NRA. That was a CLE put on by the Virginia CLE which is
21 part of the -- the State government. And all I spoke on
22 was the current status and gave updates on what Virginia

1 law is.

2 And to suggest that that had something to do
3 with the NRA is completely unfounded.

4 And I don't see anything even in your -- even
5 in the footnote -- that suggests that that had anything to
6 do with the NRA. NRA has nothing to do with the Virginia
7 Continuing Legal Education program.

8 And the second point you make is that I -- my
9 name appeared as a potential witness for the NRA in the
10 ongo -- in a trial in New York.

11 I would, first of all, say that I was not
12 subpoenaed as a witness in that case. I was not -- from
13 -- I was as surprised as anyone else when I found out my
14 name was on that list.

15 I had found that out several months ago when
16 the list was -- came out initially. And I was not a
17 potential witness for the NRA.

18 I was a possible potential witness for one of
19 the individuals involved in that case. And I told him in
20 no uncertain terms, since I'd not been given notice or I
21 had not consented to have my name on that list, that I was
22 not going to testify in that case.

1 And I would appreciate it if in the future you
2 make allegations concerning things that I have done, that
3 you get the facts right.

4 Beyond that, I'm not going to go into the rest
5 of the motion for recusal. I've addressed that before.

6 We are going to go directly to the issues in
7 this -- in -- that are in front of the Court today.

8 MR. WEINER: Thank you, Your Honor.

9 MS. DiBLASIO: Good morning again, Your Honor.
10 Diane DiBlasio for the Defendant Okori, LLC.

11 We are here by special appearance to object to
12 the Court's exercise of personal jurisdiction over
13 nonresident Defendant Okori, LLC and for no other reason.

14 We are not here to dispute the merits of the
15 Plaintiffs' case or to address any of the allegations in
16 the Amended Complaint.

17 For the purposes of today we take as true the
18 allegations as pled in the Amended Complaint except those
19 which have been contradicted by evidence unambiguously
20 attached to pleadings submitted in this case.

21 THE COURT: Well, you -- you acknowledge that
22 -- do you not, that Okori and others made items available

1 for sale to the public on the website?

2 MS. DiBLASIO: For purposes of this objection,
3 Your Honor, the standard as we understand it is that
4 similar to a demurrer, that you accept as true the
5 allegations pled in the Complaint.

6 THE COURT: Right. And that's one of the
7 allegations in the Complaint.

8 MS. DiBLASIO: Yes, Your Honor.

9 THE COURT: And you accept that at -- you --
10 for purposes of this hearing you accept that to be the
11 case?

12 MS. DiBLASIO: Yes.

13 THE COURT: Okay.

14 And that -- it also says that 80P Builder sold
15 these items to consumers in Virginia, including Defendant
16 Burkard, correct?

17 MS. DiBLASIO: I believe that's what it says
18 if you are reading from the Amended Complaint.

19 THE COURT: Okay.

20 As well as to the citizens of the Commonwealth
21 of Virginia, right?

22 MS. DiBLASIO: I believe that's what it says.

1 THE COURT: So this is basically one of these
2 interactive websites where I can go on -- somebody could
3 go on and order things -- somebody in Virginia could go on
4 and order things and have them shipped to him?

5 MS. DiBLASIO: Well, I -- I'm not sure I would
6 consider it interactive, Your Honor. It's a website.
7 That's my understanding. It's pled in the Complaint that
8 -- it's a website on the internet that's accessible to the
9 public.

10 THE COURT: Right.

11 Including the public in Virginia?

12 MS. DiBLASIO: My understanding is that's what
13 the Plaintiffs have pled.

14 THE COURT: Okay.

15 So based on those facts, go ahead.

16 MS. DiBLASIO: Okay.

17 So the issue today is whether the Plaintiffs
18 have satisfied the Court on the face of the pleadings that
19 it may exercise control over Okori, LLC.

20 Generally speaking, Your Honor -- and I won't
21 spend much time on this because I'm sure the Court is well
22 of the personal jurisdiction types.

1 So first we have the general jurisdiction,
2 which is basically reserved for those Defendants who are
3 essentially at home in a forum state -- those who reside
4 there, have a principal place of business there, who are
5 incorporated under the laws there organized.

6 Essentially, they can be sued in a specific
7 place on any cause of action, even those unrelated to the
8 specific one at hand.

9 Separately -- and I will just say I don't
10 believe that Plaintiffs are alleging there's general
11 personal jurisdiction here, so I won't spend much time on
12 it. I'll submit on the brief on that point.

13 THE COURT: All right.

14 MS. DiBLASIO: Moving to subject -- I'm sorry,
15 specific personal jurisdiction. That's a different type
16 of personal jurisdiction, as the Court is well aware.
17 It's typically thought of as case specific jurisdiction.

18 And under the Virginia Long-arm Statute, there
19 are certain types of contacts that are enumerated therein
20 where it -- cert -- it -- arising -- it's those contacts
21 linked to Plaintiffs alleging -- making allegations
22 against the Plaintiff -- I'm sorry, against the Defendant

1 -- arising out of those contacts that personal subject
2 matter jurisdiction may be found so long as it does not go
3 against due process of the 14th Amendment.

