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.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

STATEMENT OF ISSUES ON APPEAL

I. Did the Lower Court err in denying the Motion for Entry of Foreign Judgment?

II. Did the Lower Court err in finding that Haricharan "Mike" Mishra was not Respondent's agent and subsequently holding that service of process was improper?

III. Did the Lower Court err in citing unsupported facts and inapplicable Illinois case law in its order?

IV. Did the Lower Court err in its dicta that the Illinois default judgment should not be afforded full faith and credit even if service was proper?

STATEMENT OF THE CASE

On August 15, 2019, Appellant filed her Notice of Intent to Domesticate Foreign Judgment. Respondent appeared and argued that the judgment should not be enforced because it was not properly served and that the Illinois court did not have personal jurisdiction in the underlying case. On December 4, 2019, a hearing was held before Judge Larry B. Hyman, Jr. without any witnesses. On February 18, 2020, the Lower Court denied domestication ruling that the Illinois default judgment should not be afforded full faith and credit and is null and void pursuant to South Carolina's Uniform Enforcement of Foreign Judgments Act. Notice of the Order Denying Plaintiff's Motion for Entry of Foreign Judgment ("Order") was given to the parties on February 24, 2020. Notice of Appeal was served on March 25, 2020. The amount involved in the appeal is $34,571.77, plus continuing interest at a rate of 9% per annum.

STANDARD OF REVIEW

"An action to enforce a foreign judgment is an action at law." Minorplanet Sys. USA Ltd. v. Am. Aire, Inc., 368 S.C. 146, 149, 628 S.E.2d 43, 44 (2006). In an action at law, tried by a judge without a jury, we accept the findings of the trial court if there is any evidence to support the findings. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

STATEMENT OF FACTS

Respondent Shiram Hospitality, LLC does business as a La Quinta hotel located in North Myrtle Beach, South Carolina. (R. p. 15, ¶ 3.) On or about November 13, 2011, Appellant Alison Meyers was at her home in Glenview, Illinois, when she received a call from an employee of the La Quinta named "Cynthia". (R. p. 16, ¶ 8.) Cynthia told Appellant that her friend was checking in to the La Quinta. (R. p. 16, ¶ 9.) Appellant had previously offer to pay for the friend's hotel room while the friend and her husband completed their move from Illinois to South Carolina. (R. p. 16, ¶ 9.) Cynthia asked Appellant for her credit card information, which Appellant gave to Cynthia. (R. p. 16, ¶ 10.) Appellant explicitly told Cynthia that she was only giving permission for her credit card to be charged for renting one room for two nights. (R. p. 16, ¶ 11.)

On November 13, 2011, La Quinta charged Appellant's credit card $255.06 for the two nights. (R. p. 16, ¶ 12.) On November 15, 2011, La Quinta charged Appellant's card $58.24 in spite of explicit instructions to the contrary. (R. p. 17, ¶ 14.) From November 15, 2011 to January 5, 2012, Appellant's credit card continued to be charged almost daily (and in some cases twice daily) in amounts ranging from $47.39 to $58.24. (R. p. 17, ¶¶ 15, 18; R. p. 18, ¶ 20.) On or about January 5, 2012, Appellant contacted the Glenview Police Department in Glenview, Illinois and, after an officer contacted the La Quinta, Respondent finally stopped charging Appellant's card. (R. p. 18., ¶ 21.) La Quinta charged Appellant's card beyond the authorized two-night stay for a total of $3,120.74. (R. p. 18, ¶ 23.) On June 19, 2014, Appellant, through her counsel, made a demand for repayment of the unauthorized charges upon the Respondent via a certified letter, return receipt requested, which was received on or about June 20, 2014. (R. p. 18, ¶ 26.) No response to the letter was received prior to filing suit. (R. p. 18, ¶ 26.)

On November 5, 2014, Appellant filed her complaint in the Circuit Court of Cook County, Illinois. (R. p. 14.) On February 16, 2015 at 3:30 p.m., Horry County Deputy Sheriff Miramanee Cox ("Cox") served Respondent by leaving the Summons and Verified Complaint with Mike Mishra a/k/a Haricharan Mishra. (R. p. 29.) Notably, Mike died in 2018. (R. p. 40, ¶ 3(d); R. p. 84, ¶ 9.) On March 8, 2016, a default judgment was entered against La Quinta Holdings, Inc., Respondent, and Haricharan in the aggregate amount of $34,571.77.[1] (R. p. 35.) On April 23, 2019, an order was entered *nunc pro tunc* to correct the scrivener's error misspelling Haricharan's name as Harichan. (R. pp. 36-37.)

On August 15, 2019, the Notice of Intent to Domesticate Foreign Judgment was filed in this case. (R. p. 30.) On August 29, 2019, Sanjay H. Mishra ("Sanjay"), Respondent's registered agent, was served in Raleigh, North Carolina. (R. p. 38.) On October 2, 2019, Respondent appeared and filed its Notice of Defense, and Response to Notice to Domesticate Foreign Judgment. (R. pp. 39-41.) On October 16, 2019, Appellant filed her Notice of Motion and Motion for Entry of Foreign Judgment. (R. p. 69.) On November 27, 2019, Appellant filed a Memorandum in Support of Plaintiff's Notice of Intent to Domesticate a Foreign Judgment. (R. pp. 70-75.) On November 29, 2019, Respondent filed its Memorandum in Opposition [sic] Plaintiff's Motion for Entry of Foreign Judgment. (R. pp. 76-82.) On December 2, 2019, Respondent filed the Affidavit of Sanjay Mishra. (R. pp. 83-84.) On December 4, 2019, a hearing was held by Judge Larry B. Hyman, Jr. and the matter was taken under consideration. (R. pp. 42-68; R. pp. 3-6.)

