IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

AUDIENCE OF ONE PRODUCTIONS, LLC, Plaintiff, v. IMPACT VENTURES, LLC f/k/a TNA ENTERTAINMENT, LLC; DEAN BROADHEAD; RONALD DEAN HARRIS; and AROLUXE, LLC d/b/a AROLUXE MARKETING, Defendants.	)	Civil Action No. 3:16-cv-795

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

Pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure and Rule 7 of the Local Rules for the United States District Court for the Eastern District of Virginia, Defendants Ronald Dean Harris ("Harris") and Aroluxe, LLC d/b/a Aroluxe Marketing ("Aroluxe") submit this Memorandum of Law in Support of their Motion to Dismiss for Lack of Personal Jurisdiction.

INTRODUCTION

The civil action brought by Plaintiff Audience of One Productions, LLC ("Plaintiff") must be dismissed as to Defendants Harris and Aroluxe because this Court does not have the required general or specific personal jurisdiction over either defendant. Specifically, neither Harris, a Tennessee citizen, nor Aroluxe, a Tennessee limited liability company, possesses the necessary "minimum contacts" with the Commonwealth of Virginia required to satisfy the longstanding prerequisites of Virginia's long-arm statute and the Due Process Clause of the Fourteenth Amendment.

STATEMENT OF FACTS

On September 27, 2016, Plaintiff filed a Civil Action Complaint ("Complaint") in the United States District Court for the Eastern District of Virginia, Richmond Division, against Harris, Aroluxe, and Defendants Impact Ventures, LLC f/k/a TNA Entertainment, LLC ("TNA") and Dean Broadhead ("Broadhead"). *See* Complaint [ECF No. 1]. In the Complaint, Plaintiff, a Virginia limited liability company, set forth the following causes of action: (1) breach of contract against Defendant TNA; (2) fraudulent inducement against Defendants Broadhead and Harris; (3) tortious interference with contract against Defendant Aroluxe; and (4) violation of Va. Code § 18.2-499 against all Defendants. *Id.* at ¶¶ 3, 52-86. The Civil Cover Sheet filed by Plaintiff listed diversity as the basis of federal jurisdiction. *See* Civil Cover Sheet [ECF No. 1-3].

Specific to the fraudulent inducement claim against Defendant Harris, Plaintiff alleged that Harris made false assurances to Plaintiff that TNA would make payments that it never intended to make. Complaint at ¶¶ 58-66. Plaintiff's tortious interference claim against Defendant Aroluxe was based on its allegation that "Aroluxe, through two of its principals, the Harris Brothers, took steps to prevent further payment from TNA" to Plaintiff. *Id.* at ¶ 76. Likewise, Plaintiff's business conspiracy claim for violation of Va. Code § 18.2-499 was based on the allegation of an agreement between all defendants to prevent Plaintiff from competing with Defendant Aroluxe for TNA's production work. *Id.* at ¶ 84.

Defendant Harris is an adult citizen and resident of the State of Tennessee. Complaint at ¶ 7; Affidavit of Ronald Dean Harris ("Harris Aff."), attached to the Motion to Dismiss as **Exhibit A** and expressly incorporated herein, at ¶ 1. At all times relevant to the Complaint, Harris was not an employee of TNA. *Id.* at ¶ 2. Similarly, at all times relevant to the Complaint,

Harris was not employed by Defendant Aroluxe. *Id.* at ¶ 3. During the timeframe set forth in the Complaint, Harris maintained a residence in Tennessee and never traveled to Virginia. *Id.* at ¶ 5.

Defendant Aroluxe is a Tennessee limited liability company with its principal place of business located at 5111 Maryland Way, Suite 207, Brentwood, Williamson County, Tennessee 37027. Complaint at ¶ 6; Declaration of Jason Brown ("Brown Decl."), attached to the Motion to Dismiss as **Exhibit B** and expressly incorporated herein, at ¶ 2. Aroluxe does not conduct business in the Commonwealth of Virginia, nor is it registered with the State Corporation Commission. *Id.* at ¶¶ 3-4. Likewise, Aroluxe does not maintain any offices, employees, or other presence in Virginia. *Id.* at ¶ 5. Moreover, Aroluxe does not own property or solicit clients in Virginia. *Id.* at ¶¶ 6-7. Finally, Aroluxe does not conduct significant business transactions or engage in long-term business activities in Virginia. *Id.* at ¶ 8.