4 Here the Plaintiffs essentially plead that
5 Okori, LLC operated 80PBuilder.com. And for that
6 operation in and of itself they allege this Court has
7 personal jurisdiction against nonresident Defendant Okori,
8 LLC.

9 THE COURT: Well, not really for operating the
10 website, but for selling -- for operating it for -- to
11 generate sales in Virginia, among other states.

12 MS. DiBLASIO: Well, so, yes. So Plaintiffs
13 have pled that Okori transacted business in the
14 Commonwealth of Virginia through its operation of the 80P
15 Builder website.

16 And, right, Your Honor. And so we would argue
17 that the mere operation of a website is not sufficient to
18 establish personal jurisdiction if it does not -- if the
19 operator of that website does not manifest an intent to
20 enter a specific forum.

21 THE COURT: Well, you just said that they were
22 -- intended to sell to the public across the United

1 States, which would include Virginia.

2 MS. DiBLASIO: If -- well, if Your Honor could
3 point to that specific paragraph in the Amended Complaint?

4 THE COURT: Well, you just agreed with me when
5 I said that to you. It -- and that that's what the
6 Complaint says, that they were -- they were intending to
7 sell into Virginia.

8 MS. DiBLASIO: Your Honor, if I may?

9 THE COURT: They made the items available for
10 sale to the public and sold these items to consumers in
11 Virginia, as well as to the citizens of the Commonwealth
12 of Virginia.

13 MS. DiBLASIO: The case law that we've cited
14 in our brief would make clear that a manifest intent to
15 enter a particular forum in particular is necessary to
16 make --

17 THE COURT: Well, what do you mean by
18 "manifest intent"? Do you mean that they had to intend to
19 sell to somebody in Fairfax County, Virginia, only?

20 MS. DiBLASIO: So that -- a manifest intent is
21 that the operator of a website took actions to enter those
22 households of members of the community in specific

1 jurisdictions.

2 So targeted as -- or, you know, the like
3 -- like that is which is -- what manifest intent to enter
4 in that particular place.

5 THE COURT: So opening up -- putting a website
6 avail -- making the website available to everyone in the
7 United States means that they didn't make it available to
8 somebody in Virginia?

9 MS. DiBLASIO: No, Your Honor. I -- that's
10 not what I'm saying.

11 So when I'm saying available to everyone in
12 the United States, if that were enough for the purposes of
13 specif -- of, yes, specific personal jurisdiction, then
14 that would essentially subject the operator to personal
15 jurisdiction everywhere its website can be found.

16 And under the laws, as we've cited in our
17 brief, there has to be -- if that was -- that's not --
18 that's not the standard.

19 The standard is that there's a manifest intent
20 to enter the specific place because, otherwise, like I
21 said, the person could be hailed into the court of every
22 single place their website can be accessed.

1 THE COURT: All right.

2 MS. DiBLASIO: And so going from there -- so
3 we've -- we've argued that the Plaintiffs have not alleged
4 sufficient facts to show that Okori manifests the intent
5 to enter into this specific forum.

6 Additionally, the Plaintiffs argue in their
7 Amended Complaint that Okori transacted business in the
8 Commonwealth of Virginia when it sold the items to
9 Defendant Burkard.

10 Our argument is that that alleged sale would
11 have had to have taken place outside of the Commonwealth
12 because of the terms and conditions on the website at the
13 time that Defendant Burkard allegedly purchased the guns.

14 And that term and condition essentially says
15 that title to the purchased goods title -- title passes at
16 the point at which those items are transferred to the
17 carrier.

18 THE COURT: Is that -- that -- isn't that
19 there just for the purposes that if the property gets lost
20 or stolen by the carrier that the seller doesn't have any
21 responsibility for it?

22 MS. DiBLASIO: Legally, our argument is that

1 since title passed at the point at which the goods would
2 have been provided to the common carrier and the
3 Plaintiffs have alleged that the goods were shipped from
4 North Carolina, then the title passing in North Carolina
5 is the essence of the transaction.

6 The transaction would have had to have taken
7 place outside of the Commonwealth and there would be no
8 transaction of business in the Commonwealth.

9 THE COURT: All right.

10 MS. DiBLASIO: Further, Your Honor, even if
11 Your Honor rejects the argument that a transaction of
12 business has not taken place in the Commonwealth, said
13 transaction must comport with the due process clause of
14 the 14th Amendment.

15 Under the 14th Amendment due process clause
16 traditional notions of fair play and substantial justice
17 come into play.

18 Due process is not offended when a
19 nonresident, such as Okori here, has certain minimum
20 contacts with the forum state and the cause of action
21 arises out of those contacts. That's the important factor
22 here.

1 Rather, the Defendant must have purposely
2 availed himself of the laws of the forum state such that
3 he can reasonably anticipate being hailed into a court
4 there.

5 For this -- for the Commonwealth to exercise
6 jurisdiction consistent with the due process clause, the
7 Defendant -- oh, sorry, Your Honor -- there must be a
8 substantial connection between the Defendant and the forum
9 state.

10 The relationship must arise out of the
11 contacts that the Defendant himself creates with the forum
12 state. And that's in Burger -- the Supreme Court of the
13 United States case -- Burger King.

14 For minimum contacts we must look at the
15 Defendant's contacts with the forum state itself, and not
16 the Defendant's contacts with persons who may reside in
17 the forum state. And that's pursuant to International
18 Shoe.

