EXHIBIT 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Case No.: 2021-CP-26-07668
GLORIA ORMAND-WARD by and through HER GUARDIAN AND CONSERVATOR, CDM CORPORATION, through its representative, STEPHEN MANTELL Plaintiff, 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 dba NEWMAN BROTHERS GENERAL CONTRACTORS; JOHN NEWMAN; and TOORAK CAPITAL, LLC Defendants.	)	**DEFENDANT CHICAGO TITLE INSURANCE COMPANY'S MEMO IN OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER ORDER GRANTING CHICAGO TITLE'S MOTION TO DISMISS**

The parties extensively briefed Chicago Title's motion to dismiss for lack of personal jurisdiction before arguing it on September 19, 2022. After the hearing, Plaintiff and Chicago Title each submitted detailed proposed orders with supporting authorities. The Court carefully considered the arguments and issues raised by both each party before issuing its Order Granting Chicago Title Insurance Company's Motion to Dismiss for Lack of Personal Jurisdiction filed October 12, 2022 (hereafter the "Dismissal Order"). Plaintiff now seeks reconsideration, presenting the same arguments that the Court has already considered. There is no reason for the court to reverse its ruling.

LEGAL STANDARD

The South Carolina Rules of Civil Procedure

> contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the

> party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). *see also Hickman v. Hickman*, 329 S.E.2d 481 (S.C. Ct. App. 1990) ("[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.").

DISCUSSION

1. The court correctly determined that complying with South Carolina Code Section 38-5-70 does not render Chicago title subject to general jurisdiction in South Carolina; moreover, the Supreme Court's ruling in *Mallory V. Norfolk So. Ry. Co.*, 266 A.3d 542 (Pa. 2021), *cert. granted*, 2022 WL 1205835 (No. 21-1168, April 25, 2022) ("*Mallory*") cannot require reversal even if the Supreme Court were to find that *Pennsylvania Fire* is still good law.[1]

Plaintiff invites the court to reverse the Dismissal Order, and then stay Chicago Title's motion pending the United States Supreme Court's decision in *Mallory*, where the issue is whether the Supreme Court's opinion in *Pennsylvania Fire* is still good law despite the subsequent opinions of *International Shoe*, *Daimler*, *Goodyear*, and *BNSF Railway Co*.[2] The Court should reject this invitation. This Court correctly found that *Pennsylvania Fire* is no longer good law in light of those cases based on precedent existing now and at the time of that decision.[3] But even if the Supreme Court finds that *Pennsylvania Fire* is still good law, that ruling would not warrant reversal of the Dismissal Order. Under the holding in *Pennsylvania Fire*, 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); Dismissal Order p. 7. As set forth below, the Pennsylvania statute at issue in *Mallory* is explicit that registration constitutes consent to "general jurisdiction," and there

[1] This addresses arguments numbered 1 through 5 in Plaintiff's Motion for Reconsideration.
[2] These cases are discussed in the parties' briefing on Chicago Title's motion, and in the Dismissal Order.
[3] Defendant submits that the Supreme Court is likely to hold the same.

was no issue as to whether the statute provided for consent to general jurisdiction. South Carolina Code Section 38-5-70 is completely different and this Court correctly found that Section 38-5-70 does not constitute consent to general jurisdiction in South Carolina. Dismissal Order p. 7. Thus, the Supreme Court's holding in *Mallory*, whatever it may be, cannot change the Court's ultimate finding that Chicago Title is not subject to general jurisdiction in South Carolina.

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 is going to 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). After discussing and addressing the United States Supreme Court's opinions in *Daimler*, *Goodyear*, and *Pennsylvania Fire*, among others, 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 *Daimler*, *Goodyear*, and *BNSF Railway Co.*, and rejecting cases decided prior to *International Shoe*, such as *Pennsylvania Fire*. *Id.* at 565-71. It also pointed out that consent to jurisdiction by waiving one's due process rights must be

voluntary, knowing and intelligent. *See id.* at 568-69 (citing *Brady v. United States*, 397 U.S. 742, 748 (1970)) (observing that waivers of constitutional rights must be voluntary, knowing, and intelligent). It determined that a foreign corporation's consent to jurisdiction is knowing and intelligent in light of the explicit nature of the Pennsylvania statute at issue, but not voluntary:

> Unlike other states, whose statutes do not expressly condition the privilege to do business upon submission to general jurisdiction, foreign corporations are given reasonable notice that "qualification as a foreign corporation under the laws of this Commonwealth" constitutes "a sufficient basis" to "enable the tribunals of the Commonwealth to exercise general personal jurisdiction" over a foreign corporation. 42 Pa.C.S. § 5301(a)(2)(i). That notice, however, does not render the consent voluntary.

