

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM Horry COUNTY  
Court of Common Pleas  
The Honorable Michael G. Nettles

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Case No: 2024-CP-26-04462

Appellate Case No: 2025-001152

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Lynn Dilucchio and Kevin Kemper,  
As Co-Administrators C.T.A of The Estate  
of Augusta Kemper, Plaintiffs,

Appellants

v.

George C. Zitzelberger, Defendant.

Respondent.

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**INITIAL BRIEF OF APPELLANT**

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*/s/Mary M. Caskey*

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**SC Court of Appeals**

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUES ON APPEAL .....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS .....3

STANDARD OF REVIEW .....6

ARGUMENT .....7

    I. The Circuit Court Erred in Dismissing for Lack of Personal Jurisdiction..... 8

    II. Respondent’s Continuous and Systematic Contacts with South Carolina Support the Exercise of General Jurisdiction .....9

    III. Alternatively, Specific Jurisdiction Exists Because Appellants’ Claims Arise Directly from Respondent’s Purposeful Conduct in South Carolina.....11

    IV. The Circuit Court Misapplied the Prima Facie Standard and Resolved Factual Inferences Against Appellants .....15

CONCLUSION.....16

**TABLE OF AUTHORITIES**

**CASES**

*Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 582 U.S. 255, 137 S. Ct. 1773, 198 L.Ed.2d 395 (2017).....11

*Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985).....8, 12, 13, 14

*Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005) .....8, 16

*Coggeshall v. Reprod. Endocrine Assocs.*, 376 S.C. 12, 18, 655 S.E.2d 476, 479 (2007) .....9

*Cribb v. Spatholt*, 382 S.C. 490, 676 S.E.2d 714 (Ct. App. 2009)13

*First Citizens Bank & Tr. Co., Inc. v. Blue Ox, LLC*, 422 S.C. 461, 466, 812 S.E.2d 418, 420 (Ct. App. 2018), *reh'g denied* (Apr. 26, 2018), *cert. denied* (Aug. 3, 2018) .....6

*Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)..... 9

*International Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement, et al.*, 326 U.S. 310, 320, 66 S.Ct. 154, 160, 90 L.Ed. 95, 161 A.L.R. 1057 (1945).....13

*Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 328, 594 S.E.2d 878, 882 (Ct. App. 2004) .....6, 7, 8, 9, 15

*Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 431, 665 S.E.2d 660, 664 (2008).....8, 11, 13

*S.C. Farm Bureau Mut. Ins. Co. v. Kennedy*, 398 S.C. 604, 610, 730 S.E.2d 862, 864 (2012) .....7

*S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 259, 423 S.E.2d 128, 130 (1992).....6, 8, 14

*Springmasters, Inc. v. D & M Mfg.*, 303 S.C. 528, 402 S.E.2d 192 (Ct.App.1991).....15

*Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) .....6

**STATUTES**

S.C. Code Ann. § 27-23-10, *et seq* .....2

S.C. Code Ann. § 36-2-803.....8

S.C. Code Ann. § 36-2-802.....9

## **STATEMENT OF ISSUES ON APPEAL**

1. Did the trial court err in granting Respondent's Motion to Dismiss and finding that South Carolina courts lacked personal jurisdiction over Respondent, where Respondent resided, owned property, and operated a business in South Carolina during the period in which the alleged fraudulent transfers occurred?
2. Did the trial court err in holding that receipt and use of allegedly fraudulent transfers within South Carolina fail to establish specific jurisdiction under S.C. Code Ann. § 36-2-803?
3. Did the trial court err in refusing to exercise jurisdiction under the Statute of Elizabeth where the alleged transfers occurred while Respondent purposefully availed himself of the benefits of doing business and owning property in South Carolina?
4. Did the court err by resolving factual disputes against Appellants instead of viewing evidence in the light most favorable to them at the Rule 12(b)(2) stage?

## STATEMENT OF THE CASE

This appeal arises from the Horry County Court of Common Pleas' dismissal of Appellants' claims for lack of personal jurisdiction.

