

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
In the Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Appellate Case No. 2022-001028

Alison Meyers, ...Petitioner,

v.

Shiram Hospitality, LLC, ...Respondent.

APPENDIX

Stephanie H. Burton
Gibbes Burton, LLC
308 East St. John Street
Spartanburg, South Carolina 29302
(864) 327-5000
sburton@gibbesburton.com

Counsel for Petitioner

RECEIVED

May 02 2023

S.C. SUPREME COURT

APPENDIX TABLE OF CONTENTS

	Pages
RECORD ON APPEAL.....	1-86
FINAL BRIEF OF APPELLANT	87-118
FINAL BRIEF OF RESPONDENT.....	119-137
FINAL REPLY BRIEF OF APPELLANT.....	138-159
OPINION OF THE COURT OF APPEALS.....	160-163
PETITION FOR REHEARING.....	164-170
ORDER DENYING PETITION FOR REHEARING.....	171
PETITION FOR CERTIORARI.....	172-180
RETURN TO PETITION FOR CERTIORARI.....	181-191
ORDER GRANTING PETITION FOR A WRIT OF CERTIORARI.....	192

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

Stephanie H. Burton (#13089)
Gibbes Burton, LLC
308 East St. John St.
Spartanburg, SC 29302
Telephone: (864) 327-5000

Attorneys for Appellant

Fred B. Newby (#4202)
C. Scott Masel (#12497)
Newby, Sartip & Masel, LLC
P.O. Box 808
Myrtle Beach, SC 29578
Telephone: (843) 449-9417

Attorneys for Respondent

RECEIVED
Sep 28 2020
SC Court of Appeals

INDEX

ORDERS

Form 4 order filed on December 4, 2019	3
Order Denying Plaintiff's Motion for Entry of Foreign Judgment filed on February 24, 2020	6

PLEADINGS

Verified Complaint filed on November 5, 2014, in Cook County Case No. 2014 M2 002586 ..	14
<u>Exhibit A</u> – June 19, 2014 Letter.....	28
Horry County Affidavit of Service dated February 16, 2015, in Cook County Case No. 2014 M2 002586	29
Notice of Intent to Domesticate a Foreign Judgment filed on August 15, 2019	30
Attorney's Affidavit filed on August 15, 2019, with attached as Exhibit A	31
<u>Exhibit A</u> - Illinois orders filed on March 8, 2016, and April 23, 2019.....	34
Affidavit of Service filed on September 9, 2019	38
Defendant's Notice of Defense, and Response to Notice to Domesticate Foreign Judgment filed on October 2, 2019	39

TRANSCRIPT

Transcript of Record for hearing on December 4, 2019	42
--	----

EXHIBITS

Plaintiff's Exhibit A submitted to the Court at the hearing on December 4, 2019	58
Plaintiff's Exhibit B submitted to the Court at the hearing on December 4, 2019.....	59
Plaintiff's Exhibit C submitted to the Court at the hearing on December 4, 2019.....	61

MOTION

Notice of Motion and Motion for Entry of Foreign Judgment filed on October 16, 2019	69
---	----

Memorandum in Support of Plaintiff's Notice of Intent to Domesticate a Foreign Judgment filed on November 27, 2019	70
---	----

<u>Exhibit A</u> - Horry County Affidavit of Service dated February 16, 2015, in Cook County Case No. 2014 M2 002586	74
---	----

Defendant's Memorandum in Opposition Plaintiff's Motion for Entry of Foreign Judgment filed on November 29, 2019	76
---	----

Affidavit of Sanjay H. Mishra filed on December 2, 2019	83
---	----

CERTIFICATE OF COUNSEL

Certificate of Counsel	85
------------------------------	----

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2605254

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ 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

Electronically signed on 2019-12-04 10:04:09 page 3 of 3

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-26-05254ORDER 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 Domesticated 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 Domesticate 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.

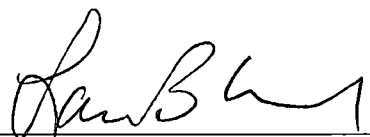
Defendant points out that Illinois courts have found a defendant to have insufficient minimum contacts in the state even when the defendant purposefully conducts business with Illinois in mind. Examples include an Indiana corporation that made an agreement to purchase power generated in Illinois and 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.	)	No.
	)	
SHIRAM HOSPITALITY, LLC, d/b/a	)	
LA QUINTA INN NORTH MYRTLE BEACH,	)	Amount Claimed: \$3,120.74, plus
a South Carolina Corporation, HARICHARAN J.	)	interest charged, costs, punitive
MISHRA, an Individual, and LA QUINTA	)	damages, and reasonable
HOLDINGS, INC., a Texas corporation.	)	attorney's fees.
	)	
Defendants.	)	

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.

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.

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. *Cirrineone 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

ELECTRONICALLY FILED
11/5/2014 12:03 PM
2014-M2-002586
PAGE 6 of 15

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.

ELECTRONICALLY FILED
11/5/2014 12:03 PM
2014-M2-002586
PAGE 9 of 15

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.

**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

ELECTRONICALLY FILED
11/5/2014 12:03 PM
2014-M2-002586
PAGE 12 of 15

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.

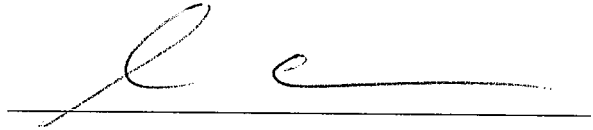
Dated: November 3, 2014


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

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.

A handwritten signature in dark ink, appearing to read 'Alison Meyers', is written over a horizontal line.

Alison Meyers

Signed this 8 day of October, 2014.

ELECTRONICALLY FILED
11/5/2014 12:03 PM
2014-M2-002586
PAGE 14 of 15

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

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

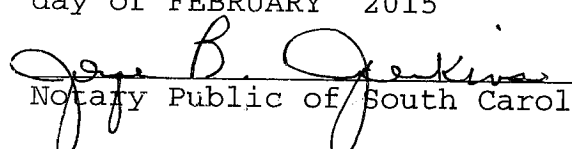
TIME OF SERVICE: 3:30 PM

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


MIRAMANEE COX
Deputy Sheriff

 (L.S.)
Notary Public of South Carolina

My Commission Expires: 9-15-2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	C/A #:
ALISON MEYERS,	)	
	)	
Plaintiff,	)	
vs.	)	NOTICE OF INTENT TO
	)	DOMESTICATE FOREIGN JUDGMENT
SHIRAM HOSPITALITY, LLC; AND LA QUINTA	)	
HOLDINGS, INC.,	)	
	)	
Defendants.	)	
_____	)	

TO THE DEFENDANTS ABOVE NAMED:

PLEASE TAKE NOTICE that the Plaintiff intends to domesticate a foreign Judgment in Horry County, South Carolina. The Defendants Shiram Hospitality, LLC, and La Quinta Holdings, Inc. (together the "Defendants") have thirty (30) days after service hereof, exclusive of the day of such service, to satisfy or contest a certain foreign Judgment in the records of the Circuit Court of Cook County, Illinois, located at Case Number 2014-M2-0002586. A true and certified copy of the Judgment from the Circuit Court of Cook County, Illinois is attached hereto and incorporated herein by reference as Exhibit A.

If the Defendants fail to satisfy or contest the Judgment within the time aforesaid, the Judgment will be enforceable in Horry County, South Carolina as it is in the Cook County, Illinois. Any response from the Defendants must be filed with this Court and served upon the Plaintiff's counsel at his office, 1703 Laurel Street (29201), Post Office Box 11682, Columbia, South Carolina, 29211, within thirty (30) days after service hereof, exclusive of the day of such service.

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

By: s/Edward L. Grimsley
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

August 15, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	C/A #:
ALISON MEYERS,	)	
	)	
	)	
Plaintiff,	)	
vs.	)	ATTORNEY'S AFFIDAVIT
	)	
SHIRAM HOSPITALITY, LLC; AND LA	)	
QUINTA HOLDINGS, INC.,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, Edward L. Grimsley, who first being duly sworn, deposes and says:

1. That he is the attorney for Alison Meyers (the "Plaintiff");
2. On March 8, 2016, the Plaintiff was awarded Judgment against the Defendants Shiram Hospitality, LLC, and LaQuinta Holdings, Inc. (together the "Defendants") in the Circuit Court of Cook County, Illinois in the amount of \$34,571.77;
3. That according to Plaintiff's records, the Judgment is still due and owing;
4. The last known address of the Defendant Shiram Hospitality, LLC, through its Registered Agent, Sanjay H. Mishra is 201 S. Ocean Boulevard, North Myrtle Beach, SC 29582;
5. The last known address of the Defendant La Quinta Holdings, Inc. through its Registered Agent, Corporate Creations Network, Inc., is 5444 Westheimer # 1000, Houston, TX 77056.
6. S.C. Code Ann. § 36-2-803(A)(1) provides as to the Long Arm Statute that "This court may exercise personal jurisdiction over a person who acts directly or by an agent as to cause of action arising from the person's transacting any business in this State". The Defendant La Quinta Holdings, Inc. is a corporation organized under the laws of the State of Texas and, upon information and belief, operates a hotel in Horry County. The Defendant La Quinta Holdings, Inc. is deemed to be doing business in the State of South Carolina, therefore, this Court has venue and jurisdiction over this matter
7. The judgment is FINAL;
8. The Judgment remains unsatisfied in the in the principal amount of \$34,571.77; and
9. The judgment is not contested, in that there are no post-trial motions pending, no notice of appeal has been filed, and no appeal pending.

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 DISTRICTLINE NO. 4aALISON MEYERS

v.

No. 2014 M2 0002586SHIRAM 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

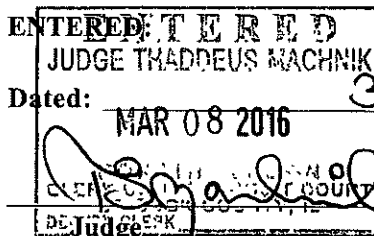
THIS MATTER having come before the Court, the Court having jurisdiction and being fully advised, IT IS HEREBY ORDERED:

- 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: _____

()

9208 ☐ Order Final and Appealable() ☒ See Attached Order: Judgment Itemized as follows: Compensatory Damages: \$3,120.74
Attorney's Fees Costs: \$6,951.03
Punitive Damages: \$24,500.00

4304 The date of _____ is hereby stricken.

Atty. No. 38354Name: Brendan AppelAtty. for: PlaintiffAddress: 191 Waukegan Rd Ste 360City/State/Zip: Northfield IL 60063Telephone: 847-730-4224# 1798
Judge's No.

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

Copy Distribution - White: 1. ORIGINAL - COURT FILE Canary: 2. Pink: 3. COPY

Record on Appeal 035

APPENDIX 036

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

ALISON MEYERS
PEOPLE OF THE STATE OF ILLINOIS

v.

No. 2014-M2-0002586SHIRAM 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" nuncpro tunc.
3. This Order shall be attached and made part of this Court's March 8, 2016 Judgment Order.

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

ENTERED:

Dated:

Judge:



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

APPENDIX 038

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
3810 ESSEX GARDEN LANE
RALEIGH, NC 27612

DATE OF SERVICE: 8/29/19 TIME OF SERVICE: 8:52 7 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 ☒ Unknown

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

IS THE SUBJECT PROPERTY A MOBILE HOME? ☐ YES ☒ NO ☐ N/A
 VIN #: _____

COMMENTS: Did the individual state he/she is authorized to accept service on behalf of defendant? ☒ 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 Rabst Bryant 8/30/19
 Signature of Process Server Date

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 Number/Reference: _____
 Notary Public for NC Commission Expiration 3/4/2024
 Notary Public (Legal Signature)

Rachel Bryant
 NOTARY PUBLIC
 Forsyth County
 North Carolina
 My Commission Expires March 4, 2024

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Alison Meyers,

Plaintiff,

vs.

**Shiram Hospitality, LLC, and La
Quinta Holdings, Inc.**

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

**Defendant Shiram Hospitality,
LLC's Notice of Defense, and
Response to Notice
to Domesticate Foreign Judgment**

The Defendant, Shiram Hospitality, LLC, by way of its Notice of Defense and Response to Plaintiff's Notice of Intent to Domesticate Foreign Judgment, would respectfully show unto the court, pursuant to §§15-35-920 and 15-35-940, S.C. Code of Laws, as amended, and Rules 12(b), 55(b) and 60 SCRPC, the following:

1. Plaintiff has filed its Notice of Intent to Domesticate Foreign Judgment relating to a default judgment entered in the Circuit Court of Cook County Illinois, 2nd Municipal District in the case entitled "Alison Meyers v. Shiram Hospitality, LLC, Harichan J. Mishra and La Quinta Holdings, Inc., case number 2014 M20-000-2586", in which Plaintiff was seeking approximately \$3,120.74 in actual damages. Default Judgment was entered in that case on or about March 8, 2016 for \$3,120.74 in actual damages, \$6,951.03 attorneys' fees and costs, and \$24,500.00 punitive damages.

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.

