

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

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Case No. 2019-CP-26-05254

Appellate Case No. 2022-001028

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**RECEIVED**

**Aug 15 2022**

**S.C. SUPREME COURT**

Alison Meyers,

Petitioner,

v.

Shiram Hospitality, LLC,

Respondent.

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**RETURN TO PETITION FOR CERTIORARI**

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## **COUNTER QUESTIONS PRESENTED**

1. WHETHER THE COURT OF APPEALS PROPERLY CONCLUDED THERE IS EVIDENCE TO SUPPORT THE TRIAL COURT'S ORDER THAT THE ILLINOIS COURT LACKED PERSONAL JURISDICTION OF RESPONDENT.
2. WHETHER THE COURT OF APPEALS PROPERLY APPLIED ILLINOIS LAW?

## **INTRODUCTION**

The Court of Appeals properly applied the “any evidence” standard in affirming the trial court’s denial of Petitioner’s motion for entry of foreign judgment because the evidence of record shows the Illinois court in the underlying case lacked personal jurisdiction over Respondent. Indeed, the only evidence before the trial court on this jurisdictional issue was Respondent’s Affidavit that wholly supports the trial court’s order. Petitioner, however, seeks this Court’s review based on specific allegations contained in her Illinois complaint that were not before the trial court, were not ruled upon by the trial court, and were never brought to the trial court’s attention by a post hearing motion. As such, the Court of Appeals properly concluded evidence supports the trial court’s decision and therefore Petitioner’s Petition for Certiorari should be denied.

## **COUNTER-STATEMENT OF THE CASE AND FACTS**

In 2014, Petitioner filed suit against three defendants, including Respondent Shiram Hospitality, in Cook County, Illinois. In 2016, the Illinois trial court entered an “X-Parte Default Judgment for Plaintiff” against all three defendants, awarding compensatory damages in the amount of \$3,120.74, plus \$6,951.05 for attorney fees and \$24,500 for punitive damages. [R.p. 35]. This order does not reflect how attorney fees in the amount of nearly \$7,000 was deemed reasonable in a default judgment case, nor the basis for awarding punitive damages of nearly 8 times the compensatory damages. [Id.].

More than three years later, Petitioner filed a Notice of Intent to Domesticated Foreign Judgment in Horry County, to which Respondent timely objected, asserting the Illinois judgment was void for improper service and lack of jurisdiction.<sup>1</sup> [R.p. 30, 39-41]. Appellant's motion for entry of the judgment was heard by The Honorable Larry B. Hyman, Jr. on December 4, 2019. [R.p. 69].

At the hearing, Respondent relied on the filed Affidavit of its owner, Sanjay Mishra, which states, in part: Respondent's sole business is the ownership and operation of a La Quinta Hotel franchise in North Myrtle Beach; it rents rooms and provides services to guests in Horry County only; it only collects payments and makes deposits in its bank accounts located in local Horry County banks; it has never owned property, and has never conducted business, outside of Horry County; and Respondent has no presence, nor does it do any business, in Illinois. [R.p. 83-84].

Petitioner, on the other hand, did not submit any affidavit or testimony at the hearing relating to the underlying facts of her Illinois case. Important to this appeal, the record reflects Petitioner did not file or otherwise submit her Illinois complaint to the trial court, nor did she request the trial court to take judicial notice of the complaint, nor did she provide the trial court any quotes or specific statements from the complaint. Instead, Petitioner's counsel orally described the underlying facts to the trial judge as follows: Petitioner's close friend was in South Carolina staying at Respondent's hotel but did not have a credit card, so the friend called Petitioner, who was in Illinois, and asked if she could charge the room to Petitioner's credit card, to which Petitioner agreed; the hotel desk clerk called Petitioner to confirm that she agreed to her friend's use of her credit card, which Petitioner confirmed, and then Petitioner provided her card number and security code to the desk clerk; Petitioner contends she authorized her card for two nights only,

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<sup>1</sup> By this time, one defendant had already passed away and the other defendant was dismissed, leaving only Respondent to respond to Petitioner's Notice.

but when there were additional charges, she called the hotel and requested a refund that the hotel refused to provide. [R. p.43, 44, 54].

By Order dated February 18, 2020, the trial court denied Petitioner's motion for entry of the foreign judgment, ruling (i) Petitioner failed to present sufficient evidence that she properly served Respondent's agent with the Illinois lawsuit as required under Illinois law, and (ii) the evidence establishes that Respondent was not doing business in Illinois and did not have sufficient minimum contacts necessary for the Illinois court to exercise personal jurisdiction over Respondent. [R.p. 6-13]. Notably, while the trial court's order repeatedly refers to Respondent's Affidavit, which clearly shows that Respondent's business is limited to Horry County only, nothing in the order suggests the trial court possessed or reviewed the contents of the Illinois complaint. Neither party filed any post hearing motions.

