THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson
Circuit Court Judge

Case No. 2011-CP-38-00853
Appellate Case No. 2014-000459

Directory Assistants, Inc., ... Appellant,

v.

Dennis Shay, d/b/a Marsch Chiropractic Center,..... Respondent.

Initial Brief of Appellant

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Statement of the Case and Facts[1]

This matter involves domestication of a valid foreign judgment in South Carolina pursuant to the South Carolina Uniform Enforcement of Foreign Judgments Act and the Full Faith and Credit Clause of the United States Constitution. The trial court erred in failing to enroll the judgment under the Full Faith and Credit Clause of the United States Constitution.

Appellant Directory Assistants, Inc.[2] ("Directory Assistants") offers advertising services to businesses throughout the United States. Dennis Shay and Marsch Chiropractic Center (collectively "Shay") do business in South Carolina. On September 8, 2008, Shay entered into a written consulting contract ("the Contract") with Directory Assistants. {Consulting Contract p. 1-2; R. ___}. Shay contracted with Directory Assistants to provide advertising services on behalf of Marsch Chiropractic. {Consulting Contract p. 1-2; R. ___}. Directory Assistants and Shay agreed to resolve all disputes under the Contract through binding arbitration. {Consulting Contract p. 2; R. ___}. Ultimately, Shay breached the Contract by failing to pay for services rendered by Directory Assistants as required by the Contract. {Cite; R. ___}.

As a result of that breach, Directory Assistants filed a demand for arbitration against Shay with the American Dispute Resolution Center, Inc. {Demand for Arbitration filed May 26, 2009; R. ___}. Shay received notice of the arbitration

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[1] Because the procedural history and facts of this matter overlap substantially, Directory Assistants combines the Statement of the Case and Statement of Facts to eliminate repetition in this brief and for ease of reference.

[2] Directory Assistants, Inc. was referred to as "DAI" in the trial court proceedings. This brief will use Directory Assistants for clarity.

hearing pursuant to the rules of the American Dispute Resolution Center. {Arbitration Award p. 2, ¶ 2; R. ___}.

After receiving notice of the demand for arbitration, Shay retained counsel to challenge the demand for arbitration. {Shay Letter dated May 29, 2009 to American Dispute Resolution Center; R. ___}. Shay's counsel objected in writing, but Shay did not challenge the existence of the Contract. {Shay Letter dated May 29, 2009 to American Dispute Resolution Center; R. ___}. In fact, Shay admitted the existence of the Contract, stating he "disput[ed] the validity of this provision of the contract" and had previously "exercised his right to terminate the contract . . . ." {Id.; R. ___}. Moreover, Shay claimed the arbitrator was required to first determine arbitrability, namely whether an agreement to arbitrate existed between the parties. {Shay Letter to American Dispute Resolution Center dated August 25, 2009; R. ___}. The arbitrator denied Shay's objection by order dated September 4, 2009. {Arbitration Award p. 2, ¶ 3; R. ___}. Shay then received notice of the arbitration hearing. {Arbitration Award p. 2, ¶ 2, 5; R. ___}. However, Shay did not appear at the arbitration hearing. {Arbitration Award p. 2, ¶ 5; R. ___}.

On September 17, 2009, the arbitrator issued a written arbitration award finding Shay breached the Contract and awarded Directory Assistants damages in the amount of $34,582.00. {Arbitration Award p. 2-3; R. ___}. Further, Directory Assistants would be entitled to collect interest on the damages award if Shay failed to pay in full by October 17, 2009. {Arbitration Award p. 3; R. ___}.

Directory Assistants then filed its application for confirmation of the arbitration award with the Connecticut Superior Court for the Hartford Judicial District (the

"Connecticut Court"). {Confirmation of Arbitration Award and Order to Show Cause dated October 22, 2009, Exhibit 5 to Memorandum in Support of Domesticating Foreign Judgment; R. ___}. The Connecticut Court directed Shay appear and explain why the application should not be granted. {1st Order to Show Cause dated October 22, 2009; R. ___}. The Connecticut Court granted the application. However, Directory Assistants failed to serve Shay with the first order to show cause. {Order Granting Motion to Open & Vacate Judgment dated August 2, 2010, Exhibit 6 to Memorandum in Support of Domesticating Foreign Judgment; R. ___}. Upon motion of Directory Assistants and with consent of Shay, the Connecticut Court vacated that initial judgment. {Order Granting Motion to Open & Vacate Judgment dated August 2, 2010, Exhibit 6 to Memorandum in Support of Domesticating Foreign Judgment; R. ___}.

The Connecticut Court thereafter issued a second order to show cause directing Shay to appear for the confirmation hearing. {2nd Order to Show Cause & Notice Regarding Hearing, Exhibit 7 to Memorandum in Support of Domesticating Foreign Judgment; R. ___}. Directory Assistants served the second order to show cause and notice of hearing on Shay. {Return of Service dated September 15, 2010, Exhibit 8 to Memorandum in Support of Domesticating Foreign Judgment; R. ___}. Directory Assistants also served its application to confirm the arbitration award, with exhibits, on Shay. {Return of Service dated September 17, 2010, Exhibit 9 to Memorandum in Support of Domesticating Foreign Judgment; R. ___}.

In response to the confirmation action, Shay retained new counsel from Connecticut to represent and defend him. Connecticut counsel immediately filed an

appearance on behalf of Shay. {Notice of Appearance dated September 9, 2010, Exhibit 10 to Memorandum in Support of Domesticating Foreign Judgment; R. ___}. Shay's counsel then filed a responsive pleading objecting to Directory Assistants' application for confirmation of arbitration award.[3] {Objection to Application, Exhibit 11 to Memorandum in Support of Domesticating Foreign Judgment; R. ___}.

In that pleading, Shay argued that the Connecticut Court could not confirm the arbitration award because (a) he "did not assent to arbitration," (b) he was not a party to the Contract,[4] (c) the terms of the arbitration agreement were not followed, and (d) the arbitrator lacked jurisdiction over Shay because no decision as to arbitrability under the Contract was undertaken. {Id. at p. 2-3; R. ___}. Critically, Shay failed to file a motion to dismiss Directory Assistants' application to confirm the arbitration award based on lack of personal jurisdiction within the applicable thirty-day deadline imposed by Connecticut law.[5]

Directory Assistants filed a memorandum opposing Shay's objection to the application. {Opposition to Shay's Objection to Application dated October 20, 2010; R. ___}. Directory Assistants noted, inter alia, that Shay's objection contradicted his prior confirmation of the Contract in his letter to the arbitrator. {Id.; R. ___}.

