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

UNIVERSAL FIBERS, INC.,	)	
	)	
	)	
Plaintiff,	)	Case No. 1:13CV00004
	)	
v.	)	**OPINION AND ORDER**
	)	
ECMH, LLC, d/b/a CLAYTON MILLER HOSPITALITY CARPETS,	)	By: James P. Jones United States District Judge
	)	
	)	
Defendant.	)	

Andrew M. Hanson and Holly N. Mancl, Penn, Stuart & Eskridge, P.C., Bristol, Tennessee, for Plaintiff; Warren N. Coppedge, Jr., Coppedge & Evans, P.C., Dalton, Georgia, and Howard C. McElroy, McElroy, Hodges, Caldwell & Thiessen, Abingdon, Virginia, for Defendant.

In this business dispute over carpet yarn sold by the plaintiff, a corporation located in this judicial district, the defendant buyer has moved to dismiss for lack of personal jurisdiction, or in the alternative, to transfer the case to the Northern District of Georgia, the home district of the defendant, for the convenience of the parties and in the interest of justice. Based upon the record, I find that the plaintiff has made a prima facie showing of jurisdiction and that its choice of forum should prevail.

I

Universal Fibers, Inc. ("Universal"), the plaintiff in this case, filed suit in state court against ECMH, LLC, doing business as Clayton Miller Hospitality Carpets ("Clayton Miller"), seeking judgment for the unpaid sales price of goods. Clayton Miller removed the case to this court, based upon diversity of citizenship and amount in controversy. 28 U.S.C.A. § 1332(a) (West 2006 & Supp. 2012). Clayton Miller then filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2) and, in the event the court did not dismiss the case, a Conditional Motion to Transfer pursuant to 28 U.S.C.A. § 1404(a) (West Supp. 2012). The motions have been briefed and orally argued and are ripe for decision.

The following facts appear from the present record, including the affidavits filed by the parties.

Universal, located in Washington County, Virginia, is a supplier of synthetic fibers, including carpet yarn, to various customers. Clayton Miller, located in Dalton, Georgia, is a carpet manufacturer, specializing in hotel carpets. Clayton Miller sent to Universal by electronic means (email or facsimile) three purchase orders for carpet yarn, which Universal manufactured in its plant in Washington County and shipped from there to Georgia.[1] Prior to making the yarn, Universal

[1] Clayton Miller claims that the transactions at issue were initiated by a sales call by an agent of Universal in Georgia, which Universal denies. Universal contends that at

provided to Clayton Miller a sample of the yarn, which Clayton Miller used to make a carpet sample for the approval of its customer.

After Clayton Miller manufactured and shipped the carpet to its customer, it says that it learned that the yarn provided by Universal did not conform to its earlier sample. According to Clayton Miller, this nonconformity required it to repair the carpet in order to satisfy its customer. It duly notified Universal, which denied any nonconformity and blamed Clayton Miller's manufacturing process for any problems with the carpet. The parties each engaged an expert in the field to examine the issue and then attempted to mediate the dispute, without success. Clayton Miller calculated its extra expense in repairing the carpet, and deducted that amount from the sales price for Universal's yarn and sent Universal a check for $5,496.40, the difference between its claimed expense and Universal's invoice for $192,006.39.[2] Universal refused the payment and instead filed this action for the full amount owing, plus interest and late charges.

Clayton Miller's principal place of business is in Georgia. It has no offices or other places of business in Virginia, nor does it own property or have employees located in Virginia. It has two independent sales agents paid by commission who

---

some unspecified time since 2001, personnel from Clayton Miller or a predecessor company, visited Universal's facility in Virginia.

[2] Universal maintains a post office box in Georgia where it receives payment on its invoices.

occasionally solicit business for it in Virginia but who were not involved in the present transactions. It asserts that apart from the electronic transmission of the purchase orders from Georgia to Virginia, it "did not engage in any activity directed toward Virginia in connection with the transactions at issue in this case." (McClain Aff. ¶ 14.)

