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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-26-07668

(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. 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

FINAL BRIEF OF APPELLANT

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

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QUESTION PRESENTED

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A. Did the Trial Court Err in Finding and Concluding that Chicago Title Insurance Company Was Not Subject to General Jurisdiction, Even though it Consented to General Jurisdiction Pursuant to South Carolina Code Ann. Section 38-5-70?

B. Did the Trial Court Err in Finding and Concluding that Chicago Title Insurance Company Was Not Subject to the Specific Jurisdiction of the Court?

STATEMENT OF THE CASE

The Appellant, Gloria Ormand-Ward[1] ("Ms. Ward") was 77 years of age when she became the victim of title fraud when a fraudulent warranty deed (hereinafter "Warranty Deed") bearing her alleged DocuSigned signature, was filed with the Horry County Register of Deeds conveying her home to Homedebone, LLC (R. pp. 108-112), a dissolved Utah limited liability company (R. p. 167). She filed her Complaint on November 18, 2021 (R. p. 39). She subsequently amended her Complaint on April 26, 2022 to include Chicago Title Insurance Company (hereinafter "Chicago Title") as a party defendant (R. p. 67).

Defendants Homedebone, LLC, Rosaria A. Alagna a/k/a Rose Alagna and Chris Parker were all duly served with the Amended Complaint, and are each in default. (R. pp. 168-170). Defendant David Litt ("Litt") has evaded several attempts at service of the Complaint and Amended Complaint and has never been served.

The Amended Complaint sets forth, in detail, the fraud and other wrongful acts that were perpetrated on Ms. Ward. Specifically for this appeal, Ms. Ward asserts that Chicago Title is in partnership with Chicago Land Agency Services ("CLAS") (R. p. 73,¶29). According to their website, CLAS is a partner with Chicago Title (R. p. 73, ¶29). The partnership, through CLAS, caused the Warranty Deed to be e-recorded, using CLAS's electronic portal to the Office of the Horry County Register of Deeds.

CLAS filed a Motion to Dismiss, pursuant to Rule 12(b)(6) SCRCP, on May 25, 2022 (R., 171). Chicago Title filed its Motion to Dismiss for failure to state a claim (12(b)(6)

[1] Ms. Ward was adjudicated incapacitated (R. pp. 8-9) on September 24, 2021 and a Guardian and Conservator were appointed by the Horry County Probate Court Judge. The case, and this appeal, are brought in Ms. Ward's name, by and through her Guardian and Conservator. The terms "Appellant" and "Ms. Ward" are used interchangeably.

SCRCP) and lack of personal jurisdiction (12(b)(2) SCRCP) on June 1, 2022. (R. p. 177). Plaintiff filed a Consolidated Memorandum in Opposition to CLAS's and Chicago Title's Motions to Dismiss on September 9, 2022 (R. p. 198). A hearing was held on CLAS's and Chicago Title's Motions to Dismiss on September 19, 2022. Thereafter, on October 4, 2022, the trial court issued its Order on CLAS's Motion to Dismiss, wherein CLAS's Motion to Dismiss was granted as to two causes of action, i.e., intentional infliction of emotional distress and slander of title (R. p. 12). CLAS's Motion to Dismiss was denied as to the remaining causes of action (R. p. 16).

CLAS filed its Answer to the Amended Complaint on October 19, 2022 (R. p. 318).

By Order filed October 12, 2022, the trial court granted Chicago Title's Motion to Dismiss on the basis that it lacked personal jurisdiction over Chicago Title. (R. p. 17). The Appellant filed her Motion for Reconsideration on October 21, 2022 (R. p. 331). Oral arguments were heard on November 29, 2022. Thereafter, the trial court denied the Appellant's Motion to Reconsider on January 17, 2023 (R. p. 31).

The Appellant filed her Notice of Appeal on February 16, 2023. On May 24, 2023, Appellant moved for "an Order staying the proceedings in this appeal until after the issuance of a decision in the United States Supreme Court case of *Mallory v. Norfolk Southern Railway Co.*" Chicago Title consented "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." The Motion to Stay was granted by Order entered on June 6, 2023, with the direction that the Appellant notify the Court of Appeals within ten (10) days after the issuance of the decision in *Mallory.*

The U.S. Supreme Court issued its decision in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S.122 (2023) (plurality opinion) on June 27, 2023. Appellant informed this Court of the *Mallory* decision via letter dated July 6, 2023. This Court issued a letter on July 7, 2023 stating that "[t]his case will no longer be held in abeyance and the appellant's initial brief and designation of matter is due within 30 days from the date of this letter."

On August 4, 2023, Appellant filed her Motion to Remand the case back to the trial court. Chicago Title filed its Reply in Opposition on August 14, 2023. Appellant's Return to Chicago Title's Reply was filed on August 17, 2023, and this Court denied Appellant's Motion to Remand on August 24, 2023.

