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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

(Appellate Case No: 2023-000239)

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

INITIAL BRIEF OF RESPONDENT

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January 3, 2024

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II. WHETHER SOUTH CAROLINA CODE SECTION 38-5-70 WOULD VIOLATE THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION IF IT IS DETERMINED TO CONFER GENERAL JURISDICTION FOR SOUTH CAROLINA OVER INSURANCE COMPANIES LICENSED IN SOUTH CAROLINA.

III. WHETHER THE TRIAL COURT CORRECTLY DETERMINED THAT IT COULD NOT EXERCISE SPECIFIC PERSONAL JURISDICTION OVER CHICAGO TITLE WHERE CHICAGO TITLE DID NOT DIRECT ANY SUIT RELATED ACTIVITIES TOWARD SOUTH CAROLINA AND APPELLANT IS SEEKING TO IMPOSE LIABILITY ON CHICAGO TITLE BASED SOLELY ON AN INCORRECT STATEMENT ON CLAS'S WEBSITE.

STATEMENT OF THE CASE

This case arises out of an alleged scheme by four of the named defendants to acquire residential property from Gloria Ormand-Ward ("Ward"). In particular, Appellant contends David Litt, Homedebone LLC, Rosaria Alagna and/or Chris Parker fraudulently affixed Ward's signature, or fraudulently induced Ward to affix her own signature, via Docusign to a February 4, 2021 warranty deed transferring the property to Homedebone. (Id. ¶¶ 24, 38, 52, 60-66). Chicago Land Agency Services ("CLAS") e-recorded by the 2021 warranty deed on February 18, 2021, at Litt's request. (Compl. at ¶24; CLAS Mot. to Dism. p. 3).

Appellant initially filed this action in the Horry County Court of Common Pleas on November 18, 2021, but did not name Chicago Title as a defendant. (Compl.). Appellant asserted fraud and similar claims against the scheming defendants. (Am. Compl.). Against CLAS,

Appellant asserted claims of negligence (third cause of action), quiet title (fourth cause of action), intentional infliction of emotional distress (fifth cause of action), and unfair trade practices (sixth cause of action). (Compl. at pp. 15, 17, 19, 20).

Appellant filed an Amended Complaint effective April 26, 2022, naming Chicago Title. (Am. Compl). The allegations against Chicago Title were derivative of the claims against CLAS. Specifically, Appellant alleged "[o]n information and belief, CLAS and Chicago Title are joint venture partners." (Am. Compl. ¶ 29). This allegation is based on a statement on the CLAS website that says "CLAS is a joint venture with Chicago Title Insurance Company . . ." (Id.). Appellant asserted claims of negligence, quiet title, intentional infliction of emotional distress, unfair trade practices, slander of title, and civil conspiracy against CLAS and Chicago Title. (Am. Compl.).

CLAS filed a motion to dismiss for failure to state a claim on May 25, 2022. (CLAS Mot. to Dism). Chicago Title timely filed a motion to dismiss for failure to state a claim and for lack of personal jurisdiction on June 1, 2022. (CT Mot. to Dism.). On September 19, 2022, Appellant filed a memorandum in opposition to Chicago Title's motion arguing, among other things, that, as a licensed insurer, Chicago Title is subject to general jurisdiction pursuant to South Carolina Code Section 38-5-70, which is entitled "Appointment of director as attorney for service of process" and provides:

> 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. Copies of the appointment, certified by the director, are sufficient evidence of the appointment and must be admitted in

> evidence with the same force and effect as the original might be admitted.

In support of this argument, Appellant cited Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co., 243 U.S. 93 (1917) (hereafter "Pennsylvania Fire"), where the Supreme Court held that an insurer consented to general jurisdiction in Missouri by complying with a state law requiring it to obtain a license and execute a power of attorney agreeing that service on the superintendent of insurance was the equivalent of personal service. (Memo. Opp. Mot. Dism. at 14).

On September 16, 2022, Chicago Title filed a Reply brief addressing Appellant's arguments. (Reply). On September 19, 2022, the Court held a virtual hearing on the motions to dismiss. (09/19/22 Hearing Tran.). On October 4, 2022, the Court issued an order granting the motion for failure to state a claim as to two causes of action (intentional infliction of emotional distress and slander of title). By order dated October 12, 2022, the trial court granted Chicago Title's motion to dismiss for lack of personal jurisdiction (the "Dismissal Order"). (Dismissal Order). In rejecting Appellant's arguments regarding general personal jurisdiction, the trial court held that 1) Pennsylvania Fire was no longer good law in light of more recent case law and 2) even if Pennsylvania Fire was still good law, Chicago Title did not consent to general jurisdiction by complying with the insurance licensing statute because South Carolina Code Section 38-5-70 does not constitute consent to general jurisdiction in South Carolina. (Id. at pp. 7-9).

On October 21, 2022, Appellant moved to reconsider the Dismissal Order, relying primarily on the fact that the United States Supreme Court had granted certiorari in Mallory v. Norfolk So. Ry. Co., 266 A.3d 542 (Pa. 2021), cert. granted, 2022 WL 1205835 (No. 21-1168, April 25, 2022) and oral argument in that matter was scheduled for November 8, 2022. (See Mot. to Reconsider at 2). The issue on appeal in Mallory was whether Pennsylvania's consent to

jurisdiction by registration statute, 42 Pa.C.S. Section 5301(a)(2), which provides that registration is "a sufficient basis of jurisdiction to enable the tribunals of this commonwealth to exercise general personal jurisdiction over such person," violates the Due Process clause contained in the Fourteenth Amendment of the United States Constitution. Chicago Title opposed Appellant's Motion to Reconsider, arguing, among other things, that "even if the Supreme Court finds that Pennsylvania Fire is still good law, that ruling would not warrant reversal of the Dismissal Order." (Opp. To Mot. Recon. at 2). The Court heard in person oral arguments on November 29, 2022 (11/29/22 Hrg. Tran.) and denied the motion on January 17, 2023. (Form 4 Order).

