

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
In the Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2020-000557

Alison Meyers,Appellant,

v.

Shiram Hospitality, LLC,Respondent.

RECORD ON APPEAL

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SC Court of Appeals

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Alison Meyers
PLAINTIFF(S)

Shiram Hospitality LLC
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Plaintiffs Motion/Entry of Foreign Judgment is Under Advisement.
Attorneys to submit proposed orders to Judge Hyman within 2 weeks.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/04/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Alison Meyers VS Shiram Hospitality LLC , defendant, et al

Case Number: 2019CP2605254

Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
)
 Alison Meyers,)
)
 Plaintiff,)
)
 vs.)
)
 Shiram Hospitality, LLC,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE NO.: 2019-CP-26-05254

**ORDER DENYING PLAINTIFF’S
 MOTION FOR ENTRY OF FOREIGN
 JUDGMENT**

This matter came before the Court on Plaintiff’s Notice of Motion and Motion for Entry of Foreign Judgment, filed on October 14, 2019, pursuant to the Uniform Enforcement of Foreign Judgments Act (the “UEFJA”), §§ 15-35-940 et seq. of the laws of the State of South Carolina. Defendant timely filed its Notice of Defense and Response to Notice to Domesticate Foreign Judgment, as well as its Memorandum in Opposition to Plaintiff’s Motion for Entry of Foreign Judgment. Accompanying Defendant’s Memorandum was the Affidavit of Sanjay H. Mishra (the “Affidavit”). A hearing was held before me on December 4, 2019, at which both parties were present by their attorneys, Edward Grimsley for the Plaintiff Alison Meyers (the “Plaintiff”) and Fred Newby for the Defendant Shiram Hospitality, LLC (the “Defendant”).

FACTUAL BACKGROUND

Defendant is a South Carolina limited liability company. At all relevant times, its registered agent has been Sanjay H. Mishra, 201 S. Ocean Boulevard, North Myrtle Beach, South Carolina 29582. The Defendant, doing business as La Quinta North Myrtle Beach Inn, operates a hotel in North Myrtle Beach, South Carolina. Defendant is a manager-managed LCC; its manager is Sanjay H. Mishra, one of only two members of the LLC.

On November 5, 2015, Plaintiff filed a Verified Complaint in the Second Municipal District, Civil Division, Circuit Court of Cook County, Illinois, against Defendant; Haricharan J. (Mike) Mishra, an individual now deceased; and La Quinta Holdings, Inc., a Texas corporation. Plaintiff sought damages of \$3,120.74, plus interest, costs, punitive damages, and attorney’s fees.

The Affidavit of Substituted Service for the Defendant in that case, dated February 17, 2015, states: “Personally appeared before me Miramane Cox, Deputy Sheriff, who being duly sworn, says that he served the Summons and Verified Complaint in this action on the defendant Shiram Hospitality, LLC, by delivering personally to Mike Mishra, a person of discretion father of agent Sanjay H. Mishra, and leaving with said person of discretion copies of the same at 1601B Old Highway 17 North, LaQuinta Inn, North Myrtle Beach, SC...” According to the Affidavit, Mike Mishra was the father of Defendant’s registered agent, but was never a member, officer, managing or general agent, or agent authorized to receive service of process. Affidavit, ¶ 9. Plaintiff offered no affidavit contradicting these facts. Further, the Affidavit stated that Mike Mishra did not inform his son that he received service.

Defendant made no answer, and, on March 8, 2016, more than one year after the purported service, Plaintiff obtained a Default Judgment against Defendant in the amount of \$34,571.77, comprised of \$3,120.74 in compensatory damages, \$6,907.03 in attorney’s fees and costs, and \$24,500.00 in punitive damages. Plaintiff seeks to domesticate its foreign judgment against Defendant, and Defendant contests the judgment on two grounds: insufficient service of process and lack of personal jurisdiction based on Defendant’s dearth of “minimum contacts” with Illinois.

APPLICABLE RULES OF LAW

“Before a court is bound by the judgment rendered in another State, it may inquire into the jurisdictional basis of the foreign court's decree.” *Underwriters Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 705, 102 S. Ct. 1357, 71 L. Ed. 2d 558 (1982). “A judgment of a court without jurisdiction of the person... is not entitled to recognition or enforcement in another state...” *Fin. Fed. Credit Inc. v. Brown*, 384 S.C. 555, 562-63, 683 S.E.2d 486, 490 (2009). In South Carolina, under the UEFJA, a judgment debtor may seek relief from a judgment due to a lack of personal jurisdiction, and “[t]he law against which a foreign judgment is evaluated for validity and effect is the law of the state rendering that judgment.” *PYA/Monarch, Inc. v. Sowell's Meats & Servs., Inc.*, 327 S.C. 469, 473, 486 S.E.2d 766, 768 (Ct. App. 1997).

For a state court to exercise jurisdiction over a defendant, there must be adequate service upon that defendant, and the court must have personal jurisdiction over the defendant. Service of process on the defendant must be sufficient under the Due Process Clause of the Fourteenth Amendment *and* the laws of the forum state. In Illinois, LLCs are treated like corporations for

service of process purposes. See *MB Fin. Bank, N.A. v. Ted & Paul, LLC*, 990 N.E.2d 764 (Ill. Ct. App. 2013). Under the Illinois Civil Practice Act, corporations may be served “by leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State.” 735 ILCS § 5/2-204. As elsewhere in the Illinois Civil Practice Act and the Illinois Compiled Statutes generally, “the State,” refers to Illinois. The only other possible interpretation is “the State in which the corporation operates.” If that is what the statute meant, it would need to say so, since § 5/2-204 relates to service on corporations in general, not service on foreign corporations. Therefore, on its face, § 5/2-204 requires *in-state service*.

However, *out-of-state service* is permissible, subject to certain requirements. Subsection (d) of 735 ILCS § 5/2-209, Illinois’ long-arm statute, provides, “Service of process upon any person who is subject to the jurisdiction of the courts of this State, as provided in this Section, may be made by personally serving the summons upon the defendant outside this State, as provided in this Act, with the same force and effect as though summons had been personally served within this State.” This means that a person (or entity) may be served outside Illinois (“this State”) if, and only if, (i) the person or entity is subject to the jurisdiction of Illinois courts, and (ii) service is conducted according to the requirements of the Civil Practice Act (“this Act”). The first requirement raises the issue of personal jurisdiction independent of the question of adequate service; this is discussed more below. The second requirement of § 5/2-209 is reiterated in 735 ILCS § 5/2-208(a)-(b), which reads, “Personal service of summons may be made upon any party outside the State... The service of summons shall be made in like manner as service within this State...” Together with § 5/2-204, these provisions mean that an LLC operating outside Illinois may be served outside Illinois by leaving a copy of the process with the LLC’s registered agent, officer, or “agent” under § 5/2-204.

“The burden is upon the plaintiff to prove the existence of an agency relationship.” *Hickey v. Union Nat’l Bank & Trust Co.*, 547 N.E.2d 4, 8 (Ill. App. Ct. 3rd Dist. 1989). Whether an individual is an “agent” is a question of fact, and its determination tends to be influenced by the actions taken by the recipient with respect to the summons after service is effected. See *Island Terrace Apts. v. Keystone Serv. Co.*, 341 N.E.2d 41 (Ill. App. Ct. 1st Dist. 1975) (upholding a trial court finding that an employee who was served, who did not recognize or understand the legal import of service of process, and who did not communicate the service to her employer was not an “agent” under § 5/2-204).

Notwithstanding the fact that, “Under section 2-204... service on a private corporation may be made ‘(1) by leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State,’” “Illinois courts may not exercise jurisdiction pursuant to this section over nonresident corporations who are not licensed in Illinois unless the corporations are ‘doing business’ in this State.” *Radosta v. Devil's Head Ski Lodge*, 526 N.E.2d 561, 563 (Ill. App. Ct. 1st Dist. 1988). Such a finding generally requires that the corporation conducts business in Illinois of such a character and extent as to warrant the inference that it has subjected itself to the jurisdiction and laws of Illinois. *Loggans v. Jewish Community Center*, 447 N.E.2d 919 (Ill. App. Ct. 1st Dist. 1983). The “doing business” test is “not to be equated with the mere satisfaction of the minimum contacts requirement under the due process clause of the fourteenth amendment to the United States Constitution.” *Huck v. Northern Indiana Public Service Co.*, 453 N.E.2d 1365, 1368 (Ill. App. Ct. 1st Dist. 1983). “There is no all-inclusive test for determining whether a foreign corporation is doing business in this State... Although there may be no such all-inclusive test, almost all Illinois cases determining the existence of personal jurisdiction over foreign corporations have based their findings upon the existence of factors such as offices or sales activities in Illinois.” *Id.*

The “doing business” test is therefore a higher bar than the minimum contacts requirement for the exercise of personal jurisdiction under the Due Process Clause. This, combined with the first requirement of § 5/2-209 – that an entity be subject to the jurisdiction of Illinois courts – and with the fact that adequate service, while necessary, is not alone sufficient for a state court to exercise personal jurisdiction over a defendant, points the Court beyond the issue of adequate service to the independent issue of whether the Illinois court had personal jurisdiction over Defendant.

For the courts of a state to have jurisdiction over a defendant, the forum state’s statute granting personal jurisdiction, the forum state’s constitutional due process protections, and the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution must be satisfied. Illinois’ long-arm statute, 735 ILCS § 5/2-209, provides that jurisdiction may be exercised over any person (or entity) “on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States.” § 5/2-209(c). Subsections (a) and (b) of that statute address general and specific personal jurisdiction, but the broad grant of jurisdiction in § 5/2-209(c) reflects a “conscious purpose to assert jurisdiction over nonresident defendants to the extent permitted by

the due-process clause” of the Fourteenth Amendment, and thus permits Illinois to maintain jurisdiction over a nonresident if there are sufficient contacts or ties with the forum to make it reasonable and just according to traditional concepts of fair play and substantial justice (see below). *Green v. Advance Ross Electronics Corp.*, 408 N.E.2d 1007, 1009 1980 (Ill. App. Ct. 1st Dist. 1980), aff'd, 427 N.E.2d 1203 (Ill. 1981).

Under the Due Process Clause of the Fourteenth Amendment, if the defendant is not incorporated in the forum state, has not been served in the forum state, or has not consented to the jurisdiction of the forum state (by filing a responsive pleading), then the defendant must have certain “minimum contacts” with the forum state, and the exercise of jurisdiction over the defendant must not offend “traditional notions of fair play and substantial justice.” *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945). The defendant's connection with the forum state must be “such that it should reasonably anticipate being hauled into court there.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985). The defendant must “purposefully avail itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). “Random,” “fortuitous,” or “attenuated” contacts, or the “unilateral activity of another party or a third person,” is insufficient. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984).

ARGUMENTS OF THE PARTIES – SERVICE OF PROCESS

On the matter of insufficient service of process, Plaintiff argued, in its Memorandum in Support of Plaintiff’s Notice of Intent to Domesticate a Foreign Judgment, that Defendant’s position is that “service on the Defendant was ineffectual since the Illinois Court did not have jurisdiction over the Defendant.” Plaintiff’s Memorandum, p. 1. On the contrary, Defendant argues the opposite, that the Illinois court lacked jurisdiction over Defendant because service on Defendant was ineffectual. Based on this misunderstanding, Plaintiff, in its Memorandum, moves directly to the question of “minimum contacts” and overlooks the prior, independent question of adequate service.

Defendant argues Plaintiff failed to effect sufficient service of process on Defendant under Illinois law because (i) the Defendant served Mike Mishra, the father of agent Sanjay Mishra, outside the State of Illinois, and Mike Mishra was not the registered agent, an officer, or an “agent”

of the Defendant as the term is used in § 5/2-204; and (ii) regardless, § 5/2-204 is of no avail to Plaintiff because Defendant has never “done business” in Illinois.

On the first point, Defendant notes that the Affidavit of Substituted Service itself refers to Mike Mishra as “Father of Agent Sanjay Mishra,” not as an agent in his own right. “Sanjay Mishra affirms that Mike Mishra was never a member, officer, managing or general agent, or agent of the LLC authorized to receive service of process. Affidavit, ¶ 9. Plaintiff bears the burden of proving Mike Mishra was an “agent,” but has offered no evidence to contradict the Affidavit in that regard, other than some newspaper accounts in which Mike Mishra called himself the “owner” of Defendant’s hotel, even though the public record shows otherwise. Defendant argues that had Mike Mishra understood the legal import of the documents he received, he would not have failed to communicate them to his son Sanjay.

