

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

<b>CAMBATA AVIATION, INC.,</b>	)	
	)	<b>Civil Action No. 5:01CV00062</b>
<b>Plaintiff,</b>	)	
<b>v.</b>	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
<b>KANSAS CITY AVIATION CENTER, INC.,</b>	)	<b>By: Samuel G. Wilson</b>
	)	<b>Chief United States District Judge</b>
	)	
<b>Defendant.</b>	)	

This is a contract action between Plaintiff Cambata Aviation, Inc. (“Cambata”) and Defendant Kansas City Aviation Center, Inc. (“KCAC”) involving the sale of two aircraft. The court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332. The case is before the court on KCAC’s motion to dismiss for lack of personal jurisdiction and insufficiency of service of process, or, alternatively, to transfer venue to the United States District Court for the District of Kansas. The court finds that it has personal jurisdiction over KCAC and that no other forum would be more convenient; therefore, the court denies KCAC’s motion to dismiss and motion to transfer.

**I.**

Cambata, a Virginia corporation, located in Millboro, Virginia, owns two Beechjet 400A aircraft. Cambata hired Stanford & Associates, a company located in Fredericksburg, Virginia, to assist it in selling these two aircraft and listed the aircraft for sale on an on-line listing service for used aircraft. KCAC is a Kansas corporation engaged in the business of purchasing and selling aircraft. KCAC has no physical presence in Virginia and its only contacts with Virginia arise out of the following dealings with Cambata.

In the Spring of 2001, an aircraft researcher for KCAC contacted Stanford & Associates about purchasing Cambata's aircraft and was initially referred to Ted Glassman, an employee of Stanford & Associates in Connecticut. Later, Ron Griffith, Director of Sales for KCAC, negotiated with Robert Stanford, the President of Stanford & Associates, with respect to the aircrafts' purchase price, a purchase money deposit, inspection arrangements and other matters regarding the sale of the aircraft. These negotiations were conducted by telephone between Mr. Griffith in Kansas and Mr. Stanford in Fredericksburg, Virginia. Several of these phone calls were initiated by Mr. Griffith.

On June 8, 2001, KCAC faxed to Stanford & Associates in Fredericksburg, Virginia an Aircraft Purchase Agreement written and signed by KCAC. This agreement was passed along to Cambata in Millboro, Virginia, but was not signed by Cambata. On June 12, 2001, KCAC faxed to Stanford & Associates in Fredericksburg, Virginia another signed agreement providing for the purchase of the aircraft. This agreement was sent to Cambata in Millboro, Virginia and was signed by Cambata in Millboro, Virginia.

Under the terms of the agreement, KCAC was to inspect the aircraft in Stanford, Florida and again in Dallas, Texas. An escrow account was set up at Insurance Aircraft Title Service in Oklahoma. The parties agreed to a purchase price of \$8,600,000. The agreement contained no forum selection clause and no choice of law clause.

On July 19, 2001, Cambata initiated this suit, claiming that KCAC refused to complete the transaction. In its complaint, Cambata asks for specific performance of the contract and damages for breach of contract. On August 14, 2001, KCAC moved to dismiss the action under Federal Rules of Civil Procedure 12(b)(2) and (5) for lack of personal jurisdiction and insufficiency of

service of process. In the alternative, KCAC moved to transfer the action to the United States District Court for the District of Kansas under 28 U.S.C. § 1404(a).

## II.

Under Federal Rule of Civil Procedure 4(k)(1)(A), a federal court may exercise jurisdiction over a defendant “who could be subjected to the jurisdiction of a court of general jurisdiction in the state in which the district court is located.” Under Virginia’s long arm statute, a Virginia court may exercise personal jurisdiction “over a person . . . as to a cause of action arising from the person’s . . . [t]ransacting any business” in Virginia. Va. Code Ann. § 8.01-328.1(A). The court finds it helpful to look at the following factors when assessing whether a defendant has transacted business in Virginia: “(i) where any contracting occurred, and where the negotiations took place, (ii) who initiated the contact, (iii) the extent of the communications, both telephonic and written, between the parties, and (iv) where the obligations of the parties under the contract were to be performed.” See Affinity Memory & Micro, Inc. v. K & O Enterprises, Inc., 20 F. Supp. 2d 948, 952 (E.D. Va. 1998).