Id. at 569.

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 ask enumerated in the section." The Pennsylvania Court correctly interpreted the statute to require the foreign corporation to submit to general jurisdiction. In contrast 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. It provides, in relevant part:

> Every insurer shall, before being licensed, appoint in writing the director and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it must be served and in this writing shall agree that any lawful process against it which is served upon this attorney is of the same legal force and validity as if served upon the insurer and that the authority continues in force *so long as any liability remains outstanding in the State*.

S.C. Code Ann. § 38-5-70 (emphasis added).

Rather, South Carolina's statute is similar to the Missouri statute interpreted in *State ex rel. Phoenix Mutual Life Insurance Co. of Hartford, Conn. v. Harris*, 121 S.W.2d 141 (Mo. 1938) and

State ex rel. American Central Life Insurance Co. v. Landwehr, 318 Mo. 181, 300 S.W. 294 (Mo. banc 1927). That statute provided:

> Any insurance company not incorporated by or organized under the laws of this state, desiring to transact any business by any agent or agents in this state, shall first file with the superintendent of the insurance department a written instrument or power of attorney, duly signed and sealed, appointing and authorizing said superintendent to acknowledge or receive service of process issued from any court of record, justice of the peace, or other inferior court, and upon whom such process may be served for and in behalf of such company, in all proceedings that may be instituted against such company, in any court of this state or in any court of the United States in this state, and consenting that service of process upon said superintendent shall be taken and held to be as valid as if served upon the company, according to the laws of this or any other state. Service of process as aforesaid, issued by any such court, as aforesaid, upon the superintendent, shall be valid and binding, and be deemed personal service upon such company, *so long as it shall have any policies or liabilities outstanding in this state*, although such company may have withdrawn, been excluded from or ceased to do business in this state, ***

Phoenix Mutual, 121 S.W.2d at 142 (emphasis supplied by the *Phoenix Mutual* Court). The *Phoenix Mutual* Court held that the phrase "so long as it shall have any policies or liabilities outstanding in this state" is a "limiting clause" that "limits such proceedings to actions upon policies issued or liabilities incurred in this state, but they must also be outstanding in this state when the suit is filed." *Id.* at 145-46. "[C]ertain it is that the statute requires all suits and proceedings in this state to be based upon business transacted in Missouri, while the company was operating here under license." *Id.*; *see also State ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d 41, 53 n. 11 (Mo. 2017).

Similarly, here, the phrase "so long as any liability remains outstanding in the State" in South Carolina Code Section 38-5-70 is a limiting phrase that limits such proceedings to those based on business that Chicago Title transacted in South Carolina. Plaintiff has not identified any business Chicago Title transacted in South Carolina that relates to this claim in any way. This claim does not even relate to an insurance policy issued in South Carolina. In fact, the naming of Chicago Title in

this case has nothing to do with its status as an insurer. Thus, the Court correctly held that "South Carolina Code Section 38-5-70 does not constitute consent to general jurisdiction in South Carolina." Dismissal Order p. 8.

Plaintiff challenges that particular holding by asserting that the Court failed to consider *Equilease Corp. v. Weathers*, 275 S.C. 478, 272 S.E.2d 789 (1980) and *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 753 S.E.2d 537 (2014). Plaintiff cites these cases for the proposition that insurance service statutes "were designed to provide a simple and easy method of obtaining jurisdiction over a foreign insurance company." Plaintiff made this same argument, citing these same cases, in Plaintiff's memorandum opposing Chicago Title's motion to dismiss. *See* Pl's Memo. Opp. Mot. Dismiss p. 15. Chicago Title addressed these cases at page 6, footnote 3 of its reply in support of its motion to dismiss, but will elaborate more here. Again, these cases do not help Plaintiff. Personal jurisdiction was not at issue in either of those cases, and nothing in those cases, not even the language quoted by Plaintiff, suggests that the legislature intended for Section 38-5-70 to confer *general* jurisdiction on an insurance company for all claims, especially where the claim does not even arise out of the insurance company's status as an insurance company.

