

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION AE
CASE NO. 50-2019-CA-013860-XXXX-MB

GABE HOFFMAN,
Plaintiff/Petitioner

vs.

THOMAS SCHOENBERGER,
Defendant/Respondent.

**ORDER GRANTING MOTION TO DISMISS
WITHOUT PREJUDICE AND QUASHING SERVICE OF PROCESS**

THIS CAUSE comes before the Court on the motion of defendant Thomas Schoenberger (“Schoenberger”) to dismiss this action for lack of personal jurisdiction and to quash service upon him due to the lack of personal jurisdiction (“the Motion”). (D.E. # 57.) (The Court notes that the style of the motion to dismiss also includes an entity, “Thomas Schoenberger, LLC,” even though that entity is not named as a defendant in either the original complaint or the amended complaint.) Plaintiff Gabe Hoffman (“Hoffman”) filed his response to the Motion on January 5, 2021. The Court has reviewed the submissions of the parties and is otherwise advised of the premises.

BACKGROUND FACTS

On October 28, 2019, plaintiff Gabe Hoffman (“Hoffman”) filed this action against Schoenberger. The complaint sought relief for defamation for various Internet posting allegedly made by Schoenberger. (D.E. # 2.) Hoffman was served on May 27, 2020. (D.E. # 16.) On June 13, 2020, Schoenberger, acting *pro se*, filed a motion to quash service and to dismiss the complaint for lack of personal jurisdiction. (D.E. # 17.)

On August 12, 2020, Hoffman filed a motion for leave to amend his complaint to include claims for tortious interference and injunctive relief (D.E. # 27). The Court denied Schoenberger’s motion to quash service and to dismiss and granted Hoffman’s motion for leave to amend his complaint. (D.E. #32.) On September 4, 2020, the Court denied Hoffman’s emergency motion for injunctive relief. (D.E. # 39.)

On December 9, 2020, Schoenberger, through counsel, filed the current Motion, again seeking dismissal of the amended complaint and seeking to quash service. (D. E. # 57.) Hoffman contends that the Motion should again be denied because he has conducted third-party discovery establishing that Schoenberger's allegedly defamatory postings have been accessed in Florida by a Florida resident eliminating any issue of personal jurisdiction. (D.E. # 61.)

ANALYSIS AND RULINGS

Florida Rule of Civil Procedure 1.140(b) requires that the defense of lack of personal jurisdiction must be asserted by a defendant in either a "responsive pleading" (i.e., an answer), or by motion. Under subsection (h) of that rule, the defense of lack of personal jurisdiction is waived if not presented by motion or included in a responsive pleading. In this case, Schoenberger has consistently raised lack of personal jurisdiction in his motion to dismiss the complaint (D.E. # 17), and again in the Motion before the Court (D.E. # 57).

Florida Rule of Civil Procedure 1.110(b) requires, in pertinent part, "A pleading which sets forth a claim for relief . . . must state a cause of action **and shall contain** (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it." (Emphasis added.) Therefore, a complaint must include allegations of fact sufficient to confer personal jurisdiction over a defendant. *See, Lake Erie Chemical Co. v. Stinson*, 162 So. 2d 545, 546-47 (Fla. 2d DCA 1964). Moreover, even if a claimant later presents evidence supporting the existence of personal jurisdiction, nonetheless the complaint must be dismissed if it does not contain allegations sufficient to confer jurisdiction. *Id.*

The same rule applies to complaints against out-of-state defendants predicated on Florida's long-arm statute, section 48.193, Florida Statutes. The complaint must contain allegations sufficient to meet long-arm jurisdiction. *Kaminsky v. Hecht*, 272 SO. 3d 786, 787 (Fla. 4th DCA 2019) (quoting *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989)). The Court is foreclosed from considering any evidence outside the four corners of the complaint establishing personal jurisdiction.

As for Schoenberger's motion to quash service of the original complaint, it is well

established that the failure of a complaint to contain allegations sufficient to establish personal jurisdiction under the Florida long-arm statute, section 48.193, Florida Statutes, voids any service of process accomplished pursuant to section 48.194. *Dimino v. Farina*, 572 So. 2d 552, 554 (Fla. 4th DCA 1990) and cases cited therein. Accordingly, service on Schoenberger must be quashed.

Based on the foregoing, it is hereby,

ORDERED AND ADJUDGED as follows:

1. The Order of August 17, 2020 denying Schoenberger's motion to dismiss the original complaint for lack of personal jurisdiction and to quash service of process is vacated
2. Plaintiff's first amended complaint is dismissed without prejudice. Plaintiff shall have thirty (30) days from the date of this Order to file a second amended complaint alleging facts supporting long-arm personal jurisdiction.
3. Plaintiff's service of the original complaint on the defendant is quashed.

DONE AND ORDERED, in West Palm Beach, Palm Beach County, Florida this 14th day of January, 2021.

50-2019-CA-013860-XXXX-MB 01/15/2021
Glenn D. Kelley, Judge

50-2019-CA-013860-XXXX-MB 01/15/2021
Glenn D. Kelley
Judge

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