The defendant ECMH, LLC, using the trade name Clayton Miller Hospitality Carpets, came into existence on April 17, 2009. Since that date, it has submitted more than 360 purchase orders to Universal, including the ones involved in this case, and more than $7.6 million has been invoiced to that entity by Universal.

Clayton Miller represents that it does not contest the amount of Universal's invoice and that its only claim, based upon section 2-313 of the Uniform Commercial Code, is that Universal breached the express warranty of sale that the goods would conform to the sample provided.[3] Universal denies that its product did not conform to the sample and contends that any fault or mistake lies with Clayton Miller's manufacturing process.

[3] Section 2-313(1)(c) provides that "[a]ny sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model."

II

The first issue before the court is the defendant's Motion to Dismiss for lack of personal jurisdiction.

"When a court's personal jurisdiction is properly challenged by motion under Federal Rule of Civil Procedure 12(b)(2), the jurisdictional question thereby raised 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). Where, as here, the district court addresses this question in a pretrial motion without an evidentiary hearing, "the plaintiff need prove only a prima facie case of personal jurisdiction," and the court should draw all reasonable inferences and resolve all factual disputes in the plaintiff's favor. *Id*. at 60.

In order to demonstrate that personal jurisdiction exists over a non-resident defendant, two conditions must be satisfied. "First, the exercise of jurisdiction must be authorized by the long-arm statute of the forum state, and, second, the exercise of personal jurisdiction must also comport with Fourteenth Amendment due process requirements." *Christian Sci. Bd. of Dirs. of the First Church of Christ, Scientist v. Nolan*, 259 F.3d 209, 215 (4th Cir. 2001). The defendant in this case was served with process pursuant to Virginia's long-arm statute, Va. Code Ann. § 8.01-328.1(A)(1) (Supp. 2012). That statute extends personal jurisdiction to the extent permissible under the Due Process Clause of the Constitution.

Consulting Eng'rs Corp. v. Geometric Ltd., 561 F.3d 273, 277 (4th Cir. 2009). The dual requirements, therefore, "collapse into a single inquiry" as to whether exercise of jurisdiction over the defendant comports with due process. *Nolan*, 259 F.3d at 215.

Due process permits jurisdiction over a defendant who has "minimum contacts" with the forum state such that "the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks and citation omitted). A defendant's contacts with, and conduct within, the state must be such that the defendant "should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

Jurisdiction over a non-resident may be based upon the exercise of either "specific" or "general" jurisdiction. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-15 (1984). Specific jurisdiction is appropriate "when a controversy is related to or 'arises out of' a defendant's contact with the forum." *Id*. at 414. While the plaintiff asserts that jurisdiction here exists under either theory, I find it unnecessary to consider other than the application of specific jurisdiction.

The Fourth Circuit adheres to a three-prong test for specific personal jurisdiction, requiring a court to consider: "(1) the extent to which the defendant

'purposefully availed' itself of the privilege of conducting activities in the State; (2) whether the plaintiff['s] claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally 'reasonable.'" *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 712 (4th Cir. 2002). This is not a bright-line test, and the court must "do more than formulaically count contacts, instead taking into account the qualitative nature of each of the defendant's connections to the forum state." *Tire Eng'g & Distribution, LLC v. Shandong Linglong Rubber Co.*, 682 F.3d 292, 301 (4th Cir. 2012). Accordingly, "a single act by a defendant can be sufficient to satisfy the necessary 'quality and nature' of such minimal contacts, although 'casual' or 'isolated' contacts are insufficient to trigger such an obligation [to litigate in the forum]". *CFA Inst. v. Inst. of Chartered Fin. Analysts of India*, 551 F.3d 285, 293 (4th Cir. 2009) (quoting *Int'l Shoe*, 326 U.S. at 317-18).