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[3] Shay's Connecticut Counsel filed, on two occasions, exhibits in support of the objection. {Connecticut Court Case Docket Entry Numbers 114.00 and 115.00, Exhibit 4 to Memorandum in Support of Domesticating Foreign Judgment; R. ___}.

[4] Notably, this contradicts Shay's prior position on this issue. Shay admitted he signed the Contract in communication with the American Dispute Resolution Center. Shay stated that the "contracts were signed in South Carolina. . . ." {Letter dated June 16, 2009, to American Dispute Resolution Center; R. ___}.

[5] Connecticut requires lack of personal jurisdiction to be challenged within 30 days after an appearance in the action. See Conn. Practice Book § 10-30.

Moreover, Shay had failed to preserve any objection to the existence of the arbitration agreement by failing to challenge the same at the arbitration. {Id. at p. 3-4; R. ___}.

The Connecticut Court issued an order directing Shay appear and testify if he wanted the Connecticut Court to consider the statements in his affidavit supporting his objection to Directory Assistants' application. {Order dated October 25, 2010, Exhibit 12 to Memorandum in Support of Domesticating Foreign Judgment; R. ___}. The Connecticut Court also advised Shay of the scheduling of the merits hearing on Directory Assistants' application for November 22, 2010. {Id.; R. ___}. Shay did not appear at the hearing. {Order dated January 4, 2011; R. ___}.

On May 25, 2011, the Connecticut Court issued an order granting Directory Assistants' application and confirmed the arbitration award. {Order Granting Directory Assistants' Application to Confirm Arbitration Award dated May 25, 2011, Attached to Notice of Filing of Foreign Judgment; R. ___}. Notably, the Connecticut Court did **not** enter a default judgment against Shay. Rather, the Connecticut order confirmed the arbitration award on the merits because Shay appeared and filed a responsive, substantive pleading objecting to confirmation of the arbitration award. {Order Granting Directory Assistants' Application to Confirm Arbitration Award dated May 25, 2011, Attached to Notice of Filing of Foreign Judgment; R. ___}.

Shay continued to litigate this matter in Connecticut by filing a motion to reconsider. {Connecticut Court Case Docket Entry Number 121.00, Exhibit 4 to Memorandum in Support of Domesticating Foreign Judgment; R. ___}. The Connecticut Court denied the motion. {Order Denying Reconsideration dated June 7, 2011; R. ___}. Shay failed to appeal that ruling. {Notice of Filing of Foreign

Judgment, Affidavit p. 2; R. ___}. The Connecticut Court judgment became final at that time. Shay did not satisfy the Connecticut judgment. {Notice of Filing of Foreign Judgment, Affidavit p. 1; R. ___}.

Thereafter, Directory Assistants filed its notice of filing of the Connecticut judgment in Orangeburg County, South Carolina. {Notice of Filing of Foreign Judgment dated July 20, 2011; R. ___}. Directory Assistants served Shay via counsel. {Affidavit of Service on Behalf of Defendant Dennis Shay; R. ___}. Shay filed an objection to the notice. {Second Notice of Objection and Objection to Filing of Foreign Judgment; R. ___}. Shay claimed that the Connecticut judgment could not be enrolled in South Carolina because (1) Shay did not sign the Contract, (2) no valid arbitration agreement existed, and (3) the Connecticut arbitrator failed to determine jurisdiction over Shay because no arbitrability determination was made. {Second Notice of Objection and Objection to Filing of Foreign Judgment; R. ___}. Shay also claimed the Connecticut judgment could not be enrolled because Shay was entitled to relief under Rule 60(b) of the South Carolina Rules of Civil Procedure. {Shay's Motion to Vacate Order of Judgment & Stay Execution dated February 2, 2012; R. ___}.

Directory Assistants responded to Shay's objection and Rule 60(b), SCRCP, motion on July 27, 2011. {Memorandum in Support of Domesticating [Directory Assistants'] Foreign Judgment; R. ___}. Directory Assistants argued the Full Faith and Credit Clause of the United States Constitution required the trial court to deny Shay's arguments against filing of the Connecticut judgment and his Rule 60(b)(1) and 60(b)(4), SCRCP, claims for relief. {Memorandum in Support of Domesticating [Directory Assistants'] Foreign Judgment p. 1; R. ___ ("The Full Faith and Credit

Clause of the United States Constitution requires domestication of . . . the Connecticut judgment . . . ."); see also p. 6-8; R. ___}. Directory Assistants also noted, inter alia, Shay's arguments failed because he failed to timely contest personal jurisdiction in Connecticut and because Shay's claims were barred by res judicata and collateral estoppel. {Memorandum in Support of Domesticating [Directory Assistants'] Foreign Judgment p. 1-8; R. ___}.

At the hearing on Shay's objection, Shay claimed the enforcement of the Connecticut judgment fell under the South Carolina Uniform Enforcement of Foreign Judgments Act ("the Act") and that any objection to domestication there under could be maintained "basically in the nature of a Rule 60(b) Motion." {Trans. p. 8; R. ___}. Shay objected solely on the basis of mistake under Rule 60(b)(1), SCRCP, and that the judgment was void under Rule 60(b)(4), SCRCP. {Trans. p. 15; R. ___}. Specifically, the claimed misconduct assert by Shay was the failure of the arbitrator to make an initial determination as to arbitrability under the Contract. {Trans. p. 17; R. ___}. Shay had previously raised this exact issue before the arbitrator and the Connecticut Court, with both denying his requested relief. {Shay Letter to American Dispute Resolution Center dated August 25, 2009; R. ___; Objection to Application, Exhibit 11 to Memorandum in Support of Domesticating Foreign Judgment; R. ___}. In South Carolina, Shay, for a second time, based his Rule 60(b)(1), SCRCP, claim of mistake on the fact that he did not sign the Contract. {Trans. p. 20; R. ___}. Again, Shay previously raised this issue to the Connecticut Court, which declined to grant relief on that basis. {Objection to Application, Exhibit 11 to Memorandum in Support of Domesticating Foreign Judgment; R. ___}.

