

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Marvin H. Dukes, III, Presiding Judge

Case No. 2013 - CP - 1186

RECEIVED
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SC Court of Appeals

Charles R. Mikals and Donna Mikals.....Appellants,
v.

Debra House.....Respondent.

RECORD ON APPEAL

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CERTIFICATE OF COUNSEL

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CASE NO: 2013-CP-07-01186

Charles R. Mikals, et al.,

Plaintiff(s),

vs.

Debra House.,

Defendant(s).

ORDER
(on reconsideration)

2014 JAN 23 AM 10:31
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter came before me on January 22, 2014 pursuant to Plaintiff's motion to Alter or Amend my Order dated and filed October 7, 2013. That Order granted Defendant's motion to dismiss on jurisdictional grounds. In ruling on Plaintiff's motion, I now substitute this Order which modifies my reasoning for dismissal.

Plaintiff alleges that Defendant (a Canadian citizen) called to, e-mailed to and travelled to Beaufort County, South Carolina on one or more occasions to solicit Plaintiff's agreement to use his personal line of credit for purposes of securing financing for a Canadian company¹. Plaintiff alleges that these solicitations were accompanied by false assurances as to the safety of this course of action.

While these allegations, on their face, may satisfy the "power prong"² of a jurisdictional analysis, they fail the fairness test. To exercise jurisdiction in this case would be to offend "traditional notions of fair play and substantial justice".

Taking the Plaintiff's allegations as fact: 1) The Defendant is a Canadian citizen; 2) The loans and line of credit which form the basis the action are from the Bank of Montreal and; 3) The loans and line of credit were for the benefit of Canadian corporations.

It is clear from the four corners of the Complaint that the truth or falsity of the representation of financial health of a Canadian corporation will be a crucial component of the

¹ Greenline Plywood Products was owned by Plaintiff's children and operated as a successor to another Canadian company (Forest Products) formerly owned by Plaintiff.

² To satisfy the power prong, the court must find the defendant directed his activities to residents of South Carolina and that the cause of action arises out of or relates to those activities. *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 331-32, 594 S.E.2d 878, 884 (Ct.App.2004).

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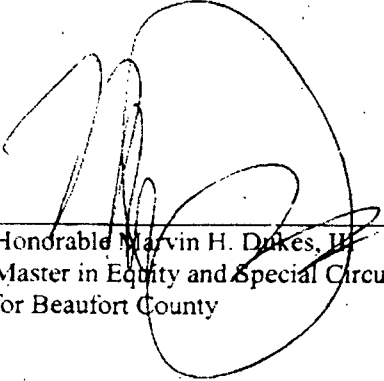
Plaintiff's case. The character and circumstances of such a case dictate that Canadian records, Canadian reports, Canadian budgets, Canadian accountants and the like be involved.

South Carolina is not a convenient forum for such a case.

I can imagine almost no South Carolina interest in exercising jurisdiction.

Therefore the Defendant's Motion to Dismiss is granted, the Plaintiff's Motion to Alter or Amend the dismissal is substantially denied (except as to any changes herein) and this Order is substituted.

IT IS SO ORDERED:



Honorable Marvin H. Dukes, II
Master in Equity and Special Circuit Court Judge
for Beaufort County

January 22, 2014
Beaufort, South Carolina

Type text

292

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Charles R. Mikals and Donna Mikals,

Plaintiffs,

vs.

Debra House,

Defendant.

IN THE COURT OF
COMMON PLEAS

Civil Action
No. 2013-CP-07-1186

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

2013 OCT -7 PM 12:10

This matter came before this Court upon the Defendant's Motion to Dismiss. A hearing was held before the Court on Tuesday, September 3, 2013, at 10:00 a.m. at the Beaufort County Courthouse. Present at the hearing for Defendant was J. Scott Falls, Esq. and John E. North, Jr., Esq. for Plaintiffs. For the following reasons, Defendant's Motion to Dismiss is granted.

UNDISPUTED FACTS & PROCEDURAL HISTORY

Defendant, a Canadian citizen, was hired as the Chief Financial Officer of Greenline Forest Products Limited ("Forest Products") in 2000. Plaintiffs, who are presently South Carolina citizens, were the owners of Forest Products, which was a Canadian company. Greenline Plywood Products, Limited ("Plywood") was incorporated in Canada in 2002. Greenline Industries, Inc. ("Industries") was incorporated in South Carolina in 2005, with offices in both South Carolina and Canada. In 2008, the inventory of Forest Products was transferred to Plywood. Defendant worked for the various Greenline entities (collectively "Greenline") until

her termination in Canada in 2010. Defendant subsequently filed a wrongful termination lawsuit against Greenline Industries and the Plaintiffs herein in a personal and individual capacity in the Superior Court of Ontario, Canada, which is pending at this time. Defendant has always been a Canadian citizen and has resided in Canada her entire life. Similarly, Defendant has never owned real property in the United States of America or South Carolina. In her capacity as an employee of the Greenline entities, Defendant traveled to South Carolina no more than two times, with the most recent visit in 2007.¹

In May 2013, Plaintiffs filed suit in the State of South Carolina Court of Common Pleas alleging causes of action for fraud and breach of fiduciary duty. Subsequently, Defendant, a pro se party at the time, filed her own Motion to Dismiss. Both parties have provided supplemental Memoranda and Affidavits to the Court, both before and after the hearing on this matter, and the Court has considered all of the same in determining this Motion. Plaintiffs have also sought leave to correct various Affidavit deficiencies, but the Court has already considered the Affidavits in the light most favorable to the Plaintiffs, making this request moot.

STANDARD FOR MOTION TO DISMISS

A motion brought pursuant to Rule 12(b)(2), SCRPC asserts that the court has not acquired personal jurisdiction or judicial power over a person and, thus, cannot render an effective judgment against that person. *Brown v. Evatt*, 322 S.C. 189, 470 S.E.2d 848 (1996) (failure to serve summons and complaint resulted in lack of personal jurisdiction by court over defendant); *Cf., PYA/Monarch, Inc. v. Sowell's Meats & Servs., Inc.*, 327 S.C 469, 486 S.E.2d 766 (Ct. App. 1997). A court does not have power over a particular party under Rule 12(b)(2) if

¹ Although Defendant alleges that she has not traveled to South Carolina since 2006, this fact has been considered in the light most favorable to the Plaintiffs.

it is not authorized by statute, or if authorized, its exercise of power or jurisdiction under the facts of the matter violates the Due Process Clause of the state or federal Constitution. See generally *QZO, Inc. v. Moyer*, 358 S.C. 246, 594 S.E.2d 541; *Moosally v. W.W. Norton & Co. Inc.*, 358 S.C. 320, 594 S.E.2d 878 (Ct. App. 2004). The South Carolina long arm statute extends to the full extent of the Due Process Clause. *Triplett v. R.M. Wade & Co.*, 261 S.C. 419, 200 S.E.2d 375 (1973). The determination of personal jurisdiction consists of two parts: the first step involves determining whether the state has the power to assert personal jurisdiction over the party's contacts with the state; the second step involves determining whether it would be fair to exercise this power in the circumstances of the specific case at hand. *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 423 S.E.2d 128 (1992); *Hume v. Durwood Medical Clinic, Inc.*, 282 S.C. 236, 318 S.E.2d 119 (Ct. App. 1984), *cert. denied*, 474 U.S. 848 (1985). The Plaintiff has the burden of establishing that personal jurisdiction exists. *Askins v. Firedoor Corp. of Florida*, 281 S.C. 611, 316 S.E.2d 713 (Ct. App. 1984).

CONCLUSIONS OF LAW

I. The Exercise of Personal Jurisdiction Would Violate Due Process.

Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Proctor & Schwartz, Inc. v. Rollins*, 634 F.2d 738 (4th Cir. 1980); *Bumgarner v. Keene Corp.*, 593 F.2d 572 (4th Cir. 1979); *Grimsley v. United Eng'rs & Contrs., Inc.*, 818 F. Supp. 147 (D.S.C. 1993). Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that he could reasonably *anticipate* being hauled into court there. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

Without minimum contacts, the Court does not have the “power” to adjudicate the action. *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256 (1992).

In deciding whether a finding of minimum contacts comports with the due process requirements of traditional notions of fair play and substantial justice, the court must 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. *Clark v. Key*, 304 S.C. 497, 405 S.E.2d 599 (1991); *Colite Indus., Inc. v. G.W. Murphy Constr. Co.*, 297 S.C. 426, 377 S.E.2d 321 (1989); *South Carolina Dep’t of Soc. Servs. v. Basnight*, 346 S.C. 241, 551 S.E.2d 274 (Ct. App. 2001).

The Plaintiffs have alleged that the last time Defendant traveled to South Carolina was no more recent than 2007, when she traveled here as an employee of Plaintiffs’ and Plaintiffs’ children’s companies, the various Greenline entities. She has not returned to South Carolina since this time and Plaintiffs have not established any basis for a physical entrance by Defendant since 2007.

Plaintiffs also set forth an argument that “at no point was the Defendant employed by the Plaintiffs.” (Pl.s’ Memo in Opp. to Mot. to Dismiss at 3-4). However, it is undisputed that Plaintiff Donna Mikals personally terminated the Defendant’s employment in Canada in 2010. Furthermore, the Plaintiffs’ company, Forest Products, is the Canadian company that initially hired Defendant in Canada in 2000. Although the various Greenline entities have been reorganized and restructured for estate planning purposes, the Defendant continued working for the Greenline entities in Canada until her termination by Plaintiff Donna Mikals in Canada in 2010.

Plaintiffs further argue that minimum contacts have been established by Defendant making “various untrue representations to them, by telephone and in person, within South Carolina, soliciting the use of their line of credit for the benefit of the company for which the Defendant worked.” (Pl.s’ Memo in Opp. to Mot. to Dismiss at 3-4). Plaintiffs then cite *Hammond v. Butler* for the proposition that a non-resident Defendant who benefits financially from transacting business in South Carolina meets the requirements of personal jurisdiction. *Hammond* is distinguishable from this case because *Hammond* did not involve an employer-employee relationship, as is the case here. Although Plaintiffs allege that they did not employ Defendant, it is undisputed that Plaintiffs’ company, Forest Products, initially hired Defendant in Canada in 2000 and that Plaintiff Donna Mikals personally terminated Defendant in Canada in 2010. Further, Plaintiffs have asserted no financial benefit that Defendant would have received from the alleged tortious acts *other than the normal wages* received as an employee. This only further demonstrates the existence of an employer-employee relationship. To the extent that Plaintiffs argue long-distance telephone calls made by Defendant to Plaintiffs constitute minimum contacts, the Court again finds that any such telephone calls were made in the capacity of an employer and employee relationship and do not constitute “transacting business” within the meaning articulated in *Hammond. Id.* Although Plaintiffs vehemently argue that Defendant was never their employee, they have brought a cause of action for breach of fiduciary duty, which by its very nature requires a duty of care not found between individuals in the absence of some form of special relationship, such as an employer and employee relationship in certain cases. Nevertheless, the undersigned finds that Defendant’s minimal and sporadic contacts within the State of South Carolina while she was an employee of the various Greenline entities are not sufficient to confer personal jurisdiction over her.

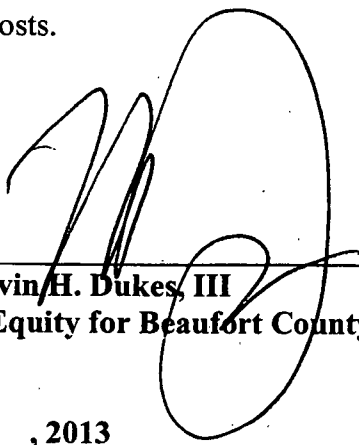
II. Exercise of Personal Jurisdiction Would Not Fulfill the “Fairness” or “Reasonable” Prongs of Due Process.

In *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 423 S.E.2d 128 (1992), the South Carolina Supreme Court held that a court must also perform an analysis as to whether the exercise of personal jurisdiction over a Defendant would be “reasonable” or “fair.” *Id.* Under the fairness prong, the court must 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. *Clark v. Key*, 304 S.C. 497, 405 S.E.2d 599 (1991).

The Defendant is a Canadian citizen who is presently eight months pregnant. She was originally hired by a Canadian business, Greenline Forest Products, Ltd. in 2000. No Greenline entity was incorporated in South Carolina until 2005, at the time it incorporated Greenline Industries, which still maintains an office in Canada. Another Greenline entity, Greenline Plywood Products, Inc., is owned by Plaintiffs’ children and is a Canadian company which the Defendant performed duties for. Accepting Plaintiffs’ facts as true, Defendant has not traveled to South Carolina since 2007 and only came at that point in time as part of her employment duties for the various Greenline entities, owned at least in part, by Plaintiffs. Plaintiff Donna Mikals personally terminated Defendant in Canada in 2010. This Court finds that the duration of the Defendant’s activities within the State of South Carolina does not support a finding that it is “reasonable” or “fair” to exercise personal jurisdiction over her. Furthermore, the inconvenience of travel by the Defendant from Canada is a factor which the Court must also consider.

IT IS THEREFORE ORDERED, that Defendant's Motion to Dismiss be and hereby is granted on all causes of action asserted by Plaintiffs and that Plaintiff's Complaint is dismissed with prejudice with all parties to bear their own costs.

AND IT IS SO ORDERED.



Judge Marvin H. Dukes, III
Master in Equity for Beaufort County

Dated this 7 day of Oct, 2013

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Charles R. Mikals and Donna Mikals,
Plaintiffs,

v.

Debra House,
Defendant.

Case No. 2013 – CP – 07-

COMPLAINT

(Law – Jury Trial Requested)

2013 MAY -7 AM 9:36
CLERK OF COURT
BEAUFORT COUNTY S.C.

COME NOW THE PLAINTIFFS, and for their causes of action against the
Defendant, allege and state as follows:

THE PARTIES AND JURISDICTION

1. The Plaintiffs, Charles R. Mikals and Donna Mikals, ("Plaintiffs") are citizens of the United States and residents of Beaufort County, South Carolina.
2. The Defendant, Debra House, ("Defendant") is a Canadian citizen and has resided in Ontario, Canada, since the claims herein arose.
3. This Court can exercise personal jurisdiction over the Defendant pursuant to S.C. Code § 36-2-803 as the result of the Defendant transacting business in the State of South Carolina and by the Defendant's commission of tortious acts in whole or in part in the State of South Carolina, as hereinafter more specifically set forth.
Venue is proper in this Court pursuant to S. C. Code § 15-7-30 (D).

FACTUAL ALLEGATIONS

4. Defendant was hired by Greenline Forest Products, Limited ("Forest Products"), a Canadian company, in 2000. At the time, the Plaintiffs were the owners of Forest Products, which was in the business of manufacturing wood moldings and trim. Defendant held the position of Chief Financial Officer and was entrusted with the handling of all financial matters for Forest Products.
5. In 2008, the business of Forest Products was closed and the assets and liabilities of Forest Products were transferred to Greenline Plywood Products, Limited ("Plywood"), which was created to manufacture plywood. Plywood was owned by Randall Robert Mikals and Laurie Ann Perruzza, the children of Plaintiffs. At that time, the Defendant's employment with Forest Products ended and she became the employee of Plywood. Defendant held the position of Chief Financial Officer with Plywood and was entrusted with the handling of all financial matters for Plywood.
6. The Plaintiff, Charles R. Mikals, is seventy-two years of age. Contemporaneously with the closing of Forest Products in 2008, he retired from all business activities, and agreed that all of the remaining assets and liabilities of Forest Products would be transferred to and assumed by Plywood, the company owned by his children. Thereafter, he had no further involvement with the business of Plywood and remained in retirement at his home in South Carolina.
7. As the Chief Financial Officer of Forest Products and thereafter Plywood, Defendant was responsible for and handled every aspect of the financial affairs

of the companies and was intimately familiar therewith. Both Forest Products and Plywood were closely held entities owned by family members who managed the operations of the companies and delegated all financial matters for the companies to Defendant, in whom they reposed absolute trust and confidence. A fiduciary relationship existed between Plaintiffs and Defendant as the result of her long-term employment handling the funds of companies owned by the Plaintiffs and their children, by the scope of the responsibilities entrusted to her, by the position of trust and confidence held by Defendant, by her long, personal relationship with the Plaintiffs and their children, and by the acceptance by Defendant of the responsibilities, trust, and confidence that the Plaintiffs placed on Defendant. Accordingly, Defendant was obligated to deal with Plaintiffs in ultimate good faith and fairness.

8. Defendant was a highly compensated employee of Plywood with virtually unfettered knowledge and control of all financial aspects of its operations.
9. The Bank of Montreal served as the lender for both Forest Products and, later, Plywood, both of which used extensive borrowing to finance their business activities. Defendant was solely responsible for dealing with Bank of Montreal and had sole responsibility for negotiating the terms and conditions of the credit to be extended by Bank of Montreal to the companies.
10. At the time that its business was terminated in 2008, the outstanding balance of the obligation of Forest Products to the Bank of Montreal was approximately \$2.0 million. In connection with the termination of the business of Forest Products, Bank of Montreal agreed to transfer the outstanding balance owed by Forest

Products to Plywood. Bank of Montreal proposed that \$1.5 million of the debt be satisfied by an Overdraft Lending facility and the remaining \$500,000 was to be satisfied pursuant to a demand note of Plywood.

11. The loans to Plywood were conditioned on Plywood meeting and continuing to meet certain financial standards prescribing required ratios with regard to assets and liabilities. Plywood was obligated to provide periodic financial reports demonstrating that those standards were being met.
12. The Defendant was solely responsible for meeting the bank's reporting requirements, as well as managing the accounts payable, accounts receivable, and drawing upon available credit as required for Plywood's business.
13. Prior to closing the Bank of Montreal loan to Plywood and Plywood's assumption of the obligations of Forest Products, Defendant made multiple phone calls to the Plaintiff, Charles R. Mikals, in South Carolina soliciting his agreement to allow Plywood to use a personal line of credit ("LOC") of the Plaintiffs with Bank of Montreal for the benefit of Plywood. The Defendant also made such solicitations to Plaintiffs in person and gave to Plaintiffs assurances as to the fiscal health of Plywood, the security and safety of the loan, and that Plywood's collateral would guarantee Plywood's performance of its obligations. These solicitations and assurances were made both telephonically and in person in Beaufort County, South Carolina.
14. Defendant represented to the Plaintiffs that all advances on the Plaintiff's LOC for Plywood's benefit would be fully secured by all of the assets of Plywood, and second in position only to the security interest in Plywood's assets held by the

Bank of Montreal. Defendant specifically assured the Plaintiffs that Plywood had the financial capacity to pay any existing balance on their LOC at any time, on demand and would do so. The Defendant further represented that advances on the LOC would be repaid in monthly installments, with interest, by Plywood.

15. In reliance on the representations and assurances of the Defendant, including that advances on the Plaintiffs' LOC would be secured by all of the assets of Plywood, the Plaintiffs agreed that their LOC could be used for the business purposes of Plywood up to a maximum of \$500,000, with all accruing interest to be paid currently by Plywood and all principal repaid by Plywood on demand. Plaintiffs would never have agreed to allow their personal LOC to be used for the business of Plywood had these representations not been made.

16. At the time that she induced the Plaintiffs to allow their LOC to be used for the business purposes of Plywood, Defendant knew that Plywood would not be able to meet Bank of Montreal's financial requirements if Plywood's obligations were \$2.0 million and Plywood would, therefore, have no additional credit available from Bank of Montreal for its operations. Defendant negotiated an arrangement with Bank of Montreal whereby only \$1.5 million of the liabilities of Forest Products were assumed by Plywood, thereby enabling Plywood to obtain additional advances on its Overdraft Lending facility. In November, 2008, the remaining liability of Forest Products, which was then closed for business and which had conveyed all of its assets to Plywood, was paid with funds withdrawn from the LOC of the Plaintiffs by Defendant without the assumption of such

liability by Plywood and without the promised grant of a security interest in all of the assets of Plywood.

17. Defendant's misrepresentations, acts, omissions and concealments as set forth herein were knowingly false and fraudulent in many particulars, including, without limitation, the following:

- a. Contrary to the representations and specific promises made to the Plaintiffs as an inducement and condition for the use of their LOC, Defendant withdrew funds from the Plaintiffs' LOC without fulfilling any of the conditions required in order to use the funds of Plaintiffs. Defendant made such withdrawals without Plywood assuming any obligation to Plaintiffs, without Plywood granting a security interest in favor of Plaintiffs with respect to all of the assets of Plywood, without Plywood perfecting any security interest in all of the assets of Plywood, and without documenting in any way Plywood's obligation to the Plaintiffs.
- b. Defendant represented that the advances on Plaintiffs' LOC could be repaid by Plywood on demand. Defendant knew that was false because Plywood had not even assumed such obligation to the Plaintiffs, because the financial requirements of Bank of Montreal precluded Plywood from being able to make such a sizable payment to Plaintiffs on Plywood's Overdraft Facility, because Plywood could not operate within the limits of the Overdraft Facility if the outstanding debt of Plywood was \$2.0 million, and because the financial condition of Plywood precluded its access to \$500,000.00 on demand.

- c. Defendant represented to Plaintiffs, both orally and in writing, that their collateral position was fully secured by the assets of Plywood when she knew that such liability had not been assumed by Plywood, that Plywood did not record such liability on the books of the Company or report any such liability to the Bank of Montreal for purposes of Plywood's financial reporting requirements, and that Plywood had not granted Plaintiffs a security interest in all of the assets of Plywood.
- d. Defendant withdrew funds from Plaintiffs' LOC to make interest payments when she had promised and represented that Plywood would make those interest payments.
- e. Defendant withheld having Plywood make interest payments on the Plaintiffs' LOC so that Plywood would appear to be in a more favorable financial position with the Bank of Montreal and failed to record such interest as a payable of Plywood despite her representation that such interest would be paid by Plywood.
- f. Defendant made withdrawals on the Plaintiffs' LOC in excess of the \$500,000.00 limitation imposed by Plaintiffs.
- g. Defendant overstated Plywood's accounts receivables by creating false invoices, manipulated Plywood's accounts payables by writing checks for payment but never sending them to vendors, and created documents overstating inventory, all to create the false impression that Plywood remained a financially viable business.

- h. Defendant assured Plaintiffs that Plywood was profitable and that, as of November, 2009, had a year-to-date profit of \$179,000.00. Later, Defendant admitted that she had lied about Plywood continuing to operate profitably. Defendant admitted that the company had a loss of \$600,000.00. In fact, in 2009, Plywood had an operating loss of \$1,205,161.00.
 - i. Defendant misrepresented her motives in requesting the use of funds from the Plaintiffs LOC and represented to Plaintiffs that the use of Plaintiffs' LOC would simply benefit Plywood by allowing it to borrow at a better rate of interest than that offered by Bank of Montreal and that the Plaintiffs' funds would not be at risk.
 - j. The Defendant failed to fully disclose to the Plaintiffs all known material information related to the Plaintiffs' LOC.
18. Defendant's misrepresentations, acts, omissions, and concealments as set forth herein were false and were knowingly made by Defendant as part of a fraudulent scheme designed to prop up the financial position of Plywood so that it could continue its business operations and continue to pay Defendant's salary, benefits, and bonuses.
19. In April, 2011, Plywood filed bankruptcy proceedings. In those proceedings, the Trustee denied any claim of Plaintiffs for the funds drawn on their LOC by Defendant on the basis that there was no record on the books of Plywood documenting any such obligation, that there was no written promissory note nor grant of any security interest in the property of Plywood to secure any such

obligation, and that no documentation of any kind existed to establish that Plywood was liable for the funds withdrawn on the Plaintiffs' LOC.

20. At no point in time prior to 2011 did Plaintiffs know, nor did they have any reason to know, that the withdrawals made by Defendant on their LOC were not documented as an obligation of Plywood and not secured by a lien on all of the assets owned by Plywood.
21. There was a balance of \$611,828.52 created on Plaintiffs' LOC as the result of borrowing initiated by Defendant without meeting the conditions precedent for such borrowing.
22. All financial records relating to Plywood and to the line of credit of Plaintiffs hereinbefore described were in the exclusive control of Defendant and not Plaintiffs, including statements generated by the Bank of Montreal with respect to the LOC.

FIRST CAUSE OF ACTION - FRAUD

23. The allegations of paragraphs 1 through 22 are incorporated herein by reference.
24. The intentional misrepresentations of material fact, omissions, acts, and concealments hereinbefore described were reasonably relied upon by Plaintiffs to their detriment and the Plaintiffs incurred damages as hereinafter described as the direct and proximate result thereof.
25. The Defendant acted knowingly, willfully, wantonly, and with disregard for the rights of Plaintiffs and Plaintiffs are entitled to an award of punitive damages as allowed by law.

SECOND CAUSE OF ACTION – BREACH OF FIDUCIARY DUTY

26. The allegations of paragraphs 1 through 25 are incorporated herein by reference.

27. Defendant owed fiduciary duties to the Plaintiffs as alleged herein.

28. In breach of those duties, Defendant made the intentional misrepresentations of material fact, omissions, acts, and concealments hereinbefore set forth and Plaintiffs suffered damages as hereinafter described as a result thereof.

DAMAGES

29. As a direct and proximate result of the fraud and breach of fiduciary duty of the Defendant, the Plaintiffs have been damaged in the amount of the funds drawn from their LOC, together with interest on such funds through February 26, 2010, in the amount of \$611,828.52. The Plaintiffs have been further damaged in the amount of the interest that accrued or would have accrued on the LOC thereafter.

WHEREFORE, Plaintiffs pray for judgment in the total amount of \$611,828.52, together with interest from and after the dates referenced above at the rates established on Plaintiffs' LOC, for punitive damages, for attorney fees and expenses as allowed by law, for their costs herein expended, and for such other and further relief as the Court deems just and proper.

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Attorney for the Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Charles R. Mikals and Donna Mikals,

Plaintiffs,

v.

Debra House,

Defendant.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

Case No. 2013-07

MOTION TO DISMISS

13 JUL -2 PM 1:26
BEAUFORT COUNTY, S.C.
CLERK OF COURT
ROSEHEAD

I, Debra House, am the Defendant in the complaint brought forward by the Plaintiffs, Charles R. Mikals and Donna Mikals.

I have read their complaint and wish to respond with a 'MOTION TO DISMISS' on three grounds including LACK OF PERSONAL JURISDICTION, STATUTE OF LIMITATION and FAILURE TO STATE A CLAIM.

LACK OF PERSONAL JURISDICTION

1. The Plaintiffs, Charles R. Mikals and Donna Mikals, ("Plaintiffs") held dual citizenship of the United States and Canada during my tenure of employment in Ontario, Canada from March 2000 to May 2010. They were both domiciled in Canada.
2. All business transactions pertaining to the Plaintiffs' personal Line of Credit ("LOC") held with the Bank of Montreal ("BMO") took place in Ontario, Canada. The LOC was CAD funds.
3. The Plaintiffs are now domiciled in Beaufort, South Carolina but their claim has no connection with the State of South Carolina.

STATUTE OF LIMITATIONS

4. Charles R. Mikals paid a fee to establish a secured personal LOC in 2005 with BMO located in Ontario, Canada. I do not recall Donna Mikals being named on the personal LOC so her involvement in this claim is in itself questionable but for simplicity, I will continue to refer to them as the Plaintiffs in my motion.
5. My employment was terminated on May 28, 2010.
6. I was served with this claim on June 05, 2013.
7. Prior to 2008, BMO reduced the operating line of credit to the Plaintiffs' Canadian company, Greenline Forest Products Ltd, ("Forest") from \$2 Million CAD to \$1.75 Million CAD. To enable the operation to continue without seeking funds elsewhere, the Plaintiffs loaned Forest \$250,000 CAD. The funds were obtained from the Plaintiffs' personal LOC. This loan, similar to all other shareholder loans made to the company, was posted to the 'Loan from Shareholders' account and was listed as such on Forest's annually audited Financial Statements.
8. In 2008, for estate planning purposes, Forest no longer continued operating in the same capacity. The Plaintiffs along with their children, Randall Mikals ("Randy") and Laurie Perruzza, ("Laurie") collectively ("Family") made a request to BMO to extend the same terms and conditions to Greenline Plywood Products Ltd ("Plywood"). Plywood was a Canadian company established in 2002, owned by Randy and Laurie. BMO did not agree to simply transfer the outstanding balance owned by Forest to Plywood nor did they offer Plywood the same terms and conditions. They offered a secured operating line of \$1.5 Million CAD which included a personal guarantee by Randy in the amount of \$250,000 CAD.

The Family had a decision to make with respect to the \$250,000 CAD shortfall in paying off the existing operating line in Forest. BMO was willing to increase the Plywood line by \$250,000 to \$1.75 Million CAD if Randy increased his personal guarantee from \$250,000 to \$500,000 CAD. He was not willing to do so because he had recently signed 100% personal guarantee with Bank of America ("BOA") for his and Laurie's U.S. company, Greenline Industries, Inc. ("Industries") in the amount of \$1.5 Million USD.

Randy even challenged BMO on the \$250,000 personal guarantee because his father had not been required to sign any personal guarantee for Forests' operating line. They explained this is a different company with different owners that would need to establish itself before they would consider removing it. The company's receivable insurance company, EDC, offered financing but the Family was not interested because it was costly. The funds were available at the time on Industries' operating line but I brought it to their attention that transferring the funds would create a loss in foreign exchange because the current rate of converting USD to CAD funds was not favorable. The Family agreed. Randy was pleased because transferring the funds would have increased his exposure with BOA. The Plaintiffs were still very much involved in the decision making of Plywood and wanted to help Plywood succeed so they agreed to pay off the outstanding balance of \$250,000 CAD that remained in Forest's operating line. The Plaintiffs obtained these funds from the personal LOC. The remaining \$1.5 Million CAD was transferred from Plywood to Forest and applied towards the existing inter-company loan accounts on the respective Balance Sheets.

9. After being asked by the Plaintiffs to review their personal LOC statement in February 2010, I discovered that the terms and conditions of the line were 'no monthly minimum payments due and interest fees were to be compounded within the line'. For example, the LOC would increase each month by the amount of interest accrued. I advised the Plaintiffs that the balance of approximately \$611,000 was a combination of principle and accrued interest that had compounded since the line was established in 2005. The Plaintiffs knew or ought to have known the balance of their personal LOC and knew or ought to have known the terms and conditions that they had arranged at the time the LOC was established in 2005.
10. I had no access to the Plaintiffs' personal LOC. I had no authority to withdrawal funds on the Plaintiffs' personal LOC.

FAILURE TO STATE A CLAIM

11. In 2008, Forest was not closed. When my employment was terminated in May 2010, it was still an active Canadian registered company. In 2008, it no longer maintained a bank account but still conducted business through inter-company transactions. Forest's Financials and Tax Returns continued to be completed by the company's Chartered Accounting Firm, HS & Partners LLP (formerly Hincliffe Sapi LLP) ("HS&P"). The assets and liabilities were not transferred to Plywood. Inventory was the only asset transferred by way of inter-company loan when Plywood was established in 2002. In 2008, the existing Accounts Receivable and Accounts Payable were still processed through Forest but the offsetting accounting entries were applied to the inter-company loan account instead of the bank. The Equipment, Shareholder's Loans and Retained Earnings remained in Forest. Forest had revenues in the form of rental income and expenses in the form of depreciation for equipment that was owned by Forest and used by Plywood. Forest also absorbed other expenses in an effort to conceal losses of Plywood and Industries. HS&P advised it was not favorable to close a company with a balance in retained earnings but the exercise of absorbing losses would work to reduce the balance while simultaneously benefitting the Financial Statements of Plywood and Industries.
12. BMO does not negotiate terms and conditions of operating lines. They make an offer and the customer can choose accept or decline their services. BMO did not agree to transfer the outstanding balance owed by Forest to Plywood. BMO presented a new offer to Plywood with its own set of terms and conditions. The operating line was not determined by assets and liabilities. It was determined by 90% of current accounts receivable plus 50% of inventory held in Canada and was required to be reported to BMO on a monthly basis. Randy's signature was required on the report prior to it being provided to BMO each month. I did not have the authority to be solely responsible for dealing with BMO.
13. The term 'demand note' has never been used to describe any loans from shareholders in the past nor did it appear as such in the Financial Statements that were reviewed

and/or audited by HS&P on an annual basis. The Financial Statements were signed each year by the President of each respective company. I was never advised to post either of these loans differently than any other shareholder's loan had been posted in the past. Historically, no Personal Property Security Agreements (PPSA) for shareholder's loans had ever been discussed, requested, suggested, recommended or otherwise until the Auditor of HS&P strongly advised to register one in March of 2010.

