

2020 WL 2046620

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

District Court of Appeal of Florida, Second District.

GREENSPIRE GLOBAL, INC.,
and Steven M. Knauss, Appellants,

v.

SARASOTA GREEN GROUP LLC, Appellee.

Case No. 2D19-3399

Opinion filed April 29, 2020.

Synopsis

Background: Limited liability company (LLC) brought action against out-of-state corporation and its president alleging the commission of various tortious acts in the state. After a non-evidentiary hearing, the Circuit Court, 12th Judicial Circuit, Manatee County, [Edward Nicholas, J.](#), denied defendants' motion to dismiss for lack of personal jurisdiction. Defendants appealed.

The District Court of Appeal, [Black, J.](#), held that trial court could not deny the motion to dismiss without holding limited evidentiary hearing to resolve the conflict in the parties' evidence.

Reversed and remanded.

Appeal pursuant to [Fla. R. App. P. 9.130](#) from the Circuit Court for Manatee County; [Edward Nicholas](#), Judge.

Attorneys and Law Firms

[James L. Essenson](#), [Barbara J. Welch](#), and [Matthew J. Kelly](#) of Law Firm of James L. Essenson, Sarasota, for Appellants.

[Hunter G. Norton](#) of Shumaker, Loop & Kendrick, LLP, Sarasota, for Appellee.

Opinion

[BLACK](#), Judge.

*1 Greenspire Global, Inc., and Steven Knauss, president of Greenspire, appeal an order denying the motion to dismiss for lack of personal jurisdiction Sarasota Green Group LLC's second amended complaint. Because the trial court erred in failing to hold a limited evidentiary hearing to determine the jurisdictional issue in light of the parties' conflicting affidavits, we reverse.

In the second amended complaint Sarasota Green Group LLC (SGG) alleged that Greenspire, an Iowa corporation, and Mr. Knauss, an Iowa resident, committed various tortious acts in Florida. SGG asserted that Florida has jurisdiction over Greenspire and Mr. Knauss because its claims are based upon representations made by Mr. Knauss during a business meeting with SGG in Manatee County, Florida, to negotiate the terms of an exclusive license agreement between Greenspire and SGG. SGG also alleged that Greenspire has been conducting various other business activities within Florida. Greenspire and Mr. Knauss moved to dismiss the second amended complaint for lack of personal jurisdiction. Two affidavits were filed in support of the motion to dismiss: an affidavit of Mr. Knauss individually and an affidavit of Mr. Knauss in his capacity as president of Greenspire. In response, SGG filed an affidavit of its managing member. Thereafter, a supplemental affidavit of Mr. Knauss individually and as president of Greenspire was filed. A nonevidentiary hearing was held, and at the conclusion of the hearing the trial court acknowledged that the affidavits conflict to "a large extent." Nonetheless, the trial court declined to hold an evidentiary hearing and denied the motion to dismiss. This appeal followed.

We review the trial court's ruling on a motion to dismiss based on personal jurisdiction de novo. [Wendt v. Horowitz](#), 822 So. 2d 1252, 1256 (Fla. 2002). "The Florida Supreme Court announced a two-prong test to determine whether personal jurisdiction extends to a non-resident defendant: (1) whether the complaint alleged sufficient facts for application of the Florida long-arm statute[, [section 48.193, Florida Statutes](#)]; and (2) if so, whether there are sufficient 'minimum contacts' alleged to meet due process requirements." [Dickinson Wright, PLLC v. Third Reef Holdings, LLC](#), 244 So. 3d 303, 306 (Fla. 4th DCA 2018) (citing [Venetian Salami Co. v. Parthenais](#), 554 So. 2d 499, 502 (Fla. 1989)); accord [Teva Pharm. Indus. v. Ruiz](#), 181 So. 3d 513, 516 (Fla. 2d DCA 2015). "A defendant

wishing to contest the allegations of the complaint concerning jurisdiction or to raise a contention of minimum contacts must file affidavits in support of his position.” [Venetian Salami](#), 554 So. 2d at 502. “The burden is then placed upon the plaintiff to prove by affidavit the basis upon which jurisdiction may be obtained.” *Id.* (citing [Elmex Corp. v. Atl. Fed. Savings & Loan Ass'n](#), 325 So. 2d 58, 62 (Fla. 4th DCA 1976)).

Though SGG's complaint comports with both prongs of the [Venetian Salami](#) standard, Greenspire and Mr. Knauss submitted affidavits which rebutted SGG's jurisdictional allegations, effectively shifting the burden back to SGG to prove “that a basis for long-arm jurisdiction exists.” See [Teva Pharm. Indus.](#), 181 So. 3d at 519. SGG met this burden by submitting an affidavit refuting the allegations of Greenspire and Mr. Knauss, creating a conflict in the parties' evidence. As such, the trial court should have held a limited evidentiary hearing to resolve the jurisdictional issue. See [Venetian Salami](#), 554 So. 2d at 503; see also [Dickinson Wright](#), 244 So. 3d at 306 (“If the parties' evidence cannot be harmonized by the trial court, then ‘the trial court must hold a limited evidentiary hearing to resolve the jurisdictional

issue.’ ” (quoting [Volkswagen Aktiengesellschaft v. Jones](#), 227 So. 3d 150, 155 (Fla. 2d DCA 2017))). “[A]n evidentiary hearing under [Venetian Salami](#) resolves the factual disputes necessary to determine jurisdiction pursuant to [section 48.193](#) as well as whether minimum contacts exist to satisfy due process concerns.” [Teva Pharm. Indus.](#), 181 So. 3d at 521 (alteration in original) (quoting [Dev. Corp. of Palm Beach v. WBC Constr., L.L.C.](#), 925 So. 2d 1156, 1160 (Fla. 4th DCA 2006)).

*2 Accordingly, we reverse the order denying the motion to dismiss and remand for further proceedings consistent with this opinion.

Reversed and remanded.

LaROSE and MORRIS, JJ., Concur.

All Citations

--- So.3d ----, 2020 WL 2046620, 45 Fla. L. Weekly D1019