Directory Assistants argued Shay's position ignored the fact that the Full Faith and Credit Clause of the United States Constitution limited the relief available to a judgment debtor, like Shay, under the Act and does not allow for full relief under Rule 60(b), SCRCP. {Trans. p. 10; R. __}. Specifically, Directory Assistants stated:

> [T]he law indicates that because of full faith and credit [Shay] would simply be limited to asserting a 60(b) as if the judgment is void for lack of personal jurisdiction or subject matter jurisdiction, but that would be it. We wouldn't go into any issues that there was no arbitration agreement, or there was, because that would be based upon the merits of the arguments raised in Connecticut that have been ruled upon by the Connecticut court.

{Trans. p. 20-21; R. ___}. Ultimately, the trial court granted Shay relief under Rule 60(b)(1), SCRCP, based on mistake and Rule 60(b)(4), SCRCP, on Shay's arbitrability argument. {Order Granting [Shay's] Motion for Relief from Foreign Judgment; R. ___}. The trial court also denied Directory Assistants' request for attorney's fees and cost pursuant to the Contract. {Id.; R. ___}.

Directory Assistants filed a timely motion to reconsider, arguing that the Full Faith and Credit Clause of the United States Constitution does not allow Shay to avoid the Connecticut judgment on the basis of mistake under Rule 60(b)(1), SCRCP, or on Shay's arbitrability argument based on Rule 60(b)(4), SCRCP. {Motion to Alter or Amend Judgment p. 3, 7; R. ___}. The trial court denied the motion. {Order denying Motion to Alter or Amend; R. ___}. This appeal timely followed.

Argument

The issue in this case is whether the Full Faith and Credit Clause of the United State Constitution precludes the use of Rules 60(b)(1) and 60(b)(4) of the South Carolina Rules of Civil Procedure to defeat a foreign money judgment pursuant to South Carolina's Uniform Enforcement of Foreign Judgments Act ("the Act"). The trial court erred in refusing to domesticate Directory Assistants' Connecticut judgment against Shay based on a Rule 60(b), SCRCP, basis. The defenses preserved by the Act and available under Rule 60(b), SCRCP, are limited by the Full Faith and Credit Clause. The limits imposed by the Full Faith and Credit Clause do not allow the judgment debtor, such as Shay, to seek relief in the domesticating state, such as South Carolina in this action, based on Rule 60(b)(1), SCRCP, or Rule 60(b)(4), SCRCP. Courts throughout the country ascribe to this rule. Therefore, the trial court erred. This Court should reverse and remand the matter for domestication of Directory Assistants' Connecticut judgment.

I. The trial court erred in granting the motion in opposition to enforcement of the Connecticut judgment because the Full Faith and Credit Clause precludes granting the relief sought by Shay.

Before the trial court, Shay argued the valid Connecticut judgment could not be enforced in South Carolina under the interplay between the Act and Rules 60(b)(1) and 60(b)(4) of the South Carolina Rules of Civil Procedure. The trial court accepted this argument. That was error. The defenses to enforcement of judgments from other states are not controlled by the Act or Rule 60, SCRCP. Rather, the Full Faith and Credit Clause controls and limits the available defenses under the Act to those directed to the validity and enforcement of the judgment. The Full Faith and Credit Clause

precludes the judgment debtor from arguing mistake under Rule 60(b)(1), SCRCP, or arbitrability[6] under Rule 60(b)(4), SCRCP, in opposing enforcement in the domesticating state. This Court should reverse the trial court and remand this matter with instructions to domesticate Directory Assistants' Connecticut judgment.[7]

The Full Faith and Credit Clause of the United States Constitution states:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

U.S. Const. art. IV, § 1. Pursuant to that constitutional mandate, Congress decreed that "judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken." 28 U.S.C. § 1738 (2012). The purpose of the Full Faith and Credit mandate:

> [W]as to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin.

Baker v. Gen. Motors Corp., 522 U.S. 222, 232 (1998); Milwaukee Cnty. v. M.E. White Co., 296 U.S. 268, 277 (1935).

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[6] Shay did not seek relief from the Connecticut judgment based on fraud pursuant to Rule 60(b)(3), SCRCP. Shay's arbitrability argument cannot be construed as fraud because Shay expressly moved for relief based on the "judgment being void" under Rue 60(b)(4), SCRCP.

[7] This Court should also remand for the trial court to rule on Directory Assistants' motion for attorney fees and costs.

The test for determining when the Full Faith and Credit Clause requires enforcement of a foreign judgment focuses on the validity and finality of the judgment in the rendering state. See, e.g., Halvey v. Halvey, 330 U.S. 610 (1947); Morris v. Jones, 329 U.S. 545 (1947). In Morris, the Supreme Court reasoned that:

> A judgment of a court having jurisdiction of the parties and of the subject matter operates as res judicator, in the absence of fraud or collusion, even if obtained upon a default. Such a judgment obtained in a sister State is . . . entitled to full faith and credit in another State, though the underlying claim would not be enforced in the State of the forum. . . . The full faith and credit to which a judgment is entitled is the credit which it has in the State from which it is taken, not the credit that under other circumstances and conditions it might have had.
> . . . .
>
> The command [of the federal statute implementing the Full Faith and Credit Clause] is to give full faith and credit to every judgment of a sister State. And where there is no jurisdictional infirmity, exceptions have rarely, if ever, been read into the constitutional provision or the Act of Congress in cases involving money judgments rendered in civil suits.

Morris, 329 U.S. at 550-53 (citations omitted). Therefore, if the foreign judgment is final in the rendering state, then it is conclusive in the domesticating state and must receive full faith and credit. Id. at 554.

South Carolina is in accord. The Full Faith and Credit Clause of the United States Constitution generally requires "every State to give a judgment at least the *res judicata* effect which the judgment would be accorded in the State which rendered it." Aaron v. Mahl, 382 S.C. 585, 592, 674 S.E.2d 482, 485 (2009).

> Where a judgment rendered by a court having jurisdiction of the cause and the parties is challenged in another state, the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of

> action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based.