A

With regard to the first prong of the test for personal jurisdiction, the Fourth Circuit has outlined a non-exclusive list of factors that the court should consider in evaluating whether a non-resident defendant purposefully availed itself of the privileges and protections of conducting business in the forum state: (1) whether the defendant maintains offices or agents in the forum; (2) whether the defendant owns property in the forum; (3) whether the defendant reached into the forum to

solicit or initiate business; (4) whether the defendant deliberately engaged in significant or long-term business activities in the forum; (5) whether the parties contractually agreed that the law of the forum would govern; (6) whether the defendant made in-person contact with a resident of the forum in the forum state regarding the business relationship; (7) the nature, quality and extent of the parties' communications about the business being transacted; and (8) whether performance of the contractual duties was to occur within the forum. *Consulting Eng'rs*, 561 F.3d at 278. "[T]he mere fact that emails, telephone calls, and faxes were employed does not, of itself, alter the minimum contacts analysis. The analysis must focus on the nature, quality, and quantity of the contacts, as well as their relation to the forum state." *Id.* at 279 n.5.

The Fourth Circuit has undertaken the personal jurisdiction analysis in several recent cases. For example, in *Consulting Engineers*, the court determined that neither defendant in the case was subject to personal jurisdiction in Virginia, the forum state. Neither defendant conducted ongoing business in the forum, nor did they maintain offices, property, or employees there. *Id*. at 279-280. Although the parties reached non-disclosure agreements, those agreements were signed outside the forum and indicated that they would be governed by foreign law. Moreover, the parties' understanding never proceeded to a formal business relationship. *Id.* at 280. All activities giving rise to the claim, including all the

work contemplated by the parties' potential agreement and the alleged conspiracy to commit tortious acts against the plaintiff, occurred in India. *Id*. Virginia courts would even have applied the law of India to the plaintiff's tort claims, rather than that of the forum. *Id.* Although the defendants reached out to the plaintiff in the forum to initiate the parties' relationship and exchanged several emails and phone calls with the plaintiff while it was in the forum, the court concluded that these minimal contacts were not enough to overcome the foreign locus of the cause of action. *Id.*

In contrast, in *CFA Institute* the Fourth Circuit concluded that the defendant was subject to personal jurisdiction in the forum state of Virginia. 551 F.3d at 295. The court emphasized that the defendant reached out to the plaintiff, a resident of the forum, to initiate an ongoing business relationship. *Id.* The defendant's representatives twice visited the plaintiff's offices in the forum state and the defendant continued to correspond with the plaintiff while knowing that the plaintiff was located in the forum. The court found these contacts sufficient to subject the defendant to specific personal jurisdiction, despite the fact that the agreement between the parties was executed in India and the performance and breach of the agreement occurred largely outside the forum. *Id.*

I find this case to be more analogous to the facts presented in *CFA Institute* than those of *Consulting Engineers*. Applying the factors outlined above, I first

note that the defendant, Clayton Miller, does not maintain offices or employees in the forum and owns no property here. The defendant does have a relationship with several independent contractors who serve as sales agents and solicit business in Virginia, but their sales region is not focused on the state and they were not involved in the transaction at issue. In addition, the parties made no agreement regarding what law should govern any disputes between them or where those disputes should be litigated. Finally, it does not appear that any representatives of the defendant have entered the forum, at least not recently, in furtherance of this business relationship. The plaintiff alleges that representatives of the defendants once visited the plaintiff's facility in Virginia at some point since the parties' relationship began in 2001. (Johnson Aff. ¶ 9.) The defendant contends that it has existed as an independent corporate entity only since 2009. Given that the plaintiff has not alleged that representatives of this specific corporate entity visited its facility and whatever visit did occur was apparently so distant in time as to be unrelated to the transaction at issue, I do not consider it in evaluating the defendant's contacts with the forum. Factors one, two, five and six, therefore, counsel against a finding that this court has jurisdiction over the defendant.

The remaining factors, however, demonstrate that the defendant does have sufficient minimum contacts to show that it purposefully availed itself of this forum. First, Clayton Miller reached into this forum to initiate the transaction by

transmitting to Universal by electronic means three purchase orders for carpet yarn. "Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant *himself* that create a substantial connection with the forum State." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (internal quotation marks and citation omitted).

