

RECEIVED

Aug 17 2023

SC Court of Appeals

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

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

**REPLY TO RESPONDENT’S RETURN IN OPPOSITION TO
APPELLANT’S MOTION TO REMAND¹**

In reply to Chicago Title’s Return in Opposition to Ms. Ward’s Motion to Remand,
Ms. Ward would show the following:

I. Relevant Procedural Background

¹ In this Reply, Respondent will be referred to as “Chicago Title” and Appellant will be referred to as “Ms. Ward”.

Ms. Ward points out the following undisputed facts:

- A. Ms. Ward has been and continues to be a resident of South Carolina.
- B. Ms. Ward was 77 years old when the warranty deed was filed, which caused her to lose her home.² (See Exh. D to Amended Complaint, a copy of which was attached to Ms. Ward's Motion to Remand).
- C. The Fraudulent Deed was allegedly electronically signed via DocuSign for a stated consideration of "the sum of \$100.00 and other consideration to them in hand paid."
- D. The Fraudulent Deed was electronically filed with the Horry County Register of Deeds by Chicago Land Agency Services, Inc. ("CLAS"), an Illinois company located in Chicago, Illinois.
- E. The CLAS website states that it and Chicago Title are "joint venture partners".
- F. Chicago Title claims that CLAS's assertion on its website is inaccurate, and that is not a partner with CLAS, despite the fact that CLAS's homepage, to this day, states that it is.
- G. Chicago Title claims to be a 49.9% shareholder of CLAS. The officers and directors of Chicago Title are also officers and/or directors of CLAS (see [Plaintiff's] Consolidated Memorandum in Opposition to CLAS's Motion to Dismiss and Chicago Title's Motion to Dismiss, pp. 9-10, attached as Exh. 1 to Respondent's Reply Memorandum filed 08/15/23).

² The warranty deed in dispute is referred to as the "Fraudulent Deed" in the Amended Complaint and will be referred to as the Fraudulent Deed within this Reply.

H. Chicago Title is an admitted insurer in South Carolina. S.C. Code Ann. § 38-1-20 (5). Chicago Title had to comply with the South Carolina Insurance Law in order to become an admitted insurer. See the Authority and Requirements to Transact Business, S.C. Code Ann. § 38-1-10, *et seq.*, including, without limitation, the appointment of the Director of the Department of Insurance as its attorney for service of process. S.C. Code Ann. § 38-5-70.

II. A Remand of this Appeal Is Appropriate Based on the Facts and Law of this Case

Ms. Ward filed her Motion to Stay the Appeal Proceedings on May 24, 2023 in order to await the decision by the United States Supreme Court in *Mallory vs. Norfolk S. Ry. Co.*, 143 S. Ct. 2028 (2023) which was decided on June 27, 2023. As discussed in her Motion to Remand, the trial court found that the case of *Pennsylvania Fire Ins. Co. of Philadelphia v Gold Ins. Mining & Milling Co.*, 243 U.S. 93 (1917) had been implicitly overruled. *Pennsylvania Fire* is directly on point to this case. The decision in *Mallory* reaffirmed the validity of *Pennsylvania Fire*. The trial court should now consider Chicago Title's Motion to Dismiss in light of *Mallory* and the affirmation of *Pennsylvania Fire*.

Chicago Title claims that Ms. Ward's Motion to Remand should not be considered, alleging that Ms. Ward had not timely filed her Designation of Record and Initial Brief. Chicago Title is in error on this issue, as the Motion to Remand stayed the other filing requirements for perfecting the appeal. See letter from the Clerk of the Court of Appeals, attached hereto as Exhibit 1. Ms. Ward is not late in any of her filings and Chicago Title is in error to argue otherwise.

III. The Decision in Mallory Directly Affects the Dismissal Order

An admitted insurance company in South Carolina has consented to personal jurisdiction within the state. The consent is evidenced by S.C. Code Ann. § 38-5-70, which requires the appointment of Director of the Department of Insurance to be the insurance company's ". . . lawful attorney upon whom all legal process in any action or proceeding against it must be served . . .". *Pennsylvania Fire* involved an almost identical statute.

Establishing jurisdiction based on consent is not a novel or new concept, but it has been the source of recent confusion as a result of *Daimler AG v. Bauman*, 571 U.S. 117 (2014), which held that general jurisdiction can only be based on corporation's state of incorporation or its principal place of business. *Daimler*, and the cases that came after, did not deal with a corporation's consent to jurisdiction by its appointment of the Director of the Department of Insurance as its attorney for acceptance of all legal process in any action. licensure for insurance companies or registration for corporations generally. *Mallory* clearly and unequivocally decided that an insurance company can consent to jurisdiction in reaffirming *Pennsylvania Fire*.

