IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO.: SC01-896
L.T. NO.: 4D00-2011

MARTIN ACQUADRO, M.D., and
ROSE ACQUADRO,

Petitioners,

v.

JANET BERGERON,

Respondents.
___________________________________/

PETITIONERS' BRIEF ON THE MERITS

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STATEMENT OF THE CASE

On October 1, 2001, this Court accepted jurisdiction to review the decision of the District Court of Appeal of Florida, Fourth District, entitled Acquadro v. Bergeron, 778 So. 2d 1034 (Fla. 4th DCA 2001). Petitioners, Martin Acquadro, M.D. ("Dr. Acquadro") and Rose Acquadro, seek to dismiss the underlying action against them brought by respondent, Janet Bergeron ("Bergeron"). The district court's decision expressly and directly conflicts with decisions of other district courts of appeal.

This matter was before the Fourth District as a non-final appeal. Consequently, the record on appeal consists of those parts of the record from the lower tribunal that were included in the appendices of the appellants and appellee. This brief will use the same appendix references as in the district court briefs. For the Court's convenience, an appendix is being filed herewith consisting of the documents included in the district court appendix, as well as the district court opinion.

STATEMENT OF THE FACTS

Petitioners, Dr. Martin Acquadro and his mother, Rose Acquadro (collectively, "the Acquadros"), residents of Massachusetts, seek review of a fourth district decision that affirmed an order denying their motion to dismiss for lack of personal jurisdiction. The fourth district decision sets forth these material facts:

> Plaintiffs' [sic] complaint alleges, among other things, that the appellants, while in Massachusetts, engaged in telephone conversations with persons in Florida, in which one of the appellants defamed plaintiff and both made statements which were the basis of claims for false arrest and malicious prosecution. Personal jurisdiction was alleged under section 48.193(1)(b), Florida Statutes (1999), which subjects a non-resident who commits a tortious act within Florida to the jurisdiction of the Florida courts.
>
> Defendants filed affidavits in support of their motion to dismiss for lack of personal jurisdiction, in which they denied making the statements which were the basis of the tort claims, but did not deny their involvement in the telephone conversations with persons in Florida.

Acquadro v. Bergeron 778 So.2d 1034, 1035 (Fla. 4th DCA 2001) (emphasis supplied).

Jurisdiction under section 48.193(1)(b), Florida Statutes, requires the commission of a "tortious act within this state." Thus, the Acquadros' affidavits -- in which they "denied making the statements which were the basis of the tort claims" -- contested the essential jurisdictional facts alleged by plaintiff.

Bergeron did not file any affidavit to refute the Acquadros' affidavits contesting jurisdiction.[1] Instead of an affidavit, Bergeron offered live testimony at a specially-set hearing on defendants' motion to dismiss. (App. 7). Bergeron herself noticed the hearing, which was not ordered by the court. (App. 6).

Both Bergeron and her sister, Jacqueline Branz ("Branz"), testified at the hearing. As set forth below -- even with this live testimony -- Bergeron did not refute the proof in the Acquadros' affidavits contesting jurisdiction.

In order to put plaintiff's testimony in context, it is necessary to go back to the genesis of the

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[1] The fourth district's reference in its decision to "conflicting affidavits" might lead to the mistaken impression that Bergeron actually filed an affidavit in this case. No such affidavit was ever filed.

underlying case. On September 17, 1997, Bergeron was arrested for battery on Edward Acquadro ("Eddie"), the uncle of Dr. Acquadro and brother-in-law of Rose Acquadro. (App. 4, ¶¶3-4; App. 5, ¶2). At the time of Bergeron's arrest, Eddie was a frail 72-year-old, and Bergeron was 38. (App. 4, ¶4). For several years prior to Bergeron's arrest, Eddie had allowed Bergeron to reside in his house in Boca Raton, Florida. (App. 4, ¶6).

