

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals  
Appellate Case No.: 2023-000239

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**May 24 2023**

**SC Court of Appeals**

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Case No.: 2021-CP-26-07668

Gloria Ormand-Ward by and through  
her Guardian and Conservator, CDM  
Corporation, Through its Representative,  
Stephen Mantell ..... Appellant

vs.

David Litt, Homedebone, LLC, Rosaria A. Alagna aka  
Rose Alagna; Chris Parker; Chicago Land Agency Services,  
Inc.; Chicago Title Insurance Company; Pereira Partners,  
LLC; NB Labor LLC d/b/a Newman Brothers General  
Contractors; John Newman; and Toorak Capital, LLC ..... Defendants

Of which,

Chicago Title Insurance Company is the ..... Respondent

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**MOTION TO STAY PROCEEDINGS**

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Appellant Gloria Ormand-Ward, by and through her Guardian and Conservator, CDM Corporation, Through its Representative, Stephen Mantell, appeals the Order of the Honorable Michael G. Nettles, dated October 12, 2022, which Order dismissed the Defendant and Respondent, Chicago Title Insurance Company ("Chicago Title") on the basis that Chicago Title is not subject to personal jurisdiction in South Carolina.

Ms. Ward contends that Chicago Title's registration in South Carolina as a foreign licensed insurer creates personal jurisdiction because Chicago Title has consented to jurisdiction in South Carolina by virtue of its licensure in South Carolina. This is reinforced by Chicago Title's appointment of the Director of Insurance as its registered agent pursuant to S.C. Code Ann. § 38-5-70 (2020).

Currently pending before the United States Supreme Court is the case of *Robert Mallory, Petitioner vs. Norfolk Southern Railway Co.*, No. 21-1168 (Arg. Nov. 8, 2022). The issue before the United States Supreme Court, in *Mallory*, is whether it is constitutionally permissible to assert personal jurisdiction over a foreign corporation which registers to do business in a state on the basis that it has consented to the personal jurisdiction in that state. This issue is precisely related to the issue in this instant appeal that in the unique context of a foreign insurer being licensed in South Carolina, it has consented to the general jurisdiction of this State.

### **Background and Procedural History**

The pertinent facts as alleged in the *Amended* Complaint, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, are as follows:

Ms. Ward, at age 77, lost her home as a result of title fraud. Ms. Ward lived in her home, located in Antigua at Providence Park, a community which is subject to the Providence Park at Antigua Homeowners Association ("HOA"). The HOA filed a lien against Ms. Ward's home in 2019 in the amount of \$2,550.00 plus \$500.00 attorney's fees for unpaid homeowner assessments. Thereafter, in September, 2020, the HOA instituted foreclosure proceedings against Ms. Ward for the unpaid assessments.

At some point after the filing of the foreclosure action and before the foreclosure sale, Defendant David Litt ("Litt"), a resident of the State of Illinois, contacted Ms. Ward with offers to help her to deal with the foreclosure. Litt prepared a deed conveying Ms. Ward's home to Litt's Utah limited liability company, Defendant Homedebone, LLC, which, in fact, had been terminated by the Utah Secretary of State the year before.

The Warranty Deed was allegedly signed via DocuSign, an electronic signature service. The stated consideration for the Warranty Deed was One Hundred and 00/100 Dollars (\$100.00).

This Warranty Deed was subsequently recorded from Illinois by the Defendant, Chicago Land Agency Services, Inc. ("CLAS") with the Horry County Register of Deeds, through an electronic portal, on February 18, 2021. No South Carolina attorney assisted in either the preparation or e-recording of the Warranty Deed.

After the Warranty Deed was recorded, Litt, through Homedebone, LLC, sold Ms. Ward's home to the Defendant, Pereira Partners, LLC, a Wyoming limited liability company, by Deed dated April 5, 2021 and recorded with the Horry County Register of Deeds on April 7, 2021. Ms. Ward was immediately locked out of her home and as a result, became homeless. She was hospitalized for months and now resides in a nursing home because she has lost the ability to take care of herself.

Chicago Title is a major national title insurance company. It is licensed as a foreign title insurance company authorized to transact title insurance business in South Carolina pursuant to the Insurance Law of South Carolina, S.C. Code Ann. § 38-1-10 (2020), *et seq.*

In order to obtain a license to sell insurance in South Carolina, a foreign insurance company must submit extensive financial information to the S.C. Department of Insurance.

In addition, it must submit evidence proving, among other things, that it is safe and solvent and that its dealings are safe and equitable. See S.C. Code Ann. § 38-5-90 (2020).

CLAS, on its web site, states that it and Chicago Title are joint venture partners. Chicago Title was joined as a defendant because of its partnership status with CLAS. Chicago Title claims that it is a 49.9% shareholder of CLAS and that Chicago Title and CLAS are not “co-owners” or “partners” of a business. The Affidavit of Michael Cusack is attached hereto as Exhibit B and incorporated herein by reference.