In *Equilease Corp.*, an insurer (who was not licensed in South Carolina) was named as a defendant and timely filed an Answer through an attorney after being served with the Plaintiff's Summons and Complaint. The insurer did not dispute personal jurisdiction. *Equilease*, 275 S.C. at 483, 272 S.E.2d at 791. The insurer's co-defendants cross-claimed against the insurer and served the cross-claim on the insurer via the South Carolina insurance commissioner, but the insurer's attorney was never served. The co-defendants sought a default judgment against the insurer after the applicable time period expired from the time they served the cross-claims on the commissioner, arguing that South Carolina Code Sections 15-9-270 and 38-52-80 provided the proper method for

service of the cross-claim. *Id.* at 482, 272 S.E.2d at 791. The trial judge found that the service of the cross-claim was inappropriate because it should have been served on the attorney due to a statute that required service on the attorney after the attorney had appeared. *Id.* at 483, 272 S.E.2d at 791. In rejecting the co-defendants' argument, the trial judge said "[t]hese statutes are substituted service or constructive service statutes. These statutes were designed by the legislature to provide a simple and easy method of obtaining jurisdiction over a foreign insurance company." *Id.* at 482-83, 272 S.E.2d at 791. The South Carolina Supreme Court affirmed, with little analysis. Personal jurisdiction was not at issue in that case and when the trial judge said "jurisdiction," he was distinguishing between service of process and service on an attorney after initial service of process. There is certainly no holding that South Carolina Code Section 38-5-70 was designed to obtain ***general jurisdiction*** over an insurance company, or that the statute would allow a South Carolina court to obtain jurisdiction over an insurance company for all claims regardless of whether it even arises out of the insurance company's status as an insurance company.[4]

In *White Oak*, a nursing home brought an action against its insurer regarding coverage of a malpractice claim and served the insurer at the address set forth in the policy for service of process, rather than upon the insurance commissioner. The insurer defaulted and sought to set aside the default by arguing that service was invalid because South Carolina Code Section 15–9–270, which requires service of process be through the Director of the Department of Insurance, provides the exclusive means of service of process on an insurer. *White Oak*, 407 S.C. at 6, 753 S.E.2d at 539. In rejecting this argument, the South Carolina Supreme Court stated "[w]e have previously interpreted insurance service statutes as 'designed by the legislature to provide a simple and easy method of obtaining

[4] Moreover, it should be noted that the Court held that South Carolina Code Section 38-5-80, which is now Section 38-5-70, was not at issue and even distinguished a case on that basis. *See Equilease*, 275 S.C. at 482, 272 S.E.2d at 791.

jurisdiction over a foreign insurance company.'" *Id.* at 9, 753 S.E.2d at 541 (quoting *Equilease*).[5] Importantly, the *White Oak* Court then stated "[t]hus, their purpose is to provide an insured with ***a method to obtain service of process on insurance companies***; it is not to serve as a shield for insurance companies, protecting them from their own policy terms." *Id.* (emphasis added). Again, personal jurisdiction was not at issue in *White Oak* and nothing in the Court's opinion suggests that Section 38-5-70 provides for general personal jurisdiction of insurance companies for all claims regardless of whether they arise out of the insurer's contacts with South Carolina or even the company's role as an insurance company.[6]

Moreover, unlike in *Mallory*, where the defendant would be engaging in a *knowing* and *intelligent* waiver of their constitutional right to due process by registering, an insurance company registering to do business in South Carolina would be making no search knowing waiver since the statute says nothing of general jurisdiction. The Pennsylvania courts found dismissal was appropriate despite the fact that the waiver was knowing and voluntary. If the Supreme Court reverses that determination, this case is clearly distinguishable because of the massive distinction in the applicable statutory language and the fact that any waiver here would not be knowing or voluntary given the fact that Section 38-5-70 does not even mention the word "jurisdiction."

For these reasons, the Court should not reverse its holding that Chicago Title is not subject to general jurisdiction in South Carolina.

