

SUPREME COURT OF FLORIDA

Case No. SC09-1039

Lower Tribunal No(s): 4D08-4374
07-09966 (14)

OCEAN WORLD, S.A., Appellee

vs.

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW
YORK D/B/A COLUMBIA UNIVERSITY, Appellant

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

This answer brief is respectfully submitted by defendant-respondent The Trustees of Columbia University (“Columbia”) in opposition to the petition of plaintiff Ocean World, S.A. (“Ocean World”) to invoke the discretionary jurisdiction of this Court pursuant to Fla. R. App. P. 9.030(a)(2)(A). Ocean World erroneously asserts that discretionary jurisdiction should be exercised because the decision of the Fourth District Court of Appeal (“Fourth DCA”) below, which held that there was no adequate basis for the exercise of personal jurisdiction over Columbia in this case, purportedly “expressly and directly” conflicts with several decisions of this Court, as well as decisions of the Fourth DCA itself, within the meaning of Rule 9.030(a)(2)(A)(iv). On the contrary, the record reflects that the Fourth DCA faithfully applied the applicable precedents – including several of the very ones that Ocean World asserts were expressly and directly contradicted. Moreover, in doing so the Fourth DCA correctly rejected Ocean World’s groundless assertion of personal jurisdiction over Columbia in Florida.

Ocean World, a foreign corporation, alleged in its second amended complaint that several of the defendants – not including Columbia – had improperly interfered with a contract between Ocean World and the government of the Dominican Republic under which Ocean World would import into that country twelve dolphins from Japan. The only two claims asserted against Columbia were

that (1) Columbia allegedly had negligently hired and retained one of the other defendants, Dr. Diana Reiss (“Reiss”), as an unpaid adjunct research scientist in New York, and (2) that, in allegedly encouraging the Dominican Republic not to import the dolphins (conduct that was not alleged to have occurred in Florida), Reiss somehow acted as Columbia’s “apparent agent.”

Columbia moved to dismiss Ocean World’s second amended complaint on the grounds, *inter alia*, that it was not subject to personal jurisdiction in the State of Florida, specifically contesting that it had engaged in the type of continuous and systematic conduct directed at Florida that could support an assertion of general jurisdiction, and further submitting that Ocean World had not advanced any allegations of conduct by Columbia that could support an assertion that Columbia had made Reiss its apparent agent. Thus, Columbia submitted, specific jurisdiction over Columbia could not be based on any alleged conduct by Reiss. Columbia also contended that there were not, in any case, sufficient allegations of conduct by Reiss that would support the assertion of specific jurisdiction even over her. In support of its motion to dismiss, Columbia filed numerous, un rebutted, affidavits challenging the jurisdictional allegations in the complaint and setting forth Columbia’s very limited contacts with Florida. The trial court nonetheless denied Columbia’s motion without explanation. In an opinion dated May 6, 2009,

however, the Fourth DCA reversed the denial and directed that the claims against Columbia be dismissed.

In its opinion, the Fourth DCA addressed at length the reasons why the State of Florida lacked both general and specific personal jurisdiction over Columbia. The court reviewed the facts evidenced in the record – including those in Columbia’s supporting affidavits – and, following the analysis set forth in *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499 (Fla. 1989), concluded that there was no sufficient basis for the exercise of personal jurisdiction in Florida over Columbia. Citing *Woods v. Nova Cos. Belize Ltd.*, 739 So. 2d 617 (Fla. 4th DCA 1999), the court explained that Columbia’s various activities relating to Florida over the years – “even lumped together” – did not support the exercise of general personal jurisdiction. The court further held that because, as it had held in a related appeal, there was no jurisdiction over Columbia’s purported apparent agent, Reiss, there could be no specific personal jurisdiction over Columbia based on Reiss’ alleged activities. The court did not reach Columbia’s alternative contention that there was no basis for specific jurisdiction over Columbia, since Ocean World had not alleged that Columbia had done anything to cloak Reiss with apparent authority.

In an effort to squeeze this case into the parameters of Rule 9.030(a)(2)(A), Ocean World has materially mischaracterized the Fourth DCA’s decision. Contrary to Ocean World’s assertion in its Initial Brief on Jurisdiction (“Init.

Brief”), the Fourth DCA did not hold that “the defendant is not required to provide a rebutting affidavit”. (Init. Brief 4.) Rather, the court expressly cited to numerous facts in Columbia’s supporting affidavits to support its decision. The court did not hold “that it is proper (when looking to the significance of Defendant’s contacts with the state) to consider just one year of contacts that a nonresident defendant may have had with Florida.” (Init. Brief 5.) In fact, the opinion considered Columbia’s alleged activities over a lengthy period – from 1971 to 2006 – before ruling that Columbia was not subject to general personal jurisdiction in Florida.¹ Because the Fourth DCA thus neither directly nor expressly contradicted any applicable Supreme Court or District Court precedent, Ocean World’s petition should be denied.

