



## NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse  
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Fairfax, Virginia 22030-4009

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COUNTY OF FAIRFAX

CITY OF FAIRFAX

July 10, 2019

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RETIRED JUDGES

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Re: *McNeal v. Raagu Ventures, LLC, et al.*, CL 2019-2553

Dear Mr. McClanahan and Mr. Craig:

This matter is before the court on a motion to dismiss for lack of personal jurisdiction filed by Defendant My Little Magic Garden, LLC ("MLMG"). For the reasons that follow, the motion is GRANTED and MLMG will be DISMISSED as a defendant.

### Facts

The only facts before the court are those set forth in the Complaint; no evidence was offered by either party.

Paragraph 3 of the Complaint alleges that the "principal place of business" of Raagu Ventures, LLC is Herndon, Virginia and paragraph 6 alleges that Kiran Kalva is "a resident of Virginia." At paragraph 89, the Complaint alleges:

A wire transfer of \$107,415.60 was received in Raagu Capital One account number D on September 19, 2016, followed by a customer withdrawal of \$100,000.00 on September 19, 2016, by Mr. Kalva. Mr. Kalva transferred the \$100,000.00 in the form of a cashier's check to be paid as a down payment to start the daycare business, My Little Magic Garden.

Paragraph 89 of the Complaint also referenced (and thus incorporated) an Exhibit P, which was a transcript of the deposition of Mr. Kalva. When asked during the deposition "so that \$107,415 was the proceeds from the sale of the old . . . Brentford House," he responded: "Right." Ex. P at 15. He was then asked: "And then this cashier's check that you produced that's dated 9/19 is reflective of this 9/19 \$100,000 withdrawal?" to which he Mr. Kalva responded: "Right." Ex. P at 16. When he was asked the purpose of the check, he explained that "this went for the daycare down payment." Ex. P at 16. He further explained that he wrote a cashier's check to "myself . . . for the withdrawal." Ex. P at 16. He then agreed that "the same day the bank writes the check to . . . First Columbia Title Company" (Ex. P at 16) which "was for the down payment on the daycare . . . . My Little Magic Garden," of which he is an owner. Ex. P at 18.

### Analysis

There is no case law from the Virginia appellate courts on the standard to be applied for determining the applicable facts when considering a pre-trial motion to dismiss for lack of personal jurisdiction. In this court's view, however, where a motion to dismiss is based solely on the allegations of the complaint (as here), the motion is akin to a demurrer of a discreet issue, and, on demurrer, the court "accept[s] as true all factual allegations expressly pleaded in the complaint and interpret those allegations in the light most favorable to the claimant." *Parker v. Carilion Clinic*, 296 Va. 319, 330 (2018).<sup>1</sup>

Thus, for purposes of the instant motion, the court will accept as true all the material factual allegations in the complaint and interpret those allegations in the light most favorable to Plaintiff.<sup>2</sup> Accord, *Malcolm v. Esposito*, 63 Va. Cir. 440 (2003) (court "must construe all relevant allegations in the light most favorable to the plaintiff and draw the most

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<sup>1</sup> The Fourth Circuit has adopted a similar standard:

[W]hen, as here, the court addresses the [existence of personal jurisdiction] on the basis only of motion papers, supporting legal memoranda and the relevant allegations of a complaint, the burden on the plaintiff is simply to make a prima facie showing of a sufficient jurisdictional basis in order to survive the jurisdictional challenge. (Citation omitted). In considering a challenge on such a record, the court must construe all relevant pleading allegations in the light most favorable to the plaintiff, assume credibility, and draw the most favorable inferences for the existence of jurisdiction.

*Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir. 1989).

<sup>2</sup> The court will, however, ignore Paragraph 90 of the Complaint, which alleged: "Accordingly, Raagu made an undocumented loan of \$100,000.00 to My Little Magic Garden directly from the proceeds of the sale of 6124." The allegation that the \$100,000 was a "loan" is directly contradicted by Exhibit P, which indicates that the \$100,000 was a down payment. Because the instant motion to dismiss is akin to a demurrer in that it accepts as true the factual allegations of the complaint for purposes of the motion, the court may (and will) ignore paragraph 90. See *Ward's Equipment v. New Holland North America*, 254 Va. 379, 382 (1997) ("a court considering a demurrer may ignore a party's factual allegations contradicted by the terms of authentic, unambiguous documents that properly are a part of the pleadings").

favorable inferences for the existence of jurisdiction'"); *New York Commercial Bank v. Heritage Green Dev.*, 95 Va. Cir. 278 (2017) ("court must construe all relevant pleading allegations in the light most favorable to the plaintiff and draw all reasonable inferences for the existence of jurisdiction'"); and *Power Mechanical, Inc. v. McClary Trucking, Inc.*, 96 Va. Cir. 275 (2017) ("court must construe all relevant pleading allegations in the light most favorable to the plaintiff and draw all reasonable inferences for the existence of jurisdiction'").