Hamilton v. Patterson, 236 S.C. 487, 492, 115 S.E.2d 68, 70 (1960) (quoting Miliken v. Meyer, 311 U.S. 457, 462 (1940)). To this end, "because there is a full faith and credit clause a defendant may not a second time challenge the validity of a plaintiff's right which has ripened into judgment." Id. (quoting Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 439-40 (U.S. 1943)).

South Carolina law expressly recognizes that "[t]he validity and effect of a foreign judgment must be determined by the laws of the state which rendered the judgment." Minorplanet Systems USA Ltd. v. American Aire, Inc., 368 S.C. 146, 149, 628 S.E.2d 43, 45 (2006). Under the Full Faith and Credit Clause of the United States Constitution, personal jurisdiction is presumed when a foreign judgment appears on its face to be a record of a court of general jurisdiction. Law Firm of Paul L. Erickson, P.A. v. Boykin, 383 S.C. 497, 501, 681 S.E.2d 575, 577 (2009). Clear and convincing evidence is required to overcome this presumption. Fin. Fed. Credit, Inc. v. Brown, 384 S.C. 555, 563, 683 S.E.2d 486, 490 (2009).

Our Uniform Enforcement of Foreign Judgments Act establishes the procedures related to enforcing a foreign judgment in South Carolina. See S.C. Code Ann. § 15-35-900 to 15-35-960. The judgment creditor first files the foreign judgment in the appropriate county. S.C. Code. Ann. § 15-35-920(A). Moreover, "[a] judgment so filed has the same effect and is subject to the same defenses as a judgment of this State and must be enforced or satisfied in like manner. . . ." S.C. Code Ann. § 15-35-920(C). The Act does provide that "if the judgment is contested, or the judgment

debtor files a motion for relief or notice of defense pursuant to Section 15-35-940, enforcement of the foreign judgment is stayed automatically, without security, except as hereinafter provided, until the court finally disposes of the matter." Id. The Act also provides the defenses to enforcement of the foreign judgment for the judgment debtor. The judgment debtor may seek relief "on the grounds that the foreign judgment has been appealed from, that enforcement has been stayed by the court which rendered it, or on any other ground for which relief from a judgment of this State is allowed." S.C. Code Ann. § 15-35-940(A).

Shay filed a motion for relief from enforcement in this action under the Act's procedures. Shay argued to the trial court that the phrases "subject to the same defenses as a judgment of this State" and "on any other ground for which relief from a judgment of this State is allowed" altered the well-settled framework for enforcing a foreign judgment and allowed him to challenge the Connecticut judgment in South Carolina based on Rule 60(b), SCRCP. Directory Assistants countered by noting the Full Faith and Credit Clause limits the use of Rule 60(b), SCRCP, by a judgment debtor to challenge enforcement of a foreign judgment under the Act and that Shay's basis for relief was precluded by the Full Faith and Credit Clause.

South Carolina has yet to address the impact of the Full Faith and Credit Clause on the Act and Rule 60(b) of the South Carolina Rules of Civil Procedure. However, the near-unanimous majority of courts that have addressed the issue have rejected the argument that the foreign judgment can be challenged in the domesticating state under Rule 60(b). Those courts establish a well-established rule—the Act does not expand the traditional defenses available to the judgment debtor to enforcement of a foreign

judgment, and Rule 60(b) can only be used by a judgment debtor to argue the foreign judgment was obtained by extrinsic fraud or that the rendering state **court** lacked jurisdiction. Shay did neither in this action.

The North Carolina Supreme Court recently considered and rejected the argument advanced by Shay in this action. DocRx, Inc. v. EMI Servs. of N.C., 758 S.E.2d 390 (N.C. 2014). In that action, DocRx filed a breach of contract action against EMI, a North Carolina corporation, in Alabama. DocRx, 758 S.E.2d at 391. EMI did not answer, and a default judgment was entered against it with an award of monetary damages to DocRx. Id. DocRx then moved to file the Alabama judgment in North Carolina. Id. EMI filed a motion for relief from and notice of defenses to the Alabama judgment pursuant to the North Carolina Uniform Enforcement of Foreign Judgments Act ("UEFJA"). Id. EMI claimed DocRx based its claim for damages on fraudulent figures and sought to stop enforcement of the Alabama judgment under Rule 60(b)(1) of the North Carolina Rules of Civil Procedure. Id. at 391-92.

The trial court noted the Alabama judgment was "subject to the same defenses as a judgment of this State" under the North Carolina UEFJA, and therefore, EMI was entitled to relief under Rule 60(b). Id. at 392. The trial court held that "in accordance with NCRP 60(b)(3) the intrinsic fraud, misrepresentation and misconduct of [DocRx] . . . precludes the enforcement of the Alabama judgment as a judgment of [North Carolina]." Id.

The North Carolina Court of Appeals noted the interplay between the UEFJA, Rule 60(b), and the Full Faith and Credit Clause. Id. The court "acknowledged that the plain language of the UEFJA would seem to allow a foreign judgment debtor to

utilize any defense applicable to a domestic judgment, such as Rule 60(b)." Id. However, the court of appeals adopted the overwhelming majority position and held that "the remedies available under Rule . . . 60 are limited by the Full Faith and Credit Clause of the United States Constitution when a foreign judgment is at issue." Id. Misconduct, misrepresentation, and intrinsic fraud cannot be used to defeat enforcement under that analysis. Id. at 392-93.

The North Carolina Supreme Court analyzed the issue of first impression as well. Id. at 393-98. The Supreme Court recognized that the majority of courts that have addressed the issue "have rejected the argument that the judgment of the rendering state can be reopened in the forum state under Rule 60 of the Rules of Civil Procedure." Id. at 395. The Supreme Court adopted that rule and held that:

> [T]he defenses preserved under North Carolina's UEFJA are limited by the Full Faith and Credit Clause to those defenses which are directed to the validity and enforcement of a foreign judgment. The language of the UEFJA that a foreign judgment "has the same effect and is subject to the same defenses as a judgment of this State and shall be enforced or satisfied in like manner," N.C.G.S. § 1C-1703(c), does not refer to defenses on the merits but rather refers to defenses directed at the enforcement of a foreign judgment, such as, that the judgment creditor committed extrinsic fraud, that the rendering state lacked personal or subject matter jurisdiction, that the judgment has been paid, that the parties have entered into an accord and satisfaction, that the judgment debtor's property is exempt from execution, that the judgment is subject to continued modification, or that the judgment debtor's due process rights have been violated.