On the second point, Defendant argues that, even if Mike Mishra was an “agent” under § 5/2-204, jurisdiction may not be exercised pursuant to that section unless the defendant was “doing business” in Illinois by maintaining offices or conducting sales activities in the state. According to Sanjay Mishra, Defendant “does not own, and has never owned any property outside Horry County, South Carolina”; it “does not carry on business, nor has it ever carried on business, outside Horry County, South Carolina”; it “has no presence, nor does it do any business in, the State of Illinois; and it “provides its services to guests who are present in Horry County, and collects payments in Horry County,” with all payments “deposited in the Company’s bank accounts located in local, Horry County Banks.” Affidavit, ¶ 3-6.

ARGUMENTS OF THE PARTIES – MINIMUM CONTACTS

On the matter of Defendant’s “minimum contacts” with Illinois, the party asserting personal jurisdiction has the burden to establish such jurisdiction where it is challenged by a preponderance of the evidence. *Finnegan v. Les Pourvoiries Fortier, Inc.*, 562 N.E.2d 989 (Ill. App. Ct. 1st Dist. 1990). Plaintiff first cites § 5/2-209, Illinois’ long-arm statute. But a state statute cannot extend personal jurisdiction beyond what is allowed by the U.S. Constitution, and § 5/2-209 does not purport to do so. For that reason, Plaintiff next notes that, under the Due Process Clause of the Fourteenth Amendment, “a nonresident defendant may be subject to a forum state’s jurisdiction based on certain ‘single or occasional acts.’” Memorandum in Support of Plaintiff’s Notice of Intent to Domesticize a Foreign Judgment, p. 3, citing *Goodyear Dunlop Tires*

Operations, S.A. v. Brown, 564 U.S. 915, 923, 131 S. Ct. 2846, 2853 (2011). Plaintiff does not identify by which act Defendant purportedly availed itself of Illinois jurisdiction, whether it be Defendant's contract with Plaintiff, which was in South Carolina, or Defendant's processing of Plaintiff's credit card, which was also in South Carolina.

In response, Defendant reiterates that it "does not own, and has never owned any property outside Horry County, South Carolina"; that it "does not carry on business, nor has it ever carried on business, outside Horry County, South Carolina"; that it "has no presence, nor does it do any business in, the State of Illinois; and that it "provides its services to guests who are present in Horry County, and collects payments in Horry County," with all payments "deposited in the Company's bank accounts located in local, Horry County Banks." Affidavit, ¶ 3-6.

Defendant explains that Plaintiff traveled from Illinois to South Carolina, executing a contract with Defendant. The subject matter of that contract was the provision of hotel services at Defendant's facility in North Myrtle Beach, South Carolina. It was only by chance that Plaintiff's home state was Illinois. When Defendant executed its contract with Plaintiff, it is likely that the Defendant did not even know where Plaintiff was traveling from. When Defendant charged the Plaintiff's card for payment under the contract, it is also likely that Defendant did not even know where Plaintiff banked. In other words, from Defendant's perspective, the fact that Plaintiff hailed from Illinois was of no matter and certainly had no bearing on the transaction. This, argues Defendant, is the epitome of the type of "fortuitous" contact that the courts have ruled does not support personal jurisdiction. See *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984). A hotel operator in such a situation cannot be said to "purposefully avail itself of the privilege of conducting activities within the forum State," and to find otherwise would be to set a precedent that offends "traditional notions of fair play and substantial justice." Under Plaintiff's theory, nearly every hotel in the country could be subject to the jurisdiction of all fifty states.

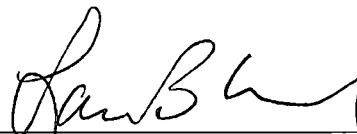
Defendant points out that Illinois courts have found a defendant to have insufficient minimum contacts in the state even when the defendant purposefully conducts business with Illinois in mind. Examples include an Indiana corporation that made an agreement to purchase power generated in Illinois and transmit power into Illinois (*Huck v. Northern Indiana Public Service Co.*, 453 N.E.2d 1365 (Ill. App. Ct. 1st Dist. 1983)); and a Delaware corporation manufacturing and selling dinnerware from its place of business right across the Mississippi River from Illinois, in St. Louis, Missouri (*Cook Associates Inc. v. Lexington United Corp.*, 407 N.E.2d

944 (Ill. App. Ct. 1st Dist. 1980), aff'd, 429 N.E.2d 847 (Ill. 1981)). Nor, Defendant concludes, will financial benefits accruing to a defendant from a collateral relation to the forum state support jurisdiction absent constitutionally cognizable contacts making it both fair and reasonable that the defendant defend the lawsuit in that forum. *Stephens v. Northern Indiana Public Service Co.*, 409 N.E.2d 423 (Ill. App. Ct. 5th Dist. 1980).

RULING

Based on the foregoing, I find: (i) that Plaintiff has presented insufficient evidence that Mike Mishra, the father of agent Sanjay H. Mishra, was an “agent” for service of process under 735 ILCS § 5/2-204; (ii) that, even if Plaintiff had presented sufficient evidence of the foregoing, § 5/2-204 is of no avail to Plaintiff since Defendant was not “doing business” in Illinois; and (iii) that, aside from the question of service of process, Plaintiff lacked the “minimum contacts” with Illinois necessary for the courts of the state to exercise personal jurisdiction over Defendant under the requirements of the Due Process Clause of the Fourteenth Amendment. Specifically, by its unwilling, single, and fortuitous contact with Illinois, Defendant did not “purposefully avail itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” See *Hanson v. Denckla*, *supra*. Under *Burger King Corp.*, *supra*, Defendant could not have “reasonably anticipate[d] being hauled into court” in Illinois under the facts presented. Because there was insufficient service of process and because the Illinois court lacked jurisdiction over Defendant in the case in which the foreign judgment was entered, this Court determines, pursuant to the Uniform Enforcement of Foreign Judgments Act, §§ 15-35-940 et seq. of the laws of the State of South Carolina, that the foreign judgment should not be afforded full faith and credit and is null and void in South Carolina.

THEREFORE, IT IS HEREBY ORDERED, that Plaintiff’s Motion for Entry of Foreign Judgment is DENIED.



The Honorable Judge Larry B. Hyman, Jr.

Conway, South Carolina

2-18- , 2020

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 SECOND MUNICIPAL DISTRICT, CIVIL DIVISION**

ALISON MEYERS, an Individual,)
)
 Plaintiff,)
)
 v.)
)
 SHIRAM HOSPITALITY, LLC, d/b/a)
 LA QUINTA INN NORTH MYRTLE BEACH,)
 a South Carolina Corporation, HARICHARAN J.)
 MISHRA, an Individual, and LA QUINTA)
 HOLDINGS, INC., a Texas corporation.)
)
 Defendants.)

No.

**Amount Claimed: \$3,120.74, plus
 interest charged, costs, punitive
 damages, and reasonable
 attorney’s fees.**

VERIFIED COMPLAINT

Plaintiff ALISON MEYERS, an Individual, by and through her attorney, The Law Offices of Brendan R. Appel, LLC, complains against Defendants LA QUINTA INN NORTH MYRTLE BEACH, a South Carolina business, SHIRAM HOSPITALITY, LLC, a South Carolina corporation, HARICHARAN J. MISHRA, an Individual, and LA QUINTA HOLDINGS, INC., a Texas corporation as follows:

THE PARTIES

1. Plaintiff ALISON MEYERS (“Alison”) is an Individual with her principal place of residence in the Village of Glenview, Cook County, Illinois.
2. Defendant LA QUINTA HOLDINGS, INC., (“La Quinta Holdings”) a Texas corporation which owns, operates and franchises hotels and whose corporate headquarters is located at 909 Hidden Ridge, Ste. 600, Irving, Texas 75038. On information and belief, La Quinta Holdings has a registered agent for service in Illinois under the alias “La Quinta Franchising, LLC” at Illinois Corporation Service, 801 Adlai Stevenson Drive, Springfield, Illinois 62703.

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3. Defendant SHIRAM HOSPITALITY, LLC, (“Shiram”) is a South Carolina Corporation, whose registered agent is Sanjay H. Mishra, 201 S. Ocean Blvd., North Myrtle Beach, South Carolina 29582. Shiram does business as LA QUINTA NORTH MYRTLE BEACH for the purpose of operating a hotel at 1601-B Highway 17 North, North Myrtle Beach, South Carolina 29582 (“La Quinta” or “the La Quinta”) pursuant to a franchise agreement with La Quinta Holdings.

4. Defendant HARICHARAN J. MISHRA, (“Mishra”) is an Individual whose principal place of residence is, on information and belief, 201 S. Ocean Blvd., No. U1705, North Myrtle Beach, South Carolina 29582. On information and belief, Mishra is the managing member of Shiram. Mishra appointed his son, Sanjay H. Mishra, as the registered agent for Shiram and organized Shiram’s registered office at a luxury condominium property owned by Mishra. Mishra was formerly the owner of the La Quinta, but organized Shiram in or around 2008 for the purposes of securing a \$76,140.00 loan from the United States Small Business Administration in order to purchase the La Quinta from himself to enable the La Quinta to pay off its mortgage, upon which Mishra had defaulted. Mishra has continued to operate the La Quinta as if it were under his personal ownership, even incurring several tax liens against the La Quinta property.

JURISDICTION AND VENUE

5. Venue in this county is proper pursuant to 735 ILCS 5/2-101 in that this is the county in which transactions or some part thereof occurred out of which the causes of action herein arose.

6. This court has jurisdiction over all out-of-state defendants in this action pursuant to 735 ILCS 5/2-209(a) by virtue of their transaction of business within the state of Illinois

whether in person or through an agent.

BACKGROUND

7. This is an action resulting from Defendants' continual and flagrant over-charging of Plaintiff's credit card beyond what was explicitly authorized by her, and their subsequent refusal to refund the retained funds.

8. On or about November 13, 2011, 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.

9. Cynthia told Alison that her friend Brendalyn Langdon ("Brendalyn") was checking in to the La Quinta. Alison had previously offered to pay for Brendalyn to stay two nights at the La Quinta while Brendalyn and her husband Terence (collectively "the Langdons") completed their move from Illinois to South Carolina. On information and belief, Terence was still en route to South Carolina and Brendalyn was at the La Quinta alone without alternative means to way to pay for the hotel room.

10. Cynthia asked Alison for her credit card information, which Alison gave to Cynthia. On information and belief, Cynthia's acts were against policies regarding use of credit cards instituted by La Quinta Holdings.

11. Alison explicitly told Cynthia that she was only giving permission for her credit card to be charged for renting one room for two nights. Cynthia indicated that she understood and that Alison's credit card would not be charged for more than two nights for the Langdons' stay in one room.

12. On November 13, 2011, La Quinta charged Alison's credit card \$255.06 for the two nights.

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13. On information and belief, on November 14, 2011 Brendalyn was able to get alternate credit card information from Terence, and gave the information to Cynthia and reiterated that La Quinta was to stop all charges on Alison’s card.

14. On November 15, 2011, La Quinta charged Alison’s card \$58.24 in spite of explicit instructions from both Alison and Brendalyn to charge the Langdons’ card only. La Quinta had the Langdons’ credit card information on November 15, 2011, and charged the Langdons’ card \$127.68 on the same date.

15. From 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. During this time, the La Quinta was also charging the Langdons’ card.

16. On or about December 1, 2011, Alison became aware that her credit card was still being charged despite only authorizing La Quinta to charge two nights. Alison immediately called Brendalyn and informed her of the wrongful charges. On information and belief, Brendalyn spoke with the La Quinta’s assistant general manager named “Justine,” last name unknown, and told her to cease and desist charging Alison’s credit card.

17. On information and belief, on or about December 2, 2011 Brendalyn returned to the front desk at the La Quinta and spoke with the La Quinta’s general manager “Wanda,” last name unknown. Brendalyn told Wanda that the Langdons’ credit card was the only card that should be charged. Wanda indicated that she understood.

18. From 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.

19. On or about December 27, 2011, Alison received notice from her bank that her

credit card was still being charged by La Quinta. Alison attempted to contact the Langdons without success.

20. From 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.

21. On or about January 5, 2012, Alison contacted the Glenview Police Department. A police officer with the Glenview Police Department contacted the La Quinta, and La Quinta finally stopped charging Alison's card on January 5, 2012.

22. La Quinta refunded \$10.00 to Alison's card on January 5, 2014. This is the only refund that La Quinta has made to Alison despite numerous requests.

23. La Quinta charged Alison's card beyond the authorized two-night stay a total of \$3,120.74.

24. In or around March of 2012, Geoff Tucker, an employee with La Quinta Holdings, contacted the Langdons and informed them that Alison's credit card would not be refunded.

25. As of this writing, Alison has been unable to secure a refund of the unauthorized charges from either Defendant.

26. On June 19, 2014, Alison, through her counsel, made a demand for repayment of the unauthorized charges upon the La Quinta via a certified letter, return receipt requested. La Quinta received this letter on or about June 20, 2014. To date, neither Alison nor her attorney has received a response to this letter. A copy of this letter is attached hereto as **Exhibit A**.