Bergeron was taken into custody at a garage owned by Bonnie Towing & Recovery, Inc. ("Bonnie Towing"), co-defendant below, after police were called to the scene by Bonnie Towing employees. (App. 4, Ex. A). As conceded by Bergeron's counsel, it is undisputed that the police had probable cause to arrest Bergeron. (App. 7, p.78, line 20 – p.79, line 2). The probable cause affidavit describes the incident as follows:

> I was dispatched to Bonnie Towing . . . in reference to a report of an elderly male being abused.
>
> On arrival, I met with complainants/witnesses . . . . All are employees of Bonnie Towing. . . . [The witnesses] stated the following . . . . Eddie's car . . . had been impounded by Bonnie Towing. When Bergeron was informed of how much the tow bill was, $100.00, she started to scream and yell . . . at Eddie that it was all his fault for the car being towed. At one point, Bergeron forcibly picked Eddie up . . . [and] carried Eddie out of the office through the front door. . . Eddie was hit on the head with the door.
>
> After Eddie had been carried outside, . . . Bergeron pick[ed] up a car battery [and] hit Eddie in the arm with the battery as she tried to get him out of her way.
>
> . . . Eddie . . . is 72 years old . . . weighs 102 pounds, and is very frail looking. (Bergeron is 5'0 and weighs 160 pounds). . . While talking to Eddie he stated the following . . . He does not know why Bergeron treats him badly, that she also hits him at home. . . . Eddie stated that Bergeron did hurt his ribs when she picked him up. . . .
>
> After talking to the witnesses, victim Acquadro, and defendant Bergeron, it was determined through my investigation that there was sufficient probable cause to arrest Janet Bergeron for battery on a person 65 years of age or older.

(App. 4, Ex. A) (emphasis supplied).

During the evening of September 17, 1997, Dr. Acquadro and his parents, Rose Acquadro and the since-deceased Andrew Acquadro, learned of Bergeron's arrest. (App. 4, ¶8; App. 5, ¶3). Andrew and Rose Acquadro arranged for Eddie to fly to Massachusetts to obtain appropriate medical care and

treatment. (App. 4, ¶8; App. 5, ¶3). Eddie arrived in Massachusetts suffering from, among other things, pneumonia and a left proximal humerus fracture. (App. 4, ¶8; App. 5, ¶3). After recuperating sufficiently, Eddie began living in an assisted-living center. (App. 4, ¶8; App. 5, ¶3). Eddie eventually died on August 27, 1998. (App. 4, ¶8; App. 5, ¶3).

Bergeron returned to Eddie's house after being released from jail despite an Order of No Contact and an Order Directing New Residence that had been entered against her. (App. 4, Ex. D.). A civil action ("Acquadro I") was commenced against her, which was eventually dismissed after Eddie regained possession of his house. (App. 4, ¶¶11-12).

In the amended complaint in this action, Bergeron alleged that Dr. Acquadro and Rose Acquadro had lied to the police and had offered money and other benefits to Bonnie Towing representatives in order to procure Bergeron's arrest. (App. 1, ¶¶16-17). Bergeron also alleged that while she was in jail, Dr. Acquadro and Rose Acquadro had conspired with defendant James Bonnie to convert Bergeron's property, and had converted Bergeron's property. (App. 1, ¶¶61-62). Bergeron alleged that petitioners' attorneys had provided the criminal court with false information to procure the aforementioned Order of No Contact and Order Directing New Residence. (App. 1, ¶20). Bergeron further alleged that Rose Acquadro had defamed Bergeron by stating--in a telephone conversation between Bergeron's sister, Jacqueline Branz ("Branz"), James Bonnie, and Rose Acquadro--that Bergeron "has AIDS." (App. 1, ¶¶52-53).

In the affidavits supporting their motion to dismiss, Dr. Acquadro and Rose Acquadro directly contested each and every one of Bergeron's allegations. (App. 4; App. 5). Petitioners stated that they had not spoken to and were not even acquainted with Bonnie Towing representatives prior to Bergeron's arrest. (App. 4, ¶15; App. 5, ¶4). Petitioners stated that they had not offered money or other benefits to procure Bergeron's arrest. (App. 4, ¶15; App. 5, ¶4). Petitioners stated that they had not lied to the police in order to procure Bergeron's arrest and had in fact known nothing of the arrest until after it had occurred. (App. 4, ¶¶15-16; App. 5, ¶¶4-5). Dr. Acquadro stated that his attorneys did not provide the

criminal court with false information to procure the Order of No Contact and Order Directing New Residence, and pointed out that these orders had already been entered by the time that legal counsel was retained to represent Eddie's interests in Acquadro I. (App. 4, ¶17).

