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No. 24-12176-D

IN THE
SUPREME COURT OF THE UNITED STATES
Office of the Clerk

MARK T. STINSON, SR.,

PETITIONER,

VS.

MEMPHIS LIGHT GAS & WATER,
JEREMY THACKER, individually
and d/b/a PRIDESTAFF,

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Mark T. Stinson, Sr.
777 NW 155th Lane, Apt. 911
Miami, FL 33169-6180
Ph: (786) 299-7499
Email: mstinson1@bellsouth.net
Pro Se

QUESTIONS PRESENTED FOR REVIEW

- I. Whether the Eleventh Circuit Court of Appeals erred in its decision confirming the Southern District Court's of Florida determination that the petitioner failed to state a claim upon which relief can be granted?
- II. Whether the Southern District Court of Florida erred in its decision dismissing Stinson's complaint for failed to state a claim upon which relief can be granted?

LIST OF PARTIES

The Petitioner is Mark T. Stinson, Sr. A Respondent is Memphis Light Gas & Water, (MLGW), Jemery Thacker, d/b/a PrideStaff is a Respondent.

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PETITION FOR WRIT OF CERTIORARI
Citations to Opinions Below

The Memorandum Opinion and Order of the district court on 05/15/2024, [35] OMNIBUS ORDER granting 16 Motion to Dismiss 1 Complaint for failure to State a Claim; granting 21 Motion to Dismiss 1 Complaint; Dismissing 1 Complaint; denying as moot 34 Motion for Summary Judgment; Closing Case. Signed by Judge Beth Bloom on 05/15/2024.

The Order of the three-judge panel of the Court of Appeals for the Eleventh Circuit, on 04/04/2025 [58] ORDER: Appellant's motion to expedite a ruling on his Motion for Punitive Damages is DENIED AS MOOT. Appellant's motions for remand are DENIED. [55], [49]; [55], [47]; [50]; [55], [49] AJ, JP and EJK. Order is reported and reproduced at appendix A.

The Order of the Southern District Court of Florida to dismiss on 05/15/2024 [35] is reported, and reproduced appendix B.

JURISDICTIONAL STATEMENT

The district court had jurisdiction over this litigation under 28 U.S.C. §§ 1331 and 1332. The jurisdiction of the federal Circuit is under 28 U.S.C. § 1295(a)(1) over appeals from all District Courts in those cases in which jurisdiction is based upon 28 U.S.C. §§ 1331 and 1332. The United States Supreme Court has jurisdiction to hear and determine the writ of certiorari under 28 U.S.C. § 1254.

Petitioner Mark Stinson timely filed a notice of appeal in the Southern District Court of Florida Miami Division on 07/01/2024 [41], due to the

petitioner incarceration on 02/13/2024 threw 08/14/2024.

On April 4, 2025, the Eleventh Circuit Court of Appeals affirmed the district court's dismissal.

The petitioner's petition sent to this Court postmarked April 15, 2025, is timely. Stinson asks this Court to grant this petition and vacate the Eleventh Circuit's pro forma Order issuing Failure to State a Claim denial and remand this case with instructions to conduct a proper hearing analysis consistent with the gate-keeping function mandated by Fed. R. Civ. P. 12(b)(6) and this Court's precedents. Jurisdiction is appropriate under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Under Rule 12(b)(6), a motion to dismiss for failure to state a claim test only the sufficiency of the complaint. The standard requires that all factual allegations be accepted as true and viewed in the light of the most favorable to the plaintiff.

INTRODUCTION

The petitioner seeks a writ of certiorari to address significant legal questions regarding whether the lower courts erred in its determination that the petitioner failed to state a claim upon which relief can be granted. The issues presented are of substantial public interest and involve fundamental questions about the violation of the Tennessee Consumer Protection Act.

STATEMENT OF THE CASE

Factual Background: On or about June 2011, Pridestaff and/or Thacker submitted a proposal to MLGW to provide clerical services and general laborers, contract number 11499 and 115291. The contracts were for five (5) years commencing January 2012 and including December 31, 2016. One condition of an award was that the submitter (referred to as 'Respondent" in the MLGW documents) had to agree to utilize the services of a Certification Agency Certified Minority.

