

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2014-001319

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SC Court of Appeals

Shannon C. McGrath and the Shannon C. McGrath 2005 Trust, Appellants,

v.

Thomas J. McGrath, TD Ameritrade, Inc., E*Trade Securities, LLC and
E*Trade Clearing, LLC, Defendants,

Of Whom Thomas J. McGrath is the Respondent.

RESPONDENT THOMAS J. MCGRATH'S MOTION TO DISMISS APPEAL

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Attorneys for Respondent
Thomas J. McGrath

Respondent Thomas J. McGrath (“Mr. McGrath”) hereby moves to dismiss the above-captioned appeal for lack of appellate jurisdiction because the notice of appeal was not timely served. The grounds for this Motion are as follows:

1. By order entered May 8, 2014, the Circuit Court dismissed Appellants’ complaint as to Mr. McGrath for lack of personal jurisdiction. (Order Granting Defendant Thomas J. McGrath’s Motion to Dismiss for Lack of Personal Jurisdiction (the “Order”), attached as Exhibit A.) Appellants did not file any Rule 59(e) or other post-judgment motions.

2. On May 14, 2014, Mr. McGrath’s counsel emailed a stamp-filed copy of the Order to Appellants’ counsel of record, Elizabeth Zeck, at the e-mail address that she registered in the Attorney Information System established by the South Carolina Supreme Court. (E-mail from Jeslyn Harvey, legal assistant to Susan Wall, to Elizabeth Zeck of May 14, 2014, with cover letter, stamp-filed Order and form 4, attached as Exhibit B; Elizabeth Zeck AIS Record, attached as Exhibit C.)

3. Under Rule 203(b)(1), SCACR, “[a] notice of appeal shall be served on all respondents **within thirty (30) days after receipt of written notice of entry of the order of judgment.**” Rule 203(b)(1), SCACR (emphasis added). As this Court has held, such notice need not be provided by the Circuit Court; rather, it is entirely proper – indeed, common – for notice of entry of an order to be provided by opposing counsel. *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 5-6, 524 S.E.2d 416, 418 (Ct. App. 1999) (holding that appellant’s time to serve notice of appeal began running upon appellant’s facsimile receipt of notice of entry of order from opposing counsel).

4. Under South Carolina law, serving a notice of appeal within the timeframe established by the rules is jurisdictional, and the appellate court has no authority to enlarge that time period or excuse a late filing. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) (“The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.”).

5. In the Supreme Court’s Order creating the Attorney Information System (the “AIS”), the Court ordered all attorneys in the State to register an e-mail address with the AIS and to keep that e-mail address up to date. (Supreme Court of South Carolina Order RE: Attorney Information System (the “AIS Order”), 2011-10-17-01, attached as Exhibit D.) The Court further ordered that “[t]he . . . e-mail address shown in the AIS **shall be used for all purposes of notifying and serving the attorney** or foreign legal consultant.” (AIS Order, Ex. D (emphasis added).)

6. Likewise, Rule 410(g), SCACR, establishes that members of the bar “have a continuing duty to verify and update the information contained in the AIS, and must ensure that the AIS information is current and accurate at all times.” Rule 410(e), SCACR, further provides that “[t]he . . . e-mail address shown in the AIS **shall be used for the purpose of notifying and serving the member** [of the bar].” Rule 410(e), SCACR (emphasis added).

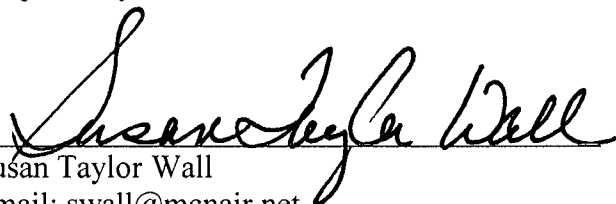
7. In this case, counsel of record for the Appellants was provided written notice of the entry of the Order, and a copy of the filed-stamped Order itself, on May 14, 2014, at the e-mail address that Appellants’ counsel registered in AIS, which email

address, under the Supreme Court's Order and the Appellate Rules, is proper "**for all purposes of notifying**" an attorney. (AIS Order, Ex. D (emphasis added); *see also* Rule 410(e), SCAR.) Appellants therefore received written notice of the entry of the Order on May 14, 2014, for purposes of Rule 203(b)(1), SCACR.

8. Appellants' deadline for serving a notice of appeal ran on June 13, 2014, which is thirty (30) days from May 14, 2014. By its own terms, however, the Notice of Appeal was not served until June 16, 2014. (Notice of Appeal, attached hereto as Exhibit E.) The Notice of Appeal is therefore late, and this Court lacks jurisdiction to consider the appeal. *Elam*, 361 S.C. at 14-15, 602 S.E.2d at 775. Accordingly, the appeal must be dismissed for lack of appellate jurisdiction.

WHEREFORE, Mr. McGrath respectfully requests that the Court DISMISS the above-captioned appeal for lack of appellate jurisdiction.

Respectfully submitted,



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THOMAS J. MCGRATH

June 25, 2014

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2014-001319

Shannon C. McGrath and the Shannon C. McGrath 2005 Trust,.....Appellants,

v.

Thomas J. McGrath, TD Ameritrade, Inc., E*Trade Securities, LLC and
E*Trade Clearing, LLC,.....Defendants,

Of Whom Thomas J. McGrath is theRespondent.

PROOF OF SERVICE

The undersigned hereby certifies that on June 25, 2014, a copy of **RESPONDENT THOMAS J. MCGRATH'S MOTION TO DISMISS APPEAL** was served on all counsel of record via U.S. Mail, postage prepaid and addressed as follows:

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) FOR THE NINTH JUDICIAL CIRCUIT

SHANNON C. MCGRATH, AND THE
SHANNON C. MCGRATH 2005 TRUST,

) CASE NO.: 2013-CP-10-000893
)
)

PLAINTIFFS,

) **ORDER GRANTING DEFENDANT
) THOMAS J. MCGRATH'S
) MOTION TO DISMISS FOR LACK
) OF PERSONAL JURISDICTION**
)

V.

THOMAS J. MCGRATH, TD AMERITRADE,
INC., E*TRADE SECURITIES, LLC AND
E*TRADE CLEARING, LLC,

DEFENDANTS.

FILED
MAY 1 - 8 PM 4: 12
CLERK OF COURT
THOMAS J. MCGRATH

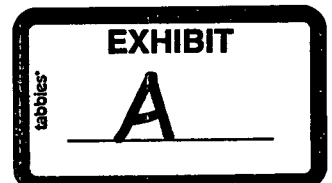
THIS MATTER came before the Court on Defendant Thomas J. McGrath's Motion to Dismiss. The Court held a hearing on the Motion on March 5, 2014 in which all parties were represented by counsel. Upon consideration of the arguments of counsel, memoranda of law, affidavits, and other materials submitted by the parties, the Court grants the Motion and dismisses Defendant Thomas J. McGrath from this case for lack of personal jurisdiction and improper service.

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FACTUAL BACKGROUND

A. Substantive Allegations

This case involves the Shannon C. McGrath 2005 Trust (the "Trust"). (Compl. at ¶ 2) Under the Trust instrument, the Trust was created in and is governed by the laws of the State of New Jersey. (*Id.*) Plaintiff's father, Michael McGrath ("Michael"), who is currently in federal prison for mortgage fraud, is the settlor of the Trust (known as the "Grantor" under New Jersey law). (*Id.*) The Original Trustees were Janet Rinaldi and Karina Coehlo. (*Id.*) Plaintiff is the



primary beneficiary of the Trust. (Trust Instrument art. II.) The Trust was purportedly funded with deposits of funds into the Trust's TD Ameritrade bank account (the source of these funds is not discussed in Plaintiff's Complaint). (Compl. at ¶ 12.) In 2009, the Original Trustees resigned, and Defendants Thomas J. McGrath ("Thomas"), Michael's brother and Plaintiff's uncle, agreed to serve as a Successor Trustee. (*Id.* at ¶ 11.)

Plaintiff alleges in her Complaint that in 2010, Thomas gave Michael the online name and password for the Trust's TD Ameritrade account. (*Id.* at ¶ 13.) According to Plaintiff, Michael then opened an account with E*Trade Clearing and wired approximately \$400,000 from the Trust's TD Ameritrade account to the new E*Trade account. (*Id.* at ¶¶ 14-15.) It is alleged that from this time until April 2011, Michael misappropriated virtually all of the Trust's assets. (*Id.* at ¶ 17.) Plaintiff brings breach of fiduciary duty, fraud, and South Carolina Securities Act claims against Thomas concerning his alleged role in the dissipation of Trust assets.