14. I did not make multiple phone calls to solicit the Plaintiff to allow Plywood to use his personal LOC nor did I make such solicitations in person (in either Ontario or South Carolina) nor did I give assurances as to the fiscal health of Plywood, the security and the safety of the loan. The Family was involved in the discussions with BMO, HS&P and me as to their choices. The Plaintiff felt comfortable paying off the balance of Forest's operating line knowing that the funds were available in Industries should the personal LOC need to be paid. If any soliciting took place, I would suspect it was Randy that may have done so as he was the only one to personally benefit from the Plaintiffs loaning the company additional funds. It would not make sense to suggest that Plywood had the funds available to pay off the LOC at any time; otherwise, there would not have been a \$250,000 shortfall and they wouldn't have required the additional funds to pay off the existing operating line in Forest.
15. The personal LOC was secured with BMO. The Plaintiffs knew or ought to have known that they did not hold a secured interest for this or any other of their loans to the company. In order for the Plaintiff to be a secured creditor, they would have to consult their lawyer and pay to have a signed PPSA registered with the Ontario Government.
16. At no time did I suggest the Plaintiffs' personal LOC would be repaid by monthly installments, with interest, by Plywood. I was not authorized to withdrawal company funds. I did not have access to the Plaintiffs' personal LOC. I was not authorized to withdrawal funds on their personal LOC. I was not aware of what interest charges were accruing and/or if any other transactions transpired on their account. Only the Family was authorized to make withdrawals on Plywood's account. None of the Family made arrangements for any payments to be made to the Plaintiffs' personal LOC nor was it

brought up in conversation with me. The Plaintiffs' were the only ones with access to their personal LOC.

17. Contrary to the statements made in point 17. of the Plaintiffs' claim,

- a. I did not have access to the Plaintiffs' LOC nor did I have authority to withdrawal funds. Until March of 2010, no discussions had taken place about registering a PPSA. I was never directed by the owners and/or HS&P to post the shareholders loan any differently than had been done in the past nor was I ever advised it had been posted incorrectly. HS&P and the owners signed off on the Annual Financial Statements.
- b. I did not represent that the advances could be repaid by Plywood on demand. The funds were available in Industries, not Plywood. Had the funds been available in GPPL, the advance would not have been required.
- c. Again, the funds that BMO advanced to the Plaintiffs were secured. At no time did I suggest or imply that shareholder's advances to the company were secured. Until March 2010, no advances from the shareholder's had ever been secured. Until HS&P brought it up in March 2010, it had not been addressed.
- d. Again, I did not have access or authority to withdrawal funds on the Plaintiffs' LOC and I did not have authority to withdrawal company funds.
- e. In 2007 I was instructed to STOP accruing interest on any shareholder's loans in order to reduce company expenses. Consequently, the Plaintiffs and Randy, who also had a shareholder loan, did not receive a T5 Tax Form (Statement of Investment Income) since 2006. HS&P also completed the Family's personal Income Tax returns so were well aware that the Plaintiffs' instructions had been

followed. The plan was to wait for business to improve then apply an accelerated interest rate to the shareholder's loans.

- f. Again, I did not have access or authority to withdrawal funds on the Plaintiffs' LOC. I suggest it would be Plaintiffs' responsibility to maintain the balance of their personal LOC of which only they had access to.
- g. I was instructed by Randy, the President of Plywood, to pre-invoice firm orders that were in-transit and to extend the month a few days into the following month in order to increase the receivables listing to maximize Plywood's line of credit availability. Accounts Payable cheques were issued on a weekly basis, however, they would have to wait several days if not weeks to be signed. It was Laurie's responsibility to sign the cheques. She often claimed that she did not have time to sign them and they'd simply have to wait. Once signed, the funds would have to be available prior to them being released; otherwise they would be returned for insufficient funds so I monitored and prioritized payments. Our inventory reporting system was not reliable. This was due but not limited to: Laurie not entering Purchase Orders in a timely manner (the goods could therefore not be received into the system); Laurie entering the purchasing price per unit incorrectly (which would distort the values - sometimes overstating the inventory by millions of dollars for one item); Laurie entering the wrong item number on the Purchase Orders or the wrong item number being reported as used in production. The only way to get an accurate evaluation was to stop production for a day while a physical inventory was taken. Then, each and every one of the hundreds of items would have to be recorded and evaluated on an individual basis. Because of reductions in staff, we did not have the time or the manpower to do this on a regular basis so I suggested that

we enter the historical values of Cost of Goods Sold into the Profit and Loss Statement which would give a reasonable estimate of what the inventory value was. Randy agreed.

- h. I never assured the Plaintiffs that Plywood was profitable in November of 2009 nor did I lie nor did I ever admit to lying. Plywood was fabricated by the Family to show a loss as indicated of \$1,205,161 for 2009. The Family chose for Plywood to absorb approximately \$300,000 to \$400,000 USD of GII losses (so that GII would show a small profit; the company that Randy had a 100% personal guarantee with the bank); the Family chose to post the \$112,000 CAD interest that had accrued since 2005 in the Plaintiffs' personal LOC; Randy chose to post a donation to the TDSB (Toronto District School Board) for approximately \$135,000 CAD in 2009 that was not delivered until 2010; the Family chose to not post or recognize a government claim that was submitted for Scientific Research and Experimental Development (SRED) in the amount of \$1.1 Million CAD. This is a tax credit issued by the Canadian Government to reimburse companies for costs of labor and materials associated with developing new products. This claim accounted for all losses indicated in Plywood. The Family, however, chose not recognize this claim on the Financial Statements so it stands to reason that the profits were skewed and a loss was reported. Had they been successful in collecting the funds they claimed to have spent, they would not have required an operating line from BMO and they would still have been in operation.
- i. The use of funds from the Plaintiffs' LOC did benefit Plywood as well as Randy. It was cost-free; it allowed Plywood to save on interest expense for the time being; there was no need for Randy to increase his exposure by increasing his personal guarantee; neither Plywood or Industries would suffer a loss on exchange rate by converting USD to

CAD funds; and the funds were available in Industries operating line should the Plaintiffs demand their personal LOC be paid.

j. I did not hide anything from the Plaintiffs.

18. I had the Family's best interests at heart at all times when working for them. To suggest I was part of a fraudulent scheme for my own benefit is unfounded. In June 2007, I removed myself from the bonus program and negotiated a lower but fixed annual income of \$97,500. I had not received a raise since this time. My salary was based on 45 hours per week. In order to help the company, my workload increased to 60-65 hours per week with no additional compensation as staff reductions were enforced. Benefits were offered to me when I was hired in 2010 and are a common perk in Canadian employment contracts.
19. After filing bankruptcy in April 2011, the Plaintiffs were only entitled to receive approximately \$71,000 CAD in funds available after the operating line was paid to BMO. The trustee denied the Plaintiffs claim but this was not a court decision; the Plaintiffs agreed to release their entitlement and chose not to pursue the issue. Plywood's assets were transferred to Industries prior to the bankruptcy but did not appear as a receivable at the time of declaring bankruptcy. A previous outstanding inter-company loan due from Industries did not appear as a receivable at the time of declaring bankruptcy. In May 2010, Industries owed Plywood approximately \$700,000 CAD. Had this inter-company loan been paid, Plywood would not have been reliant on BMO for an operating line of credit and would not have been forced into bankruptcy. Likewise, had the loan been paid, Plywood could have paid the Plaintiffs' personal LOC prior to declaring bankruptcy. Also, in March of 2010 the Plaintiffs arranged for a standing order of \$10,000 CAD to be paid on a monthly basis, therefore, it does not stand to reason that the Plaintiffs' balance on their personal LOC would not have been significantly reduced since February 26, 2010. Also, I would suspect that Forests equipment would have or could have been sold so the funds from the sale could have been applied towards the LOC as well.

To conclude, I cannot comprehend how the Plaintiffs can insinuate that a bank account that I had no authority to access could possibly be under my exclusive control or be my responsibility. Similarly, I find it inconceivable that the Plaintiffs are suggesting it would be reasonable to believe they had no knowledge of the transactions or the balance of their personal account for over five years.

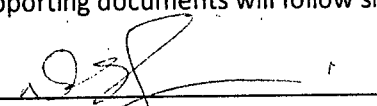
Furthermore, this LOC was established over eight years ago, my employment was terminated over three years ago and this has absolutely nothing to do with the State of South Carolina.

In fact, I find this claim to be libelous, fraudulent and transparent. I feel it has been issued for the sole purpose of deterring me from pursuing my action against them filed with the Ontario Superior Court of Justice for wrongful dismissal in attempt to gain Collateral Advantage.

Their Attorney, John North, in a cover letter sent to my lawyer in Canada, even goes as far as stating 'if all parties can agree to move on with their lives, then maybe we can end all of this conflict and the parties can terminate the continued wasteful expenditure of their funds'. The letter also suggests that their son, Randy Mikals, plans to file a personal claim against me. Although nothing has been served to me to date, it will be viewed as nothing more than abusive process.

WHEREFORE, I request judgment for punitive damages, for attorney fees and expenses allowed by law, for my costs herein expended, and for such other and further relief as the Court deems just and proper.

Please find my Affidavit enclosed. Additional supporting documents will follow shortly.

By: 

Debra House
53 Manitoba St.
Stouffville, ON L4A 4T3
(905) 640-1652
mhouse@rogers.com

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Charles R. Mikals and Donna Mikals,)
Plaintiffs,)

Case No. 2013 – CP-07-1186

v.)

Debra House,)
Defendant.)

13 JUL -2 PM 1:26
JEREMY A. ROSENBAUM
CLERK OF COURT
BEAUFORT COUNTY, S.C.
AFFIDAVIT

I, DEBRA HOUSE, of the Town of Whitchurch-Stouffville, in the Regional Municipality of York, the Defendant herein, MAKE OATH AND SAY:

1. My date of birth is ~~8-11-72~~, 1971 and I am and have always been domiciled in Ontario, Canada. I am and have always been a Canadian Citizen.
2. I was served this claim by the Plaintiffs on June 05, 2013.
3. I was employed with companies associated with the Plaintiffs from March 2000 to May 2010 under the jurisdiction of Ontario, Canada.
4. Charles R. Mikals and Donna Mikals, ("Plaintiffs") held dual Citizenship (United States and Canada) and dual residency (United States and Canada).
5. I have never travelled to Beaufort, South Carolina for the purposes of soliciting the Plaintiffs.
6. The Bank of Montreal, ("BMO") served as a Canadian lender for all companies associated with the Plaintiffs as well as for the Plaintiffs personally; including a personal Line of Credit, ("LOC").
7. The Plaintiff's personal LOC was established and signed in Canada with BMO in 2005.
8. There is no connection between the Plaintiff's Canadian LOC and South Carolina.
9. I did not access the Plaintiffs' personal LOC nor did I have the authority to do so.

10. I did not withdrawal funds from the Plaintiffs' personal LOC nor did I have the authority to do so.
11. I did not receive monthly or annual statements pertaining to the Plaintiffs' personal LOC.
12. I did not represent to the Plaintiffs verbally or in writing that their personal LOC would be fully secured.
13. I did not assure the Plaintiff's that Greenline Plywood Products Ltd, ("GPPL") had the financial capacity to pay any existing balance on their LOC at any time, on demand and would do so.
14. I did not represent that advances on the LOC would be repaid in monthly installments, with interest, by Plywood.
15. Although I was BMO's main point of contact for the company, I was not their sole contact and was not solely responsible for dealing with or negotiating terms and conditions with them.
16. All Plywood reporting decisions were directed from and/or approved by the President, Randy Mikals ("Randy").
17. I was not solely responsible for meeting the bank's reporting requirements. I prepared Plywood's reports under Randy's direction. He signed off on them prior sending.
18. As at May 2010, the Plaintiffs' company, Greenline Forest Products Ltd, ("Forest") was still an active company that filed annual tax returns to Canada Revenue Agency.
19. I was not instructed to post any shareholders loans as Promissory Notes.
20. All company Financial Statements were completed by the company's Chartered Accounting Firm, HS & Partners LLP (formerly Hincliffe Sapi LLP) ("HS&P") and signed by the President of each respective company.
21. The Plaintiffs' personal tax returns were completed by HS&P.
22. Although he was not recently active in the day to day operations of the companies, the Plaintiff, Charles R. Mikals, was still active an active member and often called upon for guidance, opinion and expertise on all major business decisions.
23. Prior to Plywood declaring bankruptcy in April 2011, in attempt to minimize its obligations, Plywood reduced its assets by way of inventory, equipment and

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-07-1186

CHARLES R. MIKALS, and Donna
MIKALS,

Plaintiffs

v.

DEBRA HOUSE,

Defendant.

NOTICE OF HEARING ON
DEFENDANT'S MOTION
TO DISMISS

TO: THE DEFENDANT

Please take notice that the Defendant's Motion to Dismiss will be heard by the Court on August 13, 2013, at 1:30 p.m. in the chambers of the Honorable Marvin Dukes, Beaufort County Courthouse, Beaufort, South Carolina.

CHARLES R. MIKALS, and DONNA MIKALS,
Plaintiffs,

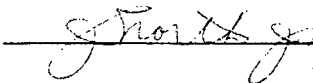
By



John E. North, Jr.
North & Black, PC
916 Bay Street, Suite 100
Beaufort, SC 29902
(843) 379-0800 (tel)
(843) 379-0900 (fax)
Attorney for Plaintiffs

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the Defendant by depositing same in the United States Mail, first class, postage prepaid and addressed to the Defendant, 53 Manitoba Street, Stouffville, Ontario, L4A 4T3 on this 19th day of July, 2013.



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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT FOURTEENTH JUDICIAL CIRCUIT

CHARLES R. MIKALS, and Donna
MIKALS,

Plaintiffs

v.

DEBRA HOUSE,

Defendant.

CASE NO. 2013-CP-07-1186

PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION
TO DISMISS AND MEMORANDUM
IN SUPPORT THEREOF

STATEMENT OF THE CASE

This is an action for damages for fraud and breach of fiduciary duty arising out the Defendant's fraudulent misrepresentations that induced the Plaintiffs to subject their personal line of credit to the obligations of the company by which Defendant was employed and for the failure of the Defendant to adequately secure the repayment and collateralization of the funds used as she represented she would do.

The Plaintiffs are citizens of the United States and residents of South Carolina. The Defendant is a Canadian citizen.

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In her pleading captioned "Motion to Dismiss",¹ the Defendant objects to the exercise by this Court of jurisdiction over her, asserts a statute of limitations defense, and alleges that the Complaint fails to state a claim against her based upon her view of the facts. She further seeks affirmative relief from this Court, including an award of punitive damages; attorney fees, costs and expenses, and "other and further relief". She supports her motion with her own Affidavit and states that "[a]dditional supporting documents will follow shortly". Motion, Page 10.

As set forth in detail hereinafter, none of the Defendant's grounds are meritorious.²

1. THE DEFENDANT HAS WAIVED ANY OBJECTION TO JURISDICTION BY ADDRESSING THE MERITS OF THE CASE AND BY SEEKING DAMAGES AND OTHER AFFIRMATIVE RELIEF FROM THE COURT.

If a party requests affirmative relief from the Court, she has subjected herself to the jurisdiction of the Court and any further objection thereto is waived. *Ciolfi v. Iravani*, 625 F. Supp. 2d 276, 290 (E.D. Penn. 2009).

For purposes of determining waiver, "affirmative relief" is involved when the Court is asked to consider the actual merits or the quasi-merits of the controversy. *Wyrough & Loser v. Pelmore Labs, Inc.*, 376 F. 2d 543, 547 (3d Cir. 1967).

There is no question that the Defendant has asked the Court to consider the merits of the controversy. Though her filing is styled a "Motion to Dismiss", it

¹ As discussed, hereinafter, the pleading is in the nature of an Answer and Counterclaim and not a 12(b)(6) test of the legal sufficiency of the allegations of the Complaint.

² "A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, 265 n. 5, 589 S.E.2d 6, 9 n. 5 (2003).

is in the nature of a response on the merits, not a Rule 12(b)(6) Motion.³ Her supporting Affidavit, as well, deals with the merits of the claim, and not solely jurisdictional facts.⁴

Instead of an analysis of whether the Complaint, on its face, states a cause of action, and whether the requirements of the South Carolina long arm statute permit the exercise of jurisdiction, the Motion is a lengthy articulation of the Defendant's view of the facts, her denials of the claims of the Plaintiffs, and a fact intensive discussion of the financial affairs of the parties, their relationships, their business rationales, and speculation about their motives and concerns.

She concludes by stating that the Complaint is "libelous and fraudulent", and requesting that the Court award her a "judgment" for punitive damages, attorney fees and expenses and other proper relief. (Motion to Dismiss, p. 10).

Clearly, by asking the Court to adjudicate the facts and to award to her a judgment for damages, the Defendant has gone far beyond whether jurisdiction is proper and has waived any objection to having the matter heard in South Carolina.

2. THE COMPLAINT ADEQUATELY ALLEGES A BASIS FOR THE EXERCISE OF PERSONAL JURISDICTION OVER THE DEFENDANT.

Even if the Defendant had not waived her jurisdiction claim, this Court can exercise jurisdiction under the South Carolina long arm statute as was pled in the Complaint. Pursuant to S.C. Code 36-2-803, if the Defendant commits tortious actions causing damage within the state or does business within the state, the

³ A 12(b)(6) Motion deals only with the legal sufficiency of the claim based only upon the allegations of the Complaint and not extraneous matter.

⁴ Her Affidavit as well delves into facts relating to the merits of the claims against her.

exercise of jurisdiction is proper so long as the Defendant's contacts with the state are sufficient to satisfy Constitutional due process concerns. *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E. 2d 835 (S.C. App. 2012).

Under South Carolina law, this Court can exercise personal jurisdiction over the Defendant if the Plaintiffs suffered injury as a result of the Defendant's tortious conduct, even if the tortious acts were committed out of state. *International Mariculture Resources v. Grant*, 336 S.C. 434, 520 S.E. 2d 160 (Ct. App. 1999), substituted and refilled, 1999.

The long arm statute has been interpreted to permit the exercise of jurisdiction to the maximum extent constitutionally permissible, and due process requires only that the Defendant have "minimal" contacts with South Carolina. *Young v. Jones*, 816 F. Supp. 1070, *affd.* 103 F. 3d 1180, *cert. denied* 118 S. Ct. 329, 552 US 928, 139 L. Ed. 2d 255.

The Plaintiffs bear the burden of demonstrating the jurisdictional facts. Their burden is met if the Complaint makes a *prima facie* showing that jurisdiction is proper. *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 259, 423 S.E. 2d 128, 130 (1992); *Mid-State Distrib. Inc. v. Century Importers, Inc.*, 310 S.C. 330, 332, 426 S. E. 2d 777, 779. Only if the Complaint is insufficient in this respect does the Court consider Affidavits. *Mid-State Distrib.*, at 332.

Plaintiffs allege that the Defendant made various untrue representations to them, by telephone and in person, within South Carolina, soliciting the use of their line of credit for the benefit of the company for which the Defendant worked.

It is further alleged that the Defendant represented that the funds being solicited would be secure, that the loan was safe, and that loan would be collateralized by all of the assets of the entity using the funds, none of which was true. Complaint ¶ 13, 14.

In paragraph 14 of the Complaint, it is alleged that Defendant specifically assured Plaintiffs that the company had the financial capacity to pay any balance of funds owed, on demand, and that the borrowed funds would be repaid with interest. The Complaint further alleges that the Defendant owed them a fiduciary duty and that all of the actions outlined in the Complaint were in breach of that fiduciary duty. Complaint, ¶ 27, 28. Finally, the Complaint alleges in excess of \$611,000 in damages sustained by the Plaintiffs in South Carolina as a result of the Defendant's tortious conduct.

The Complaint unequivocally alleges facts demonstrating that the Defendant's tortious conduct caused damage within the state sufficient to invoke jurisdiction under the Defendant under subsection (3) of the long arm statute.

To find a basis for the exercise of personal jurisdiction under subsection (1), the Complaint must allege facts showing that the Defendant transacted business within the state. Under South Carolina law, a single contact with South Carolina is sufficient to give this Court personal jurisdiction over the Defendant if the contact "gives rise to, or figures prominently in the cause of action under consideration". *Askins v Firedoor Corporation of Florida*, 281 S.C. 611, 616, 316 S. E. 2d. 713, 716 (Ct. App. 1984).

As set forth above, the Complaint alleges that the Defendant contacted the Plaintiffs, in South Carolina, both personally and by telephone, concerning the matters that are the crux of Plaintiffs' contentions.

In *Hammond v. Butler, Means, Evins & Brown*, 300 S.C. 458, 388 F. 2d 796 (1990), *cert. denied*, 111 S. Ct. 373, 498 U.S. 952, 112 L. Ed. 335, the Supreme Court made clear that involvement by a non-resident within the state from which the defendant benefitted financially met the requirements of the "doing business" provision of the South Carolina long arm statute.

The Complaint alleges the same factual setting as *Hammond*. The relationship between the Plaintiffs and the business entity in which they and the Defendant were involved was ongoing over many years, and the Defendant was intimately involved in those financial affairs and business activities in which they were engaged. The Complaint further alleges that the Defendant benefitted personally from her tortious activities. Complaint, ¶¶ 4 – 7; 18. Accordingly, pursuant to *Hammond*, jurisdiction is proper under the long arm statute and is Constitutionally warranted.

Further, with respect to due process, if a defendant purposefully directs activities to the forum state, the exercise of jurisdiction over him is Constitutionally permissible. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L. Ed. 2d 490 (1980); *Cribb v. Spatholt*, 382 S.C. 490, 676 S. E. 2d. 714 (Ct. App. 2009).

When the Defendant intentionally made her misrepresentations to the Plaintiffs in South Carolina, both by phone and in person, she certainly could

have anticipated the possibility of being sued there and to be held her responsible in a South Carolina court for the damages that she caused to South Carolina residents. Such a result is not unfair. South Carolina Courts are available to provide a remedy to its citizens who have suffered damage as a result of the torts of others, whatever their citizenship.

3. THE AFFIDAVIT OF THE DEFENDANT, AS WELL AS THAT OF THE PLAINTIFFS, SUPPORTS THE PROPRIETY OF JURISDICTION IN SOUTH CAROLINA.

The Defendant's Motion offers no argument and cites no law on the jurisdictional issue, other than the conclusory statement that the Plaintiff's claim "has no connection with the State of South Carolina". Motion to Dismiss, ¶ 3.⁵ While that may be the Defendant's personal conclusion, it does not comport with the law of South Carolina as set forth above.

The only aspect of the Affidavit bearing on jurisdiction is the Defendant's assertion that she has never travelled to South Carolina "for the purpose of soliciting the Plaintiffs". ¶ 5 The Affidavit is, however, consistent with the Plaintiffs' allegations that the Defendant was intimately involved with the Plaintiffs' business affairs. In ¶ 3 of the Affidavit, the Defendant states that she was employed by "companies associated with the Plaintiff" ¶ 3. The balance of the Affidavit as well as the Motion demonstrates intimate knowledge of the financial affairs of those businesses and the Plaintiffs.

The Defendant disputes having sufficient contacts with the state to support jurisdiction even though it is her contention, asserted in Court filings, that she

⁵ The Defendant's assertion in her Motion and Affidavit with respect to the citizenship of the Plaintiffs should be disregarded as incompetent. There is no showing with respect to how the Defendant would, in fact, know their citizenship status.

was an employee of a South Carolina corporation with which the Plaintiffs and their family members were involved. She directed communications to the Plaintiffs in the state that contained the false representations described in the Complaint. The Defendant and not the Plaintiffs dealt with the lender and others concerning the line of credit at issue in this case.

Exhibit A to the Affidavit of the Plaintiff, Donna Mikals, filed herewith, is the Statement of Claim filed in Canada by the Defendant against the Plaintiffs and others. In that Statement of Claim, the Defendant alleges that she was the Chief Financial Officer of Greenline Industries, Inc., a South Carolina corporation,⁶ which she further alleges was "affiliated" with Greenline Plywood Products Ltd, a Canadian company. She further alleges that in that capacity she earned almost \$100,000. Exhibit A, ¶¶3, 8, and 10.

Exhibit B to the Mikals Affidavit is an email dated March 19, 2010, sent to the Plaintiff Donna Mikals by Defendant, falsely assuring her that Chuck (Plaintiff Charles Mikals) was "protected" with respect to the line of credit at issue in this litigation. Exhibit C to the Mikals Affidavit is an email dated March 19, 2010, which the Defendant sent to the Plaintiff, Donna Mikals, and others falsely stating that Plaintiff Charles Mikals was in a secured position, second only to Bank of Montreal.

Finally, Exhibit D to the Mikals Affidavit is a letter from an attorney stating that the Defendant was the person who contacted him concerning securitizing the Plaintiffs' line of credit.

⁶ Although the Defendant was involved in some of the business matters of the South Carolina corporation, the Plaintiffs dispute that she was an employee of that entity.

These documents demonstrate that the Defendant caused tortious injury in the state, did business in the state, and had contacts with the state sufficient to meet Constitutional requirements. Jurisdiction in this state is proper.

4. THE COMPLAINT IS NOT SUBJECT TO DISMISSAL BASED ON THE STATUTE OF LIMITATIONS.

In her Motion, the Defendant captions a section Statute of Limitations, but neither discusses what statute applies nor why the Complaint demonstrates on its face that the relevant statute has expired.⁷

In ¶ 20 and 22 of their Complaint, the Plaintiffs allege that at no time prior to 2011 did they know nor could they have known that the representations made by Defendant were false and fraudulent and that all records relating to their line of credit were in the exclusive control of the Defendant, including bank statements. The Complaint was filed in 2013.

The statute of limitations applicable to these claims is three years. On the face of the Complaint, the claim was brought within that period and is not subject to dismissal.

5. THE COMPLAINT ADEQUATELY ALLEGES FRAUD AND BREACH OF FIDUCIARY DUTY.

In the third section of her Motion, entitled Failure to State a Claim, the Defendant merely argues the facts. The purpose of a Motion to Dismiss on the basis of failure to state a claim is to evaluate whether or not the factual allegations of the Complaint adequately support the necessary elements of a cognizable legal claim. There is no argument by the Defendant that the Plaintiffs

⁷ Unless the Complaint demonstrates on its face that the applicable statute of limitations has expired, then the Defendant must simply raise that argument as an affirmative defense, subject to proof.

have not stated a legally recognizable claim, only the argument that the facts alleged are not true. This goes to the merits and is not proper for adjudication on a Motion to Dismiss.

The Plaintiffs have adequately alleged the legal elements of their claims and alleged facts to support them. The Complaint should not be dismissed.

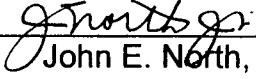
6. THE COURT CANNOT CONSIDER THE CONTENT OF THE DEFENDANT'S AFFIDAVIT AND MOTION ON THE MERITS WITHOUT CONVERTING THE MOTION TO A MOTION FOR SUMMARY JUDGMENT AND GIVING THE PLAINTIFFS NOTICE AND AN OPPORTUNITY TO RESPOND.

Under Rule 12, if, on a Motion to Dismiss, matters outside the allegations of the Complaint are raised, the Court may refuse to consider them, or convert the motion to one for summary judgment under Rule 56 and give the non-moving party notice and the opportunity to respond with materials properly submitted under that rule. Rule 12(b) SCRPC.

The Plaintiffs position is that the material submitted by the Defendant that is irrelevant to the jurisdictional issue should not be considered by the Court and that the action should proceed to a trial on the merits. In the event that the Court chooses to consider such evidence and to convert the motion to one for summary judgment, Plaintiffs request the opportunity to respond to the matters raised by the Affidavit.

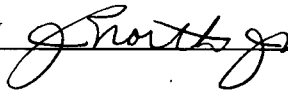
For all of the foregoing reasons, the Plaintiffs respectfully request that the Court find jurisdiction proper and deny the Defendant's Motion to Dismiss.

CHARLES R. MIKALS, and DONNA MIKALS,
Plaintiffs,

By 
John E. North, Jr.
North & Black, PC
916 Bay Street, Suite 100
Beaufort, SC 29902
(843) 379-0800 (tel)
(843) 379-0900 (fax)
Attorney for Plaintiffs

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the Defendant by depositing same in the United States Mail, first class, postage prepaid and addressed to the Defendant, 53 Manitoba Street, Stouffville, Ontario, L4A 4T3 on this 19th day of July, 2013.



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Charles R. Mikals and Donna Mikals,

Plaintiffs,

v.

Debra House,

Defendant.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-07-1186

**DEFENDANT'S MOTION FOR
CONTINUANCE OF HEARING**

TO: JOHN E. NORTH, JR., ESQ., ATTORNEY FOR PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that I, the Defendant, Debra House, hereby move this Court pursuant to Rule 40(i) of the South Carolina Rules of Civil Procedure for a Continuance of the Hearing on Defendant's Motion to Dismiss, which is currently on the docket and scheduled to be before the Court on August 13, 2013 at 1:30 pm to a later date for good cause and, more specifically, for the reasons set forth below.

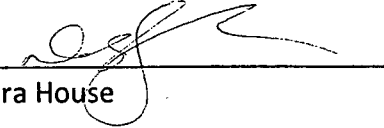
The reasons and grounds for this Motion are:

- I, the Defendant, am in my third trimester of pregnancy and have been directed by my physician that I am not supposed to travel until after the child's birth. A doctor's note can be provided in this regard if needed;
- I, the Defendant, am a resident of Canada and have never resided in the United States. I will be forced to travel from Canada to South Carolina for the hearing and need more time to make travel arrangements; *See Crout v. South Carolina Nat. Bank*, 278 S.C. 120, 293 S.E.2d 422 (1982);
- No continuances have been previously requested or granted by either party in this case. *See Sheets v. Sheets*, 287 S.C. 596, 340 S.E.2d 542 (1986);

- In civil cases, the grant of a continuance request made upon the motion of counsel or a party for "good and sufficient cause" is favored. Rule 40(i)(1), SCRCP; and
- Opposing counsel would not consent to a continuance of the jury trial or to a scheduling order setting forth a date or week certain for trial, necessitating this Motion.

For the foregoing reasons, this Honorable Court should order that the hearing for the Defendant's Motion to Dismiss for this case currently scheduled for August 13, 2013 at 1:30 pm be continued to a later date and time pursuant to Rule 40(i) of the South Carolina Rules of Civil Procedure.

This Motion is made pursuant to Rule 40(i) of the South Carolina Rules of Civil Procedure, and is supported by the pleadings and such other materials as may be submitted or that the Court deems appropriate.

By: 
Debra House

July 23, 2013

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-07-1186

CHARLES R. MIKALS, and Donna
MIKALS,

Plaintiffs

v.

DEBRA HOUSE,

Defendant.

AFFIDAVIT IN OPPOSITION TO
DEFENDANT'S MOTION
TO DISMISS

2013 JUL 23 AM 10:31
CLERK OF COURT
BEAUFORT COUNTY, S.C.

State of South Carolina)
County of Beaufort)

The undersigned, Donna Mikals, being first duly sworn on oath, deposes and states as follows:

1. Exhibit A to this Affidavit is the Statement of Claim filed in Canada by the Defendant against the Plaintiffs and others. In that Statement of Claim, the Defendant alleges that she was the Chief Financial Officer of Greenline Industries, Inc., a South Carolina corporation,¹ which she further alleges was "affiliated" with Greenline Plywood Products Ltd, a Canadian company. She further alleges that in that capacity she earned almost \$100,000. Exhibit A, ¶¶3, 8, and 10.

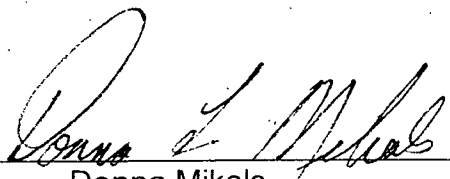
2. Exhibit B to this Affidavit is an email dated March 19, 2010, sent to me at my residence in South Carolina by Defendant, falsely assuring me that Chuck (Plaintiff Charles Mikals) was "protected" with respect to the line of credit at issue in this litigation. I am jointly liable with Charles Mikals on that line of credit.

3. Exhibit C to this Affidavit is an email dated March 19, 2010, which the Defendant sent to me at my residence in South Carolina falsely stating that Plaintiff Charles Mikals was in a secured position, second only to Bank of Montreal.

4. Exhibit D to this Affidavit is a letter from an attorney stating that the Defendant was the person who contacted him concerning securitizing the Plaintiffs' line of credit.

¹ Although the Defendant was involved in some of the business matters of the South Carolina corporation, the Plaintiffs dispute that she was an employee of that entity.

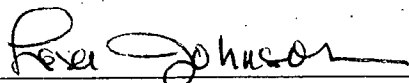
Dated this 18th day of July, 2013.


Donna Mikals

State of South Carolina

County of Beaufort

On the 18th day of July, 2013, Donna Mikals appeared before me and executed the foregoing Affidavit and, being first duly sworn on oath, swore that the facts set forth in this Affidavit are true.

