

4  
4 off

**FILED**

SID J. WHITE

MAR 28 1989

CLERK, SUPREME COURT

By \_\_\_\_\_  
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

VENETIAN SALAMI COMPANY, )  
a foreign corporation, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
T. S. PARTHENAIS, )  
 )  
Respondent. )

CASE NO. 73,848

APPEAL FROM THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA  
APPEAL NO. 88-1414

---

JURISDICTIONAL BRIEF OF PETITIONER

---

Laurence H. Bartlett  
Florida Bar No. 0287989  
BLACK, CROTTY, SIMS, HUBKA,  
BURNETT AND SAMUELS  
P. O. Box 5488  
Daytona Beach, Florida 32018  
(904) 253-8195

Attorney for Petitioner

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
THE RULING OF THE FIRST DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS IN <u>UNGER V. PUBLISHER ENTRY SERVICE, INC.</u> , 513 <u>So.2d 674</u> (Fla. 5th DCA 1987) AND <u>OSBORN V. THE UNIVERSITY SOCIETY</u> , 378 <u>So.2d 873</u> (Fla. 2d DCA 1979).	
CONCLUSION	6
CERTIFICATE OF SERVICE	6

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
<u>Engineered Storage Systems v. National Partitions and Interiors, Inc.,</u> 415 So.2d 114 (Fla. 3rd DCA 1982)	4
<u>Jones v. Jack Maxton Chevrolet, Inc.,</u> 484 So.2d 43 (Fla. 1st DCA 1986)	4, 5
<u>Osborn v. The University Society,</u> 378 So.2d 873 (Fla. 2d DCA 1979)	3, 4, 5
<u>Parthenais v. Venetian Salami Co.,</u> 14 FLW 488 (Fla. 1st DCA Feb. 15, 1989)	2
<u>Unger v. Publisher Entry Service, Inc.,</u> 513 So.2d 674 (Fla. 5th DCA 1987)	3, 4, 5
 <u>OTHER AUTHORITIES</u>	
Section 48.193, Florida Statutes (1987)	1, 4

STATEMENT OF THE CASE AND FACTS

Respondent's Complaint (R-1) alleges that the Petitioner's corporation contacted the Respondent in Alachua County, Florida, and agreed to pay the Respondent in Alachua County, Florida. Petitioner was served in Montreal, Canada by the Providencial Baliff who is authorized to make such service in the Providence of Quebec, Canada. Petitioner, through counsel, filed a Motion to Quash Service of Process for Lack of Jurisdiction and to Abate for Improper Service (R-1A) and other matters not at issue here. Specifically, Petitioner alleged in its Motion that the Respondent had failed to make sufficient allegations to bring it within the jurisdiction of Florida's "long-arm Statute" (Section 48.193, Florida Statutes). In support of the Motion, Respondent filed an affidavit of Antoine Bertrand (R-4) which states that he is the President of Venetian Salami Company and that Venetian does not conduct any business in Florida or own any property in Florida and that they never had discussions with the Respondent in Florida. Respondent filed two affidavits, one which was submitted by the Respondent (R-9), whose affidavit states that his agreement with the Petitioner was for expenses and that it was agreed that his services would be performed in Florida, New York and Canada and that he would be paid in Alachua County, Florida, and that he did perform services and incur expenses in Florida, New York and Canada. Respondent also filed an affidavit of Pierre Patenaude (R-7). The affidavit of Pierre Patanaude states that at the time the agreement was made with the Respondent he was President of the Petitioner corporation. His

affidavit says that he hired the Respondent on behalf of the corporation at his place of business in Alachua County, Florida and he agreed to pay the Respondent in Alachua County, Florida.

The trial court held a hearing and required parties to submit Memorandum of Law (R-11, 22). The Court entered an Order (R-60) dismissing the Complaint for lack of jurisdiction. The Respondent filed a Motion for Rehearing (R-61) requesting the right to amend the Complaint which was denied without a hearing (R-62).

The Respondent appealed the trial court's Order to the First District Court of Appeal and on February 15, 1989, the trial court's order dismissing the complaint was reversed and the cause remanded for further proceedings. Parthenais v. Venetian Salami Co., 14 FLW 488 (Fla. 1st DCA February 15, 1989).

Petitioner's notice to invoke this honorable Court's jurisdiction was filed on March 15, 1989.

SUMMARY OF ARGUMENT

As acknowledged by the District Court in its opinion herein, the District Court's decision is in direct and express conflict with Unger v. Publisher Entry Service, Inc., 513 So.2d 674 (Fla. 5th DCA 1987) and Osborn v. The University Society, 378 So.2d 873 (Fla. 2d DCA 1979).

ARGUMENT

THE RULING OF THE FIRST DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS IN UNGER V. PUBLISHER ENTRY SERVICE, INC., **513** So.2d **674** (Fla. 5th DCA **1987**) AND OSBORN V. THE UNIVERSITY SOCIETY, **378** So.2d **873** (Fla. 2d DCA 1979).

The order entered by the trial court dismissed Respondent's Complaint for lack of jurisdiction, stating that Respondent had failed to establish certain sufficient minimum contacts of the Petitioner with the State of Florida. The Fifth District Court of Appeal in Unger, supra, and the Second District Court of Appeal in Osborn, supra, clearly state that in addition to the statutory requirements necessary to obtain personal jurisdiction, there must be a showing that the Defendant has minimum contacts with the state in order to satisfy due process requirements. Absent such a showing, the courts state that there is a lack of jurisdiction.

In Jones v. Jack Maxton Chevrolet, Inc., **484** So.2d **43** (Fla. 1st DCA **1986**) and Engineered Storage Systems v. National Partitions and Interiors, Inc., **415** So.2d **114** (Fla. 3rd DCA **1982**), the First and Third District Courts of Appeal respectively held that compliance with the statutory requirements of Section **48.193**, Florida Statutes, is sufficient to obtain personal jurisdiction over a defendant. Citing its prior decision in Jones and admitting that conflict exists in the Florida appellate decisions regarding the additional requirement of minimum contacts in order to satisfy due process considerations, the

First District Court of Appeal elected to follow its holding in Jones, supra, thereby creating another opinion which is expressly and directly in conflict with Unger, supra, and Osborn, supra.



CONCLUSION

For the reasons expressed herein, Petitioner respectfully requests that this honorable Court grant his Petition for review and hear this case on the merits.

Respectfully submitted,

BLACK, CROTTY, SIMS, HUBKA,  
BURNETT AND SAMUELS

By: 

Laurence H. Bartlett  
Florida Bar No. 0287989  
P. O. Box 5488  
Daytona Beach, Florida 32018  
(904) 253-8195

Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 27<sup>th</sup> day of March, 1989, a true and correct copy of the above and foregoing was placed in the United States mail, with postage prepaid thereon, to: Mr. Kenneth S. Davis, 515 N. Main Street, No. 300, Gainesville, Florida 32601.

  
Laurence H. Bartlett