B. Thomas's Contacts with South Carolina

Thomas is a resident of New Jersey. (Affidavit of Thomas J. McGrath at ¶ 2). Based on the evidence submitted by the parties, it is clear that his connections to South Carolina are effectively non-existent:

- (1) He has never lived, worked, or maintained an office in South Carolina;
- (2) He has only passed through South Carolina while driving to Florida;
- (3) He has never owned any real or personal property in South Carolina;
- (4) He has never held a bank account or other assets in South Carolina;
- (5) He has never conducted or operated any business in South Carolina, or engaged in any business venture here;
- (6) He has never had any employees in South Carolina;
- (7) He has never sued anyone or, other than in this case, been sued in South

Carolina; and

- (8) He has never been a shareholder, investor, officer, or director of any business that transacted business in South Carolina.

(*Id.* at ¶¶ 2-8.) In addition, Thomas has never consented to an exercise of jurisdiction by any court in South Carolina and was not served with process in this case in South Carolina. (*Id.* at ¶¶ 22-23.) Likewise, as it relates to this case, all of the Trust assets managed by Thomas were located in New Jersey, and Thomas administered the Trust exclusively from New Jersey. (*Id.* at ¶ 17.)

Plaintiff's submissions do nothing to undercut these basic facts. As Plaintiff herself admits, during Thomas's tenure as Successor Trustee, the only connection between the Trust and South Carolina was that Plaintiff happened to attend college in South Carolina, and the Trust made payments for Plaintiff's tuition and other expenses, as expressly contemplated by the Trust instrument. (Affidavit of Shannon McGrath ¶¶ 4, 6.) Indeed, Plaintiff's affidavit focuses on *her own* contacts with South Carolina, not Thomas's. (*Id.*) As to Thomas, these coincidental contacts are not meaningful. Under the Trust instrument, Thomas would have made payments to Plaintiff and whatever educational institution Plaintiff attended, regardless of where Plaintiff and the institution were located. (Thomas Aff. ¶ 19.)

LEGAL STANDARD

Rule 12(b)(2), SCRPC, permits the Court to dismiss a nonresident defendant for lack of personal jurisdiction. "The party invoking personal jurisdiction over a nonresident bears the burden of proving the existence of jurisdiction." *Int'l Mariculture Resources v. Grant*, 336 S.C. 434, 437, 520 S.E.2d 160, 161 (Ct. App. 1999); *see also Allen v. Columbia Fin. Mgmt., Ltd.*, 297 S.C. 481, 484, 377 S.E.2d 352, 354 (Ct. App. 1988) (holding because the defendant challenged personal jurisdiction, the plaintiff bore the burden of showing the existence of personal

jurisdiction). Before trial, the plaintiff must “make a prima facie showing by pleadings and affidavits that the trial court should exercise personal jurisdiction” over the defendants. *Allen*, 297 S.C. at 484, 377 S.E.2d at 354.

“When a nonresident defendant attacks the allegations of a complaint based on jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). Here, the Court has carefully examined the affidavits and other evidence submitted by the parties and has relied on such evidence in determining that personal jurisdiction is lacking. Indeed, even if all of Plaintiff’s evidence is credited as true, the Court concludes that it lacks personal jurisdiction over Thomas.


ANALYSIS

Traditionally, courts conducted a two-step inquiry to determine, first, whether personal jurisdiction would lie under applicable long-arm statute, and, second, whether the assertion of personal jurisdiction comported with constitutional due process. In South Carolina, however, the long-arm statute reaches to the limits of due process, so “the sole question [is] whether the exercise of personal jurisdiction would violate due process.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005).

A plaintiff may attempt to demonstrate personal jurisdiction by two distinct avenues—general and specific jurisdiction. General jurisdiction is premised on a defendant’s overall contact with the forum state, and depends on a defendant maintaining “continuous and systematic” contacts with the state that are “so substantial and of such a nature as to justify suit against the defendant on causes of action arising from dealings entirely different from those activities.” *Cribb v. Spatholt*, 382 S.C. 475, 482, 676 S.E.2d 706, 710 (Ct. App. 2009) (citing

Int'l Shoe Co. v. Washington, 326 U.S. 310, 318 (1945)). Specific jurisdiction, on the other hand, arises from the defendant having sufficient contact with the forum *related to the claims at issue* that it has purposefully availed itself of the privilege of conducting business in the forum. *Pitts v. Fink*, 389 S.C. 156, 164-65, 698 S.E.2d 626, 630-31 (Ct. App. 2010).

In this case, the Court concludes that Thomas does not have the “continuous and systematic” contacts with South Carolina required to establish general jurisdiction, and he likewise has done nothing related to this case to purposefully avail himself of the privilege of conducting business in South Carolina. As a result, personal jurisdiction is lacking, and the claims against him must be dismissed.

 **A. Thomas Lacks the Continuous and Systematic Contact with South Carolina Required to Establish General Jurisdiction**

General jurisdiction arises when a defendant has contact with the forum that are “substantial, continuous, and systematic.” *Coggershall v. Reproductive Endocrine Assocs. of Charlotte*, 376 S.C. 12, 17, 655 S.E.2d 476, 479 (2007). South Carolina courts have held even relatively substantial contacts with South Carolina – including serving as many as 3,000 South Carolina customers, doing business with multiple South Carolina vendors, and certifying products that are routinely sold in South Carolina – are insufficient where the defendant does not have a regular and sustained practice of directing its activities at South Carolina. *See, e.g., Cockrell*, 363 S.C. at 495, 611 S.E.2d at 510 (certifying products regularly sold in South Carolina not enough); *Coggershall*, 376 S.C. at 17, 655 S.E.2d at 479 (selling to 3,000 South Carolina customers and doing business with multiple South Carolina vendors not enough).

In this case, the Court concludes that Thomas has no significant contacts with South Carolina. Indeed, the only contact that Plaintiffs argues is that, in 2009, Thomas’s employer registered him in South Carolina and other states as a securities broker. (Registration

Documents.) Thomas, however, was only registered for a period of three (3) months, during which time he did not utilize the registration, did not transact any business in South Carolina, and did not even recall that he was registered here. (*Id.*; Thomas Aff. ¶ 9.) Under these circumstances, the Court concludes that merely obtaining the securities registration is insufficient to establish jurisdiction. *See, e.g., Ratliff v. Cooper Labs., Inc.*, 444 F.2d 745, 748 (4th Cir. 1971).

B. Thomas Lacks the Minimum Contacts to Establish Specific Personal Jurisdiction, and Exercising Jurisdiction over Him Would Violate Traditional Notions of Fair Play and Substantial Justice

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For specific jurisdiction, due process requires that a non-resident defendant have sufficient minimum contacts with the forum and that the maintenance of the suit does not offend “traditional notions of fair play and substantial justice.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. A defendant has sufficient minimum contacts with the forum state if its contact are such that it could “reasonably anticipate being haled into court there.” *Id.* at 492, 611 S.E.2d at 508. Even if a plaintiff makes the required showing of sufficient minimum contacts, personal jurisdiction will not lie if its exercise would be unreasonable and contrary to concepts of fair play and substantial justice. *Id.*

1. Thomas Has No Substantial Contacts with South Carolina

To demonstrate sufficient minimum contacts, the plaintiff must prove that “the defendant directed his activities to residents of South Carolina and that the cause of action arises out of or relates to those activities.” *Cribb*, 382 S.C. at 484, 676 S.E.2d at 711. Here, the Court concludes that Plaintiff has failed to show that her cause of action against Thomas arose from Thomas’s activities in South Carolina.

It appears to the Court that the only real connection between the Trust and South Carolina

is that Plaintiff happens to live in South Carolina. This does not create personal jurisdiction, as the *plaintiff's* residence alone cannot establish that the *defendant* has sufficient contact with the forum. *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 625 (4th Cir. 1997). Rather, there must be evidence that the defendant intentionally directed his activities at the forum; otherwise, "jurisdiction would depend on a *plaintiff's* decision about where to establish residence," instead of on the *defendant's* contacts. *Id.* (emphasis in original). In similar cases, courts – including the Supreme Court of the United States – have held that the happenstance of where a trust beneficiary chooses to live does not, without some purposeful availment, establish personal jurisdiction over a non-resident trustee. *See, e.g., Hanson v. Denckla*, 357 U.S. 235, 254-55 (1958) (beneficiary's residence in forum insufficient to establish personal jurisdiction over trustee); *Conn v. ITT Aetna Fin. Co.*, 252 A.2d 184, 190-91 (R.I. 1969) (same); *Dreher v. Smithson*, 986 P.2d 721, 725 (Or. Ct. App. 1999 (same); *see also Walden v. Fiore*, 134 S.Ct. 1115, 1122 (2014) (emphasizing that "the plaintiff cannot be the only link between the defendant and the forum"). In this case, the Courts finds no evidence of Thomas purposefully directing any activities at South Carolina. To the contrary, South Carolina is nothing more than where Plaintiff chose to live. Plaintiff, therefore, falls short of establishing that Thomas has sufficient contacts with South Carolina to justify the exercise of personal jurisdiction over him.