Id. at 397 (citing New York ex rel. Halvey v. Halvey, 330 U.S. 610, 614-15 (1947); Morris, 329 U.S. at 554; Milwaukee Cnty. v. M.E. White Co., 296 U.S. 268, 275-76 (1935)). The Supreme Court reasoned that:

> To permit a party to relitigate matters that could have and should have been litigated in the rendering court is inconsistent with decisions of the United States Supreme Court holding that judgments that are valid and final in the rendering state are entitled to enforcement in the forum state under the Full Faith and Credit Clause. Further, to permit a party to collaterally attack a foreign judgment on the merits would be contrary to the rationale underlying the UEFJA, which is to streamline the procedure for enforcing a foreign judgment and eliminate the need for additional litigation.

Id. at 397 (internal citations omitted).

Other courts are in accord. For example, the Minnesota Supreme Court considered the effect the Full Faith and Credit Clause had on its state's UEFJA, which provided that "[a] judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a district court or the supreme court of this state, and may be enforced or satisfied in like manner." Matson v. Matson, 333 N.W.2d 862, 867 (Minn. 1983) (en banc) (quoting Minn. Stat. § 548.27 (1982)). The court held that:

> [Judgment debtor] is under the misconception that the above-emphasized language allows the courts of this state to apply Minn.R.Civ.P. 60.02 to foreign judgments in the same manner it is applied to judgments of the courts of this state. It has been settled by the United States Supreme Court and courts of other states that the power of a state to reopen or vacate a foreign judgment is more limited than under the rules of civil procedure and that a foreign judgment cannot be collaterally attacked on the merits. After a foreign judgment has been duly filed, the grounds for reopening or vacating it are limited to lack of personal or subject matter jurisdiction of the rendering court, fraud in procurement (extrinsic), satisfaction, lack of due process, or other grounds that make a judgment invalid or unenforceable. The nature and amount or other aspects of the merits (i.e., defenses) of a foreign judgment cannot be relitigated in the state in which enforcement is sought. See Morris v. Jones, 329 U.S. 545 (1946).

Id. at 867-68.

The Nevada Supreme Court likewise held that "the defenses preserved by Nevada's Uniform Enforcement of Foreign Judgments Act and available under NRCP 60(b) are limited to those defenses that a judgment debtor may constitutionally raise under the full faith and credit clause and which are directed to the validity of the foreign judgment." Rosenstein v. Steele, 747 P.2d. 230, 232 (1987) (citations omitted); see also Marworth, Inc. v. McGuire, 810 P.2d 653, 657 (Colo. 1991) (en banc) (holding that under the Colorado UEFJA "[o]ur courts may consider C.R.C.P. 60(b) motions for relief from a foreign judgment only to the extent permitted by the full faith and credit clause"); Carr v. Bett, 970 P.2d 1017, 1024 (Mont. 1998) (holding that a foreign judgment filed under the Montana UEFJA may not "be subjected to the same defenses and proceedings for reopening or vacating as a domestic judgment, and remain consistent with full faith and credit. . . . [T]he only defenses that may be raised to destroy the full faith and credit obligation owed to a final judgment are those defenses directed at the validity of the foreign judgment"); Wooster v. Wooster, 399 N.W.2d 330, 333 (S.D. 1987) (stating that "the grounds mentioned in Rule 60(b) which allow relief from a judgment are not available to vacate a foreign judgment" under the South Dakota UEFJA); Salmeri v. Salmeri, 554 P.2d 1244, 1248 (Wyo. 1976) (holding that a foreign judgment was "not subject to attack in [Wyoming] except on grounds that would permit attack upon any other money judgment, such as want of jurisdiction in the court entering the judgment or lack of service so as to vest jurisdiction over the defendant"); Morris Lapidus Assoc. v. Airportels, Inc., 361 A.2d 660, 664 (Pa. 1976) ("The [UEFJA] does not entitle a party to raise any and all defenses; he is only entitled

to raise defenses which destroy the full faith and credit obligation normally owed to a foreign judgment."); Jordan v. Hall, 858 P.2d 863, 866 (N.M. Ct. App. 1993) ("We agree with these authorities and hold that the New Mexico Foreign Judgments Act does not change the universal rule that foreign judgments are entitled to full faith and credit. Only the defenses of fraud or lack of jurisdiction may be raised to destroy the full faith and credit owed a foreign judgment."); Conglis v. Radcliffe, 889 P.2d 1209, 1210 (N.M. 1995) (same); Nader v. Serody, 43 A.3d 327, 335-36 (D.C. 2012) ("Nader does not contend that the Pennsylvania judgment does not have res judicata effect in that state, and he is now precluded from mounting a second collateral attack under the guise of a 60 (b) motion in D.C. Superior Court challenging a foreign judgment. The same principles of res judicata that bar claims that have been — or could have been — aired and resolved in previous litigation against the same party have even greater force when the litigation has taken place in another state. Anything less would run afoul of the Full Faith and Credit Clause."); Directory Assistants, Inc. v. Cooke, Cameron, Travis & Co., P.C., 49 So. 3d 1175, 1181 (Ala. Civ. App. 2010) (holding that "the substantive merits of a foreign judgment such as the Connecticut judgment are not susceptible to reexamination by an Alabama court upon a motion to set aside the registration of the foreign judgment"); Data Mgmt. Sys., Inc. v. EDP Corp., 709 P.2d 377, 381 (Utah 1985) ("Neither Rule 60(b) nor our Utah Foreign Judgment Act allows our Utah courts to reopen, reexamine, or alter a foreign judgment duly filed in this state, absent a showing of fraud or the lack of jurisdiction or due process in the rendering state."); Nastro v. D'Onofrio, 822 A.2d 286, 293 (Conn. Ct. App. 2003) ("We are persuaded that we should follow the decisions of courts in other states that have considered this

problem. These courts have added a limiting gloss to the word 'defenses' by holding that the foreign judgments act permits a judgment debtor to raise only those defenses that are constitutionally permissible.").

