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

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

Alison Meyers, ...Appellant/Petitioner,

v.

Shiram Hospitality, LLC, ...Respondent.

PETITION FOR REHEARING

Stephanie H. Burton
Gibbes Burton, LLC
308 East St. John St.
Spartanburg, SC 29302
(864) 327-5000

Counsel for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

As authorized by Rule 221 of the South Carolina Appellate Court Rules, Appellant Alison Meyers respectfully requests that the Court grant oral argument in this case or modify its May 18, 2022 Opinion because the Court has overlooked and misapplied the facts in evidence and the holding of Russell v. SNFA, 987 N.E.2d 778, 786 (Ill. 2013).

I. The Court misapplies the facts in evidence and applies facts that are not in evidence.

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

> Here, the LLC's only business is a La Quinta Hotel located in Horry County, South Carolina. The LLC has never owned property outside of this location and does not have a presence in Illinois. The LLC, through La Quinta Hotel, provides services to guests, collects payments, and deposits those payments all within Horry County. (Opinion No. 2022-UP-014 at p. 3.)

The Court, however, does not elaborate on the source(s) of the foregoing statements. The only submission in the record that contains this information is the Affidavit of Sanjay H. Mishra. That affidavit, however, does not offer into evidence that: 1) the LLC does not advertise in State of Illinois, including through its internet website; 2) that Meyers was physically in the state of South Carolina or that the payment collected was not from Illinois; and 3) if called to testify as to the veracity of the facts and claims in the affidavit that Sanjay H. Mishra would be able to do so competently and to the best of his knowledge.

Further, the Opinion also states that the action "arose out of Meyers's offer to pay for a friend's stay at La Quinta Hotel using her credit card." (Opinion No. 2022-UP-014 at p. 3.) Yet again, there are no facts in evidence to support this Court's finding, let alone that Appellant made an *offer* to pay for a friend's stay. Rather, the uncontested Verified Complaint of Alison Meyers states under oath that "Alison was at her home in Glenview, Illinois, when she received a call from

an employee of the La Quinta named 'Cynthia,' last name unknown," that "Cynthia asked Alison for her credit card information," and that "Alison explicitly told Cynthia that she was only giving permission for her credit card to be charged for renting one room for two nights." (R. p. 16, ¶ 8, ¶ 9, ¶ 11.) These attested to facts, however, were never disputed by Mishra's Affidavit, especially the fact that the LLC reached out directly to Meyers in Illinois. If anything, Respondent falsely alleged and argued, without any evidence in the record, that "Plaintiff traveled from Illinois to South Carolina, executing a contract with the Defendant." (Record on Appeal 079.)

Moreover, the Verified Complaint explicitly states that "[f]rom November 15, 2011 to December 1, 2011, Alison's credit card continued to be charged almost daily in amounts ranging from $47.39 to $58.24" and "[f]rom on or about December 2, 2011 to December 27, 2011, the La Quinta continued to charge Alison's credit card almost daily (and in some cases twice daily) in amounts ranging as high as $47.39." (R. p. 17, ¶ 15, ¶ 18.) It also states that "[f]rom on or about December 27, 2011 to January 5, 2011, the La Quinta continued to charge Alison's credit card almost daily (and in some cases twice daily) in amounts ranging as high as $47.39." (R. p. 18, ¶ 20.) These attested to facts are undisputed by Mishra's Affidavit.

Based on the foregoing, there is evidence in the record that should be used by this Court demonstrating Respondent's contacts with Illinois and this Court should reverse the trial court's decision denying Appellant's motion for entry of foreign judgment.

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

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

incorrect because it is clear that as a matter of law Respondent had sufficient minimum contacts with Illinois for the court there to properly exercise jurisdiction.

The Court's last statement in its Opinion is that "because the LLC did not have sufficient minimum contacts *such that it was fairly warned it may be haled into an Illinois court*, there is evidence to support the Illinois court lacked personal jurisdiction over the LLC." (Opinion No. 2022-UP-014 at p. 3.) The Court, however, does not correctly apply Russell v. SNFA to the facts in evidence – and not in evidence – in this matter.

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

The court in Russell stated that: "The Seventh Circuit has repeatedly held that tortfeasors must expect to be haled into Illinois courts for torts where the injury took place there." Russell, 987 N.E.2d at 833, citing ABN AMRO, Inc. v. Capital International Ltd., 595 F. Supp. 2d 805, 828 (N.D. Ill. 2008). In ABN AMRO, the federal court found that "there is more than just a contract between the parties, and more than just actively pursued negotiations. Plaintiff alleges intentional torts. That makes the personal jurisdiction inquiry somewhat simpler. . . not only did the injury allegedly occur in Illinois, Plaintiff alleges that Capital, Sarco, and Sarco's sales agents

sought out ABN to solicit it to enter the deal. Those actions constitute sufficient contacts with Illinois to warrant exercising personal jurisdiction over them in a case based on those contacts." ABN AMRO, Inc., 595 F. Supp. 2d at 828.

The facts in this case, show that Respondent purposefully directed its activities to the State of Illinois (including advertising), called the State of Illinois, entered into a contract in the State of Illinois, and collected/received payments sent from the State of Illinois without authorization on a daily basis. In addition, the verified Complaint alleges intentional torts of conversion and fraud resulting from Respondent's contact with Meyers in Illinois. Conversely, there is no evidence in the Record otherwise. Russell demonstrates that this activity is sufficient to establish the required minimum contacts and the Court's Opinion should be amended to reverse the decision of the trial court.

CONCLUSION

Based upon the foregoing authorities and argument, Appellant Alison Meyers respectfully submits that this Court Appeals overlooked these important legal considerations and misapplied the holdings of the Illinois opinions to the undisputed facts presented in this case. The Court should reconsider its decision, set the case for oral argument, or amend Opinion 2022-UP-014 to reverse the trial court's decision to deny her motion for entry of a foreign judgment.

Respectfully submitted,

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Case No. 2020-000557

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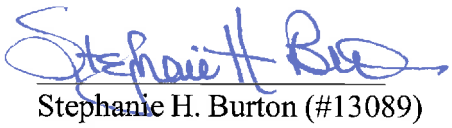
PROOF OF SERVICE

I certify that I have served the Appellant's Petition for Rehearing on Respondent Shiram Hospitality, LLC by United States mail and by email, on June 2, 2022, addressed to its attorneys of record, Fred B. Newby, Sr. and C. Scott Masel, 4593 Oleander Drive, Myrtle Beach, South Carolina 29577, fnewby@newbylaw.com, smasel@newbylaw.com.

June 2, 2022



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RECEIVED
Jun 02 2022
SC Court of Appeals

June 2, 2022
By Email and United States Mail

The Honorable Jenny Abbott Kitchings
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P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

Re: Alison Meyers v. Shiram Hospitality, LLC
Appellate Case No.: 2020-000557

Dear Ms. Kitchings:

We are enclosing for filing the original and six copies of the following:

1. Petition for Rehearing; and

2. Proof of Service for same.

We are also enclosing our firm's check in the amount of $50.00 for the required filing fee. We would appreciate you filing these papers and returning an electronic clocked copy to us by email to sburton@gibbesburton.com and bedwards@gibbesburton.com. By copy of this letter we are serving copies of the same on counsel for Shiram Hospitality, LLC.

With kind regards,

Yours very truly,

GIBBES BURTON, LLC

Stephanie H. Burton

SHB/bre
Enclosures
cc: Mr. Fred B. Newby, Sr. (w/enclosures)(by United States Mail & email)
Mr. C. Scott Masel (w/enclosures)(by United States Mail & email)