2. **Forcing Thomas to Litigate in South Carolina Would Be Unreasonably Burdensome and Fundamentally Unfair**

Not only does Thomas not have sufficient minimum contacts with South Carolina under the law, the Court also concludes that exercising jurisdiction over him would violate traditional notions of fair play and substantial justice. In considering the fairness of exerting jurisdiction over an individual, courts consider:

- (1) the duration of the activity of the nonresident within the state;

- (2) the character and circumstances of the commission of the nonresident's acts;
- (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and
- (4) the State's interest in exercising jurisdiction.

Cockrell, 363 S.C. at 492, 611 S.E.2d at 508.

Here, the Court concludes that each factor weighs in favor of the dismissal of Plaintiff's Complaint. *First*, as set forth in Thomas's affidavit, he did not engage in any substantial activity in South Carolina. *Second*, concerning the character and circumstances of Thomas's alleged acts, any connection to South Carolina appears to be pure happenstance. The Trust instrument does not mention South Carolina or require any action by the trustee in South Carolina. It merely requires that the trustee pay benefits to Plaintiff, wherever she may choose to live.

Third, the bulk of the parties, evidence, and witnesses appear to be located in New Jersey, where the Trust was formed and maintained and where the key players resided at the time the alleged actions set forth in the Complaint took place. In addition, the evidence regarding the source of the money used to fund the trust (which may have been fraudulent) is also located in New Jersey. The only tie this matter appears to have to South Carolina is Plaintiff's alleged status as a new South Carolina resident. Plaintiff's residence should not trump the gross inconvenience to all other parties in litigating what is plainly a New Jersey dispute in South Carolina. Moreover, the inconvenience to Thomas of having to litigate in South Carolina would be extreme. As set forth in his affidavit (and not rebutted by Plaintiff), he is a man of modest means with three young children and substantial child care responsibilities. He does not have the means or ability to participate in protracted litigation this far away from home, and, given the matter's more than substantial connections to New Jersey, he should not be forced to do so.

Fourth, South Carolina has no significant interest in this matter. It involves claims

arising from the alleged dissipation of trust funds obtained in New Jersey, allegedly taken from a New Jersey trust, by a New Jersey resident, from New Jersey bank accounts, because of the purported negligence of a New Jersey successor trustee administering the Trust in New Jersey. "South Carolina's interest in providing redress for its citizens was diminished when 'nothing which [was] the subject of this litigation ha[d] taken place in South Carolina.'" *Cribb*, 382 S.C. at 489, 676 S.E.2d at 714. Moreover, as set forth in the Trust Agreement and as alleged by Plaintiff in the Complaint, the Trust – and therefore this case – is governed by New Jersey Law. (Complaint at ¶ 2, Ex. 1.) Our Supreme Court has held that choice of law provisions are "relevant in deciding whether to exercise personal jurisdiction," *Coggeshall*, 376 S.C. at 20-21, 655 S.E.2d at 480, because it often makes little sense for a South Carolina court to decide a foreign dispute under foreign law. In short, New Jersey has the superior interest in this case.

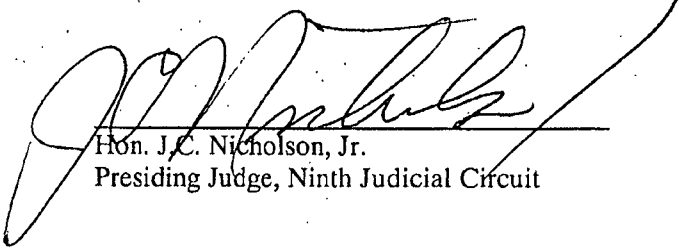
In light of the minimal and coincidental connection between this matter and South Carolina, the substantial prejudice to Thomas in forcing him to litigate in South Carolina, and South Carolina's lack of any interest in deciding this New Jersey dispute, the Court concludes that it would be fundamentally unfair and contrary to Thomas's due process rights to force him to litigate in South Carolina.¹

¹ Because personal jurisdiction is lacking, the Court also concludes that Plaintiff failed to effect proper services on Thomas, and the Complaint is therefore dismissed as against Thomas under Rule 12(b)(5), SCRPC, as well. Service of process on a defendant located beyond the territorial limits of the state is permitted only when a statute so provides. Rule 4(f), SCRPC. Pursuant to S.C. Code Ann. § 36-2-804, service may be made outside the State of South Carolina, only when there is personal jurisdiction over a non-resident defendant as set forth in S.C. Code Ann. §§ 36-2-802 and 803. Because there is no personal jurisdiction over Thomas as set forth above, service of process upon him by certified mail, return receipt requested, was improper.

CONCLUSION

For the reasons set forth above and all others present in the record, the Court GRANTS Defendant Thomas J. McGrath's Motion to Dismiss and hereby DISMISSES all causes of action as against him.

AND IT IS SO ORDERED.



Hon. J.C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

This 5 of May, 2014

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2013- CP-10-0893

Shannon C. McGrath, et al.
 PLAINTIFF(S)

Thomas J. McGrath, et al.
 DEFENDANT(S)

Submitted by: _____ Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : This order ends the case only as to Defendant Thomas J. McGrath.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
 Circuit Court Judge

2117
 Judge Code

5/5/14
 Date

FILED
 2014 MAY -8 PM 4:12
 JULIE J. ARMSTRONG
 CLERK OF COURT

Harvey, Jeslyn

From: Harvey, Jeslyn
Sent: Wednesday, May 14, 2014 3:30 PM
To: 'ezeck@willoughbyhoefer.com'; Ambler Jr., Robert R.; Hawk, John; Atwood, Catherine; 'crawfordc@gtlaw.com'; 'kappesk@gtlaw.com'
Cc: Wall, Susan; Frampton, Hal
Subject: Shannon C. McGrath, et al. vs. Thomas J. McGrath, et al.; Case No.: 2013-CP-10-000893

Please see attached. Thank you.

MCNAIR
ATTORNEYS

Jeslyn Harvey

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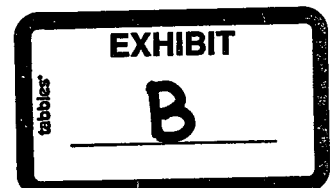
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VCard | **Web site**



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ATTORNEYS

May 14, 2014

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VIA EMAIL

Elizabeth Zeck, Esq.
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Re: *Shannon C. McGrath, and The Shannon C. McGrath 2005 Trust vs.
Thomas J. McGrath, TD Ameritrade, Inc., E*Trade Securities, LLC and
E*Trade Clearing, LLC*
Case No.: 2013-CP-10-000893

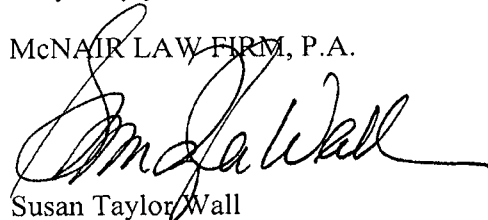
Dear Elizabeth:

Enclosed for service upon you, please find a stamp-filed copy of the Order Granting Defendant Thomas J. McGrath's Motion to Dismiss for Lack of Personal Jurisdiction in the above-referenced case.

With kind regards, I am

Very truly yours,

McNAIR LAW FIRM, P.A.



Susan Taylor Wall

STW:jsh
Enclosure

cc: Catherine R. Atwood, Esq. (w/ Enclosure, via E-mail)
Charles Harmon Crawford, III (w/ Enclosure, via E-mail)
Robert R. Ambler, Jr., Esq. (w/ Enclosure, via E-mail)
John Hawk, Esq. (w/ Enclosure, via E-mail)
Kurt Kappes, Esq. (w/ Enclosure, via E-mail)
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CHARLESTON 354874v1

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

SHANNON C. MCGRATH, AND THE
SHANNON C. MCGRATH 2005 TRUST,

PLAINTIFFS,

V.

THOMAS J. MCGRATH, TD AMERITRADE,
INC., E*TRADE SECURITIES, LLC AND
E*TRADE CLEARING, LLC,

DEFENDANTS.

) IN THE COURT OF COMMON PLEAS
)
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2013-CP-10-000893
)
)

) **ORDER GRANTING DEFENDANT**
) **THOMAS J. MCGRATH'S**
) **MOTION TO DISMISS FOR LACK**
) **OF PERSONAL JURISDICTION**
)

FILED
MAY 18 PM 4:12
LIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER came before the Court on Defendant Thomas J. McGrath's Motion to Dismiss. The Court held a hearing on the Motion on March 5, 2014 in which all parties were represented by counsel. Upon consideration of the arguments of counsel, memoranda of law, affidavits, and other materials submitted by the parties, the Court grants the Motion and dismisses Defendant Thomas J. McGrath from this case for lack of personal jurisdiction and improper service.