STATEMENT OF FACTS

Ms. Ward owned her home, located in upscale subdivision, in the City of Myrtle Beach, known as Providence Park at Antigua Subdivision, free and clear of any encumbrances, since 2012. (R. p. 68, ¶3).

Ms. Ward's homeowner's association assessments became delinquent and, as a result, Providence Park at Antigua Homeowners Association, Inc. (the "HOA") filed a lien on September 25, 2020 in the amount of $5,526.50 for delinquent assessments, late fees and attorney's fees and a shortly thereafter, the HOA filed a foreclosure action to collect these amounts. (R. p. 71, ¶22). The foreclosure action was a matter of public record. During this time, Defendant David Litt ("Litt") contacted Ms. Ward with an offer to help her stop the foreclosure (R. p. 71, ¶23). At Litt's request, Ms. Ward gave written permission for him to talk to the HOA's attorney (R. p. 76, ¶36).

However, prior to communicating with the HOA's attorney, Litt had Ms. Ward DocuSign a Power of Attorney for Financial Management dated February 5, 2021 (R. p. 114) and, more importantly, Litt may have directed Ms. Ward to click something creating a

DocuSign signature on the Warranty Deed to her home in favor of Homedebone, LLC dated February 4, 2021 (R. p. 109). The power of attorney and the Warranty Deed were allegedly electronically signed by Ms. Ward via DocuSign, an electronic document signing software. There are numerous obvious defects with the Warranty Deed. The trial court enumerated some of these defects as follows:

1) it was digitally signed via DocuSign (which is not permitted in South Carolina);

2) was not signed by Ormand-Ward in the presence of the two listed witnesses;

3) was prepared by an LLC (which Plaintiff asserts is improper in South Carolina);

4) incorrectly states that the Home is located in North Carolina;

5) lists the notary in the Grantor block as a notary public for the "State of North Carolina, County of Horry";

6) was notarized by a person who was not a notary in South Carolina (or North Carolina);

7) contains an incorrect derivation clause;

8) lists a grantee (Homedebone) that did not exist as of the date of the Deed due to termination by the Utah Secretary of State; and

9) sets forth inadequate consideration ($100).

(R. p. 18).

CLAS subsequently electronically filed the Warranty Deed utilizing its electronic portal to the Office of the Horry County Register of Deeds recorded on February 18, 2021[2]

[2] CLAS attempted to record the Warranty deed as early as February 5, 2021 and it was finally accepted for recording on February 18, 2021 by the Horry County Register of Deeds. The Warranty Deed had been rejected in four earlier attempts to record it because of obvious problems with the construction of the Warranty Deed. (R. p. 202).

utilizing its electronic portal (R. p. 71, ¶20). Thereafter, Litt, through his (terminated) company Homedebone, LLC, sold Ms. Ward's home to Pereira Partners, LLC for the sum of $260,000.00 (R. p. 71, ¶20). When the home was sold, Ms. Ward was ousted from the home (R. p. 19). As a result, she became homeless. She had to be hospitalized for several months and in October, 2021 she was moved to the Senior Care of Marion, a residential nursing home (R. p. 79, ¶49), where she remains to this day.

An incapacity proceeding was instituted by an attorney retained by the Grand Strand Regional Hospital to appoint a Guardian and Conservator, and on September 30, 2021, the Probate Court for Horry County appointed CDM Corporation, by and through its representative, Stephen Mantell, as Ms. Ward's Guardian and Conservator. (R. p. 9); (R. p. 68, ¶5).

CLAS is an Illinois corporation formed in 1997 (R. p. 73, ¶29). CLAS claims to have expertise in providing real estate services including, but not limited to title searches, underwriting support and preparation of title insurance policies to attorneys who practice real estate law and are licensed title insurance agents, as well as the filing of deeds (R. p. 69, ¶11).

CLAS is named as a defendant because of its negligence and gross negligence in filing the Warranty Deed when it knew or should have known that the Warranty Deed had numerous defects that made it unrecordable and otherwise allowing the Warranty Deed to be fraudulently recorded. CLAS also knew or should have known that its filing of the Warranty Deed constituted the unauthorized practice of law and, further, it knew or should have known that the Warranty Deed was not recordable.

Appellant amended her Complaint to add Chicago Title Insurance Company as a Defendant, because it is in partnership with CLAS (R. p. 67). This is clearly stated on the home page of the web site, www.ctclas.com, (which appears to be the combination of **c**hicago **t**itle and **clas**) proudly proclaiming:

> Chicago Land Agency Services, known in the title insurance industry as CLAS, was formed in 1997. CLAS is a joint venture partnership with Chicago Title Insurance Company, the marquee name in title insurance. This unique relationship has positioned CLAS to provide title insurance to real estate professionals in an accurate and timely manner.