[1] $3,120.74 for compensatory damages, $24,500.00 for punitive damages, and $6,951.03 for attorney's fees and costs.

On February 18, 2020, the Lower Court issued an Order Denying Plaintiff's Motion for Entry of Foreign Judgment that was filed on February 24, 2020. (R. pp. 6-13.) On March 25, 2020, Notice of Appeal was served.

ARGUMENT

This case unfortunately proves true the saying, "No good deed goes unpunished." Sadly for Appellant, her good-hearted gesture to help a friend in need was taken advantage of by an unscrupulous LaQuinta hotel operator in Myrtle Beach. Likely counting on the probability that no one would sue over $3,000.00 of fraudulent charges, Respondent attempted to defraud Appellant and run up her credit card beyond the two nights she authorized. Respondent succeeded in avoiding liability for its fraud through a mix of inaccurate facts and inapplicable law provided to the trial court in its proposed draft order. With even the mildest scrutiny, however, the true facts – coupled with correct case law – clearly provide a solid basis for both proper service upon Haricharan "Mike" Mishra as Respondent's agent as well as personal jurisdiction over Respondent for its intentional directed contact with an Illinois resident. The trial court's order should be reversed and entry of the Foreign Judgment directed.

I. The Lower Court erred in denying Plaintiff's Motion for Entry of Foreign Judgment by entering an order that incorporated erroneous facts and inapplicable case law.

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. 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. Hosp. Mgmt. Assocs., Inc. v. Shell Oil Co., 356 S.C. 644, 653, 591 S.E.2d 611, 616 (2004). "The judgment debtor may file a motion for relief from, or notice of defense to, the foreign judgment on the grounds that the foreign

judgment has been appealed from, that enforcement has been stayed by the court which rendered it, or on any other ground for which relief from a judgment of this State is allowed." S.C. Code Ann. § 15-35-940(A). "A judgment presumes jurisdiction over the subject matter and over the persons. . . [and] '[i]f it appears on its face to be a record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself." Sec. Credit Leasing, Inc. v. Abed N. Armaly, 339 S.C. 533, 541, 529 S.E.2d 283 (Ct. App. 2000). It is clear, that the burden of opposing enforcement of the Illinois judgment in this case is upon Respondent; "[T]he burden of undermining the decree of a sister state '*rests heavily on the assailant'*…" Law Firm of Paul L. Erickson, P.A. v. Boykin, 383 S.C. 497, 504, 681 S.E.2d 575 (S.C. 2009) (emphasis added).

In considering whether the judgment of its sister state should be enforced in this case, this Court must consider Illinois law. "When determining the validity and effect of a foreign judgment based on lack of personal jurisdiction, courts look to the law of the state that rendered the judgment." Pitts v. Fink, 389 S.C. 156, 163, 698 S.E.2d 626, 629 (Ct. App. 2010). Examination of Illinois law unequivocally demonstrates that the Illinois judgment is enforceable.

A. The Lower Court erred in determining that Haricharan "Mike" Mishra was not an agent of Shiram Hospitality, LLC

It is uncontroverted that Mike was served by Deputy Sheriff Cox with the Summons and Verified Complaint for Respondent in the underlying Illinois matter. (R. p. 30.) Pursuant to Illinois law, Mike is a proper agent of Respondent for service and, as a result, Respondent was properly served.

A private corporation "may be served (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; or (2) *in any other manner now or hereafter permitted by law*." 735 ILCS 5/2-204 (emphases added).

Illinois law further states that "(a) Personal service of summons *may be made upon any party outside the State* . . . (b) The service of summons shall be made *in like manner as service within this State*." 735 ILCS 5/2-208(a)(b) (emphases added).

The long arm statute of Illinois prescribes that "[s]ervice 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." 735 ILCS 5/2-209(d). The statute further provides that "Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law." 735 ILCS 5/2-209(g).

In Illinois, Deputy Sheriff Cox's return is *prima facie* proof of service. Isaacs v. Shoreland Hotel, 40 Ill. App.2d 108, 110-1, 188 N.E.2d 776, 778 (Ill. App. Ct. 1963). "Where the agency of the person named on the return is disputed, *the defendant has the burden of proving* that the individual served was not a proper person to receive service." Acosta v. Ashley's Quality Care, Inc., No. 16 C 5393, 2018 WL 1621021, ¶ 2, (N.D. Ill. 2018) (emphasis added), citing to Island Terrace Apartments v. Keystone Serv. Co., 35 Ill. App. 3d 95, 98, 341 N.E.2d 41, 44 (Ill. App. Ct. 1975).

