

Third District Court of Appeal

State of Florida

Opinion filed May 6, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1737
Lower Tribunal No. 17-27919

Meyer Werft GMBH & Company, KG,
a foreign corporation,
Appellant,

vs.

Jocelyne Humain,
Appellee.

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

De Leo & Kuylenstierna, P.A., and Jan M. Kuylenstierna, and Ryon L. Little, for appellant.

No appearance for appellee.

Before LINDSEY, MILLER, and LOBREE, JJ.

LINDSEY, J.

Appellant Meyer Werft GmbH & Company, KG (defendant below) appeals from the trial court's order denying its motion to dismiss for lack of personal jurisdiction and for forum non conveniens. Because Appellee Jocelyne Humain (plaintiff below) failed to refute Meyer Werft's sworn proof in support of its motion to dismiss, we reverse and remand with instructions to grant Meyer Werft's motion to dismiss for lack of personal jurisdiction.

I. BACKGROUND

In March 2016, Humain,¹ who had been hired as a seamstress by the Cintas Corporation to make and repair uniforms for Royal Caribbean Cruise Ltd., flew to London to work aboard the Ovation of the Seas before it was put into service as a cruise ship. While the ship was at sea off the coast of Denmark, Humain tripped over some electrical cords under her desk and broke her wrist. Humain initially filed suit against Cintas and Royal Caribbean. In her second amended complaint, Humain added Meyer Werft, the German shipbuilder that constructed the Ovation of the Seas. Meyer Werft is the only defendant before us in this appeal.

Humain's complaint alleged three counts against Meyer Werft: (I) Jones Act negligence based on Humain's alleged status as Meyer Werft's employee, (II) unseaworthiness of the vessel, and (III) negligence (in the alternative) based on

¹ According to the operative complaint, Humain is a U.S. citizen residing in Miami-Dade County Florida.

Humain’s alleged status as a passenger. Humain asserted Meyer Werft was subject to general personal jurisdiction in Florida based on its “continuous and systematic general business contacts in the state of Florida.” Further, Humain’s complaint asserted the trial court had jurisdiction pursuant to the provision of Florida’s long-arm statute governing specific personal jurisdiction, section 48.193(1)(a), Florida Statutes, based on Meyer Werft’s business dealings with Florida cruise companies and its alleged breach of an employment contract with Humain when it failed to provide seaman’s benefits after she was injured on a ship Meyer Werft allegedly owned.

Meyer Werft specially appeared and moved to dismiss for lack of personal jurisdiction or, in the alternative, for forum non conveniens. In a sworn declaration attached to the motion to dismiss, Jens Sandmann, Meyer Werft’s head of legal affairs, contested the jurisdictional allegations in the complaint. Specifically, Sandmann’s sworn declaration asserted, *inter alia*, the following:

MEYER WERFT is a corporation formed under the laws of Germany. MEYER WERFT’s principal place of business and headquarters are in Papenburg, Germany. . . . MEYER WERFT’s business includes the building of vessels At no time has MEYER WERFT been engaged in cruise ship operations or been engaged in the cruise line business.

. . . .

All of MEYER WERFT’s principals, executive officers, officers, managers, and directors reside in Germany or Finland and are German citizens. MEYER WERFT has over 2,900 employees, the vast majority of

whom are based in the company's offices and shipyards in Papenburg, Germany.

....

The Plaintiff JOCELYNE HUMAIN, was never hired as an employee of MEYER WERFT. There is no and there never was any employment contract between MEYER WERFT and JOCELYN HUMAIN. MEYER WERFT has never hired JOCELYNE HUMAIN to perform any work or services.

....

Pursuant to ship building contracts MEYER WERFT has built ships for cruise lines which operate at many ports throughout the world at its facility in Papenburg, Germany.

....

The contract to build the M/V Ovation of the Seas was signed by MEYER WERFT in Papenburg, Germany. . . . At the time of the alleged incident the M/V Ovation of the Seas was registered in the register for ships under construction in the country of Germany and flying the German flag. In the shipbuilding register at the local court in Emden, Germany, [Royal Caribbean] was registered as legal owner of the MJV Ovation of the Seas under construction and MEYER WERFT was registered as building site and building yard of the M/V Ovation of the Seas.

....

MEYER WERFT did not build any part of the vessel or perform any inspections or repairs of the M/V Ovation of the Seas in the State of Florida or in any other part of the United States of America.

....

No vessel owned by MEYER WERFT has ever called at any ports in the State of Florida or in any ports in any other of the states of the United States of America.