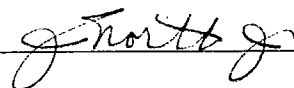

Notary Public

My commission expires: 10-16-2019

LESA JOHNSON
Notary Public, State of South Carolina
My Commission Expires October 16, 2019

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the Defendant by depositing same in the United States Mail, first class, postage prepaid and addressed to the Defendant, 53 Manitoba Street, Stouffville, Ontario, L4A 4T3 *on this 19th day of July, 2013.*



This is Exhibit referred to in the
affidavit of RANDALL R. MIKALS
sworn before me, this 27
day of JULY 2012

My Commission Expires

June 27, 2016

Court File No.

ONTARIO Civil-107 559-00
SUPERIOR COURT OF JUSTICE

A COMMISSIONER FOR TAKING AFFIDAVITS
Blaise H. Mc Donald
BETWEEN:

DEBRA HOUSE

PLAINTIFF

and

GREENLINE INDUSTRIES INC., RANDALL ROBERT MIKALS,
DONNA F. MIKALS, CHARLES R. MIKALS, and LAURIE ANN PERRUZZA

DEFENDANTS

STATEMENT OF CLAIM

TO THE DEFENDANT

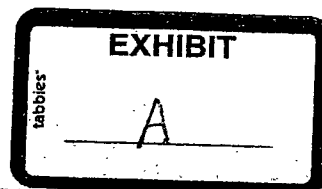
A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff(s) lawyer or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.



22

IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY
LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A
LOCAL LEGAL AID OFFICE.

Date: December 22, 2011

Issued by *K. Lian*
Local registrar

Address of court office:
50 Eagle Street West
Newmarket, ON L3Y 6B1

TO:

GREENLINE INDUSTRIES INC.
2966 Trask Pkwy
Beaufort, SC 29906-8040
USA

AND TO:

RANDALL ROBERT MIKALS
c/o Greenline Industries Inc.
2966 Trask Pkwy
Beaufort, SC 29906-8040
USA

AND TO:

DONNA F. MIKALS
44 Indigo Plantation Road
Okatie, South Carolina 29909-7030
USA

AND TO:

CHARLES R. MIKALS
44 Indigo Plantation Road
Okatie, South Carolina 29909-7030
USA

AND TO:

LAURIE ANN PERRUZZA
690 Rupert Avenue
Stouffville, ON L4A 8B7

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CLAIM

1. The plaintiff claims:
 - (a) a declaration that her employment with Greenline Industries Inc. was wrongfully terminated on or about May 28, 2010;
 - (b) damages as a result of the wrongful termination of the plaintiff's employment in the amount of \$200,000.00;
 - (c) termination pay pursuant to the provisions of the *Employment Standards Act*, R.S.O. 1990 r.E-14, as amended;
 - (d) punitive, exemplary and/or aggravated damages in the amount of \$250,000.00;
 - (e) special damages in the amount of \$100,000.00;
 - (f) prejudgment and postjudgment interest in accordance with the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, section 127;
 - (g) her costs of this action on a full indemnity basis together with applicable Harmonized Sales Tax, payable pursuant to the provisions of the *Excise Tax Act*, R.S.C. 1990, c. E-15, as amended;
 - (h) such further and other relief as to this Honourable Court may seem just.

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The Parties

2. The plaintiff, Debra House ("Debra") is 40 years of age and resides in the Town of Stouffville, in the Province of Ontario.
3. The defendant, Greenline Industries Inc. ("Greenline") is a corporation duly incorporated pursuant to the laws of the State of South Carolina, having its offices in Beaufort, South Carolina and in Stouffville, Ontario and engages in the manufacture and distribution of plywood products. Greenline Industries Inc. is affiliated with Greenline Plywood Products Ltd. ("Greenline Plywood") a corporation incorporated pursuant to the laws of the Province of Ontario, having its offices in Stouffville, Ontario and engaged in the manufacture and distribution of plywood products.
4. The defendant, Randall Robert Mikals, resides in the Town of Okatie, in the State of South Carolina and is a director and President of Greenline and Greenline Plywood.
5. The defendant, Donna F. Mikals, resides in the Town of Okatie, in the State of South Carolina and is an officer and/or director of Greenline and Greenline Plywood.

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6. The defendant, Charles R. Mikals, resides in the Town of Okatie, in the State of South Carolina and is an officer and/or director of Greenline and Greenline Plywood.

7. The defendant, Laurie Ann Perruzza, resides in the Town of Whitchurch Stouffville, in the Province of Ontario and is an officer and/or director of Greenline and Greenline Plywood.

The Employment Contract

8. The plaintiff was employed by Greenline pursuant to a contract of employment for in excess of 10 years.

9. During her employment with Greenline, the plaintiff enjoyed the position of Chief Financial Officer until her unlawful termination on May 28, 2010. Throughout the period of her employment, the plaintiff fulfilled her job responsibilities and duties in a superior manner.

10. In recognition of the high degree of responsibility integral to her position, as well as her significant achievements and abilities, the plaintiff, at the time of her termination received an annual salary of approximately \$97,500.00.

Termination of the Contract

11. The plaintiff pleads that her employment with Greenline was wrongfully terminated on May 28, 2010. The plaintiff further pleads that her employment was terminated without just cause and without reasonable notice, or compensation in lieu thereof. The defendants' purported basis for terminating the plaintiff's employment is baseless, false, contrived and asserted in bad faith.

Damages for Breach of Contract

12. As a result of her termination, the plaintiff is entitled to damages for reasonable notice. The plaintiff is further entitled to be compensated for the salary increment, full benefits and vacation pay that was owing to her and that she would have received during the period of reasonable notice. In addition, the plaintiff states that she is entitled to payment of 8 weeks for termination pay pursuant to the *Employment Standards Act*, as amended.

13. The plaintiff claims that Greenline and its co-defendants have acted in a deliberate, malicious, high-handed, arrogant and callous manner with a wanton and flagrant disregard for the plaintiff's contractual rights and in contravention of their obligation to act in good faith thereby entitling the plaintiff to punitive, exemplary and/or aggravated damages.

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14. The plaintiff further states that the defendants have breached their obligations of good faith and fair dealings toward the plaintiff and collectively conspired against her and pleads that the defendants have failed to be candid, reasonable, honest and forthright and that their conduct has been unfair, untruthful, misleading, fraudulent and unduly insensitive to the plaintiff. The defendants' bad faith conduct includes, but is not limited to the following:

- (a) they abruptly terminated the plaintiff's employment ostensibly for cause during a boardroom meeting on May 28, 2010;
- (b) they failed to date to provide the plaintiff with written confirmation of the basis of her unlawful termination;
- (c) they contacted the authorities resulting in 3 police officers attending at the premises of Greenline Plywood;
- (d) the principals of Greenline and Greenline Plywood physically prevented the plaintiff from leaving the premises;
- (e) the plaintiff was physically assaulted while attempting to clear out her desk;
- (f) they terminated the plaintiff's employment for just cause when it knew or ought to have known, that dismissal for just cause was not warranted and that same would have negative and serious implications to the plaintiff;
- (g) they collaborated in a scheme to intentionally terminate the plaintiff in an effort to elude their legal obligations to the plaintiff at law;
- (h) they conspired to divest Greenline Plywood of its assets and surreptitiously and improperly directed the movement of assets, including



inventory and equipment, from Greenline Plywood to Greenline to avoid obligations to Greenline Plywood's creditors and to avoid legal obligations to the plaintiff; and

- (i) they manipulated the financial records of Greenline Plywood in order to reflect a profit in Greenline for the purposes of bankrupting Greenline Plywood to avoid its obligations to the plaintiff.

15. As a result of her wrongful dismissal from her employment by the defendant Greenline, the plaintiff has been and will be put to numerous and various expenses relating to her continued attempts to mitigate her damages by seeking alternative comparable employment, the particulars of which are not known at the present time but will be provided prior to trial.

16. The plaintiff relies upon Rule 17.02(f), (g), and (h) of the *Rules of Civil Procedure*.

16. The plaintiff proposes that this action be tried at Newmarket, Ontario.

Date of issue: December 22, 2011

MINGAY & VERESHCHAK
Barristers and Solicitors
81 Main Street North
Markham, Ontario
L3P 1X7

Attention: Oleh P. Vereshchak
L.S.U.C. # 27142D

Tel: (905) 294-0550
Fax: (905) 294-9141

Solicitors for the Plaintiff

39

donnam@greenlineforest.com

From: Debra House [debrah@greenlineforest.com]
Sent: Friday, March 19, 2010 2:45 PM
To: Donna Mikals
Subject: Chuck's loan

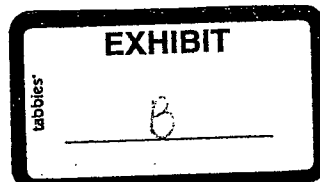
FYI - Ken needed the exact amount of Chuck's loan before he could add him to the registration so I called Jean to find out the amount. It is higher than I expected and Jean (of course) couldn't figure out why because she can't even see the history on her computer. All she could tell me is that it was set to never print a statement and is hooked to your personal accounts for overdraft. So, I was expecting it to be in the range of \$500-\$550 and she told me the balance was \$611. I have requested a statement to be issued since the day it was started back in 2005 from their loans dept so we can see the transactions since it was opened. She mentioned that the interest does it self contained i.e. gets added to the balance each month which is certainly part of the reason why it's more than I thought.

After we receive the money from Benefact, I suggest we do the following:

- 1) pay it down by whatever surplus of funds we have available.
- 2) change the account to charge the interest to GPPL instead of accruing so it does not grow and we are only dealing with principle amount (we can do this now if you'd like)

Anyways, we've got Chuck protected which is the most important part! I've got Ken registering the amount of \$600K so we're covered (we'll get the excess of \$11 taken care of ASAP).

Debra House, CFO
Greenline
Ph) 905.640.4788 Ext 203
Fx) 905.640.8862



3/22/2010

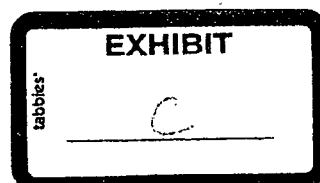
00058

Randy Mikals

From: Debra House <debrah@greenlineforest.com>
Sent: Friday, March 19, 2010 4:17 PM
To: Donna Mikals; Laurie Perruzza; Mark Hinchcliffe; Randy Mikals
Subject: PPSA Registration

Chuck has been registered as the secured party behind BMO but it reads 'save and except, two security registrations wrt BMW and Ryder against vehicles'.

Debra House, CFO
Greenline
Ph) 905.640.4788 Ext 203
Fx) 905.640.8862



KENNETH C. GOODBRAND
Barrister & Solicitor

IN ASSOCIATION WITH
BUTTON, ARMSTRONG & NESS

E-Mail: banlaw@rogers.com

BOX 220, 6361 MAIN ST.,
STOUFFVILLE, ONTARIO
L4A 7Z5

TEL: (905) 640-3530
FAX: (905) 640-7027

WITHOUT PREJUDICE

PERSONAL AND CONFIDENTIAL

REGISTERED MAIL

May 9, 2010

Mr. Charles Mikals
c/o Greenline Industries Inc.
2966 Trask Parkway
Beaufort, SC
29906-8040

Dear Mr. Mikals:

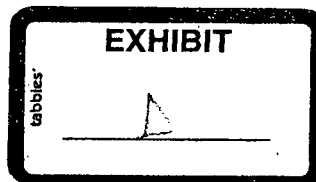
Re: Greenline Plywood Products Ltd.

In early March, 2010, I was contacted by Deborah House, the then Controller of Greenline Plywood Products Ltd. and was asked to place a PPSA registration by the above-noted company in your favour in the amount of \$600,000.00. I took my instructions verbally. I completed the registration and forwarded my reporting letter and verification statement to Ms. House. I was not asked to prepare a general security agreement ("GSA") and assumed that Ms. House had made other arrangements in this regard. In February, 2011, Cynthia H. of Greenline asked me for a copy of the GSA in response to which I advised that I had not been asked to prepare one.

Please be advised that, in the event neither you or Ms. House had a GSA prepared, the validity of your security could be in jeopardy. Accordingly, you should consult with independent counsel in relation to this issue and have your counsel contact the receiver.

Yours very truly,


Kenneth C. Goodbrand
KCG/wck



00060

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Charles R. Mikals and Donna
Mikals,

Plaintiffs,

vs.

Debra House,

Defendant.

IN THE COURT OF
COMMON PLEAS

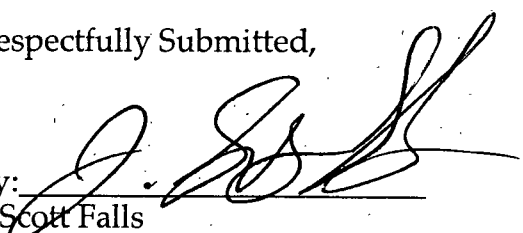
Civil Action
No. 2013-CP-07-1186

NOTICE OF APPEARANCE

**TO: JOHN E. NORTH, JR., ESQ., ATTORNEY FOR PLAINTIFFS CHARLES R.
MIKALS AND DONNA MIKALS:**

PLEASE TAKE NOTICE THAT J. Scott Falls, Esq., whose mailing address is Post Office Box 657, Charleston, South Carolina 29402, hereby enters his appearance as counsel on behalf of Defendant Debra House. All pleadings and other documents should be served upon him at the foregoing address.

Respectfully Submitted,

By: 

J. Scott Falls

Scott@jscottfallslaw.com

53 Broad Street, Suite 205

Post Office Box 657 (29402)

Charleston, South Carolina 29401

(843) 737-6040 (telephone)

(843) 737-6140 (facsimile)

Attorney for Defendant Debra House

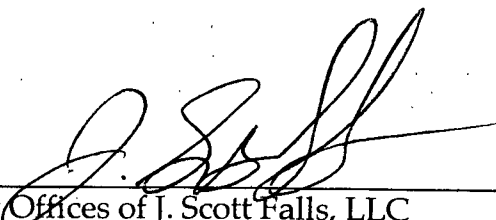
Charleston, South Carolina
August 12, 2013

00061

CERTIFICATE OF SERVICE

I, the undersigned of the Law Offices of J. Scott Falls, LLC, Attorney for Debra House do hereby certify that I have served a copy of the foregoing, Notice of Hearing, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

John E. North, Jr., Esq.
North & Black, PC
916 Bay Street, Suite 100
Beaufort, SC 29902



Law Offices of J. Scott Falls, LLC
53 Broad Street, Suite 205
Post Office Box 657 (29402)
Charleston, South Carolina 29401
ð(843) 737-6040 (telephone)
(843) 737-6140 (facsimile)

Charleston, South Carolina
August 12, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Charles R. Mikals and Donna
Mikals,)

Plaintiffs,)

vs.)

Debra House,)

Defendant.)

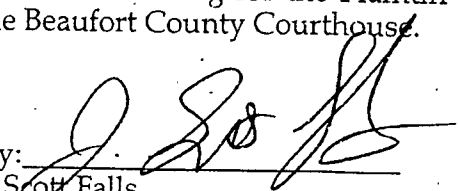
IN THE COURT OF
COMMON PLEAS

Civil Action
No. 2013-CP-07-1186

NOTICE OF HEARING

TO: JOHN E. NORTH, JR., ESQ., ATTORNEY FOR PLAINTIFFS CHARLES R. MIKALS AND DONNA MIKALS:

YOU WILL PLEASE TAKE NOTICE that a hearing has been set in the above entitled action on Defendant's Motion to Dismiss on September 3rd, 2013 at 9:30 a.m. before the Honorable Marvin H. Dukes, III. The hearing for the Plaintiff's Motion to Dismiss is set to be heard at that time at the Beaufort County Courthouse.

By: 

J. Scott Falls

Scott@jscottfallslaw.com

53 Broad Street, Suite 205

Post Office Box 657 (29402)

Charleston, South Carolina 29401

(843) 737-6040 (telephone)

(843) 737-6140 (facsimile)

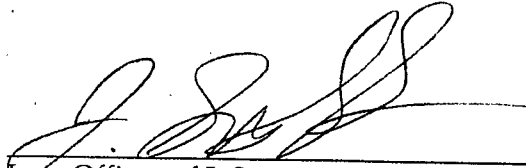
Attorney for Defendant Debra House

Charleston, South Carolina
August 12, 2013

CERTIFICATE OF SERVICE

I, the undersigned of the Law Offices of J. Scott Falls, LLC, Attorney for Debra House do hereby certify that I have served a copy of the foregoing, Notice of Appearance, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

John E. North, Jr., Esq.
North & Black, PC
916 Bay Street, Suite 100
Beaufort, SC 29902



Law Offices of J. Scott Falls, LLC
53 Broad Street, Suite 205
Post Office Box 657 (29402)
Charleston, South Carolina 29401
(843) 737-6040 (telephone)
(843) 737-6140 (facsimile)

Charleston, South Carolina
August 12, 2013

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Charles R. Mikals and Donna
Mikals,

Plaintiffs,

VS.

Debra House,

Defendant:

IN THE COURT OF
COMMON PLEAS

Civil Action
No. 2013-CP-07-1186

**AFFIDAVIT OF DEBRA HOUSE IN
SUPPORT OF MOTION TO DISMISS
PURSUANT TO RULE**

I, Debra House, swear and affirm as follows:

1. My name is Debra House and I reside in the ~~Town of Whitby, Ontario, in the Regional Municipality of York, in the Province of Ontario,~~ and the Country of Canada.
2. I submit this Affidavit in support of my Motion to Dismiss for Lack of Personal Jurisdiction under Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.
3. I am over the age of eighteen and have personal knowledge of and am competent to testify about the matters addressed in this Affidavit.
4. I make this Affidavit based on personal knowledge, conversations and discussions had in my previous position with one of the numerous business entities that were either owned by the children of the Plaintiffs and/or the Plaintiffs herein. All companies that I worked for had their administrative offices in Stouffville, Ontario.

The statements contained in this Affidavit are true and correct. If called as a witness, I could and would testify thereto under oath.

5. I was born on April 22, 1971 and I am and have always resided in Ontario, Canada and have always been continuously domiciled in Ontario, Canada. I am and have always been a Canadian citizen.

6. I have never resided in the United States at any point in my life. I have only been to South Carolina (2) two times in my *entire* life and both visits were in 2006.¹

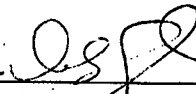
7. In support of my only having travelled to South Carolina two times ever, both of which occurred in 2006, I am attaching a certified "Border Crossing record for 2008" (Official File # P-2013-05424/LBA) pertaining to any and all travel I made outside of Canada during 2008. I obtained this official documentation from the Canada Border Services Agency ("CBSA") on August 7, 2013 and I swear and affirm that these are authentic documents that I received from the CBSA in response to my requesting the same. This document is attached as **Exhibit A**.

8. The Complaint states that alleged "solicitations and assurances (by me) were made both telephonically and **in person in Beaufort County, South Carolina.**" (Compl. ¶¶ 10 - 13) (emphasis provided). As illustrated by the official CBSA Border Crossing Record, Plaintiffs' contention is false as I did not travel to Beaufort County, South Carolina in 2008 as Plaintiffs claim in the Complaint they filed with the Court.

¹ I believe that I went on a trip with my family to Hilton Head when I was a child and I *may* have travelled through the State of South Carolina for a vacation trip to Florida or Georgia. All of these potential entrances into the state would have been for pleasure and not work related. I provide this information to ensure full candor with the Court.

9. For further proof of the lack of personal jurisdiction that this Honorable Court has over me, I am providing my entire certified "Border Crossing Record" (Official File # P-2013-05424/LBA) for the entire period of time from August 1, 2000 through July 23, 2013 as **Exhibit B**. I obtained this official documentation per my request to the CBSA and it is an official government document that shows that I **entered the State of South Carolina only two times - both in 2006**. Other than these two visits to South Carolina, I have never been there at any other point in my life, with the possible exceptions set forth in footnote 1.
10. My official Passport is attached hereto and incorporated herein as **Exhibit C** to further evidence that I have not been to South Carolina since 2006.
11. For additional support for my lack of travel to South Carolina after 2006, I am attaching a document that I created that further details each trip that I made out of Canada from 2000 through 2013. I am attaching this document as **Exhibit D** for further support and evidence that I have no minimum contacts and have made no visits to South Carolina during the times that Plaintiffs claim that I did.
12. My business card with my previous employer is attached as **Exhibit E** for the purpose of indicating that they operated and did business in Ontario, Canada, which is where I was at all times employed.
13. The website for my previous employer evidences and specifically states that the **Company's Administrative Offices are in Stouffville, Ontario**. The website page from the company's own official corporate is attached as **Exhibit F**.

FURTHER AFFIANT SAYETH NOT


Debra House

SWORN to and subscribed before me
This 29th day of August, 2013

at City of Oshawa in the Region
of Durham, Province of Ontario
Notary Public/Commissioner for


MARY JANE MCCARTHY
NOTARY PUBLIC

My Commission Expires: N/A

EXHIBIT A



Canada Border Services Agency Agence des services
frontaliers du Canada

410 Laurier Avenue West, 10th Floor
Ottawa, Ontario K1A 0L8

AUG 07 2013

Our File
P-2013-05424 / LBA

Debra Lynn House
53 Manitoba Street
Stouffville, Ontario L4A 4T3

Dear Ms. House:

This letter is in response to your request under the *Privacy Act*. Your request reads:

**"Border Crossing record for 2008 pertaining to {HOUSE, Debra Lynn - nee SURMAN
- DOB: April 22, 1971}"**

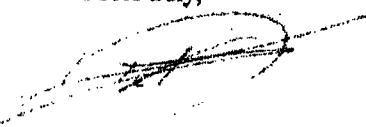
The processing of your request is now complete. Please note that certain information has been exempted pursuant to section 26 of the *Act*.

As the Canada Border Services Agency is committed to providing the highest level of client service, we would be pleased to assist you with any questions or concerns you may have regarding the handling of your request. You may contact Lucie Bégin-Allain at 613-941-6948 or by e-mail at Lucie.Begin-Allain@cbsa-asfc.gc.ca, using our file number as a reference.

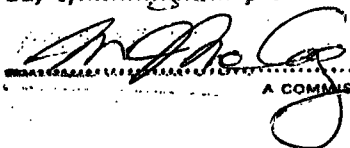
Should you be dissatisfied with the processing of this request, you may file a complaint with the Privacy Commissioner of Canada by writing to:

Office of the Privacy Commissioner of Canada
Place de Ville, Tower B
112 Kent Street
Ottawa, Ontario
K1A 1H3

Yours truly,


Alain Belleville
Manager
Access to Information and Privacy Division

This is Exhibit A referred to in the
affidavit of Debra House
sworn before me, this 29th
day of August, 2013 12


A COMMISSIONER, ETC

Canada

NOT RELEVANT

00070



Canada Border
Services Agency

Agence des services
frontaliers du Canada

August 01, 2013

PROTECTED B

RELEASED UNDER THE PRIVACY ACT
DIVULGUÉ SOUS LA LOI DE LA PROTECTION DES
RENSEIGNEMENTS PRIVÉS

Integrated Customs Enforcement System



ICES TRAVELLER HISTORY - ATIP TRAVELLER PASSAGE REPORT

DATE RANGE: from 2008/01/01 00:00
to 2008/12/31 23:59

SELECTED CRITERIA

TRAVELLER NAME: SURMAN, Deb

DATE OF BIRTH: ~~REDACTED~~

WORK LOCATION: All Work Locations

DOCUMENT TYPE: All Document Types

PROGRAM TYPE: All Program Types

DOCUMENT NUMBER: N/A

OFFICER ID: All Officers

LANE: All lanes

LEGEND

GENDER:

(F) Female
(M) Male
(U) Unknown

DOCUMENT TYPE:

PASS - Passport

00071



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Services Agency

Agence des services
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August 01, 2013

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Integrated Customs Enforcement System



Passage Date/Time	Officer ID	Traveller Name	Date of Birth	Gender	Citizenship	Work Location	Line	Doc Type	Document Number	Program Type
2008-04-12 02:14:15 ET	NXN144	SURMAN, DEBRA LYNN	1974-06-22	F	CA	Pearson Int'l Airport - Terminal 3	5	PASS	JT182398	IPIL
2008-12-03 16:25:11 ET	DXW259	SURMAN, DEBRA LYNN	1974-06-22	F	CA	Samia, Blue Water Bridge - Traffic	05	PASS	JT182398	IPIL Highway

00072

EXHIBIT B

00073



Canada Border Services Agency Agence des services
frontaliers du Canada

410 Laurier Avenue West, 10th Floor
Ottawa, Ontario K1A 0L8

AUG 07 2013

Our File
P-2013-05424 / LBA

Debra Lynn House
53 Manitoba Street
Stouffville, Ontario L4A 4T3

Dear Ms. House:

This letter is in response to your request under the *Privacy Act*. Your request reads:

**"Border Crossing record for 2008 pertaining to [HOUSE, Debra Lynn - nee SURMAN
- DOB: April 22, 1971]"**

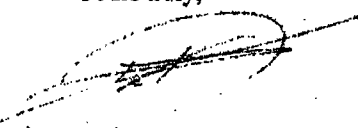
The processing of your request is now complete. Please note that certain information has been exempted pursuant to section 26 of the *Act*.

As the Canada Border Services Agency is committed to providing the highest level of client service, we would be pleased to assist you with any questions or concerns you may have regarding the handling of your request. You may contact Lucie B  gin-Allain at 613-941-6948 or by e-mail at Lucie.Begin-Allain@cbsa-asfc.gc.ca, using our file number as a reference.

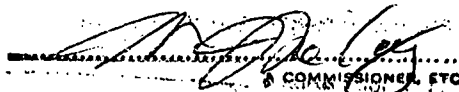
Should you be dissatisfied with the processing of this request, you may file a complaint with the Privacy Commissioner of Canada by writing to:

Office of the Privacy Commissioner of Canada
Place de Ville, Tower B
112 Kent Street
Ottawa, Ontario
K1A 1H3

Yours truly,


Alain Belleville
Manager
Access to Information and Privacy Division

This is Exhibit B referred to in the
affidavit of Debra House
sworn before me, this 29th
day of August, 2013


COMMISSIONER, ETC

Canada

NOT RELEVANT

00074



Canada Border
Services Agency

Agence des services
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August 01, 2013

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RENSEIGNEMENTS PRIVÉS

Integrated Customs Enforcement System



ICES TRAVELLER HISTORY - ATIP TRAVELLER PASSAGE REPORT

DATE RANGE: from 2000/08/01 00:00
to 2013/07/23 23:59

SELECTED CRITERIA

TRAVELLER NAME: SURMAN, Deb

DATE OF BIRTH: [REDACTED]

WORK LOCATION: All Work Locations

DOCUMENT TYPE: All Document Types

DOCUMENT NUMBER: N/A

OFFICER ID: All Officers

LANE: All lanes

PROGRAM TYPE: All Program Types

LEGEND

GENDER:

(F) Female
(M) Male
(U) Unknown

DOCUMENT TYPE:

PASS - Passport

00075



Canada Border
Services Agency

Agence des services
frontaliers du Canada

August 01, 2013

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Integrated Customs Enforcement System



Passage Date/Time	Officer ID	Traveller Name	Date of Birth	Sex	Citizenship	Work Location	Line	Doc Type	Document Number	Program Type
2002-04-28 02:33:21 ET	RXG284	SURMAN, DEBRA L	1974-09-02	F	CA	Pearson Int'l Airport - Terminal 3	18	PASS	VG670386	
2003-05-10 23:54:36 ET	RSY120	SURMAN, DEBRA L	1974-09-02	F	CA	Pearson Int'l Airport - Terminal 3	23	PASS	VG670386	
2004-05-04 03:05:36 ET	CXO152	SURMAN, DEBRA LYNN	1974-09-02	F	CA	Pearson Int'l Airport - Terminal 3	05	PASS	JT182398	
2005-01-06 17:43:23 ET	AXD387	SURMAN, DEBRA L	1974-09-02	F	CA	Pearson Int'l Airport - Terminal 3	28	PASS	VG670386	IPIL
2006-05-19 10:55:51 ET	AXS317	SURMAN, DEBRA LYNN	1974-09-02	F	CA	Pearson Int'l Airport - Terminal 3	6	PASS	JT182398	IPIL
2006-12-02 00:40:15 ET	SXB652	SURMAN, DEBRA LYNN	1974-09-02	F	CA	Pearson Int'l Airport - Terminal 3	2	PASS	JT182398	IPIL
2007-04-29 02:24:19 ET	TXK207	SURMAN, DEBRA LYNN	1974-09-02	F	CA	Pearson Int'l Airport - Terminal 3	3	PASS	JT182398	IPIL
2008-04-12 02:14:15 ET	NXN144	SURMAN, DEBRA LYNN	1974-09-02	F	CA	Pearson Int'l Airport - Terminal 3	5	PASS	JT182398	IPIL
2008-12-03 16:25:11 ET	DXW259	SURMAN, DEBRA LYNN	1974-09-02	F	CA	Samia, Blue Water Bridge - Traffic	05	PASS	JT182398	IPIL Highway

00076



Canada Border
Services Agency

Agence des services
frontaliers du Canada

August 01, 2013

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RENSEIGNEMENTS PRIVÉS

Integrated Customs Enforcement System



ICES TRAVELLER HISTORY - ATIP TRAVELLER PASSAGE REPORT

DATE RANGE: from 2000/08/01 00:00
to 2013/07/23 23:59

SELECTED CRITERIA

TRAVELLER NAME: HOUSE, Deb

DATE OF BIRTH: ~~10/10/1962 (DOB: 10/10/1962)~~

WORK LOCATION: All Work Locations

DOCUMENT TYPE: All Document Types

PROGRAM TYPE: All Program Types

DOCUMENT NUMBER: N/A

OFFICER ID: All Officers

LANE: All lanes

LEGEND

GENDER:

(F) Female
(M) Male
(U) Unknown

DOCUMENT TYPE:

PASS - Passport

00077



Canada Border
Services Agency

Agence des services
frontaliers du Canada

August 01, 2013

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DIVULGUÉ SOUS LA LOI DE LA PROTECTION DES
RENSEIGNEMENTS PRIVÉS

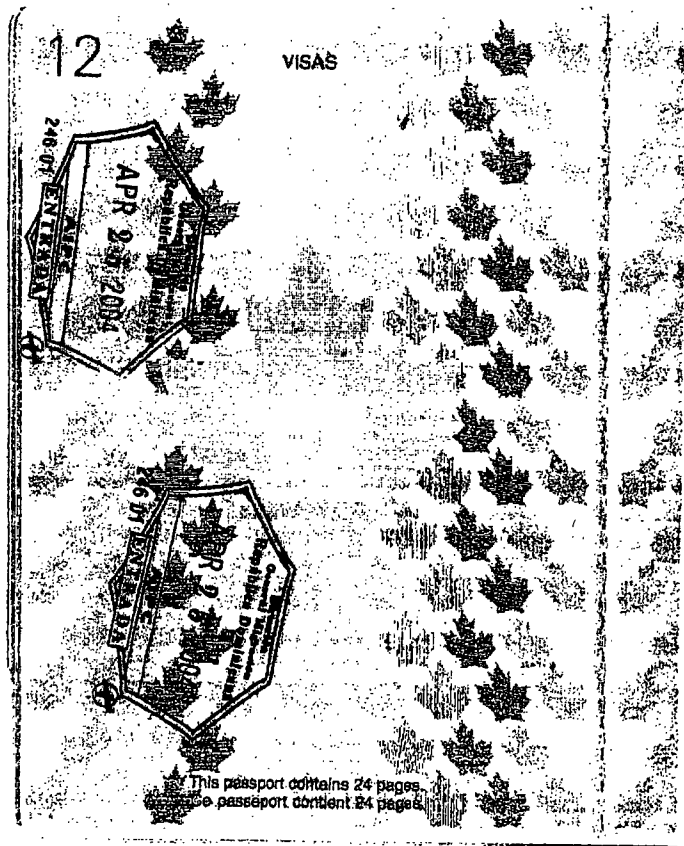
Integrated Customs Enforcement System



Passage Date/Time	Officer ID	Traveller Name	Date of Birth	Gender	Citizenship	Work Location	Lane	Doc. Type	Document Number	Program Type
2009-05-04 01:58:19 ET	HXC010	HOUSE, DEBRA LYNN	1954-05-08	F	CA	Pearson Int'l Airport - Terminal 3	13	PASS	WF076932	IPIL
2010-02-28 02:24:13 ET	WBK120	HOUSE, DEBRA LYNN	1954-05-08	F	CA	Pearson Int'l Airport - Terminal 3	7	PASS	WF076932	IPIL
2012-12-09 13:01:22 ET	PSC123	HOUSE, DEBRA LYNN	1954-05-08	F	CA	Samia, Blue Water Bridge - Traffic	08	PASS	WF076932	IPIL Highway