Second, the parties' course of dealing illustrates that this was not an isolated or incidental transaction. The parties have been doing business with each other since at least 2009. In that time, Clayton Miller has submitted more than 360 purchase orders to Universal, which has invoiced more than $7.6 million to the defendant. This history of purchases demonstrates that the defendant repeatedly reached out to a resident of this forum to do business. The parties have a long-established relationship that should have made it "reasonably foreseeable that the defendant could be subject to suit [here.]" *CFA Inst.*, 551 F.3d at 296.

Moreover, even if the court considers only the communications associated with this transaction, the plaintiff has shown that this was not merely a basic purchase agreement limited to the simple submission of an order form. Universal provided a sample of its product to the defendant for the approval of both Clayton Miller and its customers. Only after receiving this approval did the plaintiff begin manufacturing the yarn order. The defendant's engagement in long-term and significant purchasing activities in the forum, as well as the nature, quality and

extent of the parties' communications about those activities, recommends subjecting the defendant to the jurisdiction of this court.

Finally, it is clear that the parties intended for much of the plaintiff's contractual duties to be performed in this forum. Clayton Miller transmitted its purchase orders to Universal in Virginia and the parties must have intended for Universal to fill the order by manufacturing the yarn here. Having completed its obligation under the agreement, Universal shipped the yarn from the forum to Georgia. Virginia, therefore, has a strong performance-based nexus to the contractual agreement between these two parties.

I believe factors three, four, seven and eight demonstrate that the defendant purposefully availed itself of this forum. Similar to the defendant in *CFA Institute*, the defendant contacted the plaintiff, initiating the transaction. 551 F.3d at 295. The parties developed a long-term relationship in which the defendant repeatedly reached into the forum to transact business with the plaintiff. *Id.* Although no representatives or employees of the defendant visited the forum as was the case in *CFA Institute*, much of the performance of this agreement happened in this forum, a factor in favor of jurisdiction that was absent from *CFA Institute*. Although Universal had arranged for the defendant to deliver payment for the carpet yarn to a post office box in Georgia, this fact is of less importance given Clayton Miller's awareness that it ordered goods from a manufacturer located in Virginia. The

long-term nature of the relationship between these two parties should have put the defendant on notice that it might be subject to suit in Virginia in a dispute between these parties.

This case is also distinguishable from *Consulting Engineers* in a number of respects. The performance contemplated by the parties' relationship in that case was focused entirely outside the forum. The parties did not have a long-standing business relationship in which the defendants had sent communications and orders into the forum over a number of years, as the parties do here. The defendant argues that the plaintiff cannot simply rely on the fact that the defendant reached out to the plaintiff and the parties exchanged a few communications into and from the forum. As detailed above, however, the plaintiff has shown substantially more than that.

Several other courts have found that a defendant purposefully availed itself of the forum under similar factual circumstances. For example, in *Diamond Crystal Brands, Inc. v. Food Movers International, Inc.*, the 11th Circuit emphasized the long-term business relationship and the amount of money exchanged between the parties in concluding that an out-of-state buyer had established contacts demonstrating purposeful availment of the forum. 593 F.3d 1249, 1270-74 (11th Cir. 2010). No representatives of the defendant in *Diamond Crystal* had ever entered Georgia, the forum state, or even directed any

communications toward the plaintiff in that state. The defendant submitted purchase orders to the plaintiff's agent in California. The court found, however, that the defendant had purposefully availed itself of the forum by allowing for delivery of the purchased goods in Georgia, by sending payment for the goods to Georgia, and by requiring its own customers to pick up the resold goods in Georgia.