 **ORIGINAL**

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.)
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER

2 State of South Carolina)

3 County of Horry)

4

5 I, Natalie Dahl, Official Court Reporter for the

6 State of South Carolina, do hereby certify that the

7 foregoing is a true, accurate and complete Transcript

8 of Record of the evidence introduced in the hearing of

9 the above-captioned case, relative to appeal, in the

10 Court of Common Pleas for Horry County, South

11 Carolina, on the 4th day of December, 2019.

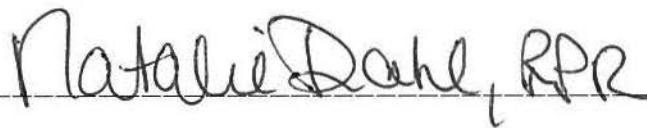
12 I do further certify that I am neither of kin,

13 counsel, nor interest to any party hereto.

14

15 March 26, 2020

16

17 

18 Natalie Dahl, RPR

19 Court Reporter

20

21

22

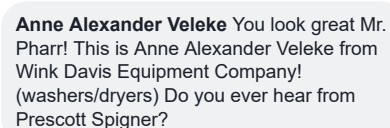
23

24

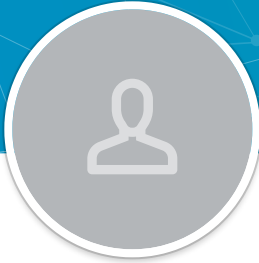
25



Most Relevant ▾



1y

[Join now](#)[Sign in](#)**mishra mike**

Managing Director at Shiram LLC

North Myrtle Beach, South Carolina · 9 connections

**Shiram LLC**[Join to Connect](#)

Experience

**Managing Director**

Shiram LLC

View mishra mike's full profile to

- ✓ See who you know in common
- ✓ Get introduced
- ✓ Contact mishra mike directly

[Join to view full profile](#)

LinkedIn

Join now

Sign in

mishra mike

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)

mishra's public profile badge

Include this LinkedIn profile on other websites

mishra mike

Managing Director at Shiram LLC

Managing Director at Shiram LLC

View profile

LinkedIn

View profile badges

LinkedIn © 2019

User Agreement

Cookie Policy

Brand Policy

Community Guidelines

About

Privacy Policy

Copyright Policy

Guest Controls

Language

https://www.linkedin.com/in/mishra-mike-5964a2117

Record on Appeal 060

APPENDIX 061

2/2



THE B2B NEWS SOURCE

(<https://www.hotel-online.com/>)

Hotel Revenue Management
**ULTIMATE
BUYER'S GUIDE**

DOWNLOAD NOW

Ideas™
A SAS COMPANY

SUBSCRIBE

([HTTPS://WWW.HOTEL-ONLINE.COM/SUBSCRIBE](https://www.hotel-online.com/subscribe))

INDUSTRY RESOURCES

([HTTPS://WWW.HOTEL-ONLINE.COM/INDUSTRY-RESOURCES](https://www.hotel-online.com/industry-resources))

READ TODAY'S NEWSLETTER

([HTTPS://MAILCHI.MP/HOTEL-ONLINE.COM/HOTEL-ONLINE-HEADLINES-AHIP-ACQUISITION-QUALITY-ASSURANCE-DATA-BREACH](https://mailchi.mp/hotel-online.com/hotel-online-headlines-ahip-acquisition-quality-assurance-data-breach))

Cloud5
COMMUNICATIONS

Top GPNS WiFi Provider
Fast, Easy Compliance to Brand Standards

BREAKING NEWS ([Https://Www.Hotel-Online.Com/Breaking-News/](https://www.hotel-online.com/breaking-news/))

Auditing the Auditors: What Happens When Quality Assurance Morphs Into PR & Marketing?

(https://www.hotel-online.com/press_releases/release/auditing-the-auditors-what-happens-when-quality-assurance-morphs-into-pr-marketing/)

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

Categories

> Industry Happenings
(25,411)

Record on Appeal 061

APPENDIX 062

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/)



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

—

(c)2012 The Sun News (Myrtle Beach, S.C.)

Visit The Sun News (Myrtle Beach, S.C.) at www.thesunnews.com

Distributed by MCT Information Services Australian:NWS,

7

RELATED NEWS:

(https://www.hotel-online.com/press_releases/release/rebranded-hotel-jal-city-bangkok-to-open-2nd-quarter-of-2020/)

(https://www.hotel-online.com/press_releases/release/choice-hotels-notifies-guests-of-inadvertent-disclosure-issue/)

(https://www.hotel-online.com/press_releases/release/auditing-the-auditors-what-happens-when-quality-assurance-morphs-into-pr-marketing/)

(https://www.hotel-online.com/press_releases/release/benchmark-a-global-hospitality-company-to-operate-first-margaritaville-resort-in-texas/)

(https://www.hotel-online.com/press_releases/release/american-hotel-income-properties-to-acquire-12-premium-branded-hotels-for-191-0-million/)

(https://www.hotel-online.com/press_releases/release/radisson-hotel-group-establishes-strategic-joint-venture-for-expansion-in-germany-and-austria/)

(https://www.hotel-online.com/press_releases/release/owned-and-managed-by-my-hospitality-new-towneplace-suites-by-marriott-opens-in-lafayette-louisiana/)

(https://www.hotel-online.com/press_releases/release/remington-hotels-promotes-key-leaders-and-expands-executive-team/)

(https://www.hotel-online.com/press_releases/release/six-warning-signs-your-hotel-is-overdue-for-a-renovation/)

(https://www.hotel-online.com/press_releases/release/hospitality-financial-leadership-hotel-franchise-management-fees-20-years-is-a-long-time/)

online.com/press_releases/release/christophe-piffaretti-appointed-chief-development-officer-kempinski-hotels-s-a/)

(https://www.hotel-

online.com/press_releases/release/mohegans-pioneering-approach-leads-down-international-path/)

(https://www.hotel-online.com/press_releases/release/middle-

east-hotels-occupancy-up-uae-to-continue-leading/)

(https://www.hotel-

online.com/press_releases/release/as-hotel-construction-booms-in-charlotte-here-are-five-key-projects/)

(https://www.hotel-

online.com/press_releases/release/south-metro-dreams-of-destination-greatness-but-needs-more-hotels/)

(https://www.hotel-

online.com/press_releases/release/cf-lands-state-hospitality-apprenticeship-grant/)

(https://www.hotel-

online.com/press_releases/release/maa-hospitality-set-to-open-springhill-suites-by-marriott-in-palm-desert-california/)

(https://www.hotel-online.com/press_releases/release/cimarron-hospitality-partners-with-genuine-hospitality-to-operate-new-hilton-garden-inn-boulder-longmont-co/)

(https://www.hotel-online.com/press_releases/release/canadian-lodging-

outlook-quarterly-2019-q3/)

(https://www.hotel-

online.com/press_releases/release/developed-by-panchshil-realty-the-ritz-carlton-debuts-in-pune-india/)



Marketing Strategy Conference

Marketing in
a Digital World



January 22, 2020
New York Marriott Marquis



Tweets by @HotelOnlineNews



Hotel-Online
@HotelOnlineNews



Hotel Online Headlines
for 12/02/2019: AHIP
Acquisition; Quality
Assurance; Data Breach
- [mailchi.mp/hotel-
online.c...](mailto:mailchi.mp/hotel-online.c...)



1h



Hotel-Online Retweeted



HHD Magazine
@HHDMagazine

[Embed](#)

[View on Twitter](#)

Subscribe to the one-and- only Hotel-Online!

As the first news aggregate for the hotel industry, Hotel-Online is the industry's must-read daily news source for everything hotel curated for busy professionals. Sign up today for industry news delivered to your inbox.

SUBSCRIBE



CONTACT

- Hotel Online
70 Mansell Court, Suite 225
Roswell, GA 30076
(678) 802-5308
(mailto:info@hotel-online.com)

(<https://www.hotel-online.com/about-us/>)
(<https://www.hotel-online.com/terms-and-conditions/>)
(<https://www.hotel-online.com/privacy-policy/>)
(<https://www.hotel-online.com/faq/>)
(<mailto:info@hotel-online.com>)
(/media-kit/)
(<https://www.hotel-online.com/allevnts/>)



8/8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	C/A #: 2019-CP-26-05254
ALISON MEYERS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF MOTION AND MOTION FOR
	)	ENTRY OF FOREIGN JUDGMENT
	)	
SHIRAM HOSPITALITY, LLC,	)	
	)	
Defendants.	)	
_____	)	

TO: DEFENDANT ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that on the 10th day after service hereof, or as soon thereafter as counsel may be heard, the undersigned attorney for the Plaintiff, Alison Meyers (the "Plaintiff"), will move before the Presiding Judge for the Fifteenth Judicial Circuit, seeking to enforce a default judgment obtained against the Defendant Shiram Hospitality, LLC (the "Defendant"), a corporation in Horry County, South Carolina, obtained in the Circuit Court for the Second Municipal District, County of Cook, State of Illinois. This motion is based on the pleadings filed with this Court, the Uniform Enforcement of Foreign Judgments Act (UEFJA), Title 15, Art. 11, Section 15-35-940 *et. seq.*, the other laws of the State of South Carolina, and other matters as may be presented to the Court, and the Plaintiff so moves the Court.

GRIMSLEY LAW FIRM, LLC

/s/Edward L. Grimsley
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
Post Office Box 11682
Columbia, South Carolina 29211
(803) 233-1177

Columbia, South Carolina
October 14, 2019

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 Miramanee 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
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

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

My Commission Expires: 9-15-2016

M. Cox
MIRAMANEE COX
Deputy Sheriff

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

DEFENDANT SHIRAM HOSPITALITY,
LLC'S MEMORANDUM IN OPPOSITION
PLAINTIFF'S MOTION FOR ENTRY
OF FOREIGN JUDGMENT

The Plaintiff has moved to domesticate a foreign judgment obtained against the Defendant in Cook County, Illinois. For the reasons stated below, Defendant Shiram Hospitality, LLC, submits this memorandum in opposition to the Plaintiff's Motion for Entry of Foreign Judgment.

FACTS

Defendant Shiram Hospitality, LLC ("the 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. Any revenue is deposited into account(s) maintained by an institution located in South Carolina. Aside from having occasional out-of-state customers, the Defendant has no meaningful business activity outside of the state of South Carolina.

On November 5, 2015, the Plaintiff filed a Verified Complaint in the Second Municipal District, Civil Division, of the Circuit Court of Cook County, Illinois, against the Defendant and Haricharan J. Mishra, an individual now deceased, and La Quinta Holdings, Inc., a Texas corporation. The Plaintiff sought damages of \$3,120.74, plus interest, costs, punitive damages, and reasonable attorney's fees. The case was entitled, "Alison Meyers v. Shiram Hospitality, LLC, Haricharan J. Mishra, and La Quinta Holdings, Inc.," case no. 2014-M2-002586."

The Affidavit of Substituted Service in that case, dated February 17, 2015, states: "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...”

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 Domestic 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	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	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

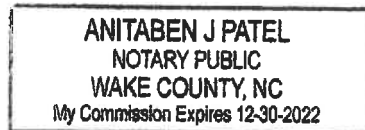
November, 2019,

Anitaben J. Patel

Sanjay H. Mishra

Sanjay H. Mishra

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



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.

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.
Spartanburg, SC 29302
Telephone: (864) 327-5000

Attorneys for Appellant

RECEIVED
Sep 28 2020
SC Court of Appeals

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

Stephanie H. Burton (#13089)
Gibbes Burton, LLC
308 East St. John St.
Spartanburg, SC 29302
subrton@gibbesburton.com
Telephone: (864) 327-5000
Facsimile: 864-342-6884

Attorneys for Appellant

RECEIVED

Sep 28 2020

SC Court of Appeals

TABLE OF CONTENTS

	Pages
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE	1
STANDARD OF REVIEW	1
STATEMENT OF FACTS	2
ARGUMENT	4
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	4
A. The Lower Court erred in determining that Haricharan "Mike" Mishra was not an agent of Shiram Hospitality, LLC able to receive service	5
B. The Lower Court erred in finding that personal jurisdiction could not be exercised over Respondent even if service was properly effectuated	13
a. The Lower Court relied upon erroneous facts in its Order	13
b. The Lower Court applied inapposite case law to the erroneous facts.....	15
i. Personal jurisdiction exists due to a contract substantially connected to Illinois	19
ii. Personal jurisdiction exists due to Respondent's tortious acts having been committed in Illinois	20
iii. Personal jurisdiction exists due to the transaction of business within Illinois	20
CONCLUSION	25

