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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

MARY E. BECK,)	
)	
Plaintiff,)	
)	
v.)	C.A. 3:92CV120
)	
WINN-DIXIE STORES, INC.,)	
)	
Defendant.)	

MEMORANDUM OPINION

This matter is before the Court on the motion of defendant Winn-Dixie Stores, Inc. ("Winn-Dixie") to dismiss for lack of personal jurisdiction or for improper venue, pursuant to Fed. R. Civ. P. 12(b)(2) & (3), or, in the alternative, to transfer the action to the Southern District of Florida, Fort Pierce Division, pursuant to 28 U.S.C. §§ 1404(a), 1406, & 1631. For the reasons discussed below, Winn-Dixie's motion to dismiss will be GRANTED and this case will be DISMISSED WITHOUT PREJUDICE.

FACTS

This is a premises liability action arising out of an alleged slip-and-fall accident at a Winn-Dixie in Port St. Lucie, Florida. The plaintiff, Mary Beck, alleges that on January 21, 1991, she slipped and fell on a marking pen left on the floor of the Winn-Dixie in which she was shopping. The plaintiff alleges that the medical treatment necessitated by the fall was extensive. She was admitted to the hospital for care related to these injuries on at

least three separate occasions. Each of these hospitalizations, except for her initial emergency care, took place in Richmond, Virginia. At the time of the accident, Beck was a resident of Virginia. She has, however, subsequently moved to Georgia. Winn-Dixie is incorporated and has its principle place of business in Florida. The corporate defendant is not physically located in Virginia. It does, however, have wholly owned subsidiaries who operate stores in Virginia, and it sends groceries under the Winn-Dixie label into Virginia.

DISCUSSION

The plaintiff has the burden of establishing in personam jurisdiction. Haynes v. James H. Carr, Inc., 427 F.2d 700, 704 (4th Cir.), cert. denied, 400 U.S. 942 (1970). Specifically, the plaintiff must prove (1) that the terms of the Virginia long-arm statute are met and (2) that jurisdiction is consistent with the due process clause of the United States Constitution. See, e.g., Omega Homes, Inc. v. Citicorp Acceptance Co., 656 F. Supp. 393, 399 (W.D. Va. 1987).

In the instant case, the Court need not reach the second prong of the test because the plaintiff is unable to meet the terms of Virginia's long-arm statute. Virginia's long-arm statute provides, inter alia:

A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's:

1. Transacting any business in this Commonwealth;

. . . .

Va. Code Ann. § 8.01-328.1 (Michie Supp. 1991). While the flow of products into Virginia under the defendant's label constitutes the transacting of business in Virginia, this is not a sufficient basis for jurisdiction in the instant action. Under the long-arm statute, the cause of action must arise from the act or acts that serve as the basis for the court's exercise of jurisdiction. Id.; City of Virginia Beach v. Roanoke River Basin Ass'n, 776 F.2d 484, 487 (4th Cir. 1985) ("In order for a cause of action to arise from business transacted in Virginia, the activities that support the jurisdictional claim must coincide with those that form the basis of the plaintiff's substantive claim."). In the instant case, the cause of action is not related in any way to the business Winn-Dixie transacts in Virginia. As such, and since there is no other basis for jurisdiction under the long-arm statute, this case must be dismissed for lack of personal jurisdiction.¹

Let the Clerk send a copy of this Memorandum Opinion and the accompanying Order to all counsel of record.

DATE

UNITED STATES DISTRICT JUDGE

¹ The Court is dismissing the case rather than transferring it pursuant to 28 U.S.C. § 1631. Winn-Dixie has suffered few if any expenses in defending this case that it would have to incur again if the suit is refiled. Thus, the Court has determined that the interests of justice are better served by dismissing the instant case without prejudice so that the plaintiff can maintain her control over the forum of the suit.