At the request of Thacker, petitioner met with him, and an agreement was reached wherein petitioner would furnish laborers and clericals under the contracts for twenty-five percent (25%) of the value of the contracts. Petitioner is that certified minority. Which is incorporated in each of the contracts. The petitioner met at least twice with Thacker who stated he would confer the agreement between him and petitioner, but he never did despite many telephone calls which were never returned. After some period of time, the petitioner was advised that a different vendor was being used. The petitioner tendered its services but was rejected. Thacker is using the petitioners Certificate of Minority to fulfill his contractual obligations to MLGW and to keep the contracts in force.

Petitioner avers that Thacker knew when he induced petitioner to allow the use of petitioner's certificates that he was not going to use petitioners services.

Thacker's statements to petitioner were fraudulent misrepresentations upon which petitioner reasonably relied and which caused him to suffer damages.

In or about the first quarter of 2016, MLGW instituted a request for Proposals as the current contracts referenced above will expire on December 31, 2016. The petitioner, desiring to submit its own proposal, requested copies from MLGW of the current two contracts referenced above. Upon petitioner's review in March of 2016, it was learned for the first time that the Minority Certificates were contained in those contracts.

Until the petitioner determined it would submit a proposal of its own, it was not reasonably able to discover that Thacker had misappropriated the certificates and was using petitioners' certificates without petitioners' permission. To continue to qualify for the award of the contracts referenced above. Petitioner submits that it is a third-party beneficiary of the contracts, and that

Defendants knew and understood that the furnishing of laborers and clericals was to be performed by petitioners. The petitioner submits that MLGW is vicariously liable for Thacker's misappropriation of the certificates and his fraudulent inducement to obtain the same.

Petitioner submits that MLGW has breached the contracts by allowing Thacker to falsely represent in the proposal documents and/or to permit Thacker to keep the award of the contracts by not using the services of the petitioner.

Petitioner avers that Thacker has converted the certificates by utilizing them to procure a contract with MLGW and by not contracting with petitioner.

The petitioner avers that Thacker was under a duty to disclose to the petitioner that he was not going to contract with the petitioner and cease and desist from using the certificates. Thacker was under duty not to use petitioner's certificates which Thacker fraudulently induced petitioner to make available to support his proposal and to have the certificates removed from the inclusions in the contracts. “[A] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotation marks omitted); see Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976).

1. Procedural History

- a. The lower court dismissed the petitioner's claims on 05/15/2024, asserting that they did not meet the requisite pleading standards under Rule 12(b)(6) of the Federal Rules of Civil Procedure. The court held that the petitioner failed to state a claim.
- b. Legal Standard: Under Rule 12(b)(6), a motion to dismiss for failure to state a claim test only the sufficiency of the complaint. The standard requires that all factual allegations be accepted as true and viewed in the light most favorable to plaintiff.

**REASONS FOR GRANTING THE WRIT THIS COURT SHOULD
GRANT CERTIORARI TO CLARIFY THE MINIMAL
REQUIREMENTS FOR STATUTORY GATE-KEEPING FUNCTION
PURSUANT TO FEDERAL RULE CIVIL PROCEDURE 12(b)(6).**

2. The Petitioner Adequately Stated a Claim

The petitioner contends that his complaint sufficiently alleged facts that, if proven true, would entitle him to relief. Specifically:

3. Legal Framework: The elements required to establish a claim under the Tennessee Consumer Protection Act, Code Ann. § 47-18-104, prohibits a number of deceptive or unfair practices in the provision of services including:

- a. Representing that goods or services are of a particular standard, quality of grade, or that goods are of a particular style or model, if they are of another (§ 47-18-104(7));
- b. Disparaging the goods, services or business of another by false or misleading representations of fact (§ 47-18-104(8)); and
- c. Engaging in any other act or practice which is deceptive to the consumer or to any other person (§ 47-18-104(27)).

4. Factual Allegations: The petitioner's allegations included:

- Key facts were overlooked that were presented in prior briefs, specifically regarding issues of exceptional importance as it pertains to the violations of the Tennessee Consumer Protection Act, *T.C.A. § 47-50-109*, Tenn. Code Ann. § 47-18-104, (§ 47-18-104(7);

(§ 47-18-104(8)); (§ 47-18-104(27); fraud, breach of contract, breach of fiduciary duty misappropriation of funds, misrepresentation, breach of duty of good faith, usurpation of business opportunity, unfair dealings, interference with business relations, and loss of liberty, all were intentional deceptive fraudulent acts.