COUNT I – CONVERSION

27. Plaintiff repeats and realleges the allegations contained in paragraphs 1-26 as though fully set forth herein.

28. La Quinta employees Cynthia, Justine, and Wanda (collectively “La Quinta employees”) were acting within the scope of their employment when the unauthorized charges were made on Alison’s credit card.

29. Conversion is the unauthorized deprivation of property from a person entitled to its possession. *Sandy Creek Condominium Assoc. v. Stolt & Egner, Inc.*, 267 Ill. App. 3d 291, 291 (2nd Dist. 1994). To prove conversion, plaintiff must establish (1) a right in the property; (2) a right to immediate possession; (3) wrongful control by the defendant; and (4) a demand for possession. *Cirrinzione v. Johnson*, 184 Ill.2d 109, 114 (Ill. 1998).

30. Alison had an immediate right to the over-charged funds. The La Quinta continues to wrongfully control the funds. Alison has made repeated demands for repayment, of which Exhibit A is only the most recent example.

31. The La Quinta and its owner Shiram are vicariously liable for conversion through the conduct of their employees acting within the scope of their employment.

32. La Quinta Holdings is liable for the acts of the La Quinta and its employees under the theory of apparent agency. The website for La Quinta Holdings is www.lq.com (“the website”). The website advertises and enables booking for more than 830 hotels across the United States, Mexico, and Canada. The website describes LaQuinta Holdings as “one of the largest owners, operators and franchisors of select-service hotels in the United States,” with “more than 8,000 employees nationwide.” The website makes no distinction between hotels that

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are owned and operated by La Quinta Holdings and those that operate pursuant to a franchise agreement such as La Quinta North Myrtle Beach. At the bottom of the main page of the website, the phrase “RESERVE WITH CONFIDENCE” is displayed in all capital letters above the logo of McAfee Secure, an Internet security service, with the words “Tested Daily.”

33. By failing to make any distinction between the warranties made as to the information security of the corporate-managed hotels and the franchise locations, La Quinta Holdings created the appearance that the La Quinta was its agent. *Gilbert v. Sycamore Municipal Hospital*, 156 Ill.2d 511, 523-524 (Ill. 1993).

34. Alison would not have given the Cynthia her credit card information if not for the appearance of this agency relationship, as Alison relied on the reputation and (apparent) security of La Quinta Holdings’ trusted brand. *Id.*

35. In the alternative, La Quinta Holdings is liable for the acts of the La Quinta’s employees due to its status as a joint employer. On information and belief, La Quinta Holdings’ policies exert a large degree of control over its franchisees’ employees. Further, the website boasts “more than 8,000” employees nationwide while making no distinction as to its corporate and franchisee-employed employees. The La Quinta and La Quinta Holdings are joint employers of the employees that made the unauthorized charges on Alison’s credit card. La Quinta Holdings is vicariously liable for the conduct of the La Quinta’s employees by virtue of its status as a joint employer.

36. Shiram is the owner of the La Quinta. Mishra has failed to respect the corporate form of Shiram by incurring tax liens on the La Quinta property, by naming his son as registered agent, and by naming his own luxury condominium as the address of the registered agent.

37. Efforts to pierce the corporate veil are governed by the state of incorporation.

Westmeyer v. Flynn, 889 N.E.2d 671, 676 (Ill. App. 2008). On information and belief, Shiram is a South Carolina corporation. South Carolina uses a two-prong test to determine whether piercing of the corporate veil is proper. *Sturkie v. Sifly*, 280 S.C. 453, 458 (Ct. App. 1984). The first prong tests the Defendant's observance of the corporate formalities. *Id.* The second prong requires that there be an act of fundamental unfairness if the acts of the corporation are not regarded as the acts of the individuals. *Id.*

38. There exists such unity of interest and ownership that the separate personalities of Shiram and Mishra no longer exist. To adhere to the fiction of a separate corporate existence of Shiram and Mishra would promote inequitable consequences by limiting Alison's recovery for the fraudulent charges on her credit card by Shiram employees.

39. Equity merits the piercing of the corporate veil, and Mishra is liable for the conversion committed by Shiram and the La Quinta's employees.

40. Alison has been damaged \$3,120.74, plus interest charged to her by her credit card company, by the conversion committed by the Defendants.

41. Punitive damages are available for conversion. *Dubey v. Public Storage, Inc.*, 395 Ill. App. 3d 342, 355 (1st Dist. 2009). Punitive damages for the tort of conversion properly lie where the Defendants act willfully or with such gross negligence to indicate a wanton disregard for the rights of others. *Turner v. Firststar Bank, N.A.*, 363 Ill. App. 3d 1150, 1160 (1st Dist. 2006).

42. Punitive damages are proper in this case. La Quintia employees received repeated instructions to only charge the Langdons' card, made assurances that charges would stop on Alison's card, only for La Quinta to flagrantly disregard those instructions and assurances. Such acts indicate a willful and wanton disregard for Alison's rights.

WHEREFORE, Plaintiff, ALISON MEYERS, prays that this Court enter judgment in her

favor for the amount of \$3,120.74, plus costs, fees interest charged, and punitive damages against the Defendants, jointly and severally, and for any other relief that this Court may deem necessary.

COUNT II – UNJUST ENRICHMENT

43. Plaintiff repeats and realleges the allegations contained in paragraphs 1-42 as though fully set forth herein.

44. To prove a claim for unjust enrichment in Illinois, the plaintiff must prove (1) that the Defendants received a benefit; (2) the Plaintiff suffered a detriment by the Defendants' receipt of the benefit; and (3) the Defendants' retention of the benefit would be unjust. *HPI Health Care Servs., Inc. v. Mr. Vernon Hospital, Inc.* 545 N.E.2d 672 (Ill. 1989).

45. Here, La Quinta and Shiram received the benefit of the funds over-charged to Alison's credit card, and Alison suffered from their receipt of the funds because she lost use of the funds. Further, the Defendants' retention of the benefit would be unjust because the La Quinta could have charged the Langdons at any time after November 15, 2011.

46. For the reasons set forth in Count I and realleged in this Count, Defendants La Quinta, La Quinta Holdings, Shiram and Mishra are jointly and severally liable for the acts of the La Quinta and its employees.

WHEREFORE, Plaintiff, ALISON MEYERS, prays that this Court enter judgment in her favor for the amount of \$3,120.74, plus interest charged, costs and fees against the Defendants, jointly and severally, and for any other relief that this Court may deem necessary.

COUNT III – BREACH OF CONTRACT

47. Plaintiff repeats and realleges the allegations contained in paragraphs 1-46 as though fully set forth herein.

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48. When La Quinta employee Cynthia contacted Alison on November 13, 2011, the parties formed a valid, enforceable oral contract supported by consideration for two nights residence in the La Quinta’s hotel.

49. La Quinta’s charging of \$3,120.74 in unauthorized funds on Alison’s credit card constitutes a breach of the oral contract.

50. Alison has been damaged \$3,120.74 plus interest charged to her as a result of La Quinta’s breach of the contract.

51. For the reasons set forth in Count I and realleged in this Count, Defendants La Quinta, La Quinta Holdings, Shiram and Mishra are jointly and severally liable for the La Quinta’s breach of contract.

WHEREFORE, Plaintiff, ALISON MEYERS, prays that this Court enter judgment in her favor for the amount of \$3,120.74, plus interest charged to her, fees and costs against the Defendants, jointly and severally, and for any other relief that this Court may deem necessary.

COUNT IV- COMMON LAW FRAUD

52. Plaintiff repeats and realleges the allegations contained in paragraphs 1-51 as though fully set forth herein.

53. The elements of common-law fraud are (1) a false statement of material fact; (2) the Defendant’s knowledge that the statement was false; (3) the Defendant’s intent that the statement induce the Plaintiff to act; (4) the Plaintiff’s reliance on the statement. *Miller v. William Chevrolet*, 326 Ill. App. 3d 642, 648 (1st Dist. 2001).

54. On November 3, 2011, La Quinta employee Cynthia made a false statement of material fact in promising that Alison’s credit card would only be charged for two nights. On information and belief, Cynthia made the statement with the intention that the statement induce

Alison to give Cynthia her credit card information. Alison relied on Cynthia's statement in subsequently furnishing her credit card information.

55. On multiple occasions after Alison's initial authorization to charge for two nights, Defendants were reminded not to charge (and later to stop charging) Alison's card after two nights. Each time, Defendants would agree to comply with the original agreement, but in truth never had any intention to stop charging Alison's credit card for the Langdons' stay.

56. Alison has been damaged \$3,120.74, plus interest charged due to a La Quinta employee's fraud.

57. Punitive damages in common law fraud claims may be proper when the Defendant is aware of the damage that his deceit would cause. *Vance Pearson, Inc. v. Alexander*, 86 Ill. App. 3d 1105, 1112 (4th Dist. 1980).

58. Cynthia was aware of the damages that her deceit would cause as evidenced by La Quinta's continuous charging of Alison's credit card. On information and belief, Brendalyn told Cynthia to cease charging Alison's card on November 15, 2011, and La Quinta continued to do so anyway.

59. For the reasons set forth in Count I and realleged in this Count, Defendants La Quinta, La Quinta Holdings, Shiram and Mishra are jointly and severally liable for the acts of the La Quinta and its employees.

WHEREFORE, Plaintiff, ALISON MEYERS, prays that this Court enter judgment in her favor for the amount of \$3,120.74, plus punitive damages, interest charged, costs and fees against the Defendants, jointly and severally, and for any other relief that this Court may deem necessary.

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**COUNT V – VIOLATIONS OF
THE CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT**

60. Plaintiff repeats and realleges the allegations contained in paragraphs 1-59 as though fully set forth herein.

61. Deceptive acts, including the employment of any deception, fraud, false pretense, or false promise in the conduct of any trade or commerce are unlawful violations of the Illinois Consumer Fraud and Deceptive Business Practices Act (the “Act”). 815 ILCS 505/2.

62. An individual who suffers actual damages for violations for the Act may bring a private action for the actual economic damages suffered, plus any other relief the trial court deems proper. 815 ILCS 505/10(a).

63. To prove a violation of the Act in a private action, Plaintiff must establish (1) a deceptive act or practice; (2) intent on Defendants’ part that Plaintiff rely on the deception; (3) the deception occurred in the course of trade or commerce; (4) “actual damage” suffered by Plaintiff; and that (5) said damage was actually caused by the deception. *Zekman v. Direct American Marketers, Inc.*, 182 Ill.2d 359 (Ill. 1998).

64. Such action may be commenced in the county in which the transaction or any substantial portion thereof occurred. 815 ILCS 505/10(b).

65. In an action for actual damages under the Act, the Court may award reasonable attorney’s fees and costs to the prevailing party. 815 ILCS 505/10(c).

66. La Quinta violated the Act by employing a deceptive practice when it falsely promised to Alison that her card would only be charged for two nights. La Quinta intended Alison to rely on the false promise in order to secure her credit card information. La Quinta made the false promise in the course of a commercial transaction. Alison suffered actual damages in

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the form of \$3,120.74 in unauthorized charges plus interest charged to her by her credit card company. Alison's damages were caused by the deception, since she never would have given her credit card information to La Quinta without the false promise that her card would only be charged two nights for the Langdons' stay.

67. This commercial transaction occurred in substantial part in Glenview, Illinois, when La Quinta employee Cynthia contacted Alison at her home there.

68. Alison is entitled to her damages, costs, fees, reasonable attorney's fees, and punitive damages due to La Quinta's flagrant violations of the Act.

69. For the reasons set forth in Count I and realleged in this Count, Defendants La Quinta, La Quinta Holdings, Shiram and Mishra are jointly and severally liable for the acts of the La Quinta and its employees.

WHEREFORE, Plaintiff, ALISON MEYERS, prays that this Court enter judgment in her favor for the amount of \$3,120.74, plus punitive damages, interest charged, costs and reasonable attorney's fees against the Defendants, jointly and severally, and for any other relief that this Court may deem necessary.

Dated: November 3, 2014

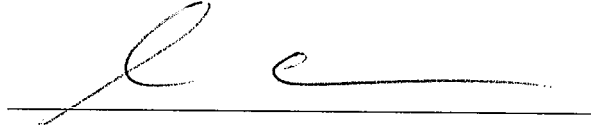

Attorney for Plaintiff

Attorney No.: 38354
Brendan R. Appel
Alex P. Blair
Law Offices of Brendan R. Appel, LLC
191 Waukegan Road, Suite 360
Northfield, Illinois 60093
847-730-4224

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VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.



Alison Meyers

Signed this 8 day of October, 2014.