(R. p. 73, ¶29). This is still prominently displayed on CLAS's home page as of the date of this brief.

CLAS is not a totally owned subsidiary of Chicago Title; rather, Chicago Title owns 49.9% of CLAS (R. p. 385, ¶2). Evidence of their "unique relationship" supports the allegations of the Chicago Title/CLAS partnership. Chicago Title's metropolitan Chicago office and CLAS are located at the same address, i.e., 1620 W. Belmont, Chicago, IL 60657 (R. pp. 266-269). Of the six officers of CLAS, according to its 2021 Annual Report filed with the State of Illinois, three of CLAS's officers are also affiliated with Chicago Title (R. pp. 272-276.) Michael Cusack is a CLAS director (R. p. 275) and is also an Executive Vice President of Chicago Title (R. p. 385, ¶1). According to his LinkedIn profile, Vince Hearn, a Director at CLAS, is a Vice President, Sales Manager of Chicago Title (R. p. 278). Lisa Smith, another CLAS Director, also posted on her LinkedIn profile that she serves as an Assistant Vice President of Chicago Title (R. p. 282).

Chicago Title is a major national title insurance company in most states. It is incorporated in Florida, which is also its principal place of business (R. p. 19). Chicago Title

is an admitted insurer in South Carolina which means it has been licensed by the Department of Insurance to write title insurance in this state. In order to become an admitted insurer, Chicago Title had to, and continues to have to, comply with the Insurance Law, S.C. Code Ann. § 38-1-10 (2020), *et seq.*

In becoming an admitted insurer in South Carolina, Chicago Title not only has to be licensed, but it also must agree to be supervised by the Director of the Department of Insurance (the "Director"). As part of the licensing process, Chicago Title has to comply with S.C. Code Ann. § 38-5-90 (2020), which set out specific areas where Chicago Title, as a foreign insurer, has to agree to submit to the jurisdiction and supervision of the Director. These areas include:

> (a) The insurer is duly qualified to transact business under the laws of this State.
>
> . . .
>
> (e) The insurer's directors and officers are competent, trustworthy, and have a good business reputation.
>
> (f) The insurer has employed one or more persons with adequate experience and training to manage properly its business and affairs relating to its policies in South Carolina.
>
> (g) The insurer has not entered into any management contract, agency agreement, or other agreement which may materially affect its financial condition so as to render its proceedings hazardous to the public or to its policyholders.
>
> . . .
>
> (i) The insurer's proposed method of operation, when considered in light of its financial condition and the absence of any prior operating experience, will not likely render its proceedings hazardous to the public or to its policyholders.
>
> (j) The insurer is safe and solvent.

(k) The insurer's dealings are fair and equitable.

(l) The insurer conducts its business in a manner not contrary to the public interest.

These requirements show the extent to which Chicago Title has submitted itself to the jurisdiction of South Carolina.

Most importantly, for this appeal, is that every insurer, including Chicago Title, has to comply with S.C. Code § 38-5-70; **Appointment of director as attorney for service of process:**

> 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. . . . [emphasis added.]

By its express terms, Chicago Title has appointed the Director as its attorney for service of process in any action or proceeding against it. As will be shown, this constitutes consent to be subject to personal jurisdiction in South Carolina.

SCOPE OF REVIEW

"The question of whether a court may exercise personal jurisdiction over a nonresident defendant is one that must be resolved upon the facts of each particular case." *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 539, 783 S.E.2d 839, 842 (Ct. App. 2016). "The decision of the [circuit] court should be affirmed unless unsupported by the evidence or influenced by an error of law." *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005).

"It is well-settled that the party seeking to invoke personal jurisdiction over a non-

resident defendant via our long-arm statute bears the burden of proving the existence of personal jurisdiction." *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004). "At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a *prima facie* showing of jurisdiction either in the complaint or in affidavits." *Id.* at 328, 594 S.E.2d at 882. "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." *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).

ARGUMENT AND CITATION OF AUTHORITIES

The trial court dismissed Chicago Title ruling that the court lacked personal jurisdiction over this defendant, either by way of general jurisdiction or specific jurisdiction. Personal jurisdiction refers to the authority of a court over a defendant. *Boan v. Jacobs*, 296 S.C. 419, 421, 373 S.E.2d 697, 698 (Ct. App. 1988). Personal jurisdiction is exercised as "general jurisdiction" or "specific jurisdiction." *Coggeshall, supra.*

The cornerstone of personal jurisdiction is that the defendant must have "certain minimum contacts with the state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Daimler AG v. Bauman*, 571 U.S. 117, 126 (2014) (quoting *International Shoe v. Washington*, 326 U.S. 310, 316 (1945) (internal quotations omitted); *see also Moosally, supra.* The sole question becomes whether the exercise of personal jurisdiction violates the due process requirements of the Fourteenth Amendment. *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508.