FACTUAL BACKGROUND

A. Substantive Allegations

This case involves the Shannon C. McGrath 2005 Trust (the "Trust"). (Compl. at ¶ 2) Under the Trust instrument, the Trust was created in and is governed by the laws of the State of New Jersey. (*Id.*) Plaintiff's father, Michael McGrath ("Michael"), who is currently in federal prison for mortgage fraud, is the settlor of the Trust (known as the "Grantor" under New Jersey law). (*Id.*) The Original Trustees were Janet Rinaldi and Karina Coehlo. (*Id.*) Plaintiff is the

primary beneficiary of the Trust. (Trust Instrument art. II.) The Trust was purportedly funded with deposits of funds into the Trust's TD Ameritrade bank account (the source of these funds is not discussed in Plaintiff's Complaint). (Compl. at ¶ 12.) In 2009, the Original Trustees resigned, and Defendants Thomas J. McGrath ("Thomas"), Michael's brother and Plaintiff's uncle, agreed to serve as a Successor Trustee. (*Id.* at ¶ 11.)

Plaintiff alleges in her Complaint that in 2010, Thomas gave Michael the online name and password for the Trust's TD Ameritrade account. (*Id.* at ¶ 13.) According to Plaintiff, Michael then opened an account with E*Trade Clearing and wired approximately \$400,000 from the Trust's TD Ameritrade account to the new E*Trade account. (*Id.* at ¶¶ 14-15.) It is alleged that from this time until April 2011, Michael misappropriated virtually all of the Trust's assets. (*Id.* at ¶ 17.) Plaintiff brings breach of fiduciary duty, fraud, and South Carolina Securities Act claims against Thomas concerning his alleged role in the dissipation of Trust assets.

B. Thomas's Contacts with South Carolina

Thomas is a resident of New Jersey. (Affidavit of Thomas J. McGrath at ¶ 2). Based on the evidence submitted by the parties, it is clear that his connections to South Carolina are effectively non-existent:

- (1) He has never lived, worked, or maintained an office in South Carolina;
- (2) He has only passed through South Carolina while driving to Florida;
- (3) He has never owned any real or personal property in South Carolina;
- (4) He has never held a bank account or other assets in South Carolina;
- (5) He has never conducted or operated any business in South Carolina, or engaged in any business venture here;
- (6) He has never had any employees in South Carolina;
- (7) He has never sued anyone or, other than in this case, been sued in South

Carolina; and

- (8) He has never been a shareholder, investor, officer, or director of any business that transacted business in South Carolina.

(*Id.* at ¶¶ 2-8.) In addition, Thomas has never consented to an exercise of jurisdiction by any court in South Carolina and was not served with process in this case in South Carolina. (*Id.* at ¶¶ 22-23.) Likewise, as it relates to this case, all of the Trust assets managed by Thomas were located in New Jersey, and Thomas administered the Trust exclusively from New Jersey. (*Id.* at ¶ 17.)

Plaintiff's submissions do nothing to undercut these basic facts. As Plaintiff herself admits, during Thomas's tenure as Successor Trustee, the only connection between the Trust and South Carolina was that Plaintiff happened to attend college in South Carolina, and the Trust made payments for Plaintiff's tuition and other expenses, as expressly contemplated by the Trust instrument. (Affidavit of Shannon McGrath ¶¶ 4, 6.) Indeed, Plaintiff's affidavit focuses on *her own* contacts with South Carolina, not Thomas's. (*Id.*) As to Thomas, these coincidental contacts are not meaningful. Under the Trust instrument, Thomas would have made payments to Plaintiff and whatever educational institution Plaintiff attended, regardless of where Plaintiff and the institution were located. (Thomas Aff. ¶ 19.)

LEGAL STANDARD

Rule 12(b)(2), SCRCP, permits the Court to dismiss a nonresident defendant for lack of personal jurisdiction. "The party invoking personal jurisdiction over a nonresident bears the burden of proving the existence of jurisdiction." *Int'l Mariculture Resources v. Grant*, 336 S.C. 434, 437, 520 S.E.2d 160, 161 (Ct. App. 1999); *see also Allen v. Columbia Fin. Mgmt., Ltd.*, 297 S.C. 481, 484, 377 S.E.2d 352, 354 (Ct. App. 1988) (holding because the defendant challenged personal jurisdiction, the plaintiff bore the burden of showing the existence of personal

jurisdiction). Before trial, the plaintiff must “make a prima facie showing by pleadings and affidavits that the trial court should exercise personal jurisdiction” over the defendants. *Allen*, 297 S.C. at 484, 377 S.E.2d at 354.

“When a nonresident defendant attacks the allegations of a complaint based on jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). Here, the Court has carefully examined the affidavits and other evidence submitted by the parties and has relied on such evidence in determining that personal jurisdiction is lacking. Indeed, even if all of Plaintiff’s evidence is credited as true, the Court concludes that it lacks personal jurisdiction over Thomas.


ANALYSIS

Traditionally, courts conducted a two-step inquiry to determine, first, whether personal jurisdiction would lie under applicable long-arm statute, and, second, whether the assertion of personal jurisdiction comported with constitutional due process. In South Carolina, however, the long-arm statute reaches to the limits of due process, so “the sole question [is] whether the exercise of personal jurisdiction would violate due process.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005).

A plaintiff may attempt to demonstrate personal jurisdiction by two distinct avenues—general and specific jurisdiction. General jurisdiction is premised on a defendant’s overall contact with the forum state, and depends on a defendant maintaining “continuous and systematic” contacts with the state that are “so substantial and of such a nature as to justify suit against the defendant on causes of action arising from dealings entirely different from those activities.” *Cribb v. Spatholt*, 382 S.C. 475, 482, 676 S.E.2d 706, 710 (Ct. App. 2009) (citing

Int'l Shoe Co. v. Washington, 326 U.S. 310, 318 (1945)). Specific jurisdiction, on the other hand, arises from the defendant having sufficient contact with the forum *related to the claims at issue* that it has purposefully availed itself of the privilege of conducting business in the forum. *Pitts v. Fink*, 389 S.C. 156, 164-65, 698 S.E.2d 626, 630-31 (Ct. App. 2010).

In this case, the Court concludes that Thomas does not have the “continuous and systematic” contacts with South Carolina required to establish general jurisdiction, and he likewise has done nothing related to this case to purposefully avail himself of the privilege of conducting business in South Carolina. As a result, personal jurisdiction is lacking, and the claims against him must be dismissed.

 **A. Thomas Lacks the Continuous and Systematic Contact with South Carolina Required to Establish General Jurisdiction**

General jurisdiction arises when a defendant has contact with the forum that are “substantial, continuous, and systematic.” *Coggershall v. Reproductive Endocrine Assocs. of Charlotte*, 376 S.C. 12, 17, 655 S.E.2d 476, 479 (2007). South Carolina courts have held even relatively substantial contacts with South Carolina – including serving as many as 3,000 South Carolina customers, doing business with multiple South Carolina vendors, and certifying products that are routinely sold in South Carolina – are insufficient where the defendant does not have a regular and sustained practice of directing its activities at South Carolina. *See, e.g., Cockrell*, 363 S.C. at 495, 611 S.E.2d at 510 (certifying products regularly sold in South Carolina not enough); *Coggershall*, 376 S.C. at 17, 655 S.E.2d at 479 (selling to 3,000 South Carolina customers and doing business with multiple South Carolina vendors not enough).

In this case, the Court concludes that Thomas has no significant contacts with South Carolina. Indeed, the only contact that Plaintiffs argues is that, in 2009, Thomas’s employer registered him in South Carolina and other states as a securities broker. (Registration

Documents.) Thomas, however, was only registered for a period of three (3) months, during which time he did not utilize the registration, did not transact any business in South Carolina, and did not even recall that he was registered here. (*Id.*; Thomas Aff. ¶ 9.) Under these circumstances, the Court concludes that merely obtaining the securities registration is insufficient to establish jurisdiction. *See, e.g., Ratliff v. Cooper Labs., Inc.*, 444 F.2d 745, 748 (4th Cir. 1971).

B. Thomas Lacks the Minimum Contacts to Establish Specific Personal Jurisdiction, and Exercising Jurisdiction over Him Would Violate Traditional Notions of Fair Play and Substantial Justice

gm
For specific jurisdiction, due process requires that a non-resident defendant have sufficient minimum contacts with the forum and that the maintenance of the suit does not offend “traditional notions of fair play and substantial justice.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. A defendant has sufficient minimum contacts with the forum state if its contact are such that it could “reasonably anticipate being haled into court there.” *Id.* at 492, 611 S.E.2d at 508. Even if a plaintiff makes the required showing of sufficient minimum contacts, personal jurisdiction will not lie if its exercise would be unreasonable and contrary to concepts of fair play and substantial justice. *Id.*

1. Thomas Has No Substantial Contacts with South Carolina

To demonstrate sufficient minimum contacts, the plaintiff must prove that “the defendant directed his activities to residents of South Carolina and that the cause of action arises out of or relates to those activities.” *Cribb*, 382 S.C. at 484, 676 S.E.2d at 711. Here, the Court concludes that Plaintiff has failed to show that her cause of action against Thomas arose from Thomas’s activities in South Carolina.