STANDARD OF REVIEW

Rule 12(b)(2) of the Federal Rules of Civil Procedure permits dismissal of an action where a district court lacks the requisite personal jurisdiction. Fed. R. Civ. P. 12(b)(2). When a court's personal jurisdiction is properly challenged, the jurisdictional question is one for the judge, with the burden on the plaintiff ultimately to prove grounds for jurisdiction. *Mylan Labs., Inc. v. Akzo, N.V.*, 2 F.3d 56, 59-60 (4th Cir. 1993).

In the Fourth Circuit, the analysis for personal jurisdiction is a two-step inquiry consisting of both statutory and constitutional components. *Peanut Corp. of Am. v. Hollywood Brands, Inc.*, 696 F.2d 311, 313 (4th Cir. 1982). To satisfy its burden, the plaintiff must establish that (1) each defendant's contacts with Virginia satisfy the Virginia long-arm statute and (2) that the statutory assertion of jurisdiction is consistent with the Due Process Clause of the Fourteenth Amendment of the Constitution. *Bay Tobacco, LLC v. Bell Quality Tobacco*

Products, LLC, 261 F. Supp. 2d 483, 491 (E.D. Va. 2003). Virginia's long-arm statute extends personal jurisdiction to the fullest extent permitted by due process. *See English & Smith v. Metzger*, 901 F.2d 36, 38 (4th Cir. 1990). To satisfy the constitutional prong, a defendant must have sufficient "minimum contacts" with the forum. *See Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

ARGUMENT

A. The requirements of the Virginia long-arm statute necessary for personal jurisdiction have not been met by Defendant Harris or Defendant Aroluxe.

The Virginia long-arm statute provides that a court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's transacting any business in Virginia. Va. Code § 8.01-328.1(A)(1). The long-arm statute also provides personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's causing tortious injury in Virginia by an act or omission outside Virginia 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 Virginia. Va. Code § 8.01-328.1(A)(4).[1]

1. Defendant Harris

Defendant Harris's alleged actions, as set forth in Plaintiff's Complaint, are insufficient as to trigger either of the aforementioned sections of the long-arm statute of Virginia. Importantly, Harris is not a party to the agreement between Plaintiff and TNA; nor was Harris an employee of TNA or Aroluxe at any time relevant to the Complaint. Harris Aff. at ¶¶ 2-3. Harris has not been in Virginia during the times relevant to the Complaint, nor has Plaintiff

[1] Other bases for personal jurisdiction under the Virginia long-arm statute not applicable to this case can be found in Va. Code § 8.01-328.1(A).

alleged Harris undertook any business transaction in Virginia. *Id.* at ¶ 5. Therefore, it stands to reason that Harris has not "transacted" business in Virginia as to trigger the long-arm statute. Va. Code § 8.01-328.1(A)(1).

Similarly, Harris does not fall within the second provision of the long-arm statute pertaining to injuries in Virginia from acts occurring outside the state. Va. Code § 8.01-328.1(A)(4). This is because Harris does not (1) regularly conduct or solicit business in Virginia, (2) engage in any other persistent course of conduct in Virginia, or (3) derive substantial revenue from goods used or consumed or services rendered in Virginia. Importantly, none of Plaintiff's vague and unsupported allegations as to Harris allege that any activity took place in Virginia. Put simply, Harris has minimal, if any, contacts with the Commonwealth. *See Consulting Engineers Corp. v. Geometric Ltd.*, 561 F.3d 273, 279-80 (4th Cir. 2009) (holding that telephone calls, faxes, and emails sent to recipients in Virginia were insufficient to establish jurisdiction). Accordingly, the Virginia long-arm statute does not apply to confer personal jurisdiction on Defendant Harris.

