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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
Case No. 2024-CP-08-00077
Appellate Case No. 2024-002067

Thorne Healthtech, Inc. and Thorne Research, Inc., ... Appellants,

v.

Stephen H. Ross, ...Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Was the circuit court within its discretion in dismissing this action based on the doctrine of *forum non conveniens* and its finding that "the convenience of the parties and the interests of justice are better served by dismissing this action in favor of a New York forum"?

2. Did the circuit court correctly find that it lacked personal jurisdiction over Stephen Ross in this action?

STATEMENT OF THE CASE AND FACTS

This is an appeal from the circuit court's dismissal of this action on two separate and independent grounds, lack of personal jurisdiction and *forum non conveniens*.[1] (Orders, R. at ____).

I. The Parties

The Respondent in this action is Stephen H. Ross, the former Director of Business Development for Onegevity Health, LLC ("Onegevity"), a subsidiary of Thorne HealthTech, Inc. ("Parent Corporation"). (Complaint ¶ 6; Ross Aff. ¶ 6; Conley Aff. ¶ 6, R. at ____). Dr. Nathan Price sent an offer letter on August 14, 2021, which set forth that Ross was being hired by Onegevity.[2] (Ross Aff. ¶ 9; Conley Aff. ¶ 5, R. at ____). Ross signed the offer letter. (Ross Aff. ¶ 9, R. at ____).

As set forth in the offer letter, Ross reported directly to Dr. Price and his employment was based at Parent Corporation's corporate office in New York. (Ross Aff. ¶¶ 9-10, R. at ____). Shortly after accepting the offer, Ross moved from Georgia to an apartment in Mamaroneck, New York, from which he commuted to work at the corporate office throughout his employment. (Ross Aff. ¶ 2, 10, R. at ____).

There is no evidence that Ross entered into any other written employment agreement. (*See* Ross Aff. ¶ 11, R. at ____). Nor does the Complaint allege that Ross signed any additional contract beyond the offer letter. (Complaint, R. at ____).

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[1] Thorne has not appealed the circuit court's ruling that it lacked general jurisdiction over Mr. Ross (Brief of Appellant ("App. Br.") at n. 3). Nor has it argued on appeal that the circuit court erred in failing to allow jurisdictional discovery.

[2] The offer letter itself is not in the record.

Ross remained in New York for the duration of his employment, and he worked out of Parent Corporation's New York office until his termination in December 2023. (Ross Aff. ¶¶ 10, 18, R. at ____). During this period, Ross's responsibilities shifted from Onegevity to Drawbridge Health ("Drawbridge"), a healthcare technology affiliate of Parent Corporation, and his title was ultimately updated to Director of Operations within Drawbridge Health. (Ross Aff. ¶¶ 11-12; Conley Aff. ¶¶ 6-9, R. at ____).

By all accounts, Ross made one visit to South Carolina during his tenure with Parent Corporation—that visit occurred over the course of one and a half days in early September 2022 and was for the purpose of accompanying his wife, Dr. Mary Kay Ross, on a tour of Thorne's manufacturing facility and attending a social dinner. (Ross Aff. ¶¶ 14-15, R. at ____). Ross did not conduct any business during that visit and has never performed any work duties in South Carolina. (Ross Aff. ¶¶ 2b, 16, R. at ____).

The Appellants in this matter are Thorne HealthTech, Inc., a Delaware corporation, and Thorne Research, Inc., a South Carolina corporation (collectively, "Thorne"). (Complaint ¶¶ 1–2, R. at ____). Thorne Research, Inc. is a separate subsidiary of Parent Corporation. (Complaint ¶ 3; Conley Aff. ¶ 2, R. at ____).

II. The Litigation

The complaint asserts claims for breach of contract, breach of fiduciary duty, violations of the South Carolina Unfair Trade Practices Act (SCUTPA), and declaratory judgment. (Complaint, R. at ____). Each of these causes of action hinges on vague and conclusory allegations that Ross "accessed and disseminated confidential and proprietary information regarding Thorne's business dealings" or "misused his position" for personal benefit. (Complaint ¶¶ 15-16, 20, R. at ____). However, the complaint fails to allege any specific facts identifying what information was

purportedly accessed, how or when it was disseminated, or how any of Thorne's operations or interests in South Carolina were implicated.