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LAW OFFICES OF BRENDAN R. APPEL, LLC

191 Waukegan Road
Suite 360
Northfield, Illinois 60093

Telephone: 847.730.4224
Facsimile: 847.730.4114



BRENDAN R. APPEL
Managing Attorney
bappel@balegal.com

ALEX P. BLAIR
Associate Attorney
ablair@balegal.com

June 19, 2014

VIA CERTIFIED MAIL

La Quinta Inn
North Myrtle Beach
1601B Hwy 17 North
North Myrtle Beach, SC 29582

Re: *Fraudulent Room Charges to Alison Meyers*

Dear Sir/Madame:

Ms. Alison Meyers has retained our firm regarding a long-running dispute over charges that your hotel made to her credit card from November 13, 2011, to January 5, 2012 totaling \$3,376.10. Ms. Meyers has attempted in vain to resolve this issue with your hotel and is now in the process of investigating all rights and remedies available to recover her funds. Please consider this letter Ms. Meyers' final attempt to resolve the issue amicably.

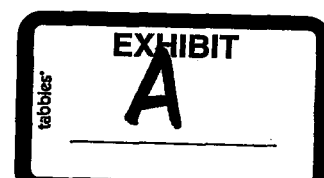
On November 13, 2011, Ms. Meyers spoke with La Quinta North Myrtle Beach employee Cynthia via telephone from her home in Glenview, Illinois, and provided her credit card number for the use of two nights only by her friends Brendalyn and Terence Langdon. Before giving her card number, Ms. Meyers made clear to Cynthia that her credit card was to be charged for two nights only, and Cynthia confirmed. Accordingly, Ms. Meyers' card was charged \$255.36 on November 13, 2014. However, in violation of her explicit authorization, permission, instructions and agreement, La Quinta continued to charge Ms. Meyers almost nightly until January 5, 2012. By the time that Ms. Meyers discovered that her credit card was still being charged, it was too late. An investigation has revealed that La Quinta continued to fraudulently charge Ms. Meyers' card after the Langdons provided La Quinta with their own credit card information on November 15, 2011, and after the Langdons ordered La Quinta to cease and desist all charges to Ms. Meyers. Our investigation has revealed that La Quinta North Myrtle Beach fraudulently charged Ms. Meyers \$3,120.74 beyond what she agreed to pay. **Ms. Meyers hereby demands the immediate repayment of \$3,120.74 to her via certified check.** Please contact me and inform us regarding your willingness to reimburse Ms. Meyers for these charges so that we may proceed accordingly.

Very truly yours,

LAW OFFICES OF BRENDAN R. APPEL, LLC

Alex P. Blair

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STATE OF SOUTH CAROLINA,

COUNTY OF

IN THE

COURT

ALISON MEYERS

Plaintiff

vs.

SHIRAM HOSPITALITY, LLC, DBA LA QUINTA
INN NORTH MYRTLE BEACH, ET AL

Defendant

AFFIDAVIT OF

SUBSTITUTED SERVICE

TIME OF SERVICE: 3:30 PM

CASE # 2014M2002586

Personally appeared before me MIRAMANEE COX

Deputy Sheriff, who being duly sworn, says that he served the
SUMMONS AND VERIFIED COMPLAINT in this action on

the defendant SHIRAM HOSPITALITY, LLC by delivering

personally to MIKE MISHRA, a person of discretion

H. MISHRA
FATHER OF AGENT SANJAY/ and leaving with said person of discretion;

copies of the same at

1601 B. OLD HIGHWAY 17 NORTH, LAQUINTA INN
NORTH MYRTLE BEACH, SC

in the county and state aforesaid on the 16th day of FEBRUARY 2015;

and that he knows the person so served to be the one mentioned and
described in the SUMMONS AND VERIFIED COMPLAINT

SHIRAM HOSPITALITY, LLC defendant therein; and also knows


that the said person of discretion bears the relation to said

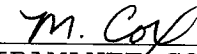
defendant or defendants as is hereinbefore stated; and deponent is

not a party to the action.

Sworn to and Subscribed before me this 17th

day of FEBRUARY 2015


 (L.S.)
Notary Public of South Carolina


MIRAMANEE COX
Deputy Sheriff

My Commission Expires: 9-15-2016

FURTHER AFFIANT SAYETH NOT.

GRIMSLEY LAW FIRM, LLC
P. O. Box 11682
Columbia, South Carolina 29211
(803) 233-1177

By: 
Edward L. Grimsley
S.C. Bar No. 2326
egrimsley@grimsleylaw.com
Benjamin E. Grimsley
S.C. Bar No. 70335
bgrimsley@grimsleylaw.com
Attorneys for the Plaintiff

Sworn to and subscribed before me
this 13 day of August, 2019



Printed Name: Monica M. Sutton
Notary Public for the State of South Carolina
My commission expires: 1/17/2023

ELECTRONICALLY FILED - 2019 Aug 15 4:16 PM - HORRY - COMMON PLEAS - CASE#2019CP2605254

**NOTICE REQUIRED BY THE
FAIR DEBT COLLECTION PRACTICES ACT**

In accordance with the Fair Debt Collection Practices Act (15 U.S.C. 1692), we advise you as follows:

1. This is a lawsuit brought on behalf of Alison Meyers (“Plaintiff”) in an attempt to collect from you a debt in the amount of \$34,571.77.
2. Unless you dispute the validity of your debt or any portion of such debt to Plaintiff within thirty (30) days after receipt of this notice, we will assume that the debt is valid.
3. If you notify Plaintiff’s law firm within thirty (30) days after you receive this notice that your debt to Plaintiff or any portion thereof is disputed, we will mail you a verification of the debt and, upon your written request within the thirty-day period, Plaintiff’s law firm will provide you with the name and address of the original creditor, if different from the current creditor.
4. Written requests should be addressed to Grimsley Law Firm, LLC, Post Office Box 11682, Columbia, South Carolina 29211.
5. Please be advised that the time period within which you have to dispute the amount of your debt and request additional information in no way alters or affects the time period set forth in the Summons within which you must file an Answer to the Complaint.

**PLEASE BE ADVISED THAT THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
SECOND MUNICIPAL DISTRICT

LINE NO. 4a

ALISON MEYERS

v.

No. 2014 M2 0002586

SHIRAM HOSPITALITY, LLC, HARICHAN J. MISHRA and
LAQUINTA HOLDINGS, INC.

TRIAL CALL ORDER

Present before the Court: Plaintiff(s) Defendant(s) Plaintiff(s)' Counsel Defendant(s)' Counsel

THIS MATTER having come before the Court, the Court having jurisdiction and being fully advised, IT IS HEREBY ORDERED:

Thereby, jury trial and certification is affixed to a true copy.
Date 02-21-2016
Dorothy Brown
Clerk of the Circuit Court
of Cook County, IL

- 4213 Alias Summons to Issue for _____
- 4292 Amended Complaint or Petition - Allowed _____
- 4295 Close Discovery - Allowed _____
- 4235 File Counterclaim or Cross Complaint - Allowed _____
- 4234 File Appearance or Jury Demand Answer or Plead Allowed _____
- 4219 Defendant _____ is defaulted; cause set for _____
- 4247 PROVE-UP on _____, _____ at _____ a.m./p.m.
- 4406 Set for STATUS. All parties must appear _____, _____ at _____ m. in Room _____
- 4482 Set for TRIAL on _____, _____ at _____ m. in Room _____
- 8005 Case Dismissed for Want of Prosecution
- 8011 Case Dismissed by Agreement of Parties/No Cost With Without Prejudice
- 8031 X-Parte Default Judgment for Plaintiff for \$ 34,571.73 SHIRAM HOSPITALITY, LLC, and
v. HARICHAN J. MISHRA and
LAQUINTA HOLDINGS, INC. (Defendant)
- 8001 Judgment for Plaintiff after trial for \$ _____ with costs assessed v. _____ (Defendant)
- 4293 Assess Costs - Allowed
- 8002 Judgment for Defendant _____ after trial
- 9207 it being further agreed that installment payments be made as follows: _____

4293

- 9208 Order Final and Appealable
- () See Attached Order: Judgment Itemized as follows: Compensatory Damages: \$3,120.74
Attorney's Fees/Costs: \$60,951.03
Punitive Damages: \$24,500.00

4304 The date of _____ is hereby stricken.

Atty. No. 38354
Name: Brendan Appel
Atty. for: Plaintiff
Address: 191 Waukegan Rd Ste 360
City/State/Zip: Northfield IL 60093
Telephone: 847-730-4224

ENTERED ENTERED
JUDGE THADDEUS MACHNIK
Dated: 3/8/16
MAR 08 2016
1798
Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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Record on Appeal 035

ELECTRONICALLY FILED - 2019 Aug 15 4:16 PM - HORRY - COMMON PLEAS - CASE#2019CP2605254

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

ALISON MEYERS
PEOPLE OF THE STATE OF ILLINOIS

v.

No. 2014-M2-0002586

SHIRAM HOSPITALITY, LLC et al.

ORDER

This matter coming to be heard on Plaintiff's Motion to Correct Scrivner's Error *Nunc Pro Tunc*, the Court being fully advised in the premises, IT IS HEREBY ORDERED:

1. Plaintiff's Motion is GRANTED;
2. Defendant's name on the Judgment dated March 8, 2016 is hereby corrected to "Haricharan J. Mishra" *nunc pro tunc*.
3. This Order shall be attached and made part of this Court's March 8, 2016 Judgment Order.

Attorney No.: 38354
 Name: Brendan R. Appel
 Atty. for: Plaintiff
 Address: 191 Waukegan Rd Ste 360
 City/State/Zip: Northfield IL 60093
 Telephone: 847-730-4224

ENTERED:

Dated:

Judge:

ENTERED
 JUDGE THADDEUS MACHNIK
 APR 23 2019
 CLERK OF THE CIRCUIT COURT
 OF COOK COUNTY, IL
 DEPUTY CLERK

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

I hereby certify that the document to which this certification is affixed is a true copy.

DOROTHY BROWN APR 29 2019
Date _____

Dorothy Brown
Clerk of the Circuit Court
of Cook County, IL.



Record on Appeal 037

Affidavit of Service

DOCKET NUMBER: 2019CP2605254 FILE NUMBER: 949.784

COURT OF COMMON PLEAS FOR HORRY COUNTY, SC

CASE STYLE:

PLAINTIFF ALISON MEYERS vs DEFENDANT SHIRAM HOSPITALITY, LLC, et al.

SERVICE OF PROCESS ON: SHIRAM HOSPITALITY, LLC

METHOD OF SERVICE: A true and correct copy of the above-described papers were served on the below-named party in the following manner:

- () (PERSONAL) By personally delivering a copy into the hands of the person to be served.
() (SUBSTITUTE) By leaving a copy at dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.
() (CORPORATION/PARTNERSHIP) By leaving a copy with an officer, a managing or general agent, or with any other agent authorized by appointment or by law to receive service of process.
() (OTHER - i.e., State of South Carolina, State Officer or Agency, Governmental Subdivision, etc.) By leaving a copy with the below-named person.
() (NON-SERVICE - PROOF OF DUE DILIGENCE) After due and diligent efforts, undersigned was unable to effect service.

PLACE OF SERVICE: C/O SANJAY H. MISHRA, REGISTERED AGENT 3811 ESSEX GARDEN LANE RALEIGH, NC 27612

DATE OF SERVICE: 8/29/19 TIME OF SERVICE: 8:52 AM 12 PM

TYPE OF DOCUMENTS: OTHER: NOTICE OF INTENT TO DOMESTICATE FOREIGN JUDGMENT, ATTORNEY'S AFFIDAVIT, REQUIRED FDCA NOTICE

DESCRIPTION OF PARTY RECEIVING DOCUMENTS: The person receiving the documents is described as follows: Name Sanjay Mishra; Relationship/Title Registered Agent; Sex M; Race Middle Eastern; Facial Hair; Age (prox.) 40-45; Height (prox.) 5'9"; Weight (prox.) 190 lbs

MARITAL STATUS: () Single () Married () Separated (X) Unknown

MILITARY STATUS: PER MY INVESTIGATION, SAID PERSON () WAS () WAS NOT ENGAGED IN THE U.S. MILITARY AT THE TIME OF SERVICE (X) UNKNOWN MILITARY BRANCH, IF APPLICABLE:

IS THE SUBJECT PROPERTY A MOBILE HOME? () YES (X) NO () N/A VIN #:

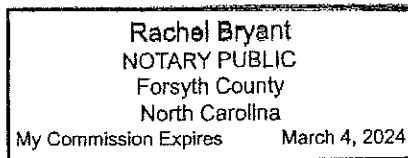
COMMENTS: Did the individual state he/she is authorized to accept service on behalf of defendant? (X) Yes () No

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: Robert Bryant Signature of Process Server Rachel Bryant Date 8/30/19

Notary Public: Sworn and subscribed before me this 30 day of August, in the year of 2019. Personally known to me or identified by the following document:

Type: Rachel Bryant Notary Public for Notary Public (Legal Signature) Number/Reference: Commission Expiration 3/4/2024



2. The Plaintiff's complaint alleged that the defendant Shiram Hospitality, LLC, operator of the La Quinta Inn in North Myrtle Beach, overcharged Plaintiff's credit card following a stay at that hotel, seeking judgment in the amount of approximately \$3,120.74.