Appellant filed her Notice of Appeal on February 16, 2023. (NOA). On May 24, 2023, Appellant moved to stay the proceedings pending a decision from the United States Supreme Court in the case of Mallory v. Norfolk Southern Railway Co. Chicago Title consented to the requested stay "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 filed a Return to Appellant's Motion "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."

The Supreme Court issued a decision in Mallory on June 27, 2023, holding that the Pennsylvania statute did not violate constitutional due process. Mallory v. Norfolk Southern Railway Co., 600 U.S. 122 (2023). This Court issued a letter on July 7, 2023, stating that the case would no longer be held in abeyance. Thereafter, Appellant filed a motion to remand seeking to have the trial court decide the case in light of the decision in Mallory. Chicago Title opposed because, in sum, the trial court already considered what ultimately came to be the holding in Mallory and determined that dismissal would be appropriate even in that event. The Court denied Appellant's motion to remand on August 24, 2023, and required Appellant to file the initial brief.

STANDARD OF REVIEW

"'The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case.'" Abdulla v. S. Bank, 439 S.C. 391, 399, 887 S.E.2d 138, 142 (Ct. App. 2023) (quoting Hidria, USA, Inc. v. Delo, 415 S.C. 533, 539, 783 S.E.2d 839, 842 (Ct. App. 2016)); Sullivan v. Hawker Beechcraft Corp., 397 S.C. 143, 151, 723 S.E.2d 835, 839 (Ct .App. 2011) (quoting Moosally v. W.W. Norton & Co., 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004)). "When a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." Abdulla, 439 S.C. at 400, 887 S.E.2d at 143 (quoting Coggeshall v. Reprod. Endocrine Assocs., 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)). The party seeking to impose personal jurisdiction has the burden of proving its existence. Id. at 400, 887 S.E.2d at 142.

"'The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law.'" Id. at 399, 887 S.E.2d at 142 (quoting Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005)).

STATEMENT OF FACTS

Appellant alleges that Litt contacted Ward offering to stop a foreclosure action by Ward's HOA to foreclose its lien on Ward's property. (Am. Comp. ¶¶ 22-23). On February 4, 2021, Homedebone, which is managed by Litt, prepared a warranty deed purportedly signed by Ward via Docusign transferring the property to Homedebone. (Id. ¶¶ 24, 38). Appellant contends Litt, Homedebone, Alagna and/or Parker fraudulently affixed Ward's signature, or fraudulently induced Ward to affix her own signature, to that deed. (Id. ¶¶ 24, 38, 52, 60-66).

Appellant alleges that the deed was defective in several respects, including because the notary (Alagna) certified she was a notary public of "North Carolina" (rather than South Carolina) but was not a notary public of North Carolina or South Carolina. (Id. ¶ 26). The transmittal sheet lists CLAS "as the place to return the Fraudulent Deed after recording." (Am. Comp. at ¶31(B);). Apparently, at Litt's request, CLAS e-recorded the Fraudulent Deed by using the Horry County Register of Deeds' electronic recording delivery service vendor, via an electronic recording portal. (Compl. at ¶¶24, 29; CLAS Mot. to Dism. p. 3). This deed was re-recorded in July 2021 to correct alleged scrivener's errors. (Am. Comp. ¶ 43). There is no allegation that CLAS or Chicago Title was involved in that recording. On February 5, 2021, Ward's name was also signed via Docusign to a Power of Attorney for Financial Management appointing Litt as her attorney-in-fact. (Id. ¶¶ 32-33).

Appellant alleges "[o]n information and belief, CLAS and Chicago Title are joint venture partners." (Id. ¶ 29). This allegation is based on a statement on the CLAS website that says "CLAS is a joint venture with Chicago Title Insurance Company . . ." (Id.).

Chicago Title is incorporated in Florida and its principal place of business is in Florida. (Cusack Aff., at ¶ 2; Am. Compl. at ¶12). CLAS is an Illinois corporation (with a principal place of business in Illinois). (Am. Compl. at ¶11). Chicago Title is a shareholder with a 49.9% interest in CLAS. (Cusack Aff. at ¶4). Chicago Title is licensed to write insurance in South Carolina, as it is in most states. (Id. at ¶3). However, Chicago Title did not issue a title policy relating to the property at issue in this case. (Id.).

No partnership exists between Chicago Title and CLAS. (Second Aff. of Michael Cusack, at ¶2). As a shareholder of CLAS, Chicago Title has rights and benefits that can include sharing

in CLAS profits with other shareholders. (Id.). However, Chicago Title is not a co-owner or partner with CLAS and does not share in profits with CLAS. (Id.).

ARGUMENT

I. APPELLANT CONCEDES THAT EXERCISE OF GENERAL JURISDICTION IS INAPPROPRIATE UNDER THE MINIMUM CONTACTS ANALYSIS.

The crux of Appellant's argument regarding general jurisdiction is Chicago Title consented to general jurisdiction in South Carolina pursuant to South Carolina Code Section 38-5-70 by becoming a licensed insurer in South Carolina, relying primarily on Mallory and Pennsylvania Fire. This "consent to jurisdiction" argument is addressed below. "Consent to jurisdiction" is separate from the "traditional minimum contacts" analysis of International Shoe Co. v. Washington, 326 U.S. 310 (1945). See Lumen Techs. Serv. Group, LLC v. CEC Group, LLC, No. 23-CV-00253-NYW-KAS, 2023 WL 5822503, at *5 (D. Colo. Sept. 8, 2023) ("[i]n other words, the Mallory decision recognizes that the jurisdictional due process 'minimum contacts' or 'at home' analysis is not applicable where a party consents to a state's jurisdiction.").