The burden upon Respondent is high; "To attack a default judgment for lack of personal jurisdiction, *the challenging party must produce evidence* impeaching the return of service *by clear and convincing evidence.*" Charles Austin, Ltd. v. A-1 Food Services, Inc., 2014 IL App (1st) 132384, ¶16, 23 N.E.3d 534, 537 (Ill. App. Ct. 2014) (emphasis added); see also Paul v. Ware, 258 Ill. App. 3d 614, 618, 630 N.E.2d 955, 958 (Ill. App. Ct. 1994). "In making this determination, the Court takes into account all the circumstances surrounding the service and the relationship of

the person served to the party named in the complaint." Bober v. Kovitz, Shifrin, Nesbit, No. 16 C 5393, 2005 WL 2271861, ¶5 (2005) (internal citation omitted). "Courts are required to indulge every presumption in favor of the return of service." Freund Equip., Inc. v. Fox, 301 Ill. App. 3d 163, 166, 703 N.E.2d 542, 545 (Ill. App. Ct. 1998). A defendant's uncorroborated testimony that he was never served *is insufficient to overcome the presumption of service*. Id. (Emphasis added.)

Under Illinois law, a plaintiff is not required to serve solely the registered agent of a company, or even an officer, member, or manager. "[S]ervice on any agent, *including a secretary or receptionist*, is generally sufficient to serve the corporation." In re Subpoena to Huawei Techs. Co., Ltd., 720 F. Supp. 2d 969, 976 (N.D. Ill. 2010) (emphasis added). The fact that someone was directed not to accept service or was not authorized to do so does not mean that he or she fails to qualify as a corporate agent as described in Section 5/2-204. Bober, 2005 WL 2271861 at ¶5.

Here, Appellant's underlying Verified Complaint properly alleged that Mike was the managing member of Respondent and that Mike continued to operate the La Quinta as if it were under his personal ownership. (R. p. 15, ¶ 4.) Deputy Sheriff Cox also 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 . . . (R. p. 29.) (Emphasis added.)

Cox's affidavit of service clearly states that he knows that Mike is affiliated with Respondent, *in addition* to being the father of Sanjay H. Mishra ("Sanjay"). Thus, *prima facie* evidence of proper service was established, every reasonable presumption is in favor of the return of service, and the

burden shifts to the Respondent to prove otherwise by clear and convincing evidence. See Acosta and Charles Austin, Ltd., *supra*.

As an initial matter, the Lower Court erroneously concluded that "[t]he burden is upon the plaintiff to prove the existence of an agency relationship." Hickey v. Union Nat'l Bank & Trust Co., 190 Ill. App.3d 186, 547 N.E.2d 4, 8 (Ill. App. Ct. 1989). (R. p. 8.) Hickey, however, is inapposite and inapplicable because the facts of the case relate to a foreclosure on a trust deed and a default judgment was not entered in that matter. Further, Hickey's holding that the burden is upon the plaintiff was without any prior case law or treatise in support of its premise.

The Lower Court compounded its error by holding that "the party asserting personal jurisdiction has the burden to establish such jurisdiction where it is challenged by a preponderance of the evidence" in reliance on Finnegan v. Les Pourvoiries Fortier, Inc., 205 Ill. App. 3d 17, 24-25, 562 N.E.2d 989, 993-994 (Ill. App. Ct. 1990). Finnegan, however, was pointedly overturned eight years later. See Stein v. Rio Parismina Lodge, 296 Ill. App. 3d 520, 524, 695 N.E.2d 518, 521 (Ill. App. Ct. 1998) ("As the court in Finnegan . . . used an erroneous standard of review, we decline to follow the part of Finnegan inconsistent with both this opinion and the long line of Illinois cases partially cited in Finnegan.").

Moreover, Acosta, Charles Austin, Ltd., Paul, Bober, and Stitch-Tec Co., Inc. (*infra*) were decided more recently than Hickey and Finnegan and all hold that the burden is on the defendant to disprove an agency relationship by clear and convincing evidence. Even Island Terrace Apartments, which was decided 15 years prior to Hickey and Finnegan, held that the burden is on the defendant to prove that the individual served was not a proper person. Island Terrace Apartments, 35 Ill. App. 3d at 98, 341 N.E.2d at 44.

The Lower Court also erred in citing to Radosta v. Devil's Heard Ski Lodge and holding that service could only be effectuated "(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". Radosta v. Devil's Heard Ski Lodge, 172 Ill. App.3d 289, 292, 526 N.E.2d 561, 563 (Ill. App. Ct. 1988). The Illinois statute also prescribes service "2) *in any other manner now or hereafter permitted by law*." 735 ILCS 5/2-204 (emphasis added). Radosta is inapposite because that court found that "defendants are not amenable to service of process under the long-arm statute because *they are not alleged to have committed a tortious act in Illinois* . . ." Radosta, 172 Ill. App.3d at 292, 526 N.E.2d at 563 (emphasis added). In direct contrast here, Appellant unequivocally alleges in the Verified Complaint that tortious acts occurred in Illinois.

Nevertheless, just one self-serving affidavit from Sanjay was submitted. Sanjay stated merely that "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 . . ." (R. pp. 83-84.) He also stated that "Mike Mishra was not, and never has been a Member, 'officer, managing or general agent, nor. [sic] any other agent authorized by appointment of [sic] by law to receive service of process . . .' for the Company as described in Rule 4(d)(3), SCRCP," none of which is required under Illinois law to properly effectuate service on a defendant located out of state. (R. p. 84, ¶ 9.) Yet Sanjay's statement is also conclusory without providing any documents relied upon, e.g. certified secretary of state filings, etc. Indeed, the affidavit still failed to deny that Mike was not an employee of Respondent, let alone that Mike never held himself out to be an agent. Moreover, Sanjay's affidavit failed to state why Mike was at the hotel and voluntarily accepted service if he was neither an employee of Respondent nor holding himself out to be an agent thereof.