Courts have noted that the purpose of the Virginia long arm statute is to extend jurisdiction to the extent permissible under the Due Process Clause and that a single act amounting to “transacting business” and giving rise to a cause of action may be sufficient to confer jurisdiction. See English & Smith v. Metzger, 901 F.2d 36, 38 (4th Cir. 1990); Danville Plywood Corp. v. Plain & Fancy Kitchens, Inc., 218 Va. 533, 238 S.E.2d 800, 802 (1977). Therefore, in determining the reach of Virginia’s long arm statute, the statutory and constitutional inquires coalesce into the question of whether the defendant had sufficient minimum contacts with Virginia to satisfy due process requirements. See Diamond Healthcare of Ohio, Inc. v. Humility of

Mary Health Partners, 229 F.3d 448, 450 (4th Cir. 2000).

Due process requires that the defendant have enough minimum contacts with the forum state such that requiring it to defend its interests there would not “offend traditional notions of fair play and substantial justice.” International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

When a defendant’s contacts with the forum state are not continuous and systematic, such that the court could exercise *general* jurisdiction, “a court may still exercise *specific* jurisdiction when the contacts relate to the cause of action and create a substantial connection with the forum state.”

Diamond Healthcare, 229 F.3d at 450. Here, the only potential basis for personal jurisdiction is the contractual relationship between KCAC and Cambata; therefore, the court must determine whether, in connection with this contract, KCAC “had a substantial connection with Virginia such that it ‘engaged in some activity purposefully directed toward [Virginia]’” Id. (citation omitted).

KCAC’s actions must have been directed at Virginia “in more than a random, fortuitous, or attenuated way.” Id.

Here, the court finds that KCAC purposefully directed its activity toward Virginia and that KCAC had such minimum contacts with the state of Virginia that it should have reasonably anticipated being forced to defend a case brought in court in Virginia. KCAC first initiated the contact between it and Stanford & Associates in Fredericksburg, Virginia. Although KCAC never physically entered Virginia to conduct contract negotiations, KCAC made several telephone calls to Stanford & Associates in Virginia and conducted the negotiations over the telephone. Also, KCAC faxed two signed agreements to Stanford & Associates in Virginia, which were then passed along to Cambata in Millboro, Virginia. One of these agreements was signed by Cambata in Millboro, Virginia.

The contract contemplated performance by the parties in several states including Virginia. The aircraft were to be inspected in Texas and Florida. KCAC was to deposit money in an escrow account in Oklahoma. Upon completion of the transaction, the money in the escrow account would have been transferred to Stanford & Associates and Cambata in Virginia.

KCAC drafted the contract between it and Cambata. KCAC could have included a forum selection clause if it wanted to limit the fora for potential litigation arising out of the contract. However, KCAC did not include a forum selection clause or a choice of law clause in the contract.

The contract between KCAC and Cambata was a substantial commercial transaction. The purchase price of the two aircraft was over eight million dollars. The size of the contract is relevant in determining whether KCAC's actions directed toward Virginia were sufficient to establish personal jurisdiction. See In-Flight Devices Corp. v. Van Dusen Air, Inc., 466 F.2d 220, 227 (6th Cir. 1972); Gateway Press, Inc. v. Leejay, Inc., 993 F. Supp. 578, 581 (W.D. Ky. 1997); Western Union Telegraph Co. v. TSI, 545 F. Supp. 329, 334 n.7 (D.N.J. 1982). The fact that the contract between KCAC and Cambata involved millions of dollars demonstrates that KCAC had a substantial connection with the state of Virginia and that requiring KCAC to defend this action in Virginia would not offend traditional notions of fair play and substantial justice.

In short, KCAC initiated contact with Virginia businesses, the contracting occurred in Virginia, the contract involved a multi-million dollar transaction, most of the negotiations took place by telephone between KCAC in Kansas and Stanford & Associates in Virginia, and performance of the contract was to take place in several states, including Virginia. The court, therefore, finds that KCAC had a substantial connection with Virginia and that KCAC engaged in

activity purposefully directed toward Virginia. Its actions were directed at Virginia in more than a random fortuitous, or attenuated way. Given the extent of KCAC's purposeful contacts with these two Virginia businesses and the fact that their contract, signed in Virginia, did not contain a forum selection clause or a choice of law clause, KCAC could "reasonably anticipate being haled into court" in Virginia. English & Smith, 901 F.2d at 40.

KCAC argues that this case is analogous to Diamond Healthcare of Ohio, Inc. v. Humility of Mary Health Partners, 229 F.3d 448 (4th Cir. 2000), in which the Fourth Circuit upheld the Eastern District of Virginia's dismissal of a contract action brought by a Virginia corporation against an Ohio corporation. In Diamond Healthcare, the Fourth Circuit held that the mere fact that final execution of a contract took place in Virginia is not sufficient for a Virginia court to confer personal jurisdiction over a nonresident of Virginia. This court recognizes that the place of execution of the contract is not dispositive of the personal jurisdiction issue; however, it is one factor the court should consider.