Based on this well-settled rule, the Connecticut judgment was a final judgment and is entitled to the same credit in South Carolina that it would be accorded in Connecticut. The defenses to a foreign judgment under the South Carolina Act are limited by the Full Faith and Credit Clause to those defenses that are directed to the enforcement of the foreign judgment, and Rule 60(b) of the South Carolina Rules of Civil Procedure has no applicability. Shay did not present any proper defenses or objections. Therefore, the trial court erred in allowing Shay to use Rule 60(b)(1) and 60(b)(4), SCRCP, as a defense to domesticating the Connecticut judgment. The trial court should have domesticated the Connecticut judgment for enforcement in this State. This Court should reverse and remand the matter for domestication of Directory Assistants' Connecticut judgment.

II. Shay failed to properly contest the jurisdiction of the Connecticut Court under Connecticut law; therefore, the Connecticut judgment was final and not subject to collateral attack in South Carolina.

Connecticut law barred Shay from asserting in South Carolina that the Connecticut Court lacked of jurisdiction to approve the arbitration award. Any challenge to the domestication of the Connecticut judgment by Shay in South Carolina based on a jurisdictional challenge was barred. Moreover, any such challenge could not and cannot formulate a basis to stop the enforcement of that judgment by Directory Assistants in South Carolina.

South Carolina law expressly recognizes that "[t]he validity and effect of a foreign judgment must be determined by the laws of the state which rendered the judgment." Minorplanet Systems USA Ltd. v. American Aire, Inc., 368 S.C. 146, 149, 628 S.E.2d 43, 45 (2006); see also Fin. Fed. Credit, Inc. v. Brown, 384 S.C. 555, 568, 683 S.E.2d 486, 493 (2009) (Kittredge concurring). A judgment presumes jurisdiction over the subject matter and over the persons, and if it appears on its face to be a record of a court of general jurisdiction, jurisdiction is to be presumed unless disproved by extrinsic evidence, or by the record itself. Taylor v. Taylor, 229 S.C. 92, 97, 91 S.E.2d 876, 879 (1956).

Based on the above, Connecticut law determines the validity of the Connecticut judgment. Shay failed to follow Connecticut procedure to challenge the jurisdiction of the Connecticut Court. The Connecticut judgment was final due to that failure, and South Carolina must presume jurisdiction over Shay and the dispute. Thus, the trial court erred in refusing to allow Directory Assistants to domesticate the Connecticut judgment.

Connecticut law provides the unambiguous procedure and time frame for a party to challenge personal or subject matter jurisdiction of the Connecticut Court. Connecticut statute provides:

> (a) A motion to dismiss **shall be used** to assert (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person . . .
>
> (b) Any defendant, wishing to contest the court's jurisdiction, **shall do so** by filing a motion to dismiss **within thirty days of the filing of an appearance**.

Conn. Practice Book § 10-30 (emphasis added). Connecticut courts bolster this rule.

Connecticut Practice Rule 10-30 requires "[a]ny defendant, wishing to contest the court's jurisdiction, may do so even after having entered a general appearance, but must do so by filing a motion to dismiss within thirty days of the filing of an appearance." Pitchell v. City of Hartford, 722 A.2d 797, 802 (Conn. Sup. Ct. 1998). Failure to adhere to that time frame results in waiver of the argument. City of Hartford, 722 A.2d at 802 ("Pursuant to the rules of practice, a waiver of personal jurisdiction defects occurs if a timely motion to dismiss is not filed."). Such waiver results in the court obtaining jurisdiction over the person. Id. at 800 ("It is fundamental that jurisdiction over a person can be obtained by waiver."); see also Schrobenhauser v. Bielmatick-Leuze GmBH & Co., 2003 Conn. Super. LEXIS 701, at *11 (Conn. Super. Ct. Mar. 6, 2003) ("The 30-day deadline for filing motions to dismiss based on alleged lack of personal jurisdiction is a mandatory deadline that must be complied with or the defendant will be deemed to waive all challenges he might have to the Court's jurisdiction over his person.").

Shay failed to adhere to this mandatory procedure to challenge jurisdiction of the Connecticut Court. Shay's Connecticut counsel filed an appearance with the Connecticut Court on September 9, 2010. Shay, however, never filed a motion to dismiss[8] with the Connecticut Court for lack of personal jurisdiction within the thirty-

[8] Shay purported to challenge the jurisdictional issue in South Carolina by raising the jurisdiction of the arbitrator in his Objection to Application. In addition to the reason this argument fails set forth above, the argument fails because Shay did not adhere to Connecticut Practice Rule 10-30. Shay never articulated any argument to dismiss for **the Connecticut Court's** lack of personal jurisdiction as required by Connecticut Practice Rule 10-30. The only relief that Shay pursued from the Connecticut Court was denial of Directory Assistants' Application based on the arbitrator's alleged lack of jurisdiction and the absence of an enforceable arbitration agreement. Shay's appearance before the Connecticut Court through counsel and his failure to file a motion to dismiss for **the Connecticut Court's** lack of personal jurisdiction within 30-days of his counsel's appearance establishes the Connecticut Court's personal jurisdiction over Shay by waiver. Concomitantly, the arbitrator had jurisdiction over Shay.

day time frame imposed by Connecticut Practice Rule 10-30. Thus, the Connecticut Court had personal jurisdiction over Shay through waiver.

Moreover, Shay cannot raise that issue via a back-door challenge in South Carolina. By the time the Connecticut judgment was filed in South Carolina, the thirty-day period for raising a challenge to jurisdiction had lapsed under Connecticut law. The Connecticut judgment became final upon the expiration of that thirty-day period. Thus, Shay's claim had been conclusively determined under Connecticut law. Shay could not use Rule 60(b), SCRCP, to raise any jurisdictional defect with the Connecticut Court. See Minorplanet Systems, 368 S.C. at 149, 628 S.E.2d at 45.

Therefore, the trial court erred in failing to find that the Connecticut judgment was a final judgment, and that it was entitled to the same credit in South Carolina that it would be accorded in Connecticut under the Full Faith and Credit Clause. This Court should reverse and remand with instructions to domesticate the Connecticut judgment.

