

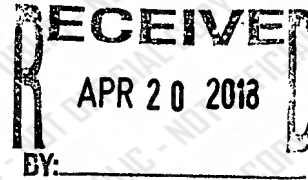
IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

TIBOR STERN, as the Personal
Representative of the Estate of Sharon
Stern, a deceased person,
Plaintiff,

CASE NO.: CACE13-010284 (03)
JUDGE: MILY RODRIGUEZ POWELL

v.

TERUGOSHI KOTOURA a/k/a KATSURA
KAN, an individual,
Defendant.



**CORRECTED ORDER AFTER LIMITED EVIDENTIARY HEARING ON
JURISDICTIONAL ISSUES**

(corrected as to the addresses on the mailing list only)"

THIS CAUSE came before the court on the Defendant's "Motion to Quash Process and Service of Process and Motion to Dismiss for Lack of Personal Jurisdiction," filed on May 29, 2014. On February 10, 2015, after a hearing, the Court denied the Defendant's motion. The Defendant appealed the February 10, 2015 ruling and the Fourth District Court of Appeals reversed and remanded the ruling in part mandating that this Court have a limited evidentiary hearing to determine jurisdiction. The evidentiary hearing is to focus on "whether the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." Kotoura v. Stern, 183 So 3d 1245, 1247 (Fla. 4th DCA 2016).

The instant action brought against the Defendant alleges that his communications with the Plaintiff's daughter, Sharon Stern ("Decedent"), caused her mental health to deteriorate to such a degree that she committed suicide. The Defendant moves to dismiss the claim contending that the court has no jurisdiction over him because he does not have sufficient minimum contacts with Florida.

At the hearing the *pro se* Defendant appeared telephonically from Japan and an interpreter was in the courtroom. To support his opposition to the Defendant's motion the Plaintiff testified and entered into evidence the October 19, 2017 deposition of Roy Talcott and the October 30, 2017 deposition of Dr. Eli Levy. Certain emails were also

* A misspelling in the second line of the Defendant's address is corrected to "202 Royal Manion Shimogano, 21-4 Shimogano Izumikawa-Cho." A second address for the Defendant has been added along with email addresses for all parties.

entered into evidence by the Plaintiff. The Defendant presented no evidence for the Court to consider.^{2 3}

In determining *in personam* jurisdiction, a two-prong analysis is used; first, a plaintiff must allege sufficient facts in order to bring the action within the reach of the long-arm statute, and second, if it does, a defendant must have sufficient minimum contacts with the state to satisfy constitutional due process requirements. Venetian Salami Co. v. Parthenais, 554 So. 2d 499, 502 (Fla. 1989). Under Florida's long-arm statute a party is subject to jurisdiction in Florida by "[c]ommitting a tortious act within this state." § 48.193(1)(b), Fla. Stat. Here, the Plaintiff alleges that the Defendant's tortious acts consisted of telephonically, electronically, or written communications to the Decedent or the Plaintiff when they were in living in Florida. Therefore, the Defendant is subject to Florida's long-arm statute. Reiss v. Ocean World, S.A., 11 So. 3d 404 (Fla. 4th DCA 2009).

At the evidentiary hearing, the Fourth District Court of Appeals limited this Court's inquiry as to whether the torts, as alleged, occurred in Florida. OSI Indus., Inc. v. Carter, 834 So. 2d 362, 368 (Fla. 5th DCA 2003) ("The court's sole inquiry and determination should have been whether the tort as alleged occurred in Florida, and not whether the alleged tort actually occurred.")

The Defendant Emailed the Decedent in Florida.

The Plaintiff testified that from the summer of 2011, until her death, the Decedent lived in Broward County, with her parents, the Plaintiff and his wife. The Decedent had used her parents' computer during the time that she lived with them. The Plaintiff testified that he had personal knowledge that the Decedent and the Defendant communicated by email during the time she was living at the house because he was able to access the emails from the home computer.

