

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Caiazzo v. American Royal Arts Corp.

73 So. 3d 245 (Fla. 4th DCA 2011) · Decided June 1, 2011

SUMMARY

The opinion addresses whether Florida courts may exercise specific or general personal jurisdiction over a New Jersey defendant whose internet-based memorabilia business involved Florida contacts. The court retained the appeal after the appellant filed a voluntary dismissal because the jurisdictional issues were of great public importance. It held that specific jurisdiction existed for the plaintiff's FDUTPA, unlawful restraint of trade, and defamation claims, but that general jurisdiction did not exist; the court also rejected adopting the Zippo sliding-scale test as a controlling framework.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Per curiam; Hazouri; Ciklin; Levine
JURISDICTION	Florida
DECIDED	June 1, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order denying the defendant's motion to dismiss for lack of personal jurisdiction.
STANDARD OF REVIEW	De novo review applies to a trial court's ruling on a motion to dismiss for lack of personal jurisdiction.
PRECEDENTIAL VALUE	Published Florida Fourth District Court of Appeal opinion; precedential within the court's jurisdiction subject to later appellate treatment.
PARTIES	Frank Caiazzo v. American Royal Arts Corp.

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the appellate court could retain jurisdiction and issue an opinion after the appellant filed a notice of voluntary dismissal.
2. Whether Florida had specific personal jurisdiction over Caiazzo as to the FDUTPA, defamation, and unlawful restraint of trade claims.
3. Whether Florida had general personal jurisdiction over Caiazzo based principally on his internet website and Florida sales.
4. Whether the Zippo active-passive website sliding-scale test should replace traditional minimum-contacts analysis in internet-related personal-jurisdiction cases.

HOLDINGS

1. An appellate court has discretion to decline to dismiss an appeal after a timely notice of voluntary dismissal when the case presents an issue of great public importance and substantial judicial labor has been expended.
2. Florida had specific personal jurisdiction over Caiazzo on the FDUTPA and unlawful restraint of trade claims.
3. Florida had specific personal jurisdiction over Caiazzo on the defamation claim based on allegations that Caiazzo or his agents made defamatory statements published and circulated in Florida, including telephone calls to ARA employees in South Florida; the unrefuted email sent by Cox alone did not establish jurisdiction.
4. Florida did not have general personal jurisdiction over Caiazzo because his website and Florida sales did not establish substantial, continuous, and systematic business contacts with Florida.
5. Florida courts should continue to apply traditional minimum-contacts principles in internet-related personal-jurisdiction cases rather than adopt Zippo's sliding-scale test. A court may consider whether a website is active or passive, but those labels are not conclusive.

KEY QUOTATIONS

“Therefore, due to both the inappropriateness of permitting Zippo to replace traditional minimum contacts and Zippo’s practical limitations, we choose to continue to apply a traditional minimum contacts analysis in personal jurisdiction questions, whether or not the internet is involved.” (at 255-56)

“In sum, the trial court erred in finding that it had general jurisdiction over Caiazzo based on his website, which does not solicit business from Florida, does not target Florida, and only makes 4.35 of total sales to Florida, a de minimis amount.” (at 260-61)

FACTUAL BACKGROUND

Caiazzo operated a sole proprietorship known as Beatles Autographs, specializing in buying, selling, and authenticating Beatles memorabilia. American Royal Arts Corp., a Florida seller of rock-and-roll memorabilia, alleged that Caiazzo characterized signatures on a Beatles album as forgeries, causing an intended purchaser not to buy the album. Caiazzo's website generated most of his business, but from 2003 through 2007 only 4.35

percent of his total sales, approximately \$100,000 of \$2.3 million, were delivered to Florida addresses, and there was no evidence that he specifically targeted Florida residents through the website.

PROCEDURAL HISTORY

American Royal Arts Corp. sued Caiazzo for alleged violations of the Florida Deceptive and Unfair Trade Practices Act, defamation, and unlawful restraint of trade. After limited jurisdictional discovery and an evidentiary hearing, the trial court found both specific and general personal jurisdiction and denied Caiazzo's motion to dismiss. Caiazzo appealed, but before the appellate opinion was released he filed a notice of voluntary dismissal. The Fourth District exercised its discretion to retain the appeal because the issue was of great public importance and substantial judicial labor had been expended.