On June 27, 2024, Appellants Lynn Dilucchio and Kevin Kemper, as Co-Administrators C.T.A. of the Estate of Augusta Kemper ("***Appellants***"), filed this action against Respondent George C. Zitzelberger ("***Respondent***"), alleging violations of the Statute of Elizabeth, S.C. Code Ann. § 27-23-10, and seeking to impose a constructive trust. (Complaint, R. at 1). The Complaint alleged that, following the entry and domestication in South Carolina of a Suffolk County, New York judgment ("the ***Foreign Judgment***") against Respondent's spouse, Patricia O'Connell ("***O'Connell***"), the spouse fraudulently transferred at least \$311,275.00 to Respondent without consideration and with intent to hinder, delay, or defraud creditors. (Complaint, R. at 3). Appellants further alleged that Respondent resided in Horry County at the time of the transfers, owned real property and a business in South Carolina, and used or benefitted from the transferred funds within this State. (Complaint, R. at 2).

On October 22, 2024, Respondent moved to dismiss the Complaint pursuant to Rule 12(b)(2), SCRCF, asserting that the circuit court lacked personal jurisdiction because Respondent, a Florida resident, had insufficient contacts with South Carolina. (Motion to Dismiss, R. at 1). Appellants opposed the motion, submitting documentary evidence that Respondent had lived and conducted business in Horry County, owned South Carolina real property until October 2024, and used the allegedly transferred funds to purchase or operate a local business. (Memorandum in Opposition, R. at 2, 4).

The Honorable Michael Nettles, Circuit Court Judge, heard the motion on April 14, 2025. By Order dated May 16, 2025, Judge Nettles granted Respondent's motion and dismissed the

action, finding that Appellants failed to demonstrate sufficient minimum contacts to support either general or specific personal jurisdiction. (Order, R. at 5, 6).

Appellants timely filed a Notice of Appeal on June 11, 2025, seeking review of the dismissal order. (Notice of Appeal, R.).

### **STATEMENT OF FACTS**

Appellants obtained the Foreign Judgment against O’Connell in the amount of \$1,728,321.00, together with post-judgment interest, for funds wrongfully distributed to O’Connell by the predecessor fiduciary to Appellants (former executor William Irving). (Complaint, R. at 3). That judgment was later domesticated in South Carolina, where Appellants commenced efforts to collect. (Complaint, R. at 3).

Appellants allege that, following entry of the Foreign Judgment and during the pendency of collection proceedings in Horry County, South Carolina, O’Connell fraudulently transferred assets to her husband, Respondent, without consideration and with intent to hinder, delay, or defraud her creditors. (Complaint, R. at 3, 4). At the time of the alleged transfers, Respondent was a resident of Horry County, South Carolina, where he and O’Connell jointly owned and operated a residence. (Complaint, R. at 2).

In addition to residing in South Carolina, Respondent owned and operated a business in Horry County, a sports bar known as Country Foods of Murrells Inlet, LLC d/b/a Wild Horse Food and Spirit a/k/a The Wild Horse Saloon<sup>1</sup>, from approximately 2020 until July 2023. (Memorandum in Opposition, R. at 4). Appellants alleged – and Respondent has admitted – that funds he received from O’Connell while residing in South Carolina were used in connection with that business.

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<sup>1</sup> There is currently a pending wrongful death civil action in Horry County, South Carolina against Zitzelberger by reason of his ownership, operation, marketing, management, maintenance, alcohol sales, and other exercises of control over the business Wild Horse Food & Spirits a/k/a The Wild Horse Saloon, 2025-CP-26-06595.

(Memorandum in Opposition, R. at 4; Motion to Dismiss, R. at 5).

Respondent also owned real property in Horry County until October 2024, when the property was sold *after* Appellants initiated this action. (Memorandum in Opposition, R. at 3). The net proceeds from that sale were turned over to Appellants in partial satisfaction of the judgment against O'Connell, following correspondence and agreement among the parties during this litigation. (Memorandum in Opposition, R. at 3).

Appellants asserted that Respondent's receipt and use of the transferred funds in South Carolina, his ownership and operation of a South Carolina business, and his continued ownership of South Carolina real property at the time of filing together establish that Respondent purposefully availed himself of the benefits and protections of South Carolina law. (Memorandum in Opposition, R. at 2). Appellants further contended that the alleged fraudulent transfers and resulting claims under the Statute of Elizabeth arose directly from Respondent's conduct within this State. (Memorandum in Opposition, R. at 2).

