

Third District Court of Appeal

State of Florida

Opinion filed April 3, 2024.

Not final until disposition of timely filed motion for rehearing.

No. 3D23-0948
Lower Tribunal No. 22-17030

Facebook, LLC,
Appellant,

vs.

Grind Hard Holdings, LLC,
Appellee.

An appeal from a non-final order from the Circuit Court for Miami-Dade County, Migna Sanchez-Llorens, Judge.

Kozyak Tropin & Throckmorton, Dwayne Robinson, Orrick, Herrington & Sutcliffe LLP, Robbie Manhas, Eric Shumsky (Washington, DC), and Stephen Hall (Boston, MA), for appellant.

Alexander Appellate Law P.A., and Samuel Alexander and Michael Ellis (DeLand), for appellee.

Before EMAS, MILLER, and LOBREE, JJ.

MILLER, J.

In this appeal, appellant, the interactive social networking platform Facebook, LLC, a non-resident defendant in an action brought by an ammunition manufacturer, Grind Hard Holdings, LLC, challenges the denial of its motion to dismiss for lack of personal jurisdiction. Concluding the allegations of record were inadequate to establish specific jurisdiction, we reverse.

BACKGROUND

Meta Platforms, Inc., owns and operates Facebook. Facebook Marketplace is an e-commerce platform that enables users to buy and sell new or used items through peer-to-peer transactions. Grind Hard Holdings, LLC is a vendor of high-grade ammunition. It derives profit from sales made on Facebook Marketplace.

Grind Hard unearthed a series of negative online reviews posted by unfamiliar customers. Upon investigating, Grind Hard discovered that its account had been cloned by an unknown Facebook user. The user solicited orders for ammunition and then refused to deliver the goods as promised.

Grind Hard filed suit against Facebook and the Grind Hard impersonator, identified only as “John Doe,” in the circuit court of Miami-Dade County. In the operative complaint, Grind Hard sought a pure bill of

discovery and injunctive relief against Facebook and alleged counts of fraud, trademark infringement, and civil theft against John Doe.

Facebook moved to dismiss for lack of personal jurisdiction.¹ In support of its motion, Facebook filed the affidavit of a Meta eDiscovery case manager. In the affidavit, the case manager attested that Meta is a Delaware Corporation headquartered in Menlo Park, California.

Grind Hard did not file any counter-affidavits. Instead, it argued that because Facebook failed to suspend the John Doe defendant from its platform, it indirectly engaged in tortious acts by violating its own policies and procedures. The trial court denied the motion, and the instant appeal ensued.

STANDARD OF REVIEW

We conduct a de novo review of a trial court's ruling on a motion to dismiss for lack of personal jurisdiction. See Wendt v. Horowitz, 822 So. 2d 1252, 1256 (Fla. 2002).

ANALYSIS

Under Florida law, “personal jurisdiction . . . [is] necessary before a defendant, either an individual or business entity, may be compelled to

¹ A motion contesting the validity of service of process remains pending in the trial court.

answer a claim brought in a court of law.” Borden v. E.-Eur. Ins. Co., 921 So. 2d 587, 591 (Fla. 2006). To determine whether the exercise of jurisdiction over a nonresident defendant is appropriate, Florida courts apply the two-prong inquiry set forth in Venetian Salami Co. v. Parthenais, 554 So. 2d 499 (Fla. 1989). The initial inquiry is whether “the complaint alleges sufficient jurisdictional facts to bring the action within the ambit of [Florida’s long-arm] statute; and if it does, the next inquiry is whether sufficient ‘minimum contacts’ are demonstrated to satisfy due process requirements.” Id. at 502 (quoting Unger v. Publisher Entry Serv., Inc., 513 So. 2d 674, 675 (Fla. 5th DCA 1987), rev. denied, 520 So. 2d 586 (Fla. 1988)).

