RECEIVED
Aug 28 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Circuit Court Judge
Case No. 2021-CP-10-01663

APPELLATE CASE NO. 2022-000346

Reid Fleming, Appellant,

v.

The Planet Vape, LLC; SCECIGARETTE, LLC; LG Chem, Ltd.; John Doe Distributor #1; John Doe Distributor #2; and John Doe Distributor #3; Defendants,

Of which LG Chem, Ltd. is the Respondent.

APPELLANT'S PETITION FOR REHEARING

Under Rule 221(a) of the South Carolina Appellate Court Rules, Appellant files this Petition for Rehearing on Unpublished Opinion No. 2025-UP-295. Appellant respectfully requests rehearing because the majority overlooked that Respondent did not deny Appellant's allegations that it placed the subject battery in the stream of commerce, that it distributed the specific type of battery at issue in

the State of South Carolina, or that it failed to take any action to ensure the battery was not sold as a standalone product in South Carolina. This oversight caused the majority to resolve factual disputes in favor of the *movant*, not the non-moving party. *See M.B. Kahn Constr. Co. v. Three Rivers Bank & Tr. Co.*, 354 S.C. 412, 415, 581 S.E.2d 481, 482 (2003) ("On a motion to dismiss for lack of personal jurisdiction, factual disputes arising by affidavit will be resolved in favor of the non-moving party.").

The majority incorrectly employs a causal analysis similar to what the United States Supreme Court specifically rejected in *Ford Motor Company v. Montana Eighth Judicial District Court*, 592 U.S. 351 (2021), by accepting Respondent's contention that the minimum contacts analysis not only requires proof that Respondent purposely availed itself of the South Carolina marketplace, but that Respondent target a discrete market and use of its product. The majority overlooks the uncontroverted complaint allegations that because Respondent knew its product was being used for this purpose in South Carolina and failed to act, it could reasonably anticipate defending suits involving this product here.

Last, the majority failed to address the fairness prong of the due process analysis.

The effect of the majority's opinion is to require Mr. Fleming – a South Carolina resident, who purchased the product here, used the product here, and was

badly hurt by the product here – to litigate his claims *only* in South Korea despite Respondent's related, pervasive business activities in our state.

I. The Appellant's uncontroverted allegations support specific personal jurisdiction

The majority of the Court found that Appellant pled no facts to support the conclusory assertion that his claims were related to forum specific conduct by Respondent. Op. at 3. In doing so the majority ignored the plain, uncontroverted allegations of the complaint that Respondent not only engaged in substantial in-state activities related to the sale and distribution of lithium-ion batteries but that Respondent, armed with the knowledge that its batteries were being used in a dangerous way in our state, did nothing to stop such conduct. Importantly, Respondent did not deny that it placed lithium-ion batteries into the stream of commerce within South Carolina, that it transacted substantial lithium-ion battery related business within South Carolina, or that it distributed the exact type of battery at issue within South Carolina. Nor did Respondent deny knowledge that these batteries were being used here in this way. Respondent very carefully denies only that it distributed these batteries in South Carolina *for a particular market or use*, as a standalone or individual battery. (R. 37-38) But this is of no moment for purposes of the jurisdictional analysis. "[W]hen a corporation has continuously and deliberately exploited [a State's] market, it must reasonably anticipate being haled into [that State's] court[s] to defend actions based on products causing injury

there." *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 364, 141 S. Ct. 1017, 1027, 209 L. Ed. 2d 225 (2021) (internal citations and quotations omitted).

The majority accepts Respondent's argument that Appellant is required to show that Respondent specifically targeted the consumer market for standalone 18650 batteries in South Carolina. But that is the same causation analysis that the U.S. Supreme Court repudiated in *Ford* by rejecting the argument that a plaintiff must prove its claim "came about because of the defendant's in-state conduct." 592 U.S. at 362. The majority focuses almost exclusively on what it describes as a lack of evidence that Respondent "served a consumer standalone market" for lithium-ion batteries (Op. at 4), with little consideration to Respondent's substantial in-state contacts involving lithium-ion battery sales and shipments. The majority's dismisses Respondent's substantial lithium-ion battery contacts as "unrelated business activities," ignoring the fact that Respondent does not deny it distributed 18650 lithium-ion batteries here for other purposes. In doing so, the majority erroneously resolved factual disputes in favor of Respondent, rather than Appellant.

II. The majority employs the same causation analysis rejected by the U.S. Supreme Court in *Ford*

The majority appears to place some import on its observation that it "was third-parties that supplied [Appellant] with the batteries at issue" (Op. at 4).

