

IN THE CIRCUIT COURT OF THE 17th
JUDICIAL CIRCUIT IN AND FOR BROWARD
COUNTY, FLORIDA

Case No.: 2012-028324 (07)

P&S ASSOCIATES, GENERAL
PARTNERSHIP and S&P ASSOCIATES
GENERAL PARTNERSHIP

Plaintiff(s)

v.

**SPECIAL APPEARANCE AND DISCLAIMER
FOR DEFENDANT MILDRED RICHARDSON**

AND

**MILDRED RICHARDSON'S MOTION TO
DISMISS FOR LACK OF JURISDICTION
OVER THE PERSON**

MILDRED RICHARDSON,

Defendant.

_____ /

Comes Now, Thomas A. Kennedy, PA., Law Office and appears specially for defendant,¹ Mildred Richardson, and moves to dismiss the Complaint filed against her / drop her as a party with respect to her, based on a lack of jurisdiction over the person, and as grounds states:

1. The Complaint alleges personal jurisdiction based on Fla. Stat §48.193(1) (specific jurisdiction - the cause of action arises from the business being conducted) because Ms. Richardson, "Trustee, is a member of one or both of the partnerships", or Fla. Stat §48.193(2) (general jurisdiction - in which the connection between the cause of action and the business is not necessary because the defendant "[is] domiciled in Florida"), see pages 1-2 of Third Amended Complaint filed herein.

2. The cited jurisdictional allegations are either insufficient or inaccurate. Ms. Richardson is neither a Trustee, Partner nor has any relationship with any entity-party to this action nor has she ever lived in Florida. Page 18 of the complaint further reveals the tenuousness of the allegation in

¹ The specially appearing movant herein, Mildred Richardson, will be referred to as "Ms. Richardson" or "Defendant."

paragraph 178 in which it is alleged that Ms. Richardson “is believed to have some connection to Broward County, Florida.”

3. Under either section of Fla. Stat §48.193, jurisdiction is inadequately pled, and does not exist, Because

- a. Ms. Richardson is not operating, engaged, conducting, or carrying on any alleged business venture or solicitation within this state, and
- b. The cause of action pled does not arise from any alleged business venture or solicitation within this state, and
- c. Ms. Richardson is not domiciled in Florida and is not alleged to be “engaged in substantial and not isolated activity” in Florida.

4. Ms. Richardson is an 88 year old resident of Carpentersville, Illinois who neither does business as required by Fla. Stat §48.193(1) or (2) nor does she have the constitutionally required minimum contacts with the State of Florida for the State of Florida to exercise jurisdiction over her person. Ms. Richardson’s actual contacts with the State of Florida are described in the attached affidavit of her son, Pastor Mark Richardson, which is incorporated by reference. The contacts are isolated and claims asserted in the Complaint do not arise from those contacts.

5. The long-arm statute provides:

Acts subjecting person to jurisdiction of courts of state

(1) Any 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 jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:

(a) 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) 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.

Fla. Stat §48.193 (emphasis within body of statute added).

6. Analysis of the question of long-arm jurisdiction requires a two-step analysis:

In the seminal case of *Venetian Salami Co. v. Parthenais*, 554 So.2d 499, 502 (Fla.1989), the Florida Supreme Court set out a two-step process to determine if personal jurisdiction exists over a nonresident defendant. A court must first determine whether sufficient facts have been alleged to bring the action within the ambit of Florida's long-arm statute. . . . If the statute applies, the court must then determine whether there are sufficient "minimum contacts" on the part of the defendant to satisfy due process requirements.

Personal jurisdiction can exist in two forms: "specific," in which the alleged activities or actions of the defendant are directly connected to the forum state, and "general," in which the defendant's connection with the forum state is so substantial that no specific or enumerated relationship between the alleged wrongful actions and the state is necessary.

Caiazza v. American Royal Arts Corp. 73 So.3d 245, 249-50 (Fla. 4th DCA 2011).