DISPOSITION

affirmed

CASES CITED

- State v. Schopp, 653 So. 2d 1016, 1018 (Fla. 1995)
- Bell v. U.S.B. Acquisition Co., 734 So. 2d 403, 404 n. 1 (Fla. 1999)
- Brown v. McNeil, 22 So. 3d 741, 742 (Fla. 1st DCA 2009)
- Washington v. State, 982 So. 2d 1207, 1208 (Fla. 5th DCA 2008)
- Hammerl v. State, 779 So. 2d 410, 411 n. 1 (Fla. 2d DCA 2000)
- Venetian Salami Company v. Parthenais, Venetian Salami Co. v. Parthenais, 554 So. 2d 499, 502 (Fla. 1989)
- Internet Solutions Corp. v. Marshall, 39 So. 3d 1201, 1207, 1213-16 (Fla. 2010)
- Woods v. Nova Cos. Belize Ltd., 739 So. 2d 617, 620 (Fla. 4th DCA 1999)
- Am. Overseas Marine Corp. v. Patterson, 632 So. 2d 1124, 1128 (Fla. 1st DCA 1994)
- International Shoe Co. v. State of Washington, International Shoe Co. v. Washington, 326 U.S. 310, 316, 318 (1945)
- Burger King Corp. v. Rudzewicz, Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474-86 (1985)
- Hanson, Executrix, et al. v. Denckla et al., Hanson v. Denckla, 357 U.S. 235, 253 (1958)
- World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)
- Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437, 447 (1952)
- Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-16 (1984)
- Asahi Metal Industry Co. v. Superior Court of California, 480 U.S. 102, 113 (1987)
- Garriss v. Thomasville-Thomas County Humane Society, Inc., 941 So. 2d 540, 545 (Fla. 1st DCA 2006)
- Kertesz v. Net Transactions, Ltd., 635 F. Supp. 2d 1339, 1345 (S.D. Fla. 2009)
- Zippo Manufacturing Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119, 1124 (W.D. Pa. 1997)
- Renaissance Health Publishing, LLC v. Resveratrol Partners, LLC, 982 So. 2d 739, 741-43 (Fla. 4th DCA 2008)
- Westwind Limousine, Inc. v. Shorter, 932 So. 2d 571, 575 n. 7 (Fla. 5th DCA 2006)

- *Wendt v. Horowitz*, 822 So. 2d 1252, 1257, 1260 (Fla. 2002)
- *Acquadro v. Bergeron*, 851 So. 2d 665 (Fla. 2003)
- *Becker v. Hooshmand*, 841 So. 2d 561 (Fla. 4th DCA 2003)
- *Seabra v. International Specialty Imports, Inc.*, 869 So. 2d 732, 733 (Fla. 4th DCA 2004)
- *Carib-USA Ship Lines Bahamas Ltd. v. Dorsett*, 935 So. 2d 1272, 1275 (Fla. 4th DCA 2006)
- *Trustees of Columbia University v. Ocean World, S.A.*, 12 So. 3d 788, 792-95 (Fla. 4th DCA 2009)
- *Hy Cite Corp. v. Badbusinessbureau.com, L.L.C.*, 297 F. Supp. 2d 1154, 1160-61 (W.D. Wis. 2004)
- *McBee v. Delica Co.*, 417 F.3d 107, 124 (1st Cir. 2005)
- *Dagesse v. Plant Hotel N.V.*, 113 F. Supp. 2d 211, 221 (D.N.H. 2000)
- *Revell v. Lidov*, 317 F.3d 467, 471 (5th Cir. 2002)
- *Bird v. Parsons*, 289 F.3d 865, 874 (6th Cir. 2002)
- *Gator.com Corp. v. L.L. Bean, Inc.*, 341 F.3d 1072, 1079-80 (9th Cir. 2003), vacated as moot, 398 F.3d 1125 (9th Cir. 2005)