III. The trial court erred in granting Shay relief from the Connecticut judgment because Shay advanced his Rule 60(b), SCRCP, arguments before the arbitrator and the Connecticut court and lost.

Shay appeared before the arbitrator and the Connecticut Court. In both appearances, Shay raised defenses to the arbitration award. The arbitrator and Connecticut Court each rejected Shay's arguments, and he failed to appeal that decision. The arbitration judgment was final at that time. Thus, the trial court erred in granting relief to Shay in South Carolina on those arguments previously rejected by the Connecticut Court. This Court should reverse and remand with instructions to domesticate the Connecticut judgment.

The Full Faith and Credit Clause requires "every State to give a judgment at least the res judicata effect which the judgment would be accorded in the State which rendered it." Aaron v. Mahl, 382 S.C. 585, 592, 674 S.E.2d 482, 485 (2009). Where a judgment rendered by a court having jurisdiction of the cause and the parties is challenged in another state, "the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." Miliken v. Meyer, 311 U.S. 457, 462 (1940). To this end, "because there is a full faith and credit clause a defendant may not a second time challenge the validity of a plaintiff's right which has ripened into judgment." Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 439-40 (1943).

In Connecticut, Shay appeared and fully litigated confirmation of the arbitration award and his defenses to confirmation. Shay retained two attorneys to represent his interests in Connecticut before the arbitrator and in the Connecticut Court. His counsel submitted letters with defenses, filed pleadings with the Connecticut Court, presented exhibits, and filed motions. Shay also filed affidavits in Connecticut in support of his position.

Throughout the litigation in Connecticut, Shay argued to the arbitrator that an initial arbitrability determination was needed prior to allowing the arbitration to proceed. {Shay Letter to American Dispute Resolution Center dated August 25, 2009; R. ___}. The arbitrator denied that argument with the issuance of the arbitration award. Undeterred, Shay appeared before the Connecticut court to oppose confirmation of the arbitration award. {Objection to Application, Exhibit 11 to

Memorandum in Support of Domesticating Foreign Judgment; R. ___}. In that objection, Shay argued that the Connecticut Court could not confirm the arbitration award because (a) he "did not assent to arbitration," (b) he was not a party to the Contract individually, (c) the terms of the arbitration agreement were not followed, and (d) the arbitrator lacked jurisdiction over Shay because no decision as the arbitrability under the Contract was undertaken. {Objection to Application, Exhibit 11 to Memorandum in Support of Domesticating Foreign Judgment p. 2-3; R. ___}. The Connecticut Court provided Shay the opportunity to present his objections to the confirmation of the arbitration award. Shay declined to attend the hearing.

The Connecticut Court rejected Shay's arguments by confirming the arbitration award. Shay then continued to litigate this matter in Connecticut by filing a motion to reconsider. {Connecticut Court Case Docket Entry Number 121.00, Exhibit 4 to Memorandum in Support of Domesticating Foreign Judgment; R. ___}. The Connecticut Court provided Shay a second opportunity to argue his motion to the court. Shay again refused to attend and do so. The Connecticut Court denied that motion as well. {Order Denying Shay's Motion to Reconsider dated June 7, 2011; R. ___}. Shay did not appeal the Connecticut Court's confirmation of the arbitration award.

After Shay lost in Connecticut, Shay again re-raised those same arguments to the trial court in South Carolina. Shay claimed that he was entitled to relief from the Connecticut judgment because (1) the arbitration award named Shay individually and (2) the judgment was void because no arbitrability decision was made. Shay based these arguments on Rule 60(b)(1) and 60(b)(4), respectively. However, those issues were raised to both the arbitrator and the Connecticut Court and rejected both times.

Because the Connecticut Court ruled on those arguments, res judicata precluded Shay from re-litigating those issues in South Carolina. See Aaron v. Mahl, 381 S.C. at 592, 674 S.E.2d at 486 (holding that "res judicata bars subsequent actions by the same parties when the claims arise out of the same occurrence that was the subject of a prior action between those parties."); Colonial Pacific Leasing Corp. v. Taylor, 326 S.C. 529, 532, 484 S.E.2d 595, 597 (Ct. App. 1997) ("If a judgment debtor appears in a foreign state and loses, then that court's exercise of jurisdiction over him is not subject to collateral attack.").

Here, Directory Assistants and Shay are the same parties in this case and the Connecticut litigation. The validity of the arbitration agreement and the arbitrator's jurisdiction has already been addressed by the arbitrator and the Connecticut Court. Thus, Shay was precluded from raising those issues in South Carolina. Colonial Pacific Leasing Corp. v. Taylor, 326 S.C. 529, 532, 484 S.E.2d 595, 597 (Ct. App. 1997) ("If a judgment debtor appears in a foreign state and loses, then that court's exercise of jurisdiction over him is not subject to collateral attack."). The trial court erred. This Court should reverse and remand with instructions to domesticate the Connecticut judgment.

Moreover, even if Shay could have raised these Rule 60(b), SCRCP, arguments, the trial court sill erred. Shay failed to seek proper relief under Rule 60(b)(1) or 60(b)(4), SCRCP. Those grounds for relief apply to specific claims, and neither of Shay's claims fall within the ambit of the rule.

The trial court erred in allowing Shay's mistake argument under Rule 60(b)(1), SCRCP. The trial court found that a mistake had been made because the arbitration

judgment was entered in the name of Shay in his individual capacity rather than, according to the Shay, entered in the name of the professional corporation that Shay supposedly had formed in South Carolina. {Order Granting [Shay's] Motion for Relief from Foreign Judgment; R. ___}.

This is not the type of mistake that would entitle Shay to relief from the judgment. South Carolina courts routinely only apply the "mistake" prong of Rule 60(b)(1), SCRCP, to procedural mistakes, not purportedly erroneous factual determinations. See e.g., Williams v. Watkins, 384 S.C. 319, 681 S.E.2d 914 (Ct. App. 2009) (finding relief allowed based on good faith mistake when defendant erroneously relied on court roster). Rule 60(b)(1), SCRCP, does not contemplate relief from a judgment based on the collateral attack of a disputed fact. Whether Shay signed the Contract in his individual capacity or in his capacity as a representative of a professional corporation was a question to be determined by the arbitrator. The arbitrator determined that fact against Shay.[9] Therefore, the trial court erred in granting relief under Rule 60(b)(1), SCRCP.

