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IN THE SUPREME COURT OF FLORIDA

VENETIAN SALAMI COMPANY,	)	CASE NO: 73,848
a foreign corporation,	)	
Petitioner,	)	
vs.	)	
T.S. PARTHENAIS,	)	
Respondent.	)	
----------	)	

FILED
SID J. WHITE
APR 20 1989
CLERK, SUPREME COURT
By _____ Deputy Clerk

APPEAL FROM THE DISTRICT COURT OF APPEAL

FIRST DISTRICT OF FLORIDA

APPEAL No. 88-1414

Jurisdiction

REPLY BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

Respondent adopts Petitioner's Statement of tne Case and Facts.

SUMMARY OF THE ARGUMENT

Despite the statement by the District Court in its opinion that its decision was in conflict with other District Courts, the decision in the District Court is consistent on the facts and the law with the decision in Unger vs. Publisher Entry Service, Inc., 513 So 2d 674 (Fla 5 DCA 1987) and is factually distinguishable from Osborn vs. The University Society, 378 So 2d 873 (Fla 2d DCA 1979) and all decisions are consistent with the rule of law set forth by the Supreme Court in Electro Engineering Products Company, Inc. vs Louis, 352 So 2d 862 (Fla 1977).

ARGUMENT

THE DECISION OF THE FIRST DISTRICT COURT IS NOT IN DIRECT CONFLICT WITH THE DECISION IN UNGER VS. PUBLISHER ENTRY SERVICE, INC., 513 So. 2d 674 (Fla. 5 DCA 1987) AND OSBORN VS. THE UNIVERSITY SOCIETY, 378 So. 2d 873 (Fla. 2d DCA 1979)

The decision of the District Court finding that the Respondent's complaint sufficiently alleged facts to comply with Florida Statute Section 48.193 together with the furnishing by Respondent of affidavits supporting the factual allegations when challenged by Petitioner's Motion to Dismiss gave jurisdiction over the Petitioner is consistent with the decision of the Fifth District Court of Appeal in Unger vs. Publisher Entry Service, Inc., 513 So. 2d 674 (Fla. 5th DCA 1987). In Unger, the Court found that a foreign Defendant who had contracted with a Florida Plaintiff to perform services in Florida implied that the Defendant was to pay the Florida Plaintiff in Florida and that those allegations were sufficient to bring the action within Florida Statute Section 48.193(1)(g). The Unger Court looked further to see if those allegations would meet the constitutional minimum contacts test and found that they did. In the instant case the Court found that the allegations of the Complaint met the requirements of Florida Statute Section 48.193 and when factually

challenged by Petitioner's Motion to Dismiss, followed the procedure which was set down by the Supreme Court in Electro Engineering Products Company, Inc. vs. Louis, 352 SO. 2d 862 (Fla. 1977). In that decision the Court described the procedure that Plaintiff must follow in order to obtain jurisdiction over a non-resident Defendant pursuant to Florida's "Long Arm'' statute. The Plaintiff must first allege in its complaint sufficient jurisdictional facts. The burden then shifts to the Defendant to make a prima facia showing of the inapplicability of the "Long Arm" statute and then the Plaintiff is required to substantiate the jurisdictional allegations by affidavit or other competent proof. That standard was followed in the First District's Court opinion in the instant case and in its prior case, Jones vs. Jack Maxton Chevrolet, Inc., 484 So. 2d 43 (Fla. 1st DCA 1986).

The other case cited by Petitioner for conflict, Osborn vs. University Society, Inc,, 378 So, 2d 873 (Fla. 2d DCA 1979) is factually distinguishable. The Third District found nothing in the Complaint that would indicate that the Defendant was availing itself of the privilege of conducting activities in Florida and that the simple execution of a contract in Florida for the Plaintiff to provide consulting services at an unspecified location was insufficient contact. There is no indication in the

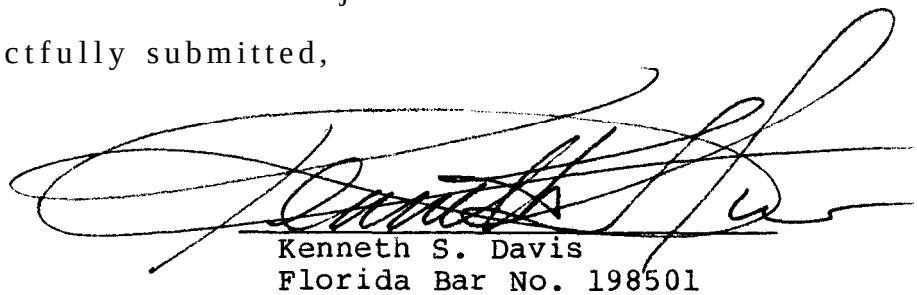
decision that when the Plaintiff was challenged by the Motion to Dismiss the Plaintiff responded with affidavits in support of his allegations in compliance with the procedure set down in Electro Engineering Products, supra, Indeed the Second District Court in 1985 in the case of Maschinenfabrik Seydelmann vs, Altman, 468 So. 2d **286**, 288 (Fla. 2d DCA 1985), approved the Electro Engineering procedure that was followed in the instant case. see also Guritz vs. American Motivate, Inc., **386** So. 2d 60 (Fla. 2d DCA 1980).

The same principal of law has been applied by the different District Courts in determining whether or not jurisdiction over foreign Defendants can be reached using Florida's "Long Arm" jurisdictional statute. Where the decision of the District Courts of Appeal and other appellate decisions apply the same principals but reach different results on different facts, the Supreme Court lacks conflict jurisdicition. Wilson vs. Southern Bell Telephone and Telegraph, 327 So. 2d 220 (Fla. 1976).

CONCLUSION

Respondent respectfully requests this Honorable Court to decline to find conflict jurisdiction.

Respectfully submitted,



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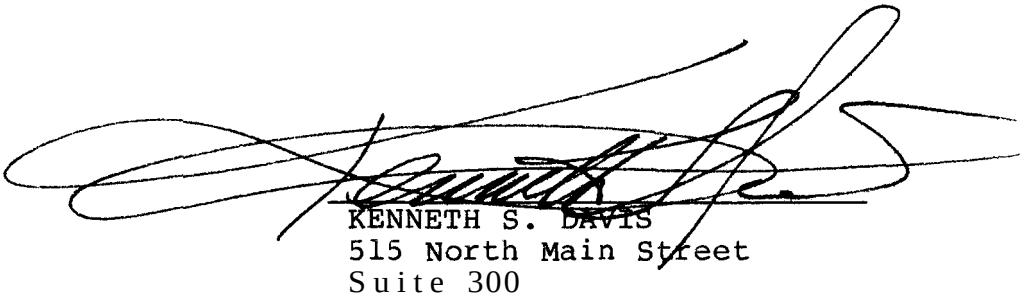
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief Of Appellant, has been furnished to Lawrence A. Bartlett, Attorney for Appellee, 501 North Grandview Avenue, Daytona Beach, Florida 32018, by United States mail this 6 day of April, 1989.



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