Appellant cites to South Carolina Code Section 36-2-802, which is a long arm statute (even though Appellant never cited that provision to the trial court). That section is entitled "Personal jurisdiction based upon enduring relationship." In particular, for general jurisdiction to exist under the traditional minimum contacts analysis, the defendant's contacts must be so continuous and systematic that the corporation is essentially "at home." Daimler AG v. Bauman, 571 U.S. 117, 118 (2014). With respect to a corporation, the place of incorporation and principal place of business are the paradigm bases for general jurisdiction. Id. at 137. Only in the "exceptional case" may general jurisdiction be established in a forum state other than the state of incorporation or the principal place of business. Id. at 139 n.19; see also Goodyear Dunlop Tier Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011); BNSF Ry. Co. v. Tyrell, 137 S. Ct. 1549 (2017).

Appellant correctly points out that United States Supreme Court jurisprudence limits the applicability of that statute and the case law interpreting it, and notes that "a non-consenting, non-resident defendant may not be subject to the general jurisdiction of the state, even if it is engaged in an enduring relationship within the state."[1] (App. Brief pp. 12-13). Out of caution, however, Chicago Title reiterates herein that it is not subject to general jurisdiction under the minimum contacts analysis because it is not incorporated in Florida and is not headquartered in Florida.

II. THE TRIAL COURT CORRECTLY FOUND THAT SOUTH CAROLINA CODE SECTION 38-5-70 DOES NOT CONFER GENERAL PERSONAL JURISDICTION OVER CHICAGO TITLE, WHERE CHICAGO TITLE DID NOT ISSUE ANY INSURANCE POLICY THAT RELATES TO ANY LIABILITIES AT ISSUE, DID NOT DIRECT ANY ACTIVITIES TO SOUTH CAROLINA, AND APPELLANT IS SEEKING TO IMPOSE LIABILITY ON CHICAGO TITLE BASED SOLELY ON AN INCORRECT STATEMENT ON CLAS'S WEBSITE.

In light of Mallory, the trial court's finding regarding Pennsylvania Fire is incorrect, but Mallory does not change the ultimate holding that Chicago Title is not subject to personal jurisdiction in South Carolina for this action. The trial court correctly held that even if Pennsylvania Fire was still good law, Chicago Title did not consent to general jurisdiction by complying with the insurance licensing statute because South Carolina Code Section 38-5-70 does not constitute consent to general jurisdiction in South Carolina. (Dismissal Order 7-9).

Under Pennsylvania Fire and Robert Mitchell Furniture Co. v. Selden Breck Construction Co., 257 U.S. 213 (1921), obtaining the necessary licensure in a given state amounts to consent to general jurisdiction in that state only if that condition is 1) explicit in the statute, or 2) the state court has interpreted the statute as imposing that condition. See Fidrych v. Marriott International, Inc., 952 F. 3d 124, 137 (4th Cir. 2020); (Dismissal Order p. 7). Here, neither is present. The

[1] Rather than distinguishing between cases involving consent/licensure statutes versus minimum contacts, on page 12 of the Initial Brief, Appellant characterizes the licensure as a foreign insurer as "contacts" that are sufficient to justify suit. This characterization does not appear consistent with Mallory. Regardless, the relevant point is that Appellant is not arguing that contacts other than licensure would amount to general jurisdiction.

condition is not explicit in South Carolina Code Section 38-5-70, and the state court has not- and should not- interpret the statute as imposing that condition.

First, Section 38-5-70 does not even mention the word "jurisdiction." Notably, this distinguishes Section 38-5-70 from the statutes at issue in Mallory and Pennsylvania Fire. The statute at issue in Mallory was 42 Pa.C.S. Section 5301(a)(2), which provides that registration to do business in Pennsylvania is "a sufficient basis of jurisdiction to enable the tribunals of this commonwealth to exercise ***general personal jurisdiction*** over such person." (emphasis added). Also, 42 Pa.C.S. Section 5301(b) states "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); see also Mallory, 600 U.S. at 127.

Similarly, the Missouri statute at issue in Pennsylvania Fire provided as follows:

> Sec. 7042. Process against foreign companies, appointment of superintendent to receive or accept service of. Any insurance company not incorporated by or organized under the laws of this state, desiring to transact 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, and in case such process is issued by a justice of the peace or other inferior court, the same may be directed to and served by any officer authorized to serve process in the city or county where said

> superintendent shall have his office, at least fifteen days before the return day thereof, **and such service shall confer jurisdiction**. . . .

State ex rel. P. Mut. Life Ins. Co. v. Grimm, 143 S.W. 483, 490 (Mo. 1911) (quoting Sec. 7042).[2]

Consequently, insurers registering to do business pursuant to that Missouri statute understood that they were not merely designating the insurance superintendent as agent for service of process, but also that such appointment constituted consent to jurisdiction. Section 38-5-70 contains no such statement. In fact, Section 38-5-70 states that the effect of appointing the insurance commissioner for service of process is that service on the commissioner "shall be of the same legal force and validity as if served upon the insurer."

This distinction is important. Service is inherently distinct from personal jurisdiction. Indeed, this Court has held that a defendant was properly served pursuant to Rule 4(a)(d)(1), SCRCP, and also that the court lacked personal jurisdiction over the defendant. See, e.g., Delta Apparel, Inc. v. Farina, 406 S.C. 257, 750 S.E.2d 615 (Ct. App. 2013). Such a holding would be impossible if service of process and personal jurisdiction were not separate.