South Carolina's long-arm statutes encompass both general jurisdiction (S.C. Code Ann. § 36-2-802) and specific jurisdiction (S.C. Code Ann. § 36-2-803).

A. The Trial Court Has General Jurisdiction Over Chicago Title.

The trial court found and concluded that:

> The fact that Chicago Title is a licensed insurer in South Carolina and has agreed to appoint the Director to Serve as agent for service of process does not confer general jurisdiction on Chicago Title. Such a result ignores the minimum contacts analysis that has governed jurisdiction since *International Shoe* and *Daimler*.

(R. p. 23). The trial court erred in this finding and conclusion by failing to appreciate the significance that the licensure laws, especially S.C. Code Ann. § 38-5-70, have on creating general jurisdiction.[3]

S.C. Code Ann. §36-2-802 sets out what is required to establish general jurisdiction:

> A court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, doing business, or maintaining his or its principal place of business in, this State as to any cause of action.

The "doing business" component of the statute requires that the defendant has an "enduring relationship" within the state. *Cockrell*, 363 S.C. at 491, 611 S.E. 2d at 510. If the defendant has an enduring relationship with the state, then it is subject to its general jurisdiction, even if the cause of action did not arise in this state. A defendant's contacts must be "continuous and systematic" as well as "so substantial and of such a nature as to justify suit against the

[3] The trial court also erred in concluding that a finding of general jurisdiction would ignore the minimum contact analysis that governs general jurisdiction jurisprudence. However, minimum contact analysis is only necessary to test "[t]he validity of an assertion of jurisdiction over a non-consenting defendant who is not present in the forum." *First Am. Bank N.A. of Virginia v. Reilly*, 563 N.E.2d, 142, 144 (Ind.App.) (1990).

defendant or causes of action arising from dealings entirely different from those activities." *Id.* Chicago Title's licensure, as a foreign insurer, itself demonstrates that its contacts are continuous, systematic and sustained, sufficient to justify suit against it in this state.[4] (R. p. 284-288.)

Recent United States Supreme Court cases, however, may modify the applicability of South Carolina's general jurisdiction statute as it relates to non-consenting defendants. In *Daimler,* the U.S. Supreme Court ruled that general jurisdiction may be exercised over a non-consenting corporate defendant only if the corporate defendant is "at home" in the state, which it defined as the state of incorporation or where it maintains its principal place of business unless there is an "exceptional case" in which to exercise general jurisdiction. *Id.* at 571 U.S. at 137, 139, n.19. Therefore, 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.

Consent can be the basis for establishing general jurisdiction. *J. McIntyre Machinery v. Nicastro*, 564 U.S. 873, 880 (2011). The issue in this appeal is whether Chicago Title submitted to the jurisdiction in South Carolina when it became an admitted insurer and consented to the Director accepting service of process on its behalf.

International Shoe and *Daimler* only addressed whether a non-consenting defendant's contacts with a forum are sufficient to support personal jurisdiction. In *International Shoe*, the Supreme Court expressly limited its analysis to cases where "no

[4] Chicago Title regularly engages in litigation in South Carolina. Although litigation, in and of itself, does not establish jurisdiction, it does demonstrate that Chicago Title's contacts in South Carolina are continuous, systematic and substantial. (R. pp. 365-371.)

consent to be sued or authorization to an agent to accept service of process has been given." 326 U.S. at 317. The Supreme Court was similarly clear in *Daimler,* 571 U.S. at 129 (addressing the limits of "general jurisdiction appropriately exercised over a foreign corporation that has not consented to suit in the forum."). Therefore, a *Daimler* analysis is inapposite to this case.

As discussed above, Chicago Title, before it could be licensed as an insurer in South Carolina, had to expressly consent to the Director being its attorney for service of all legal process on any action and that such service is equivalent to it having been served in South Carolina. The effect of this statute is to confer jurisdiction on foreign insurance companies in this state. As stated in 1 Couch on Insurance, 3d § 3:33 (June, 2023):

> . . . the consent of the foreign corporation to be sued in the state by service upon the designated public official is actual and real, since it has in fact assented to be so sued in consequence of its actual appointment of the public official to accept service of process for it. Such actual assent, as distinguished from a fictitious assent implied from the mere fact of doing business in the state without actual compliance with the conditions of admission, is broad enough to embrace any action, irrespective of whether the cause of action or transaction upon which it is based arose within or without the state.

The consent given by an insurance company pursuant to S.C. Code Ann. § 38-5-70 is actual and real and it is consent to be sued in South Carolina.

