

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

CASE NO. COCE18016298 DIVISION 53 JUDGE Robert Lee

Chetu Inc

Plaintiff(s) / Petitioner(s)

v.

Mega Group Private Investigations Inc, et al

Defendant(s) / Respondent(s)

_____ /

ORDER GRANTING

MOTION TO DISMISS OF DEFENDANT ZEEV HASKAL

THIS Cause came before the Court on March 3, 2020 for a hearing on the Defendant's Motion to Dismiss Plaintiff's Complaint, and the Court's having reviewed the Motion, the entire Court file, and the relevant legal authorities; having heard argument; having made a thorough review of the matters filed of record; and having been sufficiently advised in the premises, the Court finds as follows:

Background: On August 19, 2018, Plaintiff, CHETU, INC. ("Chetu"), filed a complaint against Defendants, Mega Group Private Investigations, Inc. ("Mega Group PI"), and Zeev Haskal ("Haskal"). Subsequently, on October 01, 2018, Defendant Haskal filed a Motion to Dismiss for lack of personal jurisdiction and failing to state a claim. (Def. Mot. to Dismiss). This Court entered an Order denying the Motion to Dismiss on October 16, 2018 for lack of a supporting affidavit. On October 31, 2018, Defendant Mega Group PI filed an Answer & Affirmative Defenses. On January 08, 2019, Defendant Haskal amended his Motion to Dismiss. On March 18, 2019 this Court denied the Amended Motion. On March 28, 2019, Haskal filed a Second Amended Motion to Dismiss Chetu's Complaint. A hearing was held on March 3, 2020 to address Defendant's, Haskal, Second Amended Motion to Dismiss.

Plaintiff Chetu's claim against Defendant Haskal posits that Defendant Haskal used Mega Group PI and MEGA GROUP ONLINE, INC. ("Mega Group OL") to use Chetu Created Intellectual Property ("Chetu Created IP") and Chetu Existing Intellectual Property ("Chetu Existing IP") without paying for its use. Further, Chetu alleges that Haskal's acts resulted in the tort of conversion, and thus he is subject to personal jurisdiction in Florida. This Court reserved ruling addressing questions of jurisdiction over Defendant, Haskal.

Conclusions of Law: Florida Statute §48.193 establishes personal jurisdiction over a person or persons "whether or not a citizen or resident of this state" if "personally or through an agent" commits,

any of the following acts:

1. 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. Committing a tortious act within this state.

...

7. Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.

Id. However, "[t]he mere proof of any one of the several circumstances enumerated in section 48.193 as the basis for obtaining jurisdiction of nonresidents does not automatically satisfy the due process requirement of minimum contacts." *Venetian Salami v. Parthenais*, 544 So.2d 499, 502 (Fla. 1989). Thus, a two-step inquiry is required to determine whether a Florida court has jurisdiction over a nonresident defendant. *Shoppers Online, Inc. v. E-Pawn, Inc.*, 792 So.2d 615, 616 (Fla. 4th DCA 2001). First, the plaintiff must sufficiently allege "jurisdictional facts." *Id.* Second, the court must consider "whether sufficient 'minimum contacts' are demonstrated to satisfy due process requirements." *Id.* A defendant may contest personal jurisdiction by filing an affidavit in support of his position. If a defendant's affidavit is sufficient the burden shifts to the plaintiff to prove by affidavit the basis upon which jurisdiction may be obtained. *Id.* at 502.

