UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

HALL & WILSON CONSTRUCTION, INC.,
t/a Hall Construction Incorporated,
a Virginia Corporation,

Plaintiff,

v. CIVIL ACTION NO: 4:09cv20

SIDNEY SOCKWELL,
and
MARCELLA SOCKWELL,

Defendants.

MEMORANDUM OPINION AND DISMISSAL ORDER

This matter comes before the court on defendants' motion to dismiss the complaint for lack of personal jurisdiction or improper venue, or, in the alternative, motion to transfer venue to the United States District Court for the Eastern District of North Carolina. Defendants' motions have been fully briefed and argued, and are now ripe for decision.

For the reasons set forth below, the motion to dismiss for lack of personal jurisdiction is **DENIED**, and the motion to dismiss for improper venue under 28 U.S.C. § 1406(a) is **GRANTED**. As a result, the alternative motion to transfer venue under the discretionary analysis of 28 U.S.C. § 1404(a) is **MOOT**.

I. Background

A. Procedural History

On January 12, 2009, plaintiff Hall & Wilson Construction, Inc. ("Hall & Wilson") filed suit in the Circuit Court for York County, Virginia, against Dr. Sidney Sockwell and Dr. Marcella Sockwell ("the Sockwells"), dentists who are husband and wife. On February 20, 2009, defendants removed the case to this federal court on the basis of diversity: Hall & Wilson is incorporated in Virginia, with its principal place of business in Grafton, Virginia, and the Sockwells are residents of North Carolina. (Compl. ¶¶ 1-2.)

On February 27, 2009, defendants filed a memorandum in support ("support") of its "Motion to Dismiss for Lack of Personal Jurisdiction, Motion to Dismiss for Improper Venue and Motion to Transfer Venue."[1] Plaintiff filed a memorandum in opposition ("opposition") on March 13, 2009, to which defendants replied on March 23, 2009. Following defendants' request for oral argument on this motion, the court held a hearing on April 14, 2009, and gave both parties one week to submit additional briefs and authorities. On April 21, 2009, defendants filed a supplemental memorandum supporting their motion, and plaintiff submitted a rebuttal brief that day.

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[1] In the state court, defendants filed a "Plea of Lack of Personal Jurisdiction by Special Appearance," which was docketed and refiled in this court as a motion to dismiss.

B. Factual History

This dispute arises out of construction services at the Sockwells' dental office building in Oxford, North Carolina. After a fire in the Sockwells' dental office building, their insurance carrier – Selective Insurance Company of the Southeast, located in Raleigh, North Carolina – retained Hall & Wilson for fire-restoration work. (Opp. 2.) A few days after the fire, Mike Hall, the owner of Hall & Wilson, visited North Carolina to personally survey the damage at the dental office building. Id. The Sockwells formed a written contract with Hall & Wilson for the repairs ("the Fire Restoration Contract"), which were paid for by their insurer. Id. at 2, 5. Although neither party can locate a copy of the Fire Restoration Contract (Supp. 2; Opp. 2), Hall & Wilson asserts that it has been paid in full for the work done under this contract. (Opp. 5.)

After the completion of repairs under the Fire Restoration Contract, the Sockwells made a second contract (the "Additions Contract") with Hall & Wilson for an addition to their dental office building, to be completed for the fixed price of $8,822.15. (Compl. ¶ 3; Ex. 1.) Both parties signed the contract, which is dated December 27, 2006: Hall & Wilson signed in Virginia, and then the Sockwells signed in North Carolina. (Opp. 3; Compl. Ex. 1.) The Additions Contract states that "[a]ny modifications to this contract which changes the cost, materials, work to be performed,

or the estimated completion date must be made in writing and signed by all parties." (Compl. Ex. 1.) The Sockwells paid a $5,000 deposit on this contract, and received a credit from Hall & Wilson for $12,613 of lumber costs. (Opp. Ex. A-4 at 2.) From its Virginia office location, Hall & Wilson designed plans, coordinated various subcontractors, ordered materials, and managed the Additions Contract, such as by sending invoices and bills. (Opp. 13, 4, 5.)