The reasons why S.C. Code Ann. § 38-5-70 confers jurisdiction is best understood in a historical context. In *Pennoyer v. Neff*, 95 U.S. 714 (1877), the U.S. Supreme Court focused on the need to have the defendant present in the state when served in order to establish personal jurisdiction over him. Jurisdiction was not predicated on where the cause of action arose or the defendant's contacts with the state other than his presence within the

state. Jurisdiction, prior to *International Shoe*, was based, therefore, on the defendant being served in the territory of the state or that the defendant voluntarily appointed an agent within the state to receive service of process (consent). *Id.,* 95 U.S. at 733. In other words, generally before *International Shoe* was decided in 1945, a defendant had to be present and served within the state.

South Carolina, by adopting S.C. Code Ann. § 38-5-70, requiring the insurer to consent to the Director as its registered agent for service of process, met the requirement that the insurer had to be present in and was being served within the state. This consent also constituted the voluntary appearance by the insured. The statute, and the insurer's compliance with the statute, created personal jurisdiction over the defendant in this state. South Carolina has had a version of this statute since 1908.[5]

The issue of whether personal jurisdiction was constitutionally permissible based on a statute like S.C. Code Ann. § 38-5-70 was affirmatively answered by the U.S. Supreme Court in *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917). The Court, in a unanimous decision, held that the statute before it (which is substantially similar to S.C. Code Ann. § 38-5-70) is constitutionally permissible because the insurer had voluntarily consented to general jurisdiction in Missouri when it signed the form making the Superintendent of the Insurance Department the attorney for service of process. Like South Carolina, this consent was necessary in order for an insurer to become licensed to sell insurance in Missouri.

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[5] For a history of the statute, *see Murray v. Soverign Camp, W.O.W*, 192 S.C. 101, 5 S.E.2d 560 (1939).

In *Pennsylvania Fire*, the plaintiff sued an Arizona insurance company in Missouri over an insurance claim insuring property in Colorado. 243 U.S. at 94-95. Like South Carolina, Missouri required every insurer licensed in Missouri to name the Superintendent of the Insurance Department as the insurance company's agent for service of process "so long as [the insurance company] should have any liability outstanding in the state." 243 U.S. at 94. The insurance company argued that finding it was subject to personal jurisdiction in Missouri by applying the statute to a policy that had no connection to Missouri was a violation of its Constitutional due process rights under the Fourteenth Amendment. *Id.* The Supreme Court ruled that the insurance company's constitutional rights were not violated. *Id.* at 95. Justice Holmes, for the Supreme Court, found that even though there were no suit-related contacts in Missouri, the statute [appointing the Superintendent of the Insurance Department] "did not deprive the defendant of due process of law even if it took the defendant by surprise." *Id.* Justice Holmes explained that the insurer had agreed it could be sued in Missouri "[B]ut when a power is actually conferred by a document, the party executing it takes the risk of the interpretation that may be put upon it by the courts." *Id.* at 96.

Another U.S. Supreme Court decision affirmed the role that consent plays in establishing general jurisdiction. In *Ex Parte Schollenberger*, 96 U.S. (1877), the U.S. Supreme Court, confronting the same or similar statute involved in *Pennsylvania Fire*, issued a Writ of Mandamus ordering the trial court to exercise jurisdiction over the insurers. The Court explained the law in terms of a bargain: The insurers had, "in express terms, in consideration of a grant to the privilege of doing business within the state, agreed they may

be sued there." *Id.* at 376. The bargain with the state was that, for the privilege of doing business in the state, the insurer would consent to general jurisdiction in the state.

The trial court correctly noted that "[e]ven under the holding of *Pennsylvania Fire*, state licensure requirements amount to consent to general jurisdiction only if the state court has interpreted the statute as imposing that condition (R. p. 23). The trial court overlooked or misapprehended that the South Carolina courts have done exactly that. South Carolina case law expressly confirms that S.C. Code Ann. § 38-5-70 creates jurisdiction over foreign insurance companies that have voluntarily complied with the statute in order to become licensed.

In *Wofford v. Prudential Ins. Co. of America*, 65 F.Supp. 637 (D.S.C. 1946), the plaintiff, a Kansas resident, sued Prudential, a New Jersey insurer, to recover the benefits under two life insurance policies in South Carolina. Prudential contended, in part, that venue was improper in South Carolina and that the federal court in Greenville did not have jurisdiction over it. Disagreeing with Prudential, the court held that by executing the form appointing the Commissioner of the Department of Insurance as the attorney for accepting service of process (the predecessor to S.C. Code Ann. § 38-5-70), Prudential had affirmatively consented to be sued in South Carolina and, as a result, the court had personal jurisdiction over Prudential. *Id.* at 639-40. The *Wofford* court stated:

> Having qualified to do business in the State of South Carolina by the appointment of an agent upon whom process may be served in actions against it in compliance with the laws of this state [referring to the former § 38-5-70], the defendant has waived the provisions of the venue statute, and by such act has consented to be sued in this court. *Id.*, 65 F.Supp. at 640.