Regardless, Sanjay's uncorroborated affidavit and testimony is insufficient to overcome the presumption of service. See Freund and Paul *supra*, see also Davis v. Dresback, 81 Ill. 393, 395 (Ill. 1876) ("If the return of a sheriff can be impeached and a judgment and decree vacated upon the evidence alone of the defendant, who has been served with process, that stability which characterizes our judicial proceedings will be lost and a wide door will be opened for the temptation to commit perjury [sic] by the unscrupulous."). Further, Respondent did not present any other evidence at the hearing, by testimony or otherwise, regarding Mike's relationship to Respondent and his involvement in its operations. Thus, Respondent's sole and woefully lacking affidavit is not clear and convincing evidence disproving proper service.

Somewhat confusingly, the Lower Court found that Appellant "offered no affidavit contradicting" the facts that Mike was never a member, officer, managing or general agent, or agent authorized to receive service of process. (R. p. 11.) Of course, one need not be any of these to be a proper person for service under Illinois law, and only an affidavit from Mike himself could support or contradict the sole member's affidavit. Nonetheless, Appellant presented additional exhibits to the trial court that showed Mike acting as an agent/employee of Respondent or holding himself out to be an agent/employee. Exhibit A, a Facebook post from an independent third party, was acknowledged by the Lower Court as identifying Mike as the owner of the La Quinta. (R. p. 58; R. p. 47, lines 20-21.) Exhibit B, Mike's own LinkedIn website profile, identifies him as Managing Director of Respondent. (R. pp. 59-60.) Exhibit C is an article from The Sun News newspaper located in Myrtle Beach, South Carolina, written by David Wren on February 26, 2012. (R. pp. 61-65.) The article stated that Mike signed a utility easement agreement in December 2011

in which he represented that he was the managing member of Respondent.[2] (R. pp. 63.) At the end of the hearing, the Lower Court kept all exhibits submitted by Appellant. (R. p. 56, lines 8-9.)

"An agent is one appointed by a principal as his representative and to whom the principal confides the management of some business to be transacted in the principal's name, or on his account, and who brings about or effects legal relationships between the principal and third parties." Colleton Cty. Taxpayers Ass. v. Sch. Dist. of Colleton Cty., 371 S.C. 224, 239, 638 S.E.2d 685 (2006). Since Respondent never disclaimed the easement in any manner, Mike is undoubtedly an agent of Respondent authorized to conduct legal business because the easement furthered a legal relationship and business agreement with a third-party. Moreover, Mike told *The Sun News* that he was managing the hotel because its owners live in North Carolina. Respondent raised no objection or counterargument.[3] During the hearing, the Lower Court stated, "I'll tell you, it is my impression that Mr. Mishra was an agent." (R. p. 55, lines 6-7.)

More bewildering, the Lower Court found 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." (R. p. 11.) That issue was not raised in (1) Respondent's Notice of Defense and Response to Domesticate Foreign Judgment; (2) Sanjay's affidavit; (3) Respondent's Memorandum in Opposition Plaintiff's Motion for Entry of Foreign Judgment; or (4) at the hearing. There is no evidence to support such a conclusion.

Nevertheless, it is clear that Mike knew the purpose of being served with a summons and complaint. This Court may take judicial notice that the South Carolina Secretary of State's Business Entities Online database shows that Mike is *currently* the registered agent for (1) IVS,

[2] The utility easement referenced is recorded with the Horry County Register of Deeds as Document No. 2012000003110; Book/Page 3561/862.
[3] Sanjay Gupta stated in his affidavit that he is one of the Respondent's owners.

LLC, (2) MVSI, LLC, (3) SVI, LLC, and (4) Atlantic Palms Resort Property Owners' Association, Inc. ("Atlantic Palms") *despite his death in 2018*.[4] Aside from the obvious difficulty in effectuating direct service, each entity lists its registered address for service as "1601 HWY 17 N MYRTLE BEACH, South Carolina 29582," which is the location of the La Quinta where Mike was served with the Summons and Verified Complaint in the Illinois case. (R. p. 29.) Additionally, this Court can take judicial notice that the Fifteenth Judicial Circuit's Public Index shows Haricharan J. Mishra as a party to a remarkable forty-eight (48) cases since 1995, including being named as a defendant in thirty-six (36) of them.[5] The Index also appears to show that Mike was served as registered agent for Atlantic Palms in two cases. Thus, the Court's conclusion that Mike did not understand the legal import of the service of summons is groundless.

On balance, the Appellant's Verified Complaint, Cox's Affidavit of Substitute Service, exhibits presented, and Mike's history as a registered agent as well as a litigant far outweighs Respondent's lone, insufficient affidavit. Even without the Lower Court explicitly stating on the record that it believed Mike to be an agent for Respondent, Respondent has not met its burden of presenting clear and convincing evidence that service was not proper. Therefore, service of process on Respondent was properly effectuated through Haricharan "Mike" J. Mishra and this Court should reverse the order of the trial court.

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[4] This Court may take judicial notice of the Secretary of State's public records showing that IVS, LLC, MVSI, LLC and SVI, LLC remain in good standing while Atlantic Palms was administratively dissolved on October 31, 2019.

[5] Haricharan J. Mishra was named as a party in litigation 23 times, including 18 times as a defendant. When his name was misspelled as "Haricharin", he was named as a party 5 more times, including 4 times as a defendant. When named as Mike Mishra, he was a party an additional 20 times, including 14 times as a defendant.