Similarly, this Court has found that appointment of a registered agent for service of process does not subject a defendant to personal jurisdiction in South Carolina. In Builder Mart of America, Inc. v. First Union Corp., the defendant bank went into default but moved to set it aside on the basis of lack of personal jurisdiction. 349 S.C. 500, 504, 563 S.E.2d 352, 354 (Ct. App. 2002), *overruled in part on other grounds* by Farmer v. Monsanto Corp., 353 S.C. 553, 579 S.E.2d 325 (2003). The defendant had registered to do business in South Carolina in accordance with

[2] The statute was not quoted in the United States Supreme Court's opinion in Pennsylvania Fire (which makes sense because it relied on the Missouri Supreme Court's statutory interpretation), but the statute was quoted in full in Grimm (the holding of which was overruled by State ex rel. Am. Cent. Life Ins. Co. v. Landwehr, 300 S.W. 294 (Mo. 1927), a case discussed *infra*. The Missouri Supreme Court quoted the statute in part and referenced Grimm in its opinion in the Pennsylvania Fire case, Gold Issue Min. & Mill. Co. v. Pennsylvania Fire Ins. Co. of Philadelphia, 184 S.W. 999, 1003 (Mo. 1916) aff'd, 243 U.S. 93 (1917), overruled by State ex rel. Am. Cent. Life Ins. Co. v. Landwehr, 300 S.W. 294 (Mo. 1927).

applicable statutes and designated an agent for service of process. Id. at 506, 563 S.E.2d at 354. The Court rejected the plaintiff's argument that the appointment of an agent for service of process meant that the bank was subject to personal jurisdiction in South Carolina. Id. The Court explained "'[a] corporation can be qualified to do business in South Carolina and have appointed an agent for service of process but still not be conducting sufficient activities in South Carolina to be subject to suit here.'" Id. (quoting S.C. Code Ann. § 33–15–101, Reporter's Comments § 2 (Rev.1990)); see also Fidrych, 952 F.3d at 138 (holding that appointment of registered agent in accordance with certificate of authority requirements did not subject Marriott to general personal jurisdiction in South Carolina). Again, this case reiterates that service of process and personal jurisdiction are not identical.[3]

In Fidrych v. Marriott International, Inc., 952 F. 3d 124 (4th Cir. 2020), the court followed Builder Mart in holding that Marriott International did not consent to general jurisdiction by registering to do business in South Carolina and appointing a registered agent. Id. at 137-38. Although Appellant distinguishes Builder Mart on the proposition that the defendant in that case did not actually do business in South Carolina despite registration, Fidrych undermines that distinction since Marriott licensed or managed at least 27 hotels in South Carolina. Id at 128. Moreover, the Fidrych Court rejected the plaintiff's argument that the official commentary to South Carolina Code Section 33-15-107, which states that a "foreign corporation that obtains a certificate of authority in a state thereby agrees that it is amenable to suit in the state," constitutes consent to general jurisdiction in South Carolina. Id. at 138 n. 3. The Court explained that

[3] Appellant recognizes that there is some case law that appears to equate the two concepts. Certainly, they are related, and service of process is a necessary part of obtaining personal jurisdiction, but clearly it is not, in and of itself, sufficient.

"amenable to suit in the state" means "amenable to service of process in the state" but did not mean it was amenable to general jurisdiction. Id.

Section 38-5-70 speaks to appointment of an agent for service of process, similar to the statutes requiring foreign corporations to appoint a registered agent. The effect of such appointment is only that such service has "the same legal force and validity as if served upon the insurer." Service is not the same thing as personal jurisdiction and, consequently, service on the insurance commissioner does not confer personal jurisdiction over Chicago Title. See also AM Tr. v. UBS AG, 681 Fed. Appx. 587, 589 (9th Cir. March 31, 2017) ("Service of process and personal jurisdiction are two different things.").

Second, even if the statute speaks to jurisdiction rather than just service, it does not confer general jurisdiction. Courts have refused to construe the phrase "any action or proceeding" to require a defendant to be haled into a state which it did not direct its activities. See Ferrante v. Trojan Powder Co., 79 F. Supp. 502, 505–06 (E.D. Pa. 1947) (citing Steinberg v. Aetna Fire Ins. Co., 50 F. Supp. 438 (E.D. Pa. 1943)). This interpretation makes sense in context. South Carolina Code Section 38-5-70 is part of a broader regime regulating the conducting of insurance business in *South Carolina* and issuing policies covering persons and property in *South Carolina*. See, e.g., S.C. Code § 38-5-10. The purpose of the statute is to protect South Carolina citizens relating to the conducting of the regulated insurance business by the licensed insurers in South Carolina. The idea behind Section 38-5-70 is to provide a means of recourse relating to the activities of those insurers pursuant to those insurance related activities and business. The idea is not to provide a means for a plaintiff to sue a shareholder of a corporation for activities that the corporation (not the shareholder) directed at South Carolina. Here, the shareholder in this scenario happens to be an insurer even though nothing in the case has anything to do with Chicago Title in its capacity as

an insurer. Section 33-5-70 is not designed to protect that any more than certificate of authority statutes are designed to protect South Carolina citizens against investment by a non-insurer under the same circumstances. Yet clearly a non-insurer foreign corporation would not be subject to general jurisdiction under the same circumstances.