The court found that it had personal jurisdiction over the Prudential by Prudential's consent to be bound by the version of S.C. Code Ann. § 38-5-70 in effect at the time.

In *Equilease Corp. v. Weathers*, 275 S.C. 478, 483, 272 S.E.2d 789 (1980), our Supreme Court discussed whether an unauthorized insurer could be held in default on unanswered cross-claims when the cross-claims had not been served on the insurer's lawyer but rather served on the Commissioner (now Director) of Insurance. The Supreme Court held that the service of the cross-claims on the Commissioner, alone, and not on the lawyers, was invalid service. In its explanation, the Supreme Court discussed jurisdiction. It stated:

> Kentucky [the insurance company] was properly served by substituted service upon the Chief Insurance Commissioner and jurisdiction was had over Kentucky pursuant to Code Section 38-52-50 (now codified at 38-25-520). *Id*., at S.C. 482, S.E.2d at 790.
>
> . . .
>
> These statutes [Code Sections 15-9-270 and 38-52-80, now codified at Section 38-25-560] 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.
>
> . . .
>
> The reasoning is logical and practical and it is clear that Code Sections 15-9-270 and 38-52-80, were intended by the legislature to be methods of obtaining jurisdiction over a foreign insurance company.

Our Supreme Court expressly found that the substituted service statute, similar to S.C. Code Ann. § 38-5-70, conferred jurisdiction on the foreign insurance company.

The South Carolina Supreme Court last visited this issue in *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 753 S.E.2d 537 (2014). In *White Oak Manor,* the Supreme Court had to decide whether S.C. Code Ann. §§ 15-9-270 and 38-5-70 provided the exclusive method by which an insurer could be served. In ruling that these two statutes did not provide the exclusive method for service on an insurance company, it discussed jurisdiction over an out-of-state insurer. The *White Oak Manor* court explained:

> "The purpose of the summons is to acquire jurisdiction of the person of the defendant and to give notice of the action and an opportunity to appear and defend." *State v. Sanders*, 118 S.C. 498, 502-03, 110 S.E. 808, 810 (1920).
>
> . . .
>
> *see Fin. Fed. Credit Inc. v. Brown, 384 S.C. 555, 565, 683 S.E.2d 486, 491 (2009) (*"[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.")
>
> . . .
>
> We 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." *Equilease Corp v. Weathers*, 275 S.C. 478, 483, 272 S.E.2d 789,791 (1980).

White Oak Manor at 753 S.E.2d at 544. This decision, together with the *Equilease* decision, demonstrates that the South Carolina law is clear and unequivocal that compliance with S.C. Code Ann. § 38-5-70 creates personal general jurisdiction over an insurance company licensed to sell insurance within the state.

In its Dismissal Order, the trial court stated that *"Pennsylvania Fire* was decided before the Supreme Court's 'transformative' opinion in *International Shoe*, which adopted the minimum contacts approach to personal jurisdiction" and was, therefore, not binding

precedent. (R. pp. 21-22). The trial court then cited those cases throughout the country which supported the trial court's rationale (R. pp. 22-23). While the trial court was correct in its analysis that some courts had decided that *Pennsylvania Fire* had been implicitly overruled, it overlooked that a case was then pending before the U.S. Supreme Court that was directly addressing the viability of *Pennsylvania Fire*.

The U.S. Supreme Court, in *Mallory v. Norfolk Southern Ry. Co.*, 600 U.S. 122 (2023), ruled that *Pennsylvania Fire* had not been implicitly repealed and that it remains binding precedent. In *Mallory*, the plaintiff had been a freight car mechanic for the defendant, Norfolk Southern Railway, for some twenty years. He first worked for Norfolk Southern in Ohio, then later, in Virginia. He was diagnosed with cancer, allegedly caused by exposure to chemicals while working for Norfolk Southern. He sued Norfolk Southern under the Federal Employer's Liability Act, a worker's compensation-like act for federal employees, including railroad workers. He brought suit in the state court of Pennsylvania, where he once lived before moving back to Virginia. *Id*., at 126.

Norfolk Southern moved to be dismissed for lack of personal jurisdiction. It is incorporated and has its principal place of business in Virginia.[6] Mallory argued that Norfolk Southern was subject to Pennsylvania jurisdiction, not because it was at home in Pennsylvania, but because it had registered to do business in that state under the state's general corporate registration statute and, therefore, consented to be sued there. The Supreme Court held that registration under the corporate registration statute was sufficient

[6] Since the time *Daimler* was decided, and if *Pennsylvania Fire* had been implicitly overruled, Virginia would have been the only state in which Norfolk Southern would have had enough contacts to establish general jurisdiction, i.e., jurisdiction based on Norfolk Southern being "at home" in that state.

to establish general jurisdiction over the defendant because it had consented to jurisdiction within the state by virtue of its registration. Of immediate significance to this appeal, and which makes Ms. Ward's position even stronger, is that the Supreme Court was dealing with general corporate registration statute and not an insurance statute like S.C. Code Ann. § 38-5-70.[7] The Supreme Court dismissed Norfolk Southern's position that it was subject to general jurisdiction only in the state in which it is incorporated or has its principal place of business.