Petitioners denied that they had converted or had conspired to convert any of Bergeron's property. (App. 4, ¶18; App. 5, ¶6). Moreover, Rose Acquadro denied that she had made defamatory statements about Bergeron. (App. 5, ¶6). Finally, petitioners denied having sufficient minimum contacts with Florida such that they would reasonably anticipate being haled into court in this state. (App. 4, ¶20; App. 5, ¶8).

At the hearing on defendants' motion to dismiss, neither Bergeron nor Branz refuted petitioners' sworn statements that they had not offered benefits to, had not spoken with, and were not even acquainted with Bonnie Towing representatives prior to Bergeron's arrest. (App. 7, pp. 37-66). Neither Bergeron nor Branz refuted petitioners' sworn statements that they had not lied to the police in order to procure Bergeron's arrest and had in fact known nothing of the arrest until after it had occurred. (App. 7, pp. 37-66). Neither Bergeron nor Branz refuted petitioners' sworn statements that they had not converted and had not conspired to convert any of Bergeron's property. (App. 7, pp. 37-66).

In fact, the following excerpt is the only time that Dr. Acquadro was even mentioned by either Bergeron or Branz:

> Q: Did [James Bonnie] say that this was durable [sic] power of attorney from Martin Acquadro?
>
> BRANZ: I was told that it was durable power of attorney. I don't recall if it was from Martin Acquadro or not specifically. The Acquadros. [James Bonnie] just saying [sic], they gave me power of attorney. And he kept saying durable power of attorney.

(App. 7, p.43). Furthermore, although Bergeron and Branz testified that Rose Acquadro had stated on a telephone call that Bergeron "has AIDS," (App. 7, pp. 45, 64), neither Bergeron nor Branz testified as to any other contacts that either Rose Acquadro or Dr. Acquadro had with the State of Florida. (App. 7, pp. 37-66).

The fourth district acknowledged that the Acquadros' affidavits had denied the tortious statements allegedly made in telephone conversations with persons in Florida. Acquadro v.

Bergeron, 778 So. 2d 1034, 1035 (Fla. 4th DCA 2001) ("Defendants filed affidavits . . . in which they denied making the statements which were the basis of the tort claims . . ."). However, the district court disagreed that "[Bergeron's] failure to refute [the Acquadros'] affidavits denying the tortious conduct required the trial court to grant their motion to dismiss for lack of jurisdiction." Id. The district court held:

> Because the defendants' affidavits did not deny that the telephone communication, which was the basis of personal jurisdiction, had occurred, the trial court correctly denied the motion to dismiss.

Id.

Thus, the court held that it was not sufficient to deny the tortious statements allegedly made by telephone to Florida; in order to contest jurisdiction, the Acquadros were required to deny the fact of the telephone communication itself. By holding that the telephone communication was the "basis of personal jurisdiction," the court essentially held that a telephone call is not merely a conduit through which a tortious act may be directed toward Florida, but is in and of itself sufficient for personal jurisdiction over a nonresident. This holding expressly and directly conflicts with decisions of other district courts of appeal.

This appeal now follows.

SUMMARY OF ARGUMENT

The Acquadros contested long-arm jurisdiction by filing affidavits in which they disputed that they had made tortious statements in connection with Bergeron. The fourth district held that contesting jurisdiction required the Acquadros to dispute that telephone communications with persons in Florida were made, and not just the alleged tortious content of those communications. This holding expressly and directly conflicts with decisions of other district courts of appeal, which hold that a telephone communication into Florida, even with tortious content, is not sufficient for jurisdiction under section 48.193(1)(b).

The district court erred by failing to find that the Acquadros' affidavits had shifted the burden to Bergeron to show the basis on which jurisdiction was obtained, i.e., the alleged tortious statements. The court further erred by failing to find that Bergeron had not met this burden, and by failing to find that there were not sufficient minimum contacts between the state and the defendants to satisfy the Fourteenth Amendment's due process requirements.

ARGUMENT

STANDARD OF REVIEW

The issues presented are questions of law, i.e., (1) whether the Acquadros were required to dispute that telephone communications were made with persons in Florida and not just the tortious statements allegedly made in those telephone communications; and (2) whether the Acquadros' affidavits had shifted the burden to Bergeron to show the basis on which jurisdiction was obtained. "A trial court's ruling on a motion to dismiss based on a question of law is subject to de novo review." Execu-Tech Business Systems, Inc. v. New Oji Paper Co. Ltd., 752 So. 2d 582, 584 (Fla. 200). Accordingly, the appropriate standard of review in this case is de novo.