The Sockwells, however, were dissatisfied with the work done on the Additions Contract. For example, on February 19, 2007, April 11, 2007, and April 16, 2007, Sid Sockwell sent emails to David Osborne – the Hall & Wilson employee overseeing the Additions Contract – that listed various deficiencies in the work. (Opp. Ex. B-4 at 1-7.) An email sent from David Osborne on April 12, 2007, indicates that Hall & Wilson would address the Sockwells' concerns, and an email sent from Sid Sockwell on April 26, 2007, indicates that Hall & Wilson made the requested improvements. Id. at 4, 9. Neither party contends that any signed, written modifications were made to the contract to provide for the further work performed by Hall & Wilson to address the Sockwells' concerns.

Hall & Wilson attached three invoices to its memorandum in opposition to this motion. The first invoice, dated February 21, 2007, seeks $342,638.71 for "insurance repairs," and indicates payment of $260,000. (Opp. Ex. A-4 at 1.) A handwritten note

shows that Hall & Wilson received an additional $11,000 from the Sockwell's insurer, leaving a total debt of $71,628.71. Id. An invoice dated February 22, 2007, shows that Hall & Wilson owed the Sockwells a credit of $8,790.85, based on the Sockwells' $5,000 deposit and their $12,000 purchase of supplies on the $8,822.15 fixed price of the Additions Contract. Id. at 2. The final invoice, dated May 23, 2007, is for $21,951.01, and describes the charges as "Homeowner Extras." Id. at 3.

Through this lawsuit, Hall & Wilson seeks $89,346.67 in damages for "extra labor, equipment and materials" needed for construction on the dental office building. (Compl. ¶ 5.) The Sockwells maintain that they paid for all work in full, and counter that Hall & Wilson still owes them money for the supplies the Sockwells purchased for the project, which cost more than the fixed price of the Additions Contract. (Supp. 3.)

II. Personal Jurisdiction

Defendants seek to dismiss this action for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). When deciding a pre-trial personal jurisdiction motion, "the plaintiff need only make a prima facie showing of personal jurisdiction," and "the court must take all disputed facts and reasonable inferences in favor of the plaintiff." Carefirst of Md., Inc. v. Carefirst

Pregnancy Ctrs., Inc., 334 F.3d 390, 396 (4th Cir. 2003).[2]

For a district court to exercise personal jurisdiction over a nonresident defendant, two conditions must be satisfied: "(1) the exercise of jurisdiction must be authorized under the state's long-arm statute; and (2) the exercise of jurisdiction must comport with the due process requirements of the Fourteenth Amendment." Id. The court will address each in turn.

A. The Long-Arm Statute Authorizes Jurisdiction

In relevant part, Virginia's long-arm statute confers "personal jurisdiction over a person . . . as to a cause of action arising from the person's . . . [t]ransacting any business in this Commonwealth[.]" Va. Code Ann. § 8.01-328.1(A)(1) (emphasis added). A "single act of business" giving rise to a cause of action can authorize jurisdiction, if it is "significant" and shows "purposeful activity" in Virginia. Prod. Group Int'l v. Goldman, 337 F. Supp.2d 788, 793 (E.D. Va. 2004); see also John G. Kolbe, Inc. v. Chromodern Chair Co., Inc., 211 Va. 736, 740 (1971).

