



## NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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4110 Chain Bridge Road  
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703-246-2221 • Fax 703-246-5496 • TDD 703-352-4139

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Robert Gill, Esquire  
Saul Ewing LLP  
1919 Pennsylvania Ave, NW, Suite 550  
Washington D.C. 20006-3434  
*Counsel for Plaintiff*

Craig Steckley, Esquire  
Tramonte, Yeonas, Roberts & Martin PLLC  
8245 Boone Blvd. Suite 400  
Vienna, VA 22182  
*Counsel for Defendant*

Re: *New York Commercial Bank v. Heritage Green Development, LLC, et al.*  
Case No. CL-2016-13753

Dear Counsel:

This case is before the Court upon the Defendant, Leonie P. Mavronicola's ("Mavronicola"), Motion to Quash Service, arguing lack of personal jurisdiction. The Plaintiff, New York Commercial Bank ("Bank") brought this action in October 2016 for defaulting on a loan, on which Mavronicola is a guarantor, used to develop a property in Maryland and secured by a lien on the property. Mavronicola was served through an appointed agent in the Commonwealth of Virginia, but now seeks to quash that service, arguing that Virginia lacks any grounds to exert personal jurisdiction over him. This motion raises two questions:

- A. Has Mavronicola, a non-resident of Virginia, conducted substantial and continuous business within Virginia so as to confer general personal jurisdiction over him?

**OPINION LETTER**

B. Does the Bank's cause of action arise from Mavronicola's transaction of business in Virginia, specifically the appointment of a registered agent?

After considering the pleadings, memorandums and oral arguments presented by Counsel, the Court finds that the Commonwealth cannot exercise personal jurisdiction over Mavronicola, and the Motion to Quash service is granted.

I. BACKGROUND<sup>1</sup>

A. Factual Background

In 2003, Defendant Heritage Green Development, LLC borrowed money from the Davis Corporation for the development of a Maryland property in the amount of \$8.25 million. Compl. ¶¶ 7-8. The loan was secured by a lien on the Maryland property itself. The loan was then later assigned, in 2004, to Atlantic Bank of New York, of whom the New York Commercial Bank is a successor in interest.

At the same time as the assignment, several individuals, an estate and two companies, signed an absolute and unconditional guaranty of payment. Compl. ¶ 11. Mavronicola was one of those guarantors. In tandem with the other guarantors, Mavronicola designated Charis Lapas ("Lapas") as an agent for service of process in Virginia. Compl. ¶¶ 3-6. The Guaranty consents to jurisdiction in New York for any suit, action or other proceeding arising out of any of the Guarantor's obligations under the Guaranty. Compl, Ex. 4, § 19. In the same section, it designated and appointed Lapas as an agent to *receive service of process* for any suit, action or proceeding arising out of the Guarantor's obligations. *Id.* In addition, it provides the address of an office for Lapas in McLean.

B. Procedural Background

The Complaint was filed in October, and served on Mavronicola through Lapas at the McLean office within two weeks of the filing. Mavronicola filed this Motion to Quash service thereafter, and oral arguments were heard on January 27, 2017, after which the Court took the Motion under advisement.

II. STANDARD OF REVIEW

The Commonwealth may have *general* personal jurisdiction over a non-resident defendant only when that defendant has engaged in such substantial,

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<sup>1</sup> In forming its opinion, the Court has reviewed the Complaint and any exhibits attached thereto

“continuous and systematic” operations “so as to render [them] essentially *at home*” in Virginia. *Yelp, Inc. v. Hadeed Carpet Cleaning, Inc.*, 289 Va. 426 (2015) (citing *Daimler AG v. Bauman*, 134 S. Ct. 746, 761 (2014)) (emphasis added).

Alternatively, Virginia may exercise *specific* personal jurisdiction over a non-resident defendant through the Long Arm Statute. Va. Code. § 8.01-328.1. One permissible grounds under this statute is where the defendant transacted business in the Commonwealth, and the underlying cause of action arises out of that transaction. *Gallop Leasing Co. v. Nationwide Mutual Ins. Co.*, 244 Va. 68, 71 (1992); *John G. Kolbe, Inc. v. Chromodern Chair Co.*, 211 Va. 736, 738-39 (1971).

Nevertheless, when a defendant challenges a court’s exercise of personal jurisdiction and the Court addresses it solely upon the basis of “threshold motion papers, pleadings, and supporting memoranda, the plaintiff’s burden is merely to make a *prima facie* showing of sufficient jurisdiction basis” and a “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.” *Prod. Group Int’l v. Goldman*, 337 F. Supp. 2d 788, 792-93 (E.D. Va. 2004).

