THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
In the Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

2022-UP-014
Case No. 2019-CP-26-05254
Appellate Case No. 2020-000557

Alison Meyers, ...Appellant/Petitioner,

v.

Shiram Hospitality, LLC, ...Respondent.

PETITION FOR CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for the Petitioner certifies that Petitioner filed a Petition for Rehearing on June 2, 2022, and the Court of Appeals issued a ruling denying rehearing on June 23, 2022.

As authorized by Rule 242 of the South Carolina Appellate Court Rules, Appellant/Petitioner respectfully requests that this Court issue a writ of certiorari to review the Court of Appeals' May 18, 2022 Opinion because the Court of Appeals overlooks and misapplies the facts not in evidence and also misapplies the holdings of the United States Supreme Court in Burger King Corp. v. Rudzewicz and the Illinois Supreme Court in Russell v. SNFA.

STATEMENT OF THE CASE

On August 15, 2019, Appellant filed her Notice of Intent to Domesticate Foreign Judgment. (R. p. 30.) Respondent appeared and argued that the judgment should not be enforced because it was not properly served, and that the Illinois court did not have personal jurisdiction in the underlying case. (R. p. 39.) On December 4, 2019, a hearing was held before Judge Larry B. Hyman, Jr. without any witnesses. (R. pp. 42-57.) After the hearing, each party was ordered to prepare and submit its own order to Judge Hyman. (R. p. 56.) On February 18, 2020, the Trial Court entered and Order Denying Plaintiff's Motion for Entry of Foreign Judgment which denied domestication, ruling that the Illinois default judgment should not be afforded full faith and credit and is null and void pursuant to South Carolina's Uniform Enforcement of Foreign Judgments Act. (R. pp. 6-13.) Notice of Appeal was served on March 25, 2020. The amount involved is $34,571.77, plus continuing interest at a rate of 9% per annum. (R. pp. 30-35.)

ARGUMENTS

I. The Court of Appeals misapplied the facts in evidence and applied facts not in evidence.

In its Opinion, the South Carolina Court of Appeals states "[w]e hold there is evidence to support the circuit court's denial of Meyers's motion for entry of foreign judgment." (Opinion No. 2022-UP-014 at p. 2.) At the end of the Opinion, the Court of Appeals wrote:

> Here, the LLC's only business is a La Quinta Hotel located in Horry County, South Carolina. The LLC has never owned property outside of this location and does not have a presence in Illinois. The LLC, through La Quinta Hotel, provides services to guests, collects payments, and deposits those payments all within Horry County.

(Opinion No. 2022-UP-014 at p. 3.)

The Court of Appeals, however, did not elaborate on the source(s) of the foregoing statements i.e., from where the evidence was actually submitted. The only known submission in the record that contained that type of information was the Affidavit of Sanjay H. Mishra (R. pp. 083-084). That affidavit, however, does not proffer into evidence that: 1) the LLC does not advertise in State of Illinois, including through its internet website; 2) that Meyers was physically in the state of South Carolina or that the payment collected was not from Illinois; and 3) if called to testify as to the veracity of the facts and claims in the affidavit that Sanjay H. Mishra would be able to do so competently and to the best of his knowledge.

Further, the Opinion also states that the action "arose out of Meyers's offer to pay for a friend's stay at La Quinta Hotel using her credit card." (Opinion No. 2022-UP-014 at p. 3.) Yet again, there are no facts in evidence to support the Court of Appeals' finding let alone that an *offer* to pay for a friend's stay is not a cause of action. Rather, the Verified Complaint of Alison Meyers states under oath that "Alison was at her home in Glenview, Illinois, when she received a call from an employee of the La Quinta named 'Cynthia,' last name unknown," that "Cynthia asked Alison for her credit card information," and that "Alison explicitly told Cynthia that she was only giving permission for her credit card to be charged for renting one room for two nights." (R. p. 016, ¶ 8, ¶ 9, and ¶ 11.) These attested to facts, however, were never disputed in Mishra's Affidavit, especially that the LLC reached out directly to Meyers in Illinois. If anything, Respondent falsely

alleged and argued, without any evidence in the record, that "Plaintiff traveled from Illinois to South Carolina, executing a contract with the Defendant." (R. p. 079.)

Moreover, the Verified Complaint explicitly states that "[f]rom November 15, 2011 to December 1, 2011, Alison's credit card continued to be charged almost daily in amounts ranging from $47.39 to $58.24" and "[f]rom on or about December 2, 2011 to December 27, 2011, the La Quinta continued to charge Alison's credit card almost daily (and in some cases twice daily) in amounts ranging as high as $47.39." (R. p. 017, ¶ 15, ¶ 18.) It also states that "[f]rom on or about December 27, 2011 to January 5, 2011, the La Quinta continued to charge Alison's credit card almost daily (and in some cases twice daily) in amounts ranging as high as $47.39." (R. p. 018, ¶ 20.) These attested to facts also were never disputed in Mishra's Affidavit.