3. The Foreign Judgment should not be recognized or given force and effect in South Carolina for the following reasons:

- a. The Circuit Court of Cook County, Illinois, Second Municipal District did not have, and at this time, does not have, jurisdiction over the Defendant Shiram Hospitality, LLC, since the corporate defendant has no presence in, nor does it now do or has ever done business, in the state of Illinois;
- b. The Circuit Court of Cook County, Illinois, Second Municipal District did not have, and at this time, does not have jurisdiction over the Defendant Haricharan J. Mishra, since was not, and never has been, present in, a citizen of, or resident of the state of Illinois or the district covered by that court;
- c. The matters complained of in the plaintiff's complaint did not occur in Illinois, but were solely related to a transaction occurring in Horry County, South Carolina;
- d. The action against the Defendant Haricharan J. Mishra is void and of no effect since he is now deceased and (i) his estate was opened in the Probate Court for Horry County on December 13, 2018, Case No. 2018-ES-26-02749, (ii) the Notice to Creditors was first run in a paper of general circulation on December 21, 2018 and last run on January 4, 2019 as required by S.C. Code of Laws, (iii) more than eight months have passed since the first running of

the Notice, (iv) Plaintiff did not file any claim with the estate, and (v) the claim is thus barred.

- e. Service on the corporate defendant was ineffectual since the court in question did not have jurisdiction over that defendant

WHEREFORE, for the reasons set out above, the named Defendants are informed and believe that this action should be dismissed with an order of this Court stating that the judgment in question is null and void in South Carolina.

Myrtle Beach, South Carolina
September 17, 2019

/s/ Fred B. Newby
Fred B. Newby
S.C. Bar No. 4202
Newby, Sartip & Masel, LLC
Attorneys for the named Defendants
P.O. Box 808
Myrtle Beach, SC 29576
fnewby@newbylaw.com

1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
2 COUNTY OF Horry) CASE NO.: 2019-CP-26-05254
3

4 -----

5 December 4, 2019

6 **BEFORE:** The Honorable Larry B. Hyman
7 -----

8 ALISON MEYERS,

9 Plaintiff,

10 vs.



11 SHIRAM HOSPITALITY, LLC, et. al,

12 Defendants.
13 -----

14
15 **APPEARANCES:**

16
17 Edward Grimsley, Esq.
18 Appearing for the Plaintiff.

19 Fred Newby, Sr., Esq.
20 Appearing for the Defendant.

21
22
23 Official Court Reporter:

24 Natalie Dahl, RPR
25

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Meyers versus Shiram Hospitality,
3 motion to enter a foreign judgment. It looks like,
4 Mr. Grimsley, that is your motion?

5 MR. GRIMSLEY: It is, Your Honor.

6 THE COURT: I'll hear from you.

7 MR. GRIMSLEY: Before I start, I have a couple of
8 exhibits, and I shared those with Mr. Newby, and I'll
9 refer to these.

10 THE COURT: Thank you.

11 MR. GRIMSLEY: The facts and laws have been set
12 forth in a memorandum I submitted in support of our
13 motion to enter judgment as the record of the court,
14 and I sent a copy to your law clerk also with a brief
15 summary of the facts relevant to the judgment that we
16 seek to domesticate.

17 This is an Illinois judgment that was handed down
18 by the Illinois court in March of 2016, and it stems
19 from my client, who was in her home in Illinois where
20 she resided. She had two friends that were a married
21 couple who were moving to Myrtle Beach. The wife
22 preceded the husband in the move by two days, and when
23 she went to check into the La Quinta
24 hotel, she didn't have a credit card. She had cash,
25 but they demanded that they have a credit card. So

1 she called my client, who is a close friend, and said
2 could I use your credit card to charge for two nights
3 until my husband gets here with the credit card, and
4 based on that telephone call from the La Quinta Inn
5 through its clerk, Cynthia, who called my client to
6 confirm that she was authorizing the use of a credit
7 card for one night's stay at La Quinta, based on that
8 telephone call, and during that conversation on the
9 telephone, my client provided the credit card number,
10 security code and said that I will authorize it for
11 two nights, and two nights only. It turned out that
12 after the two days passed, the hotel kept charging her
13 credit card for the stay. After she discovered that,
14 she called the hotel and said I only authorized two
15 nights, you continue to charge and I request that that
16 be refunded to my credit card, and the hotel refused
17 to do that.

18 The law regarding this is pretty straightforward.
19 Both Illinois and South Carolina recognize the uniform
20 statute regarding domestication of foreign judgments.
21 South Carolina courts, based on that statute, have
22 ruled that the law of the state that rendered the
23 judgment will be used to determine the validity and
24 effect of the judgment.

25 Illinois law first establishes that the courts of

1 Illinois had jurisdiction over the defendant and is
2 cited in my memorandum. But, basically, it provides
3 that a person, either individually or through an agent
4 who transacts business in the State of Illinois,
5 subjects itself to specific jurisdiction of the courts
6 of Illinois.

7 In this case, the complaint that was filed in
8 this matter that led to the judgment being rendered by
9 the courts in Illinois provided and stated that that
10 telephone call placed from Horry County to Illinois
11 constituted a transaction of business.

12 THE COURT: Let me interrupt you. Shiram
13 Hospitality, LLC, is a South Carolina entity?

14 MR. GRIMSLEY: It is, Your Honor.

15 THE COURT: And you sued them in Illinois?

16 MR. GRIMSLEY: That's correct.

17 THE COURT: Based upon, essentially, the long-arm
18 statute of Illinois?

19 MR. GRIMSLEY: Of Illinois, correct.

20 THE COURT: And a judgment was rendered; was it a
21 default?

22 MR. GRIMSLEY: It was a default judgment.

23 THE COURT: What judgment did you receive in
24 favor of your client -- or did your client receive?
25 I'm sure you were not there in Illinois.

1 MR. GRIMSLEY: What was the judgment amount?

2 THE COURT: Yes.

3 MR. GRIMSLEY: It provided, Your Honor, for the
4 amount that was charged plus punitive damages in
5 total, and that's the amount.

6 THE COURT: What do you seek to enter here, what
7 amount?

8 MR. GRIMSLEY: I think it is \$36,000, Your Honor.
9 I believe that is right. The judgment is of record
10 with the court, but I think that is what it is.

11 THE COURT: And you have now come to South
12 Carolina, your client has, to enter this Illinois
13 judgment?

14 MR. GRIMSLEY: Correct.

15 THE COURT: Okay. All right. You may proceed.

16 MR. GRIMSLEY: Thank you. Okay. So I think,
17 Your Honor, based on the facts of the case and the
18 laws of Illinois, that courts in Illinois had personal
19 jurisdiction over the Shiram, LLC.

20 THE COURT: Is there a service issue?

21 MR. GRIMSLEY: There is a service issue, and that
22 is kind of the second issue.

23 THE COURT: Let's talk about that. I assumed
24 that there was.

25 MR. GRIMSLEY: The process of service was served

1 on Mike Shiram -- no, sorry, Mishra, who was at the
2 hotel when the process server served him. He accepted
3 service and did not refuse and, apparently, based on
4 an affidavit that has been filed by the defendant,
5 after accepting it, he did not inform other -- the
6 other member of the LLC that the process had been
7 served.

8 THE COURT: Is it your allegation that he is a
9 member of the LLC, or he is some agency?

10 MR. GRIMSLEY: Based on the documents I handed up
11 to you as exhibits, there is an exhibit -- and that is
12 -- he is not a member, but that he was an agent and
13 possibly a manager for the LLC.

14 If you will look at Exhibit A, this was an
15 article that appeared in the Strand Hospitality
16 Services and it states that Mr. Far (phonetic), who is
17 pictured there with Mr. Mishra, was the owner of the
18 La Quinta North Myrtle Beach hotel.

19 Exhibit B is --

20 THE COURT: It says Mr. Mishra, who you served,
21 is the owner.

22 MR. GRIMSLEY: That's correct.

23 THE COURT: Owner of the hotel, okay.

24 MR. GRIMSLEY: And Exhibit B is a LinkedIn
25 printout, and in that Mr. Mishra states that he is the

1 managing director of the Shiram, LLC. I would submit
2 to the Court that an LLC can retain the services of
3 managers, treasures, bookkeepers and other people who
4 are not members of the LLC. I think in this case that
5 there is sufficient information to believe that Mr.
6 Mishra was actively involved in the LLC.

7 Then, there is a third article, Your Honor. It
8 appears it was a reprint from the Sunday newspaper.
9 It was in 2012, and in the article it states that
10 Mishra -- referring to Mike Mishra -- signed an
11 utility easement agreement in December stating that he
12 is a managing member of Shiram, which is an anagram of
13 Mishra.

14 Later, it states that Mike Mishra reached out to
15 the hotel last week and told news that he is managing
16 the property for Shiram, and the corporation owner
17 lives in Fayetteville, North Carolina. I think that
18 based on this information, there is reason to believe
19 that Mike Mishra was, in fact, actively involved in
20 managing the LLC even though he was not named as a
21 managing member of the LLC.

22 More importantly, Your Honor, I think to this
23 case is that when the LLC was served with the judgment
24 order shortly after it was rendered in 2016, the
25 affidavit that has been submitted by Sanjay

1 (phonetic), Mishra states that they did not know of
2 the complaint having been filed and did not know until
3 the judgment was rendered. I would submit that Mike
4 might have had reason not to disclose to them that it
5 had been served, but at any rate, they did not at that
6 time take any type of action to try to set that
7 judgment aside and have it vacated in Illinois as they
8 could have done.

9 THE COURT: There has been no effort to attack it
10 in Illinois?

11 MR. GRIMSLEY: Pardon me?

12 THE COURT: No effort to attack the judgment in
13 Illinois?

14 MR. GRIMSLEY: No, they did not, and they could
15 have. There is a statute cited in my memorandum that
16 provides that it can be done within two years, and
17 it's now three years or more. They did not take a
18 stay or attack it. So it is our position that the
19 judgment in Illinois remains valid and in effect in
20 that state and, therefore, the courts in South
21 Carolina should recognize that and domesticate the
22 judgment here.

23 THE COURT: All right. Mr. Newby, answer the
24 question for me: Why was there no effort to attack
25 the judgment in Illinois?

1 MR. NEWBY: I'm not sure that -- the timeline
2 that we have indicates that the judgment was rendered
3 in March of 2016, about a year-and-a-half after it was
4 filed in Illinois, the lawsuit was filed. Mike Mishra
5 is the father of Sanjay, the registered agent and
6 principal owner of the company. The affidavit of
7 service, in fact, doesn't say that he served as the
8 registered agent, it says that he served H. Mike
9 Mishra, a person of discretion, the father of the
10 agent, Sanjay. So service -- of course I don't know
11 the answer to your question, but.

12 THE COURT: You know, there is two service issues
13 here: One, a process from Illinois. Then, we have
14 service as it relates to the efforts to enforce the
15 judgment here. Now, if service of the petition to
16 enforce or enroll this foreign judgment is defective,
17 that would be a matter to be attacked here; would it
18 not? But if the Illinois court has found that there
19 was good service and the opportunity to challenge that
20 has expired, how do we challenge that here?

21 MR. NEWBY: There is a South Carolina court case,
22 PY Monarch versus Sowell Meats, 1997. It indicates
23 that the Uniform Enforcement of Foreign Judgments Act
24 allows a judgment -- allows relief from a foreign
25 judgment if there is lack of personal service. We

1 contend the service was defective. The statutes in
2 South Carolina are clear that you serve the registered
3 agent of an LLC, and if you cannot find the registered
4 agent in the state, then you serve the secretary of
5 the state. No effort was made to do that. They knew
6 they didn't serve the registered agent because the
7 affidavit of service says they didn't.

8 THE COURT: What do you say about that,
9 Mr. Grimsley?

10 MR. GRIMSLEY: Your Honor, it is my belief that,
11 again, Mike was an active member of the LLC. He was
12 not a named member, but I think that he was managing
13 for the LLC.

14 THE COURT: But Mr. Newby tells me that that is
15 not sufficient.

16 Read it again, Mr. Newby. Is this from Rule 5,
17 or what are you reading from there?

18 MR. NEWBY: If I may, I'll hand up a copy of the
19 case that I just cited; and the statute, I'll get a
20 copy of that, too.

21 (A brief pause in the proceedings.)

22 THE COURT: All right. I'm looking at your case,
23 and you're correct. The court says that the Uniform
24 Enforcement of Foreign Judgments Act allows the
25 judgment debtor to file a motion for relief from or a

1 notice of defense to a foreign judgment on any ground
2 for which relief from a judgment of this state is
3 allowed. Lack of personal jurisdiction is one such
4 ground. The validity in effect of a foreign judgment
5 must be determined by the laws of the state that
6 rendered the judgment.