B. The Lower Court erred in finding that personal jurisdiction could not be exercised over Respondent even if service was properly effectuated.

Personal jurisdiction over Respondent exists pursuant to Illinois law. The Lower Court erred in its dicta, however, by applying inapposite case law to unsupported facts. Consequently, this Court should reverse.

a. The Lower Court relied upon erroneous facts in its Order.

This case involves a challenge to the domestication of a default judgment due to lack of personal jurisdiction, so this Court is not called upon to review the merits of the underlying claim. Pitts, 389 S.C. at 163, 698 S.E.2d at 629. Illinois law mandates that "a court accept as true all uncontradicted, well-pleaded allegations in plaintiff's complaint, as well as facts contained in uncontested affidavits denying jurisdiction." Stitch-Tec Co., Inc. v. Royal Banks of Missouri, 303 Ill. App. 3d 293, 296-7, 707 N.E.2d 271, 274 (Ill. App. Ct. 1999). "[A]ny conflicts that exist in the affidavits and pleadings *must be resolved in the plaintiff's favor*, even though contrary allegations in the defendant's pleadings exist." Id. at 297 (emphasis added). If any material evidentiary conflicts exist, however, the trial court must conduct an evidentiary hearing to resolve those disputes. Russell v. SNFA, 408 Ill. App. 3d 827, 831, 946 N.E.2d 1076, 1081 (Ill. App. Ct. 2011).

During the hearing on December 4, 2019, the Lower Court stated, "I'll tell you, it is my impression that Mr. Mishra was an agent. What I need to know is whether or not service on the agent of the LLC in South Carolina is sufficient to confer personal jurisdiction of the LLC in Illinois." (R. p. 55, lines 6-10.) An evidentiary hearing was not conducted. The Lower Court's Order, however, relied on factual inaccuracies instead of properly considering the facts as pled in the Verified Complaint.

The pertinent facts in the underlying Verified Complaint, sworn to under oath by Appellant under penalty of perjury, specifically state:

1. "On information and belief, [Mike] is the managing member of [Respondent]." (R. p. 15, ¶ 4.)
2. "[Mike] has continued to operate the La Quinta as if it were under his personal ownership." (R. p. 15, ¶ 4.)
3. "On or about November 13, 2011, *[Appellant] was at her home in Glenview, Illinois*, when she received a call from an employee of the La Quinta named "Cynthia," last name unknown." (R. p. 16, ¶ 8.) (Emphasis Added.)
4. "Cynthia asked [Appellant] for her credit card information, which [Appellant] gave to Cynthia." (R. p. 16, ¶ 10.)
5. "[Appellant] explicitly told Cynthia that she was only giving permission for her credit card to be charged for renting one room for two nights." (R. p. 16, ¶ 11.)
6. "Cynthia indicated that she understood and that [Appellant]'s credit card would not be charged for more than two nights . . ." (R. p. 16, ¶ 11.)

Conversely, and incorrectly, Respondent alleged "[t]he 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." (R. p. 40, ¶ 3(c).) Respondent also alleged falsely without any evidence that "Plaintiff traveled from Illinois to South Carolina, executing a contract with the Defendant." (R. p. 79.) The verified facts have never been challenged. To the contrary, Respondent's counsel was obviously confused when he stated during the hearing that "the plaintiff called her friend in Illinois . . ." (R. p. 53, lines 18-19.) Sanjay's affidavit offered no insight into the underlying transaction.

The Lower Court also improperly reviewed the merits of the underlying matter by reciting materially false facts in its order:

1. "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." (R. p. 12.)
2. "Defendant explains that *Plaintiff traveled from Illinois to South Carolina*, executing a contract with Defendant . . . [i]n 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*. (R. p. 12.) (emphases added).

Even if a genuine conflict of fact exists, which there is not, Stitch-Tec Co., Inc. requires any conflict(s) to be resolved in Appellant's favor. When the undisputed facts are applied to the factors prescribed by Illinois law, it is apparent that the Lower Court's Order should be reversed.

b. The Lower Court applied inapposite case law to the erroneous facts.

"The 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 (2011). In Illinois, the long arm statute provides in pertinent part:

> (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;
> (2) The commission of a tortious act within this State;
>
> * * * * * * *
>
> (7) The making or performance of any contract or promise substantially connected with this State.
>
> * * * * * * * * *

> (f) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon subsection (a).

735 ILCS 5/2-209(a)(1)-(a)(2), (a)(7), (f) (West 2016).

The precedential case of Walrus Mfg. Co. v. New Amsterdam Cas. Co., examining the original long-arm statute and predecessor to 735 ILCS 5/2-209, found that "[i]t is perfectly clear that the purpose of this section is to provide a means of personal service over the class of cases therein provided for, so that the effect of any judgment shall be final in case it shall be further necessary to enforce the judgment in some other State." Walrus Mfg. Co. v. New Amsterdam Cas. Co., 184 F. Supp. 214, 217 (S.D. Ill. 1960). The court further noted the Illinois legislature's Joint Committee Comments regarding the intent of the long-arm statute that state:

> This section is wholly new. It is in line with the general trend to expand jurisdiction over non-residents having 'contacts, ties or relations' with the State. The non-resident motorist statute (citation omitted) is now almost universal * * * A number of states have statutes giving jurisdiction where individuals, partnerships or corporations engage in business activities or have business transactions within the state which do not necessarily amount to the doing of business within the state in the traditional sense.