The complaint in this action was served on Ross on January 17, 2024 in Georgia. (Aff. of Service, R. at ____). Ross moved to dismiss on February 22, 2024. (Motion to Dismiss, R. at _____), including arguments that the circuit court lacked personal jurisdiction and that the doctrine of *forum non conveniens* should be applied. (Motion to Dismiss and Memorandum in Support, R. at ____). In support of his motion, Ross attached affidavits from Bryan Conley (the former Chief Financial Officer of Thorne Research, Inc.) and himself. (Attachments to Motion to Dismiss, R. at ____). In his affidavit, Ross stated that, among other things, during the entirety of his employment, he lived and worked in New York at Parent Corporation's corporate office, that his supervisors were also based in the New York office, and that he visited South Carolina only once—and solely to accompany his wife on a brief tour of Thorne's manufacturing facility. (Ross Aff. ¶¶ 2, 7-10, 13-16, R. at ____).

Thorne opposed the motion, essentially arguing that the action should remain in South Carolina based on the fact that most of Thorne Research, Inc.'s operations are located there and that Ross allegedly collaborated with Thorne Research, Inc. personnel in South Carolina. (Memorandum in Opposition; Walter Aff., R. at ____). In response to the motion, Thorne submitted three affidavits from employees of Thorne Research, Inc. (Affs. of Walter, Monteleone, and Phipps, R. at ____). The affidavits do not refute that Ross lived and physically worked in New York and reported to New York based supervisors. (*Id.*). Nor was any evidence presented, nor any argument made, that the alleged "accessing and disseminating confidential and proprietary information regarding Thorne's business dealings" or "misused his position for personal benefit" had any connection to South Carolina.

Following a hearing on May 23, 2024, the circuit court granted the motion to dismiss on July 23, 2024, finding that there was no personal jurisdiction over Ross and that the doctrine of *forum non conveniens* favored dismissal. (Order, R. at ____). Thorne moved to reconsider on August 2, 2024.[3] (Motion, R. at ___). The circuit court denied the motion on November 6, 2024. (Order, R. at ____). This appeal followed.

ARGUMENT

I. The circuit court was within its discretion in dismissing this action based on the doctrine of *forum non conveniens.*

A. Thorne's argument on appeal was not raised to the circuit court and is not preserved for this Court's review.

On appeal, Thorne has raised a new argument, claiming that the circuit court misapplied the factors set forth in *Macaulay v. Wachovia Bank of S.C., N.A.*, 333 S.C. 201, 206, 508 S.E.2d 46, 49 (Ct. App. 1998). (App. Br. at Argument II). A review of the record shows no treatment of *forum non conveniens* in Thorne's memorandum in opposition to the motion to dismiss and no mention of the doctrine by Thorne's counsel at the hearing. (Motion, Transcript, R. at ____). Thorne's motion for reconsideration does not cite *Macaulay*, does not list any factors, and does not charge that the dismissal on this ground suffered from any error of law. (Motion, R. at ____). Instead, Thorne asked the circuit court to reconsider "the relevance of physical distance, especially where Thorne—the only party who still has any presence in New York—is ready and willing to litigate in South Carolina." As such, the argument presented on appeal is not preserved for this Court's review. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998) (holding that an argument must have been raised to and ruled on by the circuit court to be preserved for appellate

[3] Thorne did not serve the motion on the circuit court within ten days as required by Rule 59(g), SCRCP.

review). The Court may affirm the order of dismissal on this basis alone. *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing that an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