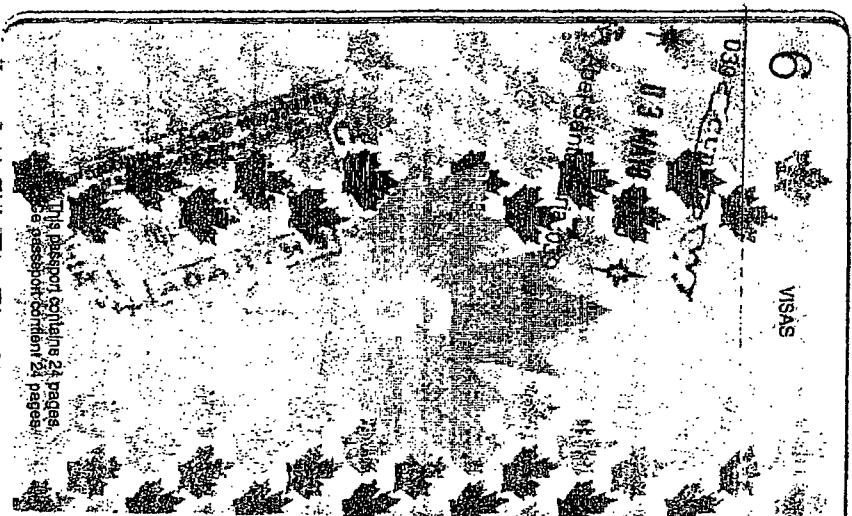
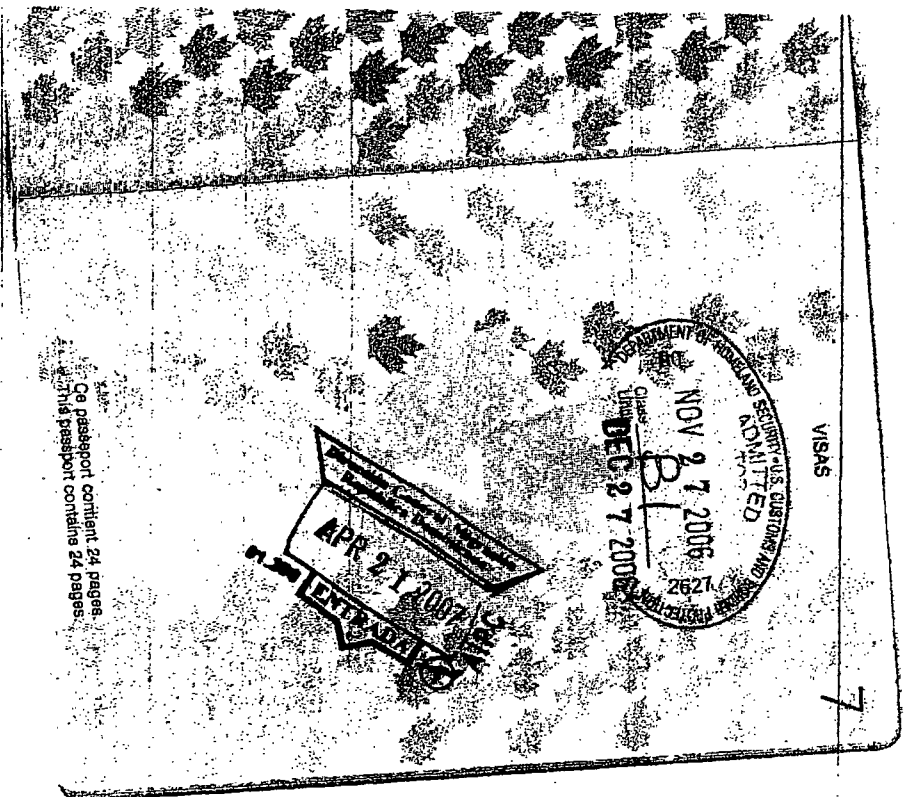
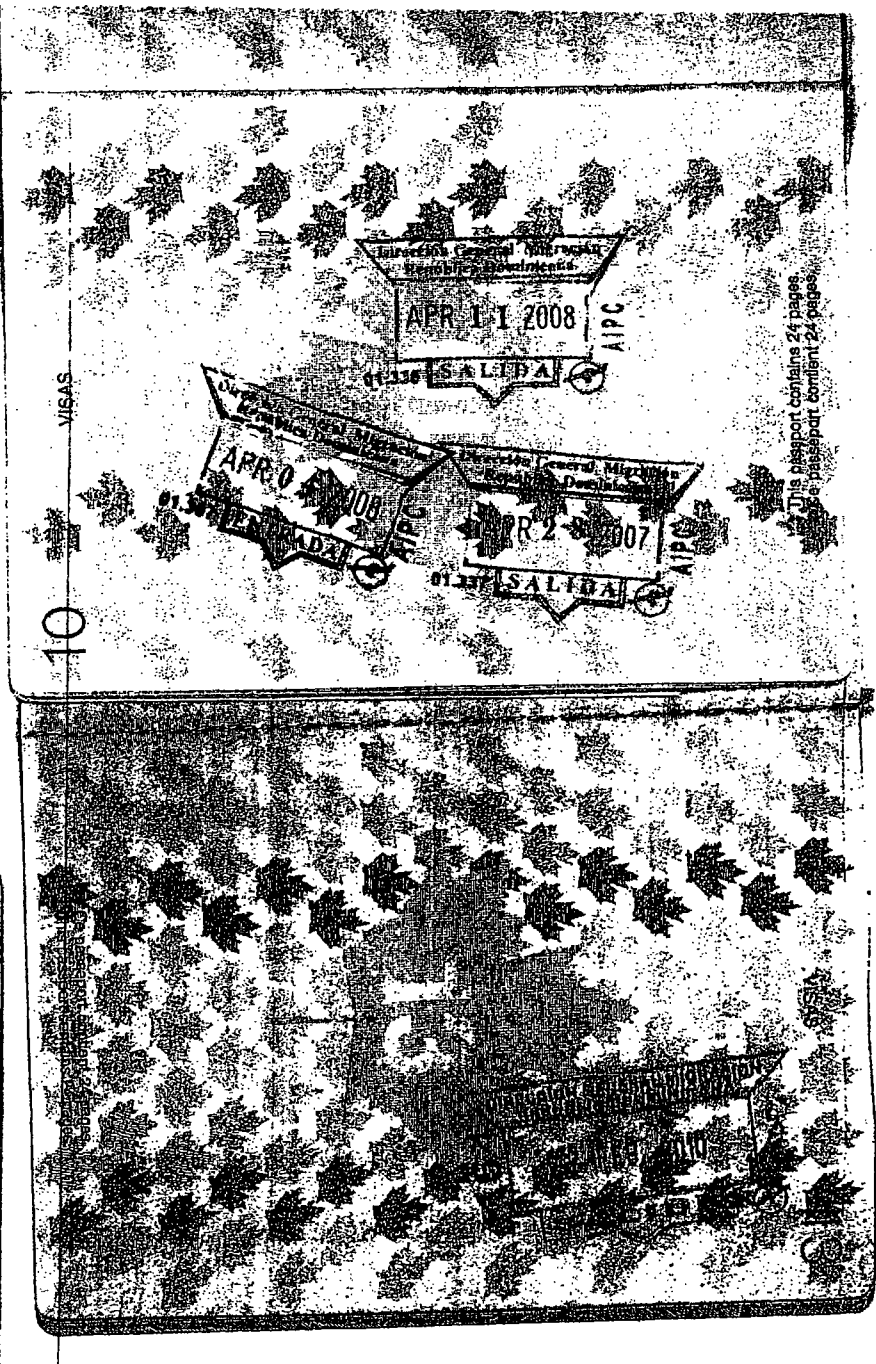
00078

EXHIBIT C



This is Exhibit C referred to in the
affidavit of Debra House
sworn before me, this 29th
day of August 2013

M. Delaney
A COMMISSIONER, ETC.



00081

EXHIBIT D

4/28/02 Pearson Int'l Airport	Dominica Republic
5/10/03 Pearson Int'l Airport	Dominica Republic
5/4/04 Pearson Int'l Airport	Dominica Republic
1/6/05 Pearson Int'l Airport	Florida (year-end inventory verification for GFPL)
5/19/06 Pearson Int'l Airport	South Carolina
12/2/06 Pearson Int'l Airport	South Carolina
4/29/07 Pearson Int'l Airport	Dominica Republic
4/12/08 Pearson Int'l Airport	Dominica Republic
12/3/08 Sarnia, Blue Water Bridge	Michigan (visit to customer, Tiara Yachts, by car)
5/4/09 Pearson Int'l Airport	Cuba
2/28/10 Pearson Int'l Airport	Dominica Republic

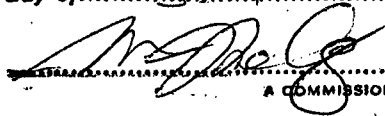
This is Exhibit D referred to in the
 affidavit of Debra House
 sworn before me, this 29th
 day of August, 2013 th

 A COMMISSIONER, ETC

EXHIBIT E



Debra House
C.F.O.

11761 Hwy. #48
Stouffville, Ontario
Canada L4A 7X5
T: 905-640-4788
F: 905-640-8862

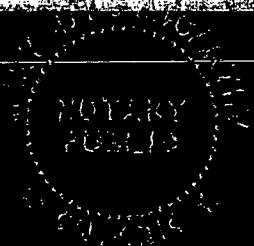
Forest Products
Plywood Products
Industries, Inc.

I, the undersigned, being a duly qualified
Notary Public for the Province of Ontario,
do hereby certify that the foregoing is a
true and correct copy of the original
document as the same appears to me.

[Signature]
Notary Public
for the Province of Ontario

2008
Benjamin

E-mail: debrah@greenlineforest.com



00085

EXHIBIT F

U.S.A.

P. 843.846.4648

F. 843.846.4723

IT'S ALL IN OUR NAME

CANADA

P. 905.640.4788

F. 905.640.8862

[home](#) | [email](#) | [back](#)

HOME

PRODUCTS

ENVIRONMENT

PLYWOOD

IPIR RECON

LEGNOQUATTRO

ABOUT US



Greenline Industries Inc.
U.S. Plywood Manufacturing Facility
and Sales Office
 2966 Trask Pkwy.
 Beaufort, SC 29906-8040
 Phone: 843-846-4648
 Fax: 843-846-4723
 email: info@greenlineforest.com
[Map / Directions](#)

This Greenline owned facility sits on 9 acres of land with 60,000sq. ft. of manufacturing and warehousing.
 This location houses our manufacturing and sales of:

- Custom Hardwood Plywood
- Veneer Splicing and Sheet Processing
- Veneer Core Calibration
- HPL Lamination
- Ipir Veneer Reconstituted Veneers
- Legnoquattro Real Dyed Veneers



Stouffville, Ontario
CANADA

Greenline Plywood Products Ltd.
Plywood and Administrative Offices
 P.O. Box 451
 11761 Hwy 48
 Stouffville, ON L4A 7X6
 Phone: 905-640-4788
 Fax: 905-640-8862
[Map / Directions](#)

This Greenline owned facility sits on 10 acres of land with over 85,000sq. ft. of office, manufacturing and warehousing.
 This location houses our manufacturing and sales of:

- Custom Hardwood Plywood
- Veneer Splicing and Sheet Processing
- Veneer Core Calibration
- Custom Hardwood Moulding
- Ipir Veneer Reconstituted Veneers
- Legnoquattro Real Dyed Veneers

[home](#) | [products](#) | [environment](#) | [plywood](#) | [IPIR](#) | [about us](#) | [contact us](#)

Copyright Empire Image 2008

This is Exhibit F referred to in the
 affidavit of Debra House
 sworn before me, this 29th
 day of August, 2013
Mr. [Signature]
 A COMMISSIONER, ETC.

plywood in Canada. *Id.* Defendant held the position of Chief Financial Officer ("CFO").
Id.

As Plaintiffs assert in their Complaint, in 2005, Greenline Industries, Inc. ("Industries") was incorporated in the State of South Carolina, but its administrative offices were and remain located in Canada. (*See* Compl.; *See also* Ex. F of Def.'s Aff. – Excerpt from Industries business website). The purpose of the incorporation of Industries was generally for estate planning reasons and it remained operating in the same capacity as Forest Products. In 2008, the inventory of Forest Products was transferred to Greenline Plywood Products, Limited ("Plywood"), which was also created by Plaintiffs. (*See* Compl.). Plywood is a corporation incorporated pursuant to the laws of the Province of Ontario, having its offices in Stouffville, Ontario. (*See* Compl.; *See also* Ex. F of Def.'s Aff. – Excerpt from Industries business website). Plywood was owned by Randall Mikals and Laurie Ann Perruzza, the children of Plaintiffs. (*See* Compl.).

Plaintiff continued working for the Greenline entities until around May 28, 2010, when she was terminated. (*See* Compl.; *See also* Pl.'s Mem. in Opp.). Subsequently, Mrs. House initiated a wrongful termination lawsuit against Greenline Industries, Inc. and the Plaintiffs in a personal capacity in the Superior Court of Ontario, Canada. (*See* Ex. A of Pl. Donna Mikals' Aff. - Wrongful Termination Lawsuit Pending in Canada).

That lawsuit is still pending in Canada to date. (*See* Ex. A of Pl. Donna Mikals' Aff. - Wrongful Termination Lawsuit Pending in Canada). **As part of the Canadian wrongful termination lawsuit, the Plaintiffs in the present matter (and Defendants in the Canadian matter) have attempted to have jurisdiction of the case transferred to South Carolina.** Of note, the at-will employment laws of the State of South Carolina are much less employee-friendly than their Canadian counterparts, which disfavor the at-

will employment doctrine. Due primarily to the Plaintiffs' delay tactics, the jurisdiction issue is still pending before the Canadian court at this time. (See Ex. A of Pl. Donna Mikals' Aff. - Wrongful Termination Lawsuit Pending in Canada).

In May 2013, the Plaintiffs filed this lawsuit, asserting compulsory counterclaims to the Canadian suit, in the South Carolina Court of Common Pleas. (See Compl.; See also Ex. A of Pl. Donna Mikals' Aff. - Wrongful Termination Lawsuit Pending in Canada). Of note, the statute of limitations for the Plaintiffs' claims in Canada is one year shorter than the statute of limitations for these claims in South Carolina.¹ (Limitations Act, 2002). Thus, the Plaintiffs decided to file suit against Mrs. House in South Carolina or their claims would be forever barred. (Limitations Act, 2002; See Compl.; See also Ex. A of Pl. Donna Mikals' Aff. - Wrongful Termination Lawsuit Pending in Canada). Notably, the Plaintiffs have elected to sue Mrs. House in their individual capacities and have not brought suit under any of their various company entity names. (See Compl.). Presumably, the Plaintiffs and/or their children were aware that if their company(ies) sued Mrs. House in South Carolina, instead of the individual owners, they would not be able to maintain the suit here due to the corporate administrative offices being in Canada. (See Ex. A of Pl. Donna Mikals' Aff. - Wrongful Termination Lawsuit Pending in Canada).

The other clear motivating factor for filing the South Carolina suit is simply retaliation for bringing the wrongful termination lawsuit in Canada and to force Mrs. House, who is eight months pregnant, to physically come to South Carolina to defend herself. This is all despite the fact that Mrs. House has not set foot in South Carolina since 2006. (Def.'s Aff.) ***Rest assured, malice is at the heart of this lawsuit.***

¹ Canada, including Ontario, places a two-year statute of limitations on virtually *all* legal civil actions, including those for Fraud and Breach of Fiduciary Duty, which the Plaintiffs herein have alleged. See Canada Civil Limitations Act, 2002 (enacted in 2004).

ARGUMENT

Where personal jurisdiction over a nonresident defendant is disputed under Rule 12(b)(2), SCRCP, Plaintiffs have the full burden of proving, by a preponderance of the evidence, that jurisdiction is proper. *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 423 S.E.2d 128 (1992). Plaintiffs have failed to show that personal jurisdiction is appropriate over Mrs. House in this matter. Due process, however, requires Plaintiffs to make such a showing.

I. Plaintiffs Have Not Made a Prima Facie Showing of Personal Jurisdiction.

The party seeking to invoke personal jurisdiction by utilizing our long-arm statute has the burden of establishing jurisdiction. *Aviation Associates & Consultants, Inc. v. Jet Time, Inc.*, 303 S.C. 502, 505, 402 S.E.2d 177, 179 (1991). The determination of whether a court may exercise personal jurisdiction over a nonresident involves a two-step analysis. *Id.* First, the trial judge must determine that the South Carolina long-arm statute applies to the particular situation. *Id.* The trial court's analysis of personal jurisdiction, however, does not end here. *Id.* Second, the trial judge must determine that the nonresident's contacts in South Carolina are sufficient to satisfy due process requirements. *Id.* This second prong mandating compliance with due process is often *not* met even where the first prong of ensuring the application of the long arm statute is met. *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 423 S.E.2d 128 (1992); *Hume v. Durwood Medical Clinic, Inc.*, 282 S.C. 236, 318 S.E.2d 119 (Ct. App. 1984), cert. dismissed, 285 S.C. 377 329 S.E.2d 443, cert. denied, 474 U.S. 848 (1985); *Wells Am. Corp. v. Sunshine Elecs.*, 717 F. Supp. 1121 (D.S.C. 1989).

Our long-arm statute, S.C.Code Ann. §. 36-2-803 (1976), has been construed to extend to the limits of due process. *Hammond v. Cummins Engine Co.*, 287 S.C. 200, 336 S.E.2d 867 (1985). Section 36-2-803(1)(a) gives South Carolina broad powers to exercise personal jurisdiction over a person as to a cause of action arising from the person's transacting any business in this State. *Id.*; *See also Power Products & Services Co., Inc.*, 379 S.C. 431, 665 S.E.2d 664 (Ct. App. 2011). However, a **mere recitation** of the long-arm statute in a Complaint is **not sufficient** to support a finding of personal jurisdiction without sufficient factual allegations therein to support such. *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 151, 723 S.E.2d 835, 839 (Ct. App. 2012), cert. dismissed (June 7, 2012), reh'g denied (Mar. 29, 2012)

The Plaintiffs allege that the long-arm statute applies "as a result of Defendant transacting business in the State of South Carolina and by the Defendant's commission of tortious acts in whole or in part in the State of South Carolina." (Compl. ¶ 3). The facts the Mikals argue to support this contention are as follows: Defendant allegedly made various untrue representations to them, by long-distance telephone calls and in person, within South Carolina, and solicited the use of their line of credit for the benefit of the company while working as Plaintiffs' employee.² (Pl.s' Mem. in Opp. at 4).

As a preliminary matter, the last time the Defendant was physically in South Carolina was in 2006. (Def.'s Aff.). Otherwise, Defendant has never been to South Carolina in her entire life. (Def.'s Aff.). Clearly, any injuries stemming from Mrs. House's 2006 visit to South Carolina would be barred by the relevant statutes of limitation. *McDonnell v. Consolidated Sch. Dist. of Aiken*, 315 S.C. 487, 445 S.E.2d 638

² Plaintiffs' vague allegations that attempt to create minimum contacts and personal jurisdiction are stated as if they occurred in some unknown and unspecified time period and are set forth without dates or time periods for such alleged actions.

(1994). This is likely why Plaintiffs fail to provide dates for the actions they allege and attribute to Defendant. (Compl.).

In fact, a close review of the Plaintiffs' Complaint fails to demonstrate *any* pleading of facts related to a physical entrance into the State of South Carolina by Defendant – within *any* applicable statute of limitations – South Carolina or Canadian. (See Pl.s' Compl.). Rather, Plaintiffs argue exclusively that the alleged limited tortious acts, apparently that they believe would **not** be barred by the statute of limitations, were made by long-distance telephone calls to Plaintiffs, who reside in Okatie. (See Pl.s' Compl.). The Complaint continues on to discuss communications Mrs. House had with the Bank of Montreal, which Plaintiffs quite conveniently fail to mention, is a **Canadian bank**. (See Pl.s' Compl.). Plaintiffs' alleging vague and undated telephone communications with a **Canadian** bank provides them with no relief in their argument that personal jurisdiction exists over Defendant.

Naturally, as Plaintiffs are officers of a Canadian company *who have made a personal and voluntary decision to retire to Okatie*, Mrs. House was required to contact them by long-distance telephone calls to relay information gained as part of her employment duties. (See Pl.s' Compl.; See also Def.'s Aff.; See also Ex. A of Pl. Donna Mikals' Aff. - Wrongful Termination Lawsuit Pending in Canada). Plaintiffs' choice of retirement location and Defendant's having to contact them by telephone *as a part of her job with Plaintiffs* does not, however, create personal jurisdiction under our long-arm statute. See S.C. Code § 36-2-802; See also S.C. Code § 36-2-803. Notably, in *Sullivan v. Beechcraft Hawker Corp.*, the South Carolina Court of Appeals held that even under our State's quite broad long-arm statute regarding tortious injuries, the Plaintiff had nevertheless failed to allege any fact that the Defendant: (1) had regular transactions of business or solicitation; (2) engaged in a persistent course of conduct; (3) derived

substantial revenue, or (4) consumed goods or services rendered in South Carolina. S.C. 143, 153-54, 723 S.E.2d 835, 841 (Ct. App. 2012). Such is the case here.

II. Exercise of Personal Jurisdiction Would Violate Due Process.

Even where the long arm statute does apply, South Carolina courts have often held that the requirements of due process have not been met. *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 423 S.E.2d 128 (1992); *Hume v. Durwood Medical Clinic, Inc.*, 282 S.C. 236, 318 S.E.2d 119 (Ct. App. 1984), cert. dismissed, 285 S.C. 377 329 S.E.2d 443, cert. denied, 474 U.S. 848 (1985); *Wells Am. Corp. v. Sunshine Elecs.*, 717 F. Supp. 1121 (D.S.C. 1989). In other words, even where the South Carolina's long arm statute is met, personal jurisdiction will *still* not exist if due process is not met. *Id.* Due process is violated in regards to the Defendant in this case.

Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Proctor & Schwartz, Inc. v. Rollins*, 634 F.2d 738 (4th Cir. 1980); *Bumgarner v. Keene Corp.*, 593 F.2d 572 (4th Cir. 1979); *Grimsley v. United Eng'rs & Contrs., Inc.*, 818 F. Supp. 147 (D.S.C. 1993). Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that he could reasonably *anticipate* being hauled into court there. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). Without minimum contacts, the Court does not have the "power" to adjudicate the action. *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256 (1992). The Court must also find that the exercise of jurisdiction is "reasonable" or "fair." *Id.*

a. The "Fairness" Prong of Due Process Has Not Been Met.

Under the fairness prong, the court must 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. *Clark v. Key*, 304 S.C. 497 (1991).

The Plaintiffs allege the following facts support finding the Defendant purposefully availed herself of the laws of South Carolina. (Pl.s' Compl; Pl.s' Mem. in Opp.). First, Defendant, as an employee of Plaintiffs' companies (or Plaintiffs' children's companies), which operate in *both* South Carolina and Canada, traveled to South Carolina twice in 2006 on company business and *at Plaintiffs' request. Id.* Second, in a quite vague manner, Plaintiffs allege Mrs. House made *long-distance* telephone calls to Plaintiffs in South Carolina concerning a company line of credit at Bank of Montreal – again, a **Canadian bank**. As set forth above, these long-distance telephone calls to Plaintiffs were made *in the course of Defendant's employment with Plaintiffs' businesses*, which were transacting business and operating with administrative offices in Canada. *Id.* From Greenline's *own* company website, their businesses have administrative offices in Canada. (Ex. F of Def.'s Aff. – Excerpt from Industries business website). If telephone calls made by an employee of a Canadian company by a Canadian resident to Plaintiffs who have *chosen to retire in South Carolina* are sufficient to create minimum contacts, then virtually anyone would have jurisdiction over another individual, in any state, at their own choosing. Such an odd prospect, however, is not the law of the State of South Carolina.

b. Exercise of Jurisdiction Is Not "Reasonable."

Mrs. House is a Canadian citizen who is presently eight months pregnant. (See Pl.'s Aff.). She was originally hired by a Canadian business owned by Plaintiffs in 2000. (See Compl.; See also Ex. A of Pl. Donna Mikals' Aff. - Wrongful Termination Lawsuit Pending in Canada). Plaintiffs did not incorporate any entity in South Carolina until 2005, at the time it incorporated Greenline Industries. (See Compl.; See also Ex. A of Pl. Donna Mikals' Aff. - Wrongful Termination Lawsuit Pending in Canada). *That very business* holds itself out on its own corporate website as a Canadian business with administrative offices in Canada. (See Compl.; See also Ex. F of Def.'s Aff. - Excerpt from Industries business website). Another Greenline entity known as Greenline Plywood and owned by Plaintiffs' children, is also a Canadian company which Mrs. House performed duties for. *Id.* She had no reason whatsoever to expect that she could be hauled into South Carolina courts, nor should she have.

Of import, and as mentioned in detail above, Mrs. House has filed a wrongful termination lawsuit in Canada against Plaintiffs and the various Greenline entities. (See Ex. A of Pl. Donna Mikals' Aff. - Wrongful Termination Lawsuit Pending in Canada). This lawsuit has been pending for many months. (See Ex. A of Pl. Donna Mikals' Aff. - Wrongful Termination Lawsuit Pending in Canada). **Plaintiffs' motivation for filing the South Carolina suit is apparent on its face.** (See Compl.; See also Ex. A of Pl. Donna Mikals' Aff. - Wrongful Termination Lawsuit Pending in Canada). It is nothing more than a retaliatory attempt to punish and encourage Defendant to dismiss her Canadian wrongful termination lawsuit. *Id.*

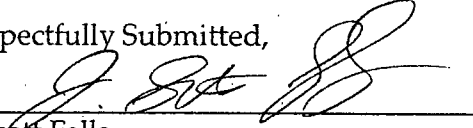
As discussed above, the Plaintiffs in the present matter had every opportunity to bring the claims brought in the present matter as **compulsory counterclaims** to the

Canadian lawsuit, which they would properly be. (*See* Compl.; *See also* Ex. A of Pl. Donna Mikals' Aff. - Wrongful Termination Lawsuit Pending in Canada). However, the Canadian statute of limitations does the Plaintiffs no favors in this regard - it is two years and has already lapsed. (Limitations Act, 2002). The South Carolina statute of limitations, on the other hand, is much more favorable to Plaintiffs - providing them with three full years to punish Mrs. House for having the audacity to bring a wrongful termination claim against them in her Canadian homeland. (Ex. F of Def.'s Aff. - Excerpt from Industries business website). **A more favorable statute of limitations does not, however, create personal jurisdiction.**

CONCLUSION

For the reasons set forth herein, in addition to the pleadings of record, this Court has no personal jurisdiction over the Defendant in this case. Accordingly, this Court should dismiss Plaintiffs' Complaint with prejudice.

Respectfully Submitted,

By: 

J. Scott Falls

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Attorney for Defendant Debra House

Charleston, South Carolina

September 3, 2013

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CHARLES R. MIKALS, and Donna
MIKALS,

Plaintiffs

v.

DEBRA HOUSE,

Defendant.

CASE NO. 2013-CP-07-1186

SUPPLEMENTAL MEMORANDUM IN
OPPOSITION TO
MOTION TO DISMISS

STATEMENT OF THE CASE

This is an action for damages for fraud and breach of fiduciary duty arising out the Defendant's fraudulent misrepresentations that induced the Plaintiffs to subject their personal line of credit to the obligations of the company by which Defendant was employed and for the failure of the Defendant to adequately secure the repayment and collateralization of the funds used as she represented she would do.

The Plaintiffs are citizens of the United States and residents of South Carolina. The Defendant is a Canadian citizen.

In her pleading captioned "Motion to Dismiss",¹ the Defendant objects to the exercise by this Court of jurisdiction over her, asserts a statute of limitations

¹ As discussed, hereinafter, the pleading is in the nature of an Answer and Counterclaim and not a 12(b)(6) test of the legal sufficiency of the allegations of the Complaint.

² A 12(b)(6) Motion deals only with the legal sufficiency of the claim based only upon the

defense, and alleges that the Complaint fails to state a claim against her based upon her view of the facts. She further seeks affirmative relief from this Court, including an award of punitive damages, attorney fees, costs and expenses, and "other and further relief". She supports her motion with her own Affidavit. As set forth in detail hereinafter, none of the Defendant's grounds are meritorious.

1. THE CLAIMS OF PLAINTIFFS ARE NOT COMPULSARY
COUNTERCLAIMS IN CANADA.

The Defendant sued the Plaintiffs in Canada for wrongfully terminating her employment in 2010, which is four years after Chuck Mikals retired from the company and moved to South Carolina. Neither of the Plaintiffs had any ownership of the Defendant's employer and neither were officers or directors. A motion to dismiss that action on jurisdictional grounds is pending. The Defendant now claims that somehow the fraud that she perpetrated on the Plaintiffs, long after they had conveyed all interest in the company, is a compulsory counterclaim to her wrongful termination action against the claimed corporate employer. As a matter of law, that is ludicrous.

The insinuations that the Plaintiffs' claims were barred in Canada by the statute of limitations have no factual basis when the written communications of the Defendant to the Plaintiffs as late as 2010 show her continuing assurances that the debt owed to the Plaintiffs was fully secured by the assets of her employer, which was totally false. See Exhibits B and C to the Affidavit of Donna Mikals. These issues simply seek to divert attention from the fact that the Complaint fully and accurately states the jurisdictional basis for the Plaintiffs' claims and the evidence submitted to the Court confirms that basis.

2. THE DEFENDANT HAS WAIVED ANY OBJECTION TO JURISDICTION BY ADDRESSING THE MERITS OF THE CASE AND BY SEEKING DAMAGES AND OTHER AFFIRMATIVE RELIEF FROM THE COURT.

If a party requests affirmative relief from the Court, she has subjected herself to the jurisdiction of the Court and any further objection thereto is waived. *Ciulli v. Iravani*, 625 F. Supp. 2d 276, 290 (E.D. Penn. 2009).

For purposes of determining waiver, "affirmative relief" is involved when the Court is asked to consider the actual merits or the quasi-merits of the controversy. *Wyrough & Loser v. Pelmore Labs, Inc.*, 376 F. 2d 543, 547 (3d Cir. 1967).

There is no question that the Defendant has asked the Court to consider the merits of the controversy. Though her filing is styled a "Motion to Dismiss", it is in fact a detailed response on the merits, not a Rule 12(b)(6) Motion.² Her supporting Affidavits, as well, deal with the merits of the claim, and not solely jurisdictional facts.³

Instead of an analysis of whether the Complaint, on its face, states a cause of action, and whether the requirements of the South Carolina long arm statute permit the exercise of jurisdiction, the Motion is a lengthy articulation of the Defendant's view of the facts, her denials of the claims of the Plaintiffs, and a fact intensive discussion of the financial affairs of the parties, their relationships, their business rationales, and speculation about their motives and concerns.

² A 12(b)(6) Motion deals only with the legal sufficiency of the claim based only upon the allegations of the Complaint and not extraneous matter.

³ Her Affidavit as well delves into facts relating to the merits of the claims against her.

She concludes by stating that the Complaint is "libelous and fraudulent", and requesting that the Court award her a "judgment" for punitive damages, attorney fees and expenses and other proper relief. (Motion to Dismiss, p. 10).

Clearly, by asking the Court to adjudicate the facts and by seeking from the Court a judgment for damages, the Defendant has gone far beyond whether jurisdiction is proper and has waived any objection to having the matter heard in South Carolina in accordance with the authorities cited above.

3. THE COMPLAINT ADEQUATELY ALLEGES A BASIS FOR THE EXERCISE OF PERSONAL JURISDICTION OVER THE DEFENDANT.

Even if the Defendant had not waived her jurisdictional claim, this Court can exercise jurisdiction under the South Carolina long arm statute as was pled in the Complaint. Pursuant to S.C. Code 36-2-803, if the Defendant commits tortious actions causing damage within the state or does business within the state, the exercise of jurisdiction is proper so long as the Defendant's contacts with the state are sufficient to satisfy Constitutional due process concerns.

Sullivan v. Hawker Beechcraft Corp., 397 S.C. 143, 723 S.E. 2d 835 (S.C. App. 2012). Under South Carolina law, this Court can exercise personal jurisdiction over the Defendant if the Plaintiffs suffered injury as a result of the Defendant's tortious conduct, even if the tortious acts were committed out of state.

International Mariculture Resources v. Grant, 336 S.C. 434, 520 S.E. 2d 160 (Ct. App. 1999), substituted and refilled, 1999.

The long arm statute has been interpreted to permit the exercise of jurisdiction to the maximum extent constitutionally permissible, and due process requires only that the Defendant have "minimal" contacts with South Carolina.