The first prong is governed by section 48.193, Florida Statutes (2022), the long-arm statute. The second prong is constitutional; thus, it “is controlled by United States Supreme Court precedent interpreting the Due Process Clause and imposes a more restrictive requirement.” Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co. Ltd., 752 So. 2d 582, 584 (Fla. 2000). To satisfy due process, “[a] court can exercise personal jurisdiction only if the foreign corporation maintains ‘certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.’” Id. (second alteration in original)

(internal quotation marks omitted) (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).

Personal jurisdiction under the long-arm statute may be general or specific. See Wiggins v. Tigrent, Inc., 147 So. 3d 76, 85 (Fla. 2d DCA 2014). General jurisdiction is established by showing that the defendant has “engaged in substantial and not isolated activity within this state.” § 48.193(2), Fla. Stat. (2023). In contrast, specific jurisdiction is claim-specific. See § 48.193(1)(a), Fla. Stat.; D-I Davit Int'l-Hische GMBH v. Carpio, 346 So. 3d 197, 201 (Fla. 3d DCA 2022) (“Specific jurisdiction requires a ‘claim-specific’ analysis, governed by section 48.193(1)(a), Florida Statutes.”)

As this court has previously explained, “[a] Florida court may exercise ‘specific’ jurisdiction over a nonresident defendant in those cases in which it is alleged that the nonresident defendant commits any of the specific acts enumerated in the statute in Florida, so long as the cause of action arises from that enumerated act committed in Florida.” Banco de los Trabajadores v. Cortez Moreno, 237 So. 3d 1127, 1133 (Fla. 3d DCA 2018) (citing § 48.193(1)(a)1.–9., Fla. Stat.). Included among the statutorily delineated acts is the commission of a tortious act within the state. § 48.193(1)(a)2., Fla. Stat.

Against these principles, we examine the instant case. Facebook correctly argues that Grind Hard did not file a counter-affidavit and abandoned any assertion of general jurisdiction in the trial court. Thus, we must confine our analysis to whether Grind Hard sufficiently alleged specific jurisdiction. We conclude it did not. Our reasoning is three-fold.

First, the complaint does not allege a tort claim against Facebook. Instead, Grind Hard has alleged two equitable claims seeking to suspend the fraudulent account and obtain documents that will enable it to identify the John Doe defendant. Further, irrespective of the causes of action, there are no extraneous factual allegations in the complaint to support the contention that the inaction of Facebook has risen to the level of tacit complicity in the commission of any of the tort claims advanced against the John Doe defendant or any unpled torts.

Second, there is no precedent to support the proposition that Facebook's purported violation of its own policies and procedures is a sufficient substitute for alleging it engaged in a tort in the state. Allowing conduct that falls short of tortious to satisfy this particular aspect of the long-arm statute would run afoul of the plain statutory language and other established principles of jurisdictional law.

Third, and finally, the “effects test” cannot be used to circumvent the language of the statute. Calder v. Jones, 465 U.S. 783 (1984), and its progeny all share the common assumption that the jurisdictional defendant has engaged in the requisite tortious act. See Licciardello v. Lovelady, 544 F.3d 1280, 1286 (11th Cir. 2008) (construing “the Calder test for personal jurisdiction as *requiring a tort* that was (1) intentional; (2) aimed at the forum state; and (3) caused harm that the defendant should have anticipated would be suffered in the forum state”) (emphasis added); Walden v. Fiore, 571 U.S. 277, 291 (2014) (“[I]n intentional-tort cases . . . it is the defendant, not the plaintiff or third parties, who must create contacts with the forum State. . . . [T]he mere fact that [defendant’s] conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction.”); Rebolledo v. Chaffardet, 351 So. 3d 84, 91 (Fla. 3d DCA 2022) (“[In a]pplying the effects test to cyber-based torts . . ., Walden has made it clear that ‘the foreseeability that is critical to due process analysis is . . . that the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there’”) (omission in original) (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)). In the absence of a tort, the effects test is simply inapplicable.

Accordingly, we are constrained to reverse the order under review and remand for further proceedings.²

Reversed and remanded.

² Our reversal is without prejudice to the amendment of the complaint. See Williamson v. Prime Sports Mktg., LLC, 314 So. 3d 480, 486–87 (Fla. 3d DCA 2020).