1. Formation of Contract in Virginia

Forming a contract in Virginia is a sufficient act of business that satisfies the long-arm statute. See Prod. Group, 337 F. Supp. 2d at 794. While a contract is generally made where the final act

[2] The burden is ultimately on the plaintiff to prove the grounds for personal jurisdiction by a preponderance of the evidence. See Carefirst, 334 F.3d at 396.

is done to make the contract binding,[3] Virginia law gives effect to the parties' intentions about contract formation.[4] See Union Cent. Life Ins. Co. v. Pollard, 94 Va. 146 (1896). Although the Sockwells made the Additions Contract binding when they signed the contract in North Carolina, the contract was made in Virginia because of the parties' express intent to form the contract here. Specifically, the Additions Contract states that "[p]arties agree that the contract has been formed in Virginia." (Compl. Ex. 1.) Based on this express statement of the parties' intentions, the court finds that the Additions Contract was formed in Virginia. This formation suffices to authorize jurisdiction in Virginia, as it qualifies as a business transaction giving rise to a cause of action.[5]

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[3] See Hogue-Kellog Co. v. G.L. Webster Canning Co., 22 F.2d 384, 385 (4th Cir. 1927); 2 Williston on Contracts § 6:62 (4th ed.) (noting the "general principle" that "the place of the contract is the place where the last act necessary to the completion of the contract was done").

[4] A federal court sitting in diversity applies the forum state's choice-of-law rules to determine the substantive law governing the claims. Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496-97 (1941). In Virginia, a contract is governed by the law of the place where the contract is made. Woodson v. Celina Mutual Ins. Co., 211 Va. 423, 426 (1970). Thus, as a threshold matter, the court must apply the forum state's law to determine where this contract was made. The court notes, however, that its analysis of contract formation would be the same under North Carolina law, which also gives effect to the reasonable, ascertainable intent of the parties. Welsh v. Northern Telecom, 354 S.E. 2d 746, 751 (N.C. App. 1987).

[5] Regardless of whether the Additions Contract governs this dispute, see infra Section III.A., the phrase "arising from" in

2. Partial Contract Performance in Virginia

Even partial contract performance is a sufficient act of business under Virginia's long-arm statute. See Peninsula Cruise, Inc. v. New River Yacht Sales, Inc., 257 Va. 315, 322 (1999). According to the Sockwells, all performance on the Additions Contract took place at their dental office building in North Carolina, with no performance taking place in Virginia. (Supp. 7, 9.) The Sockwells note that all site meetings and construction services took place in North Carolina. Id. at 9. For the Additions Contract, the Sockwells maintain that they made one payment to Hall & Wilson on the Additions Contract, through a $5,000 check written in their North Carolina living room, and that they satisfied the remainder of the contract price by purchasing labor and materials for the Additions Contract. Id. at 11.

In contrast, Hall & Wilson argues that there was at least partial performance in Virginia. For example, Hall & Wilson bought thousands of dollars of building materials in Virginia, as well as ordering materials from other states. (Opp. 4.) See I.T. Sales Inc. v. Dry, 222 Va. 6, 7-9 (1981) (personal jurisdiction from

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Virginia's long-arm statute "should be broadly construed to mean 'related to[.]'" Prod. Group, 337 F. Supp. 2d at 794. Virginia's long-arm statute extends personal jurisdiction to the limits of due process, and due-process principles allow the exercise of personal jurisdiction "not only by the acts giving rise to the claim, but also by acts 'related to' the claim itself." Id. Because the Additions Contract is at least "related to" this cause of action, it is a proper basis for personal jurisdiction.

formation of employment contract in Virginia and purchase orders in Virginia); Kolbe, 211 Va. at 741 (personal jurisdiction from ordering out-of-state materials for delivery of goods). From its Virginia office, Hall & Wilson designed plans and coordinated the efforts of subcontractors – including some from Virginia – who worked on the construction. (Opp. 13, 4.) Hall & Wilson also managed the Additions Contract from Virginia, such as by sending invoices and bills for further payment. Id. at 5; see Elefteriou v. Tanker Archontissa, 443 F.2d 185, 188 (4th Cir. 1971) (personal jurisdiction where defendant failed to make payments to Virginia party, although services were supplied outside of Virginia); Glumania Bank v. D.C. Diamond Corp., 259 Va. 312, 317-18 (2000) (personal jurisdiction from duty to send payments to Virginia plaintiff).