Even more important than these interactions, however, was the long-term course of dealing between these parties. The court emphasized that the defendant had placed fourteen orders with the Georgia plaintiff totaling more than $1.9 million, which the court characterized as "a substantial relationship in which [the defendant] deliberately associated with Georgia." *Id*. at 1270. Similarly, the parties in this case have established a long-term relationship with millions of dollars in business. Moreover, Clayton Miller may not have accepted delivery or redelivered goods in the forum, but it did communicate directly with the plaintiff in the forum by submitting purchase orders and negotiating the acceptability of the sample. As the Supreme Court has noted, "parties who 'reach out beyond one state and create continuing relationships and obligations with citizens of another state,' are subject to regulation and sanctions in the other State for the consequences of their activities." *Burger King*, 471 U.S. at 473 (quoting *Travelers Health Ass'n v. Va. ex rel. State Corp. Comm'n*, 339 U.S. 643, 647 (1950)).

The Tenth Circuit reached a similar decision in *Pro Axess, Inc. v. Orlux Distribution, Inc.*, 428 F.3d 1270 (10th Cir. 2005). The court held that an out-of-state purchaser of goods from an in-state plaintiff was subject to the jurisdiction of the court because the defendant had reached out to the plaintiff, a resident of the forum, to create a contract to purchase a product. *Id*. at 1277. In addition, although the product itself was to be made in a foreign country, many of the services necessary to perform the contract, such as selecting a manufacturer and arranging for samples to be made, were to occur in the forum. *Id.* The court also noted that the defendant exchanged various "direct communications" with the plaintiff, providing further evidence of the depth of the business relationship between the parties and the degree of the defendant's involvement with the forum. *Id*. at 1278. Finally, the fact that the contract at issue in the case involved only a single transaction did not militate against the presence of jurisdiction because performance of this contract required the parties to deal and communicate over an extended period. *Id*. All of the factors the court emphasized in *Pro Axess* are present here.

Clayton Miller reached out to Universal to initiate a transaction to buy carpet yarn. It sent three purchase orders into the forum. The parties communicated about the acceptability of a sample Universal provided to the defendant. Universal manufactured the product in this forum and shipped it from Virginia to the

defendant in Georgia. Given the nature of these contacts, as well as the long-standing substantial relationship between these parties, it should have been reasonably foreseeable to Clayton Miller that it "could be subject to suit" in this forum. *CFA Inst*., 551 F.3d at 296. I find that Universal has satisfied the purposeful availment prong of the test.

B

The second prong of the test for personal jurisdiction requires the court to consider whether the plaintiff's claims arise out of the defendant's activities directed at the state. "Where activity in the forum state is 'the genesis of [the] dispute,' this prong is easily satisfied." *Tire Eng'g*, 682 F.3d at 303 (quoting *CFA Inst*., 551 F.3d at 295). In this case, Clayton Miller contracted with Universal to buy carpet yarn, which would be produced in and shipped from Virginia. Universal now brings this suit because it has not been paid for that yarn. Clayton Miller directed its actions at the Commonwealth of Virginia by sending purchase orders into the state, and those order forms have now become '"the genesis of [the] dispute.'" *Tire Eng'g*, 682 F.3d at 303. The plaintiff, therefore, has satisfied this prong.

C

Finally, the court must determine whether its exercise of jurisdiction would be constitutionally reasonable. In conducting this inquiry, I may consider:

> (1) the burden on the defendant of litigating in the forum; (2) the interest of the forum state in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the shared interest of the states in obtaining efficient resolution of disputes; and (5) the interests of the states in furthering substantive social policies.

Consulting Eng'rs, 561 F.3d at 279.

The defendant argues that jurisdiction in Virginia will not be constitutionally reasonable because it plans to admit the validity of the plaintiff's claim but will be presenting its own counterclaim. The defendant contends that the plaintiff will not be required to present evidence related to its operation in Virginia because it will no longer carry the burden of proof, and that all of the evidence relevant to the claim that Clayton Miller plans to assert is in Georgia. Clayton Miller argues that this imbalance between the burden of proof and the location of the evidence is sufficient to demonstrate that the Western District of Virginia is a constitutionally unreasonable forum.