19 For those reasons, Your Honor, we are
20 objecting to this Court's exercise of personal
21 jurisdiction over Okori, LLC.

22 And thank you, Your Honor, unless --

1 THE COURT: All right.

2 MS. DiBLASIO: -- you have questions at this
3 time.

4 THE COURT: Thank you. No.

5 That's all right, Mr. Weiner. The motion is
6 denied.

7 MR. WEINER: Thank you, Your Honor.

8 THE COURT: Could you prepare an order to that
9 effect please?

10 MR. WEINER: Yes, sir.

11 * * * * *

12 (Whereupon, at approximately 11:25 o'clock
13 p.m., the hearing in the above-entitled matter was
14 concluded.)

15

16

17

18

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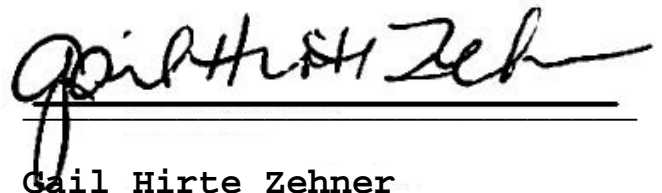
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CERTIFICATE OF REPORTER

I, GAIL HIRTE ZEHNER, a Verbatim Reporter, do hereby
certify that I took the stenographic notes of the
foregoing proceedings which I thereafter reduced to
typewriting; that the foregoing is a true record of said
proceedings; that I am neither counsel for, related to,
nor employed by any of the parties to the action in which
these proceedings were held; and, further, that I am not a
relative or employee of any attorney or counsel employed
by the parties hereto, nor financially or otherwise
interested in the outcome of the action.

A handwritten signature in black ink, appearing to read "Gail Hirte Zehner", is written over a horizontal line.

Gail Hirte Zehner

Verbatim Reporter

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EXHIBIT 3

In the Matter of:

Joshua Bushman Estate of Calvin Van Pelt, et al

vs

Salvo Technologies Inc. et al

HEARING

February 23, 2024



(703) 331-0212

www.icrdepos.com

APPEARANCES:

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**On Behalf of Defendant Salvo Technologies, Inc.,
d/b/a 80P Builder:**

(No appearance.)

**On Behalf of Defendant Okori, LLC, d/b/a 80P
Builder:**

(No appearance.)

On Behalf of Defendant BUL USA, LLC:

(No appearance.)

* * * * *

C O N T E N T S

WITNESS

DIRECT CROSS REDIRECT RECROSS

(None.)

* * * * *

E X H I B I T S

FOR IDENTIFICATION IN EVIDENCE

(None.)

* * * * *

P R O C E E D I N G S

(Whereupon, the Court Reporter was first duly sworn by the Court.)

THE COURT: All right. So this case is Joshua Bushman, et al., versus Salvo Technologies, et al. And it comes on a motion to dismiss for lack of personal jurisdiction from Defendant Polymer80.

And I have read everything. It was a long brief. Please don't regurgitate your briefs. I promise you I have read everything. I have read your attachments. I've read your affidavits. I've read all your exhibits. I've just done it. Okay?

So -- but whatever you want to add to it, please feel free to do so, okay?

MR. OHANA: Fair enough, Your Honor. Good morning. Jason Ohana here making a special appearance for Polymer80 to challenge personal jurisdiction.

Your Honor, I think this is -- the sole question here is -- well, there are two questions. One is whether there's specific personal jurisdiction with respect to my client.

My client has no physical contacts in

1 Virginia. This is -- for specific personal jurisdiction
2 there has to be a connection between the cause of action
3 and the alleged contacts.

4 My client didn't sell the frame kit at issue
5 in this case to a Virginia resident.

6 THE COURT: I love that you call it "frame
7 kit" and they call it "ghost guns." It's very
8 interesting, but go ahead.

9 MR. OHANA: My understanding -- I'm not a gun
10 person. My understanding is my client's parts go into the
11 end product that they refer to as a "ghost gun."

12 THE COURT: Well, it is -- well, yes, that's
13 fine. It's a kit that -- that makes a gun, but, yes.

14 MR. OHANA: Right. And -- but my
15 understanding is Polymer80's --

16 THE COURT: It's a frame kit.

17 MR. OHANA: -- part of it is --

18 THE COURT: I understand. I understand.

19 MR. OHANA: -- and there are other parts that
20 the other Defendants added to it to make it a ghost gun is
21 my understanding.

22 In any event, the stream of commerce cases,

1 Your Honor, go all the way back to Asahi Metals where the
2 plurality opinion held that there has to be more than just
3 you put something into the stream of commerce and that
4 sweeps it into the state, even if you knew that the stream
5 of commerce was going to sweep it into the forum.

6 THE COURT: Right. And I understand those
7 arguments. One of the arguments I find interesting is the
8 conspiracy argument.

9 Can you get to that?

10 MR. OHANA: Sure. The conspir -- one of the
11 -- the first element that they have to establish to
12 establish personal jurisdiction on a conspiracy theory is
13 that there's a plausible claim for a conspiracy.

14 So -- and even before they get to that, even
15 if they were to establish conspiracy theory personal
16 jurisdiction, that would only apply to the conspiracy
17 counts.