On plaintiff's facts, which the court must accept at this stage of the proceedings, the court finds partial contract performance in Virginia because of the purchases orders made here, provision of some services from Hall & Wilson's Virginia office, and the Sockwells' lack of payment in Virginia. Thus, partial contract performance provides a second basis for jurisdiction under Virginia's long-arm statute.

3. Communications with Virginia Party

Merely exchanging phone calls, faxes, and written communications with a resident party will not confer personal

jurisdiction, unless these communications become part of the contract sued upon. See Prod. Group, 337 F. Supp. 2d at 796. But when a contract has been formed or performed in Virginia, these communications can bolster a finding of personal jurisdiction. See Peninsula Cruise, 257 Va. at 322 (personal jurisdiction from telephone communications with Virginia plaintiff and partial contract performance in Virginia); Nan Ya PlasticCorp. v. DeSantis, 237 Va. 255, 260-61 (1989) (personal jurisdiction from contract negotiations by phone, written communications, and contract formation in Virginia).

According to Hall & Wilson, the Sockwells exchanged emails and communicated with its Virginia office during the construction process. (Opp. 4.) The court has already found personal jurisdiction authorized by Virginia's long-arm statute based on contract formation and partial performance, and these communications lend further support to that conclusion.

B. Personal Jurisdiction Does Not Offend Due Process

Virginia's long-arm statute extends personal jurisdiction to the limits of due process. See Mitrano v. Hawes, 377 F.3d 402, 406 (4th Cir. 2004); Danville Plywood Corp. v. Plain & Fancy Kitchens, Inc., 218 Va. 533, 534 (1977) (per curiam) ("The purpose of our 'long-arm statute' is to assert jurisdiction, to the extent permissible under the Due Process Clause of the Constitution of the United States, over nonresidents who engage in some purposeful

activity in Virginia.").

Exercising jurisdiction over a nonresident defendant comports with due process if the defendant has sufficient "minimum contacts" with the forum state that requiring the defense of interests in that state "does not offend traditional notions of fair play and substantial justice." Carefirst, 334 F.3d at 397 (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). Nonresident defendants can be subject to either "specific" or "general" personal jurisdiction in the forum state, depending on the nature of their contacts. See Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-15 (1984). To satisfy due process, the court must have either specific or general personal jurisdiction over defendants. For the court to have general personal jurisdiction, a defendant must have significant contacts with the forum state that are "continuous and systematic." Carefirst, 334 F.3d at 397 (quoting ALS Scan, Inc. v. Digital Serv. Consultants, Inc., 293 F.3d 707, 712 (4th Cir. 2002)). Neither party has suggested that this court has general personal jurisdiction over defendants,[6] and so the court analyzes only whether it has specific personal jurisdiction over them.

To determine whether specific jurisdiction exists, the court must find: "(1) the extent to which the defendant has purposefully

[6] Hall & Wilson does not dispute that the Sockwells do not live in Virginia, do not regularly transact business in Virginia, and otherwise lack continuous, systematic contacts with Virginia.

availed itself of the privilege of conducting activities in the state; (2) whether the plaintiffs' claims arise out of those activities directed at the state; and (3) whether the exercise of personal jurisdiction would be constitutionally 'reasonable.'" Carefirst, 334 F.3d at 397 (quoting ALS Scan, 293 F.3d at 711-12). In other words, the court must decide whether a defendant could anticipate being sued in the forum state, especially by considering whether the defendant's actions were "directed at the forum state in more than a random, fortuitous, or attenuated way." Mitrano, 377 F.3d at 407 (internal quotation marks and citation omitted).

Further, any contract used to establish personal jurisdiction must have a "substantial connection" with the forum state. McGee v. Int'l Life Ins. Co., 355 U.S. 220, 223 (1957). Despite the lack of a bright-line rule, "it is clear that merely entering into a contract with a resident party will not subject a nonresident defendant to personal jurisdiction in the resident's forum unless some substantial part of contractual formation or performance occurs in Virginia." Prod. Group, 337 F. Supp. 2d at 793.