MLGW and Jermey Thacker/PrideStaff intentionally violated MLGW's Supplier Diversity Policy, Equal Opportunity Clause, Supplier Diversity Reporting and Tracking Policy, Business Ethics Policy, Standard of Business Conduct Policy. The conspiracy, conversion, loss of liberty, and specific performance all were done intentionally, fraudulently and deceptively. MLGW was the respondeat superior for Thacker/PrideStaff. The court must also weigh all factual allegations in favor of the appellant unless the facts are clearly baseless; Denton v. Hernandez, 504 U.S. 25, 32 (1992); See Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976).

These allegations demonstrate a plausible entitlement to relief as established in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U.S. 662 (2009). That the collaboration of these individuals in this conspiracy was to steal the business of the petitioner and profit from the fraudulent acts, violating the Tennessee Consumer Protection Act.

The Petitioner contends that there are specific facts with exhibits in the verified complaint that clearly show that immediate and irreparable injury has

occurred, and the need to correct a clear error or manifest injustice is needed.

Socialist Workers Party v. Leahy, 957 F. Supp. 1262 (S.D. Fla. 1997); Cover v. Wal-Mart Stores, Inc., 148 F.R.D. 294 (M.D. Fla. 1993). Defendants have violated the duty of good faith and fair dealing under the Tennessee Consumer Protection Act, Specific Performance and Breach of Contract, Breach of fiduciary duty, Misrepresentation, Fraud, Conversion and for Concealment or Fraud by Suppression.

5. Importance of Review

The decision by the lower courts sets a concerning precedent regarding how courts interpret claims under similar statutes, potentially undermining access to justice for individuals seeking redress for violations of their rights.

6. Public Interest: This case raises critical issues affecting not only the parties involved but also broader implications for future litigants facing similar circumstances.

7. Conflict Among Courts: There exists a split among circuit courts regarding interpretations of similar claims, necessitating this Court's intervention to provide clarity and uniformity in application. At this stage, we are bound to accept as true for purposes of decision the complaint's well-pleaded factual allegations and drew all reasonable inferences from these allegations in appellant's favor. *See Siegle v. Progressive Consumers Ins. Co.*, 819 So.2d 732, 734-35 (Fla. 2002); Todd v. Johnson, 965 So.2d 255, 257 (Fla. 1st DCA

2007); Hall v. Knipp, 982 So. 2d 1196, 1198 (Fla. Dist. Ct. App. 2008). ("A ruling on a motion to dismiss based on a pure question of law is subject to de novo review."); City of Miami Firefighters' & Police Officers' Ret. Tr. & Plan v. Castro, 279 So. 3d 803, 806 n.11 (Fla. 3d DCA 2019); Medina v. Pollack, 300 So. 3d 173 (Fla. 4th DCA 2020).

The abuse of discretion standard requires an appellate court to affirm the trial court's ruling "unless no reasonable person would adopt the trial court's view." May v. State, 326 So.3d 188, 191 (Fla. 1st DCA 2021) citing Salazar v. State, 991 So. 2d 364, 372 (Fla. 2008). *See also* Lewis v. Juliano, 242 So. 3d 1146, 1148 (Fla. 4th DCA 2018). This is known as "the reasonableness test." Kaye v. State Farm Mut. Auto Ins. Co., 985 So. 2d 675, 677 (Fla. 4th DCA 2008). "This test holds that the appellant must show clear error by the trial court in its interpretation of the facts and the use of its judgment." *Id.*

In reviewing an order on a motion to dismiss, we apply the "four corners rule." Under this rule, "review for the sufficiency of a complaint to state a cause of action is limited solely to the complaint at issue and its attachments." Santiago v. Mauna Loa Invs., LLC, 189 So. 3d 752, 756 (Fla. 2016). Therefore, we review the Complaint and its attachments to determine whether [plaintiff] has sufficiently alleged breach of an express, written agreement, which is necessary to overcome sovereign immunity. City of Miami v. Cruz, 342 So. 3d 741, 743 (Fla. Dist. Ct. App. 2022).

This Court reviews de novo “a district court’s dismissal of a complaint with prejudice for failure to state a claim,” “accept[ing] the factual allegations in the complaint as true [and] construing them in the light most favorable to the plaintiff.” Quality Auto Painting Ctr. of Roselle, Inc. v. State Farm Indem. Co., 917 F.3d 1249, 1260 (11th Cir. 2019) (en banc).

