

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

TRAVEL INSURANCE FACILITIES, PLC, a Foreign Corporation,

Appellant,

v.

NAPLES COMMUNITY HOSPITAL, INC; UNKNOWN TRAVEL
HEALTH INSURERS 1-15; CHARLES F. BIRCH; PETER MAY;
ANDREW ERDOS; STUART BERRY; JAMES BIRCH; JEFFEREY
MARKS; DEBORAH MANYWEATHERS; DAWN SCOTT; IAN DAVIES;
FRANK WADE; ALAN GRECH; CHARLES E. BIRCH; CHARLES
BIRCH; VIVIA HUTCHINSON; and GRAYE REDFORD,

Appellees.

No. 2D20-3525

November 5, 2021

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Collier County; Elizabeth V. Krier, Judge.

Stephen V. Marasia and Edward R. Nicklaus of Nicklaus & Associates, P.A., Coral Gables, for Appellant.

Timothy M. Hartley of Hartley Law Offices, PLC, Fort Lauderdale, for Appellee Naples Community Hospital, Inc.

No appearance for remaining Appellees.

MORRIS, Chief Judge.

Travel Insurance Facilities, PLC, a foreign corporation (hereinafter TIF), appeals from a nonfinal order denying its motion to dismiss the complaint filed by Naples Community Hospital, Inc. (NCH). Because we conclude that NCH's complaint adequately pleaded the jurisdictional basis for exercising long-arm jurisdiction over TIF and because TIF failed to file an affidavit or other sworn proof contesting the jurisdictional allegations, we affirm the trial court's order denying TIF's motion.

BACKGROUND

NCH's complaint alleged various causes of action based on TIF's alleged failure to make full payments to NCH as a third-party beneficiary of travel insurance policies that TIF and/or affiliated insurance companies sold to their insureds. NCH contended that it had provided medical services to TIF's insureds while they vacationed in Florida. There is no dispute that NCH is a Florida Special Taxing District or that TIF is a corporation existing under the laws of the United Kingdom.

In its complaint, NCH alleged the following facts, in relevant part, in support of long-arm jurisdiction:

- TIF was subject to the trial court's jurisdiction because "the contracts and services upon which this action is based were entered into and were performed, in whole or in part, in Collier County, Florida."
- TIF was an insurer, agent, or third-party administrator for an insurer or insurers and was acting on behalf of insureds who sought hospital and other services at NCH.
- "TIF and/or Unknown Insurers agreed to provide foreign travel health insurance coverage to various foreign residents," including the Patients involved in the suit, "for health insurance coverage in the United States, including, Collier County, Florida."
- "TIF has served to adjust and settle claims" not only of the Patients at issue in the suit but also for other patients who are not part of the suit based on hospital and other services provided by NCH.¹
- TIF's and the Unknown Insurer or Insurers' insurance policies were "directly intended to cover the Patients for hospital services provided by NCH."
- The Patients involved in the suit "were insured under a policy of health insurance issued either by TIF or Unknown Insurers at the time of their treatment at NCH."
- "NCH provided hospital and other services to various patients who were insured or who had claims administered by TIF for the purposes of this lawsuit."

¹ Presumably, this allegation was included to demonstrate that TIF routinely makes payments under its or its insurers' policies for services rendered at NCH despite NCH's acknowledgement that it was not a participating provider for TIF. Though the parties tie this issue to the question of whether TIF had sufficient minimum contacts with Florida such that it should reasonably anticipate having to defend a civil action here, this allegation is arguably also relevant to the question of whether TIF's actions or omissions fit within the parameters of section 48.193, Florida Statutes (2020), the long-arm statute.

- NCH was in possession of executed assignments of benefits from the Patients.
- "Upon information and belief, the Patients had written health insurance contracts and/or policies issued by TIF or one or more of the Unknown Insurers."
- "NCH was an intended third-party beneficiary to those health insurance contracts and/or policies and in particular, with respect to the Patients' Accounts."
- Upon NCH's information and belief, the health insurance contracts and/or policies issued by TIF or the Unknown Insurers were subject to the restrictions and obligations set forth in various Florida statutes.
- "As a matter of law, NCH is a third-party beneficiary of any insurance contract or policy between the Patients and TIF and/or the Unknown Insurers."

TIF filed a motion to dismiss the complaint based on lack of personal jurisdiction. However, it did not attach an affidavit or other sworn proof contesting the jurisdictional allegations. After a hearing, the trial court denied the motion,² concluding that TIF

² After the issuance of the order on appeal, TIF filed an amended motion to dismiss below. NCH sought to dismiss this appeal as moot alleging that TIF now relies upon a sworn representation relating to the jurisdictional allegations. However, the notice of appeal in this case was filed prior to the resolution of the amended motion to dismiss the complaint. This court denied NCH's motion to dismiss this appeal, and the parties have not notified this court that the trial court has since taken any action on the amended motion to dismiss the complaint. Therefore, this appeal has not become moot. Nor does the amended motion to dismiss the complaint affect our disposition since it was not presented to the trial court before entry of the order on appeal.

performed "affirmative acts . . . by selling these people [the insureds] insurance for the purpose of travel to other places including Florida." The trial court also rejected the contention that TIF lacked sufficient minimum contacts in Florida.

ANALYSIS

We review de novo the denial of a motion to dismiss. *Wendt v. Horowitz*, 822 So. 2d 1252, 1256 (Fla. 2002).