It appears to the Court that the only real connection between the Trust and South Carolina

is that Plaintiff happens to live in South Carolina. This does not create personal jurisdiction, as the *plaintiff's* residence alone cannot establish that the *defendant* has sufficient contact with the forum. *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 625 (4th Cir. 1997). Rather, there must be evidence that the defendant intentionally directed his activities at the forum; otherwise, "jurisdiction would depend on a *plaintiff's* decision about where to establish residence," instead of on the *defendant's* contacts. *Id.* (emphasis in original). In similar cases, courts – including the Supreme Court of the United States – have held that the happenstance of where a trust beneficiary chooses to live does not, without some purposeful availment, establish personal jurisdiction over a non-resident trustee. *See, e.g., Hanson v. Denckla*, 357 U.S. 235, 254-55 (1958) (beneficiary's residence in forum insufficient to establish personal jurisdiction over trustee); *Conn v. ITT Aetna Fin. Co.*, 252 A.2d 184, 190-91 (R.I. 1969) (same); *Dreher v. Smithson*, 986 P.2d 721, 725 (Or. Ct. App. 1999 (same)); *see also Walden v. Fiore*, 134 S.Ct. 1115, 1122 (2014) (emphasizing that "the plaintiff cannot be the only link between the defendant and the forum"). In this case, the Courts finds no evidence of Thomas purposefully directing any activities at South Carolina. To the contrary, South Carolina is nothing more than where Plaintiff chose to live. Plaintiff, therefore, falls short of establishing that Thomas has sufficient contacts with South Carolina to justify the exercise of personal jurisdiction over him.

2. **Forcing Thomas to Litigate in South Carolina Would Be Unreasonably Burdensome and Fundamentally Unfair**

Not only does Thomas not have sufficient minimum contacts with South Carolina under the law, the Court also concludes that exercising jurisdiction over him would violate traditional notions of fair play and substantial justice. In considering the fairness of exerting jurisdiction over an individual, courts consider:

- (1) the duration of the activity of the nonresident within the state;

- (2) the character and circumstances of the commission of the nonresident's acts;
- (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and
- (4) the State's interest in exercising jurisdiction.

Cockrell, 363 S.C. at 492, 611 S.E.2d at 508.

Here, the Court concludes that each factor weighs in favor of the dismissal of Plaintiff's Complaint. *First*, as set forth in Thomas's affidavit, he did not engage in any substantial activity in South Carolina. *Second*, concerning the character and circumstances of Thomas's alleged acts, any connection to South Carolina appears to be pure happenstance. The Trust instrument does not mention South Carolina or require any action by the trustee in South Carolina. It merely requires that the trustee pay benefits to Plaintiff, wherever she may choose to live.

Third, the bulk of the parties, evidence, and witnesses appear to be located in New Jersey, where the Trust was formed and maintained and where the key players resided at the time the alleged actions set forth in the Complaint took place. In addition, the evidence regarding the source of the money used to fund the trust (which may have been fraudulent) is also located in New Jersey. The only tie this matter appears to have to South Carolina is Plaintiff's alleged status as a new South Carolina resident. Plaintiff's residence should not trump the gross inconvenience to all other parties in litigating what is plainly a New Jersey dispute in South Carolina. Moreover, the inconvenience to Thomas of having to litigate in South Carolina would be extreme. As set forth in his affidavit (and not rebutted by Plaintiff), he is a man of modest means with three young children and substantial child care responsibilities. He does not have the means or ability to participate in protracted litigation this far away from home, and, given the matter's more than substantial connections to New Jersey, he should not be forced to do so.

Fourth, South Carolina has no significant interest in this matter. It involves claims

arising from the alleged dissipation of trust funds obtained in New Jersey, allegedly taken from a New Jersey trust, by a New Jersey resident, from New Jersey bank accounts, because of the purported negligence of a New Jersey successor trustee administering the Trust in New Jersey. "South Carolina's interest in providing redress for its citizens was diminished when 'nothing which [was] the subject of this litigation ha[d] taken place in South Carolina.'" *Cribb*, 382 S.C. at 489, 676 S.E.2d at 714. Moreover, as set forth in the Trust Agreement and as alleged by Plaintiff in the Complaint, the Trust – and therefore this case – is governed by New Jersey Law. (Complaint at ¶ 2, Ex. 1.) Our Supreme Court has held that choice of law provisions are "relevant in deciding whether to exercise personal jurisdiction," *Coggeshall*, 376 S.C. at 20-21, 655 S.E.2d at 480, because it often makes little sense for a South Carolina court to decide a foreign dispute under foreign law. In short, New Jersey has the superior interest in this case.

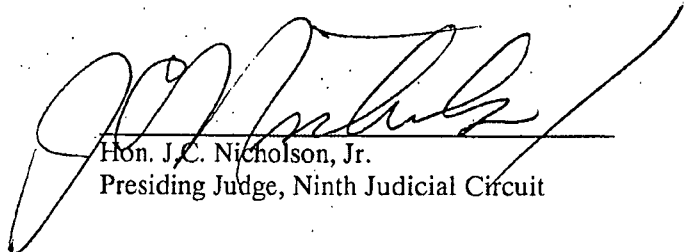
In light of the minimal and coincidental connection between this matter and South Carolina, the substantial prejudice to Thomas in forcing him to litigate in South Carolina, and South Carolina's lack of any interest in deciding this New Jersey dispute, the Court concludes that it would be fundamentally unfair and contrary to Thomas's due process rights to force him to litigate in South Carolina.¹

¹ Because personal jurisdiction is lacking, the Court also concludes that Plaintiff failed to effect proper services on Thomas, and the Complaint is therefore dismissed as against Thomas under Rule 12(b)(5), SCRPC, as well. Service of process on a defendant located beyond the territorial limits of the state is permitted only when a statute so provides. Rule 4(f), SCRPC. Pursuant to S.C. Code Ann. § 36-2-804, service may be made outside the State of South Carolina, only when there is personal jurisdiction over a non-resident defendant as set forth in S.C. Code Ann. §§ 36-2-802 and 803. Because there is no personal jurisdiction over Thomas as set forth above, service of process upon him by certified mail, return receipt requested, was improper.

CONCLUSION

For the reasons set forth above and all others present in the record, the Court GRANTS Defendant Thomas J. McGrath's Motion to Dismiss and hereby DISMISSES all causes of action as against him.

AND IT IS SO ORDERED.



Hon. J.C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

This 5 of May, 2014

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2013- CP-10-0893

Shannon C. McGrath, et al.
PLAINTIFF(S)

Thomas J. McGrath, et al.
DEFENDANT(S)

Submitted by: _____ Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

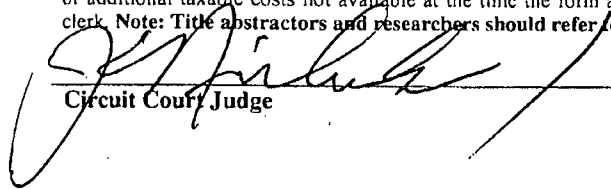
This order ends does not end the case.
Additional Information for the Clerk : This order ends the case only as to Defendant Thomas J. McGrath.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: _____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2117
Judge Code

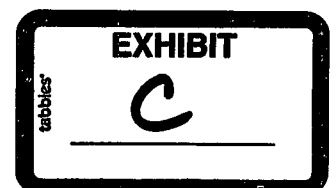
5/15/14
Date

FILED
2014 MAY -8 PM 4:12
JULIE J. ARMSTRONG
CLERK OF COURT

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SC Admission Date: June 13, 1995
SC Bar Membership Class: Regular Member
SC Bar Membership Status: Good Standing

New Search



2011-10-17-01

The Supreme Court of South Carolina

RE: Attorney Information System Amendments
and Requirements

ORDER



The South Carolina Judicial Department has completed the deployment of the statewide case management system at the circuit court and magistrate court levels in all 46 counties. Development of a case management system for the family court is currently in progress. Additionally, the Department is developing a new appellate court case management system to be used at the Supreme Court of South Carolina and the South Carolina Court of Appeals, and has begun preparing for the electronic filing of court documents in the future. As these technology initiatives have progressed, the need for accurate and up-to-date information about lawyers has become more and more critical for the day to day operations of the courts at all levels.

To meet this need, the South Carolina Judicial Department has developed the Attorney Information System (AIS) to store and manage contact information for all persons admitted to practice law in South Carolina. In addition to providing accurate information regarding members of the Bar, the system allows members to make changes to their contact information using a web-based portal, thereby ensuring that their contact information is always current. Additionally, this same system will be used to maintain information on those persons licensed in South Carolina as foreign legal consultants.

Rule 410 of the South Carolina Appellate Court Rules is hereby amended to read as shown in the attachment to this order. These changes are effective immediately.