The defendant's assertion that the plaintiff will not be required to present any evidence during the remaining course of this litigation is premature. Clayton Miller may be planning to admit the merits of the plaintiff's claim, but it has not formally done so yet, or raised its own claim in response. It is possible, if not

likely, that Universal may desire to raise defenses supported by evidence that is located in Virginia. Although it is likely that much of the evidence in this case will be found in Georgia, the court cannot determine, solely on this basis, that no relevant evidence will be found in Virginia such that jurisdiction will be unreasonable. Moreover, to dismiss this case based on a finding that this forum imposes an unreasonable burden on the defendant, thereby forcing the plaintiff to refile its case in another district, would not remedy a constitutional problem so much as shift the burdens of litigation among the parties. Although litigating this case in Virginia will impose some burden on the defendant, this district is not so distant from the defendant's home forum that it would be prohibitively difficult to bring the evidence to this district and produce witnesses for trial.

Applying the other factors outlined above, it is clear that several weigh in favor of the constitutional reasonableness of this forum. The Commonwealth of Virginia has an important interest in facilitating the adjudication of disputes involving its residents, especially in business transactions initiated by an out-of-state defendant that ultimately result in claims arising under state law. The plaintiff also has an interest in achieving convenient and effective relief. The plaintiff's choice of forum weighs in favor of that forum's constitutional reasonableness not only because the plaintiff clearly believes its choice to be a

convenient one, but also because dismissing the plaintiff's claims and forcing it to refile elsewhere will delay the litigation and the plaintiff's access to justice.

Finally, I find that dismissing this case, forcing the litigation to go forward in another district, would not substantially advance the shared interests of the states in obtaining efficient resolution of disputes of in furthering substantial social policies. Virginia may serve these interests in this case as well as any other forum, and is therefore not constitutionally unreasonable.

The Fourth Circuit recently reached a similar conclusion in *Tire Engineering* that is instructive for the court's consideration of this case. Noting that one of the defendants was a resident of the United Arab Emirates, the court still found jurisdiction to be reasonable because the party had successfully secured counsel in the forum state and some of the claims at issue in the case were based on forum law. 682 F.3d at 305. The court also emphasized that the forum had an interest in ensuring its laws were not violated and that the defendant should have foreseen the possibility of having to defend a suit there. *Id*. Similarly, the defendant in this case has secured local counsel, and the forum state maintains a strong interest in adjudicating claims arising under its laws and involving individuals who filed suit in the forum of which they are a resident.

"[The] reasonableness analysis is designed to ensure that jurisdictional rules are not exploited in such a way as to make litigation so gravely difficult and

inconvenient that a party unfairly is at a severe disadvantage in comparison to his opponent." *Nolan*, 259 F.3d at 217 (internal quotation marks and citation omitted). Although Clayton Miller makes an argument that litigating the case in this forum might be more difficult than in other possible forums, it has not shown that it will be "so gravely difficult" as to render jurisdiction here unfair. The plaintiff has chosen to bring suit in its home forum, and Virginia, as the forum state, has important interests in allowing the litigation to move forward here. For these reasons, I find that this is a constitutionally reasonable forum.

The plaintiff has presented a prima facie case establishing all of the prongs of the personal jurisdiction inquiry. Therefore, I find that the defendant is subject to jurisdiction in the Western District of Virginia and I will deny the defendant's Motion to Dismiss.

III

As an alternative to its Motion to Dismiss, the defendant has filed a Conditional Motion to Transfer pursuant to 28 U.S.C.A. § 1404(a) (West Supp. 2012). Clayton Miller represents that it plans to fully admit the validity of the plaintiff's account and assert a counterclaim, thereby assuming the sole remaining burden of proof in this case. The defendant contends that its attenuated contacts with this district, as well as its possession of the burden of proof, demonstrate that

the interests of justice and the convenience of the parties would be best served by transferring the case to the Northern District of Georgia.