TABLE OF AUTHORITIES

CASES

<u>Acosta v. Ashley's Quality Care, Inc.</u> , No. 16 C 5393, 2018 WL 1621021 (N.D. Ill. Apr. 4, 2018)	6, 8
<u>Bober v. Kovitz, Shifrin, Nesbit</u> , No. 03 C 9393, 2005 WL 2271861 (N.D. Ill. Sept. 4, 2005)	7
<u>Burger King Corp. v. Rudzewicz</u> , 471 U.S. 462 (1985)	17
<u>Charles Austin, Ltd. v. A-1 Food Servs., Inc.</u> , 2014 IL App (1st) 132384, 23 N.E.3d 534 (Ill. App. Ct. 2014)	6, 8
<u>Colleton Cty. Taxpayers Ass. v. Sch. Dist. of Colleton Cty.</u> , 371 S.C. 224, 638 S.E.2d 685 (2006)	11
<u>Cook Assocs., Inc. v. Lexington United Corp.</u> , 86 Ill. App. 3d 909, 407 N.E.2d 944 (Ill. App. Ct. 1980)	24
<u>Cook Assocs., Inc. v. Lexington United Corp.</u> , 87 Ill.2d 190, 429 N.E.2d 847 (Ill. 1981)	24
<u>Davis v. Dresback</u> , 81 Ill. 393 (Ill. 1876)	10
<u>Estate of Isringhausen ex rel. Isringhausen v. Prime Contractors and Assocs., Inc.</u> , 378 Ill. App. 3d 1059, 883 N.E.2d 594 (Ill. App. Ct. 2008)	19, 21, 22
<u>Finnegan v. Les Pourvoiries Fortier, Inc.</u> , 205 Ill. App. 3d 17, 562 N.E.2d 989 (Ill. App. Ct. 1990)	8
<u>Freund Equip., Inc. v. Fox</u> , 301 Ill. App. 3d 163, 703 N.E.2d 542 (Ill. App. Ct. 1998)	7, 10
<u>Goodyear Dunlop Tires Operations, S.A. v. Brown</u> , 564 U.S. 915 (2011)	15
<u>Hickey v. Union Nat'l Bank & Trust Co.</u> , 190 Ill. App. 3d 186, 547 N.E.2d 4 (Ill. App. Ct. 1989)	8
<u>Hosp. Mgmt. Assocs., Inc. v. Shell Oil Co.</u> , 356 S.C. 644, 591 S.E.2d 611 (2004)	4

<u>Huck v. N. Ind. Pub. Serv. Co.</u> , 117 Ill. App. 3d 837, 453 N.E.2d 1365 (Ill. App. Ct. 1983)	23
<u>In re Marriage of DiFiglio</u> , 2016 IL App (3d) 160037 (Ill. App. Ct. 2016)	18
<u>In re Subpoena to Huawei Techs. Co., Ltd.</u> , 720 F. Supp. 2d 969 (N.D. Ill. 2010)	7
<u>Int'l Shoe Co. v. Washington</u> , 326 U.S. 310 (1945)	16
<u>Isaacs v. Shoreland Hotel</u> , 40 Ill. App. 2d 108, 188 N.E.2d 776 (Ill. App. Ct. 1963)	6
<u>Island Terrace Apartments v. Keystone Serv. Co.</u> , 35 Ill. App. 3d 95, 341 N.E.2d 41 (Ill. App. Ct. 1975)	6, 8
<u>Kalata v. Healy</u> , 312 Ill. App. 3d 761, 728 N.E.2d 648 (Ill. App. Ct. 2000)	18, 19, 20, 21
<u>Law Firm of Paul L. Erickson, P.A. v. Boykin</u> , 383 S.C. 497, 681 S.E.2d 575 (2009)	5
<u>Loggans v. Jewish Comm. Ctr. of Milwaukee</u> , 113 Ill. App. 3d 549, 447 N.E.2d 919 (Ill. App. Ct. 1983)	24
<u>Mandalay Assocs. Ltd. P'ship v. Hoffinan</u> , 141 Ill. App. 3d 891, 491 N.E.2d 39 (Ill. App. Ct. 1986)	20
<u>McNally v. Morrison</u> , 408 Ill. App. 3d 248, 951 N.E.2d 183 (Ill. App. Ct. 2011)	18
<u>Minorplanet Sys. USA Ltd. v. Am. Aire, Inc.</u> , 368 S.C. 146, 628 S.E.2d 43 (2006)	1
<u>Paul v. Ware</u> , 258 Ill. App. 3d 614, 630 N.E.2d 955 (Ill. App. Ct. 1994)	6, 10
<u>Pitts v. Fink</u> , 389 S.C. 156, 698 S.E.2d 626 (Ct. App. 2010)	5, 13
<u>Radosta v. Devil's Heard Ski Lodge</u> , 172 Ill. App. 3d 289, 526 N.E.2d 561 (Ill. App. Ct. 1988)	9

<u>Russell v. SNFA,</u> 408 Ill. App. 3d 827, 946 N.E.2d 1076 (Ill. App. Ct. 2011)	13
<u>Russell v. SNFA,</u> 2013 IL 113909 (Ill. 2013)	17
<u>Sec. Credit Leasing, Inc. v. Abed N. Armaly,</u> 339 S.C. 533, 529 S.E.2d 283 (Ct. App. 2000)	5
<u>Stein v. Rio Parismina Lodge,</u> 296 Ill. App. 3d 520, 695 N.E.2d 518 (Ill. App. Ct. 1998)	8
<u>Stephens v. N. Ind. Pub. Serv. Co.,</u> 87 Ill. App. 3d 961, 409 N.E.2d 423 (Ill. App. Ct. 1980)	23
<u>Stitch-Tec Co., Inc. v. Royal Banks of Missouri,</u> 303 Ill. App. 3d 293, 707 N.E.2d 271 (Ill. App. Ct. 1999)	13, 21
<u>Townes Assocs., Ltd. v. City of Greenville,</u> 266 S.C. 81, 221 S.E.2d 773 (1976)	1
<u>Walrus Mfg. Co. v. New Amsterdam Cas. Co.,</u> 184 F. Supp. 214 (S.D. Ill. May 24, 1960)	16
<u>Wiles v. Morita Iron Works Co.,</u> 125 Ill.2d 144, 530 N.E.2d 1382 (Ill. 1988)	16, 17
<u>World-Wide Volkswagen Corp. v. Woodson,</u> 444 U.S. 286 (1980)	17

STATUTES

U.S. Const. art. IV, § 1	4
S.C. Code Ann. § 15-35-940(A)	5
S.C. Code Ann. § 33-44-108(b)	23
735 Ill. Comp. Stat. 5/2-204	5, 9
735 Ill. Comp. Stat. 5/2-208(a)(b)	6
735 Ill. Comp. Stat. 5/2-209(a)(1)	16
735 Ill. Comp. Stat. 5/2-209(a)(2)	16

735 Ill. Comp. Stat. 5/2-209(a)(7)	16
735 Ill. Comp. Stat. 5/2-209(d)	6
735 Ill. Comp. Stat. 5/2-209(f)	16
735 Ill. Comp. Stat. 5/2-209(g)	6

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 Domesticated 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 Domesticated 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 Domesticated 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), SCRCF,” 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 Domestic 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.

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 haled 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 haled 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,

/s/Stephanie H. Burton
Stephanie H. Burton
Gibbes Burton, LLC
308 East St. John St.
Spartanburg, SC 29302
sburton@gibbesburton.com
Telephone: (864) 327-5000
Facsimile: 864-342-6884

Attorneys for Appellant

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

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.

September 28, 2020

/s/Stephanie H. Burton
Stephanie H. Burton (#13089)
Gibbes Burton, LLC
308 East St. John St.
Spartanburg, SC 29302
sburton@gibbesburton.com
Telephone: (864) 327-5000
Facsimile: 864-342-6884

Attorneys for Appellant

RECEIVED
Sep 28 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2019-CP-26-05254
Appellate Case No. 2020-000557

Alison Meyers,

Appellant,

v.

Shiram Hospitality, LLC,

Respondent.

FINAL BRIEF OF RESPONDENT

Fred B. Newby (#4202)
C. Scott Masel (#12497)
Newby, Sartip & Masel, LLC
P.O. Box 808
Myrtle Beach, SC 29578
843/449-9417
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2019-CP-26-05254
Appellate Case No. 2020-000557

Alison Meyers,

Appellant,

v.

Shiram Hospitality, LLC,

Respondent.

FINAL BRIEF OF RESPONDENT

Fred B. Newby (#4202)
C. Scott Masel (#12497)
Newby, Sartip & Masel, LLC
P.O. Box 808
Myrtle Beach, SC 29578
843/449-9417
Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
STATEMENT OF ISSUES ON APPEAL.....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF FACTS.....	1
STANDARD OF REVIEW.....	5
ARGUMENT.....	5
1. APPELLANT FAILED TO PROPERLY SERVE RESPONDENT WITH THE ILLINOIS LAWSUIT BECAUSE MIKE MISHRA WAS NOT THE REGISTERED AGENT OR OTHER AGENT OF RESPONDENT.....	6
A. Service of Process Under Illinois Law – Foreign Limited Liability Company.....	7
B. Service of Process Under Illinois Law – Foreign Corporation.....	8
2. THE EVIDENCE SHOWS THE ILLINOIS COURT DID NOT HAVE JURISDICTION OF RESPONDENT PURSUANT TO THE ILLINOIS LONG ARM STATUTE OR DUE PROCESS.....	11
A. Burden of Proof.....	11
B. Evidence Shows Respondent Did Not Purposefully Direct Its Activities at Illinois.....	12
C. Evidence Shows Appellant’s Claims Arose from or Related to Her Contacts With South Carolina, Not Respondent’s Contacts with Illinois.....	13
CONCLUSION.....	15

TABLE OF AUTHORIES

CASES:

<i>Aasonn, LLC v. Delaney</i> , 961 N.E.2d 939 (Ct. App. 2nd, 2011).....	12
<i>Aspen Am. Ins. Co. v. Interstate Warehouseing</i> , 2016 IL App (1st) 151876, 57 N.E.3d 656.....	8
<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462, 472, 105 S. Ct. 2174 (1985).....	11, 12
<i>Digital Ally, Inc. v. Light-N-Up, LLC</i> , 408 S.C. 101 (Ct.App. 2014).....	5
<i>John Isfan Constr. v. Longwood Towers</i> , 2016 IL App (1st) 143211, 52 N.E.3d 510 (2016).....	6
<i>Khan v. Gramercy Advisors, LLC</i> , 2016 IL App. (4th) 150435, 61 N.E.3d 107 (2016).....	13
<i>Law Firm of Paul L. Erickson, P.A. v. Boykin</i> , 383 S.C. 497 (2009).....	5
<i>M.B. Fin.Bank, N.A. v. Ted & Paul, LLC</i> , 2013 IL App (1st) 122077, 990 N.E.2d 764 (2013)....	7
<i>Madison Miracle Prods., LLC v. MGM Distrib. Co.</i> , 2012 IL App (1st) 112334 (2012).....	13
<i>Minorplanet Sys. USA Ltd. v. Am. Aire, Inc.</i> , 368 S.C. 146 (2006).....	5
<i>Nibco, Inc. v. Johnson</i> , 98 Ill. 2d 166 (1983)	8
<i>Pickens v. Aahmes Temple</i> , 104 N.E.3d 507, 2018 IL App (5 th) 170226 (Ct.App. 2018).....	6
<i>Pitts v. Fink</i> , 389 S.C. 156 (Ct.App. 2010).....	6
<i>Russell v. SNFA</i> , 2013 IL 113909, 987 N.E.2d 778 (2013).....	11, 12, 14
<i>State Bank of Lake Zurich v. Thill</i> , 113 Ill.2d 294 (1986).	6
<i>Townes Assocs., Ltd. v. City of Greenville</i> , 266 S.C. 81 (1976).....	5
<i>Wilder Corp. v. Wilke</i> , 330 S.C. 71 (1998).....	9, 11
<i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286, 292, 100 S. Ct. 559 (1980).....	11, 14
<i>Young v. Ford Motor Co.</i> , 2017 IL App (4th) 170177, 90 N.E.3d 647 (Ct. App. 2017).....	11

STATUTES AND RULES:

735 ILCS 5/2-204.....	7
735 ILCS 5/2-209.....	7, 11
805 ILCS 180/1-50.....	6
Rule 220(c), SCRAP.....	7
Rule 401, SCRE.....	10
Rule 801, SCRE.....	9
Rule 901, SCRE.....	10

STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTION FOR ENTRY OF FOREIGN JUDGMENT BECAUSE THE EVIDENCE SHOWS APPELLANT FAILED TO PROPERLY SERVE RESPONDENT WITH THE ILLINOIS LAWSUIT?
2. WHETHER THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTION FOR ENTRY OF FOREIGN JUDGMENT BECAUSE THE EVIDENCE SHOWS THE ILLINOIS COURT DID NOT HAVE JURISDICTION OF RESPONDENT PURSUANT TO THE ILLINOIS LONG ARM STATUTE OR DUE PROCESS?

STATEMENT OF THE CASE

This is Appellant's action to domesticate a foreign judgment she obtained by default in Cook County, Illinois, against Respondent Shiram Hospitality, LLC. At issue is whether Appellant properly served the Illinois pleadings upon an agent of Respondent and whether the Illinois court had jurisdiction of Respondent.

Appellant filed her Notice of Intent to Domesticate Foreign Judgment on August 15, 2019, to which Respondent timely objected, asserting the Illinois judgment was void for improper service and lack of jurisdiction. Appellant then moved for entry of the judgment, and a hearing took place before Judge Larry B. Hyman, Jr. on December 4, 2019. Respondent filed an affidavit on the pertinent issues of jurisdiction in support of its objections, while Appellant submitted no such affidavit. By Order dated February 18, 2020, Judge Hyman denied Appellant's motion, concluding the evidence of record shows Appellant failed to properly serve Respondent with the Illinois pleadings and that the Illinois court lacked jurisdiction over Respondent. This appeal follows.

