

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

LONGWALL-ASSOCIATES, INC.,)	
)	
Plaintiff,)	Case No. 1:00CV00086
)	
v.)	OPINION AND ORDER
)	
WOLFGANG PREINFALK GmbH,)	
)	By: James P. Jones
Defendant.)	United States District Judge
)	

The question before the court in this diversity contract action is whether the defendant, a German business firm, is subject to personal jurisdiction under Virginia’s long-arm statute. I find that personal jurisdiction does exist, where the defendant’s president signed the contract between the parties in Virginia, and where there have been visits by the defendant’s representatives to the state pursuant to the contract.

I

The plaintiff, Longwall-Associates, Inc. (“Longwall”) is a Virginia corporation with its principal place of business in Virginia. It manufactures and sells underground coal mining equipment used in the process known as longwall mining. Wolfgang Preinfalk GmbH (“Preinfalk”) is a German business firm that designs and

manufactures, in Germany, gearboxes for use in longwall mining equipment. It sells the gearboxes to original equipment manufacturers who in turn install the gearboxes into chain conveyors that are used to transport coal out of longwall mining installations. An individual, Wolfgang Preinfalk, is the president of Preinfalk.

On February 28, 1997, while in Virginia, Wolfgang Preinfalk signed on behalf of his firm a written contract with Longwall by which Longwall became the exclusive distributor for Preinfalk in North America. Among other things, the contract provided that Longwall would purchase products, on a discounted price basis, directly from Preinfalk. The parties agreed that Longwall would serve as “the exclusive authorized service center” for Preinfalk products and that Preinfalk would provide to Longwall “cross-training, technical information, and technical assistance.”

The contract was for successive one-year terms, automatically renewed unless canceled by either party on sixty days’ notice. The contract contained a “hold harmless” provision, by which each party agreed to provide indemnity for its negligence.

In a complaint filed in this court, Longwall alleged that it purchased gearboxes from Preinfalk pursuant to this contract. According to Longwall, Preinfalk expressly “warranted” the gearboxes for “two (2) panels of coal.” (Compl. ¶ 7.) Longwall incorporated the gearboxes into longwall equipment that it manufactured and sold to

its own customers, certain mining companies. Longwall contended that in spite of Preinfalk's warranty, the gearboxes had failed "prior to the extraction of a single panel." (*Id.*) Longwall claimed that it suffered damages because of these failures. It sought reimbursement from Preinfalk based on the hold harmless clause of the contract and alleged breach of implied and express warranties.

In response to the complaint, Preinfalk filed a motion to dismiss, contending that it is not subject to service of process under Virginia law. In support of its motion it filed a declaration by Wolfgang Preinfalk, who asserted that Preinfalk has never had an office in Virginia or employees based there, has never owned property in Virginia, and has never advertised there. He averred that on approximately five different occasions representatives of Preinfalk, including himself, have visited Longwall's premises in Virginia at Longwall's request, in order to provide assistance with respect to the operation of the Preinfalk gearboxes.

Longwall has not disputed Wolfgang Preinfalk's declaration, nor has it submitted other evidence. The issues have been briefed and orally argued, and this opinion memorializes the basis for the denial of the motion to dismiss announced at the conclusion of oral argument.

II

Personal jurisdiction over the defendant in this diversity case is limited by the law of the forum state. *See* Fed. R. Civ. P. 4(k)(1)(A). The plaintiff asserts that Virginia’s long-arm statute, Va. Code Ann. § 8.01-328.1 (Michie 2000), affords the basis for personal jurisdiction, and thus I must examine that statute and its interpretation by Virginia’s highest court. In addition, since a state’s exercise of jurisdiction over a nonresident is limited by the Constitution’s due process guarantee, I must also determine that federal question based on the facts of this case.

As relevant here, the Virginia long-arm statute expressly allows jurisdiction over a person as to a cause of action “arising from the person’s . . . [t]ransacting any business in [Virginia] [or] [c]ontracting to supply services or things in [Virginia].” Va. Code Ann. § 8.01-328.1.A.1. This statute has been construed by the Virginia Supreme Court to allow jurisdiction based on a single relevant act in Virginia, to the extent permitted by due process. *See John G. Kolbe, Inc. v. Chromodern Chair Co.*, 180 S.E.2d 664, 667 (Va. 1971).

It is clear that the Virginia long-arm statute permits jurisdiction under the facts of this case. In *I.T. Sales, Inc. v. Dry*, 278 S.E.2d 789, 790-91 (Va. 1981), the Virginia Supreme Court held that a nonresident defendant who signed a written contract in Virginia was subject to jurisdiction on that basis under the long-arm statute, even

though the contract was to be wholly performed outside of Virginia.

Preinfalk argues that the plaintiff's cause of action does not "arise from" the contract admittedly executed in Virginia, since the signing of the contract did not itself "cause" the plaintiff's damages. The question now before me, however, is whether the allegations of the complaint, construed "in the light most favorable to the plaintiff . . . and draw[ing] the most favorable inferences for the existence of jurisdiction," *Owen-Illinois, Inc. v. Rapid Am. Corp. (In re Celotex Corp.)*, 124 F.3d 619, 628 (4th Cir. 1997) (quoting *Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir. 1989)), are sufficient to overcome the motion to dismiss. Under these circumstances, I find that the cause of action alleged sufficiently arises from the distributorship agreement.

The more serious question is whether there have been sufficient minimum contacts by the defendant with Virginia in order to satisfy due process. The Supreme Court has instructed that "the facts of each case must [always] be weighed in determining whether personal jurisdiction would comport with fair play and substantial justice. The quality and nature of an interstate transaction may sometimes be so random, fortuitous, or attenuated that it cannot fairly be said that the potential defendant should reasonably anticipate being haled into court in another jurisdiction." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 485-86 (1985) (internal quotations and citations omitted).

Burger King involved a contract action over the termination of a fast food franchise agreement. The franchisee, Rudzewicz, was a Michigan resident. He had no physical connection with Florida and had never even visited there. *See id.* at 479. His restaurant operated pursuant to the franchise was located in Michigan. Burger King, however, was headquartered in Florida, and the franchise agreement itself provided that it was deemed “made and entered into” in that state and that Florida law would control, provided that “[t]he choice of law designation does not require that all suits concerning this Agreement be filed in Florida.” *Id.* at 481. In addition, Rudzewicz dealt extensively with the Florida headquarters by mail and telephone.

Based on these facts, the Supreme Court held that it did not violate due process to allow the Florida courts jurisdiction over the Michigan resident: “Rudzewicz deliberately ‘reach[ed] out beyond’ Michigan and negotiated with a Florida corporation for the purchase of a long-term franchise and the manifold benefits that would derive from affiliation with a nationwide organization.” *Id.* at 479-80.

Similarly, in the present case, Preinfalk reached out beyond Germany and entered into a complex business relationship with a firm located in Virginia. Contrary to Preinfalk’s argument, its relationship with Virginia was not random, fortuitous or attenuated. Its physical presence in Virginia, both to execute the contract and later to carry out its contractual obligation to provide technical assistance, was a direct result

of its deliberate decision to do business with a Virginia resident. It follows that Preinfalk should reasonably have expected that its actions might subject it to suit in that state.

III

For the foregoing reasons, it is **ORDERED** that the defendant's Motion to Dismiss (Doc. No. 3) is denied.

ENTER: December 1, 2000

United States District Judge