7 So would we not have to then look at the
8 jurisdiction -- personal jurisdiction rules and laws
9 of Illinois?

10 MR. NEWBY: And I have that, too, Your Honor.

11 THE COURT: All right. Let's look at that.

12 MR. NEWBY: If I may, I'll first read the rule in
13 South Carolina on service. This is Rule 4(d) of the
14 Civil Rules of Civil Procedure. It says that service
15 upon a corporation or partnership or other
16 unincorporated association, which is subject to suit
17 under a common name, by delivering a copy of the
18 summons and complaint to an officer, a managing or
19 general agent or any other agent authorized by
20 appointment or by law to receive service of process,
21 and if the agent is one authorized by statute to
22 receive service, and the statute so requires by so
23 mailing a copy to the defendant.

24 So I'll start by saying it is clear to us that
25 they had no good service under South Carolina law.

1 THE COURT: Right. I'm interested in Illinois'
2 law; I think that is controlling.

3 MR. NEWBY: I'll hand up a copy of that, Your
4 Honor, what we believe to be the appropriate section.
5 Very similar, private corporation may be served one --
6 by, number one, leaving a copy of the summons with the
7 registered agent or any officer or agent of the
8 corporation found anywhere in the State -- "in the
9 State" would be in Illinois, because this is an
10 Illinois rule -- or, two, in any other manner now or
11 hereafter permitted by law. A private corporation may
12 also be notified by publication or mail -- and so
13 forth.

14 This is the only thing that we found that would
15 be applicable to this question. Of course that
16 doesn't affect the threshold question of whether
17 Illinois court even had jurisdiction due to minimum
18 contacts or otherwise. The fact that the plaintiff
19 called her friend in Illinois and said can we use your
20 credit card because all I have is cash, that is hardly
21 an action by the defendant, who owned a hotel, to
22 submit themselves to the jurisdiction of Illinois
23 courts. They took a credit card that was authorized.

24 If the plaintiff -- quite frankly -- by the way,
25 the judgment, you asked about the amount, it is 34,571

1 at the time it was entered. The amount they were
2 seeking is \$3,100, that they claim was an overcharge
3 on the credit card. If the friend of the plaintiff
4 got the benefit of the plaintiff's credit card to the
5 tune of \$3,100, she should collect from the friend.
6 They got the rooms; they didn't pay for them. All she
7 had to do is give me the money or give me your credit
8 card and make it even. They didn't choose to do that.
9 They filed a lawsuit in 2014 against -- not just the
10 hotel owner, by the way, but La Quinta over this
11 credit card question.

12 So we don't think Illinois court had minimum
13 contact or jurisdiction of the subject matter. We
14 don't think they had jurisdiction through service,
15 because they had bad service.

16 THE COURT: Let me hear, Mr. Grimsley.

17 MR. GRIMSLEY: Your Honor, thank you. There are
18 two telephone calls, actually. The first was from the
19 friend who wanted to use the credit card saying is it
20 all right if I do that, and then my client said, yes.
21 Then, Cynthia, who was an employee of the hotel, made
22 the telephone call to my client saying we have a guest
23 here who would like to use your credit card, do you
24 give your authority, and she did and provided the
25 hotel employee with the credit card information.

1 So I think there was -- based on statutes of
2 Illinois -- sufficient contact, and the courts of
3 Illinois said a single act is enough to transact
4 business.

5 THE COURT: I'm not so concerned about that.
6 I'll tell you, it is my impression that Mr. Mishra was
7 an agent. What I need to know is whether or not
8 service on the agent of the LLC in South Carolina is
9 sufficient to confer personal jurisdiction of the LLC
10 in Illinois.

11 MR. GRIMSLEY: The way I read Illinois statute,
12 it is. It can be an agent. It can be a member. It
13 can be a managing member, an agent.

14 THE COURT: What are they talking about here when
15 they say, "Found anywhere in the State," and they
16 capitalized that? "If the agent is found within the
17 State"?

18 MR. GRIMSLEY: I would submit that is the state
19 which it is served, Your Honor.

20 THE COURT: Well, I don't know. That is an
21 interesting question. It is particularly -- in light
22 of the fact that in that statute they capitalize that
23 word "state." Are they referring to Illinois? Or are
24 they referring to any state? Why would they even need
25 to say it if it was any state? Why couldn't they just

1 say "served"? Why would they need to say "found
2 anywhere in the State"? I mean, that wouldn't even
3 need to be there if you could serve them in any state.

4 I'll tell you what, gentlemen, provide me with
5 proposed orders within the next two weeks. Try to get
6 them before Christmas. And I want you to emphasize
7 your feelings on that particular issue, okay.

8 May I keep these?

9 MR. GRIMSLEY: Yes.

10 THE COURT: Okay. Thank you, gentlemen.

11 (Whereupon, the proceedings concluded.)
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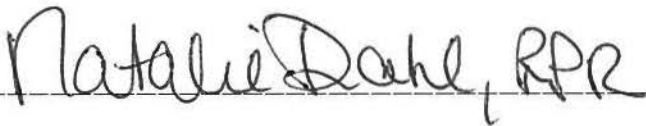
CERTIFICATE OF REPORTER

State of South Carolina)
County of Horry)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the evidence introduced in the hearing of the above-captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 4th day of December, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 26, 2020



Natalie Dahl, RPR
Court Reporter

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April 9, 2018

Mr. Pharr recently joined Mike Mishra, owner of the LaQuinta North Myrtle Beach to celebrate his birthday.

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Mr. Pharr recently joined Mike Mishra, owner of the LaQuinta North Myrtle Beach to celebrate his birthday.

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Anne Alexander Veleke You look great Mr. Pharr! This is Anne Alexander Veleke from Wink Davis Equipment Company! (washers/dryers) Do you ever hear from Prescott Spigner?

1y

See more of Strand Hospitality Services on Facebook

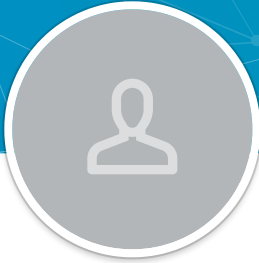
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Record on Appeal 058

🔍 mishra mike



mishra mike


Managing Director at Shiram LLC

North Myrtle Beach, South Carolina · 9 connections

 Shiram LLC

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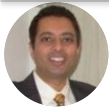
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Ajitav Mick Misra, JD, MBA

Attorney, Partner at Stinson Leonard Street | Outside GC | Finance, Tax and Corporate Matters (Licensed only in DC)



Mike Mishra

Consultant at Synergy Compliance Solutions (SCS)

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Managing Director at Shiram LLC

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SBA Reviewing North Myrtle Beach, South Carolina Hotelier's History of Problem Loans; Inquiry

Categories

> Industry Happenings
(25,411)

Record on Appeal 061

as to

| February 01, 2012

Hotel Online News for the Hospitality Executive
(<http://www.hunterhotels.net>) By David Wren, The Sun News, Myrtle Beach, S.C. McClatchy-Tribune Regional News

Feb. 26, 2012–HARICHARAN “MIKE” MISHRA – a North Myrtle Beach hotel owner who defaulted on two government-backed loans totaling nearly \$900,000 – paid off his mortgage with the proceeds from a third guaranteed small business loan. Federal officials are now examining how stimulus plan funds made their way into Mishra’s hands.

“All I can say on this is we’re looking into it,” Michael Stamler, a spokesman for the U.S. Small Business Administration, told The Sun News last week.

Mishra also defaulted in 2008 on an \$18.9 million construction loan for the Atlantic Palms condominium project in Myrtle Beach, in which purchasers lost \$2 million in deposits.

The agency’s review of the SBA loan started after The Sun News raised questions about discrepancies in documents associated with Mishra’s 2010 sale of the La Quinta Inn at 1601-B Highway 17 North in North Myrtle Beach to a corporation named Shiram LLC.

Those documents appear to show that Mishra and his son are members of the corporation that was formed to obtain an SBA-backed loan that paid off Mishra’s mortgage on the hotel just as Carolina First Bank, now TD Bank, was about to foreclose on the property.

Mishra told The Sun News that he is not affiliated with the corporation that bought the La Quinta, formerly a Best Western hotel.

However, Mishra signed a utility easement agreement in December stating that he is the managing member of Shiram, which is an anagram of Mishra.

Sanjay Mishra, Mike Mishra’s son, has been listed as Shiram’s registered agent since the corporation was formed in 2008, according to the S.C. Secretary of State’s web site.

Mike Mishra, who was reached at the hotel last week, told The Sun News that he is managing the property for Shiram and that the corporation’s owners live in Fayetteville, N.C.

“I’m not part of the LLC,” he said. “When I sold the hotel I said I would manage it for them for one year, but I’m still here.”

New loan pays off past debts

(https://www.hotel-online.com/press_release-category/industryhappeningscat/)

> Technology (4,723)

(https://www.hotel-online.com/press_release-category/technologycat/)

> All Things Independent

(3,705)

(https://www.hotel-online.com/press_release-category/allthingsindependentcat/)

> Operations (3,654)

(https://www.hotel-online.com/press_release-category/operationscat/)

> Latest news (1,995)

(https://www.hotel-online.com/press_release-category/latest-news/)

> Market Reports (1,484)

(https://www.hotel-online.com/press_release-category/market-reports-cat/)

> Development (1,270)

(https://www.hotel-online.com/press_release-category/development-cat/)

> Finance (1,150)

(https://www.hotel-online.com/press_release-category/finance-cat/)

Mike Mishra sold the La Quinta to Shiram on March 11, 2010, for \$2 million, according to Horry County property records. Shiram used the proceeds from an SBA-guaranteed loan to buy the hotel. That loan was part of President Obama's stimulus plan that temporarily relaxed lending rules and added more than \$1 billion to the SBA's pool of funds to make money more accessible to small businesses.

Mike Mishra told The Sun News that he used proceeds from the hotel sale to pay off the Carolina First loan that was in danger of default. That bank filed a mortgage satisfaction document on May 5, 2010, showing Mike Mishra and his wife, Illa, had paid off the debt.

"It [the hotel] was about to go into foreclosure and I was trying to save it," Mike Mishra said.

Gita Jhala signed the SBA-backed loan papers as the sole member and manager of Shiram, according to property records. The Shiram corporate address listed on the deed is for property that belongs to Illa and Sanjay Mishra.

Neither Gita Jhala nor her husband, Mahesh "Mike" Jhala, could be reached for comment last week.

The Jhalas previously have conducted real estate and business transactions with the Mishra family. For example, Mike and Illa Mishra sold a condominium unit at 201 S. Ocean Blvd. in North Myrtle Beach to Mahesh Jhala in January 2002, property records show. Mahesh Jhala sold the same unit to Illa and Sanjay Mishra four years later.

Mike Mishra also was the registered agent for a corporation Gita Jhala formed in 1995 that operated a Days Inn hotel in Fayetteville, N.C. Illa Mishra was a director of that corporation, according to N.C. Secretary of State records.

Mike Mishra defaulted on two previous SBA-backed loans – both of them taken on Jan. 16, 2000 – before he sold the La Quinta Inn to Shiram LLC, according to court documents. The first loan was a promissory note for a \$185,900 and the second loan was a \$681,500 30-year mortgage. The collateral for the mortgage was the hotel at 1601-B Highway 17 North in North Myrtle Beach, according to the loan document.

The federal government obtained judgments against Mike Mishra and his company, Mishra Investments LLC, for both debts. Neither debt has been repaid, according to county property records.

When Mike Mishra sold the La Quinta to Shiram, the SBA subordinated the \$681,500 judgment to the new loan. In other words, the Shiram loan would have priority over the older, defaulted debt in the case of a foreclosure or bankruptcy.

That means Mike Mishra benefited from two government-guaranteed loans collateralized by the same property even though he failed to repay the initial loan.

In addition, the S.C. Department of Revenue in December filed tax liens totaling \$1,956.92 against Mike Mishra. The address listed on the tax liens is the same address as the La Quinta.

Atlantic Palms foreclosure

> Real Estate (969)
(https://www.hotel-online.com/press_release-category/real-estate-cat/)

> Smart Strategies (953)
(https://www.hotel-online.com/press_release-category/smart-strategies-cat/)



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The tax liens are among the latest financial problems for Mike Mishra, whose plans to convert the Atlantic Palms hotel at 703 S. Ocean Blvd. in Myrtle Beach into a condominium tower were derailed when the company he and his wife formed – SVI Hospitality LLC – defaulted on a construction loan with National Bank of South Carolina in 2008.

Dozens of people who put deposits on condos at the project lost a total of \$2 million because Mike Mishra did not segregate the deposits in an escrow account, according to court documents. Instead, Mike Mishra used the deposit money to pay construction costs and other expenses.