Id. The court ultimately found that "it is obvious that this section was passed by the General Assembly for the specific purpose of enlarging in personam jurisdiction and not for the purpose of decreasing any in personam jurisdiction that the Illinois courts previously had . . ." Id. at 218.

In all cases involving a nonresident defendant, before a court may subject the defendant to a judgment *in personam*, "due process requires that the defendant have certain minimum contacts with the forum State such that maintenance of the suit there does not offend 'traditional notions of fair play and substantial justice.' " Wiles v. Morita Iron Works Co., 125 Ill.2d 144, 150, 530 N.E.2d 1382, 1385 (1988) (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). In determining whether jurisdiction conforms with notions of fair play and substantial justice, this

court must consider: (1) Illinois' interest in adjudicating the dispute; (2) Appellant's interest in obtaining convenient and effective relief; (3) the interstate judicial system's interest in obtaining the most effective resolution of controversies; and (4) the states' shared interest in furthering social policies. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980). "[T]he foreseeability that is critical to due process analysis is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." Id. at 297.

By "purposefully availing" itself of opportunities in the forum State, such as by purposefully directing itself to forum residents, a defendant subjects itself to the possible exercise of that forum's jurisdiction. Wiles, 125 Ill.2d at 151. Only in situations "where the defendant 'deliberately' has engaged in significant activities within a State [citation] or has created `continuing obligations' between himself and residents of the forum [citation] [has] he manifestly * * * availed himself of the privilege of conducting business there, and * * * it is not presumptively unreasonable to require him to submit to * * * litigation in that forum * * *." Id. citing to Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475-76 (1985).

The exercise of specific personal jurisdiction over a nonresident defendant who "purposefully directs" its activities toward the forum *is permitted even if only for single or occasional acts in the forum state*. Russell v. SNFA, 2013 IL 113909, ¶ 41 (Ill. 2013) (emphasis added). "First, the state has a manifest interest in providing its residents with a convenient forum for redressing injuries caused by nonresidents." Id. "Second, when a nonresident defendant purposefully derives benefit from its interstate activities in other jurisdictions *it would be unfair* to allow that defendant to avoid any legal consequences that proximately arose from those same activities." Id., citing to Burger King Corp., 471 U.S. at 473-74 (emphasis added).

"A two-step analysis is applied to determine whether the court acquires personal jurisdiction pursuant to the long-arm statute." Kalata v. Healy, 312 Ill. App. 3d 761, 765, 728 N.E.2d 648, 652 (Ill. App. Ct. 2000) (citations omitted). "The first step is to determine if jurisdiction is proper under the specific language used by section 2–209." Id. "If the answer is no, the inquiry ends; but if jurisdiction is found to be proper under the statute, then we reach the second step and determine whether the exercise of jurisdiction comports with due process of law." Id.

"The plaintiff bears the burden of making a *prima facie* showing that the trial court has personal jurisdiction over a nonresident defendant." McNally v. Morrison, 408 Ill. App. 3d 248, 254, 951 N.E.2d 183, 189 (Ill. App. Ct. 2011). This requirement has been liberally construed by Illinois courts *in favor of the party asserting jurisdiction*. In re Marriage of DiFiglio, 2016 IL App (3d) 160037, ¶ 14 (Ill. App. Ct. 2016) (emphasis added). "[I]f a plaintiff has made a *prima facie* case for *in personam* jurisdiction over a defendant, a court of review must then determine whether the defendant's affidavits present grounds for finding that personal jurisdiction does not exist." Kalata, 312 Ill. App. 3d at 765, 728 N.E.2d at 652 (citations omitted). "If a defendant's affidavits present grounds that would preclude a finding of personal jurisdiction, then this court must remand the case to the Lower court for an evidentiary hearing." Id. Where a reviewing court finds that defendant's affidavits did not present such grounds, no evidentiary hearing is needed. Id.

For example, in Kalata, a California defendant called the plaintiff in Illinois "in an attempt to persuade her to form a joint venture to invest money in various projects." Id. at 763, 728 N.E.2d at 650. After agreeing and sending money to California from Illinois, the plaintiff eventually discovered that defendant had withdrawn all of the funds and that the account was in defendant's name only, not in the name of the joint venture. The plaintiff's repeated demands upon defendant for the return of the money were unsuccessful and, consequently, she filed suit in Illinois alleging

breach of contract, quasi-contract, and fraud. The trial court granted defendant's motion to quash service, but the Appellate Court ultimately reversed and remanded because (1) a *prima facie* case was made that defendant entered into a contract substantially connected with Illinois and therefore personal jurisdiction was established under section 2–209(a)(7); (2) the jurisdictional requirement was satisfied where the defendant performs an act or omission that causes an injury in Illinois and the plaintiff alleges the act was tortious in nature under section 2–209(a)(2); (3) defendant's telephone and mail communications to negotiate and execute the joint venture agreement with plaintiff satisfied the long-arm statute under section 2–209(a)(1); and (4) defendant's affidavits did not present such grounds that would preclude a finding of personal jurisdiction and therefore no remand was necessary to hold an evidentiary hearing on the facts of the case.

Here, subsection 735 ILCS 5/2-209(a)(1)(2)(7) of the long-arm statute are also satisfied, individually or jointly, based on any or all of the facts alleged in the causes of action within the underlying Verified Complaint.

i. Personal jurisdiction exists due to a contract substantially connected to Illinois.