Turning to the legal issues, Defendant argues that, under Virginia's long-arm statute, Code § 8.01-328.1(A), Plaintiff "must prove that the defendant maintained some sort of ongoing interactions with the Commonwealth," citing Code § 8.01-328.1(A)(4).<sup>3</sup> Memorandum at 4. Plaintiff, on the other hand, argues that long-arm jurisdiction is found under Code § 8.01-328.1(A)(1).<sup>4</sup> Memorandum at 2. The parties agree, however, that whatever provision of Code § 8.01-328.1(A) governs, it is limited by the requirements of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

The court agrees with Plaintiff that, if there is long-arm jurisdiction, it may be found under Code § 8.01-328.1(A)(1), i.e., Plaintiff must show that the cause of action arose from Defendant's transacting any business in this Commonwealth and that a single transaction will suffice. See *Kolbe, Inc. v. Chromodern, Inc.*, 211 Va. 736, 740 (1971) ("Since the statute provides 'Transacting any business in this State' (emphasis added), it is a single act statute requiring only one transaction in Virginia to confer jurisdiction on its courts."). Code § 8.01-328.1(A)(4) is not satisfied because no "tortious injury in this Commonwealth by an act or omission outside this Commonwealth" is claimed and there is no allegation that MLMG "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 this Commonwealth . . . ."

With respect to the requirements of the Due Process Clause, that Clause:

protects a person's liberty interest in not being subject to the binding judgment of a forum unless that person has certain minimum contacts within the territory of the forum so that maintenance of an action against that person does not offend "traditional notions of fair play and substantial justice." (Citation omitted).

*Peninsula Cruise v. New River Yacht Sales*, 257 Va. 315, 319 (1999).

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<sup>3</sup> "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: . . . 4. Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth 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 this Commonwealth . . . ."

<sup>4</sup> "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: 1. Transacting any business in this Commonwealth . . . ."

Accordingly, the Due Process Clause requires that a defendant have "purposefully availed itself of the privilege of conducting activities within this Commonwealth, thereby invoking the benefits and protections of Virginia's laws." *Peninsula Cruise v. New River Yacht Sales*, 257 Va. at 321.

As applied to the case at bar, the question for resolution is whether the cause of action against MLMG arose from MLMG "[t]ransacting any business" in the Commonwealth and, if so, did it "purposefully avail[] itself of the privilege of conducting activities within this Commonwealth" such that it had "certain minimum contacts within" Virginia.

Boiled down to its essence, the only material fact concerning possibly transacting business in Virginia was that, in Virginia (where he resided), Mr. Kalva caused a bank to write a check to First Columbia Title Company for a down payment on MLMG. The court concludes, therefore, that Defendant MLMG did not transact business in Virginia in that the check was payable to First Columbia Title Company (whose location is unknown), not MLMG. Because MLMG did not transact any business in Virginia, no cause of action could have arisen, thus barring long-arm jurisdiction pursuant to Code § 8.01-328.1(A)(1).


Moreover, it is not known to whom those funds were distributed by First Columbia Title Company, so that, even if First Columbia Title Company was viewed as a mere conduit, there is no factual basis for concluding in which state business was transacted. (Because the funds were for the purpose of acquiring a membership in MLMG, it is likely that the funds went not to MLMG, but rather to someone who was already a member of MLMG and who was selling his/her membership.)

Finally, even if the check had been payable to MLMG, because it was for the purchase of a membership in MLMG, MLMG was not availing itself of the privilege of conducting activities within Virginia; rather, Mr. Kalva was availing himself of the privilege of conducting activities within Maryland. Thus, MLMG had no minimum contacts with Virginia and maintenance of this action against MLMG would offend "traditional notions of fair play and substantial justice."

In sum, because MLMG was not transacting business in Virginia and did not purposefully avail itself of the privilege of conducting activities within Virginia, this court does not have personal jurisdiction over MLMG; MLMG's motion to dismiss for lack of personal jurisdiction is, therefore, GRANTED and MLMG is DISMISSED as a defendant.

An appropriate order will enter.

Sincerely yours,

  
Richard E. Gardiner  
Judge

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

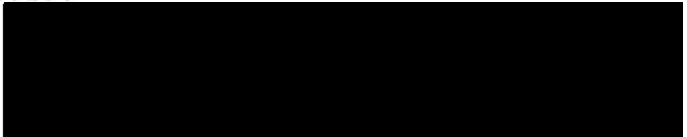
BEVERLY MCNEAL	)	
	)	
Plaintiff	)	
	)	
v.	)	CL 2019-2553
	)	
RAAGU VENTURES, LLC, <i>et al.</i>	)	
	)	
Defendants	)	

ORDER

THIS MATTER came before the court on the motion to dismiss for lack of personal jurisdiction of Defendant My Little Magic Garden, LLC.

THE COURT, for the reasons set forth in the court's letter opinion of today's date, hereby GRANTS Defendant's motion and DISMISSES MLMG as a defendant.

ENTERED this 10<sup>th</sup> day of July, 2019.



Richard E. Gardiner  
Judge

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

Copies to:

Dirk McClanahan  
Counsel for Defendant My Little Magic Garden, LLC

Thomas M. Craig  
Counsel for Plaintiff