The Appellant would bring to the Court's attention the case of *Builder Mart of America, Inc. v. First Union Corp.,* 349 S.C. 500, 563 S.E.2d 352 (Ct.App. 2002) (overruled, in part, on other grounds by *Farmer v. Monsanto Corp.,* 353 S.C. 553, 579, S.E.2d 325 (2003)) wherein this Court of Appeals ruled that merely registering to do business in the state, pursuant to S.C. Code § 33-15-101, *et seq*., without actually doing any business in the state, is not sufficient to subject the defendant to the general jurisdiction of the state by virtue of its general corporate registration. In *Builder Mart*, plaintiff sued First Union Corporation, which owned 100% of the stock of First Union National Bank of North Carolina. Plaintiff sued on multiple claims arising out of failed loans made by First Union National Bank of North Carolina to the plaintiffs. First Union Corporation did not own any property in South Carolina, nor did it have any employees or agents, loan money, provide checking accounts or otherwise transact any banking activities within the state. Based on these facts, First Union Corporation moved for dismissal for lack of personal jurisdiction, which the trial court granted and this Court affirmed, reasoning that

[7] Justice Gorsuch noted that some states apply "this all-purpose jurisdiction rule to a subset of corporate defendants, like railroads and insurance companies." *Mallory*, *Id.*, at 130-131.

a corporation which merely qualifies to do business in South Carolina, but does not actually conduct any business within the state, does not subject a corporation to suit in South Carolina.

The facts in *Builder Mart* are not analogous to the facts in this case. Qualifying to do business pursuant to S.C. Code Ann. § 33-15-101 is not, in any way, comparable to becoming a licensed insurer in South Carolina. More importantly, Chicago Title does extensive business in South Carolina. The facts in *Builder Mart* are not the same as the facts in this case and the holding of *Builder Mart* does not disturb the pronouncements made in the *Equilease* and *White Oak Manor* cases.

B. The Trial Court Has Specific Jurisdiction Over Chicago Title

In its Order, the trial court ruled that Chicago Title is not subject to the specific jurisdiction of the South Carolina courts. As a preliminary but important matter, the trial court ruled: [t]o the extent plaintiff is arguing that CLAS and Chicago Title are partners in a joint venture that is separate from CLAS, this argument is unsupported by the evidence." (R. p. 27). The trial court apparently reached this conclusion by analogizing those cases which deal with the relationship of subsidiary corporations to the parent corporation and whether the subsidiary corporation is an agent or alter-ego of the parent corporation. (R. pp. 25-27).

The trial court's ruling that Ms. Ward's claim of partnership is unsupported by the evidence misapprehends the quantum of proof required of the Appellant to defeat a motion to dismiss pursuant to Rule 12(b)(2), SCRCP. The Appellant only needs to make a *prima facie* showing of a partnership. The trial court in its ruling, however, required more of the

Appellant – that she prove her case on the merits. See *Compton v. South Carolina Dept. Of Corrections*, 392 S.C. 361, 369, 709 S.E.2d 639, 644 n.4 (2011) (In determining whether temporary injunction should issue, the moving party only had to make a *prima facie* showing; not prove the issue on the merits).

The trial court correctly noted that Chicago Title and CLAS are separate entities (R. p. 27). As separate entities, they are capable of entering into a partnership. A "partnership" is "an association of two or more persons to carry on as co-owners a business for profit." S.C. Code Ann. § 33-41-210. In South Carolina, "a partnership is an entity separate and distinct from the individual partners who compose it." *Young v. Jones*, 816 F. Supp. 1070, 1076 (D.S.C. 1992), *aff'd, Young v. FDIC*, 103 F.3d 1180, 1183 (4th Cir. 1997); *see also S.C. Tax Com. v. Reeves*, 278 S.C. 658, 659, 300 S.E.2d 916, 916 (1983). "One of the most important tests as to the existence of a partnership is the intention of the partners." *Stephens v. Stephens,* 213 S.C. 525, 530, 505 S.E.2d 577, 579 (1948). **The existence of a partnership is a question of fact.** (emphasis added.) *Hofer v. St. Clair*, 298 S.C. 503, 508, 381 S.E.2d 736, 739 (1989).