2. Defendant Aroluxe

It is also clear that Defendant Aroluxe has not committed any acts falling within the Virginia long-arm statute. First, Aroluxe has not "transacted business" in Virginia as to trigger the first section of the statute. *See* Va. Code § 8.01-328.1(A)(1). Aroluxe does not have any offices, employees, real estate, or advertising in Virginia. [Jason Aff.]. Moreover, Aroluxe has not engaged in a "single, purposeful transaction in Virginia" giving rise to the tortious interference or business conspiracy claims. *See Bay Tobacco*, 216 F. Supp. 2d at 493 (citing *Viers v. Mounts*, 466 F. Supp. 187, 190 (W.D. Va. 1979)). Like Defendant Harris, Plaintiff has not alleged that any Aroluxe activity took place in Virginia. Plaintiff complains that "Aroluxe,

through two of its principals, the Harris Brothers, took steps to prevent further payment from TNA to [Plaintiff] under the terms of the Repayment Agreement. These steps were specifically designed to allow funds that should have been paid to [Plaintiff]...." Yet a closer reading of the Complaint reveals Plaintiff's lack of detail and specificity of these alleged "steps." Even accepting Plaintiff's allegations in the Complaint as true, for the sake of argument, it is clear that Plaintiff has failed to allege that Aroluxe committed any transaction in Virginia.[2] This is because Aroluxe, a Tennessee limited liability company, does not conduct business in Virginia and has not committed any such transaction.

Second, to the extent that Plaintiff seeks to establish personal jurisdiction over Defendant Aroluxe under the latter section of the long-arm statute, such argument fails. *See* Va. Code § 8.01-328.1(A)(4). Even accepting the untrue premise that Aroluxe "caused tortious injury in Virginia by an act or omission outside Virginia," Plaintiff cannot prove that Aroluxe "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 Virginia." *Id.*; *see Bay Tobacco*, 261 F. Supp. 2d at 495 (after holding that the pleading was sufficient to satisfy the requirement that defendant acted tortious, causing injury in Virginia and giving rise to the causes of action, the district court examined the defendants' contacts with Virginia to determine whether the defendants regularly did business, engaged in some persistent course of conduct, or derived substantial revenue from goods used or consumed in Virginia). As set forth above, Aroluxe does not conduct or solicit business in Virginia; nor does it routinely engage in a consistent course of conduct in the Commonwealth. Brown Decl., at ¶¶ 3,7-8. Moreover, Aroluxe does not derive

[2] To the extent Plaintiff argues that Harris was acting on behalf of Aroluxe, such allegation is not true. Harris Aff., at ¶ 3. Moreover, Plaintiff has failed to allege the necessary requirements of a principal-agent relationship. Even if Harris were acting on behalf of Aroluxe, Plaintiff has failed to allege that Harris committed any transactions in Virginia. *See supra*, Section A.1.

any revenue from services rendered in Virginia because it does not solicit or have clients in the Commonwealth. *Id.* at ¶ 9. Accordingly, Virginia's long-arm statute is inapplicable to Defendant Aroluxe.

B. The requirements of personal jurisdiction under the Due Process Clause of the Fourteenth Amendment have not been met by Defendant Harris or Defendant Aroluxe.

Even if this Court were to find that the Virginia long-arm statute applied to Defendants Harris and Aroluxe, the traditional notions of fair play and due process prevent the Court from exercising personal jurisdiction. *See Bay Tobacco*, 216 F. Supp. 2d at 496-98; *see also Consulting Engineers, Inc. v. Geometric Software Solutions*, No. 1:06-CV-956, 2007 WL 1072010, at *2 (E.D. Va. Apr. 3, 2007) (order granting motion to dismiss for lack of personal jurisdiction), *affirmed*, 561 F.3d 273 (4th Cir. 2009) (citing *Ellicott Mach. Corp., Inc. v. John Holland Party Ltd.*, 995 F.2d 474, 477-79 (4th Cir. 1993)). To satisfy the constitutional prong of the test, a defendant must have sufficient minimum contacts with the forum. *Int'l Shoe Co.*, 326 U.S. at 316.