Young v. Jones, 816 F. Supp. 1070, *affd.* 103 F. 3d 1180, *cert. denied* 118 S. Ct. 329, 552 US 928, 139 L. Ed. 2d 255.

The Plaintiffs bear the burden of demonstrating the jurisdictional facts. However, their burden is met if the Complaint makes a *prima facie* showing that jurisdiction is proper. *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 259, 423 S.E. 2d 128, 130 (1992); *Mid-State Distrib. Inc. v. Century Importers, Inc.*, 310 S.C. 330, 332, 426 S. E. 2d 777, 779. Only if the Complaint is insufficient in this respect does the Court consider Affidavits. *Mid-State Distrib.*, at 332.

On page 5 of the Defendant's Memorandum, the Defendant inaccurately states that the Plaintiffs claim that the acts of the Defendant were committed "while working as the Plaintiffs' employee". That is not correct. In fact, the opposite is true. At no point was the Defendant employed by the Plaintiffs. At the time of the fraud on them, the Plaintiffs no longer had any financial interest in the corporate entity that employed the Defendant and which needed to secure funds for its continued operation.⁴

Plaintiffs allege that the Defendant made various untrue representations to them, by telephone and in person, within South Carolina, soliciting the use of their line of credit for the benefit of the company for which the Defendant worked. It is further alleged that the Defendant represented that the funds being solicited would be secure, that the loan was safe, and that loan would be collateralized by

⁴ Defendant correctly points out that Plaintiffs did not specifically mention that the Bank of Montreal is a Canadian bank. That fact is both obvious and irrelevant.

all of the assets of the entity using the funds, none of which was true. Complaint ¶ 13, 14.

In paragraph 14 of the Complaint, it is alleged that Defendant specifically assured Plaintiffs that the company had the financial capacity to pay any balance of funds owed, on demand, and that the borrowed funds would be repaid with interest. The Complaint further alleges that the Defendant owed them a fiduciary duty and that all of the actions outlined in the Complaint were in breach of that fiduciary duty. Complaint, ¶ 27, 28. Finally, the Complaint alleges in excess of \$611,000 in damages sustained by the Plaintiffs in South Carolina as a result of the Defendant's tortious conduct.

The Complaint unequivocally alleges facts demonstrating that the Defendant's tortious conduct caused damage within the state sufficient to invoke jurisdiction under the Defendant under subsection (3) of the long arm statute.

To find a basis for the exercise of personal jurisdiction under subsection (1), the Complaint must allege facts showing that the Defendant transacted business within the state. Under South Carolina law, a single contact with South Carolina is sufficient to give this Court personal jurisdiction over the Defendant if the contact "gives rise to, or figures prominently in the cause of action under consideration". *Askins v. Firedoor Corporation of Florida*, 281 S.C. 611, 616, 316 S. E. 2d. 713, 716 (Ct. App. 1984).

As set forth above, the Complaint alleges that the Defendant contacted the Plaintiffs, in South Carolina, both personally and by telephone, concerning the matters that are the crux of Plaintiffs' contentions.

In *Hammond v. Butler, Means, Evins & Brown*, 300 S.C. 458, 388 F. 2d 796 (1990), *cert. denied*, 111 S. Ct. 373, 498 U.S. 952, 112 L. Ed. 335, the Supreme Court made clear that involvement by a non-resident within the state from which the defendant benefitted financially met the requirements of the "doing business" provision of the South Carolina long arm statute.

The Complaint alleges the same factual setting as *Hammond*. The relationship between the *Hammond* Plaintiffs and the business entity in which they and the Defendant were involved was ongoing over many years. Here, the Defendant asserts that she acted as the Chief Financial Officer of the South Carolina corporation for a period of over ten years. As in *Hammond*, the Defendant was intimately involved in those financial affairs and business activities in which they were engaged. As in *Hammond*, the Defendant benefitted personally. Complaint, ¶¶ 4 – 7; 18. Her business activities resulted in pay of over \$97,000 per year. By obtaining a loan of funds from the Plaintiffs based on the false representations pled in the Complaint, the Defendant was able to obtain the funds that her employer needed to continue to operate, thereby enabling her employer to pay her \$97,000 per year salary for any additional two years before the company finally went bankrupt. Accordingly, pursuant to *Hammond*, jurisdiction is proper under the long arm statute and is Constitutionally warranted.

Further, with respect to due process, if a defendant purposefully directs activities to the forum state, the exercise of jurisdiction over him is Constitutionally permissible. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L. Ed. 2d 490 (1980); *Cribb v. Spatholt*, 382 S.C.

490, 676 S. E. 2d. 714 (Ct. App. 2009). Where the Defendant claims to be the Chief Financial Officer of a South Carolina corporation for over ten years, her claim of no minimum contacts with South Carolina just doesn't measure up.

When the Defendant intentionally made her misrepresentations to the Plaintiffs in South Carolina, both by phone and in person, she certainly could have anticipated the possibility of being sued there and to be held her responsible in a South Carolina court for the damages that she caused to South Carolina residents. Such a result is not unfair. South Carolina Courts are available to provide a remedy to its citizens who have suffered damage as a result of the torts of others, whatever their citizenship.

4. THE DEFENDANT'S OWN SWORN STATEMENTS, AS WELL AS THOSE OF THE PLAINTIFFS, SUPPORT THE PROPRIETY OF JURISDICTION IN SOUTH CAROLINA.

Subsection (c) of the long arm statute imposes jurisdiction on one who commits a tortious act even if only "in part" in this State. The only aspect of the Defendant's Affidavit bearing on jurisdiction is the Defendant's assertion that she has never travelled to South Carolina "for the purpose of soliciting the Plaintiffs".

¶ 5 Without regard to what she may consider the purpose of her trip, her claim to have never been to South Carolina since two business trips in 2006 is fully and completely rebutted by her own sworn statement contained in her Affidavit, dated November 8, 2012, in which she swears that "In 2007, I travelled to Beaufort, South Carolina to interview and select a USA bank as the Defendants anticipated BMO [Bank of Montreal] not agreeing to extend the line of credit necessary to

continue operating both operations in the near future. See paragraph 9 of Exhibit A to the Supplemental Affidavit of Donna Mikals.

This sworn statement confirms exactly what is alleged by Plaintiffs, i.e. that the Defendant's employer needed to access additional credit in order to continue to operate because it was anticipated that the Bank of Montreal would not extend the company's existing line of credit. The Defendant's own testimony confirms her presence in South Carolina at the very time alleged by Plaintiffs [prior to the closure of Greenline Forest Products in 2008] for the very purpose alleged by Plaintiffs [to secure additional sources of financing so that her employer could continue to operate].

This admission by Defendant is further confirmed by the Affidavit of the Greenline accountant, who accompanied the Defendant to South Carolina in 2007 to meet with the Plaintiffs "concerning business, banking, and financial issues..." See Affidavit of Mark Hinchcliffe. The Plaintiffs Supplemental Affidavit confirms that the Defendant and the Greenline accountant came to Beaufort County, arrived on October 27, 2007, at 9:50 pm, and stayed in the residence of the Plaintiffs for three or more days. See Supplemental Affidavit of Donna Mikals, paragraph 2.

The Defendant's only rebuttal of her own sworn statement and the other evidence is the submission of Canadian border crossing records and 5 of 24 pages of her passport, which are not submitted in sequence and which omit two intervening pages. Those documents on their face demonstrate that they cannot be relied upon to prove that the Defendant was not in South Carolina since, by

her own admission, she was in the United States five times⁵ and only one U.S. passport stamp appears on the submitted materials. The Supplemental Affidavit of Donna Mikals further demonstrates the fallacy of relying on such records to document travel.

The Defendant disputes having sufficient contacts with the state to support jurisdiction even though it is her contention, asserted in Court filings, that she was the Chief Financial Officer of Greenline Industries, Inc., a South Carolina corporation whose only business location is in Beaufort, South Carolina. The business card submitted by Defendant as Exhibit E to her Affidavit shows an address of 2966 Trask Parkway and lists Beaufort phone numbers to contact her. The suggestion that she has no contacts with Beaufort County is simply not credible and is rebutted by her own evidence as well as that of the Plaintiffs.

Even if she had never entered the state of South Carolina, which is clearly not the case, because she directed communications to the Plaintiffs in the state that contained the false representations described in the Complaint, section (d) of the long arm statute imposes jurisdiction on her. Defendant claims that it is not her fault that the Defendant chose to retire in South Carolina. That is true. Sadly, as a result of the Plaintiffs' decision to retire to South Carolina, the Defendant was forced to contact them in South Carolina in order to defraud them. However, that is no basis for a jurisdictional defense. When the Defendant undertakes to make misrepresentations and to defraud and injure

⁵ The Defendant admits to travelling to Florida, to South Carolina twice in 2006, to Michigan, and to South Carolina in 2007.

people in South Carolina, the long arm statute grants jurisdiction to provide a remedy for those wrongs.

Exhibit A to the Affidavit of the Plaintiff, Donna Mikals, filed herewith, is the Statement of Claim filed in Canada by the Defendant against the Plaintiffs and others. In that Statement of Claim, the Defendant alleges that she was the Chief Financial Officer of Greenline Industries, Inc., a South Carolina corporation,⁶ which she further alleges was "affiliated" with Greenline Plywood Products Ltd, a Canadian company. She further alleges that in that capacity she earned almost \$100,000. Exhibit A, ¶¶ 3, 8, and 10.

Exhibit B to the Mikals Affidavit is an email dated March 19, 2010, sent to the Plaintiff Donna Mikals by Defendant, falsely assuring her that Chuck (Plaintiff Charles Mikals) was "protected" with respect to the line of credit at issue in this litigation. Exhibit C to the Mikals Affidavit is an email dated March 19, 2010, which the Defendant sent to the Plaintiff, Donna Mikals, and others falsely stating that Plaintiff Charles Mikals was in a secured position, second only to Bank of Montreal.

Finally, Exhibit D to the Mikals Affidavit is a letter from an attorney stating that the Defendant was the person who contacted him concerning securitizing the Plaintiffs' line of credit.

These documents demonstrate that the Defendant caused tortious injury in the state, did business in the state, and had contacts with the state sufficient to meet Constitutional requirements.

⁶ Although the Defendant performed the services of Chief Financial Officer, she did so as the employee of Greenline Plywood Products, Ltd., and her employer was paid for her services.

When the Defendant came to South Carolina and represented that the loan could be repaid at any time, she knew that was false since she knew as the Chief Financial Officer that the very line of credit that was necessary for her employer to continue to do business could not be drawn on if the liabilities of the company included the sums sought from the Plaintiffs. The Defendant knew when she promised that the funds would be fully secured by a lien on the assets of the company that such security could not be given because, again, the very line of credit that was necessary for her employer to continue to do business could not be drawn on if the liabilities of the company included the sums sought from the Plaintiffs.

Because the Plaintiffs are residents of South Carolina, defrauding them causes injury in South Carolina. The actions of the Defendant took place in part in South Carolina and caused injury in South Carolina. Jurisdiction in this state is proper.

5. THE COMPLAINT IS NOT SUBJECT TO DISMISSAL BASED ON THE STATUTE OF LIMITATIONS.

In her Motion, the Defendant captions a section Statute of Limitations, but neither discusses what statute applies nor why the Complaint demonstrates on its face that the relevant statute has expired.⁷

In ¶ 20 and 22 of their Complaint, the Plaintiffs allege that at no time prior to 2011 did they know nor could they have known that the representations made by Defendant were false and fraudulent and that all records relating to their line

⁷ Unless the Complaint demonstrates on its face that the applicable statute of limitations has expired, then the Defendant must simply raise that argument as an affirmative defense, subject to proof.

of credit were in the exclusive control of the Defendant. The Complaint was filed in 2013.

The statute of limitations applicable to these claims is three years. On the face of the Complaint, the claim was brought within that period and is not subject to dismissal.

6. THE COMPLAINT ADEQUATELY ALLEGES FRAUD AND BREACH OF FIDUCIARY DUTY.

In the third section of her Motion, entitled Failure to State a Claim, the Defendant merely argues the facts. The purpose of a Motion to Dismiss on the basis of failure to state a claim is to evaluate whether or not the factual allegations of the Complaint adequately support the necessary elements of a cognizable legal claim. There is no argument by the Defendant that the Plaintiffs have not stated a legally recognizable claim, only the argument that the facts alleged are not true. This goes to the merits and is not proper for adjudication on a Motion to Dismiss.

The Plaintiffs have adequately alleged the legal elements of their claims and alleged facts to support them. The Complaint should not be dismissed.

7. THE COURT CANNOT CONSIDER THE CONTENT OF THE DEFENDANT'S AFFIDAVIT AND MOTION ON THE MERITS WITHOUT CONVERTING THE MOTION TO A MOTION FOR SUMMARY JUDGMENT AND GIVING THE PLAINTIFFS NOTICE AND AN OPPORTUNITY TO RESPOND.

Under Rule 12, if, on a Motion to Dismiss, matters outside the allegations of the Complaint are raised, the Court may refuse to consider them, or convert the motion to one for summary judgment under Rule 56 and give the non-moving

party notice and the opportunity to respond with materials properly submitted under that rule. Rule 12(b) SCRPC.

The Plaintiffs position is that the material submitted by the Defendant that is irrelevant to the jurisdictional issue should not be considered by the Court and that the action should proceed to a trial on the merits. In the event that the Court chooses to consider such evidence and to convert the motion to one for summary judgment, Plaintiffs request the opportunity to respond to the substantive matters raised by the Affidavit.

CONCLUSION

Where the Defendant's claim that she was not present in South Carolina is impeached by her own Affidavit as well as the Affidavits of third parties, and where there is no question that her presence is not even a necessary component of the claim when she has caused injury in the state, jurisdiction is proper. This is especially true when the Defendant has addressed the merits of the claim in her filings and has sought from this Court affirmative relief in the form of a judgment for punitive damages. Such actions by the Defendant waive any arguable jurisdictional claim. For all of the foregoing reasons, the Plaintiffs respectfully request that the Court find jurisdiction proper and deny the Defendant's Motion to Dismiss.

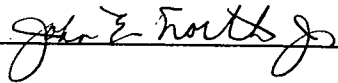
CHARLES R. MIKALS, and DONNA MIKALS,
Plaintiffs,

By John E. North, Jr.
John E. North, Jr.
North & Black, PC
916 Bay Street, Suite 100
Beaufort, SC 29902

(843) 379-0800 (tel)
(843) 379-0900 (fax)
Attorney for Plaintiffs

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the Defendant by depositing same in the United States Mail, first class, postage prepaid and addressed to J. Scott Falls, 53 Broad Street, Suite 205, Charleston S.C. on this 6th day of September, 2013.



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CHARLES R. MIKALS, and Donna
MIKALS,

Plaintiffs

v.

DEBRA HOUSE,

Defendant.

CASE NO. 2013-CP-07-1186

AFFIDAVIT OF RANDY MIKALS IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS

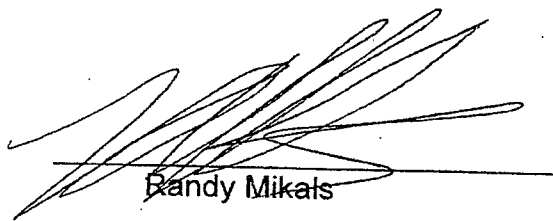
State of South Carolina)
County of Beaufort)

The undersigned, Randy Mikals, being first duly sworn on oath, deposes and states that attached hereto as Exhibit A is a true and correct copy of a portion of the American Express bill that I paid that included the charges for purchasing airline tickets for Debra House and Mark Hinchcliffe in October, 2007, to fly to Savannah, Georgia, on October 28, 2007. I know from discussions with Debra House that she used these airline tickets to visit South Carolina in connection with her efforts to find funding for the continued operation of Greenline Plywood Products, Ltd., which was her employer. I also know from discussions with Debra House that her return flight was to Grand Rapids, Michigan, where she met with Tiara Yachts representatives before returning to Canada by car.

Dated this 5th day of September, 2013.

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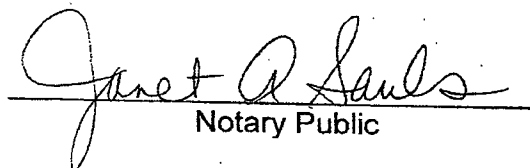


Randy Mikals

State of South Carolina

County of Beaufort

On the 16th day of August, 2013, Randy Mikals appeared before me and executed the foregoing Affidavit and, being first duly sworn on oath, swore that the facts set forth in this Affidavit are true.

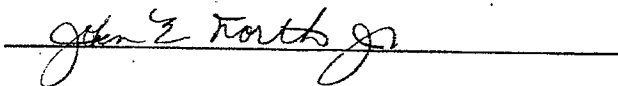


Notary Public

My commission expires: June 21, 2017

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the Defendant by depositing same in the United States Mail, first class, postage prepaid and addressed to J. Scott Falls, 53 Broad Street, Charleston, S.C. 29401 on this 6th day of September, 2013.



Statement of Account

Page 4 of 5

Prepared for
RANDY R MIKALS

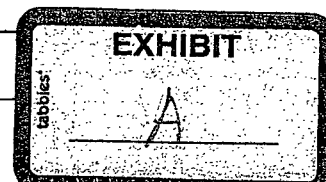
Membership number
~~8758-057888-77008~~

Closing Date
October 26, 2007

Transaction Date (Posting Date)	Details	Foreign Spending	Amount \$
October 12 (October 13)	SHELL OIL MIAMI FL	20.00 UNITED STATES DOLLAR	19.97
October 13 (October 13)	HOLIDAY INN MIAMI BEMIAM BEACH ARRIVAL 10/08/07 DEPARTURE 10/12/07 NIGHTS 01	713.32 UNITED STATES DOLLAR	712.24
October 13 (October 13)	SHELL OIL PALM COAST FL	30.40 UNITED STATES DOLLAR	30.36
October 13 (October 14)	Sleep Inn - FL005 00Palm Coast ARRIVAL 10/12/07 DEPARTURE 10/13/07 NIGHTS 01	79.19 UNITED STATES DOLLAR	79.07
October 14 (October 15)	SHELL OIL BEAUFORT SC	45.00 UNITED STATES DOLLAR	45.00
October 17 (October 18)	KATHLEEN'S GRILLE LLBEAUFORT	30.23 UNITED STATES DOLLAR	30.26
October 18 (October 19)	MOE'S SOUTHWEST GRILBEAUFORT	8.11 UNITED STATES DOLLAR	8.09
October 19 (October 20)	EXPEDIA MERCHANT CAR800-397-3342 WA		9.00
October 19 (October 20)	EXPEDIA MERCHANT CAR800-397-3342 WA		9.00
October 19 (October 20)	THE PANTRY # 3367 00FANCY GAP	54.00 UNITED STATES DOLLAR	53.92
October 19 (October 20)	THE PANTRY # 3367 00FANCY GAP	4.19 UNITED STATES DOLLAR	4.18
October 19 (October 20)	EXXONMOBIL OKATIE	45.01 UNITED STATES DOLLAR	44.94
October 19 (October 20)	BFS FOODS # 38 BP OIWESTOVER	42.02 UNITED STATES DOLLAR	41.95
October 19 (October 22)	UNITED AIRLINES TORONTO ON ROUTING: FROM: TORONTO LESTER B P TO: CHICAGO O'HARE INT CARRIER: UA CLASS: V TO: SAVANNAH INTERNATI CARRIER: UA CLASS: V TO: CHARLOTTE CARRIER: US CLASS: K TO: TORONTO LESTER B P CARRIER: US CLASS: R TICKET NUMBER: 01649859257033 PASSENGER NAME: HINCHCLIFFE/MARK MR		495.38
October 19 (October 22)	UNITED AIRLINES TORONTO ON ROUTING: FROM: TORONTO LESTER B P TO: CHICAGO O'HARE INT CARRIER: UA CLASS: V TO: SAVANNAH INTERNATI CARRIER: UA CLASS: V TO: CHICAGO O'HARE INT CARRIER: UA CLASS: W TO: GRAND RAPIDS CARRIER: UA CLASS: W TICKET NUMBER: 01649859257210 PASSENGER NAME: HOUSE/DEBRAL MRS		442.27
October 20 (October 21)	HOLIDAY INN EXPRESS MEADVILLE ARRIVAL 10/19/07 DEPARTURE 10/20/07 NIGHTS 01	97.12 UNITED STATES DOLLAR	96.98
October 21 (October 21)	PETROCAN 3680 LANGSTAFF VAUGHN ON		50.04

00115

00110



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CHARLES R. MIKALS, and Donna
MIKALS,

Plaintiffs

v.

DEBRA HOUSE,

Defendant.

CASE NO. 2013-CP-07-1186

SUPPLEMENTAL AFFIDAVIT IN
OPPOSITION TO DEFENDANT'S
MOTION
TO DISMISS

State of South Carolina)
County of Beaufort)

The undersigned, Donna Mikals, being first duly sworn on oath, deposes and states that the Affidavit of Debra House, dated August 29, 2013, submitted in support of her Motion to Dismiss, is false and misleading in many respects, including, without limitation, the following:

1. Despite denying that she had ever been in South Carolina after 2006, House's own Affidavit, dated November 8, 2012, and attached hereto as Exhibit A, swears and admits that "In 2007, I travelled to Beaufort, South Carolina to interview and select a USA bank as the Defendants anticipated BMO [the bank that issued the line of credit at issue in this proceeding] not agreeing to extend the line of credit necessary to continue operating both operations in the near future."

2. On October 28, 2007, House and our accountant, Mark Hinchcliffe, flew into Savannah International Airport and arrived at 9:50 pm. I observed my husband, Chuck Mikals, depart to pick them up at the airport and return with them to my home in Beaufort County, South Carolina. Both of these individuals stayed in my home for three days or more and met with both Chuck Mikals and me with regard to business, banking, and financial issues relating to the Greenline businesses created by us.

3. My business records further confirm that Ms. House was additionally in Beaufort County, South Carolina, on February 8, 2008.

4. Prior to moving to Beaufort County in 2006, I resided in Canada. Both before my move and after, I have travelled extensively between Canada and South Carolina. Prior to June 1, 2009, formal travel documents were not required for entry into the United States or to return to Canada. Only rarely did the Canadian authorities make any record of my travel. A passport was not required for entry into the United States from Canada. On June 1, 2009, the Western Hemisphere Travel initiative went into effect that required, after that date, that travelers present either a passport or any other document that denoted identity and citizenship. Again, no passport was required. It was only after legislation following the 9/11 terrorist events that a passport was required for entry into Canada or the United States. Accordingly, the attachments to the Affidavit of Ms. House that attempt to portray that government documents accurately reflect all travel between the United States and Canada are completely false and misleading.

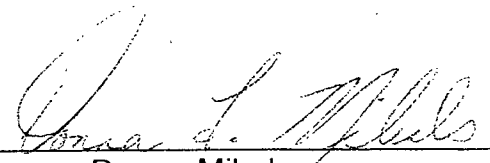
5. Equally false and misleading is the submission of 5 of 24 pages of the passport of Ms. House. Those pages are not even in sequence, start with page 6, skip pages 8, 9, and 11, and end with page 13. What is submitted demonstrates that there are no Canadian entry stamps ever, only one U.S. stamp, and the rest are either Cuban or Dominican Republic stamps. Since, most of the time, there was no record made of car travel into the United States or back to Canada prior to 9/11, Ms. House was able to travel without any record of the trip to South Carolina either by car or by domestic U.S. air carriers based in Buffalo, New York, which was a short car trip from the residence and place of employment of Ms. House. The fact that she has sworn to at least three trips to South Carolina and that there is only one U.S. stamp in her passport confirms that such records do not accurately depict the travel that took place.

6. The credibility of Ms. House concerning her sworn claim that she only had one trip to the United States since 2006 is further impugned by her own written job description filed with her employer that described her responsibilities to include from one to three business trips per year to visit Tiara Yachts in the United States and requests for reimbursement of U.S. travel expenses by Greenline. There are multiple Greenline employees who can verify travel of Ms. House in excess of that claimed by her in her Affidavit.

7. The attempt of Ms. House to disclaim any contact with the State of South Carolina should be weighted against her own claims that, for a period of over ten years, she acted as the chief financial officer of Greenline Industries,

Inc. ("Industries") and was paid a salary of approximately \$97,500.00 per year. This claim has been made against Industries and myself, personally. Although Ms. House was not the employee of Industries, she regularly performed financial and accounting services for Industries for ten years and Industries paid for those services. The business card of Ms. House, attached as Exhibit E to her Affidavit, was created by her and states that she was the Chief Financial Officer of Industries. Industries has always had only one business location and it is located in Beaufort, South Carolina, as indicated on that business card. The card also provided Beaufort County phone numbers for contact with Ms. House. Accordingly, by the admission of Ms. House, she regularly did business in South Carolina and had a persistent, ten year course of conduct that derived substantial revenue for the services that she provided in South Carolina.

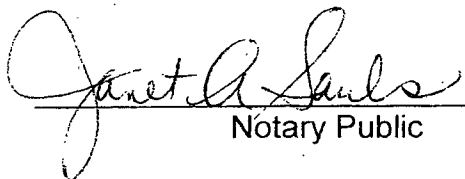
Dated this 30th day of July, 2013.


Donna Mikals

State of South Carolina

County of Beaufort

On the 30th day of August, 2013, Donna Mikals appeared before me and executed the foregoing Affidavit and, being first duly sworn on oath, swore that the facts set forth in this Affidavit are true.


Notary Public

My commission expires: June 14, 2017

00119

Court File No. CV-11-107559-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DEBRA HOUSE

Plaintiff

and

GREENLINE INDUSTRIES INC., RANDALL ROBERT MIKALS,
DONNA F. MIKALS, CHARLES R. MIKALS
and LAURIE ANN PERRUZZA

Defendants

AFFIDAVIT OF DEBRA HOUSE

I, DEBRA HOUSE, of the Town of Whitchurch-Stouffville, in the Regional Municipality of York, the plaintiff herein, MAKE OATH AND SAY:

1. I was initially hired by 'Greenline' in March of 2000 as Chief Financial Officer ("CFO"). This contract of employment was entered into at Stouffville, Ontario. At the time, 'Greenline' consisted of Greenline Forest Products Ltd. ("GFPL") and Greenline Forest Products Inc. ("GFPI").
2. GFPL was a production facility located in Stouffville, Ontario. GFPI was a warehousing facility located in Largo, Florida. GFPL produced and supplied GFPI with its inventory. GFPL and GFPI were both owned by Charles R. Mikals, Donna F. Mikals and Randall R. Mikals. The administrative office for both GFPL

- 2 -

and GFPI was located in Stouffville, Ontario. It was at this office that I attended to discharge the duties of my employment. The operating bank accounts for both GFPL and GFPI were held at the Bank of Montreal ("BMO") in Ontario.

3. Although salary portions were expensed to GFPI, all Canadian employees were paid from GFPL, including Randall R. Mikals, Laurie Ann Perruzza and myself. All USA employees were paid from GFPI.

4. In 2002, for estate planning purposes, Greenline Plywood Products Ltd. ("GPPL") was established in Stouffville, Ontario. GPPL was a production facility owned by Randall R. Mikals and Laurie Ann Perruzza. As a result, all existing plywood inventory was transferred by way of an intercompany entry from GFPL to GPPL. Although portions were expensed to GPPL and GFPI, all Canadian salaried employees continued to be paid from GFPL. The administrative office for GFPL, GFPI and GPPL was located in Stouffville, Ontario.

5. In 2005, for estate planning purposes, to reduce duty and brokerage fees and to better serve customers, Greenline Industries Inc. ("GII") was established in Beaufort, South Carolina, owned by Randall R. Mikals and Laurie Ann Perruzza. GII was a production facility. All existing inventory was transferred by way of intercompany transactions from GFPI to GII. GFPL and GPPL produced and supplied GII with some of its inventory. The administrative office for GFPL, GFPI, GPPL and GII was located in Stouffville, Ontario. It was clear that I was the CFO of all the related companies and consequently employed by them. To this end attached hereto and marked as Exhibit "A" to this my affidavit is my

5.2

- 3 -

business card identifying me as the CFO for GFPL, GPPL and GII with offices located in Stouffville, Ontario and Beaufort, South Carolina.

6. Although salary portions continued to be expensed to related companies, in 2008, all Canadian salaried employees' pay, including Randall R. Mikals, Laurie Ann Perruzza and myself was switched from GFPL to GPPL because although GFPL remained an active company, it would no longer retain a bank account.

7. Shortly after GII was established, GFPI was dissolved and the outstanding shareholder's loan was transferred to GII as a 'loan from related parties' which included Charles R. Mikals, Donna F. Mikals and Randall R. Mikals. All intercompany loans were consolidated to eliminate GFPI's receivables due from GII and payables due to GPPL and GFPL. Regular loan payments through GII's payroll company, Paychex, were issued to these three parties. These amounts were not expensed to Greenline and were not reflected as taxable income by the recipients.

8. The operating bank accounts for both GPPL and GII were held at the Bank of Montreal in Ontario.

9. In 2007, I travelled to Beaufort, South Carolina to interview and select a USA bank as the Defendants anticipated BMO not agreeing to extend the line of credit necessary to continue operating both operations in the near future.

5.3

- 4 -

10. With Randall R. Mikals' 100% personal guarantee, Bank of America agreed to finance GII with a \$1.5 million operating line of credit.

11. BMO continued to finance GPPL based on receivables and inventory with a minimal personal guarantee from Randall R. Mikals of approximately \$250,000. BMO did not recognize GII as an unrelated customer.

12. GII and GPPL had common ownership and did not operate at arm's length. GII and GPPL had common management. It shared administrative employees (all but one worked out of the Ontario facility). GII and GPPL shared common sales employees. GII and GPPL had common customers. Inventory was often shipped from whichever location was more convenient. GII and GPPL invoices to all customers were mailed from the Ontario facility. GII and GPPL had common suppliers. GPPL often made payments on GII's behalf. GII and GPPL payments to all suppliers were mailed from the Ontario facility. GII and GPPL held common inventory. Often, stock was transferred between the two entities. GII and GPPL held common insurance as well as common banking facilities located in Ontario. GII and GPPL shared advertising logos, brochures, samples, trade booths and business cards. GII and GPPL shared accounting software, server and IT support, all of which was located in Ontario. GII and GPPL shared a domain name "@greenlineforest.com". Randall R. Mikals' email signature was "Greenline Group" which exemplified no distinction between companies. Similarly, my email signature was simply "Greenline".

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- 5 -

13. GII held off-site inventory in Canada, including in Quebec and British Columbia.

14. GII and GPPL currently still share a website, www.greenlineforest.com. This website still depicts the administrative offices as located in Stouffville, Ontario. This website still portrays GII and GPPL collectively as 'Greenline', including the limited warranty. This website represents 'Greenline' as having exclusive rights to sell their product throughout North America. Attached hereto and marked as Exhibit "B" to this my affidavit is a print screen of Greenline's website home page.

15. Attached hereto and marked as Exhibit "C" to this my affidavit is a copy of the invoice utilized by GPPL and GII clearly demonstrating that both entities "attorn to the exclusive jurisdiction of the Province of Ontario" in the event of any dispute with its customers.

16. Intercompany entries were used to reallocate expenses including salaries, commissions, costs of goods sold, courier, duty, foreign exchange gains/losses, freight, insurance, loan interest, meals and entertainment, office and general, professional fees, promotions and advertising, supplies, telephone, travel and vehicle expenses.

17. All 'Greenline' financial statements, including GII, shared the same year-end and were maintained and completed in Ontario and audited in Ontario by a

5.5

- 6 -

Canadian chartered accounting firm. Intercompany loans were disclosed in the Annual Audited Financial Statements.

18. Charles R. Mikals and Donna F. Mikals held dual citizenship status and were domiciled in Canada.

19. Randall R. Mikals was domiciled in Canada in March 2000 through at least March 2011, as indicated on his unsworn Affidavit of Documents in Court File No. CV-10-409855, a copy of which is attached hereto and marked as Exhibit "D" to this my affidavit.

20. Laurie Ann Perruzza was, and continues to be, domiciled in Canada.

21. My employment contract required similar duties be performed for all related companies out of the Ontario office. I was an employee of GII as evidenced by my business card. The contract of employment connected with this action was entered into in Ontario. GII clearly benefitted from my Ontario employment and carried on business in this province. The named individual defendants all resided in Ontario and apart from Laurie Ann Perruzza removed themselves from this jurisdiction for their own benefit and convenience.

22. The defendants' conduct as set out in paragraph 14 of the Statement of Claim involving, *inter alia*, their breach of good faith and participation in a conspiracy to intentionally divest GPPL in order to avoid their legal obligations to the plaintiff all occurred within the Province of Ontario.