Under South Carolina law, all partners are generally "liable jointly and severally for everything chargeable to the partnership". S.C. Code Ann. § 33-41-370(A). Thus, "[i]ndividual partners are jointly liable for partnership debts." *Mansour v. Massey*, 287 S.C. 176, 177, 336 S.E.2d 15 (1995).

Once personal jurisdiction is obtained over the partnership, a South Carolina court may hold a foreign partner who is not subject to individual personal jurisdiction in South Carolina personally liable for the obligations of the partnership. *Young*, 816 F. Supp. at

1076 (D.S.C, 1992), *Long v. Baldt*, 464 F. Supp. 269, 275 n.8 (D.S.C. 1979); *see also* S.C. Code Ann. § 33-41-370(A). The foreign partner may also be held jointly and severally liable for the tortuous acts that are attributable to the partnership. *See Young*, 816 F. Supp. at 1076. Therefore, this issue alone should defeat Chicago Title's Motion to Dismiss and that the partnership issue should be decided either at the motion for summary judgment stage or at trial.

At the motion to dismiss stage, the Appellant has met her burden to establish that there is a question concerning the existence of a partnership between Chicago Title and CLAS. The Appellant made her *prima facie* burden by showing that:

1. Both Chicago Title and CLAS have expertise in the field of real estate law and that questions of partnership would arise regularly in relation to real estate ownership at closings;

2. That representatives of Chicago Title served on CLAS's Board of Directors; Chicago Title cannot credibly maintain that it was not aware of what was posted on the website www.ctclas.com; and

3. The home page of the website clearly and unequivocally states that *"CLAS is a joint venture partnership with Chicago Title Insurance Company, the marquee name in title insurance. This unique relationship has positioned CLAS to provide title insurance to real estate professionals in an accurate and timely manner."*

These facts constitute a *prima facie* showing required of the Appellant at this stage. After further discovery, Chicago Title can attack the Appellant's position by way of a motion for summary judgment or at trial.

Chicago Title is subject to specific jurisdiction in South Carolina based on the facts of this case. The Chicago Title/CLAS partnership committed a tortious act in this State. It engaged in the unauthorized practice of law by recording a deed with the Horry County

Register of Deeds. The Warranty Deed, itself, on its face, shows that it was prepared by a non-lawyer (R. p. 72), which should have put Chicago Title/CLAS on notice there were problems with the Warranty Deed. Lastly, the Warranty Deed, as explained above, was not in recordable form. Companies with the vast real estate experience of Chicago Title/CLAS should have known not to accept the Warranty Deed for recording, but it did record the Warranty Deed with the Horry County Register of Deeds. If their decades of experience in the industry was not enough, the fact that the Horry County Register of Deeds rejected the Warranty Deed four times before ultimately accepting it on the fifth attempt (R. pp. 232-262), should have made it obvious that the Warranty Deed was suspicious at best and fraudulent at worst. By recording the Warranty Deed, Chicago Title/CLAS empowered Homedebone, LLC sell Ms. Ward's home out from under her, rendering her homeless at the age of 77. The recording of the fraudulent Warranty Deed was accomplished by the Chicago Title/CLAS partnership, by and through its partner, CLAS.

Although the minimum contacts analysis is not necessary when the defendant has consented to jurisdiction within the forum, Chicago Title has sufficient minimum contacts to be subjected to specific jurisdiction. *See First Am. Bank, N.A. of Virginia, supra*. Chicago Title is a licensed title insurance company. For the purpose of this appeal, Chicago Title and CLAS are partners. The recording of the Warranty Deed in Horry County by the partnership, through one of its partners, was a tortious act that injured a South Carolina resident. This is sufficient to constitute minimum contacts.

The Appellant has made a *prima facie* case that Chicago Title and CLAS are in partnership together. As the issue of the existence of a partnership is a question of fact, a jury should be allowed to determine its existence.

CONCLUSION

Chicago Title is subject to the both general and specific jurisdiction. It consented to the general jurisdiction of the courts when it became licensed as a title insurer and agreed that the Director was its appointed attorney for service of process. It is subject to the specific jurisdiction of this state because of its involvement with the improper recording of the Warranty Deed through its partnership with CLAS. The Order Granting Chicago Title Insurance Company's Motion to Dismiss for Lack of Personal Jurisdiction should be vacated and reversed and this matter remanded back to the trial court.

Respectfully submitted,

/s/ John M. Leiter

John M. Leiter, Esq. (SC Bar Id. #3187)
Law Offices of John M. Leiter PA
405 79th Avenue North, Suite B
Myrtle Beach, SC 25972
(843) 449-1451
Jleiter@48th.com
Attorney for Appellant

February 29, 2024

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-26-07668

(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. 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

PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Appellant's Final Brief in the above-referenced case have been served upon opposing counsel by email only this 29th day of February, 2024.

/s/ John M. Leiter

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