18 THE COURT: To the conspiracy count?

19 MR. OHANA: Correct.

20 THE COURT: Okay.

21 MR. OHANA: So -- so they have to establish a
22 plausible conspiracy. They can't do that because what

1 they allege is a conspiracy to violate certain gun laws --

2 THE COURT: Criminal laws.

3 MR. OHANA: -- gun registration laws. I'm
4 sorry?

5 THE COURT: And to violate criminal laws.

6 MR. OHANA: To violate criminal laws. And
7 those criminal laws don't support a direct cause of
8 action. In other words, the Plaintiff couldn't sue
9 Polymer80 for violating gun registration laws.

10 And I've got -- I cited the Bella Dona case.
11 I found some other cases that I'll pass forward to the
12 Court I handed to Opposing Counsel earlier. The deal also
13 with this issue -- if I could approach?

14 THE COURT: Sure.

15 THE COURT SECURITY OFFICER: I'll get them to
16 you.

17 THE COURT: You already have these cases; is
18 that correct?

19 MR. WEINER: I --

20 MR. OHANA: I just provided them --

21 THE COURT: Mr. Weiner?

22 MR. WEINER: -- before court started, Your

1 Honor.

2 THE COURT: Okay.

3 MR. OHANA: Today.

4 Your Honor, each of these cases deals with the
5 -- the requirement that for a conspiracy count to be
6 plausible the underlying claim has to be actionable. So
7 --

8 (Whereupon, Mr. Ohana handed documents to the
9 Court, for her examination.)

10 THE COURT: So these aren't standing cases;
11 these are just conspiracy cases, right?

12 MR. OHANA: Correct.

13 THE COURT: They are not dealing with
14 conspiracy and standing; they are just dealing with the
15 elements of conspiracy, correct?

16 MR. OHANA: Yes, correct. They -- they are
17 saying --

18 THE COURT: I just wanted to make sure.

19 MR. OHANA: -- you can't have a plausible
20 conspiracy without an underlying actionable --

21 THE COURT: Right, right.

22 MR. OHANA: -- claim.

1 THE COURT: All right. Yes, sir?

2 MR. OHANA: Okay. That -- that's one issue
3 with it. Another issue is the conspiracy that -- the
4 flavor of conspiracy theory jurisdiction that they
5 propound is just automatic.

6 So if you are involved in the conspiracy and
7 the Court has personal jurisdiction over somebody else in
8 the conspiracy, you're automatically -- the court
9 automatically has personal jurisdiction over you.

10 That conflicts with -- with Walden versus
11 Fiori that requires the Defendant's actual contacts with
12 the state to be the basis for personal jurisdiction.

13 There could be -- there could be a situation
14 where if it were not automatic, where if you directed a
15 co-conspirator to carry out actions in Virginia, but
16 that's not what they allege here.

17 They allege that just by being -- by virtue of
18 being part of the conspiracy and other -- and the Court
19 having jurisdiction over other conspirators, it
20 automatically has jurisdiction over -- over Polymer80.

21 So I would suggest that that violates the
22 Virginia Supreme Court rule set out in Walden versus

1 Fiori.

2 Even before Walden versus Fiori you still had
3 the issue of -- the issue of actionability for the
4 underlying claim.

5 And you also had the issue of -- this Court in
6 their Nathan versus Takeda Pharmaceutical case also
7 emphasized that in that case there was personal
8 jurisdiction because the conspiracy was directed at
9 Virginia.

10 And here we don't have any direction of the
11 alleged conspiracy to violate gun laws as being directly
12 against Virginia.

13 So for those reasons we -- we would argue that
14 conspiracy theory jurisdiction cannot confer jurisdiction
15 against Polymer80.

16 THE COURT: All right. Thank you, sir.

17 All right. Yes, sir?

18 MR. WEINER: May it please the Court, Edward
19 Weiner on behalf of the Plaintiffs.

20 Your Honor, what I just heard is the
21 Defendants admit that they all agreed to manufacture these
22 guns and sell them to people who otherwise would not be

1 able -- who are eligible to buy guns. That was the deal.

2 THE COURT: Well, we need -- we are here for
3 jurisdiction though.

4 MR. WEINER: Right.

5 THE COURT: How do we get to Virginia?

6 MR. WEINER: We get -- well --

7 THE COURT: It was not general jurisdiction.
8 We agree to that, right? There's not general
9 jurisdiction?

10 MR. WEINER: Correct.

11 THE COURT: Okay. So it has --

12 MR. WEINER: And --

13 THE COURT: -- to be specific jurisdiction, so
14 you have to look at the long-arm statute of law.

15 And just having a website -- there's cases
16 that are clearly that just having a website is not enough
17 for jurisdiction.