The Illinois Appellate Court has repeatedly held that the existence of an oral contract and the exchange of funds between parties, formed as a result of negotiations over the phone between a non-resident and a resident in Illinois, was sufficient to create a *prima facie* case of a contract substantially connected to Illinois to establish personal jurisdiction pursuant to 735 ILCS 5/2-209(a)(7). Kalata, 312 Ill. App. 3d at 766, 728 N.E.2d at 653; see also Estate of Isringhausen ex rel. Isringhausen v. Prime Contractors and Assocs., Inc., 378 Ill. App. 3d 1059, 1068, 883 N.E.2d 594, 602 (Ill. App. Ct. 2008) ("The instant case is similar to Kalata . . . in that it too involved negotiations and correspondence between an Illinois resident and a nonresident defendant that culminated in a contract.").

Here, Appellant has made a *prima facie* case by alleging that the Respondent initiated the phone call to her in Illinois, stated the offer for two (2) nights, Appellant accepted the offer, and Respondent performed in furtherance of the contract by charging Appellant's credit card. In fact, Respondent conceded existence of such a contract in its Memorandum, as well as in the Order it drafted, that "the Defendant executed its contract with the Plaintiff" and "the Defendant charged the Plaintiff's card for payment under the contract." (R. p. 79; R. p. 12) Thus, personal jurisdiction was established and no further inquiry is necessary.

ii. Personal jurisdiction exists given Respondent's tortious acts occurred in Illinois.

In determining whether a tortious act has been committed pursuant to 735 ILCS 5/2-209(a)(2), the focus "is not on the ultimate question of whether the defendant's acts or omissions were tortious but, rather, on whether *the plaintiff has alleged* that the defendant 'is the author of the *acts or omissions within the State*.'" Kalata, 312 Ill. App. 3d at 766, 728 N.E.2d at 653 (emphases added) (citations omitted). Here, the Verified Complaint alleges that the Respondent solicited and/or received money from Appellant in Illinois, which was ultimately converted or obtained in a scheme to defraud her, and that the injury occurred in Illinois. Thus, Appellant made a *prima facie* case and no further inquiry is required.

iii. Personal jurisdiction exists because Respondent transacted business in Illinois.

To find personal jurisdiction under 735 ILCS 5/2-209(a)(1), Appellant must show "(1) that defendants transacted business in Illinois, (2) that their cause of action arose from this transaction of business and (3) that personal jurisdiction is consistent with due process." Mandalay Assocs. Limited P'ship v. Hoffman, 141 Ill. App. 3d 891, 894, 491 N.E.2d 39, 42 (Ill. App. Ct. 1986).

The factors this Court considers in determining whether Respondent sufficiently transacted business in Illinois are: (1) who initiated the transaction, (2) where the contract was entered into, and (3) where the performance of the contract was to take place. See Stitch-Tec Co., Inc., 303 Ill. App. 3d at 297. No single factor is controlling, but rather, each is significant. Id.

Here, Respondent clearly transacted business in Illinois and derived benefit from its interstate activity. Specifically, Respondent purposefully availed itself of Illinois because: (1) it solicited Appellant by initiating a phone call to negotiate the contract; (2) the contract was entered into in Illinois because the last act to form the contract – Appellant's acceptance – occurred there; and (3) performance took place in Illinois upon Respondent's obtaining of Appellant's credit card number and acceptance of payment. Additionally, Appellant's causes of action arose from Respondent's transaction(s) of business when her credit card was charged on a near daily basis from November 2011 to January 2012.

As to the third prong under § 2-209(a)(1), that personal jurisdiction is consistent with due process, three criteria are considered in determining if the federal due process standard has been satisfied: (1) whether the nonresident defendant had "minimum contact" with the forum state such that there was "fair warning" that the nonresident defendant may be hailed into a forum court; (2) whether the action arose out of or related to the defendant's contacts with the forum state; and (3) whether it is reasonable to require the defendant to litigate in the forum state. Kalata, 312 Ill. App. 3d at 768-9, 728 N.E.2d at 654 (citations omitted).

Here, Respondent had fair warning of being hailed into Illinois court based on the initial phone call to Illinois and the resulting contract, which did not include a choice-of-law provision of South Carolina. See Estate of Isringhausen, 378 Ill. App. 3d at 1066 ("a choice-of-law provision in the contract is a relevant, though not a determinant, factor in establishing jurisdiction"). Further,

every subsequent unauthorized charge to Appellant's credit card located in Illinois was a minimum contact by Respondent that came with its own fair warning, especially after notification of the ongoing fraudulent transactions. Moreover, Respondent had fair warning after the police department in Glenview, Illinois contacted the Respondent to investigate the fraudulent charges. (R. p. 18, ¶ 21.)

Additionally, all causes of action and resulting injuries occurred in Illinois and arose out of the Respondent's contact with Illinois. Thus, it would be reasonable for Respondent to litigate in Illinois because the State has a strong interest in adjudicating a dispute where an Illinois resident was targeted and victimized. See Estate of Isringhausen, 378 Ill. App. 3d at 1068. Further, Appellant's interest in obtaining convenient and effective relief in Illinois favors her because: a) she lived just seven (7) miles from the Cook County courthouse in Skokie, Illinois; b) retained a local attorney of her own choosing; and c) it would avoid additional costs associated with frequent travel to an unfamiliar state. Moreover, it would be unreasonable to require the investigating Glenview, Illinois police officer to travel to South Carolina to give testimony.

