

Third District Court of Appeal

State of Florida

Opinion filed December 4, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-451
Lower Tribunal No. 17-29163

Andreas Stihl AG & Co. KG,
Appellant,

vs.

Francisco Villalta,
Appellee.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Michael Hanzman, Judge.

McGuireWoods LLP, and Martha Swicegood Stwodah (Richmond, VA) and Justin D. Howard (Richmond, VA) and Sara F. Holladay-Tobias (Jacksonville); Bowman and Brooke LLP, and Christine L. Welstead and Stephanie M. Simm, for appellant.

Eaton & Wolk, P.L., and Douglas F. Eaton, for appellee.

Before EMAS, C.J., and SALTER and GORDO, JJ.

PER CURIAM.

Appellant seeks review of a trial court order denying its motion to dismiss for lack of personal jurisdiction. After review, we reverse and remand with instructions for the trial court to vacate the order denying Appellant’s motion to dismiss and to enter an order dismissing the First Amended Complaint as to Andreas Stihl AG & Co. KG. See Venetian Salami Co. v. Parthenais, 554 So. 2d 499 (Fla. 1989); Tobacco Merchants Ass’n of U.S. v. Broin, 657 So. 2d 939, 941 (Fla. 3d DCA 1995) (holding that where defendant has met its burden of contesting personal jurisdiction by filing a legally sufficient affidavit in support of its position, “the burden is then placed upon the plaintiff to prove by affidavit the basis upon which jurisdiction may be obtained,” and “[i]f no such **sworn** proof is forthcoming from the plaintiff as to the basis for jurisdiction, the trial court must grant the defendant’s motion to dismiss” (emphasis added) (citation omitted)); Kent v. Marmorstein, 120 So. 3d 604, 606 (Fla. 4th DCA 2013) (holding that, where plaintiff filed only an unsworn response to defendant’s affidavit contesting jurisdiction, plaintiff “failed to meet his burden” to demonstrate jurisdiction).

REVERSED AND REMANDED.