Under the amended rule, lawyers and foreign legal consultants are responsible for verifying and updating their contact information on the AIS. This must occur at least once a year prior to paying the annual license fee, or within five (5) days of a change in any of the information shown on the AIS. Further, as persons are admitted or licensed as lawyers or foreign legal consultants, their information will be added to the AIS, and these new admittees or licensees must verify and update their AIS information within five (5) days of being admitted or licensed.

Each attorney and foreign legal consultant must, at a minimum, have a mailing address, an e-mail address and a phone number listed on the AIS. The mailing and e-mail address shown in the AIS shall be used for all purposes of notifying and serving the attorney or foreign legal consultant.

To facilitate the transition to the AIS, attorneys admitted to practice law in this State (including those holding limited certificates) and foreign legal consultants licensed in this State shall, by November 18, 2011, log-on, verify, and update their contact information on the AIS. Instructions for doing so will be sent out by separate correspondence, and this correspondence will include

the individual account name and unique password for initial log-on to the AIS. At a minimum, the attorney or foreign legal consultant shall ensure that his or her contact information in the AIS includes a mailing address, an e-mail address, and a telephone or cell phone number, and that this information is current and accurate. Attorneys and foreign legal consultants who have not logged-on and verified and updated their contact information will not be allowed to pay their license fee for 2012 until they have done so.

IT IS SO ORDERED.

s/Jean H. Toal C.J.

s/Costa M. Pleicones J.

s/Donald W. Beatty J.

s/John W. Kittredge J.

s/Kaye G. Hearn J.

Columbia, South Carolina
October 17, 2011

**RULE 410
SOUTH CAROLINA BAR**

(a) Name. There is hereby created and established an organization to be known as the South Carolina Bar.

(b) Purposes. The purposes of the organization shall be to uphold and defend the Constitution of the United States and the Constitution of the State of South Carolina; to protect, and maintain respect for, representative government; to continually improve the administration of justice throughout the State; to require the highest standards of ethical and professional conduct, and uphold the integrity and honor of the legal profession; to advance the science of jurisprudence; to promote consistent high quality of legal education and legal services to the public; to apply the knowledge, experience and ability of the legal profession to the promotion of the public good; to encourage goodwill and respect for integrity and excellence in public service among the members of the legal profession and the public; to perform any additional purposes and duties assigned to it by the Supreme Court of South Carolina; and to promote and correlate such policies and activities of the Bar as fall within these purposes in the interest of the legal profession and the public.

(c) Duties and Powers.

- (1)** The duties of the South Carolina Bar shall be to faithfully carry out its stated purposes as set forth in this rule as may be amended from time to time, with the powers as shall be reasonably necessary and proper for the carrying out of these purposes, including the power to adopt, and amend as necessary, the Bylaws by which it shall be governed, to establish classification of memberships, to recommend amendments or additions to this rule and to the Constitution approved by this Court to be effective upon formation of the South Carolina Bar, and to recommend changes in the license fees to be charged the members thereof.

- (2) The annual license fee for active members who have been admitted to practice law in this State or any other jurisdiction for three years or more shall be \$245.00 plus the amount specified in (3) below. The license fee for all other members shall be in lesser amounts as may be provided for in the Bylaws of the South Carolina Bar plus the amount specified in (3) below. The license fee shall be payable on or before January 1st of each year. All income and assets shall be handled separately by the South Carolina Bar, as prescribed in its Constitution and Bylaws.
- (3) For each of the listed classes of membership, the following additional license fee shall be paid:
- (A) Active Members (less than three years) - \$20.00
 - (B) Active Members (three years or more) - \$50.00
 - (C) Judicial Members - \$50.00
 - (D) Inactive Members - \$20.00
 - (E) Military Members - \$20.00
 - (F) Limited Certificates - \$20.00

The funds generated from this additional fee shall be placed in a separate account by the South Carolina Bar and shall be disbursed as directed by the Supreme Court to help defray the costs of operating the Commission on Judicial Conduct, the Commission on Lawyer Conduct and the Office of Disciplinary Counsel.

(d) Membership Required. No person shall engage in the practice of law in the State of South Carolina who is not licensed by this Court and a member in good standing of the South Carolina Bar except as otherwise provided in the rules of this Court.

(e) Attorney Information System (AIS). The AIS is a web-based system developed by the South Carolina Judicial Department to maintain and update information regarding members of the South Carolina Bar. Members use this system, which is accessed using a user name and password, to verify and update their individual contact information. The mailing and e-mail address shown in the AIS shall be used for all purposes of notifying and serving the member.

(f) Enrollment of Members and Duties Upon Enrollment. Every person admitted to the practice of law in South Carolina shall be added to the AIS immediately upon their admission. The Clerk of the Supreme Court is authorized to release information from the admissions/application records as necessary to populate the data fields in the AIS. Each new member shall verify and update his or her information in the AIS within five (5) days of being admitted or licensed. Additionally, the South Carolina Bar may require a new member to provide additional information on a form provided by the South Carolina Bar.

(g) Duty of Members to Verify and Update the AIS. Persons admitted to practice law in South Carolina shall have a continuing duty to verify and update their information contained in the AIS, and must ensure that the AIS information is current and accurate at all times. At a minimum, the contact information listed on the AIS must include a mailing address, an e-mail address and a telephone number. Members must update their contact information on the AIS within five (5) days of any change. Additionally, members must verify and update all of their information prior to paying their bar license fees every year. For those fields that the member cannot correct or update using the AIS, the member will make and submit a discrepancy report

on the AIS so that the matter can be resolved. Members who have resigned, been disbarred or suspended, or whose admission or license has otherwise been terminated, and who do not intend to ever seek reinstatement or readmission, are not required to update their information.

(h) Foreign Legal Consultants.

(1) Duty to Verify and Update the AIS. While not members of the South Carolina Bar, persons who are licensed as foreign legal consultants under Rule 424, SCACR, shall be added to the AIS immediately upon their licensing, and the Clerk of the Supreme Court is authorized to release information from the admissions/application records as necessary to populate the data fields in the AIS. Foreign legal consultants shall have the same duty to update and verify their information on the AIS as specified for members under (f) and (g) above.

(2) License Fees. Foreign Legal Consultants shall pay a license fee of \$295 to the South Carolina Bar by January 1st. Fifty dollars of this fee shall be placed in the separate account referenced in (c)(3) above to be disbursed as directed by the Supreme Court to help defray the costs of operating the Commission on Judicial Conduct, the Commission on Lawyer Conduct, and the Office of Disciplinary Counsel.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2013-CP-10-0893

Shannon C. McGrath and the Shannon C. McGrath 2005 Trust,

Appellants,

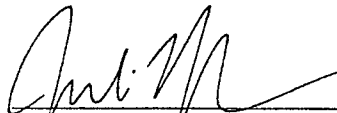
v.

Thomas J. McGrath, TD Ameritrade, Inc., E*Trade Securities, LLC and E*Trade
Clearing, LLC, Defendants,

Of whom Thomas J. McGrath is the Respondent.

NOTICE OF APPEAL

Shannon C. McGrath and the Shannon C. McGrath 2005 Trust appeal the order of the Honorable J.C. Nicholson, Jr. dated May 8, 2014, granting Thomas J. McGrath's Motion to Dismiss. Appellant received written notice of entry of this order on May 15, 2014.



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June 16, 2014



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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) FOR THE NINTH JUDICIAL CIRCUIT

SHANNON C. MCGRATH, AND THE
SHANNON C. MCGRATH 2005 TRUST,

) CASE NO.: 2013-CP-10-000893
)
)

PLAINTIFFS,

V.

) ORDER GRANTING DEFENDANT
) THOMAS J. MCGRATH'S
) MOTION TO DISMISS FOR LACK
) OF PERSONAL JURISDICTION
)

THOMAS J. MCGRATH, TD AMERITRADE,
INC., E*TRADE SECURITIES, LLC AND
E*TRADE CLEARING, LLC,

DEFENDANTS.

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CLERK OF COURT

THIS MATTER came before the Court on Defendant Thomas J. McGrath's Motion to Dismiss. The Court held a hearing on the Motion on March 5, 2014 in which all parties were represented by counsel. Upon consideration of the arguments of counsel, memoranda of law, affidavits, and other materials submitted by the parties, the Court grants the Motion and dismisses Defendant Thomas J. McGrath from this case for lack of personal jurisdiction and improper service.

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FACTUAL BACKGROUND

A. Substantive Allegations

This case involves the Shannon C. McGrath 2005 Trust (the "Trust"). (Compl. at ¶ 2) Under the Trust instrument, the Trust was created in and is governed by the laws of the State of New Jersey. (*Id.*) Plaintiff's father, Michael McGrath ("Michael"), who is currently in federal prison for mortgage fraud, is the settlor of the Trust (known as the "Grantor" under New Jersey law). (*Id.*) The Original Trustees were Janet Rinaldi and Karina Coehlo. (*Id.*) Plaintiff is the

primary beneficiary of the Trust. (Trust Instrument art. II.) The Trust was purportedly funded with deposits of funds into the Trust's TD Ameritrade bank account (the source of these funds is not discussed in Plaintiff's Complaint). (Compl. at ¶ 12.) In 2009, the Original Trustees resigned, and Defendants Thomas J. McGrath ("Thomas"), Michael's brother and Plaintiff's uncle, agreed to serve as a Successor Trustee. (*Id.* at ¶ 11.)