RELIEF REQUESTED

- I respectfully request that this Court grant the writ of certiorari in this matter and Remand;
- I respectfully request that this Court order this matter be returned to the U.S. District Court for the Southern District of Florida; and
- Provide any other relief just and proper;
- This request is made in good faith and is not intended to cause delay or prejudice against any party involved.

CONCLUSION

Therefore, for the foregoing reasons, Mr. Stinson, Sr. respectfully requests that this Court grant a writ of certiorari to review the decision stated above and clarify important legal standards regarding pleading requirements.

Respectfully submitted,



Mark T. Stinson, Sr.
777 NW 155th Ln. 911
Miami, FL 33169-6180
Ph: (786) 299-7499
Email: mstinson1@bellsouth.net
April 15, 2025
Pro Se

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,
TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS**

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 2175 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on April 15, 2025.



Mark T. Stinson, Sr.
Pro se

CERTIFICATE OF SERVICE

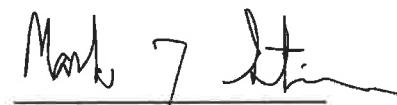
I hereby certify that a copy of the foregoing motion for Writ of Certiorari was sent to the respondent via electronic mail this 15th day of April 2025, to the following:

Desislava K. Docheva
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.
200 E. Broward Blvd., suite 2000
Fort Lauderdale, FL 33301
(954) 768-1610
ddocheva@bakerdonelson.com

Counsel for Appellee
Memphis Light Gas & Water

Kimberly J. Doud
Fla. Bar No.: 0523771
Email: kdoud@littler.com
111 North Orange Ave., Suite 1750
Orlando, FL 32810
Telephone: 407.393.2900
Facsimile: 407.393.2929

Counsel for Defendant
Jeremey Thacker/PrideStaff



Mark T. Stinson, Sr.

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12176

MARK T. STINSON, SR.,

Plaintiff-Appellant,

versus

MEMPHIS LIGHT GAS & WATER,
JEREMY THACKER,
individually d.b.a. Pridestaff,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:23-cv-24733-BB

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Order of the Court

24-12176

Before JORDAN, JILL PRYOR, and KIDD, Circuit Judges.

BY THE COURT:

Appellant's motion to expedite a ruling on his Motion for Punitive Damages is DENIED AS MOOT.

Appellant's motions for remand are DENIED.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 23-cv-24733-BLOOM/Torres

MARK T. STINSON,

Plaintiff,

v.

MEMPHIS LIGHT GAS & WATER,
JEREMY THACKER, individually and
d/b/a PRIDESTAFF,

Defendants.

OMNIBUS ORDER ON MOTIONS TO DISMISS PLAINTIFF'S COMPLAINT

THIS CAUSE is before the Court upon Defendants PrideStaff, Inc.'s ("PrideStaff") and Jeremy Thacker's ("Thacker") Motion to Dismiss Plaintiff's Complaint, ECF No. [16] and upon Defendant Memphis Light, Gas & Water's ("MLGW") Motion to Dismiss Plaintiff's Complaint and Supporting Memorandum of Law, ECF No. [21], (together, "Defendants"). Mark T. Stinson ("Stinson") filed a Response in Opposition to the Motion to Dismiss filed by PrideStaff and Thacker, ECF No. [17], but did not file a response to the Motion to Dismiss by MLGW. On February 26, 2024, Stinson filed a Motion indicating that he was detained on February 13, 2024 and asked the Court to mail a docket report to him at the Federal Detention Center in Miami, Florida, ECF No. [28]. The Court also granted a brief extension of time to reply to the Motion to Dismiss by MLGW, ECF No. [29]. Stinson filed an additional Motion to Correct his address again, ECF No. [32], on March 28, 2024.

The Court has reviewed the Motions, the supporting and opposing submissions, the record in the case, and is otherwise fully advised. For the reasons that follow, the Motion to Dismiss filed by PrideStaff and Thacker is granted, and the Motion to Dismiss filed by MLG is granted.