Respondent, a Florida resident since approximately December of 2022, moved to dismiss for lack of personal jurisdiction. (Motion to Dismiss, R. at 1). He asserted that he had no *current* property, business, or other contacts in South Carolina and that he could not reasonably anticipate being haled into court here. (Motion to Dismiss, R. at 3). However, he did not deny any of the factual allegations in the Complaint, including his ownership of property in South Carolina at the time of the filing of this action or his prior ownership and operation of a business in South Carolina.

Appellants submitted the following facts supporting personal jurisdiction:

1. Appellants filed this action to set aside fraudulent transfers made by Respondent's wife, discovered during supplemental proceedings in a separate collection action in which Appellants already hold a judgment against her. (Memorandum in Opposition, R. at 1).
2. The wife was not named as a defendant because she is already a judgment debtor; the claim

here concerns only the transfers Respondent received under the Statute of Elizabeth. (Memorandum in Opposition, R. at 1).

3. The challenged transfers were initiated and received while Respondent resided in Horry County, South Carolina, and during the parties' marriage. (Memorandum in Opposition, R. at 3, 4).
4. At the time of the alleged transfers, Respondent owned, operated, and conducted business in Horry County, and Appellants alleged the transferred funds were used to support that business. (Memorandum in Opposition, R. at 3, 4).
5. Respondent lived in South Carolina for many years until moving to Florida in 2022, yet continued to own property and operate a South Carolina business through July 2023. (Memorandum in Opposition, R. at 4).
6. Respondent admitted receiving funds from his wife while he lived in South Carolina and acknowledged that some funds may have been used to purchase or operate his Horry County business. (Memorandum in Opposition, R. at 3, 4).
7. Respondent owned real property in Horry County until October 2024; this lawsuit was filed earlier, in June 2024. (Memorandum in Opposition, R. at 4).
8. Respondent entered multiple South Carolina contracts, including the agreement to sell the property and a separate agreement to turn over the net proceeds of that sale to Appellants, which he did after the fraudulent-transfer allegations were raised. (Memorandum in Opposition, R. at 4).
9. Appellants supported their jurisdictional showing with the sale contracts and excerpts from Respondent's deposition in the related collection proceeding. (Memorandum in Opposition, R. at 4).

The Circuit Court accepted Respondent's position and dismissed the case, concluding that Respondent's former residence, property ownership, and business operations in South Carolina were insufficient to establish jurisdiction, and that Respondent's age, health, and current residence and ownership of assets renders exercising jurisdiction over him extremely inconvenient. (Order, R. at 5). Appellants now seek review of that determination. (Notice of Appeal, R.).

## STANDARD OF REVIEW

The question of personal jurisdiction is one which must be resolved upon the facts of each particular case. *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004) (citing *Engineered Prods. v. Cleveland Crane & Eng'g*, 262 S.C. 1, 201 S.E.2d 921 (1974)). The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law. *Engineered Prods.*, 262 S.C. at 4, 201 S.E.2d at 922; see also *Hammond v. Cummins Engine Co.*, 287 S.C. 200, 336 S.E.2d 867 (1985) (stating that the appellate Court is bound by Circuit Court's finding that nonresident defendant is subject to its jurisdiction absent determination that Circuit Court's ruling is without evidentiary support or controlled by error of law); *Industrial Equip. Co. v. Frank G. Hough Co.*, 218 S.C. 169, 173, 61 S.E.2d 884, 885 (1950) (“[T]his Court has adhered to the rule that a finding by the Circuit Court as to jurisdiction or lack of jurisdiction will not be disturbed on appeal unless wholly unsupported by the evidence or manifestly influenced or controlled by error of law.”).

The appellate court determines whether the trial court properly applied the law to the facts to conclude that sufficient minimum contacts exist to confer jurisdiction consistent with due process. *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 259, 423 S.E.2d 128, 130 (1992).