The project wound up in foreclosure and a receiver was appointed to operate the hotel. When the receiver took over the hotel on July 7, 2008, he learned that Mike and Sanjay Mishra had taken most of the money and all of the office equipment and the furniture from the premises, according to court documents.

A report filed by the receiver said the Mishras deleted all of Atlantic Palms' financial records and reservation information from a computer accounting system and tried to transfer \$40,560 from the development's bank accounts to other accounts they owned. The receiver was able to stop the transfers before they were completed.

Sanjay Mishra also tried unsuccessfully to get Expedia to forward payments for Atlantic Palms hotel rooms to SVI Hospitality instead of the receiver, according to court documents.

Vimal Sodjhi of Fayetteville, N.C., lost \$110,000 in deposits he placed on two units at Atlantic Palms which were never built. Sodjhi said Mike and Illa Mishra used to live in his neighborhood and convinced him to buy into the proposed condo tower. That friendship quickly soured after the project went bust.

"I contacted him [Mike Mishra] about the deposits and his response to me was, basically, that it had been my decision to get involved with it and I could take it up with his attorney," Sodjhi told The Sun News last week.

John Benso, a former Pawleys Island attorney who now is a Georgetown County magistrate serving the Murrells Inlet area, tried unsuccessfully to get eight condo depositors some money from the foreclosure lawsuit. However, a judge ruled that since the bank's mortgage pre-dated the condo contracts, NBSC was entitled to all of the money from the foreclosure sale.

Benso told The Sun News last week that he also tried unsuccessfully to get area legislators interested in passing a state law that would require developers to segregate property deposits in an escrow account. While state law requires real estate agencies to put condo deposits into an escrow account, there is no such requirement if the deposits are given directly to a project's developer. Some developers during the real estate boom, including Mike Mishra, fashioned contracts that allowed them to use the deposit money for ongoing building costs instead of holding onto it until buyers closed on their units.

Benso said he did not receive a response from the legislators he contacted.

Sodjhi said he has moved on with his life, but he still cannot understand Mike Mishra's financial dealings.



Tags

“It’s complicated,” he said. “It’s beyond my imagination.”

Contact DAVID WREN at 626-0281

—

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ALISON MEYERS,

Plaintiff,

vs.

SHIRAM HOSPITALITY, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C/A #: 2019-CP-26-05254

**MEMORANDUM IN SUPPORT OF
PLAINTIFF’S NOTICE OF INTENT
TO DOMESTICATE A FOREIGN
JUDGMENT**

This matter is before the Court on Plaintiff’s Notice of Intent to Domesticate Foreign Judgment which was filed in Horry County on August 15, 2019 (the “Notice”). The judgment being domesticated is a Trial Call Order for X-Parte Default Judgment for Plaintiff awarded on March 8, 2016 by the Circuit Court of Cook County, Illinois, Second Municipal District (the “Illinois Court”) (the “Illinois Judgment”) against Shiram Hospitality, LLC (the “Defendant”).

ISSUES BEFORE THE COURT

In Defendant’s Notice of Defenses and Objection to the Notice, it alleges that: (1) the Illinois Court did not have, at and this time, does not have jurisdiction over the Defendant; (2) the matters complained of in Plaintiff’s Complaint did not occur in Illinois, but were solely related to a transaction occurring in Horry County, South Carolina; and (3) that service on the Defendant was ineffectual since the Illinois Court did not have jurisdiction over the Defendant.

DISCUSSION OF FACTS

The Illinois Judgment awarded by the court was based on a Complaint filed by Alison Meyers (“the Plaintiff”) on or about November 5, 2014 (the “Complaint”). The Complaint was duly served on the Defendant on February 16, 2015, as set forth in the Affidavit of Miramane Cox, Deputy Sheriff, Horry County Sheriff’s Department, a true and accurate copy of the Affidavit being attached hereto as **Exhibit A**. The Defendant has not denied that it was so served.

Thereafter, the Defendant failed to file an Answer or other Response to the Complaint and did not make an appearance before the Court. Based on the Complaint, service of the Complaint on the Defendant, and Defendant’s failure to respond, the Court entered the Illinois Judgment.

The Complaint giving rise to the Illinois Judgment stems from the Defendant operating a LaQuinta Inn in Horry County, South Carolina and asserts that it continually and flagrantly over-charged Plaintiff's credit card beyond what was explicitly authorized by her, and its subsequent refusal to refund the retained funds. The explicit authorization by the Plaintiff occurred when she received an interstate telephone call at her residence in Glenview, Illinois, from an employee of the Defendant in South Carolina. When the Defendant's employee reached out from South Carolina to the Plaintiff in Illinois and sought her credit card information with which to pay for a room being occupied by a friend at the LaQuinta Inn in South Carolina, the Defendant transacted and was engaging in business in Illinois. By so doing, the Defendant submitted itself to the specific jurisdiction of the courts of Illinois.

The Defendant became aware of the Illinois Judgment shortly after it was awarded and took no action to be relieved from the judgment, which it could have done pursuant to 735 ILCS 5/2-1401(c) (Relief from judgments), which provides that a petition to vacate must be filed not later than 2 years after the entry of the order or judgment. However, more than two years have passed since the Illinois Judgment was entered, and the Defendant is now stayed from so doing.

DISCUSSION OF LAW

Whether a South Carolina court will recognize and domesticate a foreign judgment requires an examination of the pertinent South Carolina laws and regulations that guide the processes and procedure for doing so. South Carolina, along with most other states, has adopted the Uniform Enforcement of Foreign Judgments Acts. *See* S.C. Code Ann. § 15-35-900 *et seq.* (Supp. 1998). A "foreign judgment" is defined as "a judgment, decree, or order of a court of the United States or a court of another state which is entitled to full faith and credit in this State." *Id.* § 15-35-910(1).

South Carolina case law mandates that "[t]he law against which a foreign judgment is evaluated for validity and effect *is the law of the state rendering that judgment* (emphasis added)." *Jay Group, LTD. v. Bootery of Haywood Mall, Inc.*, 515 S.E.2d 542, 543 335 S.C. 114 (Ct. Apps. 1999) (citing *PYA/Monarch, Inc. v. Sowell's Meats & Servs., Inc.*, 327 S.C. 469, 473, 486 S.E.2d 766, 768 (Ct. Apps. 1998)).

The law of the State of Illinois, the state rendering the judgment, is very clear on the issue of specific jurisdiction arising from a defendant having purposely directed its activities at the

State of Illinois. The Illinois Compiled Statute 735 ILCS 5/2-209 (from Ch. 110, par. 2-209) provides in pertinent part at Sec. 2-209. Act submitting to jurisdiction - Process.

(a) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:

(1) The transaction of any business within this State

Further, in the matter of *Russell v. SNFA*, 2013 IL 113909, the Illinois Supreme Court held in Paragraphs 40 and 41 that:

¶40:

Specific jurisdiction requires a showing that the defendant purposefully directed its activities at the forum state and the cause of action arose out of or relates to the defendant's contacts with the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). **Under specific jurisdiction, a nonresident defendant may be subjected to a forum state's jurisdiction based on certain "single or occasional acts" in the state but only with respect to matters related to those acts** (emphasis added). *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. —, 131 S.Ct. 2846, 2853 (2011) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945)).

¶41:

In *Burger King Corp.*, the United States Supreme Court explained the rationale for permitting the exercise of specific personal jurisdiction over a nonresident defendant who "purposefully directs" its activities toward the forum, **even if only for single or occasional acts in the forum state** (emphasis added). First, the state has a manifest interest in providing its residents with a convenient forum for redressing injuries caused by nonresidents. 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** (emphasis added). *Burger King Corp.*, 471 U.S. at 473-74.

Based on the Defendant's activities, as well as the statutes and case law of the State of Illinois, as set forth above, the Plaintiff submits that the Defendant submitted itself to the specific jurisdiction of the Illinois Court.

The Plaintiff obtained the Illinois Judgment in full compliance with the laws thereof, and the Illinois Judgment is deemed to be valid and in full effect in Illinois, the state where it was rendered. The Plaintiff has also followed all of the pertinent South Carolina laws and regulations that guide the processes and procedures for domesticating a foreign judgment and asserts that the Illinois Judgment is valid and effective, and therefore proper for domestication in South Carolina.

The Plaintiff asserts and would ask the Court to find (1) that the Illinois Court did have specific jurisdiction over the Defendant; (2) the matters complained of in Plaintiff's Complaint occurred in Illinois and involved an interstate transaction occurring in Horry County, South Carolina; and (3) that service on the Defendant was effectual since the Illinois Court had specific jurisdiction over the Defendant.

Based on the reasons set forth above, Plaintiff submits that she has met all of the requirements of domestication of the foreign judgment against Defendant.

Therefore, the Plaintiff would ask the Court to grant her relief by:

- (1) denying Defendant's Notice of Defense and
- (2) granting Plaintiff's domestication of the foreign judgment she obtained in Illinois.

/s/ Edward L. Grimsley

Edward L. Grimsley

GRIMSLEY LAW FIRM, LLC

P.O. Box 11682

Columbia, S.C. 29211

(803) 233-1177

Attorney for the Plaintiff

EXHIBIT A

STATE OF SOUTH CAROLINA,

COUNTY OF

IN THE

COURT

ALISON MEYERS

Plaintiff

vs.

SHIRAM HOSPITALITY, LLC, DBA LA QUINTA
INN NORTH MYRTLE BEACH, ET AL

Defendant

AFFIDAVIT OF

SUBSTITUTED SERVICE

TIME OF SERVICE: 3:30 PM

CASE # 2014M2002586

Personally appeared before me MIRAMANEE COX

Deputy Sheriff, who being duly sworn, says that he served the

SUMMONS AND VERIFIED COMPLAINT

in this action on

the defendant SHIRAM HOSPITALITY, LLC

by delivering

personally to MIKE MISHRA,

, a person of discretion

FATHER OF AGENT SANJAY/ H. MISHRA

and leaving with said person of discretion;

copies of the same at

1601 B. OLD HIGHWAY 17 NORTH, LAQUINTA INN
NORTH MYRTLE BEACH, SC

in the county and state aforesaid on the 16th day of FEBRUARY 2015;

and that he knows the person so served to be the one mentioned and

described in the SUMMONS AND VERIFIED COMPLAINT

SHIRAM HOSPITALITY, LLC

defendant therein; and also knows

that the said person of discretion bears the relation to said

defendant or defendants as is hereinbefore stated; and deponent is

not a party to the action.

Sworn to and Subscribed before me this 17th

day of FEBRUARY 2015

Jay B. Jenkins (L.S.)
Notary Public of South Carolina

M. Cox
MIRAMANEE COX
Deputy Sheriff

My Commission Expires: 9-15-2016

SHIRAM HOSPITALITY, LLC by delivering personally to MIKE MISHRA, a person of discretion FATHER OF AGENT SANJAY H. MISHRA and leaving with said person of discretion; copies of the same at 1601 B. OLD HIGHWAY 17 NORTH, LAQUINTA INN, NORTH MYRTLE BEACH, SC...”

On March 8, 2016, Default Judgment was entered in that case in Illinois against the Defendant, for \$3,120.74 in actual damages, \$6,951.03 in attorneys’ fees and costs, and \$24,500.00 in punitive damages. The Plaintiff subsequently initiated this action, which was originally against both the Defendant, and La Quinta Holdings, LLC. The Plaintiff later dismissed La Quinta Holdings, LLC. The Plaintiff sent to the Defendant a Notice of Motion and Motion for Entry of Foreign Judgment, and then submitted its Motion for Entry of Foreign Judgment. The Defendant submitted its Notice of Defense and Response to Notice to Domesticated Foreign Judgment on September 17, 2019.

LACK OF PERSONAL JURISDICTION

Under Article IV, Section 1 of the United States Constitution, “Full Faith and Credit shall be given in each state to the public acts, records, and judicial proceedings of every other State.” U.S. Const. art. IV, § 1. In accordance with this provision, every state is required to give to a judgment at least the res judicata effect which the judgment would be accorded in the state where rendered. *Hospitality Mgmt. Assocs., Inc. v. Shell Oil Co.*, 356 S.C. 644, 653, 591 S.E.2d 611, 616 (2004) (citing *Durfee v. Duke*, 375 U.S. 106, 109, 84 S. Ct. 242, 11 L. Ed. 2d 186 (1963)).