I. BACKGROUND

Stinson alleges that in June 2011, PrideStaff sent a proposal to MLGW, a Tennessee utility company, seeking to supply MLGW with staffing support for their clerical and general laborer needs. ECF No. [1] ¶¶ 3-4. Stinson alleges MLGW conditioned the award of any potential service contracts with the requirement that PrideStaff use the services of a Certified Agency Certified Minority Business. *Id.* ¶ 6. This led Thacker to meet with Stinson, who held this type of certificate. *Id.* ¶¶ 7, 8. The two entered a verbal agreement whereby Stinson would help provide staff to PrideStaff, and Stinson would receive 25% of the value of any contract he helped procure as consideration. *Id.* ¶ 7. Stinson alleges after he offered his services, his phone calls were not returned, and PrideStaff chose a different vendor. *Id.* ¶¶ 9-11. Stinson claims PrideStaff converted his Certified Agency Certified Minority Business certificate to obtain the contract it desired with MLGW without him. *Id.* ¶ 23.

The Complaint sets forth a claim of fraudulent misrepresentation against PrideStaff and claims of vicarious liability and fraudulent inducement against MLGW. Stinson seeks \$1,500,000.00 in damages against PrideStaff and Thacker, \$1,500,000.00 against MLGW, punitive damages for “the intentional and willful breach of contract,” and specific performance of the alleged contracts. *Id.* ¶¶ 27, 28.

In their Motions to Dismiss, Defendants contend that the Complaint is deficient because, among several issues, this Court does not have jurisdiction over them, the claims are time barred, for failure to state a claim, and that there is a “nearly identical complaint” in the Circuit Court for Shelby County, Tennessee. No. W2022-01791-COA-R3-CV. ECF No. [21] at 15, [21-1]; *see generally* ECF Nos. [16], [21].

Stinson responds and urges this Court to keep his case “because of the numerous constitutional violations of the Circuit Court, Appeals Court and Supreme Court of Tennessee.” ECF No. [17] at 3. Stinson also asks this Court to hold his Complaint to a less stringent standard as he is filing *pro se*. *Id.* at 6. Stinson does not address the argument that jurisdiction over PrideStaff, Thacker, or MLGW is improper, either in his Complaint or Response.

Defendants PrideStaff and Thacker reply, arguing that Stinson was unresponsive to their Motion. Defendants maintain that lack of subject matter and personal jurisdiction are fatal to the ability to hear these claims in this Court. ECF No. [18] at 2. Moreover, issues pertaining to *res judicata*, venue, and the untimeliness of Plaintiff’s claims are arguments left unopposed by Stinson. *Id.* at 3.

II. LEGAL STANDARD

A. Jurisdiction

“Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.” *Ex Parte McCardle*, 74 U.S. 506, 514. Moreover, “judicial duty is not less fitly performed by declining ungranted jurisdiction than in exercising firmly that which the Constitution and the laws confer.” *Id.*

“A plaintiff seeking the exercise of personal jurisdiction over a nonresident defendant bears the initial burden of alleging in the complaint sufficient facts to make out a *prima facie* case of jurisdiction.” *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1274 (11th Cir. 2009); *see Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339 (11th Cir. 2013). “When a plaintiff fails to include sufficient allegations in his complaint to establish a *prima facie* case of personal jurisdiction, a defendant may assert a facial challenge to the complaint.” *Ramirez v. Grp. Servs.*,

No. 6:16-cv-1831-Orl-37KRS, 2017 WL 2672555, at *2, (M.D. Fla. June 20, 2017) (citing *Meier v. Sun Int'l Hotels, Ltd.*, 288 F.3d 1264, 1268–69 (11th Cir. 2002)). A defendant also may assert a factual challenge “by submitting affidavit evidence in support of its position.” *Louis Vuitton Malletier*, 736 F.3d at 1350. When a defendant presents such evidence, “the burden . . . shifts back to the plaintiff to produce evidence supporting jurisdiction [unless] the defendant's affidavits contain only conclusory assertions that the defendant is not subject to jurisdiction.” *Id.* Where the evidence conflicts, all reasonable inferences must be construed in favor of Plaintiff. *Stubbs v. Wyndham Nassau Resort & Crystal Palace Casino*, 447 F.3d 1357, 1360 (11th Cir. 2006) (quotation omitted).

This Court must “undertake a two-step inquiry in determining whether personal jurisdiction exists: the exercise of jurisdiction must (1) be appropriate under the state long-arm statute and (2) not violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.” *United Techs.*, 556 F.3d at 1274 (cleaned up). Under Florida’s long-arm statute, Florida courts can exercise specific personal jurisdiction over suits that arise out of or relate to a defendant’s contacts with Florida if those contacts fall within one of nine statutorily enumerated categories. Fla. Stat. § 48.193(1)(a).