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- 7 -

23. It is clear that an Ontario court should hear the within action and apply Ontario statutory and common law in its adjudication of this contract formed in Ontario. It would be highly prejudicial to have a court in South Carolina apply US law to this Canadian employment contract. To this end, I attach an opinion from Mr. J. Scott Falls who is a practicing attorney in South Carolina marked as Exhibit "E" to this my affidavit. Mr. Falls clearly establishes that my employment contract would be treated by the US courts as "at will employment" precluding any redress against the defendants for the improper termination of my employment.

24. I make this affidavit in support of an order confirming that service of this claim outside Ontario is authorized by the Rules and that Ontario is a convenient forum for the hearing of this proceeding.

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00122

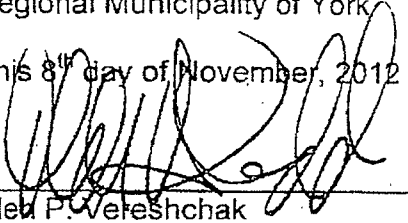
00126

SWORN BEFORE ME at the City

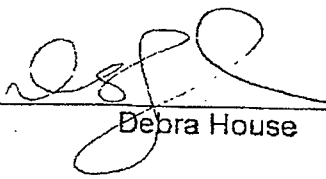
of Markham in the

Regional Municipality of York

This 8th day of November, 2012


Olen P. Vereshchak

Commissioner for Taking Affidavits


Debra House

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CHARLES R. MIKALS, and Donna
MIKALS,

CASE NO. 2013-CP-07-1186

Plaintiffs

AFFIDAVIT OF MARK HINCHCLIFFE

v.

DEBRA HOUSE,

Defendant.

The undersigned, Mark Hinchcliffe, being first duly sworn on oath,
deposes and states as follows:

1. I am a Chartered Accountant licensed to provide tax and accounting services in the Province of Ontario, Canada.
2. Commencing in the year 2000 or before, I provided tax and accounting services to Greenline Plywood Products, L.P. ("Plywood"). In doing so, I worked with Debra House, formerly known as Debra Surman, who was the Chief Financial Officer of Plywood. Ms. House provided to me the financial information of Plywood in connection with my work for Plywood.
3. In 2007, I flew with Debra House to Savannah, Georgia, and met with Chuck and Donna Mikals in Beaufort County, South Carolina, concerning business, banking, and financial issues relating to the creation of Greenline Industries, Inc. ("Industries") and the transfer of certain business activities from Plywood to Industries.

Dated this 29th day of August, 2013.


Mark A. Hinchcliffe

Sworn to before me at Mississauga, ON on this
29th day of August, 2013.



A Commissioner for Taking Affidavits

Svetlana Vaknin

claim that Defendant fabricated her own business card attached to Defendant's previously submitted Affidavit. (Donna Mikals Suppl. Aff. ¶ 2). Plaintiffs' business cards indicating both of the Greenline business locations are attached as **Exhibit B**.

Plaintiff has already stated the facts in her previous Memorandum as they relate exclusively to this issue of personal jurisdiction over her in South Carolina. Defendants attempt to make an interesting argument that *employees* of foreign corporations, which have branches or other entities located in South Carolina, have minimum contacts with the forum state by virtue of their job. (See Pl.s' Suppl. Mem.). Plaintiffs attempt to support this odd proposition by citing *Hammond v. Butler* as support. (Pl.'s Suppl. Mem. citing 300 S.C. 458, 388 S.2d 796 (1990)). The case provides no support to Plaintiffs in this matter. As *Hammond* involved a *businessman* who brought an action against a South Carolina law firm, including several individual attorneys, and a New York attorney, Plaintiff does not feel the need to differentiate it from this matter, which involved an *employee* and *employers*. Plaintiffs attempt to muddy the waters and confuse the facts in the instant Motion, going to such lengths as submitting Affidavits with inconsistent affiant and notary signature dates. (See Donna Mikals Suppl. Aff.; Randy Mikals Aff; Hinchcliffe Aff.). Their attempts are made in vain and, more importantly, are not relevant to the issue of *personal jurisdiction*.

The issues before the Court are simple. Defendant was employed in Canada and reported to work in Canada. Mrs. House never lived in nor worked in South Carolina. To this end, one of the two Plaintiffs, Donna Mikals, terminated Defendant *in Canada*. As such, Mrs. House sued the Mikals for wrongful termination in Canada, *where she was employed*. The Plaintiffs in this matter have continuously attempted to transfer jurisdiction of the wrongful termination case here to South Carolina. Their attempts have failed since the filing of the Canadian lawsuit in 2010. They have brought the

instant lawsuit as a tactic to punish Mrs. House for having the audacity to sue them in Canada. To this end, Plaintiffs even attempted to ask Mrs. House's Canadian counsel to dismiss the Canadian wrongful termination suit in return for not moving forward with the instant suit. Such ulterior and vindictive motives do not create personal jurisdiction.

Plaintiffs' Affidavits are Untimely and Their Authenticity is Questionable

Defendant objects to the Supplemental Affidavit of Plaintiff Donna Mikals, in addition to the Affidavits of Randy Mikals and Mark Hinchcliffe, on the basis that they were submitted after the hearing on this matter, without leave of Court, and are therefore untimely and improper under Rule 6(d), SCRCPP.

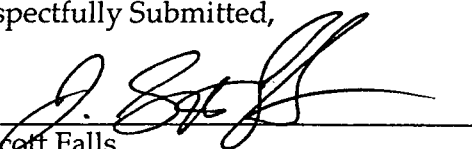
Further, the Affidavits have not been properly notarized by pursuant to Rule 11(c), SCRCPP. Plaintiff Donna Mikals swears under penalty of perjury in her Supplemental Affidavit that she signed the same before a notary public on **July 30, 2013**. The Notary Public who notarized Plaintiff's Affidavit, however, states that she did so on **August 30, 2013**. Specifically, the Notary Public, Janet Sauls, states "[o]n the 30th day of August, 2013, Donna Mikals appeared before me and executed the foregoing Affidavit." Likewise, Randy Mikals' Affidavit provides sworn testimony that it was executed on September 6, 2013, yet the Notary Public states that it was executed before her on that it was executed on August 6, 2013. Finally, Mark Hinchcliffe testifies under oath in his Affidavit that he executed the same on August 29, 2013. The Canadian "Commissioner for Taking Affidavits", however, states in the same Affidavit that it was "[s]worn to before me at Mississauga, ON on this 30[th] day of August, 2013."

Defendant objects to these affidavits on the basis of the aforementioned differing statements made within the four corners of these three affidavits as they are plainly conflicting with the testimony provided therein. Defendants affidavits violate Rule 11(c), SCRCPP for this very reason.

Further, several other factual inconsistencies are evident on the face of Plaintiffs' affidavits when compared to one another and when compared to Plaintiffs' own pleadings. Mark Hinchcliffe states in his Affidavit "[c]ommencing in the year 2000 or before, I provided tax accounting services to Greenline Plywood Products, L.P." Greenline Plywood, however, was not incorporated or even in existence *until 2002* as is clear from public records. Likewise, Defendant Donna Mikals, who terminated Plaintiff *in Canada*, admits to creating "the Greenline businesses", yet disclaims any association with the separate Greenline entities elsewhere in her affidavit. (Donna Mikals Suppl. Aff. ¶ 2). Plaintiffs' inconsistent statements regarding the Greenline entities are also evident in Randy Mikals' Affidavit. While Mr. Hinchcliffe's Affidavit claims Defendant travelled to South Carolina in 2007 regarding *Greenline Industries*, Randy Mikals' affidavit states that the same trip was in regards to *Greenline Plywood Products*. Such sham affidavits are improper and should be disregarded by the Court.

Accordingly, Defendant Debra House would respectfully request that this Court grant her Motion to Dismiss for lack of personal jurisdiction.

Respectfully Submitted,

By: 

J. Scott Falls

Scott@jscottfallslaw.com

53 Broad Street, Suite 205

Post Office Box 657 (29402)

Charleston, South Carolina 29401

(843) 737-6040 (telephone)

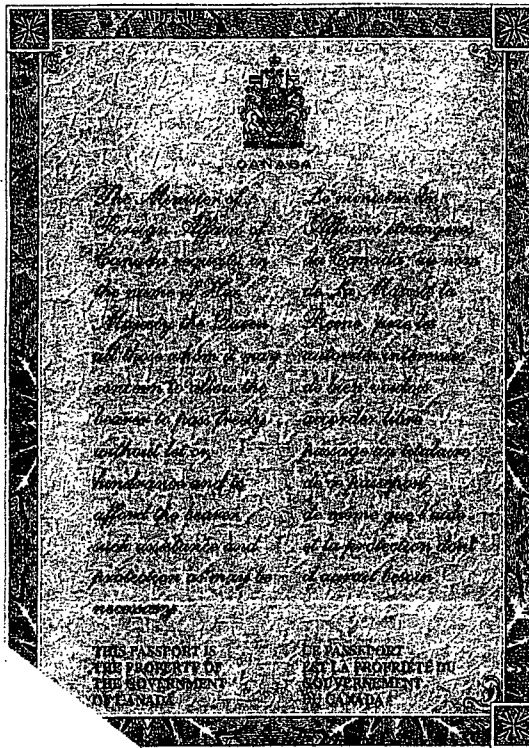
(843) 737-6140 (facsimile)

Attorney for Defendant Debra House

Charleston, South Carolina
September 12, 2013

EXHIBIT A

Defendant Debra House's Full Current and Previous Passport



CANADA

1

Passport

This passport is the property of the Government of Canada. It must not be altered. You must take every precaution to safeguard it.

This passport may be used only by the bearer in whose name it is issued.

This passport is not valid unless signed by the bearer on page 3.

Please fill in the particulars requested on page 4.

Please read the notices on page 4 and the inside back cover.

The bearer of this passport is a Canadian citizen.

This passport contains 24 pages.

Passeport

Ce passeport est la propriété du gouvernement du Canada. Il ne doit subir aucune modification. Vous devez en prendre le plus grand soin.

Ce passeport ne peut être utilisé que par son titulaire.

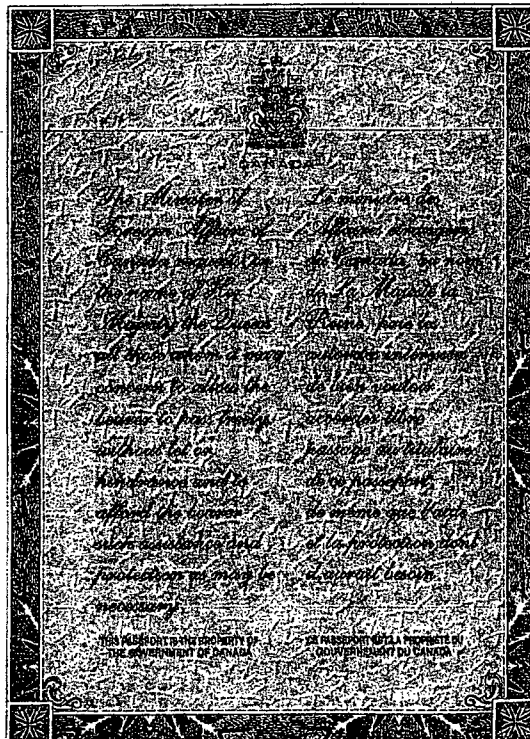
Pour être valable, ce passeport doit porter la signature du titulaire en page 3.

Prière d'inscrire les renseignements demandés en page 4.

Prière de lire les avis en page 4 ainsi qu'à l'intérieur de la couverture arrière.

Le titulaire de ce passeport est citoyen canadien.

Ce passeport



CANADA

1

Passport

This passport is the property of the Government of Canada. It must not be altered. You must take every precaution to safeguard it.

This passport may be used only by the Bearer in whose name it is issued.

This passport is not valid unless signed by the bearer on page 3.

Please fill in the particulars requested on page 4.

Please read the notices on page 4 and back cover.

The bearer of this passport is a Canadian citizen.

This passport contains 24 pages.

Passeport

Ce passeport est la propriété du gouvernement du Canada. Il ne doit subir aucune modification. Vous devez en prendre le plus grand soin.

Ce passeport ne peut être utilisé que par son titulaire.

Pour être valable, ce passeport doit porter la signature du titulaire en page 3.

Prière d'inscrire les renseignements demandés en page 4.

Prière de lire les avis en page 4 ainsi qu'en couverture arrière.

Le titulaire de ce passeport est citoyen canadien.

Ce passeport contient 24 pages.

4

LOSS OR THEFT OF PASSPORT

You are advised to keep the passport number appearing on page 2 of this passport recorded separately from this document.

If your passport is lost or stolen in Canada, report particulars to the local police and to the nearest passport office. If abroad, report to the police and to the nearest Canadian diplomatic or consular office (or British if there is no Canadian office). If you subsequently find or recover your passport, advise the authorities to whom you reported the loss or theft.

If your passport is surrendered to any person or agency outside the Canadian government (e.g. to obtain a visa) and is not promptly returned, report the facts to one of the above offices.

In Canada, Canadian passports that have been found by any person must be returned to the local police, or sent to: Passport Office, Ottawa, Ontario, K1A 0G3. Outside Canada, the passport must be sent to the nearest Canadian diplomatic or consular office.

PERTE OU VOL DE PASSEPORT

Pour vous conseiller de noter et de conserver à part le numéro de ce passeport qui apparaît à la page 2.

En cas de perte ou de vol de votre passeport au Canada, en aviser la police et le bureau des passeports le plus proche. À l'étranger, en aviser la police ainsi que le bureau diplomatique ou consulaire canadien le plus proche (ou, à défaut, un bureau britannique). Si par la suite vous retrouvez ou récupérez votre passeport, veuillez en aviser les autorités auxquelles vous avez signalé le vol ou la perte.

Si vous avez remis votre passeport à une personne ou un organisme ne relevant pas du gouvernement canadien (pour l'obtention d'un visa, par exemple) et qu'il ne vous est pas retourné dans les plus brefs délais, veuillez le signaler aux autorités compétentes tel qu'indiqué au paragraphe précédent.

Au Canada, toute personne qui trouve un passeport canadien doit le retourner au poste de police le plus proche ou l'acheminer à: Bureau des passeports, Ottawa (Ontario), K1A 0G3. À l'étranger, le passeport doit être remis au bureau diplomatique ou consulaire canadien le plus proche.

PLEASE FILL IN PARTICULARS BELOW AND AMEND AS REQUIRED

PRÉRIÉ DE REMPLIR ET/OU MODIFIER AU BESOIN

Bearer's permanent residence:

Résidence permanente du titulaire:

STREET - RUE	
CITY - VILLE	COUNTRY - PAYS

In case of accident or death notify:

En cas d'accident ou de décès, prière d'aviser:

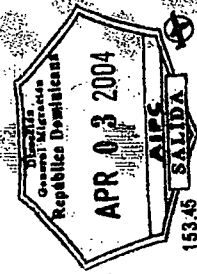
NAME - NOM	
RELATIONSHIP - LIEN AVEC LE TITULAIRE	
STREET - RUE	
	COUNTRY - PAYS

24 pages.

Ce passeport contient 24 pages.

See information on page 4 and back cover.
This passport contains 24 pages.

Lire les avis en page 4 ainsi qu'en couverture arrière.
Ce passeport contient 24 pages.



OBSERVATIONS

PERSONAL INFORMATION

Donner les renseignements personnels suivants:

1. Your name and date of birth as shown in your passport.

2. Your sex and marital status.

3. Your date of birth and place of birth as shown in your passport.

4. Your date of birth and place of birth as shown in your passport.

5. Your date of birth and place of birth as shown in your passport.

6. Your date of birth and place of birth as shown in your passport.

7. Your date of birth and place of birth as shown in your passport.

8. Your date of birth and place of birth as shown in your passport.

9. Your date of birth and place of birth as shown in your passport.

10. Your date of birth and place of birth as shown in your passport.

11. Your date of birth and place of birth as shown in your passport.

12. Your date of birth and place of birth as shown in your passport.

TRAVEL INFORMATION

Donner les renseignements relatifs aux voyages:

1. The name and address of the travel agent or tour operator.

2. The name and address of the hotel or other accommodation.

3. The name and address of the airline or other carrier.

4. The name and address of the ship or other mode of transport.

5. The name and address of the destination.

6. The name and address of the departure point.

7. The name and address of the arrival point.

8. The name and address of the departure point.

9. The name and address of the arrival point.

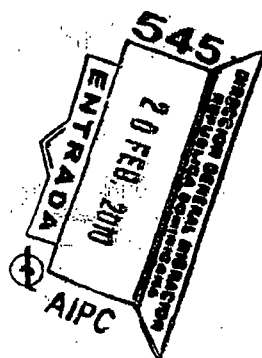
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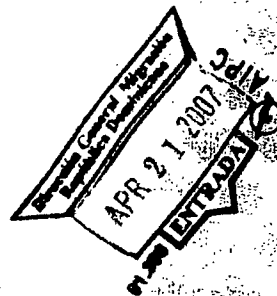
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***BEARER'S MARRIED SURNAME IS HOUSE. ADDED
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República Dominicana

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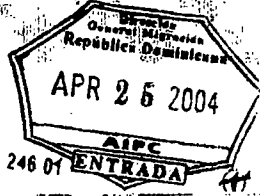
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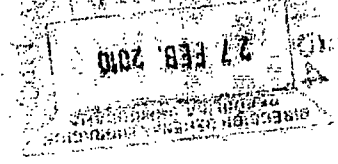
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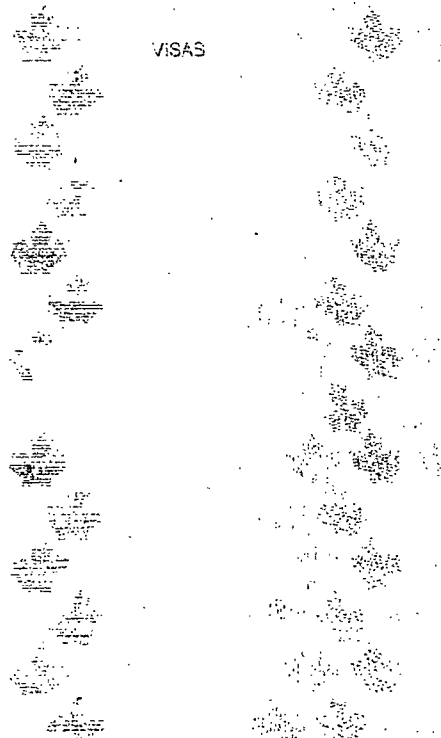


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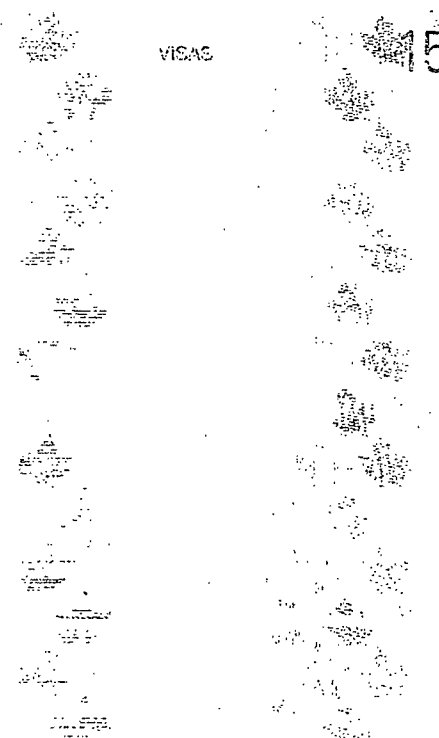
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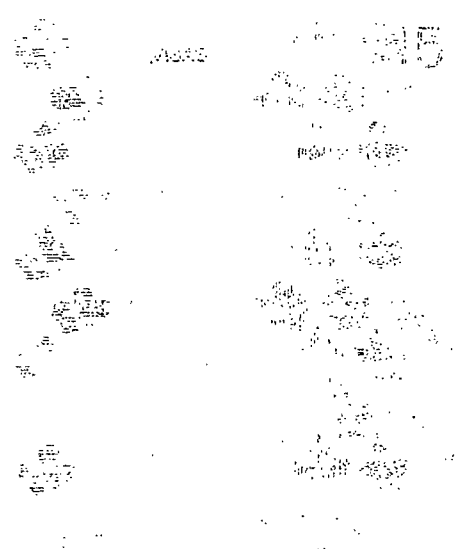
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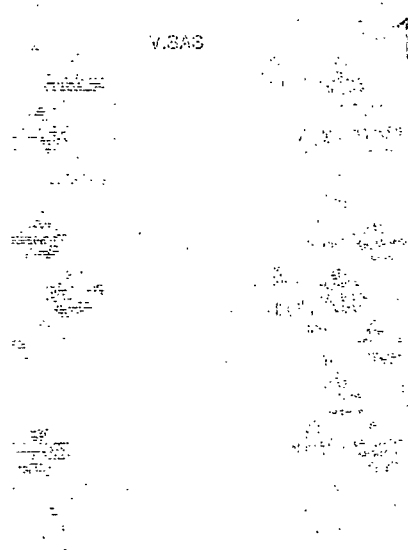
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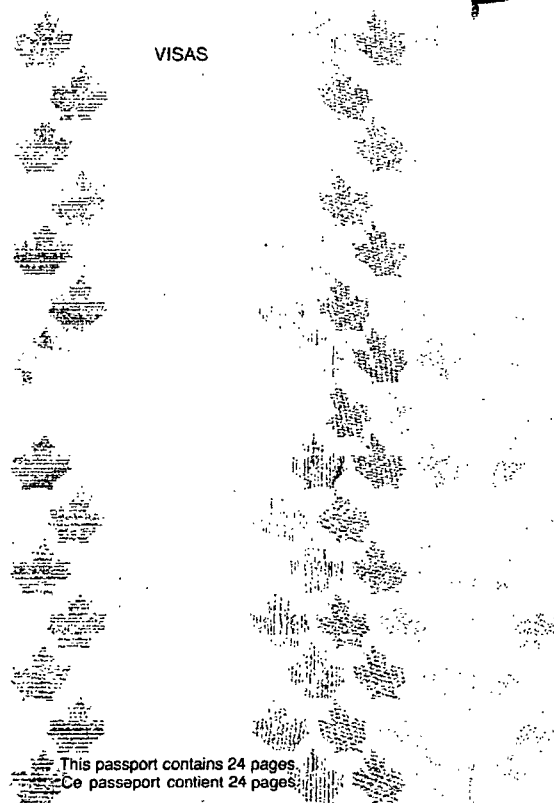


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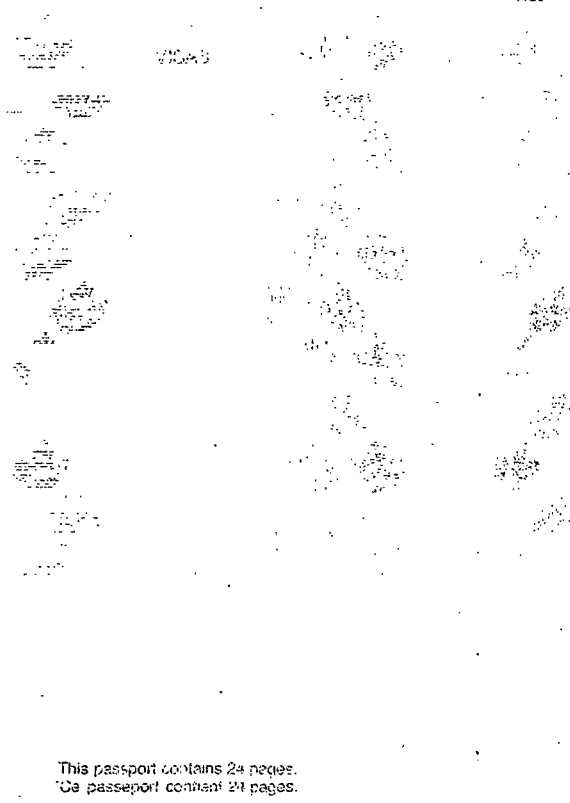
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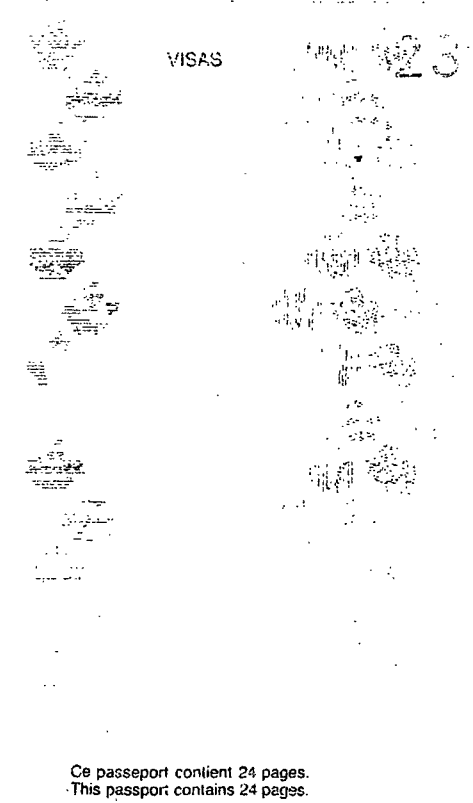
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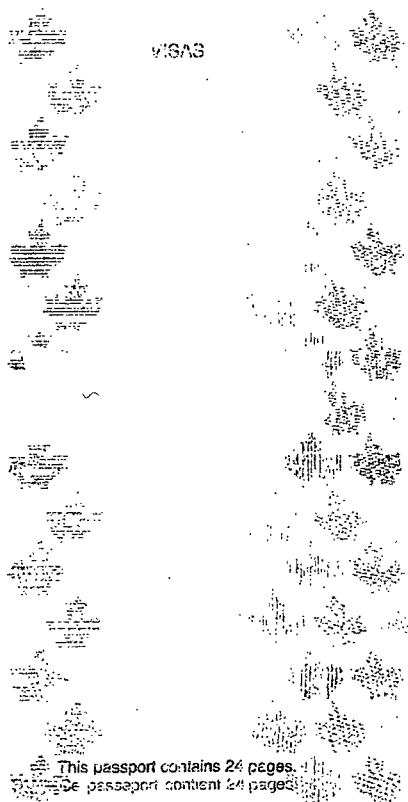
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Government of Canada Gouvernement du Canada

Canadian diplomatic and consular offices abroad provide Canadian citizens with passport and other consular services. In countries where there is no Canadian office, application may be made in an emergency to the nearest British diplomatic or consular office.

Canadian citizens who have more than one nationality through birth, descent, marriage or naturalization are advised that, while in the country of their other nationality, they may be subject to all its laws and obligations, particularly military service.

Canadian citizens intending to reside abroad for a protracted period or travelling in a disturbed area are advised to register at the nearest Canadian diplomatic or consular office.

In the absence of the nearest British consulate, registration helps Canadian authorities assist Canadian citizens in an emergency.

To receive passport services for children born abroad, proof of their Canadian citizenship must be provided. Application may be made for a Certificate of Canadian Citizenship through the Registrar of Canadian Citizenship at the nearest Canadian diplomatic or consular office.

Government of Canada Gouvernement du Canada

Les bureaux diplomatiques et consulaires du Canada à l'étranger fournissent aux citoyens canadiens des services de passeport et d'autres services consulaires. Dans les pays où il n'y a pas de bureau canadien, les demandes peuvent être déposées en urgence auprès du bureau diplomatique ou consulaire britannique le plus proche.

Les citoyens canadiens qui ont plus d'une nationalité en raison de la naissance, de la descendance, du mariage ou de la naturalisation sont avisés qu'ils peuvent être soumis à toutes les lois et obligations de leur autre nationalité, en particulier le service militaire.

Les citoyens canadiens qui envisagent de résider à l'étranger pendant une longue période ou de voyager dans une zone perturbée sont avisés de s'enregistrer au bureau diplomatique ou consulaire canadien le plus proche.

En l'absence du consulat britannique le plus proche, l'enregistrement aide les autorités canadiennes à assister les citoyens canadiens en cas d'urgence.

Pour recevoir des services de passeport pour des enfants nés à l'étranger, il faut fournir la preuve de leur citoyenneté canadienne. On peut demander un certificat de citoyenneté canadienne au registraire de la citoyenneté canadienne au bureau du gouvernement du Canada le plus proche.

Canada



Government of Canada Gouvernement du Canada

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Les citoyens canadiens qui envisagent de résider à l'étranger pendant une longue période ou de voyager dans une zone perturbée sont avisés de s'enregistrer au bureau du gouvernement du Canada le plus proche ou, en son absence, au consulat britannique le plus proche. Cette formalité permet aux autorités canadiennes d'aider les citoyens canadiens en cas d'urgence.

Toute demande de service de passeport pour un enfant né à l'étranger doit être accompagnée d'une preuve de sa citoyenneté canadienne. On peut demander un certificat de citoyenneté canadienne au registraire de la citoyenneté canadienne au bureau du gouvernement du Canada le plus proche.

Canada

EXHIBIT B

**Plaintiff Donna Mikals' Greenline
Business Card**



**Plywood Products Ltd.
Industries Inc.**

Randy Mikals
President

11761 Hwy. #48
Stouffville, Ontario
Canada L4A 7X5
T: 905-640-4788
F: 905-640-8862

2966 Trask Parkway
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F: 843-846-4723

E-mail: randym@greenlineforest.com



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Tim Turcott

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**Plywood Products Ltd.
Industries Inc.**

Ann Littleford
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**Plywood Products Ltd.
Industries Inc.**

Donna Mikals
Human Resource Manager

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F: 843-846-4723

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT FOURTEENTH JUDICIAL CIRCUIT

OCT 16 PM 4:52
JERRY A. ROSENEAU
BEAUFORT COUNTY CLERK OF COURT

CASE NO. 2013 – CP – 1186

CHARLES R. MIKALS, and
DONNA MIKALS,

Plaintiffs

v.

DEBRA HOUSE,

Defendant.

PLAINTIFFS' MOTION TO ALTER OR
AMEND PURSUANT TO RULES
52(b) AND 59(e), SCRCP AND
MEMORANDUM IN SUPPORT
THEREOF

STATEMENT OF THE CASE

This is an action for damages for fraud and breach of fiduciary duty arising out the Defendant's fraudulent misrepresentations that induced the Plaintiffs to subject their personal line of credit to the obligations of the company by which Defendant was employed and for the failure of the Defendant to adequately secure the repayment of the funds used as she represented she would do.

The Plaintiffs are citizens of the United States and residents of South Carolina. The Defendant is a Canadian citizen.

The Plaintiffs alleged that jurisdiction over the Defendant was proper under the South Carolina long-arm statute, S.C. Code 36-2-803.

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The Defendant filed her Motion to Dismiss on the basis of lack of jurisdiction and her Motion was granted by a written Order, filed October 7, 2013 ("Order").

This timely Motion to Alter or Amend followed.

AUTHORITIES AND ARGUMENT

I.

AT THIS PRETRIAL STAGE, THE PLAINTIFFS WERE REQUIRED ONLY TO MAKE A PRIMA FACIE SHOWING OF JURISDICTION FACTS AND ALL FACTUAL DISPUTES WERE TO BE RESOLVED BY THE COURT IN THEIR FAVOR.

In its Order, this Court found that the Plaintiffs "have the burden of establishing that personal jurisdiction exists". Order, page 3. That articulation of the law is just plain wrong as the Supreme Court makes clear.

Notwithstanding the fact that at trial the burden of establishing jurisdiction is upon the party seeking to invoke the jurisdiction of the courts of this state against a nonresident by utilization of our long-arm statute (citation omitted), *at the pre-trial stage of the proceedings, the plaintiff need only make a prima facie showing by pleadings and affidavits.* (citation omitted) (emphasis supplied).

Hammond v. Butler, Means Evins & Brown, 300 S.C. 458, 462, 388 S. E. 2d 796, 798 (1990). See, also: *White v. Stephens*, 300 S.C. 241, 387 S.E.2d 260 (1990); *Sullivan v. Hawker Beecher Aircraft Corp.*, 397 S.C. 143, 723 S.E.2d 835 (Ct. App. 2012) [plaintiff only required to make a prima facie showing, not to establish it will be meritorious with respect to jurisdiction].

In analyzing whether a prima facie showing of jurisdiction has been made, the Court is required to resolve all factual disputes in favor of the Plaintiffs.

00151

On a motion to dismiss for lack of personal jurisdiction, factual disputes arising by affidavit will be resolved in favor of the non-moving party.

M. B. Kahn Construction Company, Inc. v. Three Rivers Bank and Trust Company, 354 S.C. 412, 415, 581 S. E. 2d 481, 482 (2003).

Because the Court imposed the wrong standard on the Plaintiffs and weighed the evidence, rather than resolving all disputed facts in favor of the Plaintiffs, it reached the wrong conclusion and improperly dismissed the Complaint.

II.

THE RELEVANT FACTS ESTABLISHED BY THE COMPLAINT AND BY THE AFFIDAVITS.

