

Establishing In Personam Jurisdiction in Florida over Out of State Defendant Corporations

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To do business in modern America, one almost necessarily has to engage in interstate commerce. In a city like Jacksonville, with its proximity to the Florida-Georgia border, one can easily see how anything from the sale of an automobile, to the award of a subcontract, or the hiring of an employee, could involve potential litigants from different states. If a dispute arises out of such an interstate transaction and litigation is eminent, an important question is what is the appropriate forum to file the complaint?

Assuming the plaintiff is a Florida corporation, the question of whether the complaint can be filed in Florida court hinges on the State's power to enforce a judgment against the defendant. A state's power to adjudicate a claim and enforce the judgment is limited by the due process clauses of the United States Constitution and by precedent. The test to determine if a state court has the power to enforce judgment over an out of state defendant corporation asks whether the defendant has certain minimum contacts with the forum state so that the suit does not offend "traditional notions of fair play and substantial justice." *International Shoe Co. v. State of Wash., Office of Unemployment and Compensation*, 326 U.S. 310,316 (1945).

Personal Jurisdiction under Florida's Long Arm Statute:

Florida has a "Long Arm Statute" that prescribes the circumstances under which an out of state defendant can be haled into Florida court under in personam jurisdiction.

Specific Jurisdiction:

Fla. Stat. 48.193(1) lists acts under which a defendant may be subject to jurisdiction in Florida, provided the cause of action arises out of a specifically pleaded act under the statute. Jurisdiction under this subsection is known as specific jurisdiction. Specific jurisdiction can arise out of a single, isolated contact with the forum state, if the cause of action so closely related to the contact as to not offend the notions for fair play and substantial justice. The following are notable acts in this subsection for establishing specific jurisdiction in a business dispute:

- (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.
- (c) Owning, using, possessing, or holding a mortgage or other lien on any real property within this state
- (d) Contracting to insure any person, property, or risk located within the state at the time of contracting.
- (g) Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.

General Jurisdiction:

Subsection 2 of the long arm statute provides a basis for establishing general jurisdiction:

“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.”

The defendant must also have minimum contacts with Florida:

When determining whether a Florida court has jurisdiction over a defendant, the court looks to see if the complaint alleges sufficient jurisdictional facts to bring the action within the ambit of the long arm statute; if it does, then the court must decide whether there are sufficient minimum contacts to satisfy the due process requirements. *See Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989). The test for determining minimum contacts looks to whether the defendant purposefully made contacts in the state and whether the defendant should reasonably anticipate being haled into court in the state. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985).

What is it to have minimum contacts?

A corporation having minimum contacts in a Florida can be seen as having a continuous and systematic business contact with the state of Florida. A company that has consistently sought financial gain or strategic advantage from activities directed at residents of Florida will have minimum contacts to establish general jurisdiction. Consistent actions of a company’s authorized agent or company-controlled subsidiary to further the company’s goals within in the state are usually sufficient to create minimum contacts with the state. In previous cases, out of state corporations have established minimum contacts through the sale of products that targeted at Floridians, without anyone from the company ever entering Florida. *See e.g. Murante v. Pedro Land, Inc.* 761 F. Supp. 786, 790 (S.D. Fla. 1991)(Pedro Land Inc., a.k.a. “South of the Border” never entered Florida, but their fireworks sales on I-95 were targeted at Floridians). While the foreseeability of a company’s product being used in Florida is not alone determinative of sufficient minimum contacts, a company that knows a significant number of its products are being shipped to Florida will be found to have minimum contacts. *Louis Winer Co., Inc. v. San Francisco Mercantile Co., Inc.*, 501 So. 2d 171, 173 (Fla. 4th DCA 1987).

Note on Forum Selection Clauses in Contracts:

Many contracts contain forum selection clauses, which explicitly state that any dispute arising under the contract will be adjudicated in a certain court. In

Florida, these clauses are presumed valid and controlling if grounds for personal jurisdiction exist independent of the clause. If there are no grounds for personal jurisdiction outside of the clause, then the clause is unenforceable. *See Autonation, Inc. v. Whitlock*, 276 F. Supp. 2d. 1258, 1263 (S.D. Fla. 2003). Basically, a forum selection clause cannot be used to bring an action under the jurisdiction of a Florida court if the defendant objects and is found not to have sufficient contacts with the state. Thus, long arm jurisdiction and minimum contacts are the true test even with a clause in place providing otherwise. Fret not, though Florida plaintiffs for Florida courts are more inclined to retain jurisdiction when a Florida corporation sues a non-resident in Florida under a contract with a forum selection clause, due to their deference to the contract at issue.