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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

Case No: 2024-CP-26-04462

Appellate Case No: 2025-001152

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.

APPELLANTS' REPLY BRIEF

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INTRODUCTION

Pursuant to the provisions of the Federal Rule of Procedure 31, Appellants Lynn Dilucchio and Kevin Kemper, As Co-Administrators C.T.A of The Estate of Augusta Kemper (“Appellants”) submit this Reply Brief to the Initial Brief of Respondent George C. Zitzelberger (“Respondent”), filed February 4, 2026 (“Respondent’s Initial Brief”).

Respondent’s Initial Brief does not identify any legal error in Appellant’s initial brief. Instead, Respondent reframes the case as an attempt by out-of-state creditors to pursue a Florida resident and repeatedly conflates jurisdictional analysis with merits defenses. The Circuit Court’s dismissal rested on an incorrect application of Rule 12(b)(2), and Respondent’s Initial Brief confirms that error by arguing factual disputes, credibility, intent, and fairness – issues that are irrelevant at the prima facie jurisdiction stage.

The dispositive questions remain narrow: whether Appellants alleged sufficient facts demonstrating that Respondent purposefully availed himself of South Carolina such that jurisdiction is constitutionally permissible. They did. The Order should be reversed.

ARGUMENT

I. Respondent Misstates the Applicable Standard of Review and a Plaintiff’s Burden Under Rule 12(b)(2).

Respondent suggests that the Circuit Court’s ruling should be affirmed unless “unsupported by the evidence.” That framing is incomplete. Whether personal jurisdiction exists is a question of law reviewed de novo, and when a Rule 12(b)(2) motion is decided without an evidentiary hearing, a plaintiff need only make a prima facie showing of jurisdiction, with all reasonable inferences construed in the plaintiff’s favor. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505 (2005); *Moosally v. W.W. Norton & Co.* 358 S.C. 320, 329, 594 S.E.2d 878, 883 (Ct. App. 2004).

Here, Respondent does not dispute the core jurisdictional facts. He instead disputes their legal effect, which confirms that this appeal presents a legal – not factual – question. The Circuit Court erred by weighing evidence and resolving inferences against Appellants, contrary to Rule 12(b)(2).

II. Respondent’s “Receipt-Only” Argument Misunderstands Fraudulent Transfer Law and Jurisdictional Principles.

Respondent repeatedly argues that jurisdiction is improper because he “only received” funds and did not initiate transfers. That argument misunderstands both fraudulent transfer law and personal jurisdiction doctrine.

Under the Statute of Elizabeth and longstanding precedent, transferees are proper defendants in fraudulent transfer actions regardless of whether they initiated the transfers. Remedies – including avoidance and constructive trust – run directly against recipients of fraudulently conveyed assets. If mere receipt was insufficient, fraudulent transfer law would be rendered meaningless.

In *In re Tarangelo*, the court awarded a \$45,000 judgment against a transferee, reasoning that “mere avoidance of the transfer...does not result in any real recovery to the creditors. The trustee must have the ability to collect the money from defendant.” 378 B.R. 128 (Bankr. E.D. Va. 2007). Where a transferee has dissipated or encumbered the transferred assets, avoidance alone becomes “meaningless in terms of relief.” *Id.* This distinction between in rem avoidance and in personam liability explains why transferees cannot evade accountability by characterizing their receipt of funds as passive.

For jurisdictional purposes, the inquiry is whether Respondent purposefully availed himself of South Carolina, not whether he initiated the transfer. Respondent admitted receiving funds while residing in South Carolina, using those funds in connection with a South Carolina

business, owning South Carolina property, and entering contracts governed by South Carolina law. These are affirmative, forum-directed activities, not unilateral acts of a third party.

III. Respondent Misapplies S.C. Code Ann. § 36-2-803.

Respondent contends that Appellants' claims are not "listed" in § 36-2-803 and therefore cannot support specific jurisdiction. This argument fails.

First, South Carolina's long-arm statute is construed to extend to the outer limits of due process, not as a rigid checklist. *Cockrell*, 363 S.C. at 490, 611 S.E.2d at 508. Former residents who conducted business in South Carolina routinely satisfy the statute's "transacting any business" provision. *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256 (1992).

