

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

The Honorable Edgar W. Dickson  
Circuit Court Judge

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

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Directory Assistants, Inc., ..... Appellant,  
v.  
Dennis Shay, d/b/a Marsch Chiropractic Center, ..... Respondent.

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**Initial Reply Brief of Appellant**

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**SC Court of Appeals**

**Table of Contents**

Table of Authorities ..... ii

Introduction ..... 1

Argument ..... 2

    I.    The trial court erred because the Full Faith and Credit Clause does not allow a judgment debtor to obtain relief from foreign judgment on the grounds advanced by Shay ..... 4

        a.    The Act does not allow Shay to avoid domestication of the Connecticut judgment on the grounds presented to the trial court..... 5

        b.    Shay ignores this well-settled rule and asks this Court to affirm based on grounds not allowed by the Full Faith and Credit Clause ..... 8

        c.    Directory Assistants preserved its appellate arguments ..... 10

    II.   Because Shay failed to properly contest the jurisdiction of the Connecticut Court under Connecticut law, Shay is precluded from raising the issue in South Carolina under the guise of arbitrability ..... 12

    III.  Rule 60, SCRCP, required Shay to introduce independent evidence of a meritorious defense, and Shay’s attempt to fashion a meritorious defense should be rejected..... 14

Conclusion ..... 17

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<u>Aaron v. Mahl,</u> 382 S.C. 585, 674 S.E.2d 482 (2009) .....	3
<u>Carr v. Bett,</u> 970 P.2d 1017, 1024 (Mont. 1998) .....	6
<u>Conglis v. Radcliffe,</u> 889 P.2d 1209 (N.M. 1995) .....	7
<u>Data Mgmt. Sys., Inc. v. EDP Corp.,</u> 709 P.2d 377, 381 (Utah 1985) .....	8
<u>Directory Assistants, Inc. v. Cooke, Cameron, Travis &amp; Co., P.C.,</u> 49 So. 3d 1175 (Ala. Civ. App. 2010) .....	7
<u>DocRx, Inc. v. EMI Servs. of N.C.,</u> 758 S.E.2d 390 (N.C. 2014) .....	6
<u>Fin. Fed. Credit, Inc. v. Brown,</u> 384 S.C. 555, 683 S.E.2d 486 (2009) (Kittredge concurring) .....	13
<u>Jordan v. Hall,</u> 858 P.2d 863 (N.M. Ct. App. 1993) .....	7
<u>Law Firm of Paul L. Erickson, P.A. v. Boykin,</u> 383 S.C. 497, 681 S.E.2d 575 (2009) .....	5, 6
<u>Magnolia Petroleum Co. v. Hunt,</u> 320 U.S. 430 (1943) .....	4
<u>Marworth, Inc. v. McGuire,</u> 810 P.2d 653 (Colo. 1991) (en banc) .....	6
<u>Matson v. Matson,</u> 333 N.W.2d 862 (Minn. 1983) (en banc) .....	6
<u>McClurg v. Deaton,</u> 395 S.C. 85, 716 S.E.2d 887 (2011) .....	15

<u>Miliken v. Meyer,</u> 311 U.S. 457 (1940) .....	3
<u>Minorplanet Systems USA Ltd. v. American Aire, Inc.,</u> 368 S.C. 146, 628 S.E.2d 43 (2006) .....	13, 14
<u>Morris Lapidus Assoc. v. Airportels, Inc.,</u> 361 A.2d 660 (Pa. 1976).....	7
<u>Nader v. Serody,</u> 43 A.3d 327, 335-36 (D.C. 2012).....	7
<u>Nastro v. D’Onofrio,</u> 822 A.2d 286 (Conn. Ct. App. 2003) .....	8
<u>Pitchell v. City of Hartford,</u> 722 A.2d 797 (Conn. Sup. Ct. 1998).....	13
<u>Rosenstein v. Steele,</u> 747 P.2d 230 (1987) .....	6
<u>Salmeri v. Salmeri,</u> 554 P.2d 1244 (Wyo. 1976) .....	7
<u>Schrobenhauser v. Bielmatick-Leuze GmbH &amp; Co.,</u> 2003 Conn. Super. LEXIS 701 (Conn. Super. Ct. Mar. 6, 2003).....	13
<u>Taylor v. Taylor,</u> 229 S.C. 92, 91 S.E.2d 876 (1956) .....	13
<u>Thompson v. Hammond,</u> 299 S.C. 116, 382 S.E.2d 900 (1989) .....	15, 16, 17
<u>Universal Benefits, Inc. v. McKinney,</u> 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002) .....	9, 12
<u>Williams v. Watkins,</u> 384 S.C. 319, 681 S.E.2d 914 (Ct. App. 2009) .....	9
<u>Wooster v. Wooster,</u> 399 N.W.2d 330 (S.D. 1987) .....	7
<b>Rules</b>	
Colorado C.R.C.P. 60(b).....	6
Connecticut Practice Rule 10-30 .....	14

Rule 60, SCRCF .....	1, 4, 5, 6, 9, 10, 11, 12, 14, 15, 16, 17, 18
Rule 60(b), SCRCF .....	7, 8, 10, 11, 14, 15, 17
Rule 60(b)(1), SCRCF .....	9, 11
Rule 60(b)(1) and 60(b)(4), SCRCF .....	3
Rule 60(b)(3), SCRCF .....	11
Rule 60(b)(4), SCRCF .....	9, 11, 12
<b>Other Authorities</b>	
Foreign Judgments Act .....	4
New Mexico Foreign Judgments Act .....	7
South Carolina Uniform Enforcement of Foreign Judgments Act .....	1, 18
Full Faith and Credit Clause of the United States Constitution .....	1
Utah Foreign Judgment Act .....	8

## Introduction

This matter involves domestication of a valid foreign judgment in South Carolina pursuant to the South Carolina Uniform Enforcement of Foreign Judgments Act (“the Act”) and the Full Faith and Credit Clause of the United States Constitution. Shay’s brief to this Court virtually ignores this issue, and instead the brief reads like a typical Rule 60, SCRPC, case involving relief from a South Carolina judgment. This is not a Rule 60, SCRPC, case. Rather, the issue before the trial court and this Court is whether the Full Faith and Credit Clause of the United States Constitution limits the Act and precludes a judgment debtor from utilizing Rule 60, SCRPC, in a domestication action on the grounds advanced by Shay. This Court should reject Shay’s attempts to change this case into something it is not.