Plaintiff alleges in her Complaint that in 2010, Thomas gave Michael the online name and password for the Trust's TD Ameritrade account. (*Id.* at ¶ 13.) According to Plaintiff, Michael then opened an account with E*Trade Clearing and wired approximately \$400,000 from the Trust's TD Ameritrade account to the new E*Trade account. (*Id.* at ¶¶ 14-15.) It is alleged that from this time until April 2011, Michael misappropriated virtually all of the Trust's assets. (*Id.* at ¶ 17.) Plaintiff brings breach of fiduciary duty, fraud, and South Carolina Securities Act claims against Thomas concerning his alleged role in the dissipation of Trust assets.

B. Thomas's Contacts with South Carolina

Thomas is a resident of New Jersey. (Affidavit of Thomas J. McGrath at ¶ 2). Based on the evidence submitted by the parties; it is clear that his connections to South Carolina are effectively non-existent:

- (1) He has never lived, worked, or maintained an office in South Carolina;
- (2) He has only passed through South Carolina while driving to Florida;
- (3) He has never owned any real or personal property in South Carolina;
- (4) He has never held a bank account or other assets in South Carolina;
- (5) He has never conducted or operated any business in South Carolina, or engaged in any business venture here;
- (6) He has never had any employees in South Carolina;
- (7) He has never sued anyone or, other than in this case, been sued in South

Carolina; and

- (8) He has never been a shareholder, investor, officer, or director of any business that transacted business in South Carolina.

(*Id.* at ¶¶ 2-8.) In addition, Thomas has never consented to an exercise of jurisdiction by any court in South Carolina and was not served with process in this case in South Carolina. (*Id.* at ¶¶ 22-23.) Likewise, as it relates to this case, all of the Trust assets managed by Thomas were located in New Jersey, and Thomas administered the Trust exclusively from New Jersey. (*Id.* at ¶ 17.)

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Plaintiff's submissions do nothing to undercut these basic facts. As Plaintiff herself admits, during Thomas's tenure as Successor Trustee, the only connection between the Trust and South Carolina was that Plaintiff happened to attend college in South Carolina, and the Trust made payments for Plaintiff's tuition and other expenses, as expressly contemplated by the Trust instrument. (Affidavit of Shannon McGrath ¶¶ 4, 6.) Indeed, Plaintiff's affidavit focuses on *her own* contacts with South Carolina, not Thomas's. (*Id.*) As to Thomas, these coincidental contacts are not meaningful. Under the Trust instrument, Thomas would have made payments to Plaintiff and whatever educational institution Plaintiff attended, regardless of where Plaintiff and the institution were located. (Thomas Aff. ¶ 19.)

LEGAL STANDARD

Rule 12(b)(2), SCRPC, permits the Court to dismiss a nonresident defendant for lack of personal jurisdiction. "The party invoking personal jurisdiction over a nonresident bears the burden of proving the existence of jurisdiction." *Int'l Mariculture Resources v. Grant*, 336 S.C. 434, 437, 520 S.E.2d 160, 161 (Ct. App. 1999); *see also Allen v. Columbia Fin. Mgmt., Ltd.*, 297 S.C. 481, 484, 377 S.E.2d 352, 354 (Ct. App. 1988) (holding because the defendant challenged personal jurisdiction, the plaintiff bore the burden of showing the existence of personal

jurisdiction). Before trial, the plaintiff must “make a prima facie showing by pleadings and affidavits that the trial court should exercise personal jurisdiction” over the defendants. *Allen*, 297 S.C. at 484, 377 S.E.2d at 354.

“When a nonresident defendant attacks the allegations of a complaint based on jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). Here, the Court has carefully examined the affidavits and other evidence submitted by the parties and has relied on such evidence in determining that personal jurisdiction is lacking. Indeed, even if all of Plaintiff’s evidence is credited as true, the Court concludes that it lacks personal jurisdiction over Thomas.


ANALYSIS

Traditionally, courts conducted a two-step inquiry to determine, first, whether personal jurisdiction would lie under applicable long-arm statute, and, second, whether the assertion of personal jurisdiction comported with constitutional due process. In South Carolina, however, the long-arm statute reaches to the limits of due process, so “the sole question [is] whether the exercise of personal jurisdiction would violate due process.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005).

A plaintiff may attempt to demonstrate personal jurisdiction by two distinct avenues—general and specific jurisdiction. General jurisdiction is premised on a defendant’s overall contact with the forum state, and depends on a defendant maintaining “continuous and systematic” contacts with the state that are “so substantial and of such a nature as to justify suit against the defendant on causes of action arising from dealings entirely different from those activities.” *Cribb v. Spatholt*, 382 S.C. 475, 482, 676 S.E.2d 706, 710 (Ct. App. 2009) (citing

Int'l Shoe Co. v. Washington, 326 U.S. 310, 318 (1945)). Specific jurisdiction, on the other hand, arises from the defendant having sufficient contact with the forum *related to the claims at issue* that it has purposefully availed itself of the privilege of conducting business in the forum. *Pitts v. Fink*, 389 S.C. 156, 164-65, 698 S.E.2d 626, 630-31 (Ct. App. 2010).

In this case, the Court concludes that Thomas does not have the “continuous and systematic” contacts with South Carolina required to establish general jurisdiction, and he likewise has done nothing related to this case to purposefully avail himself of the privilege of conducting business in South Carolina. As a result, personal jurisdiction is lacking, and the claims against him must be dismissed.

 **A. Thomas Lacks the Continuous and Systematic Contact with South Carolina Required to Establish General Jurisdiction**

General jurisdiction arises when a defendant has contact with the forum that are “substantial, continuous, and systematic.” *Coggershall v. Reproductive Endocrine Assocs. of Charlotte*, 376 S.C. 12, 17, 655 S.E.2d 476, 479 (2007). South Carolina courts have held even relatively substantial contacts with South Carolina – including serving as many as 3,000 South Carolina customers, doing business with multiple South Carolina vendors, and certifying products that are routinely sold in South Carolina – are insufficient where the defendant does not have a regular and sustained practice of directing its activities at South Carolina. *See, e.g., Cockrell*, 363 S.C. at 495, 611 S.E.2d at 510 (certifying products regularly sold in South Carolina not enough); *Coggershall*, 376 S.C. at 17, 655 S.E.2d at 479 (selling to 3,000 South Carolina customers and doing business with multiple South Carolina vendors not enough).

In this case, the Court concludes that Thomas has no significant contacts with South Carolina. Indeed, the only contact that Plaintiffs argues is that, in 2009, Thomas’s employer registered him in South Carolina and other states as a securities broker. (Registration

Documents.) Thomas, however, was only registered for a period of three (3) months, during which time he did not utilize the registration, did not transact any business in South Carolina, and did not even recall that he was registered here. (*Id.*; Thomas Aff. ¶ 9.) Under these circumstances, the Court concludes that merely obtaining the securities registration is insufficient to establish jurisdiction. *See, e.g., Ratliff v. Cooper Labs., Inc.*, 444 F.2d 745, 748 (4th Cir. 1971).

B. Thomas Lacks the Minimum Contacts to Establish Specific Personal Jurisdiction, and Exercising Jurisdiction over Him Would Violate Traditional Notions of Fair Play and Substantial Justice

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For specific jurisdiction, due process requires that a non-resident defendant have sufficient minimum contacts with the forum and that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. A defendant has sufficient minimum contacts with the forum state if its contact are such that it could "reasonably anticipate being haled into court there." *Id.* at 492, 611 S.E.2d at 508. Even if a plaintiff makes the required showing of sufficient minimum contacts, personal jurisdiction will not lie if its exercise would be unreasonable and contrary to concepts of fair play and substantial justice. *Id.*

1. Thomas Has No Substantial Contacts with South Carolina

To demonstrate sufficient minimum contacts, the plaintiff must prove that "the defendant directed his activities to residents of South Carolina and that the cause of action arises out of or relates to those activities." *Cribb*, 382 S.C. at 484, 676 S.E.2d at 711. Here, the Court concludes that Plaintiff has failed to show that her cause of action against Thomas arose from Thomas's activities in South Carolina.