This Court reviews questions of law de novo. *First Citizens Bank & Tr. Co., Inc. v. Blue Ox, LLC*, 422 S.C. 461, 466, 812 S.E.2d 418, 420 (Ct. App. 2018), *reh'g denied* (Apr. 26, 2018), *cert. denied* (Aug. 3, 2018) (quoting *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)). “In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them.” *Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 46-47, 717 S.E.2d 589, 592 (2011) (citation omitted). “However, an appellate court may make its own determination on

questions of law and need not defer to the trial court's rulings in this regard.” *S.C. Farm Bureau Mut. Ins. Co. v. Kennedy*, 398 S.C. at 610, 730 S.E.2d at 864. “When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts.” *WDW Props. v. City of Sumter*, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000).

When, as here, a motion to dismiss for lack of personal jurisdiction is decided without an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdiction to withstand dismissal. *Moosally*, 358 S.C. at 329, 594 S.E.2d at 883.

### **ARGUMENT**

The circuit court erred in dismissing this action for lack of personal jurisdiction. Appellants presented competent evidence showing that Respondent resided in South Carolina, owned and operated a business here, and held South Carolina real property at the time of the alleged fraudulent transfers and when suit was filed. These contacts are sufficient to establish both general and specific jurisdiction under South Carolina’s long-arm statute and the Due Process Clause.

Even if factual disputes existed, dismissal was improper because the motion was decided without an evidentiary hearing, and Appellants were required to make only a prima facie showing of jurisdiction. The circuit court instead resolved inferences against Appellants and failed to credit undisputed evidence that Respondent purposefully availed himself of the privileges and protections of South Carolina law.

Because Respondent’s contacts with this State were substantial and directly related to the claims asserted, the exercise of jurisdiction comports with traditional notions of fair play and substantial justice. The order dismissing the action should therefore be reversed and the case remanded for further proceedings on the merits.

## **I. The Circuit Court Erred in Dismissing for Lack of Personal Jurisdiction.**

South Carolina's long-arm statute, S.C. Code Ann. § 36-2-803, extends to the outer limits permitted by the Due Process Clause of the Fourteenth Amendment. *Cockrell v. Hillerich & Bradby Co.*, 363 S.C. 485, 490, 611 S.E.2d 505, 508 (2005). Accordingly, the sole inquiry is whether the exercise of jurisdiction over Respondent comports with due process. *Moosally*, 358 S.C. at 329, 594 S.E.2d at 883 (Ct. App. 2004).

Due process is satisfied when the defendant has established minimum contacts with South Carolina such that maintaining the action does not offend "traditional notions of fair play and substantial justice." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985); *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 259, 423 S.E.2d 128, 130 (1992). Personal jurisdiction may be either general or specific, depending on whether the cause of action arises from or relates to the defendant's contacts with the forum. *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 431, 665 S.E.2d 660, 664 (2008).

Here, Appellants made a prima facie showing of such substantial affiliations. The record demonstrates that Respondent resided in Horry County, South Carolina for numerous years, where he owned and operated a sports bar business until July 2023. (R.). He also owned South Carolina real property until October 2024 – months after this action was filed. (R.). Respondent's ties to South Carolina were thus not isolated or fleeting; they were continuous, purposeful, and ongoing up to and beyond the commencement of this litigation.

Moreover, Respondent's own actions show that he continued to benefit from South Carolina law during the relevant period. He entered into contracts to sell his South Carolina property, and after the sale closed, he transferred the net proceeds to Appellants in partial satisfaction of his wife's judgment debt. (Memorandum in Opposition, R. at 4). These actions –

conducting business, maintaining ownership interests, entering contracts, and disposing of real estate – are precisely the type of continuous, systematic activities that render a nonresident “essentially at home” in this forum.

The circuit court’s order minimized these contacts, characterizing Respondent’s residence and property ownership as “at one point in time.” (Order, R. at 4). This interpretation disregards the timing of the relevant conduct. The proper inquiry focuses on the defendant’s contacts at the time the cause of action arose and the suit was filed, not merely at the time of the jurisdictional hearing. *See Moosally v. W.W. Norton & Co.*, 358 S.C. at 329, 594 S.E.2d at 883 (Ct. App. 2004) (requiring only a prima facie showing of jurisdiction when facts are construed in plaintiff’s favor). At both points – when the alleged fraudulent transfers occurred and when the Complaint was filed – Respondent had significant and ongoing South Carolina contacts.