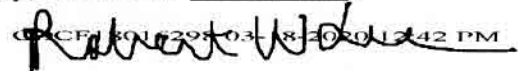
Here, Chetu alleges, "[t]his Court has personal jurisdiction over Haskal as he committed a tortious act in this state, including converting Chetu Created Intellectual Property which was located here." Pl.'s Compl. ¶7. Further, the complaint alleges, "As Mega Group has not paid Chetu [. . .] Haskal has converted use and benefit of Chetu Created Intellectual Property from Mega Group." Pl.'s Compl. ¶¶28-29. However, in paragraph 27 Chetu alleges, "[p]ursuant to the Contract, *Mega Group agreed* (emphasis added) that all Chetu Created Intellectual Property [. . .], is the sole exclusive property of Chetu unless and until payment in full is made." Pl.'s Compl. ¶27. Chetu does not allege that Haskal entered into the Contract with Chetu. Chetu does not allege that Haskal acted as an insurer of Mega Group Pl. Nor does Chetu allege that Haskal made any representations that would seemingly bind Haskal as party to the Contract. *See Oesterle v. Farish*, 887 So.2d 412 (Fla. 4th DCA 2004). Here, Haskal, alleged he has not "operated, conducted, engaged in, or carried on any business in Florida." *Aff. Zeev Haskal* ¶3. Without more Plaintiff's pleadings are insufficient to find that Defendant Haskal has retained use of Chetu Created Intellectual Property and/or Chetu Existing Intellectual Property. *See Eller v. Allen*, 623 So. 2d 545, 547 (Fla. 5th DCA 1993) (holding plaintiff had introduced no evidence that either of the defendants had personally committed any tortious act in Florida or engaged in any personal activity within the state); *Doe v. Thompson*, 620 So. 2d 1004, 1006 (Fla. 1993) (holding Florida courts do not have jurisdiction over a nonresident corporate defendant who states in his uncontradicted affidavit he did not commit a tortious act or personally cause injury in Florida).

Chetu's only allegation against Haskal is found in Affidavit of Chetu in Opposition to Defendant Zeev Haskal's Second Amended Motion to Dismiss Chetu's Complaint. The affidavit states, "Chetu performed work on behalf of [Mega Group Pl] for [Mega Group OL]." Further, that "[Mega Group OL] is a separate and distinct entity from [Mega Group Pl]." ¶6. Finally that "[Mega Group OL]'s website is using [Chetu Created IP] and [Chetu Existing IP]." The affidavit furthers, "Zeev Haskal converted use of Chetu's [Chetu Created IP] and [Chetu Existing IP] for his other company [Mega Group OL], without paying for Chetu's services rendered under the Contract." ¶11. The considered facts indicate only that Mega Group OL has used the Chetu Created IP and Chetu Existing IP. Chetu argues that Haskal's ownership of the two corporations is sufficient to establish minimum contacts. Chetu relies on *Kitroser v. Hurt*, for the proposition that, "where an individual, nonresident defendant commits negligent acts in Florida whether on behalf of a corporate employer or not, the corporate shield doctrine does

not operate as a bar to personal jurisdiction in Florida over the individual defendant.” 85 So. 3d 1084 (Fla. 2012). However, the Plaintiff’s reliance on *Kitroser* is misplaced. In *Kitroser* the “employee’s [did] not contest that they were in Florida, nor [did] they contest that they engaged in some form of conduct, training, or supervision [. . .] in Florida.” *Id.* at 1089. Here, Haskal contends he has “conducted all [. . .] dealings with Chetu on behalf of [Mega Group PI] from my office in California.” Aff. Zeev Haskal ¶14. There is no credible allegation here that Haskal has ever been “present” in the state of Florida. *Id.* at 1088 (affirming *Doe v. Thompson*, whereby a “defendant [does] not act ‘personally’ within the state when the employee [does] not act physically in Florida.” 620 So. 2d at 1005). Chetu argues that because the property in question is owned by Chetu, who resides in Florida, then the misappropriation of that property means that Haskal physically entered the State of Florida. Chetu does not provide any case law that establishes a claim for conversion of intellectual property as sufficient to meet the “present” requirement in *Kitroser*. Assuming arguendo that caselaw supports personal jurisdiction in a claim of conversion of intellectual property, the pleaded allegations indicate only that Mega Group OL and Mega Group PI have used Chetu Created IP and Chetu Existing IP without proper payment to Chetu. Thus, Defendant Haskal may properly rely on the “corporate shield” doctrine that “acts performed by a person exclusively in his corporate capacity not in Florida but *in a foreign state* may not form the predicate for the exercise of personal jurisdiction over the employee in the forum state.” *Kitroser*, 85 So. 3d at 1088. As a result, this Court need not address the minimum contacts issue in the second prong of the *Venetian Salami* inquiry. Nevertheless, the facts at play in the determination of the first prong strongly suggest there would be no minimum contacts found in the second prong. Accordingly, it is hereby

ORDERED and ADJUDGED that the Defendant’s Second Amended Motion to Dismiss Chetu’s Complaint is GRANTED. This case shall proceed as to the Defendant Mega Group PI only.

DONE and ORDERED in Chambers, at Broward County, Florida on 03-18-2020.

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Hon. Robert Lee

COUNTY JUDGE

Electronically Signed by Robert Lee

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