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[Eat Good Do Good, LLC v. Pellegrino Food Prods. Co.](#)

United States District Court for the Eastern District of Virginia, Alexandria Division

October 28, 2014, Decided; October 28, 2014, Filed

Civil No. 1:14-cv-863

Reporter

2014 U.S. Dist. LEXIS 189538 *

EAT GOOD DO GOOD, LLC, Plaintiff, -v-
PELLEGRINO FOOD PRODUCTS CO., INC.,
Defendant.

Guthery, Fluet Huber + Hoang PLLC (Woodbridge),
Woodbridge, VA.

Judges: Hon. Liam O'Grady, United States District
Judge.

Opinion by: Liam O'Grady

Core Terms

personal jurisdiction, Venue, convenience of the parties,
exercise of jurisdiction, interest of justice, substantial
part, due process, give rise, quotation, witnesses, long-
arm, marks, lack of personal jurisdiction, constitutionally
reasonable, contractual relationship, substantial weight,
judicial district, choice of forum, improper venue,
transfer venue, civil action, non-resident, purposefully,
Products, alleges, availed, comport, factors, reasons,
courts

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Opinion

ORDER

Before the Court is Defendant's Motion to Dismiss (Dkt. No. 12) the Amended Complaint (Dkt. [*2] No. 6) for lack of personal jurisdiction pursuant to [Fed. R. Civ. P. 12\(b\)\(2\)](#) or for improper venue pursuant to [Fed. R. Civ. P. 12\(b\)\(3\)](#). The Defendant alternatively moves to transfer venue pursuant to [28 U.S.C. § 1406\(a\)](#). The Plaintiff has opposed the Motion (Dkt. No. 22) and the Defendant has replied (Dkt. No. 23). The Court has reviewed the pleadings and exhibits filed by the parties. For the reasons set forth below, the Court finds that there is personal jurisdiction over this defendant, and that venue in this district is proper.

Personal Jurisdiction

When a non-resident defendant challenges personal jurisdiction, this Court must determine (1) whether Virginia's long-arm statute authorizes jurisdiction over the defendant; and (2) if jurisdiction is permissible under the statute, whether the exercise of such jurisdiction comports with the [due process clause of the Constitution of the United States](#). See [Peanut Corp. of America v. Hollywood Brands, Inc., 696 F.2d 311, 313 \(4th Cir. 1982\)](#). Under Virginia's long-arm statute, a court may exercise personal jurisdiction over a person who transacts any business in the Commonwealth. See [VA Code § 8.01-328.1\(A\)\(1\)](#). "Virginia is a single act

state, requiring only one transaction in Virginia to confer jurisdiction on its courts." [*Thornapple Associates, Inc. v. Izadpanah*, 2014 U.S. Dist. LEXIS 139333, 2014 WL 4925838, *5 \(E.D. Va.\)](#) (citing [*John G. Kolbe, Inc. v. Chromodern Chair Co.*, 211 Va. 736, 180 S.E.2d 664, 667 \(Va.1971\)](#)). Because the Supreme Court of Virginia has held that the "transacting business" provision of Virginia's long-arm statute extends to the [*3] limits of due process, the Court addresses only the due process prong of the inquiry. See [*AESP, Inc. v. Signamax, LLC*, 29 F. Supp. 3d 683, 2014 WL 3348134, *3 \(E.D. Va.\)](#) (citations omitted).

In order for the exercise of jurisdiction to comport with due process, the defendant must have sufficient "minimum contacts" such that requiring the defendant to defend a suit in Virginia does not "offend traditional notions of fair play and substantial justice." [*English & Smith v. Metzger*, 901 F.2d 36, 39 \(4th Cir. 1990\)](#) (internal quotation marks omitted) (citing [*International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 \(1945\)](#)). The Fourth Circuit has provided a three part test for analyzing the due process requirements of specific personal jurisdiction: "(1) the extent to which the defendant purposefully availed itself of the privilege of conducting activities in the State; (2) whether the plaintiffs' claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable." [*Consulting Engineers Corp. v. Geometric Ltd.*, 561 F.3d 273, 278 \(4th Cir. 2009\)](#) (citations omitted).