STATEMENT OF FACTS

Appellant's recitation of facts relies heavily on the contents of her Verified Complaint filed in the Illinois case. However, as described below, the record fails to reflect this foreign pleading was ever presented to, or considered by, Judge Hyman. Therefore, Respondent's statement of facts is limited to the record before the trial court.

Respondent Shiram Hospitality, LLC is a South Carolina limited liability company. [R.p. 83]. Respondent's principal, and only, business is the ownership and operation of a hotel located in North Myrtle Beach. Sanjay H. Mishra has always been Respondent's registered agent, and he is a Member and one of two owners of Respondent. [Id]. Appellant is a resident of Illinois.

In 2014, Appellant filed suit in Cook County, Illinois, against Respondent Shiram Hospitality, LLC, Haricharan J. Mishra, and La Quinta Holdings, Inc. There is no dispute that Haricharan J. Mishra is also known as Mike Mishra, and he is the father of Sanjay Mishra.

On February 17, 2015, Horry County Deputy Sheriff Miramanee Cox prepared an Affidavit of Substituted Service, reflecting service of the Illinois summons and verified complaint, as follows:

“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)

By order dated March 8, 2016, the Illinois trial court entered an “X-Parte Default Judgment for Plaintiff” against all three defendants. [R.p. 35]. The court awarded compensatory damages in the amount of \$3,120.74, plus \$6,951.05 for attorney fees and \$24,500 for punitive damages. [Id.]. 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.

On August 15, 2019, more than three years after the Illinois judgment, Appellant filed her Notice of Intent to Domesticated Foreign Judgment in Horry County, SC. [R.p. 30]. By this time,

Mike Mishra had passed-away. [R.p. 40, 84]. Respondent filed its Notice of Defense and Response, stating the Illinois court did not have jurisdiction of Respondent and service of the Illinois pleadings was improper. [R.p. 39-41]. Appellant then moved for entry of the judgment, and the matter was scheduled for a hearing. [R.p. 69].

Prior to the hearing, Respondent submitted a memorandum, as well as the Affidavit of Sanjay Mishra, which stated Respondent does not, and never has, conducted business in Illinois, and that Mike Mishra was not an owner or agent of the business. [R.p. 76-84]. Appellant submitted a memorandum together with Deputy Cox's Affidavit of Substituted Service, but no other affidavit. [R.p. 70-75].

At the hearing, Appellant's counsel generally provided a condensed verbal summary of the allegations underlying the Illinois lawsuit. [R.p. 43-44, 54]. Appellant's memorandum also merely summarizes some of the lawsuit's allegations. [R.p. 70-74]. However, at no time does the record reflect that the actual Illinois verified complaint was ever submitted to the court.

Appellant's counsel generally described the underlying facts to the trial court as follows: Appellant's friend was staying at Respondent's hotel but did not have a credit card, so she asked Appellant if she could charge the room to her credit card, to which Appellant agreed. [R.p. 43-44, 54]. The hotel desk clerk called Appellant, who was in Illinois, to confirm this, which Appellant did and she provided her card number and security code to the desk clerk. [Id.]. Appellant contends she authorized her card for two nights only, but when there were additional charges, she called the hotel and requested a refund that the hotel refused to provide. [Id.].

As to whether Appellant properly effectuated service of the Illinois pleadings upon Respondent, Appellant contended Mike Mishra was an agent of Respondent. To this end, Appellant's counsel handed to Judge Hyman three exhibits: (1) a 2018 Facebook post made by an unknown third party, purportedly depicting Mike Mishra and describing him as the owner of La

Quinta North Myrtle Beach; (2) a 2019 purported LinkedIn profile of a Mike Mishra, showing the job title Managing Director at Shiram LLC, and (3) a 2012 Hotel-Online.com article purportedly quoting Mike Mishra saying he was managing the hotel. [R.p. 58-68]. Appellant did not file these documents or move for their admission, and Judge Hyman did not formally admit these documents into evidence, but only said “May I keep these?” [R.p. 56].

On the other hand, Respondent relied on the filed Affidavit of Sanjay Mishra. Under oath, Sanjay states:

- Respondent’s only business is conducted in Horry County, SC;
- Respondent rents rooms in Horry County only, provides services only to guests who are present in Horry County, and only collects payment in Horry County, SC;
- Respondent does not carry on business, nor has it ever carried on business outside of Horry County, SC;
- Respondent has no presence, nor does it do any business in, the State of Illinois.
- Sanjay Mishra has been the registered agent of Respondent since its inception.
- As to Mike Mishra, he was not, and never has been, a member, officer, managing or general agent of the Respondent, nor was he any other agent authorized by appointment of law to receive service of process for the Respondent.
- Mike Mishra did not inform Respondent of his receipt of the pleadings, if in fact they were properly delivered.
[R.p. 83-84].

The Appellant failed to submit any other evidence or affidavit describing the underlying transaction or Mike Mishra.

Judge Hyman issued his order on February 24, 2020. [R.p. 6-13]. He concludes that Mike Mishra was not an agent of Respondent, specifically noting the Affidavit of Sanjay Mishra and the absence of any evidence on the issue from the Appellant. [Id.]. Judge Hyman further concludes that Respondent was not doing business in Illinois and did not have sufficient minimum contacts

in Illinois to give that state personal jurisdiction, again noting those facts presented in the only affidavit before the court that describes Respondent's business and the underlying transaction. [Id.]. As such, Judge Hyman denied Appellant's Motion for Entry of Foreign Judgment. [Id.].

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 (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. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81 (1976).

ARGUMENT

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. *Digital Ally, Inc. v. Light-N-Up, LLC*, 408 S.C. 101 (Ct.App. 2014). The burden of undermining the decree of a sister state rests heavily on the assailant, who can overcome the presumption of jurisdiction and validity by extrinsic evidence, or by the record itself. *Law Firm of Paul L. Erickson, P.A. v. Boykin*, 383 S.C. 497 (2009).

In this case, the evidence of record, namely the Affidavit of Sanjay Mishra, together with the record before the court, establishes (1) Appellant failed to properly serve Respondent with the Illinois lawsuit because Mike Mishra was not the registered agent or other agent of Respondent, and (2) Illinois lacked jurisdiction of Respondent because it was not doing business in, and did not have minimum contacts with, Illinois.

Notably, Appellant submitted to the trial court no substantive affidavits in response to the Affidavit Sanjay Mishra, but instead relied only upon an oral summary, the Affidavit of Substituted Service and three items recently printed from the internet that lack any probative value.

Moreover, the record shows Appellant's Illinois verified complaint was not before Judge Hyman. It was not filed or attached to any filing in this case, it was not referred to in Appellant's pre-hearing memorandum as a document to be examined or analyzed, and it was not referred to by Appellant's counsel at the hearing as a document to be examined or analyzed. While the verified complaint is presumably a public record, Appellant did not request Judge Hyman to take judicial notice of it, and the record shows it was simply not presented to or considered by the trial court. Because Respondent's evidence in this case overwhelmingly supports the trial court's decision, this Court must affirm the Order Denying Plaintiff's Motion for Entry of Foreign Judgment.

1. THE EVIDENCE SHOWS APPELLANT FAILED TO PROPERLY SERVE RESPONDENT WITH THE ILLINOIS LAWSUIT BECAUSE MIKE MISHRA WAS NOT THE REGISTERED AGENT OR OTHER AGENT OF RESPONDENT.

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 (Ct.App. 2010). Thus, to ascertain whether Respondent was properly served with the Illinois lawsuit, this court looks to Illinois law. Under Illinois law, "if a defendant is not properly served with summons, the court lacks personal jurisdiction over the defendant and any judgment against that party is void. *John Isfan Constr. v. Longwood Towers, LLC*, 2016 IL App (1st) 143211, 52 N.E.3d 510 (2016).

A. Service of Process Under Illinois Law – Foreign Limited Liability Company.

In Illinois, personal jurisdiction can be acquired only by service of process in the manner directed by statute. *State Bank of Lake Zurich v. Thill*, 113 Ill.2d 294 (1986). Under the applicable Illinois statute, a foreign limited liability company "shall be served either upon the registered agent appointed by the limited liability company or upon the Secretary of State as provided in this Section." 805 ILCS 180/1-50(a); See, *Pickens v. Aahmes Temple #132, LLC*, 104 N.E.3d 507,

2018 IL App (5th) 170226 (Ct.App. 2018)(Section 1-50 applies to service of LLC's and is more limited than the statute relating to service upon a private corporation).

Admittedly, this statute was not cited by the parties or the trial court. However, this court “may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.” Rule 220(c), SCRAP. There is no dispute that Respondent is a South Carolina Limited Liability Company. Moreover, there is no dispute that Sanjay Mishra has been the registered agent of Respondent since its inception and Mike Mishra has never been the registered agent. Because Section 180/1-50 requires that service upon a foreign LLC must be upon the registered agent or Secretary of State, Appellant failed to properly serve Respondent under Illinois law, and therefore the trial court's order should be affirmed.

B. Service of Process Under Illinois Law – Foreign Corporation.

In this case, service of the Illinois pleading was not only improper pursuant to 805 ILCS 180/1-50 because Respondent is an LLC, it was also improper under the Illinois statute relating to service upon a foreign corporation.

Similar to South Carolina law, a foreign corporation may be served with Illinois pleadings through its registered agent or any officer or agent of the corporation, so long as it is subject to Illinois jurisdiction under its long arm statute and said jurisdiction is consistent with Due Process.¹ 735 ILCS 5/2-204; 735 ILCS 5/2-209(d). Appellant does not contend she served Respondent's registered agent with the Illinois pleadings, so the inquiry under Section 5/2-204 is whether she served Respondent's “officer or agent” under Illinois law. This is known as substituted service.

In Illinois, “for service of process on a corporation to have been properly made upon an agent of the defendant, the agent must have had **actual authority** to accept service on behalf of the corporation.” *M.B. Fin.Bank, N.A. v. Ted & Paul, LLC*, 2013 IL App (1st) 122077, 990 N.E.2d

¹ Jurisdiction under Illinois' Long Arm Statute and Due Process are discussed below.

764 (2013)(emphasis added). In several Illinois cases, the legal inquiry is “did the employee understand the import of the documents which he or she received?” *See, Aspen Am. Ins. Co. v. Interstate Warehouseing, Inc.*, 2016 IL App (1st) 151876, 57 N.E.3d 656, *reversed on other grounds*, 2017 IL 121281, 418 Ill. Dec. 282, 90 N.E.3d 440 (2017).

While there has been disagreement among the Illinois appellate courts as to which party has the burden to show the presence or absence of an agency relationship, the Supreme Court of Illinois has explained that in cases of substituted service:

“The recital in the return that service was made upon a person who was an agent of the corporate defendant is not, therefore, conclusive and can be denied and placed in issue by the affidavit of the defendant. If the affidavit stands unrebutted or uncontradicted, it is a proper basis for quashing the service.” *Nibco, Inc. v. Johnson*, 98 Ill. 2d 166 (1983).

Appellant’s arguments regarding the applicable burden of proof after producing an affidavit of substituted service are confusing, but more importantly, they miss the mark. First, Respondent questions whether Deputy Cox’s Affidavit of Substitute Service could even establish a prima facie case under Illinois law, as it seems to state, and the trial court read it to convey, that the sheriff’s deputy knew Mike Mishra to be the “Father of Agent Sanjay Mishra” rather than agent of Respondent. At best, the affidavit of substituted service is poorly phrased and completely ambiguous.

Second, even if the Affidavit of Substituted Service creates a prima facie presumption of proper service, it is not conclusive under Illinois law, as Respondent filed an affidavit denying Mike Mishra was an agent. To be sure, for the Appellant to succeed on this issue, Illinois law requires Appellant to affirmatively refute Respondent’s affidavit with a counter-affidavit or testimony, which Appellant failed to do. Respondent’s Affidavit of Sanjay Mishra is not only clear and convincing evidence refuting the unclear and ambiguous affidavit of substituted service, it was the only probative and direct evidence before the trial court. Thus, under Illinois law, Sanjay

Mishra's affidavit must be accepted as true and a proper basis to quash service, and therefore the trial court's order should be affirmed.

Appellant also contends the trial court erred by failing to properly consider those allegations contained in her Illinois verified complaint. As stated above, the record reflects this foreign document was not before the trial court, and therefore, these allegations should not be considered on appeal. Even if the verified complaint was before the trial court, which Respondent denies, the trial court did not reference or rule on the effect of said allegations, and therefore this issue is not proper for appeal. *See, Wilder Corp. v. Wilke*, 330 S.C. 71 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.")

Even if the verified complaint was before the trial court and the trial court discussed, evaluated and/or ruled on the allegations contained therein, which never happened, it adds no real probative value. The verified complaint's allegations of agency, namely that Mike Mishra is the managing member of Shiram and he personally operated the hotel, are made by Appellant "on information and belief", meaning she only "believes the same to be true." [R.p. 15, 27]. Thus, even if the verified complaint were to be considered, which it was not and should not, these allegations are not certified to be true and correct and remain without any corroboration. Indeed, Appellant failed to submit a counter-affidavit as required by Illinois law.