18 So what else do you have in this case?

19 MR. WEINER: It's an interactive website, Your
20 Honor. Just a static --

21 THE COURT: Every website is an interactive
22 website.

1 MR. WEINER: I'm sorry?

2 THE COURT: Every website is an interactive
3 website.

4 MR. WEINER: No, that's not so. My website is
5 not interactive.

6 THE COURT: So what case law do you have that
7 an interactive website --

8 MR. WEINER: I --

9 THE COURT: -- is --

10 MR. WEINER: -- I -- I --

11 THE COURT: -- all you need?

12 MR. WEINER: -- I am very proud to ask this
13 Court to follow the cases that are stated in -- in --

14 THE COURT: Well, I can't --

15 MR. WEINER: -- their brief.

16 THE COURT: -- I've read every case.

17 MR. WEINER: Okay. Well, Judge Thacher's
18 brief -- case -- here in Fairfax, the Nathan versus
19 Takeda, clearly -- and, I mean, that was only a defamation
20 case. That -- that granted. That said there was enough
21 going on.

22 And the other case that -- Your Honor, this is

1 very on point with the Thousand Oaks case. It's right
2 there.

3 It discusses -- it absolutely makes the
4 distinction between a static website that does nothing but
5 just has something for people to read, as opposed to this
6 website where people order their guns, order their
7 firearms. That's exactly what they do.

8 And we gave you those exhibits to show that
9 Polymer80 is advertising buy this gun and here's how you
10 do it. And they -- they're manufacturers and they've had
11 someone operate their website to distribute these weapons.

12 It's -- it is right on point with the -- with
13 the Thousand Oaks case which makes that clear distinction
14 in this day and age with the internet sales, what they
15 are.

16 And they even admit in their brief that, oh,
17 yeah, we sell in Virginia, but it's just a small amount.
18 And that's addressed in that case as well. It doesn't
19 have to be the predominance of their sales. It just has
20 to be some sales to Virginia.

21 And -- and Your Honor has a -- a very vested
22 interest in protecting the youth and people of this -- by

1 keeping these firearms out --

2 THE COURT: But I have a -- I swore by the
3 books that I have to follow the law as to jurisdiction.

4 MR. WEINER: Absolutely.

5 THE COURT: Okay? I --

6 MR. WEINER: So if the --

7 THE COURT: -- I -- you put --

8 MR. WEINER: -- if the Thousand --

9 THE COURT: -- in your --

10 MR. WEINER: -- Oaks case --

11 THE COURT: -- you put in your --

12 MR. WEINER: -- the --

13 THE COURT: -- brief -- you --

14 MR. WEINER: -- Thousand Oaks case is exactly
15 on point.

16 THE COURT: -- you put in your brief
17 "fundamental fairness." I can't base anything on
18 fundamental fairness.

19 You understand that?

20 MR. WEINER: Your Honor, we are ask --

21 THE COURT: It -- it's fundamental fairness.
22 I -- that's not a -- that's not something I can base

1 jurisdiction on.

2 MR. WEINER: Okay.

3 THE COURT: Okay?

4 MR. WEINER: But the -- the internet sales, as
5 outlined by the Thousand Oaks case, which is right on
6 point, makes that distinction between a mere website and
7 an interactive website which is conducting commerce.

8 THE COURT: But that fell under a trademark
9 infringement case, right, which --

10 MR. WEINER: That was -- yeah, about beer
11 mugs, right --

12 THE COURT: Right.

13 MR. WEINER: -- engraving beer mugs.

14 THE COURT: Exactly. So it's a trademark
15 case.

16 You see the difference between that and with
17 the jurisdiction that we're dealing with here?

18 MR. WEINER: Well, yeah. I mean, it was a
19 different item, but I think this case even gives this
20 Court more of a -- contacts with our citizens in Fairfax
21 County when someone is -- has an agreement with other --
22 with the firearms distributor.

1 We'll make this illegal gun and you'll
2 distribute it. That's their deal. And they knew it was
3 coming to Virginia without question.

4 They clearly availed itself of Virginia sales.
5 And those sales are what caused the Plaintiffs' deaths.

6 THE COURT: All right. But in Thousand Oaks
7 they didn't even go into the long-arm statute, right?
8 They went straight to due process, right? They didn't
9 even evaluate long-arm.

10 I have to evaluate the long-arm proc -- the
11 long-arm statute in this case.

12 MR. WEINER: Right. And I think the --

13 THE COURT: And the factors of the long-arm
14 statute, right?

15 MR. WEINER: -- the fact that they are
16 conducting these sales targeting Virginia customers,
17 knowing that people who are not eligible to buy guns
18 otherwise are going to love their product.

19 That's -- that's the unlawful conduct. And
20 they -- they are -- they are the largest distributor of
21 unserialized ghost guns in the world and they know they
22 are selling them here in Virginia. And that's the deal

1 they made with the other coconspirators.

2 Clearly, they have availed themselves of the
3 Virginia population. And these Virginia people could not
4 buy a gun anywhere else. That's what makes it -- them --
5 so popular.

6 They admit that their -- small profits do come
7 from Virginia. They argue that they have no control over
8 the conspiracy, but they are the ones making the entire
9 product. So they have complete control.

10 THE COURT: But --

11 MR. WEINER: And they say that it -- it's --

12 THE COURT: -- but your conspiracy there
13 -- I want to make sure in your Complaint the only
14 conspiracy theory you have is that they were violating
15 federal laws, correct -- gun laws?

16 MR. WEINER: In paragraph thirty --

17 THE COURT: How is that civil conspiracy?

18 MR. WEINER: Well, because that -- that --
19 they knew -- okay -- and this is where we get to a jury
20 question. If you do that, then any reasonable person
21 would know that that is a very dangerous and harmful
22 thing.