On the other hand, South Carolina would not have much interest in adjudicating this dispute where its own resident(s) appear to use evasion tactics to avoid being properly served with process. Respondent's registered agent's address is 201 S. Ocean Boulevard in North Myrtle Beach, but the actual location is a residential condo building and a specific unit number has never been listed since its registration in 2008. As a result, anyone attempting to serve notice or process to the Respondent, such as the forum state's own Horry County Sheriff, is forced to find the Respondent at an alternate location such as the principal place of business. Sanjay was served in this matter at nearly 9:00 p.m. on Thursday, August 29, 2019, at 3810 Essex Garden Lane, Raleigh, North Carolina. (R. p. 38.) His affidavit was notarized in Wake County, North Carolina (R. p. 84.) Thus,

Respondent violates Section 33-44-108(b) because Sanjay is plainly not an individual resident of South Carolina.

Likewise, the judicial system's interest in obtaining the most effective resolution would be best served by allowing Appellant to be made whole in the forum state where the cause of action arose. Appellant should not be compelled to expend additional time and money to travel when Respondent intentionally caused an injury to her. Similarly, the states' shared interest in furthering social policies is best served by thwarting defendants from shielding themselves behind a telephone or computer screen to avoid defending lawsuits in a different state. Finding personal jurisdiction here serves traditional notions of fair play and substantial justice.

The Lower Court erred by relying upon numerous inapposite cases to support the position that Respondent failed to meet the "doing business" test in Illinois. For example, in Huck v. N. Ind. Pub. Serv. Co. ("NIPSCO"), Huck was killed at his home *in Indiana* when the antenna that he was installing touched a power line owned by NIPSCO. Huck v. Northern Indiana Public Service Co., 117 Ill. App. 3d 837, 453 N.E.2d 1365 (Ill. App. Ct. 1983). The Appellate Court found that Illinois is not sufficiently interested in that litigation to overrule the defendant's objection to jurisdiction because: (1) NIPSCO did not solicit business in Illinois; (2) the plaintiff's cause of action arose from events occurring solely in Indiana; and (3) any witnesses or evidence were in Indiana. Id. at 843, 453 N.E.2d at 1371.

The Lower Court also erred in relying on Stephens, which held that "financial benefits accruing to a defendant from a collateral relation to the forum state" will not "support jurisdiction absent constitutionally cognizable contacts making it both fair and reasonable that the defendant defend the lawsuit in that forum." Stephens v. N. Ind. Pub. Serv. Co., 87 Ill. App. 3d 961, 966, 409 N.E.2d 423, 427 (Ill. App. Ct. 1980). Stephens is nearly identical to Huck because the plaintiff

was an Indiana resident, injured in Indiana, who attempted to file suit in Illinois against NIPSCO, an Indiana public utility.

Similarly, in Loggans v. Jewish Community Center of Milwaukee, a Wisconsin company was sued by an Illinois plaintiff for an injury that occurred in Wisconsin while a visitor at a camp where she had worked eight (8) years earlier. Loggans v. Jewish Comm. Ctr. of Milwaukee, 113 Ill. App. 3d 549, 554, 447 N.E.2d 919, 923 (Ill. App. Ct. 1983). The Loggans court held that "jurisdiction may be acquired over a non-resident *for a cause of action unrelated to the corporation's activities in this State* so long as the corporation is doing business in Illinois." Id. (Emphasis added.) Because the plaintiff was no longer employed by the defendant, she was not a camper, the camp was not doing business in Illinois, and the injury occurred in Wisconsin, there was no personal jurisdiction. Here, Appellant's injuries arose in Illinois directly as a result of Respondent's solicitation, so Loggans is also inapplicable.

Lastly, the Lower Court erred in relying upon Cook Assocs., Inc. v. Lexington United Corp., 86 Ill. App. 3d 909, 407 N.E.2d 944 (Ill. App. Ct. 1980). That case, is like Loggans in that the defendant's activities in Illinois were not so substantial "that it could have reasonably anticipated being haled into court here to defend a cause of action *unrelated to those activities*." Id. at 913, 947 (emphasis added). In fact, the Illinois Supreme Court affirmed by stating the defendant "is not amenable to service under the long-arm statute because the cause of action *did not arise from the transaction of business in Illinois*." Cook Assocs., Inc. v. Lexington United Corp., 87 Ill.2d 190, 198 (Ill. 1981). Unlike Cook, Appellant's damages were sustained in Illinois as a result of Respondent's direct contact with here in Illinois.

In sum, Respondent availed itself of Illinois jurisdiction by contacting Appellant directly at her residence and fraudulently charging Appellant's credit card on a near daily basis over the

course of two months. The trial court's order was based upon both flawed legal analysis and inaccurate facts and it should be reversed.

CONCLUSION

Based upon the foregoing authorities and argument, Appellant Alison Meyers respectfully submits that the Lower Court's order should be reversed and the trial court directed to enter the Illinois Judgment.

Respectfully submitted,

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September 28, 2020

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

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Sep 28 2020
SC Court of Appeals

Case No. 2020-000557

Alison Meyers, ……Appellant,

v.

Shiram Hospitality, LLC, ……..……Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Appellant complies with Rule 211(b) of the South Carolina Appellate Court Rules.

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