

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

HELIX ELECTRIC, INC., a California)
Corporation,)
)
Appellant,)
)
v.)
)
POWER DESIGN, INC., a Florida)
Corporation, and JACK EACHUS,)
)
Appellees.)
_____)

Case No. 2D19-3673

Opinion filed May 1, 2020.

Appeal from the Circuit Court for Pinellas
County; Thomas H. Minkoff, Judge.

Andrew Froman and Claire Elizabeth
Meharg of Fisher & Phillips LLP, Tampa, for
Appellant.

Patrick M. Causey and Marie Tomassi of
Trenam Kemker, Scharf, Barkin, Frye,
O'Neill & Mullis, P.A., St. Petersburg, for
Appellee, Power Design, Inc.

No appearance for Appellee, Jack Eachus.

CASE, JAMES R., ASSOCIATE SENIOR JUDGE,

Helix Electric, Inc., appeals from a nonfinal order denying its motion to dismiss Power Design's tortious interference complaint against it for lack of personal jurisdiction. Because Power Design failed to allege sufficient jurisdictional facts against Helix in its complaint, we reverse.

Power Design sued Jack Eachus, a Florida resident, and Helix after Eachus left Power Design to work in the Virginia office of Helix, a California corporation with its principal place of business in San Diego. Helix moved to dismiss Power Design's tortious interference claim against it for lack of personal jurisdiction, arguing that Power Design's claim "does not relate to or arise from Helix's activities in Florida" and that Helix does not have sufficient contacts with Florida to allow the court to assert general jurisdiction over it. In response, Power Design conceded that the court does not have general jurisdiction over Helix but argued that the court has specific jurisdiction over Helix because Helix committed a tortious act—tortious interference with a business contract—in Florida. It also argued that specific jurisdiction was appropriate because Helix's actions caused damage to Power Design in Florida. The trial court denied Helix's motion after a nonevidentiary hearing, finding that Power Design sufficiently alleged specific jurisdiction over Helix in its complaint. Helix timely appealed.

Helix argues that Power Design failed to plead specific facts to show that Helix's actions fall within one of the subsections of Florida's long-arm statute. "The appellate court conducts a de novo review of the trial court's determination on personal jurisdiction over a nonresident defendant." Rautenberg v. Fatz, 193 So. 3d 924, 928 (Fla. 2d DCA 2016) (citing Schwartzberg v. Knobloch, 98 So. 3d 173, 180 (Fla. 2d DCA 2012)). Specific jurisdiction under Florida's long-arm statute may be exercised where a

defendant "commit[s] a tortious act within" Florida. § 48.193(1)(a)(2), Fla. Stat. (2019). In considering a motion to dismiss for lack of personal jurisdiction, the court must "first determine whether the complaint alleges jurisdictional facts that are sufficient 'to bring the action within the ambit of the statute; and if it does, the next inquiry is whether sufficient "minimum contacts" are demonstrated to satisfy due process requirements.' " Rautenberg, 193 So. 3d at 928 (quoting Wiggins v. Tigrent, Inc., 147 So. 3d 76, 84 (Fla. 2d DCA 2014)). In other words, "[b]y showing that the defendant committed a tortious act in Florida and has sufficient minimum contacts with the state, a plaintiff establishes specific jurisdiction." Id. (citing Wiggins, 147 So. 3d at 86).

We begin our review with the first prong of the analysis: whether Power Design's complaint alleges jurisdictional facts that are sufficient to bring the action within the ambit of Florida's long-arm statute. "In alleging a basis for jurisdiction, the plaintiff may either track the statutory language without supporting facts or allege specific facts to show that the defendant's actions fall within at least one of the subsections of 48.193." Id. (citing Hilltopper Holding Corp. v. Estate of Cutchin ex rel. Engle, 955 So. 2d 598, 601 (Fla. 2d DCA 2007)).

Power Design did not track the statutory language of section 48.193. Instead, it argues that its allegations in the complaint that (1) Eachus resided in Florida, (2) Helix was aware of Power Design's contract with Eachus, (3) Helix hired Eachus and placed him in a managerial position, and (4) Power Design suffered damages are sufficient to show that Helix's actions fall within section 48.193(1)(a)(2). We disagree.

Initially, Power Design's allegation that Helix's actions "resulted in the breach of a Florida contract, and loss of income to a Florida [corporation], is immaterial

for the purpose of determining jurisdiction." See Metnick & Levy, P.A. v. Seuling, 123 So. 3d 639, 645-46 (Fla. 4th DCA 2013). Thus, the only remaining allegations in Power Design's complaint to support jurisdiction over Helix are Power Design's allegations that Helix hired Eachus and placed him in a managerial position within its corporation despite its knowledge of Eachus's contract with Power Design. While these facts may support Power Design's claim that Helix committed a tort, "[a] complaint is not legally sufficient to allege personal jurisdiction based on tortious acts when the complaint fails to allege that the acts were committed within Florida." Rautenberg, 193 So. 3d at 930 (emphasis added) (citing PK Computers, Inc. v. Indep. Travel Agencies of Am., Inc., 656 So. 2d 254, 255 (Fla. 4th DCA 1995)); see also Seuling, 123 So. 3d at 645 ("The wording of 48.193[(1)(a)(2)] . . . necessarily focuses analysis not on where a plaintiff ultimately felt damages, but where a defendant's tortious conduct occurred.").

Ultimately, the allegations in Power Design's complaint are insufficient to meet the requirements of 48.193(1)(a)(2) because Power Design failed to expressly allege that Helix interfered with Power Design's contract in Florida. See PK Computers, 656 So. 2d at 255 ("The complaint below is insufficient to meet the requirements of [Florida's long-arm statute] because it does not allege that any of the acts alleged to constitute breaches of the contract between the parties were to be performed within the state of Florida."). While Power Design alleged that Eachus is a Florida resident, Power Design did not allege where or how Helix communicated with Eachus and convinced Eachus to work for it in its Virginia office. See Rautenberg, 193 So. 3d at 929 ("It appears that Falz may have wanted to imply that the accusations were made in Florida, but the allegation merely states that American Vulkan Corporation is located in

Florida."); Sueling, 123 So. 3d at 645 ("As alleged in the complaint, the acts giving rise to the tortious interference claim arose in New York, where Pirrotti convinced Sueling to breach her contract."); see also Banco de los Trabajadores v. Cortez Moreno, 237 So. 3d 1127, 1136 (Fla. 3d DCA 2018) (holding that allegations of conspiracy in complaint do not provide a sufficient basis to confer specific jurisdiction under section 48.193(1)(a)(2) "when not a single element of the underlying [tort] is alleged to have occurred in Florida"). Thus, the trial court erred in denying Helix's motion to dismiss.

Because Power Design's complaint fails to allege acts by Helix that fall within Florida's long-arm statute, we reverse the order denying Helix's motion to dismiss and direct the trial court on remand to dismiss count II of the complaint without prejudice. See Rautenberg, 193 So. 3d at 931; PK Computers, 656 So. 2d at 255.

Reversed and remanded.

NORTHCUTT and MORRIS, JJ., Concur.