IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

ORVAL YARGER,

Appellant,

v. Case No. 5D20-886

CONVERGENCE AVIATION LTD,

Appellee.

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Opinion filed February 5, 2021

Nonfinal Appeal from the Circuit Court for Marion County,
Robert W. Hodges, Judge.

Bryce W. Ackerman, of Gray, Ackerman & Haines, P.A., Ocala, for Appellant.

Christoper A. Anderson, of Gilligan, Gooding, Batsel & Anderson, P.A., Ocala, for Appellee.

WALLIS, J.

Orval Yarger appeals the non-final order denying his motion to dismiss for lack of personal jurisdiction. He argues that Convergence Aviation, Ltd. (Convergence) failed to allege and establish sufficient jurisdictional facts to bring this case within the ambit of Florida's long-arm statute, section 48.193, Florida Statutes (2019). We agree and reverse.

Convergence sued Yarger, an Illinois resident, for damages related to an airplane accident that occurred while Yarger was returning from a business trip to Florida. In its complaint, Convergence alleged that Yarger was Convergence's director and oversaw its operations, including managing property located in Marion County. The complaint further alleged that Yarger was the manager of Convergence Aviation & Communications, LLC (CACL), a Florida limited liability company that Convergence had formed to purchase and manage property that would be used to house aircrafts that Convergence owned. According to the complaint, in January 2008, as a part of his duties to Convergence and CACL, Yarger visited property that CACL owned in Marion County. On the return trip to Illinois, Convergence's airplane was involved in an accident in Kentucky. After the accident, Yarger purchased aircraft parts on behalf of Convergence so that the airplane could be repaired. When a dispute arose about the aircraft parts and Yarger refused to return them to Convergence or reimburse Convergence for their fair market value, Convergence filed suit against Yarger for conversion in Marion County, Florida.

Yarger filed a motion to dismiss for lack of personal jurisdiction, alleging that he is not now and has never been a resident of the State of Florida and, instead, is an Illinois resident. In the motion to dismiss and in Yarger's affidavit, which was attached to the motion to dismiss, Yarger admitted that: (1) he was the manager of CACL; (2) between 2006 and 2015, he visited the Marion County property on six occasions to confirm that it was being properly maintained; (3) while on a trip to the Marion County property, he consulted with a property appraiser to determine whether the property was marketable; and (4) he filed a lawsuit in Marion County, Florida, against CACL in an attempt to obtain reimbursement for money he paid on behalf of CACL that was related to the Marion

County property. Yarger swore, however, that the airplane that is the subject of this case is owned by a company that is headquartered in the United Kingdom, the airplane was never kept in Florida, the accident occurred in Kentucky, the airplane parts were purchased in Illinois and Ohio, those parts have never been in Florida, and he purchased the airplane parts from a company with headquarters in Illinois. Yarger further swore that he has never lived in Florida and he has never owned or operated a business in Florida.

Convergence filed a response to the motion to dismiss, arguing that Florida has personal jurisdiction over Yarger because of his involvement with Convergence and CACL, and because Yarger knowingly subjected himself to the jurisdiction of a Florida court for matters related to the operations of Convergence and CACL. The response included an affidavit from Convergence's chief pilot, who swore that Yarger was a manager of CACL and a Convergence director, and that, in February 2006, Yarger purchased his interest in CACL. Convergence's chief pilot also swore that Yarger travelled to Florida as a part of his duties to Convergence and CACL, Yarger made recommendations on how the buildings on the Marion County property could be constructed, and Yarger withdrew money from CACL's and Convergence's bank accounts, which were located in Florida. The lower court denied Yarger's motion to dismiss, finding that there were sufficient facts to establish personal jurisdiction over Yarger.

