

IN THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

MONIER RAHALL,
Appellant

vs.

INXS VII, LLC,
Appellee.

Case No. 2D24-1864

**APPEAL FROM THE
CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND
FOR HILLSBOROUGH COUNTY, FLORIDA, CIVIL DIVISION**

INITIAL BRIEF

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STATEMENT OF CASE AND FACTS

This is an appeal of the denial of Appellant (Defendant in lower court), Monier Rahall's Motion to Quash 03/22/24 [R. 6] the Complaint [R. 4] and Summons by INXS VII, LLC, the Appellee (Plaintiff in lower court). The Notice of Appeal was filed 08/09/24 [R. 62] pursuant to Fla.R.Civ.P. 9.130(a)(3)(c)(i) from the 07/10/24 Order on Motion to Quash [R. 63]. The Order denied Appellant's Motion to Quash [R. 6].

Appellee, INXS VII, LLC's Complaint was filed in the Circuit Court on 03/01/23 [R. 3] in violation of §605.0113(1) and (5), Fla. Stat. The Appellee, INXS VII, LLC's Sunbiz disclosures (annual report) clearly showed that the Registered Agent for Appellee, INXS VII, LLC¹, was Distressed Asset Fund II, LLC which entity was administratively dissolved on 09/23/16 forward and never renewed or reinstated. Appellee, INXS VII, LLC, had no Registered Agent at the time its Complaint was filed on 03/01/23 [R. 3] and also had no Registered Agent at the time the Complaint [R. 3] and Summons were served on 03/18/24. (See [R. 23], 06/21/24 Notice of Filing Verified Return). Therefore, the Appellee, INXS VII, LLC, could not file its 03/01/23 Complaint [R. 3] or serve the Complaint and Summons on 03/18/24

¹ INXS VII, LLC was created so it could not be sued. It had no Registered Agent and no Manager. The "Manager" listed is an LLC with no person as a Manager with the Sunbiz manager.

because § 605.0113(5), Fla. Stat. precluded any action to prosecute or maintain a lawsuit by Appellee, INXS VII, LLC, with no Registered Agent for INXS VII, LLC in violation of § 605.0113(1), Fla. Stat. and § 605.0113(5), Fla. Stat.

The Appellant (Defendant below), Monier Rahall, filed a Motion to Quash on 03/22/24 [R. 6] and Exhibits [R. 8] and clearly set forth the basis for the Motion to Quash [R. 6] in detail and the fact that when the Complaint [R. 3] and Summons were served on 03/18/24, that the Appellee, INXS VII, LLC, had no Registered Agent as mandated by § 605.0113(1), Fla. Stat. and, therefore, Appellee, INXS VII, LLC, could not proceed forward with the prosecution and maintenance of the underlying lawsuit filed by Appellee, INXS VII, LLC, in violation of § 605.0113(5), Fla. Stat. Appellant also filed a Memorandum [R. 26] and supporting documents [R. 36], all showing Appellee, INXS VII, LLC, had no Registered Agent from 09/23/16, forward, because Distressed Asset Fund II, LLC was dissolved on 09/23/16 and never reinstated. Appellee had no Registered Agent from 09/23/16 through 03/25/24 (after Appellant's Motion to Quash was filed 03/22/24), an individual was named with no full legal name and no business office on 03/25/24.

The lower court held a hearing on 07/02/24 and the transcript [R. 49] shows that there were no disputes over the facts as to when the Complaint was filed on 03/01/23 [R. 3] and as to the Complaint and Summons being served on 03/18/24 while there was no Registered Agent for Appellee, INXS VII, LLC, because Distressed Asset Fund II, LLC did not exist since 09/23/16 and was never reinstated. In fact, the Appellant's Motion to Quash [R. 6] which was filed on 03/22/24 also was filed when there *still* was no Registered Agent designated by Appellee, INXS VII, LLC, in compliance § 605.0113(1), Fla. Stat. Appellee, INXS VII, LLC, did not have a Registered Agent during the entire time of this suit and service on 03/18/24, nor when the 03/22/24 Motion to Quash [R. 6 and R. 8] was filed by Appellant, Monier Rahall before the 07/02/24 hearing on Appellant's Motion to Quash before Judge Huey.