SUMMARY OF THE ARGUMENT

The Fourth DCA correctly held in its May 6, 2009 opinion that Columbia was not subject to either specific or general personal jurisdiction in Florida. Consistent with *Acquadro v. Bergeron*, 851 So. 2d 665 (Fla. 2003) and *Wendt v. Horowitz*, 822 So. 2d 1252 (Fla. 2002), the Fourth DCA acknowledged Columbia’s supporting affidavits and relied on the facts demonstrated therein to hold that

¹ Nor, contrary to Ocean World’s unsupported assertion, did Ocean World allege in its complaint that Columbia “has business interests which commenced, organized, funded, and continue to facilitate both local and global activities to interfere with [Ocean World’s] Florida office and [Ocean World’s] business as a whole.” (Init. Brief 6.)

Columbia had more than sufficiently rebutted the largely conclusory jurisdictional allegations pled by Ocean World. Furthermore, consistent with *Woods*, 739 So. 2d at 617, the Fourth DCA analyzed Columbia's activities in Florida *over a period of decades* and determined that these activities did not rise to the level of continuous and systematic general business contacts that would support a finding of general jurisdiction. Finally, contrary to Ocean World's assertion, the effects test set forth in *Calder v. Jones*, 465 U.S. 783 (1984) (which Ocean World did not advocate in its appeal brief below) is inapplicable to the jurisdictional allegations at issue here since, under that test, specific personal jurisdiction will be found only where intentional torts, such as defamation or libel, arise from the very content of communications directed into the forum state. In the second amended complaint, Ocean World did not allege that any communication into Florida by Columbia, or even by Reiss, was defamatory or libelous, or otherwise injurious to Ocean World in Florida.

Rule 9.030(a)(2)(A) provides for discretionary review only with respect to limited categories of cases. The Rule may not properly be invoked to obtain a second round of appellate review merely because the losing party disagrees with the result below.² Accordingly, apart from the fact that the decision by the Fourth

² Rule 9.030(a)(2)(A) permits a petitioner to seek discretionary review by this Court of decisions of district courts of appeal that "(i) expressly declare valid a state statute; (ii) expressly construe a provision of the state or federal constitution;

DCA below plainly was correct, because that decision did not “expressly” or “directly” conflict on any question of law with any decision of this Court or of any district court of appeal, Rule 9.030(a)(2)(A) does not support discretionary review.

ARGUMENT

I The Fourth DCA Reviewed Columbia’s Contacts With Florida Over A Period Of Decades To Conclude That “Even Lumped Together” These Contacts Were Insufficient To Confer Personal Jurisdiction Over Columbia

Contrary to Ocean World’s assertion, the Fourth DCA did not limit its analysis of Columbia’s contacts with the State of Florida to a one-year period. (Init. Brief at 4-5.) Far from holding that “it was sufficient to assess only one year of contacts that Defendant may have had with the forum state” (Init. Brief 7), the Fourth DCA considered a variety of contacts between Columbia and Florida over several decades in determining that there was no basis for the exercise of general personal jurisdiction over Columbia.

The court considered (1) Columbia’s participation in unrelated lawsuits in Florida between 1994 and 2006 (App. OW A-1, 8); (2) Columbia’s contingent remainder interest in a parcel of property in Florida (*id.*); (3) a mortgage given by

(iii) expressly affect a class of constitutional or state officers; (iv) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law; (v) pass upon a question certified to be of great public importance; or (vi) are certified to be in direct conflict with decisions of other district courts of appeal.” Ocean World relies solely on subsection (iv) to seek review in this Court.

Columbia on Florida property that was paid off in 1971 (*id.*); (4) enrollment data for Columbia's distance learning program reflecting that only two students with Florida addresses were enrolled (*id.*); and (5) the ongoing activities of Columbia's alumni associations in Florida. *Id.* at 7. In making its ruling, the court recognized that Florida cases require that a nonresident defendant's activities be "extensive and pervasive, in that a significant portion of the defendant's business operations or revenue is derived from established commercial relationships in the state" before general personal jurisdiction is properly found. *Id.* at 5. Under this rubric, the Fourth DCA found that "even lumped together" Columbia's activities over many years did not rise to "the level of continuous and systematic general business contacts with Florida that would support a finding of general jurisdiction." *Id.* at 7.