Specifically, the action initiated by each defendant that gives rise to personal jurisdiction must be "purposefully directed" at the forum, creating a "substantial connection" with that state. *See Burger King v. Rudzewicz*, 471 U.S. 462, 475-76 (1985). Essentially, due process requires sufficient contacts with the forum state such that a defendant "should reasonably anticipate being hauled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). But, "[w]hen a suit does not arise out of the defendant's activities in the forum state, the court must exercise 'general jurisdiction'." *Nichols v. G.D. Searle & Co.*, 991 F.2d 1195, 1199 (4th Cir. 1993) (quotation omitted).

General jurisdiction occurs when a court exercises jurisdiction over a suit that does not arise from a defendant's activities in the forum state. *Consulting Engineers*, 2007 WL 1072010, at *2. In these cases, "the requisite minimum contacts are fairly extensive." *Id.* Plaintiff must first establish continuous and systematic contact with the forum state. *Nichols*, 991 F.2d at 1199. Then, a plaintiff must establish purposeful availment of the privilege of conducting activities within the forum. *Consulting Engineers*, 2007 WL 1072010, at *2 (citation omitted).

1. Defendant Harris

As set forth above, Defendant Harris has minimal, if any, contacts with the Commonwealth of Virginia. *See supra,* Section A.1. Harris is a resident of the State of Tennessee who is not a party to the agreement between Plaintiff and TNA. Harris Aff., at ¶¶ 1, 4. Nor has Harris traveled to Virginia at any period relevant to Plaintiff's Complaint. *Id.* at ¶ 5. Because the claims against Harris did not emanate from activities in Virginia, the Court must evaluate Harris' Virginia contacts under the general jurisdiction standard. *See Nichols*, 991 F.2d at 1199. Consequently, Harris' lack of Virginia contacts do not meet the "continuous and systematic" standard necessary for general jurisdiction. *See id.*; *see also Consulting Engineers*, 2007 WL 1072010 at *3 (rejecting argument that agency and co-conspirator principles were sufficient for finding of general jurisdiction). Nor can Plaintiff establish that Harris purposefully availed himself to the privilege of conducting activities within Virginia. *See Burger King*, 471 U.S. at 472. Accordingly, there can be no general personal jurisdiction over Defendant Harris.

Even if the Court were to find that Harris conducted activities within Virginia, Plaintiff cannot meet the requirements for specific jurisdiction. First, Plaintiff cannot prove that Harris has ever purposefully directed actions in Virginia as to reasonably expect that he could be sued in the Commonwealth. *See World-Wide Volkswagen Corp.*, 444 U.S. at 297. In *Consulting*

Engineers, this Court held that the defendant's actions of exchanging emails and telephone conversations with plaintiff's Virginia office were "too attenuated" as to confer specific personal jurisdiction over the defendant. 2007 WL 1072010 at *4; *see also Consulting Engineers Corp.*, 561 F.3d at 278 (appellate court setting forth factors to determine whether a defendant has purposefully availed itself to personal jurisdiction). Similar to the defendant in *Consulting Engineers*, Harris' actions, if any, hardly illustrate any "purposeful availment" directed at Virginia which created a "substantial connection" to the Commonwealth. *See Burger* King, 471 U.S. at 475-76. Even assuming for sake of argument that Harris placed phone calls and exchanged emails with an individual in Virginia, these actions are unquestionably too attenuated as to confer personal jurisdiction over him. *See Consulting Engineers*, 2007 WL 1072010 at *4; *see, e.g., Bay Tobacco*, 261 F. Supp. 2d at 497. Without question, it would be a "manifest injustice" to require Harris to defend himself in a Virginia court based on these "contacts" alone. *See Consulting Engineers Corp.*, 561 F.3d at 281. Accordingly, this Court does not have any general or specific personal jurisdiction over Defendant Harris.