Humain filed a response in opposition to Meyer Werft's motion to dismiss but failed to attach any sworn proof refuting Sandmann's sworn declaration. Following

a non-evidentiary hearing, the trial court denied Meyer Werft's motion, finding that "the standards on the motion to dismiss have not been met." Meyer Werft appeals.²

II. ANALYSIS

We review the trial court's order denying Meyer Werft's motion to dismiss for lack of personal jurisdiction de novo. See e.g., Fincantieri-Cantieri Navali Italiani S.p.A. v. Yuzwa, 241 So. 3d 938, 941 (Fla. 3d DCA 2018) (citing Wendt v. Horowitz, 822 So. 2d 1252, 1256 (Fla. 2002)).

In Florida, a well-established, two-pronged inquiry is used to determine whether personal jurisdiction is appropriate, which is set forth in Venetian Salami Co. v. Parthenais, 554 So. 2d 499 (Fla. 1989). "First, it must be determined that the complaint alleges sufficient jurisdictional facts to bring the action within the ambit of" Florida's long-arm statute. Id. at 502. "[I]f it does, the next inquiry is whether sufficient 'minimum contacts' are demonstrated to satisfy due process requirements." Id.

In this case, the first step is decisive, so we need not consider the due process requirements. See Kaminsky v. Hecht, 272 So. 3d 786, 788 (Fla. 4th DCA 2019) ("Since the long arm allegations prong of the Venetian Salami test has not been met, we need not consider the minimum contacts aspect." (quoting PK Computers, Inc. v. Indep. Travel Agencies of Am., Inc., 656 So. 2d 254, 255 (Fla. 4th DCA 1995))).

² Humain did not file an answer brief.

As explained by this Court in Fincantieri, the procedure for determining whether there are sufficient jurisdictional facts to bring the action within the ambit of the long-arm statute is as follows:

Initially, the plaintiff bears the burden of pleading sufficient jurisdictional facts to fall within the long-arm statute. Venetian Salami, 554 So. 2d at 502. “If the allegations in the complaint sufficiently establish long-arm jurisdiction, then the burden shifts to the defendant to contest the jurisdictional allegations in the complaint, or to claim that the federal minimum contacts requirement is not met, by way of affidavit or other similar sworn proof.” Belz Investco Ltd. P’ship v. Grupo Inmobiliario Cababie, S.A., 721 So. 2d 787, 789 (Fla. 3d DCA 1998) (citing Venetian Salami, 554 So. 2d at 502; Field v. Koufas, 701 So. 2d 612 (Fla. 2d DCA 1997)). “If properly contested, the burden then returns to the plaintiff to refute the evidence submitted by the defendant, also by affidavit or similar sworn proof.” Id. If the parties’ sworn proof is in conflict, “the trial court must conduct a limited evidentiary hearing to resolve the factual dispute.” Id.

Fincantieri, 241 So. 3d at 941-42.

Here, Meyer Werft contested all the jurisdictional allegations in the complaint by way of a sworn declaration, thereby shifting the burden to Humain to refute the evidence by affidavit or other sworn proof. Humain failed to do so. As a result, Humain is unable to establish the minimum contacts necessary for general or specific jurisdiction under Florida’s long-arm statute. With respect to general jurisdiction, Humain has failed to establish that Meyer Werft’s “affiliations with the State are so

‘continuous and systematic’ as to render [it] essentially at home in the forum State.”³ Daimler AG v. Bauman, 571 U.S. 117 (2014) (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011)). And with respect to specific jurisdiction, Humain has failed to establish that its cause of action arises from any of Meyer Werft’s activities within Florida. See § 48.193(1)(a), Fla. Stat. (2019).

III. CONCLUSION

Based on the unrefuted sworn proof before us, we hold that the trial court erred in denying Meyer Werft’s motion to dismiss for lack of personal jurisdiction because Humain failed to establish the minimum contacts necessary for Florida courts to exercise general or specific jurisdiction. See Tobacco Merchs. Ass’n of U.S. v. Broin, 657 So. 2d 939, 941 (Fla. 3d DCA 1995) (“If 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.”). For this reason, we reverse and remand with instructions to enter an order granting Meyer Werft’s motion to dismiss.

³ With general jurisdiction, the reach of the long-arm statute “extends to the limits on personal jurisdiction imposed by the Due Process Clause of the Fourteenth Amendment.” Carmouche v. Tamborlee Mgmt., Inc., 789 F. 3d 1201, 1204 (11th Cir. 2015) (quoting Fraser v. Smith, 594 F.3d 842, 846 (11th Cir. 2010)); see also Highland Stucco & Lime Products, Inc. v. Onorato, 259 So. 3d 944, 948 (Fla. 3d DCA 2018) (“General jurisdiction is established where the defendant has engaged in substantial and not isolated activity within the state. In other words, the defendant’s affiliations with the state are so continuous and systemic as to render it essentially ‘at home’ in the forum state.” (citations omitted)); Woods v. Nova Cos. Belize Ltd., 739 So. 2d 617, 620 (Fla. 4th DCA 1999).

Because we find jurisdiction is lacking, we do not address Meyer Werft's alternative forum non conveniens argument.

Reversed and remanded.