On appeal, Petitioner argued the trial court failed to consider the contents of her Illinois complaint and misapplied Illinois law. The Court of Appeals affirmed the trial court, concluding evidence supports the trial court's decision that the Illinois court lacked personal jurisdiction of Respondent. [Opinion No. 2022-UP-014]. To this end, the Court of Appeals cites to the information contained in Respondent's Affidavit and noted the absence of any evidence to the contrary. [Opinion, p. 3]. Moreover, the Court concluded Petitioner failed to preserve her arguments that the trial court order included unsupported facts or inapplicable law or that she is entitled to an evidentiary hearing on the personal jurisdiction issue. [Opinion, p.2, n.1]. Because its holding on the jurisdiction issue was dispositive of the appeal, the Court of Appeals did not address the trial court's other ruling that Petitioner failed to present sufficient evidence she properly served Respondent's agent with the Illinois lawsuit. [Opinion, p. 3, n.3].

## ARGUMENT

### **1. THE COURT OF APPEALS PROPERLY CONCLUDED THERE IS EVIDENCE TO SUPPORT THE TRIAL COURT’S ORDER THAT THE ILLINOIS COURT LACKED PERSONAL JURISDICTION OVER RESPONDENT.**

An action to enforce a foreign judgment is an action at law. *Minorplanet Sys. USA Ltd. v. Am. Aire, Inc.*, 368 S.C. 146 (2006). In an action at law, tried by a judge without a jury, the findings of the trial court must be affirmed if there is any evidence to support them. *Id.*

In this case, the “any evidence” standard is clearly met. The trial court relied on Respondent’s Affidavit, which plainly sets forth facts showing that its business is conducted entirely in South Carolina and that it conducts no business in Illinois. There is no question this Affidavit was filed with the court and was properly before the trial court, as it bears the electronically filed stamp and the trial court repeatedly references the Affidavit in its order. There is no other relevant evidence of record on the personal jurisdiction issue, and even if there was, Respondent’s Affidavit clearly satisfies the “any evidence” standard.

Petitioner first argues the Court of Appeals erred by relying on Respondent’s Affidavit because the Affidavit does not address (i) whether Respondent advertises in Illinois, (ii) whether Petitioner was physically in the state of South Carolina or whether payment was collected from Illinois, and (iii) whether Respondent’s owner could competently testify regarding the contents of the Affidavit. [Petition, p. 2]. It is true the Affidavit does not contain this information, but it is of no matter. First, Petitioner offers no legal basis or relevant law for why her concerns have merit. Second, Respondent’s Affidavit still satisfies the “any evidence” standard. Third, importantly, Petitioner did not raise these concerns to the trial court or to the Court of Appeals until her Petition for Rehearing. Thus, these issues are not preserved for review. *Wilder Corp. v. Wilke*, 330 S.C. 71 (1998).

Petitioner also contends the Court of Appeals erred by stating the action “arose out of Meyers’ offer to pay for a friend’s stay at La Quinta Hotel using her credit card.” [Petition, p. 3]. This is odd, as Petitioner told the trial court that Petitioner’s close friend asked her if she could use her credit card to stay at Respondent’s hotel and Petitioner said yes and authorized its use. Petitioner is parsing words that make no difference to this case.

Finally, Petitioner asserts the Court of Appeals erred by not considering the specific allegations of her Illinois complaint. As stated above, the record reflects this document was never presented to or considered by the trial court. In fact, the document does not have the South Carolina “Electronically Filed” stamp showing Petitioner filed it or otherwise made it part of the record in this case. [R. p. 14]. To be sure, nothing in the record suggests the trial judge even saw this document. As such, the trial court did not address the admissibility, relevance, significance or effect of this foreign document, and Petitioner did not file a post-hearing motion requesting otherwise.

A trial judge will not be reversed for failing to act on a matter that was not submitted to him. *Roche v. South Carolina Alcoholic Beverage Control Com.*, 263 S.C. 451 (1975). Error preservation requirements are intended "to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." *I'On v. Town of Mt. Pleasant*, 338 S.C. 406 (2000). This is important, as this requirement “prevents a party from keeping an ace card up his sleeve - intentionally or by chance - in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.” *Id.*

Petitioner is seeking a third bite at the apple. The complaint was not before the trial court at the hearing, its allegations were not referenced in the trial court’s order, and its effect, if any, was never ruled upon by the trial court. Therefore, Petitioner’s contention the Court of Appeals

erred by failing to consider a document that Petitioner did not ask the trial court to consider is without merit.