POINT I

THE FOURTH DISTRICT OPINION EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL BY HOLDING THAT, IN ORDER TO CONTEST JURISDCTION, THE ACQUADROS WERE REQUIRED TO DISPUTE THAT TELEPHONE COMMUNICATIONS WERE MADE WITH PERSONS IN FLORIDA AND NOT JUST THE TORTIOUS STATEMENTS ALLEGEDLY MADE IN THOSE TELEPHONE COMMUNICATIONS

In Venetian Salami Co. v. Parthenais, 554 So. 2d 499, 502 (Fla. 1989), this Court explained the two-step inquiry for determining long-arm jurisdiction over a nonresident defendant. "A court first must determine whether the complaint alleges sufficient jurisdictional facts to bring the action within the ambit of our long-arm statute." Doe v. Thompson, 620 So. 2d 1004, 1005 (Fla. 1993) (citing Venetian Salami, 554 So. 2d at 502). "A court then must determine whether sufficient minimum contacts exist between our forum state and the defendant to satisfy the Fourteenth Amendment's due process requirements--in short, whether a nonresident defendant 'should reasonably anticipate being haled into court' in Florida." Doe, 620 So. 2d at 1005 (citing Venetian Salami, 554 So. 2d at 500).

"[A] defendant wishing to contest the allegations of the complaint concerning jurisdiction or to raise a contention of insufficient minimum contacts must file an affidavit in support of his or her position." Doe, 620 So. 2d at 1005. "The burden is then placed upon the plaintiff to show by counter-affidavit the basis upon which jurisdiction is obtained." Id. "If relevant facts set forth in the respective affidavits are in direct

conflict, then the trial judge should hold a limited evidentiary hearing on the issue of jurisdiction." Id.

Here, the Acquadros filed affidavits "in which they denied making the statements which were the basis of the tort claims." Acquadro, 778 So. 2d at 1035. Jurisdiction in this case was grounded on section 48.193(1)(b), which requires the commission of a "tortious act within this state." § 48.193(1)(b), Fla. Stat. Thus, by denying the tortious statements — which allegedly took place in conversations with persons in Florida -- the Acquadros "contest[ed] the allegations of the complaint concerning jurisdiction." See Doe, 620 So. 2d at 1005.

This should have been sufficient to shift the burden back to plaintiff "to show by counter-affidavit the basis upon which jurisdiction is obtained." See id. However, the district court found that the Acquadros were required to dispute that telephone communications were made with persons in Florida, and not just the tortious statements within those telephone communications. Acquadro, 778 So. 2d at 1035. The court found that the telephone communication itself — rather than the alleged tortious statements within the telephone communication -- was the "basis of personal jurisdiction." Id.

Accordingly, the district court in Acquadro essentially held that a telephone call, *even without tortious content*, can still be the basis of personal jurisdiction under section 48.193(1)(b). This cannot be reconciled with the clear language of section 48.193(1)(b) itself, which requires a "tortious act" for long-arm jurisdiction.

There has been a split in the districts as to whether even a *tortious* telephone call into Florida is sufficient for personal jurisdiction under section 48.193(1)(b). In Thompson v. Doe, 596 So.2d 1178 (Fla. 5th DCA 1992), approved, 620 So. 2d 1004 (Fla. 1993), the fifth district reiterated its prior holding that "false statements made via telephone from another state to a person in Florida [do] not constitute the commission of a tortious act in Florida." Id. at 1180 (citing McLean Financial Corporation v. Winslow Loudermilk Corporation, 509 So. 2d 1373, 1374 (Fla. 5th DCA 1987)) (emphasis supplied).

Similarly, in Horowitz v. Laske, 751 So. 2d 82 (Fla. 5th DCA 1999), the fifth district held that "[b]rief phone calls and letters initiated in Michigan" responding to the state of Florida with regard to the sale of unregistered securities were "not committed in the state of Florida as required by the plain language of" section 48.193 (1)(b). Id. at 85-86. "Rather, if committed at all, these acts were committed in Michigan." Id. at 86. See also Texas Guaranteed Student Loan Corp. v. Ward, 696 So. 2d 930, 932 (Fla. 2d DCA 1997) (debt collection letters and telephone calls into Florida do not constitute tortious conduct within the state); Intercontinental Corp. v. Orlando Regional Medical Center, Inc., 586 So. 2d 1191, 1195 (Fla. 5th DCA 1991) ("mere act of communicating with the promisee in Florida . . . does not constitute commission of a tortious act in this state").