1 THE COURT: But how is it a cause of action
2 for civil conspiracy? For civil conspiracy --

3 MR. WEINER: Well --

4 THE COURT: -- you can't have a cause of
5 action for civil conspiracy for violating a criminal law.

6 MR. WEINER: Well, no. We have -- we now have
7 a tort. We -- we have -- this all ends up in a murder --
8 double murder. These -- these people (indicating family
9 members in courtroom) lost their sons and their brothers.

10 THE COURT: I understand that.

11 MR. WEINER: And -- and that's -- that's the
12 tort. This wasn't just --

13 THE COURT: But that's not the conspiracy.
14 You -- your --

15 MR. WEINER: Well, no. They knew that -- they
16 knew that --

17 THE COURT: -- conspiracy claim --

18 MR. WEINER: -- people -- they knew that
19 people were going to die if they sell ill -- guns to
20 people who should not possess guns. Virginia has said,
21 "We don't want these people to have guns. It's too
22 dangerous."

1 That is not -- no reasonable person would sell
2 guns to these people.

3 THE COURT: But the only conspiracy in your
4 Complaint is that they conspired to violate the gun laws,
5 period. That's your conspiracy.

6 MR. WEINER: And -- well, knowing that that
7 breach -- that that violation would end up in tortious
8 conduct.

9 THE COURT: But that conspiracy is not a civil
10 conspiracy.

11 You have to see that?

12 MR. WEINER: It's conspiracy that --

13 THE COURT: You can't bring --

14 MR. WEINER: -- it's going to end up --

15 THE COURT: -- a -- you can't --

16 MR. WEINER: -- they are going to --

17 THE COURT: -- bring a conspiracy charge of
18 violating a criminal law, unless you are a attorney
19 general or something.

20 MR. WEINER: When it ends up -- and you --
21 someone is your family now --

22 THE COURT: Well, now --

1 MR. WEINER: -- is dead --

2 THE COURT: -- well, now you are going back to
3 fundamental fairness, but that's not what I have to base
4 it on.

5 You're basing your civil conspiracy charge --
6 your claim for civil conspiracy -- on a violation of a
7 criminal law. That's not civil conspiracy. That's
8 criminal conspiracy, which you can't bring.

9 THE COURT: But it ended up in a tort. And
10 they knew that it was going to end up -- any reasonable
11 person would know that it was going to end up in tortious
12 (indiscernible).

13 THE COURT: I feel like I'm getting talked --
14 illogical with you. And we're just going in circles.
15 Okay.

16 MR. WEINER: Well, and this is why this -- and
17 this is why this has to be fleshed out. It -- it just
18 does.

19 I -- getting back to my notes, they -- they
20 claim -- they admit that they were part of a conspiracy in
21 their brief, but they say it was unknowing.

22 That's what they say in their brief. And that

1 is clearly a jury question, whether they knew or didn't
2 know.

3 And, again, their very first paragraph in
4 their brief admits those minimum contacts. That's what
5 they say. They acknowledge that.

6 So I don't think that that's the issue for the
7 Court is the minimum contacts of due process. They -- in
8 their very opening paragraph of their brief, paragraph
9 one, admit minimum contacts. But they say it shouldn't be
10 enough.

11 And I argue clearly when we look to the
12 Thousand Oaks case, when we look to the Nathan versus
13 Takeda case, it's more than enough to hold minimum
14 contacts.

15 THE COURT: All right. Thank you, sir.

16 Yes, sir? You get the last word.

17 MR. OHANA: I would just point out we did not
18 admit there was a conspiracy --

19 THE COURT: I know.

20 MR. OHANA: -- of course. I would also point
21 out that to the extent there was an interactive website,
22 the -- or that my client operated an interactive website,

1 it's not the website that the -- that the shooter bought
2 the materials from. So --

3 THE COURT: I understand.

4 MR. OHANA: -- that's all I've got.

5 THE COURT: And anything you want to say about
6 Thousand Oaks -- distinguishing Thousand Oaks?

7 MR. OHANA: Yeah, I think that's a big
8 distinction. I think if you sell something through your
9 interactive website that might be a closer call.

10 Here we don't even have that fact pattern
11 where somebody ordered something from our interactive
12 website.

13 THE COURT: All right. I've written up a few
14 things I want to say because, obviously, this is a very
15 serious case. And I took it very seriously and had to
16 weigh it.

17 And I just have to look though -- like I said,
18 I took an oath for books. And I have to look at the
19 jurisdiction for this particular Defendant.

20 So I'm going to go through the analysis. And
21 I want to make it -- I was going to take it under
22 advisement, but I was able to look through everything and

1 do everything. And I'm very solid on the foundation and
2 what the law is in this matter.

3 And I think it's important for these cases to
4 get their resolution as soon as possible.

5 So let me just read some of the things that
6 I've already prepared, okay?

7 In this matter Plaintiffs allege jurisdiction
8 over Defendant Polymer80 on two bases.

9 One, that Defendant's commercial activities
10 towards Virginia, in addition to the actual sale of the
11 kit to 80P Builders -- another codefendant -- which did
12 eventually end up in Virginia, satisfied the minimal
13 contacts test.