Based on the foregoing, there was no evidence in the record that could be used by the Court of Appeals to affirm the trial court's decision. Accordingly, Opinion 2022-UP-014 affirming the Trial Court's decision to deny Appellant/Petitioner's motion for entry of foreign judgment should be reversed.

II. The Court of Appeals misapplied Illinois Supreme Court law to the facts of this case as it relates to specific jurisdiction.

In its Opinion, the Court of Appeals specifically cites Russell v. SNFA, 987 N.E.2d 778, 786 (Ill. 2013), as it relates to the laws and procedures to be followed in determining the Respondent's minimum contacts with Illinois. The application of that case to the facts in this case, however, are incorrect.

The Court of Appeals' last statement in its Opinion is that "because the LLC did not have sufficient minimum contacts *such that it was fairly warned it may be haled into an Illinois court*, there is evidence to support the Illinois court lacked personal jurisdiction over the LLC." (Opinion

No. 2022-UP-014 at p. 3.) The Court of Appeals, however, does not correctly apply Russell v. SNFA to the facts in evidence – and not in evidence – in this matter.

The exercise of specific personal jurisdiction over a nonresident defendant who "purposefully directs" its activities toward the forum *is permitted even if only for single or occasional acts in the forum state.* Russell v. SNFA, 987 N.E.2d 778, 786 (Ill. 2013) (emphasis added). "First, the state has a manifest interest in providing its residents with a convenient forum for redressing injuries caused by nonresidents." Id. "Second, when a nonresident defendant purposefully derives benefit from its interstate activities in other jurisdictions *it would be unfair* to allow that defendant to avoid any legal consequences that proximately arose from those same activities." Id., citing to Burger King Corp. v. Rudzewicz, 471 U.S. 462, 473-74 (1985) (emphasis added).

Further, the United States Court of Appeals for the Seventh Circuit held that "the state in which the injury (and therefore the tort) occurs may require the wrongdoer to answer for its deeds *even if events were put in train outside its borders* . . . there can be no serious doubt after Calder v. Jones, 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984), that the state in which the victim of a tort suffers the injury may entertain a suit against the accused tortfeasor." Janmark, Inc. v. Reidy, 132 F.3d 1200, 1202 (7th Cir. 1997) (emphasis added). And, more than two decades after Janmark and more than three decades after Calder and Burger King, the Illinois Supreme Court in Russell also held that "tortfeasors must expect to be haled into Illinois courts for torts where the injury took place there." Russell, 987 N.E.2d at 833, citing to ABN AMRO, Inc. v. Capital International Ltd., 595 F. Supp. 2d 805, 828 (N.D. Ill. 2008). In ABN AMRO, the federal court found that "there is more than just a contract between the parties, and more than just actively pursued negotiations. Plaintiff alleges intentional torts. That makes the personal jurisdiction

inquiry somewhat simpler. . . not only did the injury allegedly occur in Illinois, Plaintiff alleges that Capital, Sarco, and Sarco's sales agents sought out ABN to solicit it to enter the deal. Those actions constitute sufficient contacts with Illinois to warrant exercising personal jurisdiction over them in a case based on those contacts." ABN AMRO, Inc., 595 F. Supp. 2d at 828.

The facts in this case show that Respondent purposefully directed its activities to the State of Illinois (including advertising), called the State of Illinois, entered into a contract in the State of Illinois, and collected/received payments sent from the State of Illinois without authorization on a daily basis. In addition, the verified facts allege intentional torts of conversion and fraud resulting from Respondent's contact with Meyers in Illinois. Conversely, there is no evidence presented that disputes the verified facts and allegations. As a result, Russell was misapplied, and the Court of Appeals' Opinion should be reversed to grant Appellant/Petitioner's motion for entry of foreign judgment.

CONCLUSION

Based upon the foregoing authorities and argument, Appellant/Petitioner Alison Meyers respectfully submits that the South Carolina Court of Appeals overlooked these important legal considerations and misapplied the holdings of the Illinois Supreme Court to the facts presented in this case. Appellant/Petitioner prays, therefore, that the this Court grant certiorari in this case, set the matter for oral argument, and reverse the Opinion No. 2022-UP-014 affirming the trial court's decision to deny her motion for entry of foreign judgment.

July 22, 2022

Respectfully submitted,

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