Second, Appellants' claims arise directly from conduct enumerated in the statute, including transacting business in South Carolina, having an interest in, using, or possessing South Carolina property, and committing tortious acts causing injury in South Carolina. Respondent's prior residence, business operations, and property ownership establish multiple jurisdictional bases under subsections (A)(1), (A)(5), and (A)(7).

Respondent's argument ignores the undisputed nexus between the alleged fraudulent transfers and his own South Carolina business and property interests. That nexus would have been further developed through discovery – discovery the Circuit Court foreclosed by prematurely dismissing the case.

Courts continue to recognize property ownership as a sufficient jurisdictional basis where claims involve property interests, as illustrated in *Long v. Baldt*, 464 F.Supp. 269 (1979). That principle applies squarely here.

IV. Respondent's Arguments Conflate Jurisdiction with Merits.

A substantial portion of Respondent's Initial Brief is devoted to arguing that (i) the

transfers were for legitimate marital expenses, (ii) Respondent lacked fraudulent intent, or (iii) Appellants cannot ultimately prove a Statute of Elizabeth violation. These are merits defenses, not jurisdictional ones.

At the Rule 12(b)(2) stage, Appellants were not required to prove fraud, intent, or knowledge – only to allege facts establishing a prima facie basis for jurisdiction. *Moosally*, 358 S.C. at 329, 594 S.E.2d at 883. By crediting Respondent’s merits arguments, the Circuit Court improperly short-circuited the litigation before discovery and trial.

While establishing jurisdiction requires satisfaction of constitutional due process, that inquiry focuses on purposeful availment, not ultimate liability. Respondent’s voluntary residence, business operations, and property ownership in South Carolina satisfy that requirement.

V. Respondent’s Fair-Play Argument Ignores South Carolina’s Strong Interest in This Dispute.

Respondent asserts that South Carolina has no interest in adjudicating this case because the parties are non-residents and the relief sought is monetary. That assertion is incorrect.

South Carolina has a strong interest in regulating businesses operated within its borders, property located in the State, and fraudulent transfers affecting commerce and creditors here. Courts evaluate fairness using the four-factor est articulated in *Hammond v. Butler, Means, Evins & Brown*, 300 S.C. 458 (1990). Those factors weigh heavily in favor of jurisdiction.

Supporting law demonstrates that significant ongoing commercial connections create purposeful availment, as shown in *Smith v. Teledyne Continental Motors* where the court found jurisdiction proper based on \$1.6 million in sales over ten years combined with ongoing relationships through warranty programs, contracts with eleven fixed base operators, advertising, and other continuous commercial activities in the forum state. *Smith v. Teledyne Continental Motors, Inc.*, 840 F.Supp.2d 927 (2012). Respondent argues that past connections without current

contacts are insufficient, and that the benefits were historical and no longer relevant, but South Carolina courts focus on whether defendants previously invoked the benefits and protections of state law through voluntary establishment of substantial connections and must examine the totality of a defendant's voluntary connections to assess purposeful availment.

South Carolina courts consistently reject generalized inconvenience arguments where defendants voluntarily established substantial connections with the forum. *Askins v. Firedoor Corp. of Fla.*, 281 S.C. 611, 316 S.E.2d 713 (1984). Courts, instead, routinely hold that defendants who voluntarily established substantial connections with South Carolina through residence, business operations, and property ownership cannot later avoid jurisdiction based solely on inconvenience arguments. Respondent chose to reside, conduct business, and own property in South Carolina. Having benefited from those activities, he cannot now claim that litigating here offends traditional notions of fair play and substantial justice. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475-76 (1985).

VI. The Circuit Court Failed to View the Evidence in the Light Most Favorable to Appellants.

Finally, Respondent's Initial Brief underscores the Circuit Court's core error: it failed to view the record in the light most favorable to Appellants. The jurisdictional facts are essentially undisputed, yet the Court minimized Respondent's South Carolina contacts and resolved legal inferences against Appellants.

At the prima facie stage, that approach is reversible error.

CONCLUSION

Respondent's Initial Brief confirms that this appeal turns on a legal sufficiency question, not disputed facts. Because Appellants alleged undisputed facts demonstrating Respondent's purposeful availment of South Carolina and a direct nexus to their claims, the Circuit Court erred

in dismissing the action under Rule 12(b)(2).

The Order of Dismissal should be reversed and the case remanded for further proceedings on the merits.

Respectfully submitted,

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