B. Standard of Review

In 1979, the South Carolina Supreme Court adopted the doctrine of *forum non conveniens*. *Braten Apparel Corp. v. Bankers Trust Company*, 273 S.C. 663, 259 S.E.2d 110 (1979). "The decision to invoke the doctrine of *forum non conveniens* is within the discretion of the trial court." *Fed. Land Bank of Columbia v. Davant*, 292 S.C. 172, 179, 355 S.E.2d 293, 297 (Ct. App. 1987). Generally, "[a]n abuse of discretion occurs when the trial court's ruling is based on an error of law or is not supported by the evidence." *Nelson v. Harris*, 441 S.C. 379, 386, 893 S.E.2d 592, 595 (Ct. App. 2023). Although Thorne's brief correctly recites this standard, its brief appears to urge a *de novo* or preponderance of the evidence standard. As argued below, the circuit court's ruling was an appropriate exercise of discretion and was supported by the law and the evidence.

C. The circuit court's determination that "the convenience of the parties and the interests of justice are better served by dismissing this action in favor of a New York forum" is consistent with South Carolina law and the evidence in the record.

Under the doctrine of *forum non conveniens*, "a court with proper jurisdiction [may] dismiss an action when the convenience of the parties and the ends of justice would be better served if the action were tried elsewhere." *Fed. Land Bank of Columbia*, 292 S.C. at 179, 355 S.E.2d at 297. "The doctrine is generally invoked whenever the forum has little or no relationship to a cause of action. A court should not dismiss an action under the doctrine unless the balance of factors strongly favors the defendant." *Id.* (citations omitted).

The circuit court presented the following analysis of the issue:

> Here, the Court finds that South Carolina has little to no relationship to Plaintiffs' causes of action. Specifically, Defendant's employment and relevant interactions occurred in New York, where both Thorne HealthTech's headquarters and the primary parties involved are based.[4] Plaintiffs' causes of action are grounded in actions that took place in New York.[5] Defendant's direct supervisors, the key witnesses, and the pertinent documents are all located in New York, further emphasizing New York's central role in this dispute.[6] The Court finds that granting a dismissal would not prejudice Plaintiffs. Rather, it would require them to initiate their action in New York—the state where nearly every witness resides[7]; where Plaintiffs' law firm has an office; where Defendant and his wife, Dr. Mary Kay Ross, were employed during their tenure with Plaintiffs[8]; and where convening this action would substantially benefit all parties involved due to convenience and proximity. As such, the convenience of the parties and the interests of justice are better served by dismissing this action in favor of a New York forum.

(Order, R. at ____) (footnotes added to provide examples of support in Record on Appeal).

On appeal, Thorne argues that the circuit court misapplied the factors set forth in *Macaulay v. Wachovia Bank of S.C., N.A.*, 333 S.C. 201, 206, 508 S.E.2d 46, 49 (Ct. App. 1998). (App. Br. at Argument II). Those factors are:

> (1) the relative ease of access to the sources of proof; (2) witness availability and costs of obtaining witness' attendance; (3) the possibility of viewing premises, if applicable to the action;[9] (4) ease, time efficiency and expense incurred trying the case; (5) enforceability of a judgment, if one is obtained; (6) administrative difficulties for South Carolina courts; (6) local interests in the trial; and (7) difficulties for South Carolina courts arising from conflict of laws and interpretation of foreign law.

(footnote added).

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[4] (Ross Aff. ¶¶ 2, 13-14, Complaint ¶¶ 1-3, 20, R. at __).
[5] (Ross Aff. ¶ 19, R. at ____).
[6] (Ross Aff. ¶ 13, R. at ___)
[7] (*See* Ross Aff. ¶ 13, R. at ___)
[8] (Ross Aff. ¶¶ 14-16, R. at __).
[9] The parties agree that this factor is not applicable. Similarly, it appears from Thorne's argument that enforceability of a judgment does not work in favor of New York or South Carolina. (App. Br. at Argument II). Nor are there any particular administrative or conflict of laws issues that would favor one jurisdiction over another.