In short, Respondent resided, owned property, and conducted business in South Carolina during the relevant period. His use of South Carolina property and business to facilitate or receive the alleged transfers forms a sufficient basis for the exercise of general jurisdiction under S.C. Code Ann. § 36-2-802 and constitutional due process principles. The circuit court’s contrary conclusion rests on an unduly narrow view of Respondent’s contacts and improperly resolved factual inferences against Appellants. Accordingly, dismissal under Rule 12(b)(2) was error.

## **II. Respondent’s Continuous and Systematic Contacts with South Carolina Support the Exercise of General Jurisdiction.**

General jurisdiction exists where the defendant’s contacts with South Carolina are so “continuous and systematic” as to render him essentially at home in the forum. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011); *Coggeshall v. Reprod. Endocrine Assocs.*, 376 S.C. 12, 18, 655 S.E.2d 476, 479 (2007).

Here, the record demonstrates that Respondent resided in Horry County for several years, owned and operated a business there, and owned real property in the state until after this action was filed. (Complaint, R. at 2; Motion to Dismiss, R. at 3; Order, R. at 2). These are not fleeting or incidental contacts – they reflect an ongoing and purposeful connection to South Carolina sufficient to establish general jurisdiction.

Additionally, Respondent’s ongoing connection to South Carolina is further reflected by the fact that he is currently a named defendant in a pending civil wrongful death action in Horry County arising from his ownership, operation, and management of Wild Horse Food & Spirits a/k/a The Wild Horse Saloon, *Viar, et al. v. Zitzelberger, et al.*, No. 2025-CP-26-06595.<sup>2</sup> Although the 2025 wrongful death action was filed after the Dismissal Order in this case, it confirms Respondent’s ongoing ownership and operation of a South Carolina business. His continued involvement in active litigation arising from those business activities underscores that his South Carolina contacts were not remote, isolated, or concluded years before this action, but part of an ongoing and substantial course of conduct within this State. Respondent also declined to contest personal or subject matter jurisdiction in that case, further reflecting his purposeful availment of South Carolina’s protections and obligations. While Appellants do not argue that the 2025 action has preclusive effect, its existence provides additional confirmation of meaningful, forum-directed activities, reinforcing Appellants’ prima facie showing of specific jurisdiction.

Although Respondent subsequently relocated to Florida, jurisdiction is determined at the time the cause of action arose and when the suit was filed, not by later events. Because Respondent

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<sup>2</sup> Judicial notice is proper under Rule 201(b), SCRE, because the existence of a civil action and its publicly filed pleadings are matters of public record not subject to reasonable dispute and capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Appellants do not rely on the 2025 action for preclusion, but solely to demonstrate Respondent’s continued business activities and contacts with South Carolina.

was a South Carolina resident engaged in business and property ownership here when the alleged fraudulent transfers occurred and when Appellants commenced suit, the circuit court had authority to exercise general jurisdiction.

**III. Alternatively, Specific Jurisdiction Exists Because Appellants' Claims Arise Directly from Respondent's Purposeful Conduct in South Carolina.**

Even if general jurisdiction were found lacking, South Carolina courts may exercise specific personal jurisdiction over a nonresident whose contacts with the forum give rise to the claims asserted. Every assertion of specific jurisdiction must rest upon a showing that: (1) the defendant had at least one contact with the forum state, and (2) the claim being asserted against that defendant arose out of that contact. *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 582 U.S. 255, 137 S. Ct. 1773, 198 L.Ed.2d 395 (2017). It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. *Power Prods.*, 379 S.C. at 432, 665 S.E.2d at 665. Here, Appellants alleged, without dispute, that Respondent used the fraudulently transferred funds to operate and support his South Carolina business, and that these transactions and business activities occurred while Respondent owned real property and other assets in South Carolina. These allegations directly tie the challenged conduct to Respondent's purposeful activities in this State and therefore satisfy both elements of the specific-jurisdiction inquiry.

A single act that causes harm in the forum state may create sufficient minimum contacts to confer personal jurisdiction where the harm arises out of or relates to that act; however, that single act must create a "substantial connection" with the forum to give rise to jurisdiction. *Power Prods.*, 379 S.C. 423, 665 S.E.2d 660. Appellants have made that showing in this case.