While it is a close question, the court finds sufficient "minimum contacts" to satisfy "traditional notions of fair play and substantial justice," permitting the court to exercise specific jurisdiction. Carefirst, 334 F.3d at 397 (quoting Int'l Shoe, 326 U.S. at 316). The Sockwells do not live in Virginia or conduct business in Virginia – aside from their interactions with Hall &

Wilson, with whom defendants initially contracted through their North Carolina insurance company, and from whom they received services without leaving North Carolina. Nonetheless, the Sockwells' actions were "directed at the forum state in more than a random, fortuitous, or attenuated way." Mitrano, 377 F.3d at 407 (internal quotation marks and citation omitted).

First, defendants formed the Additions Contract in Virginia, see supra Section II.A.1., giving this contract a "substantial connection" to this forum. McGee, 355 U.S. at 223; see also Prod. Group, 337 F. Supp. 2d at 793 (personal jurisdiction appropriate if either substantial contract formation or performance took place in Virginia). Further, partial performance took place in Virginia, and defendants sent various communications to this forum. For example, plaintiff ordered materials in Virginia, plaintiff provided some services from Virginia, defendants failed to make contractual payments in Virginia, and defendants exchanged emails and communicated with plaintiff in Virginia. In similar circumstances, courts have found due process satisfied, permitting the exercise of personal jurisdiction. See Glumania, 259 Va. at 317-18 (obligation to send payments to Virginia plaintiff); Peninsula Cruise, 257 Va. at 322 (telephone communications with Virginia plaintiff and partial contract performance in Virginia); Nan Ya, 237 Va. at 260-61 (contract negotiations by phone, written communications, and contract formation in Virginia); I.T. Sales,

222 Va. at 7-9 (purchase orders and contract formation in Virginia); Kolbe, 211 Va. at 741 (orders of out-of-state materials for delivery of goods). Likewise, this court finds from these combined circumstances that asserting personal jurisdiction over defendants does not offend due process.

III. Venue

Defendants also seek to dismiss this case for improper venue, or in the alternative, to transfer venue to the Eastern District of North Carolina. The court may dismiss or transfer the case under 28 U.S.C. § 1406(a), if this court is an inappropriate venue.[7]

A. The Forum-Selection Clause Does Not Apply to Create Proper Venue Under 28 U.S.C. § 1406(a)

To evaluate the propriety of venue under 28 U.S.C. § 1406(a), the court first considers the forum-selection clause in the Additions Contract,[8] which provides for venue in the Eastern

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[7] The statute provides:

> The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

28 U.S.C. § 1404(a).

[8] Hall & Wilson insists that the Sockwells' insurer has fully paid for the Fire-Restoration Contract and that it does not seek any further recovery on this contract. (Opp. 5.) Based on plaintiff's allegations, the Fire-Restoration Contract is irrelevant to this lawsuit, and the court does not consider any forum-selection clause that may have been in the Fire Restoration Contract, of which neither party can locate a copy. (See Supp. 2; Opp. 2.)

District of Virginia.[9] When parties have contractually agreed on a forum, a court must "enforce the forum clause specifically unless [the opposing party can] clearly show that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching." M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 15 (1972); see also Vulcan Chemical Technologies, Inc. v. Barker, 297 F.3d 332, 339 (4th Cir. 2002).

After reviewing all of the documents submitted by plaintiff Hall & Wilson, and construing all facts and drawing all inferences in its favor, the court finds that the Additions Contract does not govern this dispute, and thus its forum-selection clause cannot create proper venue. Specifically, an invoice dated February 22, 2007, shows that the Additions Contract was paid in full. (Opp. Ex. A-4 at 2.) This is the only invoice of the three[10] submitted

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[9] The forum-selection clause of the Additions Contract reads:

> By signing of this contract you assign venue to the state and federal courts presiding over the York County, Virginia location of our home office located at 501 Old York Hampton Highway, Grafton, Virginia 23692.