Thorne has submitted its preferred treatment of the factors, but it has not shown any abuse of discretion. Namely, as far as the ease of access to sources of proof and witness availability and the cost of obtaining attendance and local interests in the trial, the record is clear that Ross was physically located in New York as were his supervisors during his employment. (Ross Aff. ¶ 13-16, R. at ___). There is also no dispute that the Parent Corporation is a Delaware Corporation and its corporate offices are located in New York. (*See* Complaint ¶ 1, Ross Aff. ¶ 2, R. at ____). Nor is there any dispute that Ross does not reside in South Carolina. (Complaint ¶ 5, R. at ____). These facts all support the connection to New York and New York's interest in to adjudication of these claims. As such, there is evidence supporting the circuit court's findings that the parties' disputes should be resolved in New York.

With respect to the ease, time, efficiency and expense incurred trying the case, based on the very vague allegations contained in the amended complaint and the arguments in Thorne's brief that this case stems from Ross's employment, there does not appear to be any reason why Thorne's claims should not proceed in New York together with the claims Thorne is asserting against Ross's wife.[10] The fact that Thorne Research, Inc. is predominantly located in South Carolina does not mean that the circuit court abused its discretion.

Having considered the record and the arguments before it, the circuit court's analysis is supported by the record and constitutes a valid exercise of its discretion. Accordingly, this Court must affirm the circuit court's dismissal of this action based on its finding that "the convenience

[10] Although Dr. Ross's case has a separate civil action number (Berkeley County Court of Common Pleas, 2024-CP-08-00077) and appellate case number (2024-002067), the two cases have been treated together as reflected in the joint hearing on the motions to dismiss and joint order denying the motions to reconsider. In terms of Dr. Ross and Ross, the convenience of the parties and the ends of justice favor letting all claims be resolved in New York.

of the parties and the interests of justice are better served by dismissing this action in favor of a New York forum."

II. The circuit court correctly found that Ross is not subject to personal jurisdiction in South Carolina for purposes of this action.

A. 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. *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 88, 666 S.E.2d 218, 221 (2008). "The decision of the trial court will be affirmed unless unsupported by the evidence or influenced by an error of law." *Id.*; *see Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005); *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007); *Cribb v. Spatholt*, 382 S.C. 475, 481, 676 S.E.2d 706, 709 (Ct. App. 2009). "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*, 376 S.C. at 16, 655 S.E.2d 476; *Cribb*, 382 S.C. at 481, 676 S.E.2d at 709.[11] Accordingly, modern

[11] To the extent Thorne has cited earlier cases that purport to apply a Rule 12(b)(6), SCRCP standard, those cases have been supplanted by the more recent precedent cited here. With respect to the quoted discussion from *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780-81 (1993), a review of the full quote in context shows that the analysis there pertained not to the standard of review for decisions on personal jurisdiction, but rather whether orders denying motions to dismiss on personal jurisdiction grounds are immediately appealable. As stated there,

> The prima facie showing of personal jurisdiction at the pre-trial stage is all that is required to continue the civil action. To do otherwise would require a much greater degree of specificity in the pleadings than is currently mandated by the South Carolina Rules of Civil Procedure. Further, after a prima facie showing, the appeal of the personal jurisdiction issue prior to a full development of the facts serves no useful function. There is no finality in a denial of the motion to dismiss for lack of personal jurisdiction. Just as with a denial of a 12(b)(6), the prima facie showing will succeed or fail at trial. It would be inconsistent with this Court's decisions

South Carolina case law shows that circuit courts are required to carefully consider the facts and record before them in making decisions on issues of personal jurisdiction and those decisions will not be reversed absent an abuse of discretion. In other words, circuit courts are not required to find jurisdiction because a plaintiff has made vague jurisdictional allegations in its complaint.

B. Thorne has not established personal jurisdiction in this matter.

The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case. *NV Sumatra Tobacco Trading, Co.*, 379 S.C. at 88, 666 S.E.2d at 221. When personal jurisdiction is challenged by a motion pursuant to Rule 12(b)(2), SCRCP, the "party seeking to invoke personal jurisdiction . . . by utilization of our long-arm statute [S.C. Code Ann. § 36-2-803] has the burden of establishing jurisdiction." *Aviation Assocs. & Consultants, Inc. v. Jet Time, Inc.*, 303 S.C. 502, 505, 402 S.E.2d 177, 178 (1991).

