

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY FLORIDA

BANK OF AMERICA,

Petitioner,

v.

SERGE SAINT-VIL,

Respondent.

APPELLATE DIVISION (CIVIL)
CASE NO.: 502006AP000036XXXXMB
Lower Case No.: 502004CC011226XXXXMB
Division: AY

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Opinion filed: *march 2, 2007*

Appealed from: The County Court in and for Palm Beach County, Florida,
Judge Janis Brustares Keyser.

For Petitioner: Jacobson, Sobo & Moselle, P.O. Box 19359, Plantation, FL 33318.

For Respondent: No Appearance by Appellee.

PER CURIAM

On December 23, 2003, Respondent, Serge Saint-Vil ("Saint-Vil"), opened checking and savings accounts with Petitioner, Bank of America ("Bank"). The Bank sued Saint-Vil for damages, contending that he overdrew the accounts. After numerous attempts to serve him, the Bank served the State of Florida Secretary of State as his agent, pursuant to Section 48.181, Florida Statutes (2004). On May 16, 2006, the trial court denied the Bank's Motion for Default, ruling that opening a personal bank account, without more, did not qualify as doing business in the state, as required under Section 48.181, Florida Statutes.

Under Section 48.181, Florida Statutes, a person who conducts business in Florida and conceals his whereabouts appoints the Secretary of State as his agent for service of process in a cause of action arising out of that business. Saint-Vil engaged in business in the state when he opened the accounts. The Bank's cause of action arises out of that business. Consequently, Saint-Vil appointed the Secretary of State as his agent for service of process when he concealed his whereabouts.

§ 48.181, Fla. Stat. (2004); *CommerceBank, N.A. v. Taylor*, 639 So. 2d 1058, 1059 (Fla. 3d DCA 1994); *Horace v. American Nat. Bank & Trust Co.*, 251 So. 2d 33, 36-37 (Fla. 4th DCA 1971).

This case concerns only whether substitute service of process was permitted under Section 48.181, Florida Statutes, not whether Saint-Vil had sufficient minimum contacts in Florida to subject him to personal jurisdiction here. *Cf. Venetian Salami Co. v. Parthenais*, 554 So. 2d 499 (Fla. 1989). While these are related they are not necessarily coincident inquiries. Based on the foregoing, it is

ORDERED that the Petition for Writ of Certiorari is GRANTED. The trial court's May 16, 2006, Order Denying Entry of Default is quashed and the case is remanded to the trial court for further proceedings consistent with this opinion.

WINIKOFF, MAASS, and ROSENBERG JJ., concur.