2. <u>The Court should not reverse its holding that Chicago Title is not subject to specific jurisdiction in South Carolina for this case.</u>

[5] Though immaterial, it is worth noting that the South Carolina Supreme Court did not render that holding in *Equilease*. Rather, trial judge made the quoted statement.

[6] Plaintiff also argues that the insurance director "cannot perform his duties regarding foreign insurance companies if they are not subject to general jurisdiction of South Carolina" and that "it cannot be reasonably argued that a foreign insurance company is only subject to the general jurisdiction of the Department of Insurance but is not subject to the general jurisdiction of the residents of South Carolina." This argument makes little sense. The insurance director can most certainly perform his duties in the absence of general jurisdiction, since the director has no interest (or power) in regulating an insurer's conduct unrelated to South Carolina.

Plaintiff also challenges the Court's finding of specific jurisdiction, making largely the same arguments.

In arguing for specific jurisdiction, Plaintiff references cases brought by Chicago title in South Carolina, and cases against Chicago Title in South Carolina. These cases have nothing to do with whether Chicago Title is subject to specific jurisdiction in this case. "Specific jurisdiction is the State's right to exercise personal jurisdiction because the cause of action arises specifically from a defendant's contacts with the forum." *Coggeshall v. Reprod. Endocrine Associates of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007). Obviously, this case does not arise specifically from these other cases. These other cases have nothing to do with this case.[7]

Plaintiff cites *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, 141 S. Ct. 1017, 1025 (2021) for the proposition that "where a company exercised the privilege of conducting activities within a state, thus enjoying the benefits and protection of its laws – the state may hold the company to account for related misconduct." Chicago Title agrees with this proposition. The problem is there is no "related misconduct" here. Plaintiff argues "the 'related misconduct" involves acts of its alleged partner, co-defendant, Chicago Land Agency Services ('CLAS') in recording a fraudulent deed . . ." That is exactly the point. There are no acts by Chicago Title and no suit related contacts that Chicago Title has with South Carolina. *See S. Plastics Co. v. S. Com. Bank*, 310 S.C. 256, 261, 423 S.E.2d 128, 131 (1992) ("the defendant's activities directed to a resident of this State must be its own and not the unilateral activities of some other entity.") (citing *Aviation Associates & Consultants, Inc. v. Jet Time, Inc.*, 303 S.C. 502, 507, 402 S.E.2d 177, 180 (1991)).

[7] Because of this, an analysis of the circumstances of these particular cases would be a waste of time, but Chicago Title notes that the cases brought by Chicago Title are undoubtedly cases where the court had personal jurisdiction over the defendant, likely because the defendant was a South Carolina resident being sued in his or her home state. That is the opposite of what is happening here, as plaintiff is not suing Chicago Title in Chicago Title's home state (which would have jurisdiction over Chicago Title). Chicago title does not dispute that it may be subject to specific jurisdiction in South Carolina courts for cases that arise out of Chicago Title's conduct with the forum state.

Plaintiff also rehashes the argument, again rejected by the Court, that Chicago Title and CLAS have a partnership under S.C. Code Section 33-41-210.[8] But Plaintiff still does not explain how the South Carolina Uniform Partnership Act could apply to an alleged partnership between an Illinois Corporation and a Florida Corporation not made in South Carolina. Even if it did apply, though, this provision supports Chicago Title's position. The Act defines "Partnership" strictly, to exclude other corporate forms:

> A "partnership" is an association of two or more persons to carry on as co-owners a business for profit and includes, for all purposes of the laws of this State, a registered limited liability partnership. However, any association formed under any other statute of this State or any statute adopted by authority, other than the authority of this State, is not a partnership under this chapter unless the association would have been a partnership in this State before the adoption of this chapter on February 13, 1950.

S.C. Code § 33-41-210.

