

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOSHUA EVERETT BUSHMAN)
ET AL.,)
Plaintiffs,)
v.)
SALVO TECHNOLOGIES INC)
ET AL.,)
Defendants.)

CL-2023-6260

ORDER

THIS CAUSE came before the Court upon the Plaintiffs’ Motion for Reconsideration of the Dismissal Order entered February 23, 2024.

IT APPEARING to the Court that the Motion for Reconsideration has not raised any issues as to personal jurisdiction such that this Court should reverse its ruling, but that some clarification may be advisable; it is therefore noted as follows:

As stated on the record, the maintenance of an interactive website accessible in Virginia supported specific personal jurisdiction over the defendant in the *Thousand Oaks Barrel Co., LLC v. Deep South Barrels LLC* case relied upon by Plaintiffs because *Thousand Oaks* regarded alleged intellectual property infringement. 241 F. Supp. 3d 708, 712 (E.D. Va. 2017) The defendant there was alleged to have violated the copyright of a Virginia IP owner. *Id.* at 711. Therefore, the *Thousand Oaks* defendant committed the offense (infringing on the plaintiff's copyright) in Virginia. This clearly supports personal jurisdiction.

However, *Thousand Oaks* is inapposite to the case at hand. The website owned and maintained by Defendant Polymer80 has nothing at all to do with the case. Polymer80's only role here was to manufacture the weapon kit. The alleged damages in no way "arose out of" Polymer80's website's availability in Virginia, or other sales in Virginia, in contrast with *Thousand Oaks*. To rule as Plaintiffs

suggest would subject virtually every online retailer to jurisdiction in every state for any cause of action, whether or not related to a defendant's contacts.

Plaintiffs cite extensively to *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 141 S. Ct. 1017 (2021), but *Ford Motor* specific personal jurisdiction only applies when the defendant has extensive, continuous maintained contacts with the forum state. By comparison, Plaintiffs have not alleged Polymer80 maintains and supplies dealerships in Virginia, has long-term contracts with dealers and suppliers in Virginia, or otherwise purposefully availed themselves of the protections of Virginia law causing it to be constitutionally fair and reasonable for Polymer80 to be haled into court for a cause of action not directly arising out of those contacts.

Plaintiffs have also alleged Polymer80's participation in a conspiracy to evade federal and Virginia gun laws. The Plaintiffs allege this conspiracy was directed into Virginia, and thus Polymer80 should be subject to personal jurisdiction on the basis of its participation. However, the underlying civil conspiracy claim fails, and so cannot be a basis for personal jurisdiction. What Plaintiffs have pled is a conspiracy among the business entity Defendants to violate criminal laws of Virginia and the United States. The criminal laws allegedly violated do not contain a private cause of action which Plaintiffs would be entitled to assert. As Plaintiffs cannot enforce these criminal laws against the Defendants, neither can they bring a case for the conspiracy to violate these laws.

Now, in their Motion to Reconsider, Plaintiffs argue the alleged civil conspiracy was a conspiracy to commit a tort. However, the only torts of the relevant Defendants contained in the paragraphs incorporated by reference in the civil conspiracy count are negligence/gross negligence, negligence per se, and negligent entrustment. These are not intentional torts, to which a party may "conspire." Even had Plaintiffs actually pled a civil conspiracy to commit a tort, rather than the criminal conspiracy contained in the Amended Complaint, it would not stand.

As stated on the record, and in accordance with the above, it is hereby

ORDERED that the Plaintiffs' Motion for Reconsideration is denied.

ENTERED this fifteenth day of March, 2024.

The Honorable Penney S. Azcarate

**ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED
IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA.**