The Plaintiff testified about his daughter's declining mental health and the adverse effect that the Defendant's communications had on her mental state. He also

2 The Defendant did not have a notary, or similar official, in Japan, to swear him in.

3 The Court received various documents from the Defendant that were sent after the evidentiary hearing had taken place. The Court did not consider the Defendant's documents in determining jurisdiction as submission of the documents after the hearing did not allow for them to be questioned by the Plaintiff.

testified that he tried to get the Decedent into a Life Skills treatment program in Florida. Though she had originally agreed to the proposed treatment, she changed her mind in September of 2011 and refused to enter the program. The Plaintiff alleges her refusal was a direct result of her communications with the Defendant. It was during this time, specifically September 14, 2011, that the Decedent received an email from the Defendant asking her to meet him in Chiang Mai, Thailand.⁴ The Plaintiff testified that the Decedent was living in Florida on September 14, 2011.

The Defendant argued at the hearing that the Decedent was with him in San Francisco on September 14, 2011, but in an email the Defendant told her that he was in Chiang Mai and working a "busy" schedule to be ready for a dance presentation on September 18, 2011. The Defendant told the Decedent his practice schedule, in Chiang Mai, for September 13-17 of 2011. The Defendant sent the Decedent another email on September 14, 2011 confirming he was in Chiang Mai. Also, on September 15, 2011 the Defendant sent an email to the Decedent telling her the he would meet her at the Chiang Mai airport.

The Plaintiff testified that he had attempted to stop the Defendant from communicating with the Decedent. The Plaintiff advised the Defendant that the Decedent was under the care of a mental health professional, and sent him medical records to prove that the Decedent was under treatment. He also sent the Defendant a cease and desist letter. The Defendant emailed the Plaintiff on August 22, 2011 referring to his attempts to end the communications to his daughter as childish and he questioned how he could be a company president.

In the September 14, 2011 email, the Defendant told the Decedent that he would be her personal psychotherapist and that he was "expensive." The Defendant also sent an email to the Plaintiff in Florida on September 17, 2011 stating that he understood that the Decedent's family was deeply concerned about her mental health and well-being. The Plaintiff contends that these emails support his claim that the Defendant,

⁴ Emails, including the September 14, 2011 email, were extracted from the Decedent's computer by Roy Talcott. Mr. Talcott retrieved electronically stored information from the Decedent's computer. In his deposition he testified that he is a computer engineer who has worked for over ten years in information technology, computer network set-up and security, and hosting and management of email accounts. Mr. Talcott testified that he is a former employee of Apple Computers and that he is very familiar with Mac computers, such as the type that the Decedent owned.

despite his understanding that the Decedent was in need of mental health care, continued to communicate with her in Florida with knowledge that he was interfering with her care.

Dr. Levy, a psychologist with over 40 years of experience, had 14 sessions with the Decedent in Miami. Dr. Levy's deposition was entered into evidence. Dr. Levy testified that the Defendant was "extremely controlling and manipulative, threatening to withdraw love and affection ... unless she was totally obedient." The Plaintiff submitted emails into evidence that he contends show that Defendant gave the Decedent "orders" when she was in Florida. Dr. Levy described in detail how the Defendant's interactions with the Decedent intensified in the time leading up to her death.

The Decedent was living in Florida when she had an exchange of emails with the Defendant in January 2012. The Decedent emailed the Defendant on January 4, 2012, and told him that she "can't interpret your mystery" and apologized to him. The Decedent stated that Defendant was all she had left and that if he would not have her then she would "LEAVE and go somewhere else." The Defendant sent the Decedent an email, that same day and told her to simply "survive" until her birthday.

The Decedent emailed the Defendant from Florida on January 25, 2012, and told him, "so now you please tell me how... please. need way to DIE. really." Just days before she died the Decedent emailed the Defendant, thanking him for all his important lessons, using past tense language. The Defendant sent her a response in Florida and told her to continue her research "in another world." She was found dead less than forty-eight hours later in Broward County. Dr. Levy testified Defendant's communication with the Decedent in Florida was a cause of her death.