We next consider the issue of general jurisdiction under section 48.193(2). That statute provides that "[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." An assertion of general jurisdiction under section 48.193(2) requires a "showing of 'continuous and systematic general business contacts' " with this state. . . . The continuous and systematic general business contacts sufficient to confer general jurisdiction present a "much higher threshold" than those contacts necessary to support specific jurisdiction under section 48.193(1). . . . One reason for requiring a more rigorous showing to establish general jurisdiction is because jurisdiction under section 48.193(2) does not require that a lawsuit's cause of action arise from activity within Florida, or that there be any connection between the claim and the defendant's Florida activities. . . .

Florida cases have found "continuous systematic business contacts" to confer general jurisdiction where a nonresident defendant's activities are extensive and pervasive, in that a significant portion of the defendant's business

operations or revenue derived from established commercial relationships in the state. Such contacts have also been found where the defendant continuously solicits and procures substantial sales in Florida.

Trustees of Columbia University In City of New York v. Ocean World, S.A., 12 So.3d 788, 792-93 Fla. 4th DCA 2009).

7. In the case at bar, the first step of the test fails. There are insufficient facts alleged to determine that there is personal jurisdiction over Ms. Richardson, under the grounds alleged, as one, Ms. Richardson is neither a Trustee, Partner, nor engages in any business with any Entity-Party to this action; or two, in that there no facts alleged to show Ms. Richardson is a Florida Resident or has substantial and not isolated contact with this Florida. “This court and other district courts have held ‘substantial and not isolated’ to mean ‘continuous and systematic general business contact’ with Florida.” *Caiazza* at 250.

8. The failure to even allege sufficient connexity is fatal to the Complaint. *Seabra v. International Specialty Imports, Inc.*, 869 So.2d 732, 734 (Fla. 4th DCA 2004). The visit to Florida to see her son and his family twice in her lifetime is just inadequate for the assertion of general jurisdiction over Defendant. While Ms. Richardson is referred to as “trustee” and “partner” in the Third Amended Complaint filed herein, the attached affidavit makes clear she is neither.

9. Foreseeability that the interaction with the forum state could result in the interpleader lawsuit should be considered. “Factors that go into determining whether sufficient minimum contacts exist include the foreseeability that the defendant’s conduct will result in suit in the forum state and the defendant’s purposeful availment of the forum’s privileges and protections.” *Id* at 733. How could a claim related to a brief visit to Florida to visit family in which she consulted with an investment advisor be related to an interpleader action in which Ms. Richardson has no interest

and specifically disclaims any interest?²

10. From the attached affidavit, it is apparent that the second step in the test, the minimum constitutionally required contacts, also fails. This test prevents a Florida Court from exercising jurisdiction over a foreign defendant, even if the cause of action arose from the foreign defendant's activities in Florida, if the foreign defendant did not have minimum contacts with Florida. Based on the facts in the affidavit it is clear that Ms. Richardson's contacts with the jurisdiction cannot be described as anything but minimal, incidental, and collateral to the claim filed here.

The United States Supreme Court, in a handful of leading cases, laid out the proper due process standard for cases involving specific jurisdiction. First, in the interest of preserving "traditional notions of fair play and substantial justice" a state may exercise specific jurisdiction only over a defendant who has certain "minimum contacts" with the state. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945). This so-called "minimum contacts" rule is the "constitutional touchstone" for such jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985). The Court later clarified that the notion of minimum contacts encompasses only situations in which the defendant has "purposefully avail[ed] [himself or herself] of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958); see also *Burger King*, 471 U.S. at 474-75, 105 S.Ct. 2174; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980). Finally, the Court has stated that simply being able to foresee a product's arrival in the forum state will never by itself establish minimum contacts over the seller of that product. *World-Wide Volkswagen*, 444 U.S. at 297, 100 S.Ct. 580. Instead, foreseeability is relevant only when "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Id.* This is because an entity that purposefully avails itself of the privilege of conducting activities within the forum state "has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." *Id.*

Caiazza at 251.