Shay's Rule 60(b)(4), SCRCP, request for relief was likewise premised on an improper basis. The trial court ruled that the judgment was void because there had been no judicial finding on the issue of arbitrability. {Order Granting [Shay's] Motion

[9] Moreover, a review of the execution page of the Contract establishes that nowhere on the signature page does the name of Shay's professional corporation appear. Nowhere do the letters "PA" or "PC" appear in the Contract. Shay had the burden to put some designation on the signature line indicating he was signing for a professional corporation rather than his individual capacity. Indeed, he indicated that his business operated as "Marsh Chiropractic Center," rather than the name of his purported professional corporation. The way that Shay signed the Contract established that he was operating as an unincorporated sole proprietorship, not a professional corporation. The trial court's contrary finding required an improper factual determination that Shay was not signing in his individual capacity. This issue had already been resolved in favor of Directory Assistants when the arbitrator issued the award against "Dennis Shay" and when that award was confirmed by the Connecticut Court. That finding became res judicata against the Defendant and is not appropriate for collateral attack in this domestication proceeding.

for Relief from Foreign Judgment; R. ___}. This is not a valid basis for relief under Rule 60(b)(4), SCRCP.

Our courts are clear: "The definition of void under the rule **only** encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002) (emphasis added). The question as to the existence of an arbitration agreement does not go to whether due process was afforded by the Connecticut Court, nor does it implicate whether the Connecticut Court had personal or subject matter jurisdiction. The Defendant's argument, therefore, could not form the basis for relief under Rule 60(b)(4), SCRCP. Therefore, the trial court erred in granting relief under Rule 60(b)(4), SCRCP.[10]

[10] The trial court also erred in allowing Shay to advance a Rule 60(b), SCRCP, argument in South Carolina because a party cannot invoke relief under Rule 60(b), SCRCP, when the party could have pursued the issue on appeal. Here, Shay appeared in the confirmation action for the arbitration award. Shay presented arguments in writing to the Connecticut Court that mirror those he advanced in South Carolina. Once Shay received the adverse ruling from the Connecticut Court, he should have pursued an appeal in Connecticut. Thus, Shay cannot be afforded relief under Rule 60(b), SCRCP. Tench v. S.C. Dept. of Ed., 347 S.C. 117, 121, 553 S.E.2d 451, 453 (2001) (holding a party may not invoke Rule 60(b), SCRCP, where it could have pursued the issue on appeal but failed to do so).

IV. The trial court erred in granting Shay relief from the Connecticut judgment under Rule 60(b), SCRCP, because Shay failed to introduce any evidence of a meritorious defense.

Our Supreme Court requires a party seeking relief from judgment under Rule 60(b), SCRCP, to introduce evidence and argue the existence of a meritorious defense in order to obtain relief from the judgment. Shay failed to do either in this action. The trial court, therefore, erred in granting Shay relief under the rule.

"In determining whether to grant relief under Rule 60(b)(1), the court must consider the following factors: '(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party.'" Rouvet v. Rouvet, 388 S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010). Thus, "[a] meritorious defense is necessary in order for a judgment to be set aside under Rule 60(b)." McClurg v. Deaton, 395 S.C. 85, 87, 716 S.E.2d 887, 888 (2011). The moving party cannot simply rely on evidence in the record to establish the meritorious defense; instead, the party must affirmatively argue and present the evidence to support the existence of the meritorious defense to the trial court. Id.

Shay failed to argue the existence of a meritorious defense to the trial court. In fact, Shay made no mention of the need to prove that factor for relief. Moreover, the record could not support a finding of a meritorious defense. Shay has admitted the existence of the Contract, stating he "disput[ed] the validity of this provision of the contract" and had previously "exercised his right to terminate the contract . . . ." {Shay Letter dated May 29, 2009 to American Dispute Resolution Center; R. ___}. Indeed, a letter from the Shay admitted his liability and included a check for payment

under the Contract. {July 30, 2009 Letter from Shay to Ford, Exhibit A to Directory Assistants Motion to Reconsider; R. ___}. Thus, there cannot be a showing of a meritorious defense.

Conclusion

Shay had his opportunity to appear in Connecticut in both the arbitration and during the judicial review proceedings, and, in fact, did appear in those forums. Shay, however, chose not to fully prosecute his arguments and objections in Connecticut. The doctrine of res judicata and the Full Faith and Credit Clause prevent Shay from appearing and raising issues in Connecticut, then trying to relitigate the issues again in South Carolina after the Connecticut Court issued a valid and enforceable judgment. The trial court erred in granting Shay relief from that judgment. Therefore, this Court should reverse and remand with instructions to enroll the Connecticut judgment in South Carolina and resolve Directory Assistant's requests for attorney's fees under the Contract.[11]

{Signature Page Follows}

[11] The Court also ruled that there was no legal authority on which Directory Assistants could request its attorneys' fees and costs incurred in pursuing the domestication of the judgment. This was error. The Contract allows for the recovery of fees and costs incurred in pursuing collection of amounts due under the contract and even specifies that this includes "legal fees to confirm the award/domesticate the judgment." {Contract p. 2; R. ___}. Thus, remand is necessary on this issue as well.

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August 26, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
The Honorable Edgar W. Dickson

Case No. 2011-CP-38-00853

Directory Assistants, Inc., ... Appellant,

v.

Dennis Shay, d/b/a Marsch Chiropractic Center,..... Respondents.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Directory Assistants, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

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August 26, 2014

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
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1015 Sumter Street - 5th Floor
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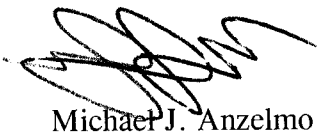
RE: Directory Assistants, Inc. and Dennis Shay d/b/a Marsch Chiropractic Center
Civil Action No. 2011-CP-38-00853
Appellate Case No. 2014-000459
Our File No. 36358/01500

Dear Ms. Kitchings:

Enclosed please find an original and one copy of an Initial Brief of Appellant in the above-referenced matter. Please file the original and return a clocked-in copy to me via our courier. Should you have any questions, please do not hesitate to contact me.

By copy of this letter, I am hereby serving opposing counsel.

Very truly yours,



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