As set forth by this Court,

> Traditionally, our courts have conducted a two-step analysis to determine whether specific jurisdiction is proper by 1) determining if the long arm statute applies and 2) determining whether the nonresident's contacts in South Carolina are sufficient to satisfy due process requirements. However, a more recent trend compresses the analysis into a due process assessment only.

Cribb, 382 S.C. at 475, 676 S.E.2d at 710-11 (citations omitted). Due process requires that a defendant possess minimum contacts with the forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice. *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. "Further, the due process requirement mandates the defendant possess sufficient minimum contacts with the forum state such that he could reasonably anticipate being haled into

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> dealing with other pre-trial dismissal motions if a special niche were maintained for personal jurisdiction.

Id.

court there." *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 431-32, 665 S.E.2d 660, 665 (Ct. App. 2008).

Courts apply a two-pronged analysis when determining whether a defendant possesses minimum contacts with the forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice. *Id.* at 432, 665 S.E.2d at 665. "The court must (1) find that the defendant has the requisite minimum contacts with the forum, without which, the court does not have the 'power' to adjudicate the action and (2) find the exercise of jurisdiction is reasonable or fair." *Id.* It is not enough to merely satisfy the "power" prong, a plaintiff must also satisfy the "fairness" prong of the test. *Cribb*, 382 S.C. at 489-90, 676 S.E.2d at 714 (finding that although there were minimum contacts with the state, dismissal was appropriate under the fairness prong because "nothing which [was] the subject of this litigation ha[d] taken place in South Carolina").

1. Ross lacked minimum contacts with South Carolina with respect to the causes of action asserted.

To satisfy the "power prong," the Court must find the defendant directed his activities to residents of South Carolina and that the cause of action arises out of or relates to those activities. *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 331-32, 594 S.E.2d 878, 884 (Ct. App. 2004). As summarized by Thorne, South Carolina courts have "the power to exercise jurisdiction because Mr. Ross knowingly entered a long-term employment contract with a South Carolina company and all four causes of action in Thorne's Amended Complaint relate to his employment[.]" (App. Br. at Argument I at Introduction). The record, however, paints a different picture.

The terms of the offer letter signed by Ross and issued by Dr. Nathan Price on behalf of Onegevity, then a wholly owned subsidiary of Parent Corporation, makes clear that Ross's

employment was based at Parent Corporation's corporate office in New York. (Ross Aff. ¶¶ 7-9, R. at ___). Thorne has not produced any employment agreement, long term or otherwise, governing Ross's employment, and no such agreement exists. Thorne's references to business activity in South Carolina relate solely to Thorne Research, Inc., a separate corporate entity headquartered in South Carolina, and not to Onegevity, Drawbridge, or Parent Corporation—the only entities with which Ross was affiliated. (Walter Aff., R. at ___).

Consistent with his role as Director of Business Development, Ross relocated from Georgia to New York and performed all of his job duties from the New York corporate office. (Ross Aff. ¶¶ 2(g), 10-13, R. at ___). His supervisors were based in New York, and his day-to-day responsibilities were confined to that state. (Ross Aff. ¶¶ 13-16, R. at ___). Ross's only visit to South Carolina during his employment was a brief, one-and-a-half-day personal trip to accompany his wife on a tour of the Summerville facility—an event unrelated to the claims at issue. (Ross Aff. ¶¶ 14-15, R. at ___).

The evidence in the record mirrors that in *Delta Apparel, Inc. v. Farina*, 406 S.C. 257, 271-72, 750 S.E.2d 615, 622-23 (Ct. App. 2013). In reversing the trial court's finding that there was personal jurisdiction, this Court provided the following discussion:

> Delta alleged in its complaint that the trial court had personal jurisdiction over Farina because Farina entered into an employment relationship with Delta, a corporation doing business in the state of South Carolina. Further, Delta claimed Farina engaged in an ongoing business relationship with Delta; however, Delta only offered Merrill's supplemental affidavit in support of its claims. In her affidavit, Merrill explained Delta's chief executive officer (CEO) and the vice president's offices are located in Greenville, and she asserted both had interviewed Farina and discussed the requirements of the position with him. She stated Farina inquired of Delta's CEO about his job responsibilities at the Ceiba plant and also held conversations with the vice president regarding his employee benefits, termination, and severance settlement. Finally, Merrill stated Farina was aware that Delta's corporate offices were in Greenville and that he had contact with individuals in the corporate offices on a regular basis.