B. *Pro Se* Filings

To state a claim upon which relief may be granted, a complaint’s factual allegations “must be enough to raise a right to relief above the speculative level”—with “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). Under this standard, legal conclusions “are not entitled to the assumption of truth” and are insufficient to state a claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

Courts must “construe *pro se* pleadings liberally, holding them to a less stringent standard than those drafted by attorneys.” *Arrington v. Green*, 757 F. App’x 796, 797 (11th Cir. 2018) (citing *Hughes v. Lott*, 350 F.3d 1157, 1160 (11th Cir. 2003)). Still, a *pro se* party must abide by “the relevant law and rules of court, including the Federal Rules of Civil Procedure.” *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989).

C. Futility

District courts “have broad discretion in permitting or refusing to grant leave to amend.” *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1270 (11th Cir. 2006) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Leave to amend should be “freely given” absent a showing of “futility of amendment.” *Id.* at 1270 (citing *Foman*, 371 U.S. at 182). When an amended complaint would still be “properly dismissed or be immediately subject to summary judgment for the defendant,” a district court could determine that leave to amend the complaint is futile. *Cf. Rivas v. Bank of N.Y. Mellon*, 777 F. App’x 958, 965 (11th Cir. 2019) (citing *Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007)).

III. DISCUSSION

A. Jurisdiction

In his Complaint, Stinson alleges “Plaintiff is a Florida corporation,”¹ MLGW is a Tennessee entity, and Thacker is a resident of Tennessee. ECF No. [1] at 1. Stinson does not allege where PrideStaff is based, but indicates Thacker is an owner/partner of PrideStaff. *Id.* Stinson fails to allege where any of the events in his Complaint occurred. Stinson alleges he met with Thacker

¹ The Court notes that if Stinson intended to file *pro se* on behalf of his corporation, that would be an independent basis for dismissal. “The rule is well established that a corporation is an artificial entity that can act only through agents, cannot appear *pro se*, and must be represented by counsel.” *Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 (11th Cir. 1985).

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in June 2011 to procure a contract to provide staffing services through PrideStaff to MLGW; MLGW is a Tennessee governmental and municipal utility company servicing Shelby County, Tennessee. *Id.* at 1-2; *see also* ECF No. [21] at 2.

Collectively, Defendants assert that personal jurisdiction is lacking, warranting dismissal. ECF No. [16] at [7-10]; ECF No. [21] at 5-19. *See* Fed. R. Civ. P. 12(b)(6). Defendants set forth additional challenges to the Complaint seeking dismissal.

The Motion to Dismiss filed by Thacker and PrideStaff clarifies that PrideStaff is incorporated in California and maintains its principal place of business there. ECF No. [16] at 9. Moreover, PrideStaff and Thacker argue that Stinson moved to Florida in 2023, well after the alleged June 2011 discussions between Stinson and Thacker, which form the basis of his Complaint. *Id.* at 10.² Thacker and PrideStaff contend no act or omission of any act occurred in Florida; thus, there is no substantial connection to Florida warranting jurisdiction.

The Motion to Dismiss filed by MLGW argues Stinson has failed to set forth allegations that it conducts business in Florida. ECF No. [21] at 9. Further, MLGW reasons because it is a governmental entity that provides utility services throughout Shelby County, Tennessee, MLGW's business is simply not conducted in nor reaches Florida. *Id.* at 8-9. Finally, MLGW reasons Stinson failed to meet his initial burden to sufficiently allege MLGW is subject to personal jurisdiction by this Court, which is a basis to grant its Motion to Dismiss. *Id.* at 9. Defendants bolster their challenge to jurisdiction by providing signed declarations consistent with *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339 (11th Cir. 2013).

² Defendants attach an earlier Complaint for Violation of Civil Violations under 42 U.S.C. § 1983 for the same underlying claims, filed in the United States District Court for the Western District of Tennessee, Western Division. *Id.* at 20, Exhibit 1. Stinson provided an address in Cordova, Tennessee. *Id.* at 22.

Defendant Thacker sets forth a sufficient facial attack, noting Stinson's Complaint alleges that Thacker is a resident of Tennessee, and points out there are no allegations in the Complaint that any act occurred in or reached Florida. ECF No. [16] at 9. Defendant PrideStaff filed a signed declaration by its Vice President of Risk Management, Sarah Hayden, stating:

PrideStaff controls its operations in California. Its main office and management functions are concentrated in California, and PrideStaff directs and controls its day-to-day operations and activities in the United States from California. ECF No. [16-4] at 2.