When ruling on a motion to dismiss, all allegations in the complaint must be taken as true and all reasonable inferences must be drawn in favor of the plaintiff. *See Wallace v. Dean*, 3 So. 3d 1035, 1042-43 (Fla. 2009); *see also Weber v. Marino Parking Sys., Inc.*, 100 So. 3d 729, 730 (Fla. 2d DCA 2012).

There is a two-step process to determine whether a court has personal jurisdiction over a defendant. The court must first evaluate whether sufficient facts have been alleged so as to satisfy the long-arm statute³ and then evaluate whether the defendant has

³ Section 48.193(1)-(2) provides in relevant part:

(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

minimum contacts with the forum state so as to comport with due

jurisdiction of the courts of this state for any cause of action arising from any of the following acts:

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.
2. Committing a tortious act within this state.
3. Owning, using, possessing, or holding a mortgage or other lien on any real property within this state.
4. Contracting to insure a person, property, or risk located within this state at the time of contracting.

.....

6. Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either:

- a. The defendant was engaged in solicitation or service activities within this state; or
- b. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.

7. Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.

.....

9. Entering into a contract that complies with s. 685.102. (b) Notwithstanding any other provision of this subsection, an order issued, or a penalty or fine imposed, by an agency of another state is not enforceable against any person or entity incorporated or having its principal place of business in this state if the other state does not provide a mandatory right of review of the agency decision in a state court of competent jurisdiction.

(2) A defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity.

process. *See Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989); *Intego Software, LLC v. Concept Dev., Inc.*, 198 So. 3d 887, 892 (Fla. 1st DCA 2016).

In order to obtain jurisdiction over a nonresident defendant, such as TIF, a plaintiff may initially plead the basis for service in the language of the long-arm statute without pleading supporting facts. *Venetian Salami Co.*, 554 So. 2d at 502 (first citing Fla. R. Civ. P. 1.070(i); and then citing *Jones v. Jack Maxton Chevrolet, Inc.*, 484 So. 2d 43 (Fla. 1st DCA 1986)). "Standing alone, 'the filing of a motion to dismiss on grounds of lack of jurisdiction over the person does nothing more than raise the legal sufficiency of the pleadings.'" *Acquadro v. Bergeron*, 851 So. 2d 665, 671-72 (Fla. 2003) (quoting *Venetian Salami Co.*, 554 So. 2d at 502). Ordinarily, "[i]n order to prevail on a motion to dismiss, a defendant must file an affidavit containing allegations, which if taken as true, show that the defendant's conduct does not make him or her amenable to service." *Id.* at 672; *see also Venetian Salami Co.*, 554 So. 2d at 502; *Washington Capital Corp. v. Milandco, Ltd.*, 695 So. 2d 838, 841 (Fla. 4th DCA 1997) ("If the allegations of the complaint are sufficient to establish Florida's long-arm jurisdiction, the burden

shifts to the defendant to contest jurisdiction by a legally sufficient affidavit or other similar sworn proof contesting the essential jurisdictional facts."). Only after a defendant submits a legally sufficient affidavit or other sworn proof challenging the jurisdictional allegations does the burden shift back to the plaintiff who must then refute the proof in the defendant's affidavit either through the plaintiff's affidavit or other sworn proof. *See Milandco, Ltd.*, 695 So. 2d at 841.

If a plaintiff has pled a prima facie case for jurisdiction, a defendant's simple motion to dismiss must fail because it only challenges the facial sufficiency of the jurisdictional allegations. *Walt Disney Co. v. Nelson*, 677 So. 2d 400, 402 (Fla. 5th DCA 1996) (first citing *Venetian Salami Co.*, 554 So. 2d at 502-03; and then citing *Grogan v. Archer*, 669 So. 2d 289, 292 (Fla. 5th DCA 1996)). However, if the plaintiff's jurisdictional allegations are facially insufficient, "[i]t may be unnecessary for the defendant to do anything more than file a simple (unsupported) motion." *Elmex Corp. v. Atl. Fed. Sav. & Loan Ass'n of Fort Lauderdale*, 325 So. 2d 58, 61 (Fla. 4th DCA 1976).

In this case, taking the allegations of NCH's complaint as true, NCH sufficiently pled a prima facie case of jurisdiction under Florida's long-arm statute. NCH alleged that the contracts and services underlying NCH's causes of action were entered into and provided in Collier County, Florida. NCH then alleged specific facts to support its assertion of long-arm jurisdiction. TIF's motion to dismiss essentially admitted the facts set forth in NCH's complaint, *see Elmex Corp.*, 325 So. 2d at 61, and TIF failed to refute the facially sufficient jurisdictional allegations via an affidavit or other sworn proof prior to the trial court's ruling on its original motion to dismiss.⁴ Consequently, the burden never shifted back to NCH to otherwise substantiate its jurisdictional claims. *Cf. Nelson*, 677 So. 2d at 403 (holding that where defendant filed an affidavit that

⁴ Because TIF's motion to dismiss essentially admitted NCH's factual assertion that the contracts and services that formed the basis for the complaint were entered into and performed in Collier County, Florida, TIF was required to submit an affidavit or other sworn proof if TIF wanted to inject facts not apparent on the face of the record to dispute that assertion. *See Elmex Corp.*, 325 So. 2d at 62. It is not enough to merely deny an assertion. Further, the fact that NCH alleged that TIF sold travel insurance to foreign residents does not, on its face, disprove that the contracts and services were entered into or performed, in whole or in part, in Collier County, Florida.

"directly and completely contradicted" the jurisdictional allegations of the plaintiff's complaint, the burden shifted back to the plaintiff "to produce sworn testimony in support of jurisdiction," which she failed to meet). The trial court thus properly denied TIF's motion to dismiss.

Affirmed.

SLEET and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.