> Despite Delta's assertion that Farina had sufficient contacts with South Carolina to support a finding of personal jurisdiction, the California Tax Board sent its requests to withhold money from Farina's pay checks to offices in Duluth, Georgia. Further, Farina's severance settlement with Delta was executed in Duluth and filed in DeKalb County, Georgia. Despite Merrill's assertions within her affidavit, she never stated where the interview and conversations between Farina and Delta's corporate officers occurred, and Delta admitted in oral argument that Farina's interview occurred in North Carolina. Finally, Merrill never asserted that Farina came to Greenville for any of the other activities listed in the affidavit.
>
> In light of these facts, we believe Farina established he did not have the minimum contacts required for the trial court to have personal jurisdiction over him. The California Tax Board's notices went to offices located in Duluth, Farina signed his severance settlement in Duluth, and Farina worked in Honduras during his employment. While Farina may have spoken with officers that worked in the Greenville corporate office, there was no evidence to show Farina ever traveled to South Carolina for those conversations. Thus, Farina's contacts do not establish that he would have reasonably expected to be haled in to court in South Carolina, nor were the contacts sufficient for this State to fairly exercise personal jurisdiction over him. Accordingly, we reverse the trial court because South Carolina did not have personal jurisdiction over Farina.

Id.

Thorne has produced no affidavits indicating that Ross directed his activities to South Carolina or that Ross's one visit to South Carolina or interactions with residents of South Carolina relate to the cause of actions asserted against Ross apart from general statements that the claims are related to his employment. Those vague allegations alone are not enough to establish minimum contacts as shown in *Delta Apparel, Inc.* *See also Aviation Assocs. & Consultants, Inc.*, 303 S.C. at 508, 402 S.E.2d at 180 (1991); *Commissioning Agents, Inc. v. Long*, 143 F. Supp. 3d 775, 788-89 (S.D. Ind. 2015) (holding that receipt of salary or other payments from a forum state company does not in itself establish personal jurisdiction if the defendant's role and activities were conducted outside the forum state); *Travel Leaders Leisure Grp., LLC v. Cruise & Travel Experts*, No. 19CV02871SRNECW, 2020 WL 4604534, at *17 (D. Minn. Aug. 11, 2020) (determining that

administrative activities such as sending emails from outside the forum state do not establish personal jurisdiction).

For purposes of this analysis, the defendant's activities directed to a resident of this State must be his or her own and not the unilateral activities of some other entity. *S. Plastics Co. v. S. Com. Bank*, 310 S.C. 256, 261, 423 S.E.2d 128, 131 (1992). All of the contacts argued by Thorne connect back to Thorne Research, Inc. and not any purposeful availment by Ross. For example, as Thorne stated, "Mr. Ross **was directed** to visit the South Carolina facility so he could connect with his new colleagues . . . ." (Pl. Mem. in Opp., p. 7, R. at ____) (emphasis added). This directive underscores that Ross's presence in South Carolina was a result of his employer's instructions and not a voluntary or deliberate action to establish business ties within this state.

Moreover, although Thorne has submitted affidavits outlining general contacts with South Carolina, the affidavits do not link that contact to the vague claims asserted in the amended complaint. (Affs. of Walter, Monteleone, and Phipps, R. at ____). Thorne has not appealed the finding that there was not general jurisdiction here. Therefore, to establish personal jurisdiction, Thorne had the burden of linking its claims to Ross's contacts with the state. It failed to do so as found by the circuit court. (Order, R. at ____). In contrast to this absence of evidence or allegation in the amended complaint on Thorne's part, Ross stated in his affidavit, "I understand that Thorne's allegations against me in the above captioned case are that I somehow improperly obtained and benefited from insider information about the August 2023 sale prior to the public announcement of the sale. These allegations are not true, but if they were, I would have only obtained this

information while I was working in the New York corporate office, I have never discussed a sale of Thorne with anyone in South Carolina."[12] (Ross Aff. ¶ 19, R. at ____).