It appears to the Court that the only real connection between the Trust and South Carolina

is that Plaintiff happens to live in South Carolina. This does not create personal jurisdiction, as the *plaintiff's* residence alone cannot establish that the *defendant* has sufficient contact with the forum. *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 625 (4th Cir. 1997). Rather, there must be evidence that the defendant intentionally directed his activities at the forum; otherwise, "jurisdiction would depend on a *plaintiff's* decision about where to establish residence," instead of on the *defendant's* contacts. *Id.* (emphasis in original). In similar cases, courts – including the Supreme Court of the United States – have held that the happenstance of where a trust beneficiary chooses to live does not, without some purposeful availment, establish personal jurisdiction over a non-resident trustee. *See, e.g., Hanson v. Denckla*, 357 U.S. 235, 254-55 (1958) (beneficiary's residence in forum insufficient to establish personal jurisdiction over trustee); *Conn v. ITT Aetna Fin. Co.*, 252 A.2d 184, 190-91 (R.I. 1969) (same); *Dreher v. Smithson*, 986 P.2d 721, 725 (Or. Ct. App. 1999) (same); *see also Walden v. Fiore*, 134 S.Ct. 1115, 1122 (2014) (emphasizing that "the plaintiff cannot be the only link between the defendant and the forum"). In this case, the Courts finds no evidence of Thomas purposefully directing any activities at South Carolina. To the contrary, South Carolina is nothing more than where Plaintiff chose to live. Plaintiff, therefore, falls short of establishing that Thomas has sufficient contacts with South Carolina to justify the exercise of personal jurisdiction over him.

2. **Forcing Thomas to Litigate in South Carolina Would Be Unreasonably Burdensome and Fundamentally Unfair**

Not only does Thomas not have sufficient minimum contacts with South Carolina under the law, the Court also concludes that exercising jurisdiction over him would violate traditional notions of fair play and substantial justice. In considering the fairness of exerting jurisdiction over an individual, courts consider:

- (1) the duration of the activity of the nonresident within the state;

- (2) the character and circumstances of the commission of the nonresident's acts;
- (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and
- (4) the State's interest in exercising jurisdiction.

Cockrell, 363 S.C. at 492, 611 S.E.2d at 508.

Here, the Court concludes that each factor weighs in favor of the dismissal of Plaintiff's Complaint. *First*, as set forth in Thomas's affidavit, he did not engage in any substantial activity in South Carolina. *Second*, concerning the character and circumstances of Thomas's alleged acts, any connection to South Carolina appears to be pure happenstance. The Trust instrument does not mention South Carolina or require any action by the trustee in South Carolina. It merely requires that the trustee pay benefits to Plaintiff, wherever she may choose to live.

Third, the bulk of the parties, evidence, and witnesses appear to be located in New Jersey, where the Trust was formed and maintained and where the key players resided at the time the alleged actions set forth in the Complaint took place. In addition, the evidence regarding the source of the money used to fund the trust (which may have been fraudulent) is also located in New Jersey. The only tie this matter appears to have to South Carolina is Plaintiff's alleged status as a new South Carolina resident. Plaintiff's residence should not trump the gross inconvenience to all other parties in litigating what is plainly a New Jersey dispute in South Carolina. Moreover, the inconvenience to Thomas of having to litigate in South Carolina would be extreme. As set forth in his affidavit (and not rebutted by Plaintiff), he is a man of modest means with three young children and substantial child care responsibilities. He does not have the means or ability to participate in protracted litigation this far away from home, and, given the matter's more than substantial connections to New Jersey, he should not be forced to do so.

Fourth, South Carolina has no significant interest in this matter. It involves claims

arising from the alleged dissipation of trust funds obtained in New Jersey, allegedly taken from a New Jersey trust, by a New Jersey resident, from New Jersey bank accounts, because of the purported negligence of a New Jersey successor trustee administering the Trust in New Jersey. "South Carolina's interest in providing redress for its citizens was diminished when 'nothing which [was] the subject of this litigation ha[d] taken place in South Carolina.'" *Cribb*, 382 S.C. at 489, 676 S.E.2d at 714. Moreover, as set forth in the Trust Agreement and as alleged by Plaintiff in the Complaint, the Trust – and therefore this case – is governed by New Jersey Law. (Complaint at ¶ 2, Ex. 1.) Our Supreme Court has held that choice of law provisions are "relevant in deciding whether to exercise personal jurisdiction," *Coggeshall*, 376 S.C. at 20-21, 655 S.E.2d at 480, because it often makes little sense for a South Carolina court to decide a foreign dispute under foreign law. In short, New Jersey has the superior interest in this case.

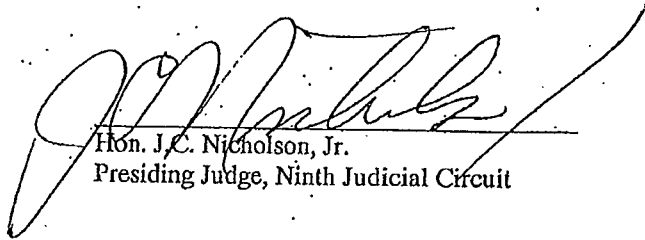
In light of the minimal and coincidental connection between this matter and South Carolina, the substantial prejudice to Thomas in forcing him to litigate in South Carolina, and South Carolina's lack of any interest in deciding this New Jersey dispute, the Court concludes that it would be fundamentally-unfair-and-contrary to Thomas's due process rights to force him to litigate in South Carolina.¹

¹ Because personal jurisdiction is lacking, the Court also concludes that Plaintiff failed to effect proper services on Thomas, and the Complaint is therefore dismissed as against Thomas under Rule 12(b)(5), SCRPC, as well. Service of process on a defendant located beyond the territorial limits of the state is permitted only when a statute so provides. Rule 4(f), SCRPC. Pursuant to S.C. Code Ann. § 36-2-804, service may be made outside the State of South Carolina, only when there is personal jurisdiction over a non-resident defendant as set forth in S.C. Code Ann. §§ 36-2-802 and 803. Because there is no personal jurisdiction over Thomas as set forth above, service of process upon him by certified mail, return receipt requested, was improper.

CONCLUSION

For the reasons set forth above and all others present in the record, the Court GRANTS Defendant Thomas J. McGrath's Motion to Dismiss and hereby DISMISSES all causes of action as against him.

AND IT IS SO ORDERED.



Hon. J.C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

This 5 of May, 2014

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE
 CASE NO. 2013- CP-10-0893

Shannon C. McGrath, et al.
 PLAINTIFF(S)

Thomas J. McGrath, et al.
 DEFENDANT(S)

Submitted by: _____ Attorney for: Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: This order ends the case only as to Defendant Thomas J. McGrath.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
 Circuit Court Judge

2117
 Judge Code

5/15/14
 Date

FILED
 2014 MAY -8 PM 4:12
 CLERK OF COURT
 JULE J. ARMSTRONG

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2013-CP-10-0893

Shannon C. McGrath and the Shannon C. McGrath 2005 Trust,

Appellants,

v.

Thomas J. McGrath, TD Ameritrade, Inc., E*Trade Securities, LLC and E*Trade Clearing,
LLC, Defendants,

Of whom Thomas J. McGrath is the Respondent.

PROOF OF SERVICE

I, Julie L. Moore, of Duffy & Young, LLC, certify that I have served the **NOTICE OF APPEAL** on Respondents and co-counsel for Appellants by U.S. mail on June 16, 2014 by depositing a copy of it to their attorneys of record as shown below:

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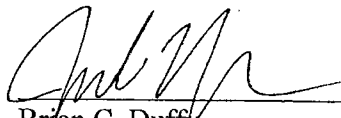
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June 25, 2014

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Via U.S. Mail

The Honorable Jenny Abbott Kitchings
Clerk of Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

JUN 27 2014

SC Court of Appeals

Re: *Shannon C. McGrath and The Shannon C. McGrath 2005 Trust vs.
Thomas J. McGrath, TD Ameritrade, Inc., E*Trade Securities, LLC and
E*Trade Clearing, LLC*
Appellate Case No.: 2014-001319

Dear Ms. Kitchings:

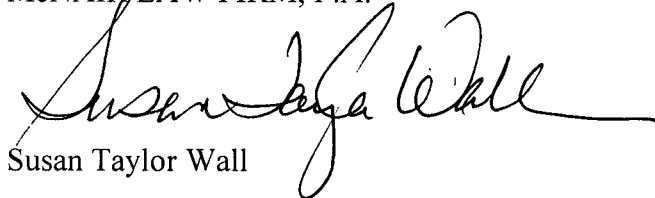
Enclosed for filing, please find the original and six copies of Respondent Thomas J. McGrath's Motion to Dismiss Appeal in the above-referenced case. I have also enclosed a Proof of Service and my office check in the amount of \$25.00 to cover the motion filing fee. Please file these documents and return a stamp-filed copy to me in the enclosed self-addressed stamped envelope.

By copy of this letter, I am serving a copy of the same upon all counsel of record.

If you have any questions, please do not hesitate to call my office. With kind regards, I am

Very truly yours,

McNAIR LAW FIRM, P.A.



Susan Taylor Wall

STW:jh
Enclosures

cc: Brian C. Duffy, Esq. (w/ Enclosures, via U.S. Mail)
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