For the above stated reasons, the Plaintiff has shown that communications by email occurred between the Defendant and the Decedent in Florida.

The Defendant Called and Skyped the Decedent in Florida.

At the evidentiary hearing the Plaintiff testified that he heard the Defendant Skype when the Decedent was at the Plaintiff's house in Broward County. The Defendant denies ever calling or speaking to the Decedent while she was in Florida,⁵

but put forth no evidence at the hearing to support that assertion. An email dated September 2011 was entered into evidence. In the email the Defendant and the Decedent discuss their Skyping. The Plaintiff's testimony, as well as email evidence, that, when he claims to have overheard the Skype between the Decedent and the Defendant, the Decedent was living in Florida.

The Plaintiff's Individual Claims Arise from the Defendant's Communication to Florida.

In the second amended complaint, filed April 22, 2016, the amendment was the addition of allegations for claims for damages in the Plaintiff's individual capacity. The Defendant has not moved to dismiss the Plaintiff's individual claims and provided no evidence opposing this Court exercising personal jurisdiction over the Defendant for the Plaintiff's individual claims. The Plaintiff testified that when he was in an emotionally weakened state, he told the Defendant that he feared the Decedent would die if the Defendant did not stop communicating with her, the Defendant responded with insults. For example, the Plaintiff testified that while he was in Florida, the Defendant sent him an email dated August 22, 2011, referring to the Plaintiff's actions as "sick ... childish ... [and] ... silly." The Defendant also referred to the Plaintiff as a hallucinating megalomaniac. Further, the Plaintiff contends that the Defendant intended to harm him when the Defendant made statements to the Miami Herald about the decline of the Decedent's mental health and her death.

It is also the Plaintiff's testimony that the Defendant told him that the Defendant would face the Plaintiff one day "in Florida in the future." The Plaintiff claims that this shows that the Defendant reasonably expected his actions to cause him to be "haled" into court in Florida for his actions regarding the Decedent. See Venetian Salami, at 500.

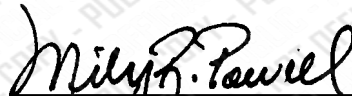
The Plaintiff has established by a preponderance of the evidence that this Court has personal jurisdiction over the Defendant for the claims asserted against him in this case.

⁵ The Defendant's May 28, 2014 affidavit.

Accordingly, for the above-stated reasons and after due consideration, it is hereby:

ORDERED AND ADJUDGED that the Defendant's "Motion to Dismiss for Lack of Personal Jurisdiction," is **DENIED**. The Defendant shall have **twenty (20) days** from the date of this Order to file his Answer and Affirmative Defenses to the Second Amended Complaint.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 19th day of April, 2018.


MILY RODRIGUEZ POWELL
CIRCUIT COURT JUDGE

cc: Walter G. Campbell, Jr., Esq., Attorney for Plaintiff, KRUPNICK CAMPBELL MALONE BUSER SLAMA HANCOCK LIBERMAN, P.A., 12 Southeast 7th Street, Fort Lauderdale, FL 33301 pleadings-wgc@krupnicklaw.com

Ben Murphey, Esq., Co-Counsel for Plaintiff, LAWLOR, WHITE, & MURPHEY, LLP, 2211 Davie Blvd., Fort Lauderdale, FL 33301 bmurphey@lwmllegal.com

Terugoshi Kotoura a/k/a Katsura Kan, *pro se*, Defendant, 202 Royal Manion Shimogano, 21-4 Shimogano Izumikawa-Cho, Sakyo-Ku, Kyoto City, Kyoto, Japan, 606-0807 kanbutoh@yahoo.co.jp

Terugoshi Kotoura a/k/a Katsura Kan, *pro se*, Defendant, 53-9 Shimogamo Miyakawa Cho, Sakyo-Ku, Kyoto City, Kyoto, Japan, 606-0801 kanbutoh@yahoo.co.jp