In applying the general *Venetian Salami* analysis, the Fourth DCA's opinion was also entirely consistent with *Woods*, 739 So. 2d at 617, in that it assessed the defendant's contacts with the forum state over a period of years prior to the commencement of the action. Indeed, there is no express and direct conflict between the Fourth DCA's opinion and any of the precedents to which Ocean World points. In reaching its decision, the court correctly applied the principles enumerated in those cases, to the extent applicable here. Accordingly, there is no basis for the exercise of discretionary jurisdiction in this matter.

II The Fourth DCA Found Sufficient Columbia's Affidavits Challenging Personal Jurisdiction And Correctly Shifted The Burden to Ocean World To Prove A Basis Upon Which Jurisdiction Could Be Obtained

Consistent with *Acquadro*, 851 So. 2d at 665, and *Wendt*, 822 So. 2d at 1252, Columbia filed numerous affidavits in support of its motion to dismiss, to rebut the largely conclusory jurisdictional allegations in Ocean World's complaint. Those affidavits established that (1) Columbia did not have an office in Florida, maintained no bank accounts in Florida, and was not registered to conduct business in Florida, (App. OW A-1 at 2); (2) only 10 of Columbia's 14,000 employees had Florida addresses – of which 8 had part-time or zero salary appointments, and 2 were post-doctoral research scientists temporarily located in Florida, (*id.*); (3) Columbia's alumni associations maintained no offices in Florida, (*id.* at 3); and (4) as of 2007, of the 457 students enrolled in Columbia's distance learning program, which originates in New York and is available virtually anywhere, only 2 students had Florida addresses. (*Id.*) Moreover, even Ocean World's own allegations showed that the lawsuits Columbia had occasionally filed in Florida, which primarily were to enforce unrelated foreign judgments, and the Florida real estate that Columbia had received, had nothing to do with the claims here. *Id.* at 3, 8.

Based on the facts of record and a meticulous analysis of (and citation to) twenty Florida cases – including several of the very cases that Ocean World erroneously asserts were somehow expressly and directly contradicted in the

opinion below, the Fourth DCA correctly determined that there was an insufficient basis to exercise long-arm jurisdiction in this matter. *Id.* at 5-8.

III The Effects Test Under *Calder v. Jones*, 465 U.S. 783 (1984) Is Inapplicable Where The Claimed Intentional Torts Do Not Arise From The Content Of Communications Into The Forum State

Contrary to Ocean World's belated assertion,³ the effects test set forth in *Calder v. Jones*, 565 U.S. 783 (1984) is inapplicable here because the claims pled against Columbia did not arise in Florida out of the content of any alleged communications into Florida. Petitioner's reliance on *Acquadro*, 851 So. 2d at 665, *Wendt*, 822 So. 2d at 1252, and *Silver v. Levinson*, 648 So. 2d 240 (Fla. 4th DCA 1994) to illustrate the use of the *Calder* effects test is thus misplaced. In those cases, the courts found specific personal jurisdiction over nonresident defendants based on defamatory statements made by the defendants in telephone calls to Florida or in letters mailed to Florida. This Court and the Fourth DCA held in those cases that personal jurisdiction could be had over the nonresident defendants because the content of their communications directed into Florida gave rise to causes of action in Florida against them. Contrary to Ocean World's

³The applicability of the *Calder* effects test was not raised below. Ocean World did not cite *Calder* in its Answer Brief in the Fourth DCA, much less advocate it as the source of an alternative test for personal jurisdiction, nor did it mention the test in its opposition to Columbia's motion to dismiss. Ocean World thus waived any right it might otherwise have had to appeal on this issue. See *Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005) ("As a general rule, it is not appropriate for a party to raise an issue for the first time on appeal.")

assertion, however, Ocean World did not allege here – and could not colorably allege – that the content of any communications into Florida by Reiss gave rise to the claims asserted against Columbia.⁴ Here again, there simply is no “express” or “direct” contradiction of any applicable legal precedent.

CONCLUSION

Discretionary review does not lie here because there is no express or direct conflict between the Fourth DCA’s opinion and any of the Supreme Court or District Court precedents to which Ocean World refers. Accordingly, Ocean World’s petition to invoke this Court’s discretionary jurisdiction should be denied.

DATED this 14th day of September, 2009.

Respectfully submitted,

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⁴ We understand that the lack of any basis to further review the denial of personal jurisdiction over Reiss is addressed at greater length in Reiss’ own brief in response to Ocean World’s petition to invoke this Court’s discretionary jurisdiction in Case No. SC09-1042.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 14, 2009, a true and correct copy of the foregoing was furnished by U.S. Mail on:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief complies with the requirements of Florida Rule of Appellate Procedure 9.210(a)(2), in that it is written in Times New Roman 14-point font.

s/Gary Kovacs
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