The circuit court considered the record before it and found that Thorne's general arguments relating to the operations of Thorne Research, Inc. and Ross's contact with South Carolina employees of Thorne Research, Inc. did not establish that Ross personally directed his activities to South Carolina or that those activities were sufficiently linked to the allegations of the amended complaint to satisfy the power prong. These findings are consistent with South Carolina case law and supported by evidence in the record and must be affirmed.

2. Thorne has not satisfied the fairness prong of the due process analysis.

Under the fairness prong, courts consider the following factors: (1) the duration of the defendant's activity in this State; (2) the character and circumstances of its acts; (3) the inconvenience to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction. *NV Sumatra Tobacco Trading, Co.*, 379 S.C. at 91, 666 S.E.2d at 223.

Again, the offer letter confirms that Ross's employment was with Onegevity, a wholly owned subsidiary of the Parent Corporation. (Ross Aff. ¶¶ 4, 9; Offer Letter, R. at ___). Neither Onegevity nor the Parent Corporation are South Carolina entities. The Parent Corporation, Thorne HealthTech, Inc., is a Delaware corporation with its corporate headquarters located at 152 West 57th Street, 10th Floor, New York, New York. (Ross Aff. ¶¶ 2, 4). Throughout his employment,

[12] This characterization of the complaint comes from an email sent by Thorne's counsel summarizing the claims as follows: "Thorne is informed and believes the both Stephen and MK Ross inappropriately obtained insider information about the same pending Thorne transaction and that they attempted to utilize the insider information for their financial benefit." (Exhibit to Memorandum in Support of Motion to Dismiss, R. at ____).

Ross was based in New York and worked exclusively from Thorne's corporate office there. His supervisors, including Dr. Nathan Price, Jerome Scelza, and Daniel McEvoy, were located either in New York or, in Mr. McEvoy's case, worked remotely from Florida. (Ross Aff. ¶¶ 11-13). Ross initially served as Director of Business Development for Onegevity and later became Director of Operations for Drawbridge, both departments operating out of the New York headquarters. (Ross Aff. ¶¶ 11-12). He carried out all of his job responsibilities in New York and made only one brief visit to South Carolina, which had no connection to the allegations in the complaint. (Ross Aff. ¶¶ 14-16). Thorne's arguments regarding the duration and location of Ross's employment are therefore misplaced.

With respect to the character and circumstances of Ross's acts, he lived and worked in New York. There is no evidence that he undertook any action that would suggest he might anticipate being sued in South Carolina, nor did he agree to the application of South Carolina law. Although Thorne submitted affidavits showing communications with the Summerville location, the affidavits do not link those communications with the allegations of the amended complaint, namely that Ross "accessed and disseminated confidential and proprietary information regarding Thorne's business dealings[.]" (Complaint ¶¶ 15-16, 20, R. at ____). Nor is there any indication that the claims are linked to Ross's one visit to South Carolina.

As for the final two factors, the vast majority of the relevant events, witnesses, and documents are centered in New York, where Ross lived and worked exclusively during his employment. His supervisors were based in New York or Florida, and the Parent Corporation's headquarters are located in New York. In addition, Ross's wife has pending claims in New York stemming from her employment with Parent Corporation. South Carolina has only a minimal connection to this case. The only South Carolina entity is Thorne Research, Inc., a separate

subsidiary of the Parent Corporation, and it was not a party to Ross's offer letter. There is no signed employment agreement, and no evidence that Ross agreed to jurisdiction in South Carolina.

Given these facts, it would not be reasonable or fair for a South Carolina court to exercise jurisdiction over Ross in this matter.

CONCLUSION

For any of these reasons, the circuit court's dismissal of this action should be affirmed.

Respectfully submitted,

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