### **A. Respondent Purposefully Availed Himself of South Carolina’s Benefits and Protections**

Appellants presented evidence that Respondent received substantial funds from O’Connell while residing in Horry County and used those funds to acquire, operate, and maintain a South Carolina business. (Memorandum in Opposition, R. at 4). Respondent also owned real property in South Carolina until October 2024 and entered into contracts regarding the sale of that property, including an agreement to transfer net proceeds to Appellants in partial satisfaction of the Foreign Judgment. (Memorandum in Opposition, R. at 4).

This nexus is further reinforced by the fact that Respondent’s ownership, operation, and control of the same business, Wild Horse Food & Spirits a/k/a The Wild Horse Saloon, is at issue in a pending South Carolina wrongful death action, *Viar, et al. v. Zitzelberger, et al.*, No. 2025-CP-26-06595. The existence of contemporaneous litigation arising from Respondent’s South Carolina business activities confirms not only that he purposefully availed himself of conducting operations in this State, but also that his business activities here were substantial, continuous, and directly connected to the financial transactions challenged in this case.

In the facts of the instant case, by accepting and using assets derived from South Carolina property and business, Respondent purposefully invoked the protections and benefits of South Carolina law. These actions were not random or fortuitous; they were deliberate, continuous, and directly tied to South Carolina commerce and property law. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (purposeful availment of the privilege of conducting business in this state exists when the defendant deliberately has engaged in significant activities within a state, or has created continuing obligations between himself and residents of the forum). Because Respondent’s activities were shielded by “the benefits and protections” of this State’s laws, it is

presumptively not unreasonable to require him to submit to the burdens of litigation in this forum as well.

### **B. Appellants' Claims Arise Directly From Respondent's South Carolina Contacts**

The gravamen of Appellants' claims – the fraudulent transfers and imposition of a constructive trust – arises directly from Respondent's South Carolina activities. The Complaint alleges that funds transferred from O'Connell were received and used in South Carolina, including to operate Respondent's Horry County business and maintain his property holdings. (Complaint, R. at 5). These activities provide a clear nexus between the forum and the claim: the alleged harm occurred in South Carolina, to South Carolina property and business, and through transactions conducted in the State.

South Carolina courts have repeatedly held that claims arising from property or business activities within the forum state satisfy the specific jurisdiction requirement. *Power Prods.*, 379 S.C. at 432, 665 S.E.2d at 664 (defendant's South Carolina activities supporting tort claims were sufficient for jurisdiction); *Cribb v. Spatholt*, 382 S.C. 490, 676 S.E.2d 714 (Ct. App. 2009) (holding that a restaurant had sufficient minimum contacts to support specific personal jurisdiction and that exercise of specific personal jurisdiction was reasonable and fair where restaurant negotiated and anticipated performing part of a contract in South Carolina).

### **C. Exercising Jurisdiction is Reasonable and Comports With Fair Play and Substantial Justice**

Once purposeful availment and a nexus to the claim are established, due process requires that jurisdiction be reasonable. *International Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement, et al.*, 326 U.S. 310, 320, 66 S.Ct. 154, 160, 90 L.Ed. 95, 161 A.L.R. 1057 (1945). Relevant factors include the burden on the defendant, the forum state's interest in

adjudicating the dispute, the plaintiff's interest in convenient relief, and interstate judicial efficiency. *Burger King*, 471 U.S. at 477 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 290, 100 S. Ct. 559, 564, 62 L. Ed. 2d 490 (1980)); *Southern Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 259, 423 S.E.2d 128, 130 (1992).

Here, all factors favor South Carolina. Respondent voluntarily resided and conducted business in South Carolina. He deliberately engaged in property and financial transactions in the forum. South Carolina has a strong interest in protecting its residents and courts from fraudulent transfers involving property and business within its borders. Appellants, as judgment creditors, have a substantial interest in convenient and effective relief. Litigation in South Carolina promotes efficiency, as the relevant property and business transactions occurred here.

Respondent (a) accepted transfers of funds from a South Carolina resident and judgment debtor, (b) used those funds in connection with his South Carolina business, and (c) retained South Carolina real estate purchased and maintained with those assets. (Memorandum in Opposition, R. at 4). The alleged fraudulent transfer – the gravamen of the action – thus arose directly from Respondent's activities in this state.