However, the same was true in *Ford* – both vehicles were brought into Montana and Minnesota by third-parties. *See Ford*, 592 U.S. at 357. But that did not prevent the exercise of personal jurisdiction in *Ford*. Nor does it in South Carolina. *See State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 90, 666 S.E.2d 218, 223 (2008) (finding minimum contacts existed "[r]egardless of how the [product] arrived in South Carolina" due to forum contacts sufficient enough that defendant could reasonably anticipate suit in South Carolina). The *Ford* court found jurisdiction was appropriate based on Ford's "systematically servi[ing] a market" for its products in those states. *Id*. at 365. Here, Respondent does not deny systematically serving a market in South Carolina for lithium-ion battery products. And, importantly, Respondent does not deny serving a market here for its 18650 lithium-ion batteries. It only denies serving a standalone consumer battery market.

The majority overlooks these important distinctions, views them in the light most favorable to Respondent, and fails to analyze whether Respondent's substantial contacts in South Carolina "are related enough to the plaintiff's suit." *Id*. at 371. The relatedness test only requires that the "relationship among the defendant, the forum, and the litigation" is close enough to support jurisdiction. *Id*. The majority frames the issue far too narrowly focusing only on whether Respondent served a standalone market rather than whether it served a larger

market to such an extent that it is not unfair to subject Respondent to suit here. In doing so the majority ignores other factors that "may be relevant in assessing the link between the defendant's contact and the plaintiff's suit." *Id*. at 371. Here those factors can include the plaintiff's residence, where he purchased/used the product, where he was hurt, and the uncontroverted allegations that Respondent knew of this particular unauthorized use of its product in South Carolina and did nothing within its South Carolina supply chain to preclude unauthorized resale to the standalone market. *See Ford*, 592 U.S. at 371 (observing that a plaintiff's place of injury and purchase are relevant to the relatedness inquiry).

As noted by the dissent, the Respondent "has not denied that it placed this battery in the stream of commerce, that it regularly does business in South Carolina, or even that it distributes this type of battery with the reasonable expectation that the batteries will be used in this way in South Carolina." (Op. at 7) This is more than sufficient to meet the requirements of due process and to provide a domestic forum for a badly injured South Carolina resident to seek recourse against a company that profited from its lithium-ion battery business activities within our state.

III. The fairness prong supports jurisdiction.

The majority did not consider the fairness prong based on its analysis of the power prong. But there is little doubt the fairness prong is met here. "[U]nder the

fairness prong, the court must 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; and (4) the State's interest in exercising jurisdiction." *Cribb v. Spatholt*, 382 S.C. 490, 500, 676 S.E.2d 714, 719 (Ct. App. 2009). There was evidence to support each factor.

The record supported that Respondent imported its products into a South Carolina port since at least 2007. (R. pp. 184-243). Respondent's activities in South Carolina were continuous, voluminous, and plainly significant to the sales of its products to numerous customers. (R. pp. 184-243, 292-386). Third, it would be inconvenient and impractical for Fleming to travel to Korea to pursue claims when most of the facts underlying the claim occurred in South Carolina. Last, it is not inconvenient for LG to defend a claim in South Carolina where it is already defending other, similar cases in South Carolina in federal and state courts. Most importantly, "South Carolina has an interest in providing redress for its citizens." *Cribb*, 382 S.C. at 504, 676 S.E.2d at 721.

Conclusion

For these reasons, Appellant respectfully requests that this Court grant rehearing, vacate its prior opinion, find that specific personal jurisdiction exists over Respondent, and remand the case for discovery and trial.

RICHARDSON THOMAS, LLC

By: ___*s/Chris Moore*_____

Chris Moore (SCB: 77934)
383 W. Cheves Street
Florence, SC 29501
T: 803.281.8147
Chris@richardsonthomas.com

SMITH & GRIFFITH, LLP

John Griffith
1102 North Main Street
Anderson, South Carolina 29621
T: 864.261.1912
john@griffithlawyer.com

Counsel for Appellant

August 28, 2025

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Circuit Court Judge

Case No. 2021-CP-10-01663

APPELLATE CASE NO. 2022-000346

Reid Fleming, Appellant,

v.

The Planet Vape, LLC; SCECIGARETTE, LLC; LG Chem, Ltd.; John Doe Distributor #1; John Doe Distributor #2; and John Doe Distributor #3; Defendants,

Of which LG Chem, Ltd. is the Respondent.

PROOF OF SERVICE

The undersigned certifies that a copy of the Appellant's Petition for Rehearing has been served upon counsel for Respondent via electronic mail at the email addresses stated in the Attorney Information System as set forth below on August 28, 2025.

NELSON MULLINS RILEY &
SCARBOROUGH LLP

C. Mitchell Brown
(mitch.brown@nelsonmullins.com)
Rachel Hedley
(rachel.hedley@nelsonmullins.com)
Mattison Bogan
(matt.bogan@nelsonmullins.com)
Elizabeth Scott Moïse
(scott.moise@nelsonmullins.com)
Deirdre S. McCool
(deirdre.mccool@nelsonmullins.com)

s/Chris Moore
Chris Moore, SCB 77934
383 W. Cheves Street
Florence, SC 29501
803.300.1517

August 28, 2025