Moreover, the clause "so long as any liability remains outstanding in the State" limits the statute's operation to specific jurisdiction. This is actually supported by case law interpreting the Missouri statute at issue in Pennsylvania Fire. In Pennsylvania Fire, the United States Supreme Court relied on the Missouri Supreme Court's interpretation of the Missouri statute. However, in State ex rel. American Cent. Life Ins. Co. v. Landwehr, 300 S.W. 294 (Mo. banc 1927), the Missouri Court overturned its interpretation of that statute. The Landwehr Court determined that the language "so long as it shall have any policies or liabilities outstanding in this state," meant that a Missouri court could not exercise jurisdiction over an insurer licensed in Missouri unless it was for a suit related claim. See also State ex rel. Norfolk S. Ry. Co. v. Dolan, 512 S.W.3d 41, 53 n. 11 (Mo. 2017) (stating that the Missouri Court's interpretation of "specifically was overturned on this precise point by [State ex rel. American Cent. Life Ins. Co. v. Landwehr, 318 Mo. 181, 300 S.W. 294 (Mo. banc 1927)], which held that a foreign insurer's registration constituted consent **only to suit on related claims**.") (emphasis added).

South Carolina Code Section 38-5-70 contains a similar limiting clause: "so long as any liability remains outstanding in the State." Thus, the Missouri Supreme Court's interpretation of that language on this point is persuasive. Courts in other jurisdictions have interpreted similar insurance licensure statutes as not providing for consent to jurisdiction over unrelated claims. See, e.g., Gen. Am. Life Ins. Co. v. Carter, 54 N.E.2d 944, 947 (Ind. 1944) (holding that the "obvious purpose" of statutory language that the power of attorney executed by an insurance company "shall

continue in force and be irrevocable so long as any liability of the insurance company remains outstanding in this state" was "to bring the insurance company within the jurisdiction of the courts of the state for the purpose of actions arising out of contracts made within the state or with residents of the state."); Tom James Co. v. Zurich Am. Ins. Co., 221 N.E.3d 1261, 1271–72 (Ind. App. 2023) (same); Lumen Techs. Serv. Group, LLC, 2023 WL 5822503, at *5 (unlike Mallory, Colorado law is not "explicit that 'qualification as a foreign corporation' shall permit state courts to 'exercise general personal jurisdiction' over a registered foreign corporation, just as they can over domestic corporations.").

As for statutory interpretation, Appellant cites Wofford v. Prudential Ins. Co. of America, 65 F. Supp. 637 (D.S.C. 1946), 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). None of these cases warrants a different conclusion.

Wofford is a federal court opinion that is non-binding on this Court. Moreover, Wofford never addresses the "so long as" language or the cases interpreting similar language that found the statute was limited to specific personal jurisdiction. In fact, there is no discussion in Wofford regarding whether the statute confers such jurisdiction. These arguments do not appear to have been raised. Rather, the analysis related to the impact of the statute on a federal venue statute and constitutionality rather than interpretation of the statute. Moreover, the case dealt with the defendant's issuance of an insurance policy, i.e., the defendant's capacity as an "insurer." Here, Chicago Title is not even being sued relating to anything it has done as an "insurer."

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 Appellant'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 never served the insurer's attorney. 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 a statute 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

[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.

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 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.

For these reasons, the Court should find that Section 38-5-70 does not confer jurisdiction over Chicago Title in this matter.

III. TO THE EXTENT SOUTH CAROLINA CODE SECTION 38-5-70 CONFERS GENERAL PERSONAL JURISDICTION OVER AN OUT OF STATE INSURER, SECTION 38-5-70 VIOLATES THE COMMERCE CLAUSE.

In Mallory, four (4) of the justices opined that the Pennsylvania statute at issue did not violate Due Process, four (4) of the justices opined that the Pennsylvania statute at issue does violate Due Process, and one (1) justice (Alito) opined that it did not violate Due Process, but heavily suggested that it violates the dormant commerce clause. See Mallory, 600 U.S. at 160

[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.

(Alito, J. concurring) ("In my view, there is a good prospect that Pennsylvania's assertion of jurisdiction here—over an out-of-state company in a suit brought by an out-of-state plaintiff on claims wholly unrelated to Pennsylvania—violates the Commerce Clause.").[6]

Specifically, Justice Alito stated, "Pennsylvania's law seems to discriminate against out-of-state companies by forcing them to increase their exposure to suits on all claims in order to access Pennsylvania's market while Pennsylvania companies generally face no reciprocal burden for expanding operations into another State." Id. at 161 n. 7. The same would be true of South Carolina Code Section 38-5-70 if it is interpreted to provide for jurisdiction over all claims against an insurer even those unrelated to any conduct undertaken or policy issued by the insurer. Under those circumstances, it would force insurers to increase their exposure to suits in order to conduct insurance business in South Carolina while South Carolina insurers would not face a reciprocal burden for expanding in another state. Under such circumstances, "the law's proponent must 'demonstrate both that the statute "serves a legitimate local purpose," and that this purpose could not be served as well by available nondiscriminatory means.'" Id. at 160 (quoting Maine v. Taylor, 477 U.S. 131, 138 (1986)). This is a high burden to overcome. Id. (citing New Energy Co. of Ind. v. Limbach, 486 U.S. 269, 278 (1988)).

South Carolina does not have a legitimate interest in requiring insurers to be haled into South Carolina based on the actions of third parties, especially here, where none of the alleged conduct has anything to do with Chicago Title being an "insurer." To comport with the Commerce Clause, the statute must be limited to conduct directed at South Carolina.

[6] Thus, a majority (5 out of 9) of the Supreme Court justices have indicated a belief that the Pennsylvania statute at issue in Mallory violates the United States Constitution, although they do not agree on which provision it violates, and the only issue before the Court was whether the statute violated Due Process.

IV. THE TRIAL COURT CORRECTLY DETERMINED THAT IT COULD NOT EXERCISE SPECIFIC PERSONAL JURISDICTION OVER CHICAGO TITLE WHERE CHICAGO TITLE DID NOT DIRECT ANY SUIT RELATED ACTIVITIES TOWARD SOUTH CAROLINA AND APPELLANT IS SEEKING TO IMPOSE LIABILITY ON CHICAGO TITLE BASED SOLELY ON AN INCORRECT STATEMENT ON CLAS'S WEBSITE.