On the other hand, the fourth district has held that "[m]aking a defamatory statement to a listener in Florida, even via telephone, constitutes the commission of a tort in Florida within the meaning of Florida's long-arm statute." Achievers Unlimited, Inc. v. Nutri Herb, Inc., 710 So. 2d 716 (Fla. 4th DCA 1998); see also Carida v. Holy Cross Hosp., Inc., 424 So. 2d 849 (Fla. 4th DCA 1982) (jurisdiction found based on defamation by virtue of phone calls into the State), overruled on other grounds, Doe v. Thompson, 620 So. 2d 1004 (Fla. 1993); Silver v. Levinson, 648 So. 2d 240 (Fla. 4th DCA 1994) (slanderous statements during telephone call placed to Florida number subjected nonresident caller to jurisdiction).

As set forth above, the district court in this case found that the telephone communication itself -- rather than the alleged tortious statements within the telephone communication -- was the "basis of personal jurisdiction" that the Acquadros would have had to contest in their affidavits in order to show that they were not subject to jurisdiction in this state. Acquadro, 778 So. 2d at 1035. Thus, the instant decision conflicts with both the line of cases above finding that a *tortious* phone call is sufficient for jurisdiction under section

48.193(1)(b) and the line of cases finding that even a tortious phone call into Florida is not tortious conduct "within this state."

POINT II

THE DISTRICT COURT ERRED IN FAILING TO FIND THAT THE BURDEN HAD SHIFTED TO BERGERON TO SHOW THE BASIS ON WHICH JURISDICTION WAS OBTAINED AND IN FAILING TO FIND THAT BERGERON HAD NOT MET THIS BURDEN; THE COURT FURTHER ERRED IN FAILING TO FIND THAT THE SECOND STEP OF THE "VENETIAN SALAMI" INQUIRY WAS NOT SATISFIED

In its decision, the district court disagreed that "[Bergeron's] failure to refute [the Acquadros'] affidavits denying the tortious conduct required the trial court to grant their motion to dismiss for lack of jurisdiction." Acquadro, 778 So. 2d 1034, 1035 (Fla. 4th DCA 2001). The court explained its disagreement by reiterating the principle that "[w]here the affidavits are in conflict, the trial court holds a 'limited evidentiary hearing in order to determine the jurisdiction issue." Id. However, the hearing at issue was not the limited evidentiary hearing ordered by the court to resolve a conflict in the parties' affidavits. Rather, the hearing was noticed by Bergeron who presented live testimony instead of filing any affidavits.

Although Venetian Salami and its progeny contemplate that, once a defendant files an affidavit contesting jurisdiction, "[t]he burden is then placed upon plaintiff to show by counter-affidavit the basis upon which jurisdiction is obtained," Doe, 620 So. 2d at 100, the district courts have allowed plaintiffs to offer testimony or other proof instead of affidavits. See Viking Acoustical Corp. v. Monco Sales Corp., 767 So. 2d 632, 634 (Fla. 5th DCA 2000) ("[w]here the defendant has filed one or more affidavits supporting a meritorious challenge, the plaintiff is required to rebut the affidavits with opposing affidavits, testimony or documents"); Washington Capital Corp. v. Milandco, Ltd., Inc., 695 So. 2d 838, 841 (Fla. 4th DCA 1997) (if defendant contests essential jurisdictional facts alleged in complaint, "burden then returns to the plaintiff who must, by

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affidavit or other sworn statement, refute the proof in the defendant's affidavit.").

However, the fact that a plaintiff offers live testimony instead of an affidavit does not relieve the plaintiff of her burden to "refute the proof in the defendant's affidavit." Washington Capital, 695 So. at 841. There is no support for the proposition that the plaintiff gets to simply "skip" this jurisdictional step and go directly to the "limited evidentiary hearing on the issue of jurisdiction." Doe, 620 So. 2d at 1005.