² While Ms. Richardson does not avail herself of this court for relief under this special limited appearance, she specifically disclaims any interest in the res of the interplead fund which is the subject of the captioned matter, see pages 38-39 of the Third Amended Complaint filed herein.

Wherefore, the Complaint against Mildred Richardson should be dismissed, dropped from the suit for lack of personal jurisdiction over her.

Certificate of Service

I certify that a copy hereof was sent by e-mail service on August 30, 2013, to the following:

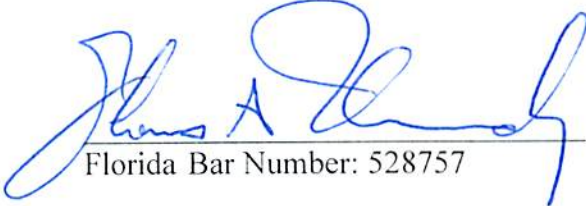
Thomas M. Messana, Esq.
Messana P.A.
401 East Olas Boulevard, Suite 1400
Ft. Lauderdale FL 33301
Email: tmessana@messana-law.com

Respectfully Submitted;

Attorney for Defendant,
Mildred Richardson

Thomas A. Kennedy PA
1426 21st Street
Vero Beach, FL 32960-3485

772-288-5990
Email: tk@thomasakennedypa.com



Florida Bar Number: 528757

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Case No.: 2012-028324 (07)

P&S ASSOCIATES, GENERAL
PARTNERSHIP and S&P ASSOCIATES
GENERAL PARTNERSHIP

Plaintiff(s)

v.

**AFFIDAVIT OF:
MARK RICHARDSON IN SUPPORT OF
MOTION TO DISMISS FOR LACK OF
JURISDICTION OVER THE PERSON**

MILDRED RICHARDSON,

Defendant.

_____ /

Affiant Mark Richardson, being first duly sworn on oath, deposes and states the following,
based on his personal knowledge:

1. My name is Mark Richardson. I am the son of Mildred Richardson, am personally aware of the contents of this affidavit which are based on my personal knowledge.
2. I am the Pastor of a church in Vero Beach, Florida. In 1999 I resided in Broward County, Florida with my wife and children.
3. My mother, Mildred Richardson is now, and has for all periods relevant to her motion been a resident of Carpentersville, Illinois and has never been domiciled in Florida.
4. My mother is 83 years old and has visited me and my family twice since we have lived in Florida. One of those visits was in 1999.
5. During my mother's visit in 1999, I or a member of my family mentioned an investment fund of which we were aware at the time. While in Florida she met with an advisor for approximately 30 minutes and listened to the advisor explain the investment. My mother declined

EXHIBIT: 1p.1

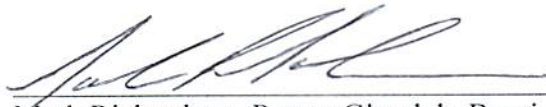
to participate, never agreed to anything, never signed any papers, and never deposited any funds.

6. My mother has not returned to Florida since that visit in 1999.

7. My mother has never lived, worked, or conducted any business in Florida. Her only connection has been two visits with her family which occurred twice over the course of 25 years.

8. My mother makes no claim for any fund or any interest in the captioned res and to the extent that any interest may exist, she specifically disclaims such interest.

9. Further affiant sayeth naught.



Mark Richardson, Pastor Glendale Baptist Church
Vero Beach, Florida

This date, August 30, 2013, in the state and county aforesaid, personally appeared before me, the undersigned notary, Mark Richardson, personally known to me, or who presented the following identification:

who took an oath and signed above.



Notary Public

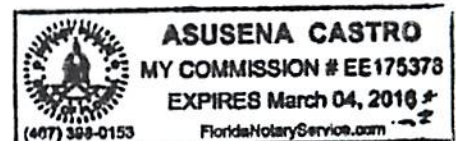


EXHIBIT: 1 p. 2