14 And the second basis is -- again, just for the
15 conspiracy claim I agree with Defendant -- Defendant's
16 alleged engagement in the conspiracy which targeted
17 Virginia subjects to an automatic personal jurisdiction.

18 Okay. So, first, general personal
19 jurisdiction. Everybody agrees that there is no general
20 personal jurisdiction in this matter, which means we have
21 to turn to specific jurisdiction.

22 When we look at specific jurisdiction, we have

1 to look at long-arm jurisdiction in Virginia.

2 And the Plaintiff alleges the long-arm statute
3 is satisfied as to A.1 -- transacting business in the
4 Commonwealth, and A.4 -- causing tortious injury in the
5 Commonwealth by act or omission outside the Commonwealth.

6 But he also has to regularly -- Defendant also
7 has to regularly does and solicit business or engage in
8 any persistent course of conduct or derive substantial
9 revenue from goods used or consumed or services rendered
10 in this Commonwealth.

11 All of that is part of A.4, not just causing
12 tortious injury. It's not just causing the injury. It's
13 also that they regularly do and solicit business in
14 Virginia or engage in any persistent course of conduct in
15 Virginia or derive substantial revenue from goods or
16 consumed services rendered in the Commonwealth of
17 Virginia.

18 It's very important to make that distinction.

19 So, first, when we look at A.1 -- transaction
20 of business --

21 (To court reporter) Let me know if I go too
22 fast for you, okay?

1 THE COURT REPORTER: You're good.

2 THE COURT: (To court reporter) All right.

3 Thank you.

4 A.1 -- transaction of business in the
5 Commonwealth.

6 Neither Plaintiff or Defendant cite to any
7 case law to any case law to support their position with
8 regards to this subsection of the long-arm statute.

9 But when you look at it, the cause of action
10 did not arise from Polymer80's transaction of business in
11 the Commonwealth, as it was in Thousand Oaks where they
12 bought -- where they -- the infringement argument was that
13 they bought directly from that website.

14 But the sale or the action did not arise from
15 Polymer80's action in the Commonwealth as the sale of the
16 gun kit in question was made in -- made to North Carolina
17 based 80P Builders which then sold it to the co-defendant
18 Burkard.

19 Polymer80 then transacted business in North
20 Carolina and Nevada where they are registered. And they
21 have a brick and mortar, but not in Virginia. Okay.

22 So then we look to the regular business or

1 conduct in Virginia and Plaintiffs must allege the
2 Defendant either, again, regularly conducted or solicited
3 business in Virginia or engaged in any persistent course
4 of conduct or derived substantial revenue from goods.

5 That's the only way that you can get through
6 this hurdle of the long-arm jurisdictional statute.

7 It does not appear that Polymer80 has
8 substantial activities or substantial revenue from
9 Virginia. Plaintiffs allege that they do, but they do not
10 step beyond legal conclusions as they do so.

11 Polymer80 does not merely contradict the
12 allegations of Plaintiff, but supplies additional
13 information.

14 Polymer80 has no property or employees in
15 Virginia, which is different from Ford -- the Ford case.

16 And it does not send mailers or physical media
17 into Virginia and derives what's either one percent or
18 four percent of its revenue from Virginia.

19 Plaintiffs point to the Thousand Oaks Barrel
20 case, which we've already discussed, in support of their
21 position that just the mere maintenance of the -- of the
22 website -- of the interactive website may support

1 jurisdiction in Virginia, but that case clearly falls
2 under the A.1 subsection.

3 And it is a trademark infringement case that
4 they would -- and got the goods directly from that
5 website. And the Court there just skipped the long-arm
6 statute analysis and went straight to due process.

7 And then when we look at the constitutional
8 inquiry, Plaintiffs address most of their argument to
9 whether personal jurisdiction is constitutionally
10 reasonable.

11 Plaintiffs rest most of their argument on
12 Polymer80 having placed its products into the stream of
13 commerce. And as Polymer80 points out, that's not enough
14 for contacts in Virginia.

15 The central inquiry in addressing this issue
16 is the due process requirements of specific personal
17 jurisdiction. There's a three-prong test for the due
18 process.

19 Number one, the extent to which the Defendant
20 purposely availed itself of the privilege of conducting
21 activities in the state.

22 Number two, whether the Plaintiffs' claims

1 arise out of those activities directed at the state, and
2 whether the exercise of personal jurisdiction would be
3 constitutionally reasonable.

4 The personal jurisdiction jurisprudence was
5 recently shifted by the Ford case, relied by the
6 Plaintiffs, but as the Defendants point out, the Defendant
7 in that case conceded purposeful availment, the prong most
8 directly challenged here by the Defendant.

9 And Ford Motor Company has been applied in the
10 Virginia Courts in the Carter versus Wake Forest
11 University Baptist Medical Center, 76 Va. App. 756 (2023)
12 where they applied the Ford in conjunction with purposeful
13 availment factors, adding those factors to the analysis.

14 And those factors included, number one,
15 whether the Defendant maintained offices or agents in the
16 state; number two, whether the Defendant maintained
17 property in the state; number three, whether the Defendant
18 reached into the state to solicit or initiate business;
19 number four, whether the Defendant deliberately engaged in
20 significant or long-term business activities in the state;
21 number five, whether a choice of law clause selects the
22 law of the state; number six, whether the Defendant made

1 in-person contact with the resident of the state regarding
2 the business relationship; number seven, whether the
3 relevant contracts required performance of duties in the
4 state; and, number eight, the nature, quality and extent
5 of the parties' communications about the business being
6 transacted.