For approximately four years, nonresident defendant Pellegrino Food Products Co., Inc. engaged in an ongoing contractual relationship with Eat Good Do Good, LLC (EGDG),¹ a Virginia corporation. See Am. Compl. ¶ 11-12, 24. EGDG alleges in relevant part that it initiated a business relationship with Pellegrino via Pellegrino's [*4] website, which stated that Pellegrino had a "national customer base" and that it manufactured food for companies "throughout the United States." See Pl.'s Mem. Law in Opp'n to Def.'s Mot. to Dismiss Am. Compl., 11 (internal quotation marks omitted). EGDG further alleges that it signed the Confidential Disclosure Agreement at issue in its Fairfax, Virginia offices and sent the contract to Pellegrino. See Am. Compl. ¶ 14.

¹ EGDG evidently transacts business under the trade names TaDah Foods and TaDah! Foods. See Am. Compl. [*5] ¶ 3; Pl.'s Mem. Law in Opp'n to Def.'s Mot. to Dismiss Am. Compl., 1.

EGDG also communicated instructions to Pellegrino from its Virginia offices via telephone and email, including producing an instructional video at Pellegrino's request, and EGDG arranged for the purchase of ingredients and distribution of the products from its Virginia offices. See Pl.'s Mem. Law in Opp'n, 11-12. Given the nature of this contractual relationship, the Court finds that the defendant has "purposefully availed" itself of the privilege of conducting business in the state of Virginia. The litigation obviously relates to alleged injuries "arising out" of those activities, and under the circumstances, the exercise of jurisdiction is constitutionally reasonable.

Venue

Venue is proper in a "judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." [*28 U.S.C. § 1391\(b\)\(2\)*](#). Venue may thus be proper in more than one district. [*Mitrano v. Hawes*, 377 F.3d 402, 405 \(4th Cir. 2004\)](#). The Fourth Circuit has stated that in determining whether a substantial part of the events giving rise to the claim occurred in the district at issue, courts should "review the entire sequence of events underlying the claim." *Id.* (internal quotation marks and citations omitted). For the reasons discussed above, the Court finds that a substantial part of the events giving rise to EGDG's claims occurred in Virginia.

Because the Court finds that venue is proper, the Court is not required to dismiss or transfer the action pursuant to [*28 U.S.C. § 1406\(a\)*](#). A district court may transfer a civil action to any other district where the action could have been brought "for the convenience of parties and witnesses, in the interest of justice." [*28 U.S.C. § 1404\(a\)*](#). The Court exercises its discretion in deciding whether to transfer a civil action on this ground, but the Court must balance factors including:

- (1) ease of access to sources of proof; (2) the convenience of the parties [*6] and witnesses; (3) the cost of obtaining the attendance of witnesses; (4) the availability of compulsory process; (5) the interest in having local controversies decided at home; (6) in diversity cases, the court's familiarity with the applicable law; and (7) the interest of justice.

[*BHP Int'l Inv., Inc. v. OnLine Exch., Inc.*, 105 F. Supp. 2d 493, 498 \(E.D. Va. 2000\)](#). The plaintiff's choice of forum is ordinarily accorded substantial weight when the

plaintiff chooses to litigate in its home forum. See [Koh v. Microtek Int'l, Inc., 250 F. Supp. 2d 627, 633 \(E.D. Va. 2003\)](#). EGDG's principal office is located in Alexandria, Virginia, within Fairfax County. See Am. Compl. ¶ 3. EGDG has thus brought suit in its home forum, the Eastern District of Virginia, and that choice of forum is entitled to substantial weight. The defendant has not met its burden to demonstrate that convenience of the parties and the interest of justice weigh "strongly in favor" of transfer to a different forum. [Koh, 250 F. Supp. 2d at 633](#). Nor does the Court find that the factors weigh in favor of transfer to another judicial district.

Conclusion

It is therefore ORDERED that:

1. Defendant's Motion to dismiss Plaintiff's Amended Complaint for lack of personal jurisdiction or for improper venue is DENIED.
2. Because this Court also finds that venue is proper, the Defendant's alternative motion to transfer [*7] venue is also hereby DENIED.

Date: October 28, 2014

Alexandria, Virginia

/s/ Liam O'Grady

Liam O'Grady

United States District Judge

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