

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

T.W. McGee, III, Circuit Court Judge

Appellate Case No. 2025-000104

Great Deal Investing LLC, of Wyoming, Appellant,

v.

Jared Burnett, Brett Buras, Damian Bergamaschi, Steve Decker, J&B
Holdings Group, LLC, and Hatchery Hill MHC, LLC, Respondents.

FINAL REPLY BRIEF OF APPELLANT

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FINAL REPLY BRIEF

Introduction

The Respondents put the cart before the horse.

Rather than addressing the propriety of the lower court's extraterritorial application of South Carolina law to an out-of-state party in violation of South Carolina's rules of construction, the Respondents avoid what the lower court considered "the threshold issue" for 18 pages. (R. p. 109). The core issue is and always has been simply this. Did GDI's phone calls, emails, and text messages from Indiana to the seller in North Carolina and to the buyer in Florida constitute practicing real estate *in the State of South Carolina?*

I. RESPONDENTS IGNORE SOUTH CAROLINA RULES OF CONSTRUCTION.

The Respondents never address any of the following binding authorities:

Ex Parte First Pennsylvania Banking And Trust Company v. Russell, 247 S.C. 506, 148 S.E.2d 373 (1966). (The general rule is that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction. A statute which purports to have such operation is invalid. * * * 50 Am.Jur., Statutes, Section 485) cited by Justice Pleicones in *Robertson v. Bumper Man Franchising Co., Inc.*, 364 S.C. 155, 612 S.E.2d 451, 452 ((2005).

S.C. Code Ann. Section 1-1-10 (The sovereignty and jurisdiction of this State extends to all places within its bounds . . .) cited by Justice Pleicones in *State v. Dudley*, 384 S.C. 578, 582, 614 S.E.2d 623, 626 (2005) n 4. (The exercise of extraterritorial jurisdiction implicates the state's sovereignty, a question so elemental that we hold it cannot be waived by conduct or consent).

Pennoyer v. Neff, 95 U.S. (5 Otto) 714, 722, 24 L.Ed. 565 (1877) (The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others. And so it is laid down by jurists, as an elementary principle, that the laws of one State have no operation outside of its territory, except so far as is allowed by comity; and that no tribunal established by it can extend its process beyond that territory so as to subject either persons or property to its decisions.) cited by Justice Toal in *Doctors Hosp. of Augusta, LLC v. CompTrust AGC Workers' Compensation Trust Fund*, 371 S.C. 5, 8 – 9, 636 S.E.2d 862, 863 – 864 (2006).

II. THE RESPONDENTS ALSO IGNORE PERSUASIVE AUTHORITY FROM OTHER JURISDICTIONS.

The Respondents likewise fail to address other relevant authorities on similar facts:

Keenan Co. v. Pamlico, Inc., 245 Ga. 842, 268 S.E.2d 334 (1980) (South Carolina plaintiffs were not barred from access to the courts of Georgia for failure to obtain Georgia real estate licenses since the plaintiffs sole contacts with the state of Georgia had been in furtherance of an isolated interstate real estate sales transaction, and no public interest of the state was served by regulating such activities).

Consul Limited v. Solide Enterprises, Inc., 802 F.2d 1143 (1986) (There is nothing in the complaint to indicate that Wilson performed any regulated acts in California ... The statutes refer to acts within the state, and we hesitate to ignore this plain language. * * * All relevant authority suggests that licensing schemes like California's do not apply to out-of-state activities regarding in-state land. Many courts have found real estate licensing statutes inapplicable to transactions in which brokers performed all of the regulated functions outside the state in which they were not licensed.)

Bennett v. MV Investors, 799 S.W.2d 221 (1990) (South Carolina plaintiff without a Tennessee real estate license not barred from maintaining an action in Tennessee where all of his activities took place in South Carolina).

AFC Realty Capital, Inc. v. Dale, 2022 WL 2193377 (2022) (summary judgment entered in favor of New York citizen against two California citizens and their businesses for a commission on a real estate transaction involving property in California, notwithstanding the fact that the Plaintiff was not licensed as a real estate broker in California).

Freedom Factory, LLC v. Smee Homes, Inc., 2024 WL 3252153 (2024) (the long arm of California's real estate regulatory scheme does not extend to activities conducted solely outside of the state, "particularly to void otherwise valid contracts.")

GDI is a Wyoming limited liability company transacting business solely in Indiana. It has never transacted business in South Carolina. Its member has never been to South Carolina. It contracted with a foreign purchaser, not a domestic seller.

It is undisputed that all of GDI's activities took place in Indiana. GDI placed telephone calls and sent emails and text messages to the seller in North Carolina and to the purchaser in Florida. GDI never placed any phone calls or sent any emails or text messages to anyone in South Carolina.

J&B has never had a certificate of authority to transact business in South Carolina and denies that it transacts business in South Carolina. If J&B's representations are taken as true, then J&B, a Texas limited liability company based in Florida, can hardly qualify as a member of the public intended to be protected by South Carolina's real estate licensing statutes. The only members of the public affected by the Respondents' purchase of the real estate were "sub-institutional grade" tenants whose rents were "optimized."

III. HAD THE LOWER COURT PROPERLY APPLIED SOUTH CAROLINA'S RULES OF CONSTRUCTION ON EXTRATERRITORIALITY, NO ANALYSIS OF SOUTH CAROLINA'S REAL ESTATE LICENSING STATUTES WOULD HAVE BEEN NECESSARY.

GDI does not challenge the constitutionality of South Carolina's Real Estate Licensing statutes. Had there been such a challenge, the South Carolina Supreme Court would have granted GDI's motion to certify.

Licensing statutes do not apply to out-of-state activities. This is true even if the land is located in the forum state. *Consul, Ltd.*, at 1150 (citing *Paulson*, 40 F.2d at 2).

Like the real estate licensing statutes in other states cited in *Consul, Ltd.*, the words *in the State of South Carolina* in S.C. Code Ann. Section 40-57-30(7) demonstrate that South Carolina's real estate licensing statutes were not intended to reach persons who render real estate brokerage services outside the State of South Carolina. Thus, the Respondents' claims that GDI violated South Carolina's real estate licensing statutes is misplaced. If the long arm of South Carolina's real estate regulatory scheme never reached the phone calls placed and emails and text messages sent from Indiana to North Carolina or Florida, South Carolina's laws were never violated.

CONCLUSION

The Respondents' attempts to conceal their communications with the seller after GDI's introduction, and their acquisition of the property through a straw purchaser speak volumes.

Based upon the foregoing, GDI submits that the lower court should be reversed and that this matter should be remanded for entry of summary judgment in favor of GDI.

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