However, “[a] judgment of a court without jurisdiction of the person or of the subject matter is not entitled to recognition or enforcement in another state, or to the full faith and credit provided for in the federal Constitution.” *Fin. Fed. Credit Inc. v. Brown*, 384 S.C. 555, 562-63, 683 S.E.2d 486, 490 (2009) (quoting 50 C.J.S. Judgments § 986 (1997)). Where the court of the issuing state has fully and fairly litigated and finally decided the question of jurisdiction, further inquiry into the jurisdiction of the issuing court is precluded. *Durfee*, 375 U.S. at 111. Otherwise, “before a court is bound by the judgment rendered in another State, it may inquire into the jurisdictional basis of the foreign court’s decree.” *Underwriters Nat’l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass’n*, 455 U.S. 691, 705, 102 S. Ct. 1357, 71 L. Ed. 2d 558 (1982). Similarly, under the UEFJA, a judgment debtor may seek relief from a judgment due to a lack of personal jurisdiction. *PYA/Monarch, Inc. v. Sowell’s Meats & Servs., Inc.*, 327 S.C. 469, 473, 486 S.E.2d 766, 768 (Ct. App. 1997).

For a state court to have personal jurisdiction over a non-resident defendant, the demands of the state's statute granting personal jurisdiction, the state's constitutional due process protections, and the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution must be satisfied. Illinois' long-arm statute "broadly provides that a court 'may also exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States.'" *Russell v. SNFA*, 987 N.E.2d 778, 784 (citing 735 ILCS § 5/2-209(c)). State and federal courts in Illinois have concluded that, together, the state's long-arm statute and constitutional due process protections authorize the assertion of personal jurisdiction to the limits allowed under the federal constitution. See, i.e., *Russell, supra*, and *Hyatt International Corp. v. Coco*, 302 F.3d 707, 715 (7th Cir. 2002).

The United States Supreme Court has observed that "[t]he Due Process Clause of the Fourteenth Amendment sets the outer boundaries of a state tribunal's authority to proceed against a defendant." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923, 131 S. Ct. 2846, 2853 (2011). Where the defendant is not a resident of or organized in, was not served in, or did not consent to the jurisdiction of the state asserting jurisdiction, the courts employ a two-pronged test for due process. First, the defendant must have certain minimum contacts with the forum state. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945). Second, the exercise of jurisdiction over the defendant must not offend "traditional notions of fair play and substantial justice." *Int'l Shoe Co.*, 326 U.S. at 316. Under the minimum contacts prong, the defendant's conduct and connection with the forum state must be "such that [the defendant] should reasonably anticipate being hauled into court there." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985). "[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

This "purposeful availment" requirement ensures that a defendant will not be hauled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts, or of the "unilateral activity of another party or a third person." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984); *Helicopteros Nacionales de Colombia, S.A. v. Hall, supra*, at 417. But where the defendant "deliberately" has engaged in significant activities within a State, or has created "continuing obligations" between himself and residents of the forum, he manifestly has availed

himself of the privilege of conducting business there, and because his activities are shielded by “the benefits and protections” of the forum’s laws, it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well. *Keeton v. Hustler Magazine, Inc.*, *supra*, at 781; *Travelers Health Assn. v. Virginia*, 339 U.S. 643, 648 (1950).

The level and character of a party's minimum contacts is assessed based on whether the contacts are general or specific. General contact, which gives rise to general personal jurisdiction, consists of the defendant's contacts with the forum state that are unrelated to the cause of action and both “continuous and systematic.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.9, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984)). “Specific contacts, which give rise to specific personal jurisdiction, consist of the defendant's contacts with the forum state that are related to the cause of action.” *Id.* (citing *Burger King Corp.*, 471 U.S. at 472-75). “Although the related contacts [for specific jurisdiction] need not be continuous and systematic, they must rise to such a level as to cause the defendant to anticipate being hauled into court in the forum state.” *Id.*

As stated above, the Defendant conducts a hotel business in North Myrtle Beach, South Carolina, and therefore plainly has no “continuous and systematic” contact with the state of Illinois. Therefore, if the Illinois court in question had personal jurisdiction over the Defendant, it was specific jurisdiction arising from contacts related to the cause of action. For there to have been specific jurisdiction, the Defendant must have purposefully availed itself of the protections of Illinois law. The Plaintiff traveled from Illinois to South Carolina, executing a contract with the Defendant. The subject matter of that contract was the provision of hotel services at the Defendant’s facility in North Myrtle Beach, South Carolina. It was only by chance that the Plaintiff’s home state was Illinois. When the Defendant executed its contract with the Plaintiff, it is likely that the Defendant did not even know where the Plaintiff was traveling from. When the Defendant charged the Plaintiff’s card for payment under the contract, it is also likely that the Defendant did not even know where the Plaintiff banked. In other words, from the Defendant’s perspective, the fact that the Plaintiff hailed from Illinois was of no matter and certainly had no bearing on the transaction.

Therefore, the Defendant engaged in no activities within the state of Illinois. If the Defendant is deemed to have engaged in an activity in Illinois by charging the Plaintiff’s card, the card being furnished by a banking institution operating in Illinois, the Defendant did not do so deliberately, and did not do so in reliance on the protection of the laws of Illinois. Rather, any

contact with Illinois by the Defendant was random, fortuitous, and/or attenuated in relation to its business activity in South Carolina.

The Plaintiff may argue that, by operating a hotel business and knowingly housing travelers from states throughout the country, and by extracting payment for its services from accounts maintained by banking institutions operating in those states, the Defendant purposefully avails itself of the privilege of conducting activity in those states. This conclusion would certainly offend traditional notions of fair play and substantial justice, as it would leave even very localized entities subject to the jurisdiction of states across the country, and possibly all 50 states. This would be impractical, unduly burdensome, and completely unfair and unjust to entities operating hotel and motel businesses in South Carolina. With the ubiquitous nature of credit card use now, this argument would presumptively make nearly every business in the country subject to the jurisdiction of every state.

Because the Illinois court lacked personal jurisdiction over the Defendant, the Court should rule that its judgment against the Defendant should not be afforded full faith and credit and thus is null and void in South Carolina.

INSUFFICIENT SERVICE OF PROCESS

When a plaintiff attempts service of process on a defendant, service must be sufficient according to the requirements of the Due Process Clause and the statutory law and court rules of the state in which the action is pending. The Due Process Clause of the Fourteenth Amendment prohibits courts from exercising personal jurisdiction over a defendant unless the defendant has proper notice of the court's proceedings. "The Due Process Clause requires every method of service to provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 707 (1988).

Rule 1.1 of the Rules of the Circuit Court of Cook County, in which the Plaintiff's action was originally filed, simply states, "Notice of all proceedings in an action shall be given to all parties who have appeared and have not been found by the Court to be in default..." Ill. R. Cir. Ct. Cook Co., R 1.1. Rule 104 of the Illinois Supreme Court rules is similarly unhelpful. However, a series of state statutes governing service of process control. See 735 ILCS § 5/2-201 et seq. Illinois has individual statutes for service upon corporations, partnerships, unincorporated associations, and the like, but only one statute addresses service on parties outside of Illinois who are not

otherwise subject to the jurisdiction of Illinois courts. It reads, “Personal service of summons may be made upon any party outside the State. If upon a citizen or resident of this State or upon a person who has submitted to the jurisdiction of the courts of this State, it shall have the force and effect of personal service of summons within this State; otherwise, it shall have the force and effect of service by publication.” 735 ILCS § 5/2-208. Regarding service by publication, “No default or proceeding shall be taken against any defendant not served with summons, or a copy of the complaint, and not appearing, unless the first publication be at least 30 days prior to the time when the default or other proceeding is sought to be taken.” 735 ILCS § 5/2-207.

Therefore, if the Defendant had been personally served, the default judgment would have been valid under the laws of Illinois, so long as personal service was made at least 30 days prior to the entry of default. However, under the laws of both Illinois and South Carolina, the Defendant was not personally served.

Illinois law provides that private corporations within the state may be served “by leaving a copy of the process with its registered agent *or any officer or agent of the corporation...*” 735 ILCS § 5/2-204 (emphasis added). Similarly, the South Carolina Rules of Civil Procedure provide, “Service shall be made as follows: ... (3) Upon a corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to *an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process* and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.” Rule 4(d), SCRPC (emphasis added). Although service by certified mail is sufficient, such service “shall not be the basis for the entry of a default or a judgment by default unless the record contains a receipt showing the acceptance by the defendant.” Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person.” Rule 4(d)(8), SCRPC. “If... the agent for service of process cannot with reasonable diligence be found at the agent’s address, the Secretary of State is an agent of the company upon whom process, notice, or demand may be served.” S.C. Code § 33-44-111.

Again, the Affidavit of Substituted Service stated that “MIKE MISHRA, a person of discretion FATHER OF AGENT SANJAY/H. MISHRA” was personally served at “1601 B. OLD HIGHWAY 17 NORTH, LAQUINTA INN, NORTH MYRTLE BEACH, SC...” The Articles of

Incorporation for Shiram Hospitality, LLC, the Defendant, provide that the its agent for service of process is Sanjay H. Mishra. Sanjay's listed address is 201 S. Ocean Boulevard, North Myrtle Beach, SC 29582. The LLC is manager-managed, and the only listed manager (and organizer) is Sanjay Mishra. Therefore, by serving Mike Mishra at 1601 B. Old Highway 17 North, the Plaintiff neither served someone with authority to accept service on behalf of the Defendant, nor served them at the correct address. If the Plaintiff could not find Sanjay Mishra at the address listed, the Plaintiff could have served the South Carolina Secretary of State. However, the Plaintiff did not.

Because the Plaintiff failed to effectuate sufficient service of process upon the Defendant under the laws of either Illinois or South Carolina, the Illinois court had no jurisdiction over the Defendant in the initial case in which the foreign judgment was entered, and the Court should rule that this judgment should not be afforded full faith and credit and is null and void in South Carolina.

WHEREFORE, for the reasons set out above, the Defendant believes the Plaintiff's Motion for Entry of Foreign Judgment should be denied.

/s/ Fred B. Newby

Fred B. Newby
 S.C. Bar No. 4202
 Newby, Sartip & Masel, LLC
 4593 Oleander Dr.,
 Myrtle Beach, SC 29577
Attorneys for Defendant

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2019-CP-26-05254

Alison Meyers,)
)
Plaintiff,)

Affidavit of Sanjay H. Mishra

vs.)

Shiram Hospitality, LLC and La)
Quinta Holdings, Inc.)
)
Defendants.)

Personally appeared before me, Sanjay H. Mishra, who after first being duly sworn, deposes and states the following:

1. He is a Member and one of two owners of the defendant, Shiram Hospitality, LLC, a limited liability company formed under the laws of South Carolina on February 8, 2008 (the "Company");
2. The principal, and only, business of the Company is the ownership and operation of a hotel located in the city of North Myrtle Beach, Horry County, S.C., currently operating under the name of La Quinta pursuant to a franchise;
3. The Company does not currently own, and has never owned, any property outside Horry County, South Carolina;
4. The Company does not carry on business, nor has it ever carried on business, outside Horry County, South Carolina.
5. The Company has no presence, nor does it do any business in, the State of Illinois.
6. The Company is in the business of operating the La Quinta Hotel referenced above and in doing so it rents rooms located in Horry County, provides its services to guests who are present in Horry County, and collects payments in Horry County South Carolina. All payments are deposited in the Company's bank accounts located in local, Horry County banks.
7. Affiant is the Registered Agent for the Company and has been since its inception.

8. Service of Process in the case at hand, which was filed and prosecuted in the State of Illinois, was never served personally or by certified or registered mail on Affiant as registered agent of the Company, nor to the best of his knowledge, was it served by publication or by service on the South Carolina Secretary of State pursuant to Section 33-44-111, S.C Code of Laws, as amended.

9. According to an "Affidavit of Substituted Service" filed in the original Illinois case, service on the Company was attempted by leaving a copy with Mike Mishra, who is now deceased, at the Hotel. Mike Mishra was not, and never has been a Member, "officer, managing or general agent, nor any other agent authorized by appointment of by law to receive service of process . . ." for the Company, as described in Rule 4(d)(3), SCRCF.

10. Mike Mishra did not inform the Affiant of his receipt of the pleadings, if in fact they were properly delivered, and Affiant only learned of this matter after the judgment was rendered in Illinois.

Sworn to before me this 2 day of
November, 2019,
Anitaben J. Patel

Sanjay H. Mishra
Sanjay H. Mishra

Notary Public for Wake County
My Comm. Expires: 12/30/2022

ANITABEN J PATEL
NOTARY PUBLIC
WAKE COUNTY, NC
My Commission Expires 12-30-2022

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
In the Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2020-000557

RECEIVED
Sep 28 2020
SC Court of Appeals

Alison Meyers,Appellant,

v.

Shiram Hospitality, LLC,Respondent.

CERTIFICATION OF COUNSEL REGARDING RECORD ON APPEAL

I certify that the Record on Appeal contains all material proposed to be included by the parties and not any other material.

/s/Stephanie H. Burton
Stephanie H. Burton (#13089)
Gibbes Burton, LLC
308 East St. John St.
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Attorneys for Appellant