By receiving, using, and benefiting from assets within South Carolina, Respondent purposefully invoked the protections and benefits of its laws. *See Burger King*, 471 U.S. at 475–76 (purposeful availment satisfied where defendant knowingly engaged in activities creating a substantial connection with the forum). Fair play and substantial justice further support jurisdiction because the State has a manifest interest in adjudicating claims involving alleged fraudulent transfers of property located here. *See Southern Plastics*, 310 S.C. at 259, 423 S.E.2d at 130.

Even where minimum contacts exist, a court must consider whether jurisdiction is reasonable in light of traditional notions of fair play and substantial justice. *Burger King*, 471 U.S.

at 477. The relevant factors – burden on the defendant, forum’s interest, plaintiff’s interest in convenient and effective relief, and the interstate judicial system’s interest in efficient resolution – all favor jurisdiction here.

Respondent voluntarily lived and conducted business in South Carolina, received and used funds here, and owned property here. South Carolina has a strong interest in protecting its courts and citizens from fraudulent transfers involving property within its borders. Litigating in South Carolina imposes minimal burden on Respondent given his extended residence and business activities here.

Accordingly, the exercise of specific jurisdiction is entirely consistent with traditional notions of fair play and substantial justice, fully comports with due process, and the dismissal of Appellants’ claims on this ground was improper.

**IV. The Circuit Court Misapplied the Prima Facie Standard and Resolved Factual Inferences Against Appellants.**

Under South Carolina law, a plaintiff is required to make only a prima facie showing of jurisdiction to survive a Rule 12(b)(2) motion decided without an evidentiary hearing. *Moosally*, 358 S.C. at 329, 594 S.E.2d at 883. There is no “other evidence” requirement for personal jurisdiction where the complaint itself demonstrates jurisdiction. *Springmasters, Inc. v. D & M Mfg.*, 303 S.C. 528, 402 S.E.2d 192 (Ct. App. 1991). Although any factual disputes must be resolved in the plaintiff’s favor at the Rule 12(b)(2) stage, this appeal presents no genuine factual disputes. The jurisdictional facts alleged by Appellants, including Respondent’s residence, business operations, and property ownership in South Carolina, are not contested. The question before the Court is therefore a legal one: whether these undisputed facts, taken as true, establish a prima facie basis for personal jurisdiction.

In evaluating whether a prima facie showing exists, 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. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). The court may not weigh the evidence, make credibility determinations, or resolve factual disputes at this stage; doing so constitutes reversible error.

Here, the circuit court clearly departed from this standard. Rather than viewing the evidence in the light most favorable to Appellants, the court credited Respondent's own characterization of his Florida residence and minimized undisputed evidence of his residence, property ownership, and operation of a South Carolina business. (Order, R. at 2). The court's analysis improperly weighed competing evidence, rather than determining whether Appellants had presented sufficient facts to establish a prima facie case of personal jurisdiction.

Appellants provided competent, unrebutted evidence that Respondent:

1. Resided in Horry County, South Carolina, for several years;
2. Owned and operated a South Carolina during and after the alleged transfers;
3. Held South Carolina real property until October 2024 and transferred the net proceeds to satisfy the underlying judgment; and
4. Received and used funds in South Carolina directly connected to the alleged fraudulent transfers.

Each of these contacts supports both general and specific jurisdiction, and collectively they create a direct nexus to Appellants' claims. At the prima facie stage, this evidence is sufficient to survive dismissal. The Court further improperly focused on Respondent's ownership of property at that time rather than at the time of the actions giving rise to the Complaint. By failing to give proper weight to these allegations and inferences, the circuit court applied an overly restrictive and

improper standard, effectively resolving factual disputes against Appellants and dismissing the case prematurely.

Because Appellants' evidence demonstrates purposeful avilment and a direct connection to the State, the dismissal under Rule 12(b)(2) was improper, and this Court should reverse and remand for further proceedings.

### **CONCLUSION**

For the reasons above, and because Respondent's South Carolina contacts were continuous, purposeful, and directly related to Appellants' claims, and because the circuit court applied an incorrect standard in dismissing the action, this Court should reverse the order of dismissal and remand for further proceedings on the merits.

Respectfully submitted,

*/s/Mary M. Caskey*

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