Whether the Defendant may or may not have offered evidence that is contrary to the claims of the Plaintiffs is completely irrelevant to the Court's analysis under *M. B. Kahn*. The following are the relevant facts established in the Complaint and the Affidavits.

1. The Plaintiffs are United States citizens and residents of Beaufort County, South Carolina. (Complaint, ¶ 1)
2. The Defendant is a Canadian citizen. (Complaint, ¶ 2)
3. At the time that the Defendant was hired by a Canadian company, Greenline Forest Products, Limited, in 2000, the Plaintiffs were owners of that business. (Complaint, ¶ 4)
4. By the time that the torts were committed against the Plaintiffs, Forest Products, Limited, which had been owned by the Plaintiffs, was closed. (Complaint, ¶ 6)

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5. At the time of the torts alleged, a separate entity, Greenline Plywood Products, Limited, ("Plywood") was owned by the Plaintiffs' children, and the Defendant was the employee of that entity. (Complaint, ¶ 5)
6. Defendant made solicitations to the Plaintiffs, telephonically and in person, in Beaufort County, to allow use of the Plaintiffs' personal line of credit to support the borrowing of Plywood, a company in which the Plaintiffs had no ownership or control, and promised that all advances would be adequately secured, that the company had adequate resources to pay the obligation, and that it would be paid in monthly installments. (Complaint, ¶ 13 and 14)
7. The representations made to the Plaintiffs were false and known to be false by Defendant. (Complaint, ¶ 16, 17, and 18)
8. In October, 2007, the Defendant and the accountant for the Plaintiffs came to Beaufort and stayed in the home of the Plaintiffs for three days to discuss banking and financial issues relating to the Greenline business entities. (Supplemental Affidavit, Donna Mikals, ¶ 2; Affidavit Hinchcliff, ¶ 3; Affidavit Randy Mikals)
9. The purpose of the trip was specifically to find funding to replace the line of credit of Defendant's employer, Plywood. (Affidavit Randy Mikals)
10. The Defendant's own Affidavit, filed in separate litigation, affirms that, in 2007, she travelled to Beaufort County for the express purpose of arranging financing for Plywood, the precise transaction in which the

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Complaint alleges the fraud was perpetrated. (Supplemental Affidavit, Donna Mikals, Exhibit A, paragraph 7)

11. The Defendant also travelled to Beaufort County in February, 2008.

(Supplemental Affidavit, Donna Mikals).

12. Defendant sent two emails, dated March 19, 2010, to Plaintiff Donna Mikals making assurances that the Plaintiffs were "protected" with respect to repayment of the obligations of Plywood and that Plaintiff Chuck Mikals had a security interest with respect to that obligation second only to Bank of Montreal.¹ (Affidavit, Donna Mikals, ¶¶ 2, 3, Exhibit B and Exhibit C) again, these representations were false and knowingly made. (Complaint, ¶¶ 16, 17, and 18).

In her opposing Affidavits, the Defendant denied that she had ever been in South Carolina after 2006 and never for business purposes. However, after Plaintiffs presented House's own Affidavit that had been filed in a Canadian proceeding wherein she swore that she had been in South Carolina in 2007 in connection with pursuing the financing to replace the line of credit of her employer, she never again disputed in any affidavit the claim of the Plaintiffs that she had come to South Carolina in 2007 for that purpose. Second, and more significantly, it is clear that, under the *M. B. Kahn* decision, this Court must accept the Plaintiffs' allegations and assertions by Affidavit as true and not engage, as it did, in weighing the evidence.

00154

¹ There was no general security agreement prepared to actual secure this loan despite Defendant's assertion otherwise. Affidavit, Donna Mikals, ¶ 4, Exhibit D.

This Court must determine whether, under the long-arm statute, the facts presented by the Plaintiffs relevant to the exercise of personal jurisdiction are sufficient to make a prima facie showing that jurisdiction is proper without consideration of the Defendant's denials and assertions going to the merits.

III.

PLAINTIFFS HAVE MADE A PRIMA FACIE SHOWING OF JURISDICTION.

The exercise of jurisdiction by this Court over the Defendant is proper so long as the Defendant's contacts with the state are sufficient to satisfy Constitutional due process concerns. *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E. 2d 835 (S.C. App. 2012).

When it is alleged that the defendant committed tortious acts, as it is in this case, the only analysis is whether due process precludes the exercise of personal jurisdiction.

....both this court and our Supreme Court have noted our long-arm statute, which affords broad power to exercise personal jurisdiction over causes of action arising from tortious injuries in South Carolina, has been construed to extend to the outer limits of the due process clause.

Power Products and Services Company, Inc. v. Kozma, 379 S.C. 423, 431, 665 S.E. 2d 660, 664 (Ct. App. 2008) *reh. denied; cert. denied*.

The two-part analysis required of this Court has been described as the "power" prong, and the "fairness" prong as this Court recognizes in its Order.

Power Prong

The Court has the "power" to exercise jurisdiction if the Plaintiffs have made a prima facie showing that the Defendant directed her activities to

residents of the state and that the cause of action arises from those activities. *Id.* at 432, 666. The facts must show that her activities were purposeful and that her relationship to the state is not random or fortuitous. *Id.* The contacts between the defendant and the state must be such that it is reasonable for the defendant to anticipate being "haled into court" in the jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).

The facts presented in this case that the Court must accept as true are that the Defendant telephoned the Plaintiffs in South Carolina, emailed them in South Carolina, and travelled to their residence in South Carolina to persuade them to make their personal funds available to the Defendant's employer as working capital and, in the process of these solicitations, made knowingly untrue statements to them to induce them to do so.

Certainly, there is nothing "random or fortuitous" about those contacts with South Carolina. The Defendant purposefully contacted and met with the Plaintiffs in this state to solicit, with false representations, their personal funds and continued to assure them by emails sent to their home in South Carolina that their funds were fully protected.

In accordance with Plaintiffs' Affidavits, this conduct took place over a three-year period from 2007 through 2010.

Evidence of correspondence and telecommunications directed to the state is sufficient to support jurisdiction. *Hammond v. Butler, Means, Evins & Brown*, 300 S.C. 458, 388 S.E. 2d. 796 (1990). While the facts presented by the Plaintiffs establish that the Defendant did, in fact, enter the state to meet with

them personally about the transaction that is the subject of this litigation, jurisdiction can be proper even if she had never travelled to South Carolina.

This Court has previously concluded that jurisdiction cannot be avoided merely because the nonresident defendant never entered the state.

Clark v. Key, 304 S.C. 497, 51, 405 S.E. 2d 599, 601 (1991) (citing *Butler*).

The *Clark* decision is on point to the current case. In *Clark*, the defendant was a North Carolina stockbroker who was employed by a co-defendant, The Pinnacle Group, and its successor. The defendant solicited a South Carolina resident to loan money to an out of state real estate venture and, when the loan was not repaid, the plaintiff sued in South Carolina for fraud, among other theories.

As in this case, the defendant acted as the "emissary" for another, in soliciting the loan, "set the framework in which the transaction was to consummated", and vouched for the "safety of the investment". After it was made, the defendant made "explanations and assurances" concerning the investment.

Under those facts, the court found the activity within the state sufficient in frequency and duration to support jurisdiction, despite the fact that the defendant had never entered the state. The only difference between the facts in the *Clark* case and this case is that House additionally came to South Carolina to make her fraudulent representation. If there is jurisdiction in the *Clark* case, there is certainly jurisdiction in this case.

Further, the Defendant contends that she was an employee of Greenline Industries, Inc., a South Carolina corporation,² and claims that she travelled to the state to obtain financing for its activities. (Supplemental Affidavit, Donna Mikals, Exhibit A, ¶ 9) If she contends that she was employed by the South Carolina corporation and admits that she travelled to South Carolina to do its business, she can hardly argue that it would be unreasonable for her to defend litigation related to her alleged employment in this forum.

The loose language of the draft Order presented to the Court and signed finding that House was an employee of Industries, without the benefit of discovery and the presentation of all of the evidence on that issue, is highly prejudicial to Industries.

In its Order at page 5, the Court erroneously concludes that since all the contacts of the Defendant with South Carolina were made in her capacity as an employee³, that those contacts cannot be considered in a minimum contacts analysis. There is absolutely no legal authority for such a proposition.

In fact, the case law is rife with cases in which minimum contacts were established when the contacts with South Carolina were made as a result of the Defendant's employment. See: *Brown v. Investment Management Research, Inc.*, 323 S.C. 395, 475 S.E.2d 754 (1996) [individual stockbroker had minimum contacts while touting investment products within the state]; *Clark v. Key, op. sit.*

² She is suing that corporation for wrongful termination.

³ As set forth later herein, the Court seems to have erroneously concluded that the Defendant was the employee of the Plaintiffs, individually, even though the Defendant has never disputed that Chuck Mikals has no ownership of any Greenline company and had been retired for four years prior to the termination of House's employment by Plywood, a company that neither Plaintiff had ever owned.

[individual stockbroker] *Parker v. Williams & Madjanik, Inc.*, 270 S.C. 570, 243 S.E.2d 451(1978) [individual architect had minimum contacts as a result of traveling to state and designing building on behalf of employer]; *Hammond v. Butler, Means, Evins & Brown*, 300 S.C. 458, 388 S.E. 2d. 796 (1990) [New York attorney had minimum contacts with South Carolina arising from his representation of medical device manufacturer and licensing transaction]; *Allen v. Columbia Financial Management, LTD*, 297 S.C. 481, 377 S.E. 2d 352 (Ct. App. 1988) [law firm had minimum contacts to support jurisdiction arising out of its performance of tax defense services for an investment scheme sold to South Carolina residents].

There is simply no authority for the proposition that contacts with the state, either by dealing with its residents or by entering the state, that involve tortious acts do not give rise jurisdiction if done in an employment capacity.

When the Defendant telephoned the Plaintiffs to solicit the loan arrangement for Plywood, when she came to South Carolina and met with the Plaintiffs for that purpose, and when she made material misrepresentations to them in those communications, whether she was acting as an employee or totally independently has no relevance to a jurisdictional analysis.

Taking the allegations of the Complaint and the evidence set forth in the Affidavits submitted by Plaintiffs, there are sufficient contacts between the Defendant and South Carolina to allow this Court to exercise power over her.

Fairness Prong

Because she has purposefully conducted her activities in South Carolina, and committed tortious acts in the state against South Carolina residents, in order to defeat jurisdiction on fairness considerations, the Defendant bears the burden to:

...present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.

Allen v. Columbia Financial Management, LTD., 297 S.C. 481, 491, 377 S.E. 2d 352, 358 (1988).

In determining whether the exercise of jurisdiction is fair, the Court must consider: 1) the duration of the activity in the state; 2) the character and circumstances of the acts; 3) the inconvenience to the parties of conferring or refusing jurisdiction; and 4) the state's interest in asserting jurisdiction. *Power Products, supra*.

As set forth earlier, the Defendant telephoned and emailed the Plaintiffs in the state and meet with them at their residence here between 2007 and 2010 to solicit their funds and to assure them that those funds were adequately secured and safe. Certainly, this is not isolated contact and is more than sufficient to support jurisdiction under South Carolina law as previously set out.

The allegations of the Complaint are that the Defendant solicited the Plaintiffs funds with false representations and continued to mislead the Plaintiffs about whether the loans were secured and safe when she knew they were not. The Complaint alleges that the Defendant benefitted from implementing this

scheme by allowing her employer, Plywood, to stay financial afloat and to continue to pay her substantial salary.⁴

There has been no showing that jurisdiction in South Carolina would be inconvenient in any legally cognizable way. Both of the Plaintiffs are permanent residents of South Carolina and elderly. The Defendant clearly has no issue with traveling to South Carolina since she has done so repeatedly in the past. The Court's reference to the Defendant being 8-months pregnant is hardly a hardship to the Defendant sufficient to refuse jurisdiction when her condition is likely to improve in a matter of 30 days. A person's status as a mother or father has never been considered determinative of whether or where they can be sued. When the alternative is that the elderly Plaintiffs would have to attempt to remedy the wrong done to them at their residence in South Carolina by litigating in Canada, any hardship argument favors jurisdiction in South Carolina where the tort was committed.

From a hardship standpoint, one young adult who saw fit to fraudulently solicit funds in South Carolina from elderly residents of South Carolina should have to address these claims in South Carolina rather than requiring two elderly South Carolina citizens to have to chase the Defendant in Canada for acts done in South Carolina.

Finally, South Carolina has a distinct interest in asserting jurisdiction in this case. Plaintiffs are residents of South Carolina. The torts were committed here and Plaintiffs' rights and remedies arose here. If the Plaintiffs are required

⁴ She was making approximately \$100,000. (Affidavit, Donna Mikals, ¶ 1)

to litigate in Canada, not only will a Canadian court be charged with applying unfamiliar law, there is the distinct possibility that they would be deprived of the remedies available to them here.

In her argument, the Defendant contends that, since all of her communications were in connection with her employment, they cannot serve as the basis for jurisdiction. (Memorandum In Support of Motion to Dismiss, p. 8). Clearly, when those communications were tortious misrepresentations, directed not at her employer, but to third parties in this state, the state has jurisdiction. See: *Brown v. Investment Management Research, Inc.*, 323 S.C. 395, 475 S.E.2d 754 (1996) [individual stockbroker had minimum contacts while touting investment products within the state]; *Clark v. Key, op. sit.* [same factual scenario and outcome]; *Parker v. Williams & Madjanik, Inc.*, 270 S.C. 570, 243 S.E.2d 451(1978) [individual architect had minimum contacts as a result of traveling to state and designing building on behalf of employer]; *Hammond v. Butler, Means, Evins & Brown*, 300 S.C. 458, 388 S.E. 2d. 796 (1990) [New York attorney had minimum contacts with South Carolina arising from his representation of medical device manufacturer and licensing transaction]; *Allen v. Columbia Financial Management, LTD*, 297 S.C. 481, 377 S.E. 2d 352 (Ct. App. 1988) [law firm had minimum contacts to support jurisdiction arising out of its performance of tax defense services for an investment scheme sold to South Carolina residents].

It is simply unreasonable to argue that a telephone call or other communication directed to a person in this state that is a fraudulent misrepresentation does not give rise to jurisdiction.

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The Defendant further argues that, because the Plaintiffs could have brought their claims in Canada, because they did not, there should be no jurisdiction in South Carolina. (Memorandum, p. 9). There is simply no legal authority for that proposition. A plaintiff can always follow a defendant to the defendant's own forum. The long-arm statute was enacted so that plaintiffs, who have been injured by conduct directed into this state, do not have to do so.

Campbell v. Johnson & Towers, Inc., 123 F. Supp. 2d 329 (D. S.C. 1999).

South Carolina has an adjudicative interest in this dispute because it affects South Carolina residents and their personal property.

Id. at 337.

The Defendant makes numerous spurious allegations about the motivation of the Plaintiffs. None of those contentions are relevant in the slightest with respect to whether or not jurisdiction is proper. Whether the Plaintiffs have evil motives or simply have been wronged and seek redress is completely irrelevant to whether or not the Defendant committed tortious acts in this state and should be held accountable for them here.

As a last attempt to portray the Plaintiffs in an unfavorable light, the Defendant argues that they are suing in South Carolina because it has a more favorable statute of limitations. (Memorandum. p. 9). First, that should be a factor favoring jurisdiction here since this state has a cognizable interest in affording its citizens redress. Second, the Defendant herself has argued that the Plaintiffs should be subject to her wrongful termination suit in Canada, because if the law of South Carolina applied, she would have no remedy. Her current

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attorney prepared the opinion letter on that point submitted to the Canadian Court.

When the facts are evaluated under the proper standard, the Plaintiffs have made a prima facie case of both the power and the fairness of this Court to exercise jurisdiction over the Defendant. As stated above, once the Plaintiffs have presented allegations and evidence to demonstrate that it would be fair to subject the Defendant to jurisdiction in this state, that should be the end of the issue at this stage of the proceeding. For the Court to engage in a weighing and balancing of the evidence is error. The dismissal of this case at the pleading stage is error.

IV.

THE COURT ERRONEOUSLY MAKES FINDINGS OF FACT UNSUPPORTED BY THE RECORD

In its Order, this Court makes findings of fact that are unsupported by the record, or are a matter of dispute for trial, and the Order should be altered to omit those findings. Because there is other pending litigation involving the parties, it is patently erroneous to have judicial findings, without evidentiary support, which may in some other forum be presented as litigated and resolved.

Further, it is apparent in resolving the jurisdictional challenge, rather than consider the facts stated by the Plaintiffs as true, as it was required to do under the *M.B. Kahn* decision, this Court weighed the evidence presented by both parties and accepted that of the Defendant.

This is particularly inappropriate when the Defendant filed a patently false Affidavit in which she vigorously contends that she was in South Carolina only

twice, both times in 2006 (Affidavit House, August 2013, paragraph 6). That assertion is completely contradicted by another Affidavit filed by the Defendant in which she describes her trip to Beaufort County in 2007 to make financing arrangements for her employer, Plywood (Supplemental Affidavit, Donna Mikals, Exhibit A, paragraph 7), as well as the Affidavit of a non-party, Mark Hinchcliff, who accompanied the Defendant on her travel to South Carolina in 2007.

(Affidavit, Hinchcliff, ¶ 3) This patent contradiction is the precise reason this Court should not indulge in adjudicating disputed facts at a pretrial stage of the proceeding on the basis of Affidavits and before the parties have had notice of the Court's intention to conduct an evidentiary evaluation and an opportunity to discover and develop the evidence.

On page 1 of its Order, the Court finds that Greenline Industries, Inc. is a South Carolina corporation, with offices in both South Carolina and Canada. While the Defendant makes such an assertion in a Statement of Claim filed in Canada (Affidavit, Donna Mikals, Exhibit A), that claim is disputed by all other parties. The Supplemental Affidavit of Donna Mikals, ¶ 7, page 4, asserts that Greenline Industries, Inc., the South Carolina corporation, had only one office and that is in Beaufort County, South Carolina.

At this pretrial stage, it is improper for the Court to make findings of disputed facts and its finding should be stricken.⁵

⁵ This is particularly appropriate since the finding is not relevant to jurisdictional issues.

Similarly, the Court finds that “[d]efendant worked for the various Greenline entities (collectively “Greenline”) until she was discharged in 2010.” Order, page 1.

For which company Defendant worked and when is the subject of separate litigation and even the Defendant has asserted conflicting claims about who her employer was. In her Affidavit filed in the Canadian action against the Plaintiffs, she asserts that she was employed by Greenline Forest Products, Ltd., and Greenline Forest Products, Inc. and her salary was paid by Greenline Forest Products, Ltd. Ultimately, a later created entity, Greenwood Plywood Products, Ltd. paid her salary. While she further asserts that she performed services for Greenline Industries, Inc., the South Carolina corporation, she continued to be paid only by the Canadian entity. (Supplemental Affidavit, Donna Mikals, Exhibit A, ¶ 1, 3 and 6).

Certainly, it is inappropriate for this Court, on the basis of conflicting and convoluted facts, to make a judicial finding as to which entity the Defendant was legally employed. Although that may be a convenient thing for Defendant’s counsel to insert into the draft Order presented to the Court, such a finding could and should only be made once the employment records of the Defendant are produced and the issue properly litigated. The Motion to Dismiss is not the time or place to litigate that issue. The factual finding in that regard should not have been made, has no basis in the record, and is wrong.

For the same reasons, the Court’s finding on page 2 of its Order, that the Defendant travelled to South Carolina in “her capacity as an employee of the

Greenline entities" is inappropriate and is at most a disputed fact. The Defendant contends she was seeking financing for Greenwood Plywood Products, Ltd. and Greenline Industries, Inc. (See Exhibit A to the Supplemental Affidavit, Donna Mikals, ¶ 9). Randy Mikals avers that she was seeking financing on behalf of her employer, Greenline Plywood Products, Ltd. (Affidavit, Randy Mikals).

On page 4 of the Order, the Court finds that the Plaintiffs have alleged that the Defendant was not in South Carolina subsequent to 2007 and suggests that, at the time, she was in the state on behalf of the Plaintiffs' companies. First, it is undisputed even by the Defendant that, in 2007, all of the active Greenline entities were owned by the Plaintiffs' children. The company that had been owned in part by the Plaintiffs was dissolved or inactive, having no inventory or bank account. The only operating entities were Greenline Industries, Inc., and Greenline Plywood Products, Ltd., neither of which had ever been owned by the Plaintiffs. (Supplemental Affidavit, Donna Mikals, Exhibit A, ¶ 2, 4, 5, 7, 8 - 17; Complaint, ¶ 4 - 6).

Further, the Supplemental Affidavit of Donna Mikals avers that the Defendant was in South Carolina as late as February, 2008.

Most unsupportable by the record is the Court's conclusion that the Defendant was employed by the Plaintiffs, individually. Order, p. 4, 5. There is not one shred of evidence anywhere in the record that would support such a

finding. Not even the Defendant contends in her submittal to this Court that she was the employee of the Plaintiffs, individually.⁶

At this preliminary stage of the proceedings, the function of this Court was to review the allegations of the Complaint, and the Affidavits of the Plaintiffs, assume the truth of the facts set forth therein, and determine whether or not the exercise of personal jurisdiction was proper. When this Court went far afield, weighing the evidence and making factual findings that were irrelevant to the issue of jurisdiction, entirely unsupported by the record, or the were, in fact, disputed, it erred.

V.

THE DEFENDANT WAIVED HER OBJECTION TO THE
EXERCISE OF JURISDICTION OVER HER BY THIS COURT.

As set forth in its earlier Memorandum in Opposition to the Motion to Dismiss, because the Defendant appeared and requested affirmative relief, she waived her objection to lack of jurisdiction. In support of their position, the Plaintiffs rely on the arguments and authorities previously presented to the Court on this issue.

VI.

THE STATEMENTS OF COUNSEL AND EVIDENTIARY ATTACHMENTS TO A
MEMORANDUM SHOULD NOT BE CONSIDERED BY THE COURT.

It is axiomatic that statements of counsel and unsworn and unauthenticated documents attached to memoranda are not evidentiary in nature

⁶ The Court apparently concludes that the Defendant was employed by the Plaintiffs because she alleges she was terminated by Plaintiff Donna Mikals. Obviously, not being an owner, director, or office of the company by which she was employed, Mrs. Mikals had no authority to fire her.

and should not be considered by the Court. On September 12, 2013, subsequent to the hearing on the Motion to Dismiss, the Defendant's counsel submitted such a Memorandum with attachments to the Court to consider. Counsel for the Plaintiffs registered their objection to the Court's consideration of them.

It is perfectly clear that, in deciding a Motion to Dismiss on jurisdictional grounds, only the Complaint and Affidavits may be considered in decided the issues. Thus, even if the Memorandum and attachments were otherwise proper, which they were not, they should form no part of the Court's analysis of whether the Plaintiffs have made a prima facie showing that jurisdiction is proper in South Carolina. Findings of fact based on such materials is error.

CONCLUSION

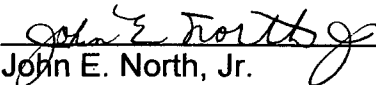
In reaching the conclusions set forth in its Order, the Court failed to evaluate the issue of personal jurisdiction under the proper standard. The Plaintiffs were required only to make a prima facie showing of jurisdiction. In determining whether they did so, the Court was required to accept all factual statements in the Complaint and the Plaintiffs' Affidavits as true.

Rather than apply the clear legal standard, the Court acted as a trier of fact, and made findings of fact and conclusions of law not support by applicable authority or the record.

For all of the reasons set forth herein, the Plaintiffs respectfully request that the Court vacate its Order dismissing the Complaint, engage in an analysis

of the record under the proper standard, affording the Plaintiffs the benefit of all disputed facts, and issue an Order denying the Motion.

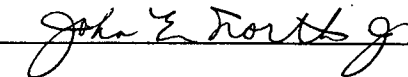
CHARLES R. MIKALS, and DONNA MIKALS,
Plaintiffs,



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Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the Defendant, by depositing same in the United States Mail, first class, postage prepaid and addressed to the Defendant's attorney, J. Scott Falls, P.O. Box 657, Charleston, SC 29401 on the 16th day of October, 2013.



00170

1 State of South Carolina) Court of Common Pleas
2 County of Beaufort) No.: 2013-CP-07-1186

3
4 Charles R. Mikals and)
5 Donna Mikals,)
6 Plaintiffs,) Hearing
7 vs.)
8 Debra House,) September 3, 2013
9 Defendants.)
_____)

10
11 Hearing reported by Deborah S. Thomas,
12 Certified Verbatim Reporter and Notary Public in and
13 for the State of South Carolina; said hearing held
14 before the Honorable Marvin H. Dukes, III, Beaufort
15 County Master in Equity and Special Circuit Court
16 Judge in accordance with the South Carolina Rules of
17 Civil Procedure, at the Beaufort County Courthouse,
18 102 Ribaut Road, Room 212, Beaufort, South Carolina,
19 on September 3, 2013, at the hour of 9:42 a.m.

20
21 COPY

22
23
24 ABACTIS REPORTING SERVICES
15 Pineapple Drive
Bluffton, South Carolina 29909
25 (803) 206-7390

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Appearances

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12 (None were proffered.)13
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24 00173

1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.

3 JUDGE DUKES: Good morning. We're
4 here in case 2013-CP-07-1186. This is Charles R.
5 Mikals and Donna Mikals versus Debra House. This is
6 Defendant House's motion to dismiss for lack of
7 personal jurisdiction.

8 Happy to hear from you, sir.

9 MR. FALLS: Your Honor, may it please
10 the court, Scott Falls on behalf of Debra House, the
11 Defendant in this case. We are here for a 12(b)(2)
12 motion to dismiss for lack of personal jurisdiction.
13 My client is an eight-month-pregnant female who
14 resides in Canada, who has always resided in Canada,
15 has never owned property in the United States, much
16 less South Carolina.

17 She worked for a company that was
18 previously owned by the Plaintiff's in this case
19 which was a Canadian company called -- well, I'm not
20 going to confuse the names. It's a company because
21 there was three and they're all initially the same
22 in our view, but it's irrelevant for the -- this
23 matter. She has been to South Carolina two times.
24 She was the CFO for this company. She came to South
25 Carolina in 2006 two times on business, physically

1 came here. She has never lived here. She did not
2 work here. She has worked for this Canadian company
3 the entire time.

4 Under our personal jurisdiction rules it's
5 a two-step analysis, Your Honor. The long-arm
6 statute has to apply. We know that our long-arm
7 statute goes to the extent of the due process under
8 the Constitution. And so, I don't think -- I don't
9 believe -- well, let me just say this. Even if the
10 long-arm statute does apply, there is a plethora of
11 case law saying that the second prong, due process,
12 is not -- is not complied with even if the long-arm
13 statute is met.

14 The due process aspect requires many
15 things. It requires that there be minimum contacts
16 which will form state. My client is a Canadian
17 citizen. She has been to South Carolina, again, two
18 times in 2006. She worked for various companies
19 owned by either the Plaintiffs or the Plaintiffs'
20 children. And this was all done for estate planning
21 purposes is the reason they were put in the
22 children's name. But she initially worked for and
23 was terminated by Ms. Donna Mikals in person in
24 Canada.

25 She has no minimum contacts with South

1 Carolina. She has not been here since 2006. She --

2 JUDGE DUKES: What was the date of
3 the termination?

4 MR. FALLS: It was 2010.

5 JUDGE DUKES: Okay.

6 MR. FALLS: After Ms. Donna Mikals
7 terminated her in person in Canada -- and the
8 company's website it says they are in Canada.
9 That's where their administrative offices are. She
10 filed a wrongful termination suit there which I
11 think does have some relation here because under
12 that wrongful termination suit, what is being
13 alleged in this lawsuit is -- would properly be a
14 compulsory counterclaim to that wrongful termination
15 suit in Canada.

16 Well, unfortunately, I guess, that's been
17 realized that that's the issue. And Canada has a
18 two-year statute of limitations under the
19 Limitations Act of 2002. They couldn't bring it as
20 a compulsory counterclaim. So that's apparently why
21 it's been filed here even though my client has no
22 minimum contacts with South Carolina. All the talk
23 about them -- her calling banks and such, that does
24 not create minimum contacts. We're talking about
25 the Bank of Montreal which is in Canada. That's --

1 and is not a South Carolina bank or United States
2 bank. I just wanted to clarify that. But,
3 basically, the Defendants -- or the Plaintiffs are
4 attempting to invoke personal jurisdiction over my
5 client simply because they decided to retire
6 in South Carolina. That is not sufficient to invoke
7 personal jurisdiction. She has no minimum contacts.
8 She has no -- it would be completely unfair and
9 unjust, which is a requirement of the due process
10 clause in determining jurisdiction.

11 We're talking about phone calls that had
12 been made or allegedly made to a bank and to the
13 Plaintiffs. The Plaintiffs, from my understanding,
14 until she -- my client was terminated, they were
15 in Canada a good bit of the time running this
16 company. They -- she -- one of the Plaintiffs fired
17 my client. My client came here in 2006. She made
18 phone calls, but phone calls are insufficient to
19 create minimum contacts. I understand there is some
20 case law where really bad things are done where one
21 act can create minimum contact.

22 But my client is an employee of this --
23 these companies, these entities. She is not seeking
24 business. She is not seeking personal gain. And I
25 don't believe the complaints allege that she is

1 even -- wanted to -- tried to seek personal gain in
2 this matter. It's just that she was a bad employee
3 is what I'm reading and alleging. She's not --
4 there's no allegation that she earned money or stole
5 money or embezzled money. It's basically that
6 she -- there was fraud. I'm not sure why there
7 would be fraud. She's not seeking personal gain.
8 But -- and also that she owed a fiduciary duty to
9 the Plaintiffs. But those are all matters for
10 summary judgment.

11 At any rate, she's -- she doesn't have
12 minimum contacts with South Carolina. And she -- it
13 would be fundamentally unfair to bring her here when
14 there is a case pending in Canada that this would
15 have properly been a compulsory counterclaim to.
16 They missed that boat, and they are asking for a
17 second bite of the apple in South Carolina.

18 JUDGE DUKES: All right. Happy to
19 hear from you, Mr. North.

20 MR. NORTH: Well, let me handle a
21 couple of housekeeping matters first of all. The
22 Defendant filed a supplement affidavit that I was --
23 that came into my office on Friday which is one day
24 before the hearing. I do not have any objection to
25 timeliness of the filing on the condition that my

1 responding affidavit of Mark Henchcliff be received
2 even though it's just a photocopy and not the
3 original.

4 Alternatively, I'd ask leave to supplement
5 the original when it gets here from Canada. I also
6 have a supplemental affidavit from Donna Mikals
7 responding to the substance of the -- the
8 supplemental affidavit of the Defendant that was
9 just filed or served on me on Friday.

10 So I would like to offer both of those
11 affidavits in opposition to this motion.

12 JUDGE DUKES: Any objection?

13 MR. FALLS: I have no objection.

14 JUDGE DUKES: Okay. All right.

15 Thank you.

16 MR. NORTH: You know, with regard to
17 the supplemental affidavit of Ms. House, you know,
18 we do have objections to those portions of the
19 affidavit that contain conclusions, hearsay, and
20 speculation and the lack of foundation to know the
21 facts that she claims to assert. But I'm sure the
22 Court can deal with that as and when it goes -- if
23 it needs to go through the details of all that.
24 We've also submitted an 11-page memorandum. The
25 Defendant e-mailed me this morning a 10-page

1 memorandum in response. If the court doesn't deny
2 this motion at this hearing, I would ask leave to
3 have five days to reply to the memorandum that was
4 served on me this morning.

5 JUDGE DUKES: All right. Okay.

6 MR. NORTH: Okay. Now, with regard
7 to the substance of the motion, the long-arm statute
8 gives us jurisdiction if any part of a tortious act
9 occurs in this state. The complaint lists in detail
10 multiple fraudulent acts and misrepresentations that
11 were made in phone calls placed by the Defendant to
12 South Carolina and made in person in Beaufort
13 County.