The Court denied the Appellant's Motion to Quash [R. 6] but never specifically said why it denied the Appellant's 03/22/24 Motion to Quash [R. 6]. There is no issue that the Appellee, INXS VII, LLC, was not in compliance with 605.0113(1) and (5) at the time of service of the Complaint and Summons on 03/18/24 and not in compliance with § 605.0113(1) or (5), Fla. Stat. at the time the Motion to Quash [R. 6] was filed by the Appellant on 03/22/24, nor from 09/23/16, forward because the Registered

Agent, Distressed Asset Fund II, LLC, for Appellee, INXS VII, LLC, did not exist at any time and was the non-existent Registered Agent.

SUMMARY OF THE ARGUMENT

The Appellant, Monier Rahall, timely filed a Motion to Quash on 03/22/24 [R. 6] and filed a Memorandum in Support on 07/02/24 [R. 26] [R. 36] and the 03/22/24 Motion to Quash [R. 6] clearly showed that the Appellee, INXS VII, LLC, filed its Complaint on 03/01/23 [R. 3] which Complaint was filed when Appellee, INXS VII, LLC, did not have a Registered Agent as required by § 605.0113(1)(a)(b), Fla. Stat. § 605.0113(1) Fla. Stat. required that Appellee, INXS VII, LLC, designate and continuously maintain a Registered Agent that was authorized. There is no question Appellee, INXS VII, LLC, had no Registered Agent at all since 09/23/16 (8 years!)! This was a litigation tactic, there was no person as a Manager and no Registered Agent to serve for Appellee, INXS VII, LLC.

This “homemade” entity, INXS VII, LLC, did not designate a Registered Agent that existed or had an address or office. The Registered Agent was a dissolved company, Distressed Asset Fund II, LLC, which was dissolved since 09/23/16 and was never reinstated. This is a litigation tactic to avoid service of suits and service of subpoenas. The Complaint [R. 3] was clearly served with a Summons on 03/18/24, all while there was no

Registered Agent for Appellee, INXS VII, LLC, and the Summons was issued when there was literally no Registered Agent for Appellee, INXS VII, LLC. The Complaint and Summons were served 03/18/24 when there was no Registered Agent for Appellee, INXS VII, LLC. Pursuant to § 605.0113(5), Fla. Stat., the Plaintiff could not prosecute or maintain an action in this court until the company complies with this section and pays all of the amounts required and paid the penalties under the chapter.

There was no issue of fact that the Appellee, INXS VII, LLC did not comply with §605.0113(1) and (5), Fla. Stat. since 09/23/16 and, therefore, could not serve the Summons and Complaint on 03/18/24 while Appellee, INXS VII, LLC, had no valid Registered Agent and no valid Registered Agent office. The Complaint and Summons served 03/18/24 was a nullity in violation of §605.0113(5), Fla. Stat. and had to be quashed by the court. Neither were filed or served by Appellee, INXS VII, LLC while in compliance with §605.0113(1) and (5), Fla. Stat., and there was no excuse for Appellee to not have a Registered Agent for years.

The Appellant's 03/22/24 Motion to Quash [R. 6] should have been granted. The "Order" on Motion to Quash Service denying the Appellant's Motion to Quash [R. 63] entered on 07/10/24 from the hearing held 07/02/24 must be reversed because the Appellee, INXS VII, LLC, had no

Registered Agent at the time of the filing of the Complaint [R. 3], or issuance of the Summons 03/18/24 or service on 03/18/24 [R. 20], and service of the Complaint and Summons and no valid Registered Agent at the time the Appellant's Motion to Quash was filed on 03/22/24 [R. 6 and R. 8], detailing the service of the Complaint and Summons on 03/18/24 [R. 20] with no Registered Agent by Appellee, INXS VII, LLC, since 09/23/16, forward.

ARGUMENT

§ 605.0113, Fla. Stat. states as follows:

605.0113 Registered Agent

(1) **Each limited liability company** and each foreign limited liability company that has a certificate of authority under s. 605.0902 **shall designate and continuously maintain in this state:**

(a) **A registered office**, which may be the same as its place of business in this state; and

(b) **A Registered Agent**, who must be:

1. An **individual** who resides in this state and **whose business address is identical** to the address of the **registered office**;
2. Another **domestic entity that is an authorized entity and whose business address is identical to the address of the registered office.**
* * *

(5) A limited liability company and each foreign limited liability company that has a certificate of authority under s. 605.0902 **may not prosecute or maintain an action in court in this state until the limited liability company complies with this section, pays to the department any amounts required under this chapter, and, to the extent ordered by a court of competent jurisdiction, pays to the department of penalty of \$5 for each day it has failed to comply or \$500**, whichever is less, and pays any other amounts required under this chapter.