Defendant MLGW also provided a signed declaration from its Chief Operating Officer, Alonzo Weaver, stating:

MLGW is a governmental entity and municipal utility providing utility services to customers located in Shelby County, Tennessee; MLGW's principal place of business is located at 220 S. Main Street, Memphis, Shelby County, Tennessee 38103; MLGW does not conduct business in Florida and does not maintain an office or agents in Florida; MLGW does not have any employees or other staff in Florida and does not maintain any telephone listings or addresses in Florida. ECF No. [21-2] at 3.

Stinson responds by asking this Court to allow his case to proceed here "because of the numerous constitutional violations of the Circuit Court, Appeals Court and Supreme Court of Tennessee." ECF No. [17] at 3. Stinson alleges the courts in Tennessee denied several of his motions and alternatively dismissed his case although they knew he was *pro se*, arguing the Tennessee courts have "no respect for the Judicial system." *Id.* Nevertheless, Stinson's Response fails to set forth evidence or any factual allegations that jurisdiction as to these Defendants is warranted. Stinson's response is effectively a concession that there is no personal jurisdiction over these Defendants.

Stinson failed to meet his threshold burden "of alleging in the complaint sufficient facts to make out a *prima facie* case of jurisdiction." *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1274 (11th Cir. 2009). As the contracts he sought were to service a Tennessee utility company, and no

party at the relevant time was based in Florida —including, it seems, Stinson — there is little to plausibly indicate any activities occurred in Florida warranting jurisdiction. The Defendants provided sworn declarations indicating they are based in California and Tennessee, with no contacts in Florida. As such, Defendants have set forth sufficient factual challenges indicating they are not subject to jurisdiction by this Court. *See Louis Vuitton Malletier*, 736 F.3d at 1350. When the burden shifted back to Stinson to produce evidence supporting jurisdiction, he failed. *Id.*

The Court finds Stinson's Response is plainly insufficient, and he did not produce any evidence, or even allege, that jurisdiction is proper in this Court. Under Florida's long-arm statute, a Florida court may only exercise specific personal jurisdiction over a defendant for acts that arise out of or relate to a defendant's conduct in Florida. Fla. Stat. § 48.193(1)(a). While a *pro se* filer is held to a less stringent pleading standard than a trained attorney, a *pro se* party must still abide by "the relevant law and rules of court, including the Federal Rules of Civil Procedure." *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989). Accordingly, Stinson's Complaint is due to be dismissed.

B. Futility of Amendment

When an amended complaint would still be "properly dismissed" a district court can determine that leave to amend the complaint is futile. *Cf. Rivas v. Bank of N.Y. Mellon*, 777 F. App'x 958, 965 (11th Cir. 2019) (citing *Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007)). Stinson cannot change his fundamental problem with jurisdiction. Defendants are clearly not subject to jurisdiction by this Court as addressed above. Consequently, Stinson's Complaint is due to be dismissed without prejudice as the merits are not reached here, but as his claim has no place in this District, his Complaint is dismissed without leave to amend.

IV. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Defendants PrideStaff and Thacker's Motion to Dismiss, **ECF No. [16]**, is **GRANTED**.
2. Defendant Memphis Light, Gas & Water's Motion to Dismiss, **ECF No. [21]**, is **GRANTED**.
3. The Clerk of Court is directed to update Stinson's Address to: Mark T. Stinson, #153816, 1045 Mulins Station Rd., Memphis, TN 38134.
4. Stinson's Complaint, **ECF No. [1]** is **DISMISSED WITHOUT LEAVE TO AMEND**.
5. The Clerk of the Court is directed to **CLOSE** this case.
6. To the extent not otherwise disposed of, any scheduled hearings are **CANCELED**, all pending motions are **DENIED AS MOOT**, and all deadlines are **TERMINATED**.

DONE AND ORDERED in Chambers at Miami, Florida, on May 15, 2024.



BETH BLOOM
UNITED STATES DISTRICT JUDGE

cc: counsel of record

Mark T. Stinson
#153816
Shelby County Correctional Center
1045 Mulins Station Rd.
Memphis, TN 38134
Pro Se