Section 1404(a) provides, "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."[4] This section "is intended to place discretion in the district court to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness." *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (internal quotation marks and citation omitted). The movant bears "a heavy burden of showing that the balance of interests weighs strongly in [its] favor in a motion to transfer." *Arabian v. Bowen*, No. 91-1720, 1992 WL 154026, at *1 (4th Cir. July 7, 1992) (unpublished) (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947)). In deciding a motion to transfer, the court should consider the plaintiff's choice of venue, convenience to the witnesses and parties, and the interest of justice. *Alpharma, Inc. v. Purdue Pharma L.P.*, 634 F. Supp. 2d 626, 632-33 (W.D. Va. 2009).

A plaintiff's choice of forum deserves substantial weight, except when '"(1) the plaintiff chooses a foreign forum, and (2) the chosen venue has little connection to the cause of action.'" *Id*. at 633 (quoting *Gen. Creation LLC v.*

[4] The parties do not dispute that this action could have been filed in the Northern District of Georgia. The defendant, headquartered in Dalton, Georgia, is a resident of that judicial district. *See* 28 U.S.C.A. § 1391(b)(1) (West Supp. 2012).

LeapFrog Enters., Inc., 192 F. Supp. 2d 503, 504-05 (W.D. Va. 2002)). When the plaintiff has chosen to file suit in his home forum, the defendant must demonstrate that the choice is overwhelmingly inconvenient in order to satisfy its burden of showing transfer to be proper. *Id.* "[A] district court is required to weigh the factors involved and '[u]nless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.'" *Collins v. Straight, Inc.*, 748 F.2d 916, 921 (4th Cir. 1983) (quoting *Gulf Oil*, 330 U.S. at 508).

In this case, the defendant argues that the Western District of Virginia has minimal connection to this cause of action such that the plaintiff's choice of venue is entitled to little deference. I disagree. The plaintiff is not only a resident of this district, but it also performed its obligations under the contract here. Moreover, on the present record it appears that the contractual agreement between these parties was formed when Clayton Miller submitted purchase orders to the plaintiff in this forum and the plaintiff accepted by filling those orders. The contractual agreement itself, therefore, was likely formed in Virginia and would be governed by that state's laws under Virginia's choice-of-law rules.[5] These contacts illustrate that

[5] The Uniform Commercial Code, as it has been adopted in Virginia, provides that in the absence of an agreement between the parties that a particular state's law should apply, "the rights and obligations of the parties are determined by the law that would be selected by application of this State's conflict of law principles." Va. Code Ann. § 8.1A-301(c) (Supp. 2012). In determining the law that should apply to a contract, Virginia courts have held that "[i]t is a long-standing rule in Virginia that the nature, validity and interpretation of contracts are governed by the law of the place where [the contract was]

there is more than a "little to connect the chosen forum with [this] cause of action." *Glamorgan Coal Corp. v. Ratners Grp. PLC*, 854 F. Supp. 436, 438 (W.D. Va. 1993). I cannot conclude that a claim based on a contract that was both formed and largely performed in Virginia does not have a substantial connection to this forum.

The defendant submits, however, that this is not a typical case because it plans to admit the validity of the plaintiff's account and bring a counterclaim of its own for damages. According to Clayton Miller, the presentation of any evidence that might be in Virginia regarding the plaintiff's claim will no longer be necessary, while all of the evidence relevant to the defendant's counterclaim is located in Georgia. Because the only issues that will remain in this case relate to the unasserted counterclaim, the defendant argues that this case no longer has a substantial nexus to the Western District of Virginia and should be transferred. This argument ignores the fact, however, that the only cause of action currently before the court is the plaintiff's claim, which, as discussed above, does have a nexus to the forum. While I accept that counsel would not mislead the court with regard to the defendant's intended admission and counterclaim, I cannot accurately predict the evidence of and defenses to a claim that has not been formally submitted. Litigation often has unexpected twists and turns. The plaintiff may

---

made." *Black v. Powers*, 628 S.E.2d 546, 554 (Va. App. 2006) (internal quotation marks and citation omitted).

have evidence in Virginia of which the defendant is unaware that is relevant to a potential counterclaim. Finding that this claim does have a nexus to this district, the plaintiff's home district, I will accord substantial weight to the plaintiff's choice of forum in weighing the additional factors.