Finally, Appellant contends the trial court erred by failing to give proper weight to the three documents printed off the internet. These documents lack any evidentiary value and are plainly insufficient to overcome the sworn affidavit of Sanjay Mishra. While their existence is noted in the trial court's order, they are properly afforded no weight by the judge. First, the record does not show these internet items were ever filed by the Appellant or even admitted into evidence. Second, these internet items are hearsay. Rule 801, SCRE. Third, they were not authenticated before the

trial court. Rule 901, SCRE. Fourth, they are irrelevant and lack any probative value. Rule 401, SCRE.

In this regard, the Facebook post is dated 2018, more three years *after* the purported date of substituted service, and is made by an unknown person with unknown qualifications to make any statement about Mike Mishra or Respondent. The LinkedIn post is even more absurd, as it is undated but printed in 2019 without any identification as to who made the entry or when, nor any information about the author. And the 2012 Hotel-Online.com article is unauthenticated, double hearsay and dated three years *prior* to the purported date of substituted service. In any event, the substance, admissibility, authentication, relevance and probative value of these internet items were not addressed by the trial court, and therefore Appellant's argument that these items should be considered on appeal is improper and not preserved. *Wilder Corp. v. Wilke*, 330 S.C. 71 (1998).

Similarly, Appellants arguments on appeal concerning the easement purportedly signed by Mike Mishra as stated in the Hotel-Online.com article, is unavailing as it is merely a bootstrapping grasp from the otherwise evidentiary deficient article without any corroboration. The purportedly numerous lawsuits involving Mike Mishra, as cited on appeal for the first time by Appellant, are also unavailing, as these too were never before the trial court, nor preserved for appeal, and do not reference or serve as evidence of agency.

In sum, the trial court order should be affirmed because the evidence before the court shows (i) Appellant failed to serve Respondent's registered agent as required by Illinois' Limited Liability Company Act, (ii) Mike Mishra was not an agent of Respondent, and (iii) Appellant failed to file any counter-affidavits (or other proper and admissible evidence) in response to the filed Affidavit of Sanjay Mishra. Once this court determines the evidence supports the trial court's order that Appellant failed to properly serve Respondent with the Illinois pleadings, this court's inquiry ends.

2. THE EVIDENCE SHOWS THE ILLINOIS COURT DID NOT HAVE JURISDICTION OF RESPONDENT PURSUANT TO THE ILLINOIS LONG ARM STATUTE OR DUE PROCESS.

Only if this court reverses the trial court's order on service, must it also determine whether Illinois had jurisdiction over Respondent under the Illinois long arm statute and federal due process.

The Illinois long arm statute, governs the exercise of personal jurisdiction by an Illinois court over a nonresident. 735 ILCS 5/209. Illinois courts will evaluate the Illinois long arm statute and the federal due process requirements similarly, and if the requirements of due process are not satisfied, then personal jurisdiction under the long-arm statute is not proper. *Russell v. SNFA*, 2013 IL 113909, 987 N.E.2d 778 (2013); *Young v. Ford Motor Co.*, 2017 IL App (4th) 170177, 90 N.E.3d 647 (Ct. App. 2017). 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." *Id.*

In this case, Appellant seeks specific jurisdiction, which requires (1) the corporate, nonresident defendant must have minimum contacts with Illinois in that (a) it purposefully directed its activities at this state and (b) plaintiffs' claims arose from or related to those contacts with Illinois, and (2) it must be reasonable for Illinois to exercise jurisdiction over the defendant. *Russell v. SNFA*, 2013 IL 113909, 987 N.E.2d 778 (2013); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980).

A. Burden of Proof.

Under Illinois law, the plaintiff has the burden to establish a prima facie basis to exercise personal jurisdiction over a nonresident defendant. *Russell v. SNFA*, 2013 IL 113909, 987 N.E.2d 778 (2013). Any conflicts in the pleadings and affidavits must be resolved in the plaintiff's favor,

but the defendant may overcome plaintiff's prima facie case for jurisdiction by offering uncontradicted evidence that defeats jurisdiction. *Id.* "If facts alleged in a defendant's affidavit contesting jurisdiction are not refuted by a counter affidavit filed by the plaintiff, then those facts are accepted as true." *Aspen Am. Ins. Co. v. Interstate Warehouseing, Inc.*, 2016 IL App (1st) 151876, 57 N.E.3d 656 (2016)(emphasis added), *reversed on other grounds*, 2017 IL 121281, 418 Ill. Dec. 282, 90 N.E.3d 440(emphasis added).

Again, Appellant relies heavily on her Illinois verified complaint, and Respondent again notes this foreign pleading was not filed in this case, was not referenced to by Appellant in Appellant's memorandum or at the hearing as a document to be examined or relied upon, was not acknowledged by judicial notice or any other manner, and was not considered or referenced by the trial court. Thus, this court's review of the trial court's decision should be limited to the facts and information available at the time the order, which consisted of the oral descriptions given at the hearing, the Affidavit of Substituted Service and the Affidavit of Sanjay Mishra. Because Appellant failed to file any counter-affidavit to Respondent's Affidavit of Sanjay Mishra, the evidence before the trial court clearly defeats jurisdiction in this case.

B. Evidence Shows Respondent Did Not Purposefully Direct Its Activities at Illinois.

When evaluating minimum contacts, the purposeful availment requirement ensures that jurisdiction will not be obtained as the result of random, fortuitous, or attenuated contacts. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985). When parties have contacts based on a contractual or business relationship, factors relevant to purposeful availment include: (1) who initiated the transaction, (2) where the contract was entered into, and (3) where performance was to occur. *Aasonn, LLC v. Delaney*, 961 N.E.2d 939 (Ct. App. 2nd, 2011). Illinois recognizes a fourth factor, namely where the contract was negotiated, but will also consider the terms of the contract, the contemplated future consequences, and the parties' actual

course of dealing. *Khan v. Gramercy Advisors, LLC*, 2016 IL App. (4th) 150435, 61 N.E.3d 107 (2016).

In this case, based on the information before the trial court, the entire transaction was initiated in South Carolina by Appellant and her friend. The friend was renting a room in South Carolina, and the friend called Appellant from South Carolina to use her credit card. Use of the credit card only took place in South Carolina. The charging of the card took place in South Carolina and the deposit of money took place in South Carolina. Clearly, the contract was entered into in South Carolina and the performance (renting the room) took place in South Carolina. Respondent's only alleged action was a single call to Appellant to verify this transaction. Indeed, Respondent did not reach out to Illinois to solicit Appellant's business, or to initiate this transaction, as that was already established between Appellant and her friend, and the desk clerk only called to obtain Appellant's confirmation, which she provided. At best, this was a random, fortuitous, or attenuated contact that precludes jurisdiction.

C. Evidence Shows Appellant's Claims Arose From or Related to Her Contacts with South Carolina, Not Respondent's Contacts with Illinois.

Moreover, when evaluating minimum contacts, "focus is on the defendant's activities within the forum State, not on those of the plaintiff." *Madison Miracle Prods., LLC v. MGM Distrib. Co.*, 2012 IL App (1st) 112334 (2012). As already discussed, Appellant and her friend initiated the transaction where Appellant agreed she would pay for her friend's hotel room in South Carolina. Again, Respondent did not purposefully or otherwise seek out Appellant or any business in Illinois, instead the desk clerk only confirmed and obtained authorization for the agreement already existing between Appellant and her friend. Respondent did not rent a hotel room located in Illinois, nor did Respondent obtain payment in Illinois, as all actions were conducted in South Carolina only.

Without sufficient minimum contacts, Illinois did not have jurisdiction over Respondent and the trial court's order should be affirmed.

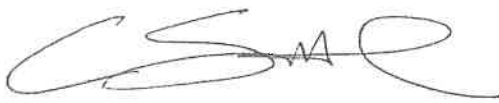
D. Evidence Shows it is Unreasonable to Require Defendant to Litigate in Illinois.

Even if there are sufficient minimum contacts, which is denied, it is unreasonable to require Respondent to litigate this case in Illinois. The protection against inconvenient litigation is typically described in terms of "reasonableness" or "fairness." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). "The defendant's contacts with the forum State must be such that maintenance of the suit does not offend traditional notions of fair play and substantial justice, and the relationship between the defendant and the forum must be such that it is reasonable...to require the corporation to defend the particular suit which is brought there." *Id.* The factors to consider when deciding reasonableness include: (1) the burden imposed on the defendant by requiring it to litigate in a foreign forum; (2) the forum state's interest in resolving the dispute; (3) the plaintiff's interest in obtaining relief; and (4) the interests of the other affected forums in the efficient judicial resolution of the dispute and advancement of substantive social policies. *Russell v. SNFA*, 2013 IL 113909, 987 N.E.2d 778 (2013).

Really, the only element that may weigh in favor of Appellant is her interest in obtaining relief at home in Cook County, Illinois. No doubt the burden imposed on the Defendant would be substantial, it does not even conduct any business in Illinois. There is no real basis to conclude that Illinois would have any interest in a hotel room and credit card dispute that took place in South Carolina, and it is much more readily apparent that South Carolina would have a greater interest and would provide a much more efficient judicial resolution of a dispute that originated completely by the actions of Appellant and her friend in this state. To be sure, the evidence not only fails to show Respondent had sufficient minimum contacts with Illinois, it is wholly unreasonable to require Respondent to litigate in Illinois.

CONCLUSION

The trial court's findings are not only supported by "any evidence", they are overwhelmingly, if not totally, supported by all the evidence before the court. The Illinois court did not have jurisdiction over Respondent because Appellant failed to serve Respondent's registered agent and because the evidence shows Mike Mishra was not a proper, authorized agent for service. Moreover, the Illinois court did not have jurisdiction over Respondent because the evidence shows the subject transaction occurred in South Carolina, Respondent did not have minimum contacts in Illinois and it would be unreasonable to require Respondent to litigate there. Therefore, the trial court's order denying Appellant's motion for entry of foreign judgment should be affirmed.



Fred B. Newby (S.C. Bar #4202)
C. Scott Masel (S.C. Bar #12497)
NEWBY, SARTIP & MASEL, LLC
P.O. Box 808, Myrtle Beach, SC 29578
(843) 449-9417
Attorneys for Respondent

September 16, 2020

CERTIFICATE OF COUNSEL

I hereby certify this Final Brief complies with Rule 211(b), SCACR



C. Scott Masel (S.C. Bar #12497)
NEWBY, SARTIP & MASEL, LLC
Attorneys for Respondent

September 16, 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

Case No. 2020-000557

Alison Meyers, ...Appellant,

v.

Shiram Hospitality, LLC, ...Respondent.

FINAL REPLY BRIEF OF APPELLANT

Stephanie H. Burton (#13089)
Gibbes Burton, LLC
308 East St. John St.
Spartanburg, SC 29302
sburton@gibbesburton.com
Telephone: (864) 327-5000
Facsimile: (864) 342-6884

Attorneys for Appellant

RECEIVED
Sep 28 2020
SC Court of Appeals

TABLE OF CONTENTS

	Pages
TABLE OF AUTHORITIES	ii
ARGUMENT	1
I. Service on Respondent was Proper under Illinois Law.....	1
A. Service of process on unregistered foreign limited liability companies is prescribed by the Illinois long arm statute.....	1
B. Service on Mike Mishra was proper under Illinois Law.....	3
i. Corporate service or personal service outside Illinois is sufficient.....	3
ii. Respondent failed to impeach Deputy Cox’s Affidavit.....	4
iii. Illinois law does not require authorization in order to accept service ..	4
iv. Reliance on the Verified Complaint is appropriate.....	7
v. Plaintiff’s evidence presented at hearing was properly admitted	8
vi. Mike Mishra’s understanding of the legal import of documents served cannot be challenged	12
II. Jurisdiction Over the Respondent was Properly Exercised by the Illinois Court ..	12
A. Respondent fails to meet its burden of proof	12
B. Respondent purposefully directed its activity in Illinois at the Appellant	14
C. Respondent’s contacts with Illinois were sufficient	15
D. Requiring the Respondent to litigate in Illinois is reasonable	15
CONCLUSION	16

TABLE OF AUTHORITIES

CASES

<u>Aspen Am. Ins. Co. v. Interstate Warehousing, Inc.,</u> 2016 IL App (1st) 151876, 57 N.E.3d 656 (Ill. App. Ct. 2016)	6, 13
<u>Bober v. Kovitz, Shifrin, Nesbit,</u> No. 03 C 9393, 2005 WL 2271861 (N.D. Ill. Sept. 4, 2005)	6
<u>Burger King Corp. v. Rudzewicz,</u> 471 U.S. 462 (1985)	15
<u>Charles Austin, Ltd. v. A-1 Food Servs., Inc.,</u> 2014 IL App (1st) 132384, 23 N.E.3d 534 (Ill. App. Ct. 2014)	4
<u>Davis v. Dresback,</u> 81 Ill. 393 (Ill. 1876)	5
<u>Hunter v. Hyder,</u> 236 S.C. 378 (1960)	11
<u>In re Subpoena to Huawei Techs. Co., Ltd.,</u> 720 F. Supp. 2d 969 (N.D. Ill. 2010)	4
<u>Island Terrace Apartments v. Keystone Serv. Co.,</u> 35 Ill. App. 3d 95, 341 N.E.2d 41 (Ill. App. Ct. 1975)	4
<u>Kalata v. Healy,</u> 312 Ill. App. 3d 761, 728 N.E.2d 648 (Ill. App. Ct. 2000)	14
<u>Law Firm of Paul L. Erickson, P.A. v. Boykin,</u> 383 S.C. 497, 681 S.E.2d 575 (2009)	1
<u>MB Financial Bank, N.A. v. Ted & Paul, LLC,</u> 2013 IL App (1st) 122077, 990 N.E.2d 764 (Ill. App. Ct. 2013).....	5
<u>Nibco, Inc. v. Johnson,</u> 98 Ill.2d 166 (Ill. 1983)	6, 8
<u>Ores v. Kennedy,</u> 218 Ill. App. 3d 866, 578 N.E.2d 1139 (Ill. App. Ct. 1991)	15
<u>Pickens v. Aahmes Temple #132, LLC,</u> 2018 IL App (5th) 170226, 104 N.E.3d 507 (Ill. App. Ct. 2018).....	2