After viewing the facts of Diamond Healthcare as a whole, the court finds that it is distinguishable from the present case. Most notably, in Diamond Healthcare, the defendant, an Ohio corporation, did not initiate contact with the plaintiff, a Virginia corporation. See id. at 451. In its opinion, the Fourth Circuit stressed the fact that the plaintiff initiated the contractual relationship. See id. Here, in contrast, it was KCAC, the out-of-state defendant, who first initiated contact with businesses in Virginia. Since KCAC reached out beyond Kansas and initiated a contractual relationship with Cambata, KCAC could reasonably anticipate being haled into court in Virginia. Also, in Diamond Healthcare, the parties conducted contract negotiations in person in Ohio and the performance of the contract was to take place almost exclusively in

Ohio. See id. In this case, however, there were no in person negotiations; the negotiations were conducted by phone between Kansas and Virginia. Also, performance of this contract was not limited to one state; performance was to take place in many different states, including Virginia. Lastly, in Diamond Healthcare, the contract stated that the agreement between the plaintiff and defendant would be governed by Ohio law. See id. at 452. The Fourth Circuit found that this choice of law clause was inconsistent with the contention that the defendant Ohio corporation could “reasonably expect being haled into court” in Virginia. Id. Here, however, KCAC did not include a forum selection clause or a choice of law clause in its contract with Camabta.

In finding that KCAC is subject to personal jurisdiction in Virginia, the court is not relying solely on the fact that final execution of the contract took place in Virginia. However, considering that KCAC initiated contact with Virginia businesses, that the contracting occurred in Virginia, that most of the negotiations took place by telephone between Kansas and Virginia, and that performance of the contract was to take place in several states, including Virginia, the court finds that KCAC had sufficient contacts with Virginia such that maintenance of this action in Virginia does not “offend traditional notions of fair play and substantial justice.” International Shoe, 326 U.S. at 316. Accordingly, KCAC’s motion to dismiss for lack of personal jurisdiction and insufficiency of service of process is denied.

### **III.**

KCAC moves, in the alternative, to transfer venue to Kansas under 28 U.S.C. § 1404(a). In deciding a motion to transfer venue, the court considers the “plaintiff’s choice of venue, witness convenience and access, party convenience, and the interest of justice.” Affinity Memory, 20 F. Supp. 2d at 954. However, the “plaintiff’s choice of forum should rarely be disturbed

unless the balance is strongly in favor of [the] defendant.” Doe v. Connors, 796 F. Supp. 214, 221 (W.D. Va. 1992).

Here, the balance of conveniences does not favor KCAC. Although KCAC employees and witnesses might have to travel to Virginia, transferring the case to Kansas would create the same burden for employees and witnesses of Cambata and Stanford & Associates. KCAC has not shown the court any reason why the interest of justice would weigh in favor of venue in Kansas over Virginia. Therefore, the court will allow Cambata’s choice of venue to stand.

#### IV.

For the reasons stated above, the court finds that it has personal jurisdiction over KCAC and that the convenience of the parties and witnesses and the interests of justice do not weigh in favor of a transfer of venue. Accordingly, the court denies KCAC’s motion to dismiss for lack of personal jurisdiction and insufficiency of service of process and denies KCAC’s alternative motion for transfer of venue. An appropriate order will be entered this day.

**ENTER:** This \_\_\_\_ day of October, 2001.

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CHIEF UNITED STATES DISTRICT JUDGE

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FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

CAMBATA AVIATION, INC.,	)	
	)	<b>Civil Action No. 5:01CV00062</b>
<b>Plaintiff,</b>	)	
v.	)	<b><u>ORDER</u></b>
	)	
KANSAS CITY AVIATION	)	<b>By: Samuel G. Wilson</b>
CENTER, INC.,	)	<b>Chief United States District Judge</b>
	)	
<b>Defendant.</b>	)	

In accordance with the court's Memorandum Opinion entered this day, it is **ORDERED** and **ADJUDGED** that Defendant Kansas City Aviation Center, Inc.'s motion to dismiss for lack of personal jurisdiction and insufficiency of service of process and motion for transfer of venue are **DENIED**.

**ENTER:** This \_\_\_\_ day of October, 2001.

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CHIEF UNITED STATES DISTRICT JUDGE