14 They have repeatedly based their argument
15 that she's never been in the state of South Carolina
16 since 2006. And the best response to that is the
17 Defendant's own affidavit filed in the Canadian
18 proceeding which is attached to the supplemental
19 memorandum that admits, this is her sworn statement
20 that in 2007, "I traveled to Beaufort, South
21 Carolina, to interview and select a U.S. bank. As
22 the Defendants' anticipated, the Bank of Montreal,
23 not agreeing to extend the line of credit necessary
24 to continue operating both operational in the near
25 future. So not only does she admit that at the very

1 time that we've alleged --

2 JUDGE DUKES: Where are you again?

3 I'm sorry.

4 MR. NORTH: I'm on Paragraph 9 of the
5 attachment to the supplemental affidavit.

6 JUDGE DUKES: Supplemental affidavit.
7 Okay. I have affidavit.

8 MR. NORTH: And then there's --

9 JUDGE DUKES: I don't even know if I
10 have the supplemental. Let's see.

11 MR. NORTH: Well, that's because I
12 grabbed yours instead of mine.

13 JUDGE DUKES: Okay. All right.
14 Thank you. All right. Paragraph 9.

15 MR. NORTH: Paragraph 9 of the
16 attachment.

17 JUDGE DUKES: Of the attachment. All
18 right. Go ahead.

19 MR. NORTH: This is the Defendant's
20 own statement acknowledging that she traveled to
21 Beaufort County in 2007 to deal with the
22 ramifications of the bank of Montreal cutting back
23 on the line of credit that was necessary to continue
24 operating her employer. And then we also have the
25 affidavit of Mark Henchcliff who for since at least

1 the year 2000 has been the company accountant who
2 confirms that in 2007 both he and Debra House flew
3 to Beaufort County and met with Chuck Mikals
4 concerning the business, banking, and financial
5 issues relating to the transfer of certain business
6 activities from Greenwood Plywood to Greenline
7 Industries.

8 So the very foundation of this Defendant's
9 basis for saying she's had no minimum contacts is
10 undone by her own sworn testimony that puts her
11 right in the place where we say she was dealing with
12 the very issues that we say she was dealing with.

13 And in addition to that, any time she does
14 a tortious act that causes injury in the state of
15 South Carolina, the law is clear that South Carolina
16 has jurisdiction over her even if she doesn't come
17 into the state or have anything to do with the state
18 if she causes injury. And when you defraud elderly,
19 70-some-year-old people of their money and they are
20 residents of South Carolina, you have inflicted an
21 injury in South Carolina.

22 But there are two other things to keep
23 in mind. One is that this Defendant came into court
24 seeking affirmative relief. She can -- the first
25 filing out of the box was seeking punitive damages

1 against the Plaintiffs. Once you seek affirmative
2 relief, the law is clear you have waived any
3 jurisdictional argument.

4 And finally, the suggestion that there are
5 no minimum contacts is ridiculous when the
6 Defendant's very own filings and affidavits that are
7 now before the court state that she acted as the
8 chief financial officer of Greenline Industries for
9 a period of 10 years. And Greenline Industries only
10 has one business location. And it's right here in
11 Beaufort County. So for her to suggest that there
12 are no contacts between her and Beaufort County is
13 ludicrous.

14 She submits evidence trying to say that,
15 here's a copy of my passport and it shows that I
16 wasn't in South Carolina. But what she does is she
17 copies five of the 24 pages of her passport. She
18 omits in sequence two of those pages. She admits
19 in sworn testimony being in the United States one
20 time; yet, the five pages that she submits show that
21 there's only one U.S. stamp.

22 So right there it shows that her passport
23 is not any reliable record of whether she comes and
24 goes. And the affidavit of Donna Mikals makes it
25 perfectly clear why that is. If you live in

1 Toronto, all you do is hop in the car, drive across
2 the border to Buffalo, and you have a domestic U.S.
3 flight from Buffalo to Savannah.

4 So from the standpoint of this
5 jurisdictional objection, I think the preponderance
6 of the evidence is perfectly clear that this
7 Defendant not only had minimum contacts, she had
8 every single contact a person could ever want or
9 expect to be held accountable for the fraud that she
10 committed on these people in Beaufort County.

11 And just to clarify this suggestion that
12 there's some compulsory counterclaim that should
13 have been filed in Canada, the Canadian proceeding
14 is an action by Debra House against her employer, a
15 corporate entity.

16 And in that -- in that action, she also
17 sued Chuck Mikals. Chuck Mikals retired from any
18 involvement in the company in 2006. Yet, she sues
19 him in Canada on a wrongful discharge that took
20 place four years after he retired. And there is, in
21 fact, a motion pending to dismiss that on the basis
22 of lack of jurisdiction in Canada.

23 And they suggest that the resolution of
24 that has been delayed because of the tactics of the
25 Plaintiffs. The tactics of the Plaintiffs are we

1 want Debra House to be deposed. And that put a
2 grinding halt to that entire proceeding. And it's
3 gone nowhere for nine months. That motion is still
4 pending. We expect it to be granted.

5 But the bottom line is this action has
6 absolutely nothing to do with her employment or her
7 wrongful termination. What it has to do with is her
8 acts of going to Chuck Mikals two years after he
9 retired to Beaufort County and tricking him and
10 lying to him in order to get him to make his
11 personal line of credit available so that her
12 employer did not go out of business.

13 Without access to that line of credit and
14 the ability to continue to buy goods on credit, that
15 company would have to be shut down. And she
16 promised him that all of that debt would be
17 instantly repayable. She promised him that all of
18 the assets of the company would be held as
19 collateral to secure that debt.

20 Not only were none of the assets granted
21 as collateral, she did not even mark that liability
22 on the books of the company because if she did then
23 Bank of Montreal would not make any additional
24 advances. And that fraud caused them to lose
25 \$611,000. And that fraud took place in whole or

1 in part here in South Carolina. And the statute is
2 very clear, Section 36-2-803. We have jurisdiction
3 over somebody who commits a tortious act, in whole
4 or in part, in this state. And we also have
5 jurisdiction independently of that provision if you
6 cause tortious injury into the -- in the state by
7 one who engages in a persistent course of conduct
8 in this state. This woman for 10 years acted as the
9 CFO of Greenline Industries here in Beaufort County.

10 So under two separate provisions of the
11 long-arm statute, we have jurisdiction over this
12 Defendant and the motion to dismiss should be
13 denied.

14 JUDGE DUKES: Anything else?

15 MR. FALLS: Your Honor, the affidavit
16 from 2007, this is the first time I've seen that.
17 But all I can say is I don't know if it's a mistake
18 or what. If you'll take a look at my client's
19 affidavit, in addition to her passport which there
20 were no pages excluded, I'm not sure what that's
21 about.

22 MR. NORTH: Well, take a look at the
23 exhibit. You can count -- you can look at the page
24 numbers.

25 MR. FALLS: Well, I think the others

1 were either blank or not U.S. If that's the case,
2 I'll supplement that if that's a question, though.
3 But --

4 MR. NORTH: I'd be happy to
5 supplement that.

6 MR. FALLS: What we have, also, if
7 you'll look at Exhibit A and B, are the official
8 Canadian border crossing documents. You can't get
9 around these. These -- in order to leave Canada,
10 you have to, you know, go through the border. And
11 these don't lie. We have 2008, particularly,
12 because of all these allegations that she was here
13 in 2008. She wasn't. The Canadian border crossing
14 documents show she wasn't.

15 Then we even went and got the 2012
16 documents from the Canadian border crossing agency,
17 official documents, and I can get certified copies
18 of these if you would like, showing when she was
19 here. And 2007 is not one of those times. 2008 is
20 not one of those times. 2006 is when she was
21 in Beaufort County.

22 JUDGE DUKES: Without having me dig
23 through the complaint again, when is it asserted by
24 the Plaintiff that she personally approached him
25 in Beaufort County and --

1 MR. FALLS: What it says is that
2 in 2008, one of the companies shut down and the line
3 of credit was transferred from one of the Greenline
4 companies to Greenline Plywood. And the complaint
5 says prior to that time, she made these
6 solicitations. Prior to that time was actually
7 October 28th when she flew in to Savannah, Georgia,
8 and landed at 9:52 p.m. and was picked up by Chuck
9 Mikals at the airport and stayed at their house.

10 JUDGE DUKES: What year? I'm sorry.

11 MR. NORTH: October of 2007 was when
12 she came to South Carolina. But our records also
13 show she was back in March of 2008.

14 MR. FALLS: What records --

15 MR. NORTH: The business records of
16 Greenline.

17 MR. FALLS: Is that in here
18 somewhere?

19 MR. NORTH: No, that's in the
20 affidavits, the affidavits that have been submitted.
21 The complaint itself just talks about coming
22 personally and making all of those representations
23 both by phone calls sent to South Carolina and
24 in person while in South Carolina.

25 MR. FALLS: That's --

1 MR. NORTH: Let me respond to this
2 Canadian documentation thing, too. The first that
3 came up was on Friday. And the affidavit of Donna
4 Mikals establishes that prior to moving to Beaufort
5 County in 2006, she resided in Canada.

6 Both before her move and after, she
7 traveled extensively between Canada and South
8 Carolina. Prior to June 1 of 2009, formal travel
9 documents were not even required to come between the
10 United States and Canada. On June 1 of 2009, they
11 had the Western Hemisphere Travel Initiative, and
12 all that required is you have identity when you go
13 over the border. You didn't even have to have a
14 passport. It was only after 9/11 that they beefed
15 up security at the border and required passports.
16 So travel prior to 9/11 --

17 JUDGE DUKES: And 9/11 was 2001,
18 right?

19 MR. FALLS: Yes, that's right.

20 JUDGE DUKES: I mean, I agree with
21 you. After 9/11 it changed dramatically, but that
22 was --

23 MR. NORTH: You're right. You're
24 right about that.

25 MR. FALLS: (Inaudible) very certain

1 2001.

2 MR. NORTH: I'm wrong about that.

3 But I am right about the June 1, 2009. Even the
4 Western Hemisphere Travel Initiative that went into
5 effect June 1 of '09, did not require even that you
6 have your passport to cross the border. You just
7 had to have something that showed your identity and
8 citizenship.

9 MR. FALLS: But the Canadian border
10 crossing documents would illustrate that. You can't
11 get in and out without --

12 MR. NORTH: Today you can't, but back
13 in those days you could. And Debra House's own --
14 if you look at her own records of where she says she
15 went back and forth, there are five instances where
16 it doesn't show up on your border crossing record,
17 but she admits that she was in the United States.

18 MR. FALLS: I don't know how to
19 respond to that because I've just seen --

20 MR. NORTH: All I'm saying is that
21 between her passport and that, her own evidence
22 shows that those are not a reliable medium of the --
23 saying when she is in the United States. And that
24 is counterbalanced against her own sworn statement
25 that she went to Beaufort in 2007 to deal with this

1 Bank of Montreal line of credit issue and the
2 affidavit of the company's accountant that he went
3 with her. I don't know how you can get around that.

4 JUDGE DUKES: Where is the affidavit
5 that says he went with her?

6 MR. NORTH: Right here.

7 JUDGE DUKES: And he says he went
8 when?

9 MR. NORTH: 2007.

10 MR. FALLS: I'm just not sure how it
11 wouldn't show up on the border crossing
12 documentation. I mean, I'll supplement the passport
13 since there's some question about that. I have no
14 problem doing that. I think she only included the
15 relevant -- this may have been everything. I think
16 this was everything if you notice there's blank
17 pages here.

18 MR. NORTH: We have three items of
19 evidence having to do with her coming in October.
20 The -- Donna Mikals has her affidavit saying that on
21 October 28th, she flew in, she landed at Savannah at
22 9:50, her husband picked them up. And both of these
23 individuals, the accountant and Debra House, stayed
24 in their house in Beaufort County for three more
25 days at that time.

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1 And that she also came back in February of
2 the following year, and House's own affidavit saying
3 that she came in October of 2007 to deal with the
4 line of credit issues, and the accountant for the
5 company confirming that he went with her.

6 JUDGE DUKES: Well, I guess I'm
7 trying to figure out what time or times she was
8 actually -- the Plaintiff asserts she was only
9 actually in South Carolina in furtherance of this
10 fraud that is alleged.

11 MR. FALLS: 2006, Your Honor, was the
12 last time she was physically here. Now, in her
13 affidavit there is a footnote she went to Augusta.
14 She thinks she may have crossed the South Carolina
15 border then and wants to, in all candor to the
16 court, mention that. I think she went to the
17 Masters. She went to Augusta for something.

18 She's been to Florida and she may have
19 crossed into South Carolina then. She doesn't know.
20 But 2006 was the last time that she was here. These
21 other affidavits I'm not sure -- she was
22 representing herself pro se before, so I'm not
23 sure --

24 JUDGE DUKES: Well, that reminds me.
25 There was some -- Mr. North mentioned something

1 about her seeking affirmative relief in this action.
2 What was the affirmative relief?

3 MR. FALLS: Well, Your Honor, what
4 that is in reference to is she did a motion to
5 dismiss, pro se. And at the end she said she
6 wanted -- she asked for the case to be dismissed and
7 that attorney's fees and punitive damages be awarded
8 to her.

9 JUDGE DUKES: Oh, she didn't file a
10 counterclaim?

11 MR. FALLS: No, sir. No, Your Honor.

12 MR. NORTH: No, but she still asked
13 for affirmative relief. When we talk about
14 jurisdictional issues, you can't even defend the
15 merits of the case without waiving jurisdiction let
16 alone ask the court for affirmative relief whether
17 it's a formal counterclaim or not.

18 MR. FALLS: She was representing
19 herself pro se, Your Honor. And no counterclaim was
20 filed. I believe the rules require that a
21 counterclaim be captioned as such.

22 JUDGE DUKES: So let me make sure
23 I've got a complete picture of at least what the
24 allegation is. Ms. House was an employee of this
25 company called Greenline?

1 MR. FALLS: Yes. Greenline Plywood.

2 JUDGE DUKES: Greenline Plywood, a
3 Canadian company.

4 MR. FALLS: Right.

5 JUDGE DUKES: All right. So she was
6 an employee. All right. And the allegation is that
7 as an employee, she traveled in 2007, October 2007,
8 to Beaufort County, South Carolina, and made certain
9 representations which are alleged to be fraudulent
10 to Mr. Mikals that induced him to guarantee certain
11 funds. And his allegation is that turned out that
12 the assertions were false and he's lost money as a
13 result.

14 MR. NORTH: Mr. Mikals was retired
15 in 2006, had nothing to do with the business. She
16 needed to figure out some way to deal with the Bank
17 of Montreal no longer making that line of credit
18 available to the company. And she flew down and
19 talked him into making his personal line of credit
20 available on the condition -- and he agreed to it on
21 the condition that it could be repaid at any time,
22 which we can show is absolutely false because it
23 couldn't be repaid because the Bank of Montreal
24 would not make any additional advance over the 1.5.
25 And they certainly weren't going to give the

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1 additional two million that they had already refused
2 to give.

3 And the second thing is it was supposed to
4 be completely collateralized with a lien on every
5 asset of the company. Not only did that not happen,
6 but she did not even record the liability on the
7 books of the company at any point in time. And sent
8 him written communications assuring him that he's
9 all collateralized, that he's, you know, got a lien
10 on all the assets, did all of those things.

11 JUDGE DUKES: All right. But these
12 were assertions -- these were promises to do things
13 -- alleged promises to do things in the future,
14 right? I mean, he, as I understand it -- and again
15 I'm trying to understand it. She flew one time to
16 South Carolina. Is that right, in '07? October of
17 '07?

18 MR. NORTH: Well, she did a whole lot
19 of things in South Carolina. By her own admission
20 she acted for 10 years as the chief financial
21 officer of Greenline Industries out on Trask Avenue.
22 So --

23 JUDGE DUKES: But I'm talking about
24 physical -- physically being in the state of South
25 Carolina.

1 MR. NORTH: Physical in the state of
2 South Carolina she admits twice in 2006. Both times
3 staying, I might add, here in Beaufort County. And
4 then in 2007, she admits to being here dealing with
5 this line of credit issue. And then our evidence is
6 she was back in March of 2008.

7 MR. FALLS: Your Honor, if I could
8 just say one thing for the record?

9 JUDGE DUKES: Sure.

10 MR. FALLS: In the complaint, on the
11 four corners of the complaint, it doesn't say when
12 she traveled here. It's quite vague. And I have to
13 give it to you it's quite crafty language because I
14 don't understand when she is asserting that she was
15 here physically. I think it's 2008, which you are
16 trying to get out, but it's telephonic and physical
17 appearance occurred in 2008. But then there's no
18 dates given for physical appearances. It doesn't
19 say that she was here at any point in time except
20 for a vague allegation that she was here physically
21 at some point in 2008 or prior to.

22 MR. NORTH: What it says is that
23 prior to shutting down the one business and
24 transferring that line of credit, she came to South
25 Carolina and did all of the things that are listed

1 on two full pages. And now that you raise that
2 issue, all of our affidavits show -- they show to
3 the minute when she arrived in South Carolina.

4 JUDGE DUKES: But I'm still trying to
5 understand the whole thing. Is this -- this is --

6 MR. NORTH: She knew --

7 JUDGE DUKES: -- not a 12(b)(6)
8 today. Is that right?

9 MR. FALLS: It's not, Your Honor.
10 We're just arguing the 12(b)(2).

11 JUDGE DUKES: Okay. Because I guess
12 I'm trying to understand the -- maybe I don't need
13 to worry about it today, but she was an employee of
14 a Canadian corporation?

15 MR. NORTH: Right.

16 JUDGE DUKES: Taking the facts in the
17 light most favorable to the Plaintiff, and I know
18 I'm a little bit off of your motion here, but she
19 flies allegedly to South Carolina. And here is a
20 third-party individual that used to run this company
21 but now he's out?

22 MR. NORTH: Right.

23 JUDGE DUKES: All right. She's
24 just -- she's just an employee. And she allegedly
25 says, look, sign on the dotted line here. And after

1 you do so at some point we will make certain
2 accommodations that will make it safer for what you
3 have just signed. Is that essentially the
4 allegation? And then she fails to do these things
5 after the fact and he loses money as a result?

6 MR. NORTH: No, it's not just after
7 the fact. She comes down and says it will be
8 immediately repayable. And you will have a lien on
9 all the assets. And she knew from dealing with the
10 Bank of Montreal that the financial reporting
11 requirements, if she did either of those things,
12 would keep him from -- it would keep the company
13 from getting any additional advances on the line of
14 credit.

15 So she knew that Day One that that was not
16 a possibility. And then she went back, got that
17 money, and never recorded it on the books and
18 records. It never gave any lien on any of the
19 assets, assured him that it was all done, taken care
20 of, and that he was fully protected. And at the end
21 of the day when the company did go under two years
22 later, he lost it all.

23 And so the suggestion that somebody who
24 for 10 years acts as the chief financial officer of
25 a South Carolina corporation with its only location

1 here in Beaufort having a business card that they
2 conveniently attached to their affidavit that shows
3 her as the chief financial officer with an office on
4 Trask Parkway, and these are the Beaufort County
5 phone numbers to reach her on, her own personal
6 business card that she created, to suggest that
7 there are no minimum contacts with her when our
8 evidence and her own sworn statement says that she
9 came to South Carolina to deal with this line of
10 credit issue, I just don't see that there's any
11 possible ruling, especially when you throw in the
12 waiver argument that she's seeking affirmative
13 relief.

14 MR. FALLS: Well, Your Honor, if
15 we're -- I don't want to waive that argument of
16 personal jurisdiction and get into a 12(b)(6), but I
17 don't understand the cause of action and how it
18 applies. She wasn't seeking any personal gain. But
19 I'm not going to -- I don't understand why she would
20 have tried to fraud someone with no gain for herself
21 because that is an element of fraud. But anyway,
22 the business card, it states that -- it's attached
23 to her affidavit, my client's. It states that the
24 offices are in Canada and there's an office in South
25 Carolina. And if you look at their website, it says

1 the administrative offices are in Canada.

2 Again, Ms. Mikals terminated my client
3 in Canada, physically. She was in Canada a lot. My
4 client wouldn't have had to travel down here to
5 defraud her anyway. We've got -- I mean, I think
6 you would agree to that. She was in Canada a lot,
7 your client Ms. Mikals, correct?

8 MR. NORTH: Chuck Mikals retired
9 in '06, never to be seen or heard from again,
10 wanting nothing to do with this company. He was the
11 one that was defrauded. She is a Plaintiff because
12 she's jointly liable on that line of credit.

13 JUDGE DUKES: Well, let's do this.
14 Let's see. I think I told you I would give you five
15 days to supplement your brief. And, you know, once
16 you've had an opportunity to look at it if you want
17 to just send and copy, you know, a two-sentence
18 response if you --

19 MR. FALLS: I would appreciate it.

20 JUDGE DUKES: No problem. Just by
21 e-mail is fine. And I'll look at it. Have any
22 efforts been made to try to settle this thing? Is
23 that a possibility?

24 MR. NORTH: Day One, you know --

25 JUDGE DUKES: Now, this -- she was

1 just an employee of this -- is this still a
2 corporation that continues on or is it gone?

3 MR. NORTH: She filed a lawsuit
4 against Greenline Plywood for wrongful termination.
5 And a year and a half after that lawsuit was pending
6 in Canada against the Canadian company, it went
7 bankrupt. It went under, filed, and is gone. And
8 so then, she turns around and for the first time
9 says, oh, now, I'm going to sue Greenline Industries
10 here in South Carolina. And I'm also going to sue
11 Chuck Mikals who has been gone for four years. I'm
12 going to sue Donna Mikals who was not an officer,
13 director of the company. Sues Randy Mikals' sister
14 who didn't even know anything about the termination.
15 Sues her for wrongful termination.

16 JUDGE DUKES: So those are actual
17 lawsuits that are filed?

18 MR. NORTH: There's one lawsuit
19 pending in Canada and all the defendants have filed
20 a motion to dismiss based on a lack of jurisdiction.

21 JUDGE DUKES: Okay. But -- and I
22 guess I'm curious. I would think settlement would
23 be best done in a consolidated fashion, if at all.
24 I mean, is this -- if this is an individual who is
25 an employee who at some point lost her job, your

1 client's suing her for a significant amount of money
2 based on what's sort of a corporate loss. I don't
3 know what the possibility of recovery is. Maybe she
4 is very wealthy. I don't know.

5 MR. FALLS: She's not, Your Honor.

6 JUDGE DUKES: But, I mean, I guess
7 what I would like to see is a possibility -- even if
8 I got rid of this and sent it somewhere else, you've
9 still got these issues. What -- there's obviously
10 different counsel in Canada dealing with the other
11 part. Do they have anything in Canada that has to
12 do with -- I guess they would get rid of the -- I'm
13 sure they have some number other than 12(b)(6), but
14 the dismissal issues with regard to the individuals,
15 is that -- that's not scheduled or there's nothing
16 going on with any of that up there?

17 MR. NORTH: No. It's been sitting
18 stagnant for maybe a year by now, but at least nine
19 months.

20 MR. FALLS: And as far as settlement,
21 Your Honor, sort of the crux of this, I believe
22 Mr. North sent a letter to counsel in Canada with a
23 copy of this lawsuit. And he accepted service and
24 asked him to settle it. And then it was filed. He
25 accepted service. I don't know that that's going

1 to -- we can talk, but I don't know that my client
2 has any money. I mean, we can talk about it.

3 MR. NORTH: We're not seeking any
4 money even though she's filed, in our opinion, the
5 most ridiculous, groundless lawsuit in the world
6 against all these people and Greenline Industries,
7 even though every piece of paperwork that exists in
8 the whole world shows that she was an employee. She
9 did all the services for Greenline Industries, but
10 she was always employed by Plywood.. So --

11 MR. FALLS: But probably --

12 MR. NORTH: And, you know, here's the
13 thing. You know, in Canada when you hire an
14 employee, it's kind of like France, you own them for
15 life. And so she wants to have Canadian law apply
16 to a South Carolina employment which our public
17 policy does not believe -- we have employment by
18 will. So this claim of perpetual right to
19 employment forever is additionally ridiculous. And
20 I think unenforceable down here. So we suggested,
21 fine. You take your groundless claims, go away.
22 You caused us to lose \$611,000. We'll just forget
23 it. Let's just end all of this ridiculous bloodshed
24 and spending a gazillion dollars on lawyers, but she
25 won't go for it.

1 JUDGE DUKES: Well, I don't know
2 because there are obviously more lawyers than are
3 sitting here at the table, so I don't know what --
4 and I guess what I was going to ask is is there any
5 possibility for you all to get with your Canadian
6 counterparts up there and see if there is some
7 global settlement that could make this whole thing
8 go away because it doesn't sound like anybody is
9 going to make very much money on it? If --

10 MR. FALLS: We can certainly --

11 MR. NORTH: I'll tell you what. Do
12 you want to go off the record?

13 JUDGE DUKES: Anything else for the
14 record? Okay. That will conclude the record.
15 Thanks.

16 (Whereupon, the hearing
17 was concluded at 10:18 a.m.)
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Certificate of Reporter

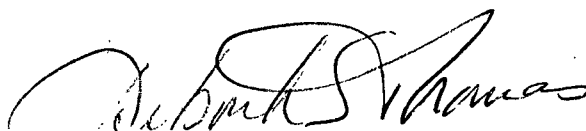
I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of Mikals vs. House on the 3rd day of September, 2013: and that the foregoing 34 pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to the JOHN E. NORTH, JR., ESQUIRE, North & Black, PC, 916 Bay Street, Suite 100, Beaufort, South Carolina.

In witness whereof I set my hand and seal this 28th day of October, 2013.

My Commission
expires 1/4/18



Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

1 State of South Carolina) Court of Common Pleas
2 County of Beaufort) 14th Judicial Circuit
3 No.: 2013-CP-07-1186

4 Charles R. Mikals and
5 Donna Mikals,

6 Plaintiffs,

7 vs.

8 Debra House,

9 Defendant.

HEARING

January 22, 2014

10
11 Hearing reported by Deborah S. Thomas,
12 Certified Verbatim Reporter and Notary Public in and
13 for the State of South Carolina; said hearing held
14 before the Honorable Marvin H. Dukes, III, Beaufort
15 County Master in Equity and Special Circuit Court
16 Judge in accordance with the South Carolina Rules of
17 Civil Procedure, at the Beaufort County Courthouse,
18 102 Ribaut Road, Room 212, Beaufort, South Carolina,
19 on January 11, 2014, at the hour of 8:45 a.m.

20
21 ABACTIS REPORTING SERVICES
22 15 Pineapple Drive
23 Bluffton, South Carolina 29909
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COPY

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10 EXHIBIT INDEX

11 Exhibits: Marked at Page

12 (None were proffered.)

13
14 * * * * *

1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.

3 JUDGE DUKES: Good morning then. We
4 are here on case 13-CP-07-1186. This is Mikals and
5 Mikals versus House. I have previously entered an
6 order granting Defendant's Motion to Dismiss which
7 was filed October 7th, 2013.

8 We are here today on Plaintiffs' Motion to
9 Reconsider that order. We have Mr. J. Scott Falls
10 on the telephone and Mr. John E. North here for the
11 Plaintiff. Happy to hear from you, Mr. North.

12 MR. NORTH: Yes. We have submitted
13 on behalf of the Plaintiffs a 21-page motion and
14 memorandum that lists out the various errors that
15 are contained within the order.

16 The first error is that the court applied
17 the wrong standard in evaluating the Motion to
18 Dismiss. We've cited three Supreme Court cases that
19 make it perfectly clear that the Plaintiff is only
20 required to make a prima facie showing and that all
21 factual issues must be resolved in the Plaintiff's
22 favor.

23 And the order that was entered goes on to
24 weigh the evidence and apply the wrong standard.
25 The order was drafted by Defendant's counsel, and it

1 contains factual findings that are completely
2 unsupported by the record.

3 We also have in this case a unique
4 situation where the Defendant waived any
5 jurisdictional objection by seeking affirmative
6 relief.

7 And the fourth ground that is set forth in
8 the motion has to do with the fact that within the
9 order there are factual findings that are based upon
10 evidentiary material that was not submitted at the
11 hearing on the motion. It was simply attached in an
12 unsworn manner to memorandums that were submitted
13 after the hearing. And as such, basing factual
14 findings on materials that weren't even included
15 under oath or part of the record, is inappropriate.

16 I think from my standpoint if I were the
17 court the first point is something that really needs
18 to be studied carefully. I think if you read the
19 motion to alter or amend you will see the clear
20 standard enunciated by the Supreme Court. And if
21 you compare that to the order that was entered, it's
22 obvious that the wrong standard was applied.

23 And I just hate to have this litigation
24 spend the next two years getting that undone before
25 we end up back where we started when that could be a

1 avoided.

2 JUDGE DUKES: All right. Mr. Falls,
3 happy to hear from you, sir.

4 MR. FALLS: Your Honor, I don't have
5 much to add. I would just stand by the pleadings
6 previously submitted and the order in response. One
7 thing I did want to mention is --

8 COURT REPORTER: I'm sorry. I'm
9 having just a little trouble hearing you.

10 JUDGE DUKES: Hold on a second. Let
11 me turn this up a little bit. My court reporter is
12 having a hard time hearing, so I'm going to turn the
13 phone this way. So let's reset to Mr. Falls, happy
14 to hear from you, sir. Go ahead.

15 MR. FALLS: Thank you, Your Honor. I
16 don't have a lot to add to that. My client would
17 stand by her previous pleadings which are on record
18 and the order entered by the court.

19 One thing on the unsworn evidence
20 presented, I believe that is in reference to some
21 additional pages to a passport. And we would
22 present to the court that they were not relevant
23 anyway to the finding because they don't show any
24 travel, but -- relevant to this matter. And we
25 would just stand by the previous pleadings.

1 JUDGE DUKES: All right. And I
2 understand Mr. North has a 21-page motion and brief
3 which I actually don't have right here in front of
4 me but I'm sure is in the file. I don't know if
5 you've got an extra copy. There is one. And,
6 Mr. Falls, have you submitted anything in response
7 or not?

8 MR. FALLS: I have not, Your Honor.
9 I have Mr. North's brief, a copy of it, but I have
10 not. I could certainly do so if that would be
11 helpful.

12 JUDGE DUKES: I mean, you don't have
13 to. If you wanted to respond to it, you know, if
14 you could do so in five days, that would be fine.

15 MR. FALLS: Sure.

16 JUDGE DUKES: Let's see. Today is
17 Wednesday. So call it -- make it five working days.

18 MR. FALLS: Sure. I'll be sure to do
19 that.

20 JUDGE DUKES: Yeah. And anyway, and
21 you can certainly send that -- if you wanted a copy
22 filed, of course, it needs to go to the clerk,
23 otherwise if you wanted to do it in letter format,
24 just send it to Heather with a copy to Mr. North.

25 And certainly I'll provide Mr. North the

1 opportunity to respond if he would like to that by
2 e-mail. All right. Well, I will take a look at
3 everything and see what we can figure out and try to
4 let you all know something as quickly as possible.
5 Have a good day. Anything else for this record?
6 Okay. Hearing nothing --

7 MR. FALLS: Not here, Your Honor.

8 JUDGE DUKES: All right. Great.

9 Nothing, Mr. North?

10 MR. NORTH: Nothing further.

11 JUDGE DUKES: Okay. All right.

12 Thank you very much. Have a good day.

13 (Whereupon, the hearing
14 was concluded at 8:48 a.m.)
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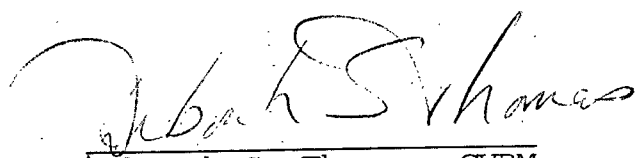
Certificate of Reporter

I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of Mikals v. House, on the 22nd day of January, 2014: and that the foregoing 8 pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to John E. North, Jr., North & Black, PC, 916 Bay Street, Suite 100, Beaufort, South Carolina.

In witness whereof I set my hand and seal this 2nd day of June, 2014.



My Commission
expires 1/4/18

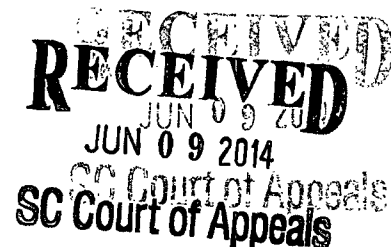
Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Marvin H. Dukes, III, Presiding Judge

Case No. 2013 - CP - 07 - 1186



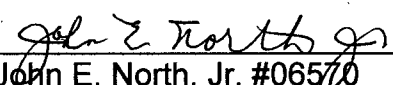
Charles R. Mikals and Donna Mikals.....Appellants

v.

Debra House.....Respondent

Certificate of Counsel

The undersigned counsel for the Appellants hereby certifies that the Record Appeal contains all material proposed to be included by the parties, except that material excluded by Rule 210(c), SCACR and no other material and that the Brief and Reply Brief of Appellants complies with Rule 211(b) SCACR.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Marvin H. Dukes, III, Presiding Judge

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SC Court of Appeals

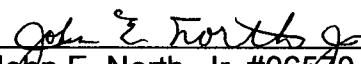
Case No. 2013 - CP - 07 - 1186

Charles R. Mikals and Donna Mikals.....Appellants
v.

Debra House.....Respondent

PROOF OF SERVICE

I hereby certify that I served three copies of the Appellants' Brief, Appellants' Reply Brief and the Record on Appeal upon the attorney for the Respondent, J. Scott Falls, P.O. Box 657, Charleston, SC 29401 by United States Mail, first class, postage prepaid on June 6, 2014.


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