<u>Russell v. SNFA,</u> 2013 IL 113909 (Ill. 2013)	13, 14, 15-16
<u>State v. Doctor,</u> 306 S.C. 527, 413 S.E.2d 36 (1992)	11
<u>Wilder Corp. v. Wilke,</u> 330 S.C. 71, 497 S.E.2d 731 (1998).....	1, 7, 8

STATUTES

735 Ill. Comp. Stat. 5/1-109	8
735 Ill. Comp. Stat. 5/2-204.....	3
735 Ill. Comp. Stat. 5/2-208(a)(b).....	3
735 Ill. Comp. Stat. 5/2-209(d)	3
735 Ill. Comp. Stat. 5/2-209(g)	3
805 Ill. Comp. Stat. 180/1-35.....	2
805 Ill. Comp. Stat. 180/1-50(a).....	1
805 Ill. Comp. Stat. 180/1-50(b).....	2
805 Ill. Comp. Stat. 180/1-50(d).....	3

RULES

Rule 103(a)(1), SCRE.....	9
Rule 104(a), SCRE.....	10
Rule 401, SCRE.....	10
Rule 403, SCRE.....	10
Rule 801, SCRE.....	10
Rule 801(d)(2)(D), SCRE.....	11
Rule 803(1), SCRE.....	10
Rule 803(21), SCRE.....	10, 11

Rule 804(a)(4), SCRE.....	11
Rule 804(b)(3), SCRE.....	11
Rule 805, SCRE.....	11
Rule 901, SCRE.....	10
Rule 901(b)(1), SCRE.....	10
Rule 902(6), SCRE.....	11

ARGUMENT

Respondent's Initial Brief fails to address nearly every single case cited by Appellant. Instead, Respondent attempts to cast red herring arguments, based on its own version of events, to fit its narrative hoping that it will be absolved of paying a judgment that is based on its actions nearly a decade ago. Yet despite Respondent's protestations, Illinois case law unequivocally supports Appellant's arguments regarding the manner of service, apparent agency between Mike Mishra and Respondent, as well as jurisdiction over Respondent.

I. Service on Respondent was proper under Illinois law.

"[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 (2009) (emphasis added). Here, Respondent did not meet that burden, especially pursuant to Illinois law.

A. Service of process on unregistered foreign limited liability companies is prescribed by the Illinois long arm statute.

Respondent contends that the Illinois Limited Liability Company Act prescribes that a foreign limited liability company "shall be served either upon the registered agent . . . or upon the Secretary of State as provided in this Section." 805 Ill. Comp. Stat. 180/1-50(a). It further asserts that due to the failure to serve either the registered agent or the Secretary of State, service on Mike Mishra was improper. Respondent's argument fails because the Act is not controlling.

As an initial matter, Respondent waived such an argument because it raised such argument for the first time in its Initial Brief. See Wilder Corp. v. Wilke, 330 S.C. 71, 76 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but *must have been raised to and ruled upon* by the trial judge to be preserved for appellate review."). Respondent notes that Appellant did not cite the Act, but that is because the underlying action was brought pursuant to the long arm statute of Illinois. (R. p. 45, lines 12-19.) Regardless, the Act prescribes service of

process upon a foreign LLC only when it registers to transact business in Illinois. See 805 Ill. Comp. Stat. 180/1-35 (“Each limited liability company and foreign limited liability company shall continuously maintain in this State a registered agent and registered office, which agent must be an individual resident of this State or other person authorized to transact business in this State.”) Since Respondent had neither a registered agent nor a registered office in Illinois, Section 1-50(a) of the Act is inapplicable. Respondent’s reliance upon Pickens v. Aahmes Temple #132, LLC , 2018 IL App (5th) 170226, 104 N.E.3d 507 (Ill. App. Ct. 2018), is misplaced.

Service upon the Illinois Secretary of State, as prescribed in the Act, is permitted only under specific circumstances:

(1) Whenever the limited liability company shall fail to appoint or maintain a registered agent in this State; (2) Whenever the limited liability company’s registered agent cannot with reasonable diligence be found at the registered office in this State or at the principal place of business stated in the articles of organization; (3) When a limited liability company has dissolved; (4) When a domestic limited liability company has been dissolved, the conditions of paragraph (1) or paragraph (2) exist, and a criminal proceeding has been instituted against or affecting the limited liability company; and (5) When the admission of a foreign limited liability company to transact business in this State has been revoked or withdrawn. 805 Ill. Comp. Stat. 180/1-50(b).

None of the aforementioned circumstances exist because Respondent is not registered in Illinois. Further, it is illogical that service upon every unregistered foreign LLC must be through the Illinois Secretary of State because every plaintiff would take advantage of that option, and then the burden would fall on the Secretary of State to give notice to every LLC.

Assuming, *arguendo*, that the Act did prescribe service on every unregistered foreign LLC, Respondent still was properly served pursuant to the catchall provision that states, “Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter

provided by law.” 805 Ill. Comp. Stat. 180/1-50(d). As a result, statutory service on a corporation¹ or personal service outside the state² is satisfactory under the Act. Therefore, Respondent’s argument is misplaced and service was proper.

B. Service on Mike Mishra was proper under Illinois Law.

Respondent contends that service was improper because service was effectuated in the same manner as upon a foreign corporation. It also argues that Mike Mishra did not have authority to accept service, that he did not understand what he received, that the Verified Complaint has no probative value, and that the documents presented to the trial court at the hearing were not admitted as evidence. All of the arguments, however, fail to address or distinguish any of the cases cited by Appellant and fail to meet the burden of clear and convincing evidence.

i. Corporate service or personal service outside Illinois is sufficient.

As stated above, the underlying matter was brought pursuant to the Illinois long arm statute. Thus, “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.*” 735 Ill. Comp. Stat. 5/2-209(d) (emphasis added). Additionally, the long arm statute’s catchall provision unequivocally states that, “[n]othing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law.” 735 Ill. Comp. Stat. 5/2-209(g). Either way, statutory corporate service

¹ “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 Ill. Comp. Stat. 5/2-204 (emphases added).

² “(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 Ill. Comp. Stat. 5/2-208(a)(b) (emphases added).

or personal service outside the state is appropriate. Subsequently, “service 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); *see also* Island Terrace Apartments v. Keystone Serv. Co., 35 Ill. App. 3d 95, 99, 341 N.E.2d 41, 44 (Ill. App. Ct. 1975).

ii. Respondent failed to impeach Deputy Cox’s Affidavit.

Respondent now questions whether Deputy Cox’s Affidavit of Substitute Service establishes a *prima facie* case under Illinois law, and contends that it “is poorly phrased and completely ambiguous.” (Resp. Br., p. 8.) These arguments are likewise waived pursuant to Wilder, Corp., because the first time that Respondent raises such issue is in its Initial Brief. Additionally, the Illinois court already concluded that the affidavit established *prima facie* evidence when it entered the default judgment, and any challenge by Respondent should have been made in Illinois after receiving notice of the judgment. Respondent failed to do so and also failed to examine Deputy Cox regarding any ambiguity in the affidavit. Thus, Respondent cannot now challenge the language of Deputy Cox’s affidavit; rather, it needed impeach 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).

iii. Illinois law does not require authorization in order to accept service.

Next, Respondent argues that under Illinois law, Mike Mishra did not have actual authority to accept service citing MB Financial Bank, N.A. v. Ted & Paul, LLC. It also argues that Mike Mishra did not understand what he received and cites Aspen Am. Ins. Co. v. Interstate Warehousing, Inc. Yet, pursuant to Wilder Corp., Respondent waived the issue of whether Mike

Mishra understood the legal import of what he received because the issue was never raised prior to this appeal. Beyond this, Mike Mishra did not need to be authorized to receive service.

In MB Financial, a default judgment on foreclosure was obtained after the trial court found that service was effectuated on an agent of the company via corporate service. MB Financial Bank, N.A. v. Ted & Paul, LLC, 2013 IL App (1st) 122077, ¶ 29, 990 N.E.2d 764 (Ill. App. Ct. 2013). In response, affidavits were filed by the agent and the president stating that the agent “has never been a director, officer, agent or registered agent.” Id. at ¶ 30. The appellate court held that whether someone is a corporate agent for the purpose of receiving service of process on behalf of that corporation is a question of fact. Id. at ¶ 31. MB Financial is inapposite to the instant matter because the agent served, Mike Mishra, is unable to submit an affidavit denying a connection to Respondent and cannot be examined by either party due to his death. Further, Sanjay Mishra’s affidavit only 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 . . .’ It does not state that Mike Mishra was not a regular agent or *an employee of Respondent*, that he never held himself out to be an agent or employee, nor did it explain why Mike Mishra was at the hotel voluntarily accepting service if he was neither an employee or agent of Respondent nor holding himself out to be an agent or employee thereof. Consequently, Sanjay Mishra’s uncorroborated affidavit is not clear and convincing evidence required to overcome the presumption of service. See 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.”). This is especially true because the underlying case is about Respondent’s fraud.

In addition, Respondent cites Nibco, Inc. v. Johnson. In that case, a member of the defendant’s household was served, which constituted “substitute service” or “abode service”. Nibco, Inc. v. Johnson, 98 Ill.2d 166 (Ill. 1983). In *dicta*, the Illinois Supreme Court compared substitute service to corporate service, and opined that service made upon a defendant may be denied and may put at issue by the affidavit, which if it stands un rebutted or uncontradicted may be a proper basis for quashing the service. Id. at 172. Here, the affidavit was rebutted and contradicted by evidence submitted to the Court, especially by way of the article using Mike Mishra’s own words. As a result, Respondent’s affidavit, which is the only evidence submitted and is self-serving by nature, does not rise to the level of clear and convincing evidence required to show that service was improper.

Notwithstanding the waiver, Respondent contends that a common corporate agent may not be served because there was no authorization to receive service. Yet, Illinois courts have held that the failure to authorize does not mean that he fails to qualify as a corporate agent to be served. Bober v. Kovitz, Shifrin, Nesbit, No. 16 C 5393, 2005 WL 2271861, ¶ 5 (2005). Respondent further argues that Illinois courts may inquire whether an employee understood the import of the documents received when served with process. See Aspen Am. Ins. Co. v. Interstate Warehousing, Inc., 2016 IL App (1st) 151876, 57 N.E.3d 656 (Ill. App. Ct. 2016). The court in Aspen, however, found that despite not being an agent authorized to receive service, the general manager was served properly. Id. Even if Mike Mishra was not explicitly authorized to receive service as an agent of Respondent, the Trial Court recognized that Mike Mishra held himself out as an agent through the evidence that was submitted at hearing. Thus, service was proper under Illinois law.

iv. Reliance on the Verified Complaint is appropriate.

Disingenuously, Respondent argues that the Verified Complaint should not be relied upon, despite its own reference to it. In its Notice of Defense, and Response to Notice to Domesticate Foreign Judgment, Respondent states “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” and that “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, ¶¶ 2, 3(c).) Respondent also refers to the Verified Complaint in its Memorandum in Opposition to Plaintiff’s Motion for Entry of Foreign Judgment by referencing the damages sought therein. (R. p. 76.) Further, Respondent refers to the Verified Complaint in its Initial Brief to argue that the allegations of agency are made upon information and belief. Respondent cannot have its cake and eat it too as a copy of the Verified Complaint could only be obtained by 1) being served or 2) appearing at the Clerk of the Circuit Court of Cook County to receive a printout (as documents are not normally accessible otherwise).

Further, Respondent argues that review of Verified Complaint is waived because the Appellant raises it for the first time on appeal. In support of its position, Respondent cites to Wilder Corp. v. Wilke, but this reliance is misplaced and meritless. The issue in Wilder Corp. related to a seller’s and buyer’s amortization schedules that were integral to the trial court’s decision. Wilder Corp., 330 S.C. at 76. Further, the trial court ruled on the objections “by expressly adopting Buyer’s amortization schedule in its order.” Id. at 77. Here, in addition to Appellant’s recitation of the facts in pleadings, specific reference to the underlying Complaint was made at the hearing and it is a matter of public record. (See R. p. 45, lines 7-11 (“the complaint that was filed in this matter that

led to the judgment being rendered by the courts in Illinois provided and stated that that telephone call placed from Horry County to Illinois constituted a transaction of business.”.)