"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, 376 S.C. at 16, 655 S.E.2d at 478. A finding of specific jurisdiction "requires a court to find that the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities." S. Plastics Co. v. S. Com. Bank, 310 S.C. 256, 261, 423 S.E.2d 128, 131 (1992) (citing Aviation Associates & Consultants, Inc. v. Jet Time, Inc., 303 S.C. 502, 508, 402 S.E.2d 177, 180 (1991)). "In addition, the defendant's activities directed to a resident of this State must be its own and not the unilateral activities of some other entity." Id. (citing Aviation, 303 S.C. at 507, 402 S.E.2d at 180); Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 417 (1984) ("[The] unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction"); see also Hinkle v. Continental Motors, Inc., C.A. No. Civil Action No. 9:16-3707-RMG, 2017 WL 4574794 (D.S.C. 2017) (opinion by Judge Gergel declining to exercise jurisdiction over case involving plane crash that occurred in South Carolina, because the suit did not arise out of defendant's contacts with South Carolina); Hidria, USA, Inc. v. Delo, 415 S.C. 533, 783 S.E.2d 839 (Ct. App. 2016) (no jurisdiction over a Slovenian company because there was no evidence that defendant "had a manifest intent to target South Carolina readers); Walden v. Fiore, 571 U.S. 277, 284 (2014) ("the defendant's suit-related conduct must create a substantial connection with the forum State.").

Chicago Title has not engaged in any suit related conduct, much less directed any suit related activities toward South Carolina. As an initial matter, Appellant argues that the trial court's ruling the partnership claim "is unsupported by the evidence misapprehends the quantum of proof required by the Appellant to defeat a motion to dismiss pursuant to Rule 12(b)(2), SCRCP." (App. Brief p. 22). Appellant then asserts, without elaboration, that the trial court required Appellant to prove her case on the merits. (Id.). But Appellant ignores that, unlike the standard under Rule 12(b)(6), the trial court is not bound by allegations in a complaint. Rather, the court must consider evidence outside of the pleadings and "'[t]he decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law.'" Abdulla, 439 S.C. at 399, 887 S.E.2d at 142 (quoting Cockrell, 363 S.C. at 491, 611 S.E.2d at 508).

Here, the trial court appropriately applied this standard and determined that the evidence does not support that CLAS and Chicago Title have a joint venture or partnership. (Dismissal Order p. 11). The trial court's finding is supported by the evidence and should be affirmed. Chicago Title presented evidence that CLAS and Chicago Title are not partners and are not in a joint venture. (Cusack Aff.; Second Cusack Aff.). Rather, Chicago Title is a shareholder in CLAS. (Cusack Aff.; Second Cusack Aff.). Appellant's entire theory of specific jurisdiction- and, indeed, its entire case against Chicago Title- rests on one (incorrect) statement on CLAS's website that "CLAS is a joint venture partnership with Chicago Title." However, as set forth in detail below, the trial court correctly found CLAS's formation as a corporation precludes it from being a joint venture or partnership, and CLAS's website statement is nonsensical because CLAS cannot be a joint venture partner in a joint venture partnership and also be the joint venture partnership itself. Moreover, even if there was some joint venture partnership involving CLAS and Chicago Title, there is no evidence that CLAS's conduct was within the scope of the partnership as opposed to

its own business. Finally, even if CLAS recorded the deed in the scope of a joint venture partnership with Chicago Title, 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.

A. CLAS's formation as a corporation precludes it from being a joint venture or partnership, and CLAS's website statement is nonsensical because CLAS cannot be a joint venture partner in a joint venture partnership and also be the joint venture partnership itself.

Appellant alleges "[o]n information and belief, CLAS and Chicago Title are joint venture partners." (Am. Comp. ¶29). Other than the website statement, there are no other facts pled to support the allegation of a joint venture. The pertinent facts show Chicago Title is a shareholder (owing a 49.9% interest) in that corporation. (Cusack Aff. at ¶4). No partnership exists between Chicago Title and CLAS. (Second Aff. of Michael Cusack, at ¶2). As a shareholder of CLAS, Chicago Title has rights and benefits that can include sharing in CLAS profits with other shareholders. (Id.). However, Chicago Title is not a co-owner or partner with CLAS and does not share in profits with CLAS. (Id.).

Nevertheless, based on the website statement, Appellant argues Chicago Title and CLAS have a partnership within the meaning of South Carolina Code Section 33-41-210. The website statement is insufficient to support the existence of a joint venture or partnership because CLAS's formation as a corporation precludes it from being a joint venture or partnership and the website statement is nonsensical, as CLAS cannot be a joint venture partner in a joint venture partnership and also be the joint venture partnership itself.

A "joint venture" is defined as a special combination of two or more persons, where in some specific venture a profit is jointly sought without any actual partnership or corporate designation." Gordon v. Rothberg, 213 S.C. 492, 503, 50 S.E.2d 202, 207 (1948); Tompkins v.

Commr. of Internal Revenue, 97 F.2d 396, 398 (4th Cir. 1938). "Practically 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, 213 S.C. at 503, 50 S.E.2d at 207. Thus, "the fact that an entity is a corporation precludes a finding that it is a partnership or a joint venture or a finding that its stockholders constitute partners or joint venturers." In re Silicone Gel Breast Implants Prod. Liab. Litig., 887 F. Supp. 1455, 1462 (N.D. Ala. 1995). "A joint venture cannot be carried on in corporate form because the two forms of business are mutually exclusive." Id.; see also Itel Containers v. Atlanttrafik Exp. Service Ltd., 909 F. 2d 698 (2d Cir. 1990) (affirming the district court's ruling that a company itself "was not a joint venture because it was a corporation" since "a joint venture and a corporation are mutually exclusive ways of doing business."). Applying these principles, the District of South Carolina in Future Plastics, Inc. v. Ware Shoals Plastics, Inc., 340 F. Supp. 1376, 1383 (D.S.C. 1972), held that "[t]he evidence does not establish joint venture, since the parties incorporated their effort as Future Plastics, Inc. . . . . A corporation is inconsistent with a joint venture."