CLAS cannot be a partnership within the meaning of S.C. Code § 33-41-210. CLAS is an Illinois corporation (Am. Complaint ¶11), so it is an association formed under a statute adopted by authority other than South Carolina. Furthermore, it would not have been a partnership in South Carolina before February 13, 1950 because, among other things, a corporation has been recognized as a distinct entity from joint ventures (and partnerships) since before 1950. *See Gordon*, 50 S.E.2d at 207; *see also Tocci v. Tocci,* 189 N.E.3d 241, 263 (Mass. 2022) (addressing the same provision of Massachusetts' Uniform Partnership Act and stating that business associations formed under other statutes may be considered partnerships if they would have been a partnership in the state before the state's adoption of the act, but noting that corporations have been recognized as distinct from

[8] Under South Carolina law, "[p]ractically the only difference between a 'joint adventure' and a 'partnership' is that a partnership is ordinarily for the transaction of a general business of a particular kind, while a joint adventure relates to a single transaction." *Gordon v. Rothberg*, 213 S.C. 492, 50 S.E.2d 202, 207 (1948) (citing *Welling et al. v. Crosland et al.*, 129 S.C. 127, 141, 123 S.E. 776, 781 (1924).

partnerships since 1903). Thus, the fact that CLAS is a corporation prevents it from being a partnership by statute, just like its incorporation prevents it from being a joint venture.[9]

As stated in the Dismissal Order, the evidence does not support that CLAS and Chicago Title have a joint venture or partnership. Dismissal Order p. 11. Plaintiff cites *Young v. Jones*, 816 F. Supp. 1070 (D.S.C. 1992), for the proposition that "a partnership is an entity separate and distinct from the individual partners who compose it." Yet Plaintiff's only purported evidence is the CLAS website, which that "CLAS is a joint venture partnership with Chicago Title . . ." Significantly, the website does not refer to a separate joint venture or partnership. It states that CLAS itself ***is*** the joint venture partnership, but obviously that is incorrect from a legal perspective. Put simply, there is no separate partnership, which means there is no partnership.

Furthermore, *Young* supports Chicago Title's position. In that case, the Court granted the foreign defendant's motion to dismiss for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2) (which is virtually identical to the state rule). *See Young*, 816 F. Supp. at 1077. The plaintiff in that case argued that Price Waterhouse entities were partners by virtue of statements and representations in a marketing brochure. *Id.* at 1076. In rejecting the plaintiff's argument, the Court found that there was no evidence that the plaintiff relied on those representations. Similarly, here, there is no evidence Plaintiff or anyone else relied on CLAS's website to her detriment.

Clearly, the CLAS website is insufficient for Plaintiff to make out a prima facie case. In an effort to overcome this hurdle, Plaintiff also asserts that Michael Cusack, Chicago Title's Executive Vice President who provided an affidavit in this case dated May 31, 2022, did not deny that CLAS

[9] In *Young v. Jones*, 816 F. Supp. 1070 (D.S.C. 1992), a case cited by Plaintiff in opposition to Chicago Title's motion, it was held that a partnership did not exist by virtue of representations made in a marketing brochure since there was no evidence the plaintiff had relied on the representations. Similarly, here there is no evidence Plaintiff or anyone else relied on any representation by CLAS regarding a partnership.

and Chicago Title were in partnership. Of course, this is not evidence that they were in a partnership and, in any event, Mr. Cusack stated that Chicago Title was a shareholder, which, as found by the Dismissal Order, is inconsistent with a joint venture partnership. Nevertheless, to satisfy Plaintiff's argument (which Plaintiff did not raise previously), Chicago Title is filing herewith the Second Affidavit of Michael Cusack affirming that there is no partnership between Chicago Title and CLAS. (Second Aff. of Michael Cusack, at ¶2, **Exhibit 1** hereto). Chicago Title is a shareholder of CLAS, but they are not co-owners or partners, and do not share in any profits with each other. *Id.*

Perhaps most importantly, even if the Court were to find that a partnership exists, that would not warrant reversal, since, as the Court has already held, "there is no evidence that CLAS's recording of the Deed was within the scope of such joint venture partnership." Dismissal Order p. 11. As the Court held, "[a] partner cannot be subject to personal jurisdiction in South Carolina based on the wrongful conduct in which a partner engages individually outside of the partnership." *Id.* p. 12 (citing 28 S.C. Jur. Partnerships and Joint Ventures § 33) ("Tort liability of the partnership exists only with respect to acts or omissions occurring in the ordinary course of the business of the partnership"). The Court explained:

> If CLAS is a partner in a joint venture with Chicago Title rather than the joint venture itself, then CLAS must have a purpose and business separate from the joint venture. Otherwise, CLAS would be the joint venture itself, and it cannot be both the joint venture and a joint venture partner in its own joint venture. Yet there is no evidence or specific allegation that establishes the recording of the Deed was within the scope of the joint venture as opposed to CLAS's own business. To the contrary, CLAS's Answers to Interrogatories state that Litt "engaged CLAS to assist him in efforts to record [the] deed" and "CLAS acted on this request by submitting a requested filing through its third-party vendor's submission application tool." CLAS invoiced Litt and payment was made to CLAS. There was no title insurance provided by CLAS or Chicago Title relating to the transaction. The only evidence indicates that CLAS recorded the Deed. There is no evidence of a separate joint venture having done so. *See S. Plastics Co. v. S. Com. Bank*, 310 S.C. 256, 261, 423 S.E.2d 128, 131 (1992)

> ("the defendant's activities directed to a resident of this State must be its own and not the unilateral activities of some other entity.") (citing *Aviation Associates & Consultants, Inc. v. Jet Time, Inc.*, 303 S.C. 502, 507, 402 S.E.2d 177, 180 (1991)).
>
> Moreover, even assuming there was a joint venture partnership between CLAS and Chicago Title, and even assuming the recording of the Deed was within the scope of that joint venture partnership, the Court still could not exercise personal jurisdiction over Chicago Title since there is no evidence that any such joint venture contemplated and actually involved substantial performance in South Carolina. *See Rae v. Celebrity Cruises, Inc.*, 1:21-CV-21668, 2022 WL 2981868, at *2 (S.D. Fla. July 28, 2022) (finding that where a plaintiff is trying to hold a non-resident defendant subject to jurisdiction in Florida based on the actions of the defendant's joint venture partner, "to satisfy Due Process, the [joint venture] agreement made outside of Florida must contemplate and result in substantial performance within Florida"); *see also Owen v. Carnival Corp.*, 18-25372-CIV, 2022 WL 1404602, at *3 (S.D. Fla. May 4, 2022). The recording of one deed in South Carolina does not amount to substantial performance in South Carolina (either contemplated or actual).

Dismissal Order pp. 12-13.

Plaintiff does not challenge these findings of the Dismissal Order, which is fatal to Plaintiff's specific jurisdiction argument, even if a partnership did exist.

CONCLUSION

For all of these reasons, the Court should deny Plaintiff's Motion for Reconsideration.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

s/ Denny P. Major
Denny Major (SC Bar no. 74907)
1201 Main Street, 22nd Floor
Post Office Box 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779.3080 - telephone
(803) 765.1243 - fax
dmajor@hsblawfirm.com

November 22, 2022

EXHIBIT 1

SECOND AFFIDAVIT OF MICHAEL CUSACK

STATE OF SOUTH CAROLINA COUNTY OF HORRY GLORIA ORMAND-WARD by and through HER GUARDIAN AND CONSERVATOR, CDM CORPORATION, through its representative, STEPHEN MANTELL Plaintiff, 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 dba NEWMAN BROTHERS GENERAL CONTRACTORS; JOHN NEWMAN; and TOORAK CAPITAL, LLC Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT Case No.: 2021-CP-26-07668 **SECOND AFFIDAVIT OF MICHAEL CUSACK**

PERSONALLY APPEARED BEFORE ME, Michael Cusack, who, being duly sworn, deposes and says:

1. My name is Michael Cusack. I previously executed an Affidavit regarding the above referenced matter dated May 31, 2022. As stated therein, I am an Executive Vice President at Chicago Title Insurance Company ("Chicago Title"). I am over the age of 21, and am competent to give this affidavit. The information contained in this Affidavit is within my personal knowledge.

2. As I previously stated, Chicago Title, which is a Florida corporation, is a 49.9% shareholder in Chicago Land Agency Services, Inc. (CLAS), which is an Illinois corporation. However, Chicago Title and CLAS are not "co-owners" or "partners" of a business. As a shareholder of CLAS, Chicago Title does have shareholder rights and benefits that can include sharing in CLAS profits with other shareholders. However, CLAS is not a shareholder in itself and Chicago Title and CLAS do not share profits of any business with each other.

FURTHER AFFIANT SAYETH NOT.

Michael Cusack

SWORN TO before me this 22
day of November, 2022.

Becky Voss
Notary Public for Illinois
My Commission Expires: 4/26/24

BECKY VOSS
OFFICIAL SEAL
Notary Public - State of Illinois
My Commission Expires
April 26, 2024