Respondent also erroneously contends that the Verified Complaint has no probative value. Specifically, Respondent selectively argues that the allegations against Mike Mishra are uncorroborated because they were made upon information and belief. It also argues, without authority, that Illinois law requires an opposing affidavit, which it does not. Respondent’s arguments are meritless not just because the proper venue to challenge the underlying pleading is in Cook County, Illinois, but also because the verification by certification of the Complaint is the equivalent of providing testimony under oath. See 735 Ill. Comp. Stat. 5/1-109 (“Any person who makes a false statement, material to the issue or point in question, which he does not believe to be true, in any pleading, affidavit or other document certified by such person in accordance with this Section shall be guilty of a Class 3 felony.”) As a result, the underlying Complaint, as well as the evidence submitted at hearing, is appropriate for consideration because each and every allegation is corroborated in the same manner as an affidavit. See Nibco, Inc. v. Johnson, supra.

v. Plaintiff’s evidence presented at hearing was properly admitted.

Moreover, when a trial court makes a ruling based on evidence submitted during a hearing, the issue is preserved for appeal. See Wilder, Inc., supra. Nonetheless, because Appellant asserts that the Trial Court improperly characterized the evidence at the hearing³, Respondent now argues: 1) the record does not show the documents were ever filed or admitted into evidence; 2) the documents are hearsay; 3) they were not authenticated before the Trial Court; and 4) they are irrelevant and lack probative value. Respondent’s arguments, however, all fail.

³ The Trial Court referred to Appellant’s evidence simply as “some newspaper accounts in which Mishra called himself the ‘owner’ of Defendant’s hotel . . .” (R. p. 11.)

The reasoning in Wilder Corp. precludes Respondent's arguments because it failed to object at hearing as to the admissibility of evidence presented, including, but not limited to, authentication, foundation, relevance, or that the documents may be hearsay. See also Rule 103(a)(1), SCRE (Where a ruling is one admitting evidence, a timely objection or motion to strike must be made on the record and stating the specific ground of objection if not apparent from the context.) Specifically, there was no objection at the beginning of the hearing when Appellant's counsel stated, "I have a couple of exhibits, and I shared those with Mr. Newby, and I'll refer to these." (R. p. 43, lines 7-9.) Respondent failed to object or rebut Appellant's counsel when the evidence was introduced to the Trial Court:

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

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

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

* * * * *

MR. GRIMSLEY: And Exhibit B is a LinkedIn printout, and in that Mr. Mishra states that he is the managing director of the Shiram, LLC. I would submit to the Court that an LLC can retain the services of managers, treasures [sic], bookkeepers and other people who are not members of the LLC. I think in this case that there is sufficient information to believe that Mr. Mishra was actively involved in the LLC.

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

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

(R. p. 47, line 8-p. 48, line 21.) (Emphasis added.) At the end of the hearing, Respondent again failed to object when the Trial Court asked to keep these exhibits. (R. p. 56, lines 8-9.) Therefore, Respondent failed to preserve any objection and it cannot argue for the first time on appeal that the exhibits should be given no consideration.

Even assuming, *arguendo*, that arguments as to the admissibility of evidence are not waived, Respondent argues in general that Appellant's exhibits should not be given any weight pursuant to South Carolina Rule of Evidence 801 regarding hearsay, Rule 901 regarding authentication, and Rule 401 regarding relevancy. Despite failing to specify how the exhibits did not comply with the rules, Respondent's arguments are flawed.

"Preliminary questions concerning . . . the admissibility of evidence shall be determined by the court" and "[i]n making its determination it is not bound by the rules of evidence except those with respect to privileges." Rule 104(a), SCRE. In the instant matter, the Trial Court admitted the exhibits at hearing by expressly asking to keep them and referencing them in its ruling.

Exhibit A is a photograph and caption posted on Facebook that makes a statement about Strand Hospitality Services' President John Pharr joining "Mike Mishra, owner of the La Quinta North Myrtle Beach to celebrate his birthday." The declarant's availability is immaterial because, pursuant to Rules 803(1) and 803(21), the post is a statement describing or explaining an event made immediately thereafter, and it also shows the reputation of Mike Mishra in the community. Further, it was authenticated pursuant to Rule 901(b)(1) by its appearance, contents, and substance taken in conjunction with the circumstances. (See also R. p. 47, lines 20-23.) As to probative value, Exhibit A is relevant pursuant to Rule 403 because it tends to make the existence of agency between Mike Mishra and Respondent probable.

Exhibit B, Mike Mishra's LinkedIn profile, is likewise admissible. The hearsay exception under Rule 804(a)(4) applies because Mike Mishra is unable to be present or to testify at the hearing due to his death. Additionally, pursuant to Rule 804(b)(3), Mike Mishra's statement that he is a managing director is contrary to his alleged pecuniary or proprietary interest stated in Sanjay Mishra's affidavit that a reasonable person in his position would not have made the statement that he was a managing director at any time unless believing it to be true. See also State v. Doctor, 306 S.C. 527, 529 (1992) ("We now hold out-of-court statements made by an unavailable declarant are admissible in both civil and criminal trials.").

Exhibit C is a Hotel-Online.com article that reprinted David Wren's article from The Sun News and McClatchy-Tribune Regional News. Thus, the article is self-authenticating pursuant to Rule 902(6) because it purports to be, and is, a newspaper/periodical. It is also not hearsay within hearsay under Rule 805 because: 1) it shows the reputation of Mike Mishra's character in the community pursuant to 803(21); 2) it is an exception under Rule 804(a)(4) because Mike Mishra is unable to be present or to testify at the hearing because of his death; and 3) Mike Mishra's statements pursuant to Rule 804(b)(3) are again contrary to his alleged pecuniary or proprietary interest set forth in Sanjay Mishra's affidavit that a reasonable person in his position would not have made the statements unless believing it to be true. Moreover, the statements in the periodical are not hearsay pursuant to Rule 801(d)(2)(D) because the statement is offered against a party, by the party's agent, concerning a matter within the scope of the agency or employment, made during the existence of the relationship. See also Hunter v. Hyder, 236 S.C. 378, 387 (1960) ("acts, declarations or admissions, within the scope of his agency, was competent evidence against the principals.")

- vi. Mike Mishra's understanding of the legal import of documents served cannot be challenged.

Lastly, Respondent argues that the “purportedly numerous lawsuits involving Mike Mishra . . . are also unavailing, as these too were never before the trial court, nor preserved for appeal, and do not reference or serve as evidence of agency.” (Resp. Br., pp. 10-11.) Respondent’s argument, however, is misplaced and lacks merit because it was raised by the Trial Court in its order, drafted by Respondent’s counsel.

As previously stated, the question of whether Mike Mishra understood the legal import of the documents served upon him was never raised as a question of fact by Respondent previously. Had it been raised, Appellant would have had the opportunity to present evidence in support of her position. Further, understanding the import of the documents is not evidence of agency.

In sum, the order of the Trial Court should be reversed because Respondent failed to present clear and convincing evidence to show that the manner of service on Respondent through Mike Mishra was not proper under Illinois law.

II. Jurisdiction Over the Respondent was Properly Exercised by the Illinois Court.

The sole support for Respondent’s argument that Illinois did not have personal jurisdiction is the self-serving affidavit of Sanjay Mishra. Respondent, however, fails to: 1) address any of the precedential authority cited by Appellant in her brief; 2) raise facts that were not previously known and would be at issue; and 3) cite to any authority that Appellant must file a counter-affidavit where relevant or necessary facts are not disputed.

A. Respondent fails to meet its burden of proof.

The crux of Respondent’s argument regarding jurisdiction is that Appellant failed to file an opposing affidavit and that Appellant’s Verified Complaint should not be considered because

Appellant did not reference it in her memorandum or at hearing. For the reasons stated below, Respondent's contentions are without merit.

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). Respondent fails to address this law whatsoever in its initial brief. Instead, it simply argues that if "facts alleged in a defendant's affidavit contesting jurisdiction are not refuted by a counter-affidavit filed by the plaintiff, then those facts are accepted as true." Aspen Am. Ins. Co. v. Interstate Warehousing, Inc., *supra*. Still, Respondent fails to recognize that the Appellant is not challenging or attempting to contradict Respondent's formation, ownership of property outside of Horry County, its presence in Illinois, or even where it deposits its money. Rather, Respondent purposefully directed its activities toward her in Illinois. Thus, while Sanjay Mishra states in his affidavit that Respondent does not carry on business outside of Horry County, he fails to deny that Respondent purposefully directed called Illinois to solicit payment from Appellant, enter into an agreement, and that Appellant's money was deposited (repeatedly) into its bank account(s) in Horry County.

Respondent falsely states that Appellant did not reference the Verified Complaint in her memorandum or at the hearing. In reality, Appellant's memorandum explicitly stated that

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 overcharged Plaintiff's credit card beyond what was explicitly authorized by her, and its subsequent refusal to the refund the retained funds. The explicit authorization by the Plaintiff occurred when she received an interstate phone call at her residence in Glenview, Illinois from an employee of the Defendant in South Carolina.

(R. p. 71.) (Emphasis added.)

Conversely, Respondent asks this Court to turn a blind eye to its own references to the Verified Complaint in its Memorandum in Opposition to Plaintiff's Motion for Entry of Foreign Judgment and its Initial Brief. Instead, it asks the Court to rely only on the oral descriptions given at the hearing by its attorney, which were not verified by Respondent or contained in the affidavit of Sanjay Mishra. Even if the Trial Court relied on only the oral descriptions at hearing, there is no rule mandating that a Verified Complaint filed as a matter of public record in a sister state be filed or submitted with the foreign judgment.

In all, Respondent fails to overcome Appellant's *prima facie* case because Sanjay Mishra's affidavit does not contain any facts or statements sufficient to meet its burden to defeat jurisdiction from its targeted actions. See Russell, 2013 IL 113909 at ¶ 28. Rather, there are no statements in the affidavit that touch upon jurisdiction of the Illinois court. Exhibits A, B, and C were presented at hearing to rebut and contradict Sanjay Mishra's affidavit to which the Trial Court stated, "I'll tell you, it is my impression that Mr. Mishra was an agent." (R. p. 55, lines 6-7.)

B. Respondent purposefully directed its activity in Illinois at the Appellant.

Respondent argues that all of the underlying events took place in South Carolina, including entering into contract, charging Appellant's credit card, and depositing her money. This argument, aside from its falsity, is a red herring because the call to the Appellant in Illinois could not verify a transaction that had yet to take place. In actuality, the money was sent by Appellant from Illinois *after* the oral contract was formed following negotiations between Respondent and Appellant in Illinois. See Kalata v. Healy, 312 Ill. App. 3d 761, 766-767, 728 N.E.2d 648 (Ill. App. Ct. 2000) ("we hold that personal jurisdiction has been established under section 2-209(a)(2) . . . Defendant made telephone calls to plaintiff in Illinois . . . the money was sent from Illinois, and the injury suffered by plaintiff occurred in Illinois.") Further, Appellant's friend was merely a beneficiary of

the contract formed between these parties. Appellant suffered injury in Illinois by Respondent's continued credit card charges for numerous weeks after their initial agreement..

C. Respondent's contacts with Illinois were sufficient.

Confusingly, Respondent contends that its contacts with Illinois were insufficient because its desk clerk confirmed and obtained authorization for an agreement existing between Appellant and her friend. Respondent also asserts that it did not rent a hotel room located in Illinois, nor did Respondent obtain payment in Illinois, as all actions were conducted in South Carolina only. As rebutted above, this argument frivolous because *the Respondent obtained Appellant's payment from Illinois* after coming to a mutual understanding about the terms of the agreement.

D. Requiring the Respondent to litigate in Illinois is reasonable.

Respondent contends that it is unreasonable to litigate the underlying matter in Illinois because the only element in favor of the Appellant is her interest in obtaining relief at home. Even more surprising is Respondent's assertion that Illinois would not have any interest "in a hotel room and credit card dispute that took place in South Carolina." (Resp. Br., p. 15.) Respondent's arguments are without merit.

Where a nonresident party's activities are purposefully directed at Illinois residents, that party must present a "compelling case" that jurisdiction is unreasonable. Ores v. Kennedy, 218 Ill.App.3d 866, 874, 578 N.E.2d 1139 (Ill. App. Ct. 1991), citing to Burger King Corp., 471 U.S. at 477. Here, Respondent fails to present any case, let alone a compelling one. It fails to dispute Appellant's argument that Illinois "has *a manifest interest* in providing its residents with a convenient forum for redressing injuries caused by nonresidents." Russell, 2013 IL 113909 at ¶ 41. It also fails to address that 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. It is clear that the benefit derived by the Respondent was the money from Illinois belonging to Appellant, and thus would be unfair to allow Respondent to avoid legal consequences in Illinois.

Further, Respondent fails to argue that such litigation could be too costly in Illinois or that its owners could be inconvenienced by the travel, despite residing outside of South Carolina. Consequently, there is no substantive or compelling reason that it would be unreasonable for the Respondent to litigate the matter in Illinois.

CONCLUSION

Based upon the foregoing authorities and evidence, the Trial Court's order should be reversed with a finding that service was properly effectuated and personal jurisdiction was properly exercised by the Illinois court.