7 Defendant Polymer80's only contact with
8 Virginia is through occasional sales through its website.
9 Every factor -- every other factor weighs against finding
10 purposeful availment.

11 Now that -- now, turning to the conspiracy
12 theory of personal jurisdiction which the Plaintiffs have
13 alleged, which states the Defendants are imputed with
14 constitutionally sufficient contacts with Virginia through
15 the actions of their alleged coconspirators, namely the
16 80P Builder Defendants which clearly have jurisdiction in
17 Virginia.

18 And since they have jurisdiction in Virginia,
19 then all Defendants have jurisdiction in Virginia under
20 the conspiracy theory that Plaintiff alleges, and that 80P
21 Builders are the ones who sold the gun kits to Defendant
22 Burkard.

1 To succeed on this theory the Plaintiffs would
2 have to make a plausible claim that a conspiracy -- that a
3 civil conspiracy existed; number two, that the four
4 Defendants participated in the conspiracy, and, three,
5 that the coconspirators' activities in furtherance of the
6 conspiracy had -- still had sufficient contacts with
7 Virginia to subject that conspirator to jurisdiction in
8 Virginia.

9 To satisfy these requirements the Plaintiff
10 would have to rely on more than just the bare allegations.
11 The Plaintiff must plead with particularity the conspiracy
12 -- the civil conspiracy -- as well as the overt acts
13 within the forum taking furtherance of the conspiracy.

14 The common law conspiracy claim is not a cause
15 of action that can be sued by the Plaintiffs in this case
16 because the underlying offenses are only violations of
17 criminal statutes with no personal cause of action.

18 Defendant cites case law on point which shows
19 common law conspiracy is not an independent cause of
20 action but a way of spreading liability among concerted
21 tortfeasors, and that the underlying illegality must be
22 actionable by the Plaintiffs.

1 Because this alleged conspiracy is clearly not
2 actionable by the Plaintiffs here, since it's a criminal
3 conspiracy claim, that -- the violation of gun laws --
4 Plaintiff has not made a plausible claim that a conspiracy
5 existed.

6 Additionally, the alleged conspiracy was not
7 directed at Virginia, but was a national scheme to evade
8 gun laws, as written in the Complaint.

9 So, therefore, Defendant Polymer80 did not
10 purposely avail itself of the protection of Virginia's
11 laws and is not liable under a civil conspiracy as pled by
12 Plaintiffs.

13 Additionally, the cause of action did not
14 arise from Polymer80's transaction of business in the
15 Commonwealth, nor does Polymer80 have substantial revenues
16 or other connections to Virginia as would satisfy the
17 long-arm statute.

18 Since the long-arm statute is not satisfied in
19 this case, I'm going to grant the Defendant's motion. All
20 right.

21 MR. WEINER: Would Your Honor consider
22 allowing jurisdictional discovery?

1 THE COURT: Excuse me? I'm sorry?

2 MR. WEINER: So we -- would -- would Your
3 Honor consider allowing jurisdictional discovery so that
4 some of these things --

5 THE COURT: I've made my ruling, Mr. Weiner.
6 I saw that -- I saw that as your alternative in your
7 pleading, but, no. I made my ruling. I either have
8 jurisdiction or I don't. At this time I don't have
9 jurisdiction.

10 MR. WEINER: All right.

11 MR. OHANA: I have an order, Your Honor.

12 THE COURT: Okay. You -- you -- do you want
13 to show it to Mr. Weiner?

14 MR. WEINER: We note our objection. Thank
15 you.

16 THE COURT: All right. Yes, sir. All right.
17 I'll go ahead. And if you want to note your objections to
18 the order too, I'll go ahead and take a recess so you can
19 do that, Mr. Weiner, okay?

20 MR. WEINER: Okay. Thank you.

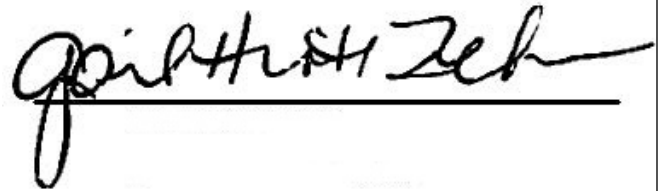
21 THE COURT: All right. Thank you.

22 * * * * *

1 (Whereupon, at approximately 11:12 o'clock
2 p.m., the hearing in the above-entitled matter was
3 concluded.)
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CERTIFICATE OF REPORTER

I, GAIL HIRTE ZEHNER, a Verbatim Reporter, do hereby
certify that I took the stenographic notes of the
foregoing proceedings which I thereafter reduced to
typewriting; that the foregoing is a true record of said
proceedings; that I am neither counsel for, related to,
nor employed by any of the parties to the action in which
these proceedings were held; and, further, that I am not a
relative or employee of any attorney or counsel employed
by the parties hereto, nor financially or otherwise
interested in the outcome of the action.

A handwritten signature in black ink, appearing to read "Gail Hirte Zehner", is written over a horizontal line.

Gail Hirte Zehner

Verbatim Reporter

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