(Compl. Ex. 1.)

[10] The first invoice, dated February 21, 2007, is for "insurance repairs" costing $342,638.71. (Opp. Ex. A-4 at 1.) Both the Sockwells and their insurer received a copy of this invoice. Id. Neither party has suggested that these "insurance repairs" described relate to the Additions Contract, as opposed to relating to the fire-damage repairs paid for by the Sockwells' insurer. The third invoice, dated May 23, 2007, also does not arise under the Additions Contract. See infra p. 16.

that indicates an $8,822.15 contract, which was the fixed-price of the Additions Contract. Id. at 1-3. According to the February 22, 2007, invoice, the Sockwells paid in full the $8,822.15 owed on the Additions Contract; in fact, the invoice itself shows a credit and a resulting overpayment of $8,790.85. Id. at 2. The overpayment resulted from the $12,613 that the Sockwells paid for lumber and their $5,000 deposit on the Additions Contract. Id. While the Sockwells also received an invoice dated May 23, 2007, charging $21,951.01 for "Homeowner Extras," these expenses could not have arisen under the Additions Contract. Id. at 3. An explicit provision in the Additions Contracts requires that "[a]ny modifications to this contract which changes the cost, materials, work to be performed, or the estimated completion date must be made in writing and signed by all parties." (Compl. Ex. 1.) Neither party contends that any written, signed modifications existed to the Additions Contract. Thus, any recovery sought for these "Homeowner Extras," or for other additional labor or materials, cannot arise under the written terms of the Additions Contract.[11]

[11] Rather, any claim for this additional labor and materials would arise under the theory of quantum meruit / unjust enrichment, under what is labeled as Count III of the complaint. The court notes that there are only two counts in the complaint, although the claim for quantum meruit recovery is labeled as Count III. Further, the court questions whether plaintiff has met the $75,000 jurisdictional amount required to maintain a suit in federal court under diversity jurisdiction. See 28 U.S.C. § 1332(a). Generally, "the sum claimed by the plaintiff controls if the claim is apparently made in good faith," and "[i]t must appear to a legal certainty that the claim is really for less than the jurisdictional

As plaintiff's own evidence shows that the Additions Contract does not govern this dispute, its forum-selection clause does not apply to create venue in the Eastern District of Virginia. Having found the forum-selection clause inapplicable, the court proceeds to analyze the propriety of venue under 28 U.S.C. § 1406(a).

B. Venue is Improper Under 28 U.S.C. § 1406(a)

"The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). In a diversity case, venue is proper in:

> (1) a judicial district where any defendant resides, if all defendants reside in the same state,
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> (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or
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> (3) a judicial district in which any defendant is subject

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amount to justify dismissal." St. Paul Mercury Indem. Co. v. Redcap Co., 303 U.S. 283, 288-89 (1938). At this early stage of the proceedings, the court cannot say "to a legal certainty" that plaintiff has failed to meet the jurisdictional amount, as Hall & Wilson has submitted a typewritten list of expenses, but with no supporting documentation, to justify the $89,346.67 sought in this lawsuit. (See Compl. Ex. 2.) As the first invoice pertains to the Fire Restoration Contract, which plaintiff claims was paid in full, and the second invoice shows a credit of $8,790.85 owed to the Sockwells, plaintiff's own evidence at this juncture does not show any basis for recovery except the $21,951.01 indicated in the third invoice. See supra pp. 15-16 and note 10. As a result, removal of this case to federal court may not have been proper, and any federal court may consequently lack subject matter jurisdiction, whether here or in North Carolina.

> to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391(a).