Chicago Title filed its Motion to Dismiss for failure to state a claim and lack of personal jurisdiction on June 1, 2022. The Honorable Michael G. Nettles granted Chicago Title’s Motion to Dismiss for lack of personal jurisdiction on October 12, 2022, a copy of which is attached hereto as Exhibit C and incorporated herein by reference, and thereafter denied Ms. Ward’s Motion to Reconsider, on January 17, 2023. Ms. Ward filed her Notice of Appeal on February 16, 2023.

### **Argument and Citation of Authorities**

Ms. Ward contends that Chicago Title is subject to general jurisdiction in the courts of South Carolina because it has consented to jurisdiction in South Carolina by virtue of its having applied for and been licensed as an admitted insurer, licensed to do business in South Carolina.

In order to become an admitted insurer in South Carolina, a foreign insurance company must comply with all of the relevant sections of the Insurance Law, S.C. Code Ann. § 38-5-10 (2020), *et seq.*, which sets out the requirements necessary for a foreign insurer to become licensed in this State. This includes the appointment of the Director of

the Department of Insurance as the insurer's agent and ". . . shall agree that any lawful process against it [the insurer], which is served on this attorney [the Director], is of the same legal force and validity as if it had been served on the insurer. . . ." S.C. Code Ann. § 38-5-70 (2020). As explained below, this consent is broader than the general consent required from foreign corporations.

A foreign insurer must also comply with the written standards established in S.C. Code Ann. § 38-5-90 (2020). In other words, in order to become licensed, as an admitted insurer, in South Carolina, a foreign insurer must agree to be subject to the jurisdiction of the Director of the Department of Insurance and, thus, subject to the general jurisdiction of the courts of South Carolina.

Foreign corporations, other than insurers, which intend to do business in this state simply have to file for authority to do business in South Carolina. The application for authority to do business is filed with the South Carolina Secretary of State, pursuant to S.C. Code Ann. § 33-15-101 (1976), *et seq.* The requirements for obtaining a certificate of authority to transact business in South Carolina are set out in S.C. Code Ann. § 33-15-103 (1976) and these requirements are ministerial compared to what is required for a foreign insurer to be authorized to transact business in this state.

The United States Supreme Court in *Mallory* is considering whether it is constitutionally permissible to subject a company that has obtained authorization to do business, pursuant to statutes similar to South Carolina's S.C. Code Ann. § 38-5-10 (2020), has consented to the general jurisdiction of that state.

In *Mallory v. Norfolk Southern Railway Co.*, 266 A.3rd 542 (Pa 2021), Robert Mallory, a Virginia resident, filed an action in Pennsylvania against a Virginia corporation,

Norfolk Southern Railway Co., alleging injuries in Virginia and Ohio. The plaintiff asserted that Pennsylvania courts had general jurisdiction over the legal action, arguing that the foreign corporation's registration to do business in Pennsylvania was a consent to jurisdiction in that state. The Pennsylvania Supreme Court, in *Mallory*, agreed with the trial court that Pennsylvania statutory scheme violated the Due Process Clause to the Fourteenth Amendment to the U.S. Constitution to the extent that it allowed for general jurisdiction over foreign corporations, absent affiliations within the state that were so continuous and systematic as to render the foreign corporation essentially at home in Pennsylvania. The Pennsylvania Supreme Court further agreed that compliance with Pennsylvania's mandatory registration requirement did not constitute voluntary consent to general personal jurisdiction. Accordingly, the Pennsylvania Supreme Court affirmed the trial court's order which sustained Norfolk Southern Railroad Co.'s objection based on personal jurisdiction and dismissed the action with prejudice for lack of personal jurisdiction.

Mallory then petitioned for a writ of certiorari to the United States Supreme Court, which was granted on April 25, 2022.

The question before the United States Supreme Court is whether the Due Process Clause to the Fourteenth Amendment to the U.S. Constitution prohibits a state from requiring a corporation to consent to personal jurisdiction to do business in the state. See Question Submitted [to the United States Supreme Court] attached hereto as Exhibit D and incorporated herein.

As indicated above, the *Mallory* case was argued before the United States Supreme Court on November 8, 2022. A decision is expected shortly<sup>1</sup>. A judgment in *Mallory* will bind this Court as to the federal Due Process Clause as to whether businesses registering to do business in a state have consented to general jurisdiction in that state. If the United States Supreme Court holds that consent-by-registration is consonant with the Fourteenth Amendment, then it would resolve the issue on appeal in this instant matter. However, it may not fully resolve the issue of whether a foreign insurance company, which is licensed in a state, has consented to general jurisdiction in that state.

For this reason, Appellant prays for an Order staying the proceedings in this appeal until after the issuance of a decision in the United States Supreme Court case of *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168, which is expected shortly, and for such other relief as this Honorable Court may determine to be in the best interest of judicial economy.

Respectfully submitted,



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May 24, 2023

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<sup>1</sup> “A Term of the Supreme Court” began, by statute, on the First Monday in October. Usually Court sessions continue until late June or early July. <https://supremecourt.gov/about/procedures.aspx>. The Supreme Court normally tries to issue all its decisions by the end of June. [www.scotusblog.com/faqs-announcements-of-orders-and-opinions/](http://www.scotusblog.com/faqs-announcements-of-orders-and-opinions/)