There is no question that the Appellee, INXS VII, LLC, did not have a Registered Agent that complied with the statute, § 605.0113(1), Fla. Stat. because the designated Registered Agent, Distressed Asset Fund II, LLC, was dissolved and non-existent since 09/23/16 forward, and never reinstated. Distressed Asset Fund II, LLC did not exist at the time this lawsuit was filed on 03/01/23, nor did it exist at the time the Complaint [R. 3] and Summons were served on 03/18/24, nor did it exist at the time that the Appellant's 03/22/24 Motion to Quash [R. 6] was filed with the court on 03/22/24 and Distressed Asset Fund II, LLC was never reinstated and did not exist since 09/23/16, forward.

The Appellee, INXS VII, LLC, on 03/25/24 simply put in another "vague person" as a name change "S. Mickey" on **03/25/24** after the Appellant had filed the Motion to Quash on 03/22/24 [R. 6] and none of these matters were ever addressed and no compliance with § 605.0113(1), Fla. Stat. from 2016, forward, nor the Appellee's willful failure to comply with § 605.0113(1) and (5), Fla. Stat. for years and during the entire time the lawsuit was filed and when the Complaint [R. 3] and Summons were served on 03/18/24 while Appellee, INXS VII, LLC, was barred from suit by § 605.0113(5), Fla. Stat.. There is no question that the service of process

03/18/24 [R. 20] was invalid and brought by an Appellee, INXS VII, LLC, who could not prosecute or maintain a lawsuit under § 605.0113(5), Fla. Stat. at the time of filing and service of the Complaint on 03/18/24 because the Registered Agent for Appellee, INXS VII, LLC, remained non-existent and Appellee, INXS VII, LLC, had no Registered Agent, nor complied with § 605.0113(5), Fla. Stat. INXS VII, LLC was non-compliant under the laws of the State of Florida.

There is no question that service of process is strictly construed and an entity, Appellant, INXS VII, LLC, that does not comply with Florida law is prohibited from prosecuting and maintaining a lawsuit cannot proceed in clear violation of the §605.0113(1) and (5), Fla. Stat. In this case, §605.0113(1) and (5), Fla. Stat. is exceedingly clear and Appellee, INXS VII, LLC, did not comply and could not prosecute or maintain this action as a Plaintiff and the Appellant's Motion to Quash [R. 6] had to be granted by the Circuit Court and the denial must now be reversed on appeal.

CONCLUSION

The Appellant, Monier Rahall, is entitled to have the "Order on Motion to Quash Service" denying the Appellant's Motion to Quash on 03/22/24 reversed because the Appellee, INXS VII, LLC, did not comply with § 605.0113(1) and (5), Fla. Stat. and did not have a Registered Agent at the

time of the filing of the Complaint on 03/01/23 and the service of the Summons and Complaint [R. 3] on 03/18/24, and at the time of filing, the Appellant's 03/22/24 Motion to Quash and the named, non-existent Registered Agent, Distressed Asset Fund II, LLC, did not exist since 09/23/16 forward and was never reinstated at or after the time of service on 03/18/24. This "homemade company," INXS VII, LLC, also named a Manager as an entity that also was non-existent when viewed on Sunbiz. The Appellee, INXS VII, LLC, is an entity that must strictly comply with Florida law, § 605.0113, Fla. Stat. and cannot prosecute and maintain lawsuits as a Plaintiff in direct violation of § 605.0113(1) and (5), Fla. Stat. The "homemade creation" of Appellee, INXS VII, LLC, with no Registered Agent is not allowed by Florida Statutes and the Court must enforce § 605.0113(1) and (5), Fla. Stat. The Circuit Court Order denying Appellant's 03/22/24 Motion to Quash to INXS VII, LLC's Complaint and Summons served 03/18/24 must be reversed and the Appellant's (Defendant's) Motion to Quash granted.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing instrument has been furnished by e-mail through the Florida Courts E-filing Portal to Paul Valles, Esq., 2309 S. MacDill Avenue, Tampa, FL 33629 (rvalles@rmslegal.com) on this 5th day of November, 2024.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the brief complies with the font requirements of Fla.R.App.P. 9.210(a)(2).

/s/ Jawdet I. Rubai