After finding that the Acquadros "filed affidavits . . . in which they denied making the statements which were the basis of the tort claims," Acquadro, 778 So. 2d at 1035, the district court should then have considered whether Bergeron met her burden to show "the basis upon which jurisdiction is obtained," Doe, 620 So. 2d at 1005. In order to determine whether Bergeron met this burden, the live testimony offered by Bergeron must be examined to determine whether it supported the tortious conduct that was alleged in the complaint but disputed by the Acquadros' affidavits.

As set forth above, there was only a single reference to Dr. Acquadro during the entire hearing, as follows:

> Q: Did [James Bonnie] say that this was durable [sic] power of attorney from Martin Acquadro?
>
> BRANZ: I was told that it was durable power of attorney. I don't recall if it was from Martin Acquadro or not specifically. The Acquadros. He just saying [sic], they gave me power of attorney. And he kept saying durable power of attorney.

(App. 7, p.43). Clearly, this did not support any of Bergeron's allegations in the complaint or refute the allegations in Dr. Acquadro's affidavit. "The failure of a plaintiff to refute the allegations of the defendant's affidavit requires that a motion to dismiss be granted." Washington Capital, 695 So. at 841.

Furthermore, although Bergeron and Branz testified that Rose Acquadro had stated on a telephone call that Bergeron "has AIDS," (App. 7, 37-66), plaintiff did not present any evidence to refute the Acquadros' affidavits wherein they disputed that they had minimum contacts with the state sufficient to subject them to jurisdiction here. (App. 4, ¶20; App. 5, ¶8). As set forth above, the second step of the Venetian Salami inquiry requires a court to determine "whether sufficient minimum contacts exist between our forum state and the defendant to satisfy the Fourteenth Amendment's due process requirements--in short, whether a nonresident defendant 'should reasonably anticipate being haled into court' in Florida."

Doe, 620 So. 2d at 1005 (citing Venetian Salami, 554 So. 2d at 500).

> [D]ue process requires that the defendant have certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice ... the test is whether the defendant's conduct is 'such that he should reasonably anticipate being haled into court there'.

Achievers Unlimited, Inc. v. Nutri Herb, Inc., 710 So. 2d 716, 718-19 (Fla. 4th DCA 1998) (emphasis supplied). Whether the Acquadros should have reasonably anticipated being haled into court here "must be viewed from the perspective of the defendant, not that of the plaintiff." Silver v. Levinson, 648 So. 2d 240, 243 (Fla. 4th 1994). (emphasis supplied). The test is satisfied "if the defendant purposefully directs activities at Florida and litigation arises out of those activities, or the defendant purposefully avails himself of the privilege of conducting activities within the forum state." Achievers Unlimited, 710 So. 2d at 719. (emphasis supplied).

Here, according to Branz's own testimony, the alleged defamatory telephone call was initiated not by Rose Acquadro in Massachusetts, but by James Bonnie in Florida.

[2] Thus, the alleged defamatory phone call did not reflect that Rose Acquadro was "purposefully direct[ing] activities at Florida." Achievers, 710 So. 2d at 716. Moreover,

> When dealing with isolated acts of a defendant, rather than centering on continuous economic activity within the state, a key focus is the quality and nature of the interstate transaction. The court must inquire into whether the conduct is so random, fortuitous or attenuated that it cannot fairly be said that the potential defendant should reasonably anticipate being haled into court in another jurisdiction.

Id. (emphasis supplied). Viewed from the perspective of Rose Acquadro, the single alleged defamatory telephone call -— placed by someone other than herself -- was such a random or attenuated act that it cannot fairly be said that Rose Acquadro should reasonably anticipate being haled into court here. See Silver, 648 So. 2d at 243. Therefore, the second step of the Venetian Salami inquiry was not satisfied.

CONCLUSION

The district court decision should be quashed and the case should be remanded with instructions to enter an order dismissing Dr. Acquadro and Rose Acquadro from the underlying action.

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[2] Branz testified that it was James Bonnies' number on the caller ID. (App. 7, p. 45).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: **Robert Rivas, Esq.,** Rivas & Rivas, 311 S. Calhoun Street, #206X, Tallahassee, FL 32301, and **Jeffrey W. Johnson, Esq.,** Hinshaw & Culbertson, South Trust Bank Plaza, One E. Broward Blvd., Suite 1010, Ft. Lauderdale, FL 33301, this 14th day of November, 2001.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font standards required by Florida Rule of Appellate Procedure 9.210(a)(2).

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