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Jun 02 2023

SC Court of Appeals

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

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles
Circuit Court Judge

C.A. No.: 2021-CP-26-07668

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

v.

David Litt, Homedebone, LLC, Rosaria A. Alanga 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

RETURN TO MOTION TO STAY PROCEEDINGS

Respondent Chicago Title Insurance Company (“Chicago Title”) does not oppose a stay of this case pending the United States Supreme Court’s decision in *Mallory V. Norfolk So. Ry. Co.*, 266 A.3d 542 (Pa. 2021), cert. granted, 2022 WL 1205835 (No. 21-1168, April 25, 2022), so long as a decision is made within a reasonable time and the stay does not prejudice Chicago Title from

making any arguments on appeal. Chicago Title is submitting this Return to ensure its position is clear that the Court can and should affirm the trial court’s dismissal of Chicago Title regardless of the United States Supreme Court’s decision *Mallory*.

In *Mallory*, a Virginia resident sued Norfolk Southern in Pennsylvania under the Federal Employers Liability Act to recover for injuries he suffered in Virginia and Ohio. *Mallory*, 266 A.3d at 551. Norfolk Southern is incorporated in Virginia with a principal place of business in Virginia, but it was registered to do business in Pennsylvania. *Id.* at 551. Pennsylvania law requires a foreign corporation to register if it will do business in Pennsylvania. *Id.* at 547 (citing 15 Pa.C.S.A § 411). Importantly, 42 Pa.C.S. Section 5301(a)(2) provides that such registration is “a sufficient basis of jurisdiction to enable the tribunals of this commonwealth to exercise **general personal jurisdiction** over such person.” (emphasis added). Section 5301(b) goes on to state that “when jurisdiction over a person is based upon this section **any cause of action may be asserted against him**, whether or not arising from acts enumerated in this section.” (emphasis added).

The trial court granted Norfolk Southern’s motion to dismiss for lack of personal jurisdiction, finding that “by requiring foreign corporations to submit to general jurisdiction as a condition of doing business here, Pennsylvania statutory scheme infringes upon our sister states ability to try cases against their corporate citizens.” *See Mallory*, 266 A.3d at 553-55. The Supreme Court of Pennsylvania affirmed, relying on the Supreme Court’s recent decisions in *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014), *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011), and *BNSF Ry. Co. v. Tyrell*, 137 S. Ct. 1549 (2017), and rejecting cases decided prior to *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

The statute at issue in *Mallory* was clear. It expressly provides that registration subjects the foreign entity to “general jurisdiction” and that “any cause of action may be asserted against”

that entity “whether or not arising from acts enumerated in the section.” The Pennsylvania Court correctly interpreted the statute to require the foreign corporation to submit to general jurisdiction. It also correctly found that the requirement does not comport with due process imposed by the United States Constitution. The constitutional issue is the one on appeal with the United States Supreme Court. If the United States Supreme Court affirms the decision in *Mallory*, the holding will eliminate Appellant’s argument that Chicago Title is subject to general jurisdiction in South Carolina pursuant to South Carolina Code Section 38-5-70 since that the statute would be unconstitutional to the extent it provides that an insurer is subject to general jurisdiction in South Carolina merely by complying with the licensure requirements.

However, even if the United States Supreme Court reverses the decision in *Mallory* and finds that consent to general jurisdiction statutes (such as 42 Pa.C.S. § 5301) comport with constitutional due process, that ruling would not warrant reversal of the trial court’s order dismissing Chicago Title. State licensure requirements amount to consent to general jurisdiction only if consent to general jurisdiction is 1) explicit in the statute, or 2) the state court has interpreted the statute as imposing that condition. *Fidrych v. Marriott Intl., Inc.*, 952 F.3d 124, 137 (4th Cir. 2020). In contrast to the Pennsylvania statute at issue in *Mallory*, South Carolina Code Section 38-5-70 does not use the term “general jurisdiction.” In fact, it does not use the term “jurisdiction” at all. As such, the trial court in this case correctly found that South Carolina Code Section 38-5-70 “does not constitute consent to general jurisdiction in South Carolina.” Order dated Oct. 12, 2022 at 8.¹

In Appellant’s Motion to Stay Proceedings, Appellant states that “[i]f the United States

¹ That Order is attached as Exhibit C to Appellant’s Motion.

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.” (Mot. at 7). Chicago Title disagrees with this statement to the extent inconsistent with the foregoing. However, without waiving any arguments it may make in this appeal, Chicago Title does not oppose the relief Appellant seeks in the Motion to Stay Proceedings.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

s/Denny P. Major

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Contractors; John Newman; and Toorak Capital, LLC Defendants

Of which,

Chicago Title Insurance Company is the Respondent

PROOF OF SERVICE

I certify that I have served Respondent Chicago Title Insurance Company's **Return To Motion To Stay Proceedings** on counsel for Appellant Gloria Ormand-Ward by and through her Guardian and Conservator, CDM Corporation, Through Its Representative, Stephen Mantell on June 2, 2023, via email, addressed as follows:

Counsel Served:

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June 2, 2023

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June 2, 2023

VIA ELECTRONIC SUBMISSION

The Honorable Jenny Abbott Kitchings
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South Carolina Court of Appeals
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SC Court of Appeals

Re: Gloria Ormond-Ward v. Chicago Title Insurance Company
Appellate Case No: 2023-000239

Dear Ms. Kitchens:

Enclosed for filing is Respondent Chicago Title Insurance Company's Reply to Appellant's Motion to Stay Proceedings in the above matter along with the Proof of Service. We are serving counsel for Appellant via email.

Sincerely,

HAYNSWORTH SINKLER BOYD, P.A.



Denny P. Major

Enclosures

cc: (via email only)
John M Leiter, Esquire – jleiter@48th.com