/s/Stephanie H. Burton
Stephanie H. Burton
Gibbes Burton, LLC
308 East St. John St.
Spartanburg, SC 29302
sburton@gibbesburton.com
Telephone: (864) 327-5000
Facsimile: (864) 342-6884

Attorneys for Appellant

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

RECEIVED

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 Reply Brief of Appellant complies with Rule 211(b) of the South Carolina Appellate Court Rules.

September 28, 2020

/s/Stephanie H. Burton
Stephanie H. Burton (#13089)
Gibbes Burton, LLC
308 East St. John St.
Spartanburg, SC 29302
sburton@gibbesburton.com
Telephone: (864) 327-5000
Facsimile: 864-342-6884

Attorneys for Appellant

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Alison Meyers, Appellant,

v.

Shiram Hospitality, LLC, Respondent.

Appellate Case No. 2020-000557

Appeal From Horry County
Larry B. Hyman, Jr., Circuit Court Judge

Unpublished Opinion No. 2022-UP-014
Submitted May 12, 2022 – Filed May 18, 2022

AFFIRMED

Stephanie Holmes Burton, of Gibbes Burton, LLC, of
Spartanburg; and Brendan R. Appel, of Northfield,
Illinois, both for Appellant.

Fred B. Newby, Sr., and C. Scott Masel, both of Newby
Sartip & Masel LLC, of Myrtle Beach, for Respondent.

PER CURIAM: Alison Meyers appeals the circuit court's denial of her motion for entry of a foreign judgment against Shiram Hospitality, LLC (the LLC). On appeal, Meyers argues the circuit court erred by (1) denying her motion for entry of foreign judgment, (2) finding Haricharan "Mike" Mishra was not the LLC's agent

and thus service of process was improper, (3) citing unsupported facts and inapplicable Illinois case law, and (4) its dicta that the Illinois default judgment should not be afforded full faith and credit even if service was proper. We affirm.

We hold there is evidence to support the circuit court's denial of Meyers's motion for entry of foreign judgment.¹ See *Minorplanet Sys. USA Ltd. v. Am. Aire, Inc.*, 368 S.C. 146, 149, 628 S.E.2d 43, 44 (2006) ("An action to enforce a foreign judgment is an action at law."); *id.* ("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."); *Fin. Fed. Credit Inc. v. Brown*, 384 S.C. 555, 562-63, 683 S.E.2d 486, 490 (2009) ("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." (quoting 50 C.J.S. *Judgments* § 986 (1997))); *PYA/Monarch, Inc. v. Sowell's Meats & Servs., Inc.*, 327 S.C. 469, 473, 486 S.E.2d 766, 768 (Ct. App. 1997) (providing "[t]he Uniform Enforcement of Foreign Judgments Act^[2] allows a judgment debtor to file a motion for relief from, or a notice of defense to, a foreign judgment" on the ground of lack of personal jurisdiction); *Russell v. SNFA*, 987 N.E.2d 778, 786 (Ill. 2013) ("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.'" (quoting *Wiles v. Morita Iron Works Co.*, 530 N.E.2d 1382 (Ill. 1988))); *Soria v. Chrysler Canada, Inc.*, 958 N.E.2d 285, 292 (Ill. App. Ct. 2d 2011) ("[I]f the

¹ As to whether the circuit court included unsupported facts, cited inapplicable Illinois caselaw, or engaged in dicta in its order, we hold these issues are not preserved for appellate review because Meyers did not raise them to the circuit court in a Rule 59(e), SCRCp, motion. See *Sweeney v. Sweeney*, 420 S.C. 69, 82, 800 S.E.2d 148, 154 (Ct. App. 2017) (finding because the husband did not raise an argument in his Rule 59(e) motion—thereby not allowing the family court the opportunity to rule upon the issue or correct any alleged mistakes in its final order—the issue was not preserved on appeal). Similarly, to the extent Meyers contends an evidentiary hearing was warranted to resolve any disputes over personal jurisdiction, this issue is also not preserved for appellate review because it was not raised to the circuit court. See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

² S.C. Code Ann. §§ 15-35-900 to -960 (2005 & Supp. 2021).

contacts between a defendant and Illinois satisfy both federal and Illinois due process requirements, an Illinois court may exercise jurisdiction, and we need not consider whether the defendant performed any of the acts enumerated in the long-arm statute."); *id.* ("To satisfy federal due process requirements, a nonresident defendant must 'have certain minimum contacts with [the forum] such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice.'" (alteration in original) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945))); *id.* ("The minimum contacts necessary for jurisdiction depend on whether the jurisdiction asserted is general or specific. General jurisdiction exists when a defendant's general business contacts within the forum state are continuous and systematic. Specific jurisdiction . . . exists when the defendant purposefully directed its activities at the forum state's residents and the cause of action arose out of the defendant's contacts with the forum state." (citations omitted)); *id.* ("[U]nder a federal due process analysis, 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."). 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. The action arose out of Meyers's offer to pay for a friend's stay at La Quinta Hotel using her credit card. Myers lived in Illinois at the time. There is no evidence the LLC purposefully directed its activities at Illinois or that the cause of action arose out of or relates to the LLC's contacts with Illinois. *See Russell*, 987 N.E.2d at 787 ("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."). Accordingly, 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.³

AFFIRMED.⁴

³ Because this holding is dispositive of the appeal, we need not address whether Mishra was an agent of the LLC. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not address remaining issues when its resolution of a prior issue is dispositive).

⁴ We decide this case without oral argument pursuant to Rule 215, SCACR.

THOMAS, MCDONALD, and HEWITT, JJ., concur.

RECEIVED

Jun 02 2022

SC Court of Appeals

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

	Pages
TABLE OF AUTHORITIES	i
ARGUMENT	1
I. The Court misapplies the facts in evidence and applies facts not in evidence	1
II. The Court misapplies Illinois Supreme Court law to the facts of this case as it relates to specific jurisdiction	2
CONCLUSION	4

TABLE OF AUTHORITIES

CASES

<u>ABN AMRO, Inc. v. Capital International Ltd.</u> , 595 F. Supp. 2d 805, 828 (N.D. Ill. 2008)	3
<u>Burger King Corp. v. Rudzewicz</u> , 471 U.S. 462 (1985)	3
<u>Russell v. SNFA</u> , 987 N.E.2d 778, 786 (Ill. 2013)	3

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

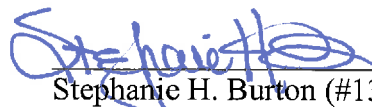
sought out ABN to solicit it to enter the deal. Those actions constitute sufficient contacts with Illinois to warrant exercising personal jurisdiction over them in a case based on those contacts.” ABN AMRO, Inc., 595 F. Supp. 2d at 828.

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,



Stephanie H. Burton (#13089)
Gibbes Burton, LLC
308 East St. John St.
Spartanburg, SC 29302
(864) 327-5000

Counsel for Appellant Alison Meyers

RECEIVED

Jun 02 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2020-000557

Alison Meyers,

Appellant,

v.

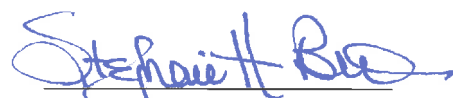
Shiram Hospitality, LLC,

Respondent.

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



Stephanie H. Burton (#13089)
Gibbes Burton, LLC
308 East St. John Street
Spartanburg, SC 29302
sburton@gibbesburton.com
Telephone: 864-327-5000
Facsimile: 864-342-6884

Attorneys for Appellant

The South Carolina Court of Appeals

Alison Meyers, Appellant,

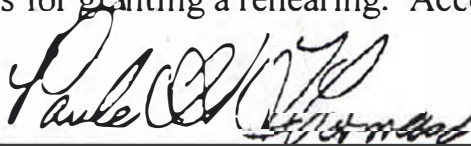
v.

Shiram Hospitality, LLC, Respondent.

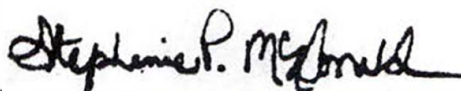
Appellate Case No. 2020-000557

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Stephanie Holmes Burton, Esquire

Fred B. Newby, Sr., Esquire

C. Scott Masel, Esquire

Brendan R. Appel, Esquire

FILED
Jun 23 2022

RECEIVED

Jul 22 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
In the Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

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

Alison Meyers, ...Appellant/Petitioner,

v.

Shiram Hospitality, LLC, ...Respondent.

PETITION FOR CERTIORARI

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

Counsel for Appellant/Petitioner

TABLE OF CONTENTS

	Pages
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	i
CERTIFICATE OF COUNSEL	i
STATEMENT OF THE CASE	1
ARGUMENT	1
I. Did the Court of Appeals misapply the facts in evidence and apply facts not in evidence?	1
II. Did the Court of appeals misapply Federal law and Illinois Supreme Court law to the facts of this case as it relates to specific jurisdiction?	3
CONCLUSION	5

TABLE OF AUTHORITIES

CASES

<u>ABN AMRO, Inc. v. Capital International Ltd.,</u> 595 F. Supp. 2d 805, 828 (N.D. Ill. 2008)	4
<u>Burger King Corp. v. Rudzewicz,</u> 471 U.S. 462 (1985)	1, 4
<u>Calder v. Jones,</u> 465 U.S. 783 (1984)	3
<u>Janmark, Inc. v. Reidy,</u> 132 F.3d 1200, 1202 (7th Cir. 1997)	4-5
<u>Russell v. SNFA,</u> 987 N.E.2d 778, 786 (Ill. 2013)	1, 3, 4, 5

CERTIFICATE OF COUNSEL

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

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

STATEMENT OF THE CASE

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

ARGUMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

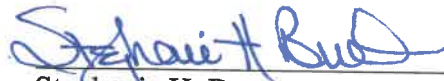
The facts in this case show that Respondent purposefully directed its activities to the State of Illinois (including advertising), called the State of Illinois, entered into a contract in the State of Illinois, and collected/received payments sent from the State of Illinois without authorization on a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

CONCLUSION

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

July 22, 2022

Respectfully submitted,



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

Counsel for Appellant

RECEIVED

Jul 22 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2020-000557

Alison Meyers,

Appellant,

v.

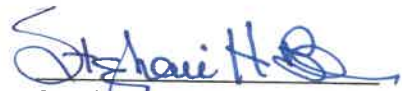
Shiram Hospitality, LLC,

Respondent.

PROOF OF SERVICE

I certify that on July 22, 2022, I served Appellant's Petition for Writ of Certiorari and Appendix on Respondent Shiram Hospitality, LLC both by United States mail and by email 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.

July 22, 2022



Stephanie H. Burton (#13089)
Gibbes Burton, LLC
308 East St. John Street
Spartanburg, SC 29302
sburton@gibbesburton.com
Telephone: 864-327-5000
Facsimile: 864-342-6884

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2019-CP-26-05254

Appellate Case No. 2022-001028

Alison Meyers,

Petitioner,

v.

Shiram Hospitality, LLC,

Respondent.

RETURN TO PETITION FOR CERTIORARI

Fred B. Newby (#4202)
C. Scott Masel (#12497)
Newby, Sartip & Masel, LLC
P.O. Box 808
Myrtle Beach, SC 29578
(843) 449-9417
Attorneys for Respondent

INDEX

COUNTER QEUSTIONS PRESENTED	1
INTRODUCTION	1
COUNTER STATEMENT OF THE CASE AND FACTS.....	1
ARGUMENT.....	3
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.....	3
2. THE COURT OF APPEALS PROPERLY APPLIED ILLINOIS LAW.....	5
CONCLUSION.....	7

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.¹ [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,

¹ 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.



Fred B. Newby (S.C Bar #4202)
C. Scott Masel (S.C. Bar #12497)
NEWBY, SARTIP & MASEL, LLC
P.O. Box 808, Myrtle Beach, SC 29578
(843) 449-9417
Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2019-CP-26-05254
Appellate Case No. 2022-001028

Alison Meyers,

Petitioner,

v.

Shiram Hospitality, LLC,

Respondent.

PROOF OF SERVICE

I certify that on August 15, 2022, I served a copy of Respondent's **Return to Petition for Certiorari** in the above case upon counsel for the Petitioner via email, addressed to:

Stephanie H. Burton
Gibbs Burton, LLC
308 East St. John Street
Spartanburg, SC 29302
sburton@gibbesburton.com

Brendan R. Appel
Law Offices of Brendan R. Appel
191 Waukegan Road, Suite 360
Northfield, IL 60093
bappel@balegal.com



C. Scott Masel
S.C. Bar# 12497
NEWBY, SARTIP & MASEL, LLC
P.O. Box 808, Myrtle Beach, SC 29578
(843) 449-9417 / smasel@newbylaw.com
Attorneys for Respondent

8/15/2022

The Supreme Court of South Carolina

Alison Meyers, Petitioner,

v.

Shiram Hospitality, LLC, Respondent.

Appellate Case No. 2022-001028

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is granted. The parties shall proceed to serve and file ten additional copies of the appendix and ten copies of their briefs in the manner provided by Rule 242(i), SCACR.

FOR THE COURT

BY Patricia A. Howard

CLERK

Columbia, South Carolina
March 30, 2023

cc:

Stephanie Holmes Burton, Esquire

Brendan R. Appel, Esquire

Fred B. Newby, Sr., Esquire

C. Scott Masel, Esquire

The Honorable Jenny Abbott Kitchings