Chicago Title, in its Reply, in quoting the Dismissal Order, argues that S.C. Code Ann. § 38-5-70 is merely a service of process statute and nothing more. What Chicago Title does not appreciate, and what the Dismissal Order does not discuss, is that there is a statute dedicated solely to service of process on insurance companies. S.C. Code Ann. § 15-9-270, gives specific instructions on how to serve an insurance company. S.C. Code Ann. § 38-5-70, on the other hand, as part of the requirements for becoming an admitted insurer, demonstrates that an insurer submits itself to the jurisdiction of South Carolina courts.

Chicago Title correctly points out that Ms. Ward has previously cited cases that support the proposition that S.C. Code Ann. § 38-5-70 establishes jurisdiction over a foreign insurer. See *Equilease Corp v. Weathers*, 275 S.C. 478, 483, 272 S.E.2d 789,791 (1980), (“The reasoning is logical and practical that Code Sections 15-9-270 and 38-52-80 (sic) were designed by the legislature to provide a simple and easy method of obtaining jurisdiction over a foreign insurance company.”); *White Oak Manner, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 9, 753 S.E.2d 537, 541 (2014). (“[W]here service is accomplished in a manner consented to by the defendant, service of process is valid and a court has jurisdiction over the defendant for purposes of entering judgment.”) See also *Wofford v. Prudential Ins. Co. of America*, 65 F.Supp. 637 (D.S.C. 1946).

The trial court, in its Dismissal Order, did not discuss, or even reference, these three cases. The *Equilease* and *White Oak Manor* cases are directly on point to an analysis that should be conducted pursuant to *Mallory*. Apparently the trial court concluded that these cases did not have any meaningful bearing on the issue as he found that *Pennsylvania Fire* had been implicitly overruled. In light of *Mallory*, this matter should be remanded so that the trial court can fully consider these cases in context with *Pennsylvania Fire*.

IV. The Sustaining Alternate Grounds Advanced by Chicago Title Support a Remand

Chicago Title argues that the *Mallory* decision may give rise to alternate arguments that could sustain the Dismissal Order. Although Ms. Ward disagrees with the analysis, Chicago Title’s arguments should properly come before the trial court for consideration when considering the impact of *Mallory* on the issue of personal jurisdiction.

The alternate sustaining grounds advanced by Chicago Title support why this case should be remanded to the trial court.

CONCLUSION

If the *Mallory* decision, in reaffirming *Pennsylvania Fire*, confirms that the Horry County Court of Common Pleas has jurisdiction over Chicago Title, then the other arguments advanced by Chicago Title become moot. Now that the U.S. Supreme Court has unequivocally ruled that *Pennsylvania Fire* has not been implicitly overruled, but is still valid, this matter should be remanded in order to properly consider whether Chicago Title is subject to the jurisdiction of the South Carolina court.

Respectfully submitted,



John M. Leiter (SC Bar ID #3187)
Law Offices of John M. Leiter, PA
405 79th Ave., North, Suite B
Myrtle Beach, SC 29572
(843) 449-1451
Attorney for Appellant

August 17, 2023



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 16, 2023

Mr. John M. Leiter, Esquire
405 79Th Ave. North, Suite B
Myrtle Beach SC 29572

Mr. Denny Parker Major, Esquire
PO Box 11889 (29211)
1201 Main Street, 22Nd Floor
Columbia SC 29201

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

Dear Counsel:

Appellant has filed a motion to remand. All timelines will be held in abeyance pending the decision from the Court on the motion to remand. Once a decision has been issued, all parties will be immediately notified.

Very truly yours,


CLERK

RECEIVED

Aug 17 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles
Circuit Court Judge

Case No.: 2021-CP-26-07330

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 dba Newman Brothers General
Contractors; John Newman; and Toorak Capital, LLC Defendants

Of Which Chicago Title Insurance Company is the Respondent

Appellate Case No.: 2023-000239

PROOF OF SERVICE

John M. Leiter (SC Bar #3187)
Law Offices of John M. Leiter, PA
405 79th Ave., North, Suite B
Myrtle Beach, SC 29572
(843) 449-1451
Attorney for Appellant

August 17, 2023

PROOF OF SERVICE

I certify that I have served the ***Appellant's Reply to Respondent's Response in Opposition to Motion to Remand*** via email only, this 17th day of August, 2023, to counsel for the Respondent, Denny P. Major, Esquire, addressed as follows:

Denny P. Major, Esq.
HAYNSWORTH SINKLER BOYD, P.A.
PO Box 11889
Columbia, SC 29211
dmajor@hsblawfirm.com

/s/ John M. Leiter
John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
405 79th Ave., North, Suite B
Myrtle Beach, SC 29572
(843) 449-1451
Attorney for Appellant