2. Defendant Aroluxe

Similarly, it is clear that Defendant Aroluxe does not possess "extensive" or "systematic" contacts with the Commonwealth of Virginia necessary for specific jurisdiction. Brown Decl., at ¶¶ 3-9; *see Nichols*, 991 F.2d at 1199 ("[w]hen a suit does not arise out of the defendant's activities in the forum state, the court must exercise 'general jurisdiction'"). Aroluxe was organized under the laws of Tennessee, does not transact or conduct business in Virginia, and does not have any offices, employees, real estate, or other presence in Virginia. Brown Decl., at ¶¶ 2-3, 5-6. Nor has Aroluxe availed itself of the privilege of doing business within Virginia, as it is not even registered with the Commonwealth of Virginia State Corporation Commission. *Id.*

at ¶ 4. Therefore, any argument for general personal jurisdiction over Aroluxe must be rejected. *See Consulting Engineers*, 2007 WL 1072010 at *3 (denying general jurisdiction over defendant foreign corporation who maintained no office, employees, or other presence in Virginia).

In *Consulting Engineers*, plaintiff -- a Virginia corporation -- brought suit against two foreign corporation defendants for allegedly hiring one of plaintiff's employees in breach of an agreement. 2007 WL 1072010 at *1. Plaintiff asserted causes of action for tortious interference with contract and business conspiracy, among others. *Id.* After a thorough analysis, this Court found that it did not have general or specific jurisdiction over either defendant and dismissed the case. *Id.* at *6.

On appeal, the Fourth Circuit upheld this Court's determination that it did not possess specific personal jurisdiction over either defendant foreign corporations.[3] *Consulting Engineers Corp.*, 561 F.3d at 273. First, the appellate court listed various factors to determine whether a defendant has engaged in purposeful availment, including, among others: whether the defendant maintains offices in the forum state, whether the defendant owns property in the forum state, whether the defendant reached into the forum state to solicit or initiate business, and whether the defendant deliberately engaged in significant or long-term business activities in the forum state. *Id.* at 278. Second, the Fourth Circuit conducted its analysis with respect to each defendant and found that neither defendant had offices, employees, or property in Virginia. *Id.* at 279-82. The court also found that neither defendant engaged in "on-going business activity" in Virginia. *Id.* at 280, 82. Moreover, the Court found that the alleged conspiracy and interference occurred outside the Commonwealth. *Id.* at 280, 82. Accordingly, the Court rejected the plaintiff's appeal

[3] Plaintiff did not appeal this Court's finding that it had no basis to assert general personal jurisdiction.

and found that each defendant's contacts were too attenuated to support specific personal jurisdiction. *Id.* at 281-82.

Here, any contention for specific personal jurisdiction over Defendant Aroluxe must be similarly rejected. As set forth above, and similar to the defendants in *Consulting Engineers Corp.*, Aroluxe has no offices, employees, real estate, or on-going business presence in the Commonwealth. 561 F.3d at 279-28; Brown Decl., at ¶¶ 5, 8. Moreover, the Complaint does not allege that the alleged conspiracy occurred in Virginia. *See* Complaint, ¶¶ 79-86. This point is logically sound, as all defendants are based in Tennessee. *See id.*, ¶¶ 4-7. In sum, Plaintiff has not and cannot show that Aroluxe's Virginia contacts, if any, were sufficient such that Aroluxe should "reasonably anticipate being hauled into court" in Virginia. *World-Wide Volkswagen Corp.*, 444 U.S. at 297. Therefore, there cannot be any specific or general jurisdiction over Defendant Aroluxe.

CONCLUSION

For all the reasons set forth above, Defendants Ronald Dean Harris and Aroluxe, LLC d/b/a Aroluxe Marketing move this Court for an Order, pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, dismissing them from the Complaint for lack of personal jurisdiction.

Respectfully submitted this 30th day of November, 2016.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 30th day of November, 2016, a copy of the foregoing **MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS** was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail, first-class postage prepaid. Parties may access this filing through the Court's electronic filing system.

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