Here, venue does not properly arise under any of these three prongs. As to the first prong, no defendant resides in the Eastern District of Virginia – all reside in the Eastern District of North Carolina. (Compl. ¶ 2.) Nor does the third prong apply, because this action could "otherwise be brought" in another district. 28 U.S.C. § 1391(a)(3). For example, this action could have been brought in the Eastern District of North Carolina, because all defendants reside there. Since venue is improper under two of the three prongs of § 1391(a), venue could be proper only if "a substantial part of the events or omissions giving rise to the claim occurred" in the Eastern District of Virginia, which the court does not find. 28 U.S.C. § 1391(a)(2). The events giving rise to this claim, which this court views as the construction services provided and materials supplied at the dental office building for which plaintiff seeks additional payment, took place at the dental office building in North Carolina. Although the alleged lack of payment to Hall & Wilson's Virginia office may be considered an "omission," the court notes that defendants' failure to mail a payment would also be an omission in North Carolina, and does not find this omission "substantial" enough to satisfy 28 U.S.C. § 1391(a)(2).

Further, even if Hall & Wilson managed and coordinated the project from Virginia, and provided some nominal services from its Virginia office, the bulk of the project – all of the site meetings and all of the actual construction work – took place at the Sockwells' dental office building in North Carolina. Thus, the only district where "a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated" is the Eastern District of North Carolina. 28 U.S.C. § 1391(a)(2).

As this court does not find venue proper under any of the three prongs of 28 U.S.C. § 1391(a), plaintiff has laid venue in the wrong district. Given the questionable subject matter jurisdiction in the case,[12] the court does not find that the interest of justice dictates transfer under 28 U.S.C. § 1406(a) to the Eastern District of North Carolina, where plaintiff could have brought the case because all defendants reside there.[13]

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[12] See supra note 11.

[13] Even if venue had been proper in the Eastern District of Virginia, this court would still find transfer warranted under 28 U.S.C. § 1404(a). "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." 28 U.S.C. § 1404(a). In this analysis, "a court must consider and balance a number of factors, including ease of access to sources of proof; the convenience of the parties and witnesses; the cost of obtaining the attendance of witnesses; the availability of compulsory process; the interest in having local controversies decided at home; in diversity cases, the court's familiarity with the applicable law; and the interest of justice." Cognitronics Imaging Sys. v. Recognition Research Inc., 83 F. Supp. 2d 689, 696

Accordingly, the case is hereby dismissed without prejudice to refile in the proper state or federal forum.[14]

IV. Conclusion

Defendants' motion to dismiss on the basis of personal jurisdiction is **DENIED**. As venue was laid in the wrong federal district, the court **GRANTS** defendants' motion to dismiss pursuant to 28 U.S.C. § 1406(a). The Clerk is **DIRECTED** to forward a copy of this Memorandum Opinion and Dismissal Order to counsel for the parties. **IT IS SO ORDERED.**

/s/
Rebecca Beach Smith
United States District Judge

Norfolk, Virginia
May 5, 2009

(E.D. Va. 2000). While the court gives substantial weight to plaintiff's initial choice of forum, various factors outweigh the court's deference to this choice. See Bd. of Trs., Sheet Metal Workers Nat'l Fund v. Baylor Heating & Air Conditioning, Inc., 702 F. Supp. 1253, 1256 (E.D. Va. 1988). For example, ease of access to proof favors transfer, because the dental office building – where the additional work was performed – is located in Eastern District of North Carolina. Further, "the interest in having local controversies in decided at home" strongly favors transferring this case to North Carolina, which has a strong interest in disputes arising from property located in its own state. Cognitronics, 83 F. Supp. 2d at 696. Moreover, the interests of justice strongly favor transfer to North Carolina. Hall & Wilson met the Sockwells through a North Carolina insurer, did construction work on the Fire-Restoration Contract and the Additions Contract in North Carolina, and then provided additional services in North Carolina. Thus, even if venue were proper in this court, the factors under 28 U.S.C. § 1404(a) would weigh heavily in the Sockwells' favor, overcoming the substantial weight accorded to Hall & Wilson's choice of forum and warranting transfer to the Eastern District of North Carolina.

[14] The court makes no ruling on the merits of the claim, the applicable statute of limitations, the applicable state law, or any other issue not addressed and ruled upon herein.