Similarly, South Carolina Code Section 33-41-210 (which has questionable application, at best, in light of CLAS being an Illinois corporation and Chicago Title being a Florida corporation) 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.

Because CLAS is a corporation, as alleged in the Amended Complaint, it cannot be a joint venture or partnership. 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, 213 S.C. at 503, 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 partnerships since 1903).

Appellant 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." (App. Brief at 22). However, Appellant's only evidence is the CLAS website, which does not, and cannot, say that CLAS and Chicago Title have a separate joint venture or partnership. It says that "CLAS is a joint venture partnership" (i.e., CLAS itself **is** the joint venture partnership). Yet this is obviously incorrect legally. Because CLAS is a corporation, the law is clear that, by definition, it cannot be a joint venture partnership.[7] Gordon, 213 S.C. 492, 50 S.E.2d at 207 (defining a joint

[7] 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 Appellant or anyone else relied on CLAS's website to her detriment.

venture as "[a] special combination of two or more persons, where in some specific venture a profit is jointly sought without any actual partnership or corporate designation."); S.C. Code § 33-41-210 (defining partnership); Peabody-Waterside Dev., LLC v. Islands of Waterside, LLC, 995 N.E.2d 1021, 1024 (Ill. App. 5th Dist. 2013) (reversing the court's finding of a joint venture because such "finding ignores the corporate form of [an LLC] and the nature of the relationship between a limited liability company and its members. . . . Joint ventures are not distinct legal entities").

Like the shareholders in Future Plastics, Inc., the shareholders of CLAS incorporated their effort as CLAS, which is inconsistent with a joint venture or partnership. CLAS is the culmination of the joint venture between what is now the shareholders of CLAS. Having incorporated, by definition, CLAS cannot be a joint venture or partnership.

The fact that CLAS states on its website that it is a joint venture is immaterial. For example, the South Carolina Court of Appeals has held that parent/subsidiary entities that hold themselves out as the same entity are not treated that way for purposes of determining whether the court can exercise personal jurisdiction over the other party. Builder Mart of Am., Inc. v. First Union Corp., 349 S.C. 500, 512, 563 S.E.2d 352, 358-59 (Ct. App. 2002) (a corporate family's "unified marketing and advertising and holding out to the public as a single entity, without more, [are] insufficient to confer jurisdiction" over the parent) *overruled on other grounds by* Farmer v. Monsanto Corp, 353 S.C. 553, 579 S.E.2d 325 (2003); see also In re Silicone Gel Breast Implants Prod. Liab. Litig., 887 F. Supp. at 1462 (noting that the fact that 2 parties "have occasionally used the term joint venture in non-legal situations does not justify a finding that, notwithstanding their incorporation of Dow Corning, they really intended to be partners or joint venturers in a legal sense."); Presbyterian Church of Sudan v. Talisman Energy, Inc., 453 F. Supp. 2d 633, 686

(S.D.N.Y. 2006) ("The fact that Consortium Members may have viewed their relationship as a joint venture or described it informally as such is insufficient to create an issue of fact on joint venture liability"), judgment entered sub nom. 2006 WL 3469542 (S.D.N.Y. Dec. 1, 2006), and aff'd, 582 F.3d 244 (2d Cir. 2009); Andrews v. Primus Telecomms. Group, 107 Fed. Appx. 301, 308 (4th Cir. July 16, 2004) (holding as a matter of law that a letter from the corporation to a third party indicating that the corporation "had partnered with" the company could not support a finding that there was a legal partnership or joint venture).

Rather, because Appellant is relying entirely on the conduct of CLAS- which is undisputedly a separate entity from Chicago Title- to establish personal jurisdiction over Chicago Title, Appellant must show that CLAS was Chicago Title's alter ego. See Marriott Intern., Inc. v. Am. Bridge Bahamas, Ltd., 193 So. 3d 902, 906 (Fla. 3d Dist. App. 2015) (stating that prohibition of a joint venture where there is incorporation "makes sense because the decision to incorporate is generally made due to the incorporators desire to shield themselves and their future investors from individual liability, and to permit the simultaneous existence of both a corporation and a joint venture would provide plaintiffs with an alternative method of holding such incorporators and shareholders liable without piercing the corporate veil.");

Appellant has the burden of showing alter ego and the presumption is that corporations are separate. Sturkie v. Sifly, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (S.C. Ct. App. 1984) ("The party seeking to have the corporate entity disregarded has the burden of proving the doctrine should be applied."). "South Carolina courts have consistently recognized that it is difficult to plead that one entity is the alter ego of another." Fancy That! Bistro & Catering, LLC v. Sentinel Ins. Co., 2021 WL 4804974, at *4 (D.S.C. Oct. 14, 2021)). Merely owning stock- even 100% of a corporation's stock- is immaterial. Yarborough & Co. v. Schoolfield Furniture Indus., Inc., 275