In Venetian Salami Co. v. Parthenais, 554 So. 2d 499 (Fla. 1989), the Florida Supreme Court set forth a two-part test to determine whether a Florida state court has long-arm jurisdiction over a nonresident. First, the court must determine whether "the complaint alleges sufficient jurisdictional facts to bring the action within the ambit of the

statute." Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co., Ltd., 752 So. 2d 582, 584 (Fla. 2000) (quoting Venetian Salami, 554 So. 2d at 502). Second, the court must determine "whether sufficient 'minimum contacts' are demonstrated to satisfy due process requirements." Id.

Under section 48.193, there are two ways to establish long-arm jurisdiction—specific and general. Aegis Def. Servs., LLC v. Gilbert, 222 So. 3d 656, 659 (Fla. 5th DCA 2017). Specific jurisdiction requires a showing that "the alleged activities or actions of the defendant are directly connected to the forum state," whereas general jurisdiction requires a showing that "the defendant's connections with the forum state are so substantial that it is unnecessary to establish a relationship between this state and the alleged wrongful actions." Id. Convergence expressly concedes on appeal that it "decided for strategic reasons not to pursue attempting to establish general jurisdiction" in the trial court. As a result, whether Convergence could have established general jurisdiction is not before us.

Here, Convergence contends that the trial court had specific jurisdiction over Yarger pursuant to sections 48.193(1)(a)1. and (1)(a)3. Those provisions read as follows:

> (1)(a) A person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from any of the following acts:
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> 1. Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.
>
> . . . .

> 3. Owning, using, possessing, or holding a mortgage or other lien on any real property within this state.

§ 48.193(1)(a)1., (1)(a)3., Fla. Stat. In order to prove specific jurisdiction, there must be a "connection or 'connexity' between the enumerated activity in Florida and the cause of action." Aegis Def. Servs., 222 So. 3d at 661. In other words, the causes of action alleged in the complaint must arise from the defendant's activities in Florida. Id.

This Court's opinion in Suroor v. First Investment Corp., 700 So. 2d 139 (Fla. 5th DCA 1997), is instructive because it involved similar facts and interpreted nearly identical language to the language in section 48.193(1)(a)1. The Suroor court considered whether a nonresident was subject to substitute service under sections 48.161 and 48.181, Florida Statutes (1995), which authorize such service on individuals who are "doing business" or are "engaged in a business venture" in Florida. Id. at 140. In Suroor, First Investment, a New York corporation, agreed to develop property that Peccany, a Delaware corporation, owned that was located in Orange County, Florida. Suroor, a citizen and resident of a foreign country, was Peccany's sole shareholder. Id. After a dispute arose regarding the Orange County property, First Investment sued Peccany and Suroor individually, and served Suroor pursuant to sections 48.161 and 48.181. Id. Suroor filed a motion to quash service and to dismiss the complaint for lack of jurisdiction. Id. The trial court denied those motions. Id.

On appeal, this court explained that section 48.181 provides that a defendant who is not personally served with process may be subjected to personal jurisdiction in Florida if "the defendant operates, conducts, engages in, or carries on a business or business venture in Florida, or has an office or agency in Florida, and the cause of action arose from these business activities." Id. Furthermore, in order to rely on section 48.181, the

plaintiff must plead facts which clearly show that the long-arm statute applies and, if it fails to do so, the trial court lacks personal jurisdiction over the defendants. Id. In deciding the case, we looked to the allegations in the complaint, which alleged that Suroor: (1) held himself out as the owner of the Orange County property; (2) visited Orange County to determine the property's development prospects; (3) used his personal funds to pay suppliers of services for improvements made to the property; (4) communicated directly with First Investment's representatives while in Orange County regarding development of the property; and (5) contracted to have services performed in Orange County. Id. at 141. This court found that those allegations were insufficient to establish that Suroor was operating, conducting, engaging in, or carrying on business in Florida. Id. In reaching this conclusion, we explained that:

> At most, these allegations [in the complaint] established that Sheikh Suroor acted in furtherance of Peccany's interests in accordance with his role as an agent of the corporation. In order to establish that Sheikh Suroor had subjected himself to personal jurisdiction in Florida, FIC was required to allege facts establishing that Sheikh Suroor had engaged in business activities, apart from his role as an agent of Peccany, and had begun serving his own personal interests. No such facts were alleged.
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> Furthermore, the actions of a corporation cannot be imputed to its shareholders for purposes of establishing long arm personal jurisdiction over the shareholder. Thus, although FIC's second amended complaint refers to Sheikh Suroor as the “sole shareholder” or the “actual or beneficial owner” of Peccany, such references do not constitute sufficient jurisdictional allegations under our long arm statute.

Id. at 141 (internal citations omitted).

As stated, the language that we interpreted in Suroor is almost identical to the "operating, conducting, engaging in, or carrying on a business" language from section

48.193(1)(a)1. The allegations in Convergence's complaint and the statements in the affidavits established that Yarger had a business interest in CACL, he worked for CACL and Convergence, he visited Florida on at least six occasions on behalf of CACL and Convergence to maintain the Marion County property, and he personally paid fees for the maintenance of that property. However, there were no other allegations or evidence establishing that Yarger engaged in or conducted business for his personal benefit in Florida. Rather, like Suroor, all of the allegations and evidence suggest that Yarger's ties to Florida were related to his role as an agent for CACL and Convergence. Thus, we conclude that the jurisdictional facts alleged in the complaint were insufficient to establish that Yarger was operating, conducting, engaging in, or carrying on a business in Florida for purposes of establishing specific jurisdiction under section 48.193(1)(a)1.[1] See id.; see also Stonepeak Partners, LP v. Tall Tower Cap., LLC, 231 So. 3d 548, 557 (Fla. 2d DCA 2017) (holding that the trial court incorrectly found that it had personal jurisdiction over the defendant pursuant to section 48.193(1)(a)1. where there was no evidence that it dealt in any goods, services, or property in Florida).

Convergence also argues that the lower court has specific jurisdiction over Yarger pursuant to section 48.193(1)(a)3. based on Yarger's claimed equitable interest in the property that is the subject of his Marion County lawsuit. We disagree. Yarger's claimed

[1] The fact that Yarger filed suit in Florida against CACL for an equitable lien on the Marion County property does not alter our analysis. In general, "a plaintiff, by bringing an action, subjects herself to the jurisdiction of the court and to subsequent lawful orders entered regarding the same subject matter of that action." Gibbons v. Brown, 716 So. 2d 868, 870 (Fla. 1st DCA 1998). However, this general rule does not apply here because this case does not arise out of the same subject matter as Yarger's Marion County equitable lien case. See id.

interest in the Marion County property would not subject him to personal jurisdiction in Florida under section 43.193(1)(a)3. because the cause of action in this case—the alleged conversion of the airplane parts—does not arise from his alleged interest in the Marion County property. See § 48.193(1)(a)3., Fla. Stat. ("A person . . . submits himself . . . to the jurisdiction of the courts of this state for any cause of action arising from . . . [o]wning, using, possessing, or holding a mortgage or other lien on any real property within this state."); Dyck-O'Neal, Inc. v. Rojas, 197 So. 3d 1200, 1202 (Fla. 5th DCA 2016) (recognizing that section 48.193(1)(a)3. "merely requires that [the] cause of action arose from a nonresident's ownership of real property in Florida").

Because Convergence failed to allege sufficient jurisdictional facts to bring the cause of action within the ambit of Florida's long-arm statute, we need not address whether Yarger had sufficient minimum contacts with Florida to satisfy federal due process requirements. See Aegis Def. Servs., 222 So. 3d at 661. We, therefore, reverse the order denying Yarger's motion to dismiss for lack of personal jurisdiction and remand with instructions to grant the motion.

REVERSED and REMANDED With Instructions.

EDWARDS and EISNAUGLE, JJ., concur.