### III. ARGUMENTS

#### A. Plaintiff’s Argument

The Bank argues that the designation of a registered agent in Virginia in the Guaranty was a single act under the Virginia Long Arm Statute. The cause of action arises from breach of that Guaranty, and thus the Court has personal jurisdiction.

Additionally, the Bank suggested in their memorandum and during oral arguments that Mavronicola maintains an office in Virginia, and that such continuous presence was sufficient to establish personal jurisdiction, seemingly under a general personal jurisdiction theory.

#### B. Defendant’s Response

Mavronicola first argues in his memorandum that a natural person cannot designate a registered agent, but only a corporation or entity may do so. Furthermore, Mavronicola argues that the Long Arm Statute is not satisfied anyway. The designation of an agent is simply not sufficient contact to justify personal jurisdiction.

#### IV. ANALYSIS

##### A. Designating an Agent, and Even Maintaining an Office, Does Not Trigger General Personal Jurisdiction

Designating an agent does not amount to continuous and systematic operations that render Mavronicola “essentially at home” in Virginia, as is minimally required for general personal jurisdiction. *Daimler AG v. Bauman*, 134 S. Ct. 746, 761 (2014); *Reynolds and Reynolds Holdings, Inc. v. Data Suplies, Inc.*, 301 F. Supp. 545, 551-52 (E.D. Va. 2004).

The maintenance of an office is admittedly more substantial. Nevertheless, the Supreme Court of Virginia has noted that not every “substantial, continuous and systematic course of business” renders an entity “at home.” *Yelp, Inc.*, 289 Va. at 438, n. 18. Furthermore, the Court continued, it would be “exceptional” that a foreign entity would have substantial contacts of such a nature as to render it at home anywhere but its principal place of business or place of incorporation. *Id.*

Although *Yelp* was focused on jurisdiction in the context of the subpoena power and dealt with corporations not individuals, both of those considerations would weigh against personal jurisdiction here. Furthermore, the complaint itself does not allege any continuous business in Virginia by Mavronicola, nor does any exhibit indicate the conducting of regular business. There is simply nothing from which the Court can infer sufficient contacts to justify general personal jurisdiction. The complaint itself does not allege any facts indicating such contacts, and the property involved is even located in Maryland. Compl. ¶ 7. It is possible Mavronicola has some office in the Commonwealth, and he has designated a registered agent in the Commonwealth, but he remains a non-resident. Even construing all of this most favorably for the Bank, there is no general personal jurisdiction.

##### B. The Cause of Action Does Not Arise from the Designation of a Registered Agent

Under the Virginia Long Arm Statute, a court “may exercise personal jurisdiction over a person ‘as to a cause of action *arising from*’ the person’s transaction of business in Virginia.” *Gallop Leasing Corp.*, 244 Va. at 71. The cause of action must then arise from the defendant’s acts in Virginia.

The Court in the Eastern District of Virginia, applying Virginia law, held that the “administrative task” of designating an agent in Virginia could not justify general personal jurisdiction; and it did not even consider whether the same could

trigger *specific* personal jurisdiction, calling it “fulfilling a state law requirement,” not an act of doing business. *Reynolds and Reynolds Holdings, Inc.*, 301 F. Supp. at 552-52. If not an act of doing business conferring personal jurisdiction in a trademark infringement case, it could not be an act giving rise to a cause of action for defaulting on a loan secured by a Maryland property for a New York creditor.

Hence, not only does the designation of an agent come in the same section of the guaranty *consenting to jurisdiction in New York*, but the failure to pay has nothing to do with the designation of an agent. As a result, Mavronicola’s designation of Lapas cannot constitute grounds for specific personal jurisdiction. Even accepting this is a single act of “transacting business” in Virginia under the Long Arm Statute, the cause of action is unrelated to, or certainly does not arise from, that act.

Finally, the failure to pay the guaranty as alleged in the Complaint does not arise from the presence of an office in Virginia. The Complaint is devoid of any such allegation, nor was any evidence presented to support such a proposition.

## V. CONCLUSION

For the foregoing reasons, the Court grants the motion to quash service for lack of personal jurisdiction, and dismisses the action without prejudice to refile in the proper forum.

Sincerely,



Daniel E. Ortiz  
Circuit Court Judge