Clayton Miller points to a number of reasons why the Northern District of Georgia will be a more convenient forum for the parties and their witnesses. The defendant emphasizes that all evidence and witnesses relevant to the counterclaim it plans to assert are located in Georgia. The defendant has submitted an affidavit to the court identifying these witnesses in support of this assertion.

Although it does seem likely that much of the evidence in this case will be found in the Northern District of Georgia, I do not agree that this factor weighs heavily in the defendant's favor. First, I cannot conclude that all of the relevant evidence and witnesses are to be found in Georgia. As detailed above, I cannot speculate about the defendant's unasserted claim and should not prejudge the plaintiff's need to call certain witnesses. The plaintiff has identified in its own affidavit a number of witnesses it is likely to call, most of whom are located in or very near this judicial district. The plaintiff's manufacturing operation is also located in this district, should it again become relevant. To transfer the case may enhance the convenience of litigation from the defendant's perspective, but it would only shift the costs of travel and securing the attendance of witnesses from

the defendant to the plaintiff. Where "the original forum is convenient for plaintiff's witness, but inconvenient for defendant's witnesses, and the reverse is true for the transferee forum[,] . . . transfer is inappropriate because the result of transfer would serve only to shift the balance of inconvenience." *Bd. of Trs., Sheet Metal Workers Nat'l Fund v. Baylor Heating & Air Conditioning, Inc.*, 702 F. Supp. 1253, 1258 (E.D. Va. 1988) (internal quotation marks, footnote, and citations omitted). Moreover, the Northern District of Georgia and the Western District of Virginia are reasonably proximate to each other. It will not be overwhelmingly difficult or expensive for the defendant and its witnesses to travel in the event of a trial.

Finally, both parties argue that litigation of this case in their respective choices of forum would be in the interests of justice. The defendant argues that transferring the case would remedy concerns about the fairness of forcing a party that bears the greater burden of proof to litigate in a foreign jurisdiction with which it has attenuated contacts. The defendant further emphasizes that its claim, as well as any of the plaintiff's potential defenses to that claim, occurred during the defendant's manufacturing process in Georgia. For that reason, the defendant asserts that Georgia has an enhanced interest in the outcome of this case, and that justice will be best-served by litigating there. Finally, Clayton Miller reasserts that litigation in Georgia, where it believes all of the evidence and witnesses will be

located, can be done more inexpensively and expeditiously than litigation in this district and, therefore, serves the court's interest in judicial economy.[6]

Although it may be true that the State of Georgia has an enhanced interest in litigating this case, that is also true for the Commonwealth of Virginia. A state has a special interest in providing a judicial forum for residents, especially when their claims arise from an out-of-state defendant's reaching into the state to initiate a transaction. Moreover, the court must recognize not only that the plaintiff chose its home forum, but also that the plaintiff filed suit in this case first. It would not be in the interest of justice to allow a defendant, even one with a legitimate counterclaim, to override the plaintiff's choice of forum when the plaintiff has sought relief in a constitutionally permissible venue for claims the defendant itself has repeatedly admitted are valid. Finally, although the Northern District of Georgia may be able to provide an expeditious forum for the parties, so may the Western District of Virginia.

Even if it becomes true that much of the evidence and witnesses relevant to this case will be located in the Northern District of Georgia, I do not believe that factors relating to the interests of justice or the convenience of the parties

[6] Clayton Miller proffers that it has investigated the status of the docket in the Northern District of Georgia and has found it to be "current," meaning that both parties could receive an expeditious disposition of their claims in that district. (Def.'s Br. 7, ECF No. 13.)

overcome the deference accorded to the plaintiff's choice of its home forum. I will, therefore, deny the defendant's Conditional Motion to Transfer.

IV

For the reasons outlined above, it is **ORDERED** that the defendant's Motion to Dismiss (ECF No. 10) and Conditional Motion to Transfer (ECF No. 12) are DENIED.

ENTER: March 28, 2013

/s/ James P. Jones
United States District Judge