S.C. 151, 153-54, 268 S.E.2d 42, 44 (1980) ("the mere acquisition and control of a domestic subsidiary's capital stock does not subject the foreign parent to the jurisdiction of that State's courts."). Common officers and/or directors are also insufficient. Id.[8] Overlap in websites, marketing, and operations, has also been found insufficient. See, e.g., Builder Mart of Am., Inc., 349 S.C. at 512, 563 S.E.2d at 358 ("unified marketing and advertising and holding out to the public as a single entity, without more, [is] insufficient to confer jurisdiction.").[9] The absence of evidence that the defendant failed to observe corporate formalities is, alone, fatal to an alter ego argument. J.R. v. Walgreens Boots All., Inc., 470 F. Supp. 3d 534, 549 (D.S.C. 2020). Moreover, alter-ego theory "'does not apply in the absence of fraud or misuse of control by the dominant entity which results in some injustice.'" Oskin v. Johnson, 400 S.C. 390, 408, 735 S.E.2d 459, 465 (2012) (quoting Colleton Cnty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cnty., 371 S.C. 224,

[8] See also Jones v. Enterprise Leasing Company-Southeast, 383 S.C. 259, 267, 678 S.E.2d 819, 823 (Ct. App. 2009) (same); *In re* AuditHead, LLC, 624 B.R. 134, 142–43 (Bankr. D.S.C. 2020) (same); Gray v. Riso Kagaku Corp., No. 95–1741, 1996 WL 181488, at *3 (4th Cir. Apr. 17, 1996) (affirming district court's dismissal of parent company for lack of personal jurisdiction even though the parent company made the subsidiary terminate a financing program on which the parent acted as a guarantor, a majority of the subsidiary's board of directors were also associated with the parent company, the parent funded the subsidiary, and the subsidiary relied on directions from the parent company to make hiring decisions and resolve complaint); ScanSource, Inc. v. Mitel Networks Corp., 6:11-CV-00382-GRA, 2011 WL 2550719, at *5 (D.S.C. June 24, 2011) ("[T]he overlap of directors and officers between parent and subsidiary alone does not render the subsidiary a 'mere department' for jurisdictional purposes.") (quoting *Weiss v. La Suisse*, 69 F.Supp.2d 449, 458 (S.D.N.Y.1999)).

[9] *See also* Fitzhenry v. One on One Marketing, LLC, No. 2:14-cv-4782-DCN, 2015 WL 4459023, at *5 (D.S.C. July 21, 2015) (finding plaintiff has shown at most that defendants "share some administrative and marketing functions" by parent's website stating subsidiary opened a branch in South Carolina and parent had job postings for employees to work at South Carolina locations); Wright v. Waste Pro USA Inc., 2019 WL 3344040, at *4 (D.S.C. July 25, 2019) ("Using a common logo on a hiring website is not enough to create an agency relationship sufficient to warrant personal jurisdiction, especially when the logo and hiring website are not relevant to the plaintiff's allegations"); Scansource, Inc., 2011 WL 2550719, at *5 ("provision of support services, including advanced costs, by parent for subsidiary, 'are part and parcel of the normal incidents of a parent-subsidiary relationship.'") (quoting Nat'l Prod. Workers Union Trust v. CIGNA Corp., No. 05–C–5415, 2007 WL 1468555, at * 10 (N.D.Ill. May 16, 2007)).

237, 638 S.E.2d 685, 692 (2006)); see also Baker v. Equitable Leasing Corp., 275 S.C. 359, 367–68, 271 S.E.2d 596, 600 (1980) (holding that the alter-ego theory should be used only when retaining separate "personalities would promote fraud, wrong, or injustice or contravene public policy").

In the fact section of Appellant's Brief, Appellant points to the fact that Chicago Title's website shows a Chicago Title metropolitan office (one of many addresses listed on the website)[10] at the same address that CLAS lists on its website. In September 2020, Chicago Title Company, LLC entered into a sublease with CLAS for a portion of the building being leased by CLAS. (Portions of Sublease, Ex. 2 to Reply). Chicago Title Company, LLC is a different entity from Defendant Chicago Title, (Defendant Chicago Title does not share office space with CLAS), but putting that aside, the existence of a sublease with the sublessee paying rent to CLAS reinforces that CLAS and Chicago Title are separate entities. A landlord-tenant relationship concerning a property in Illinois certainly does not justify the imposition of jurisdiction over Chicago Title in South Carolina.

Appellant also notes that three Chicago Title employees are on the Board of Directors at CLAS. This is consistent with Chicago Title being a 49.9% shareholder in CLAS and illustrates Chicago Title's point that it is a shareholder in CLAS and, since CLAS is a corporation, CLAS is not a joint venture. The evidence does not come close to showing alter ego.

The trial court's finding of the lack of a joint venture partnership is supported by the evidence and, therefore, must be affirmed.

[10] Chicago Title's principal address is in Jacksonville, FL. (Exh. E to Pl's Opp.).

B. The trial court correctly determined that even if there was some joint venture partnership involving CLAS and Chicago Title, there is no evidence that CLAS's conduct was within the scope of the partnership as opposed to its own business.

Even if the Court were to find a partnership exists, that would not warrant reversal since the trial court correctly 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 trial 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 trial 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.

(Id.)

The trial court also noted 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." (Id.; CLAS Ans. to Interrog. No. 7, Ex. 1 to Reply). CLAS invoiced Litt and payment was made to CLAS. (Invoice, Ex. 3 to Reply). CLAS recorded the deed, not a separate joint venture partnership. There is absolutely no evidence to the contrary.

This is fatal to Appellant's claim. S. Plastics Co., 310 S.C. at 261, 423 S.E.2d at 131 ("the defendant's activities directed to a resident of this State must be its own and not the unilateral activities of some other entity.").

C. Even if CLAS recorded the deed in the scope of a joint venture partnership with Chicago Title, 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.

Finally, 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). Consequently, the trial court's Dismissal Order should be affirmed for this additional reason.

CONCLUSION

For all of these reasons, the Court should affirm the trial court's order dismissing Chicago Title from this case for lack of personal jurisdiction.

Respectfully submitted,

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