## **2. THE COURT OF APPEALS PROPERLY APPLIED ILLINOIS LAW.**

When determining the validity and effect of a foreign judgment based on lack of personal jurisdiction, South Carolina courts look to the law of the state that rendered the judgment. *Fin. Fed. Credit, Inc., v. Brown*, 384 S.C. 555 (2009). The Court of Appeals cites to *Russell v. SNFA*, 987 N.E.2d 778 (Ill. 2013), an Illinois Supreme Court decision, and *Soria v. Chrysler Canada, Inc.*, 958 N.E.2d 285 (Ill. App. Ct. 2d 2011), both of which provide exhaustive analysis of applicable Illinois law.

Petitioner argues the Court of Appeals did not correctly apply Illinois law “to the facts in evidence – and not in evidence – in this matter.” [Petition, p. 4]. In support, Petitioner again relies on specific allegations contained in her Illinois complaint. As discussed above, this document was not before the trial court, and the trial court never ruled upon, and was not asked to rule upon, its admissibility, relevance, significance or effect. Thus, the Court of Appeals applied Illinois law to the only evidence on this issue - Respondent’s Affidavit.

Under Illinois law, personal jurisdiction under its long arm statute is proper if the requirements of federal and state due process are satisfied. *Russell v. SNFA*, 987 N.E.2d 778 (2013). When federal due process concerns regarding personal jurisdiction are satisfied, so are Illinois due process concerns. *Soria v. Chrysler Can., Inc.*, 958 N.E.2d 285 (Ill.App. Ct. 2d 2011). Thus, under a federal due process analysis, “minimum contacts” are met and an Illinois court has specific jurisdiction over a nonresident defendant when: (1) the defendant had minimum contacts with Illinois such that it was fairly warned that it may be haled into an Illinois court; (2) the action arose out of or was related to the defendant's contacts with Illinois; and (3) it is reasonable to require the defendant to litigate in Illinois. *Russell v. SNFA*, 987 N.E.2d 778 (2013); *Soria v.*

*Chrysler Can., Inc.*, 958 N.E.2d 285 (Ill.App. Ct. 2d 2011). At the heart of this analysis, the legal requirement of showing “purposeful availment” within the forum state protects a nonresident defendant from being haled into a jurisdiction based on random or attenuated contracts or activity. *Id.*; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).

Respondent’s Affidavit states it conducts business in Horry County only, it provides services to customers and collects and deposits money in Horry County only, it has never conducted business outside of Horry County, and it has no presence, nor does it do any business in the State of Illinois. This is the only evidence of record on the jurisdiction issue. As such, the Court of Appeals properly affirmed the trial court because there is no evidence that Respondent purposefully directed its activities at Illinois or that it purposefully availed itself of the privilege of conducting business in Illinois.

The Court of Appeals briefly referred to the underlying events when it said the action arose out of Meyers’s offer to pay for a friend’s stay at a La Quinta Hotel using her credit card. No doubt, this was for context, as the record is barren as to what happened except for the background summaries provided by the parties’ counsel at the trial court hearing. While summaries by counsel are not technically evidence, these descriptions still only show that Respondent did not reach out to Illinois to initiate this transaction or to solicit Petitioner’s business, as the transaction was already established between Petitioner and her friend, and the two of them brought their agreement to Respondent in South Carolina. To be sure, the desk clerk called Respondent only to confirm she had agreed to pay for her friend’s hotel room in South Carolina after the friend told the clerk that Petitioner gave her permission to use her card. No doubt, these descriptions clearly show Respondent did not “purposefully direct its activities” at Illinois; quite the contrary, Petitioner and her friend directed their activities toward South Carolina and Respondent. *Madison Miracle Prods., LLC v. MGM Distrib. Co.*, 2012 IL App (1st) 112334 (2012) (when evaluating minimum

contacts, “focus is on the defendant's activities within the forum State, not on those of the plaintiff.”).

Because Respondent’s Affidavit supports the trial court order and there was no contrary evidence before the trial court on the jurisdiction issue, the Court of Appeals properly held the only evidence before the court supports the trial court’s denial of Petitioner’s motion for entry of the foreign judgment.

### **CONCLUSION**

The trial court’s order is not only supported by “any evidence”, it is overwhelmingly, if not totally, supported by the entirety of the evidence before the court. The trial court never ruled upon, and was not asked to rule upon, the admissibility, relevance, significance or effect of Petitioner’s Illinois complaint, and therefore this document cannot serve as the basis of Petitioner’s appeal. For these reasons and as argued above, the Petition for Certiorari should be denied.



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