Moreover, Shay’s position advocates for a wholesale rejection of well-settled precedent that established a judgment debtor cannot appear in the rendering state and then raise the same issues again in a domestication action. In essence, Shay asks this Court to ignore the Full Faith and Credit Clause as well as the nearly universal recognition that the Full Faith and Credit Clause limits the Act and the relief available under Rule 60, SCRPC, to a judgment debtor in domestication actions.<sup>1</sup> This Court should not rule in such a manner. South Carolina would stand alone in allowing that procedure in domestication actions.

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<sup>1</sup> In fact, Shay’s brief does not argue against the rule that the Full Faith and Credit Clause limits use of Rule 60 by a judgment debtor in a domestication action under the Act.

## Argument

It is important for this Court to note that Shay appeared contested confirmation of the arbitration award and his defenses to confirmation in Connecticut. 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, Shay is precluded from re-litigating those issues in South Carolina. See, e.g., Aaron v. Mahl, 382 S.C. 585, 592, 674 S.E.2d 482, 485 (2009) (holding that 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"); Miliken v. Meyer, 311 U.S. 457, 462 (1940) (holding that 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”); Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 439-40 (1943) (“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”).

This Court should view the appeal in light of the above-history and actions by Shay. Accordingly, this Court should reverse and remand with instructions to enroll the Connecticut judgment in South Carolina.

**I. The trial court erred because the Full Faith and Credit Clause does not allow a judgment debtor to obtain relief from foreign judgment on the grounds advanced by Shay.**

Shay claims that this Court should affirm the trial court (1) because Directory Assistants failed to preserve its appellate argument that the Full Faith and Credit Clause limited Shay’s use of Rule 60, SCRPC, pursuant to the Uniform Enforcement of Foreign Judgments Act (“the Act”) and (2) because the plain language of the Act allows a judgment debtor to seek relief from a foreign judgment based on Rule 60, SCRPC. {Brief of Respondent p. 15-17}. Both arguments lack merit. First, Directory Assistants properly preserved the argument that the Full Faith and Credit Clause limited Shay’s use of Rule 60, SCRPC, pursuant to the Act and did not allow for the trial court to grant the relief requested by Shay. Second, the language of the Act does not supplant the rule that the Full Faith and Credit Clause only allows the judgment debtor to utilize Rule 60, SCRPC, based on lack of jurisdiction or fraud and not on the grounds advanced by Shay. Thus, Shay’s arguments cannot alter the fact that the trial court erred in failing to domesticate Directory Assistants’ Connecticut judgment. This Court should reverse.

a. **The Act does not allow Shay to avoid domestication of the Connecticut judgment on the grounds presented to the trial court.**

In his brief, Shay claims the language of the Act allows him unfettered use of Rule 60(b), SCRCP, to avoid domestication of a valid foreign judgment. {Resp. Br. p. 18-20}. Shay's position is incorrect. Courts have nearly universally rejected Shay's position. Those courts recognize that the language of the Act, and its reference to Rule 60, is limited by the Full Faith and Credit Clause and that a State's adoption of the Act does not alter this settled rule.

Shay relies exclusively on the case of Law Firm of Paul L. Erickson, P.A. v. Boykin, 383 S.C. 497, 681 S.E.2d 575 (2009), to support his claim that the Act allows him to use all Rule 60(b), SCRCP, grounds in a domestication action. His reliance on Boykin is misplaced. Boykin does not stand for that proposition. In Boykin, our Supreme Court addressed the issue of whether the judgment debtor or judgment creditor had the burden of proof under the Act. Boykin, 383 S.C. at \_\_\_, 681 S.E.2d at \_\_\_. Boykin did not address the impact of the Full Faith and Credit Clause limiting the judgment debtor's use of Rule 60, SCRCP, via the Act, in a domestication action.

After resolving the burden of proof issue, the Supreme Court addressed the procedural mechanisms by which a judgment debtor can challenge domestication of a foreign judgment. Id. at 504, 381 S.E.2d at 579. While the court did state Rule 60, SCRCP, is one such procedure, it did not hold—or even address—what substantive grounds would be available to a judgment debtor under Rule 60, SCRCP. Id. In fact, the court noted the Act “simply established **procedures** by which a debtor can raise an

objection to a foreign judgment.” Id. (emphasis added). Therefore, Boykin did not address the substantive interplay with the Full Faith and Credit Clause and the Act.

As a result, Boykin does not alter the well-settled rule at issue in this case. In fact, Boykin supports Directory Assistants’ position. Directory Assistants does not argue Shay cannot use Rule 60, SCRCP, at all. To the contrary, Directory Assistants recognizes that a judgment debtor can challenge a foreign judgment under the Act under the procedural vehicle that is Rule 60, SCRCP. Directory Assistants adheres to the settled rule that the Full Faith and Credit Clause limits the grounds available for relief for a judgment debtor under Rule 60, SCRCP. That rule establishes that the only Rule 60, SCRCP, grounds available under the Act are lack of jurisdiction or fraud. The Full Faith and Credit Clause precludes a judgment debtor from claiming mistake or that the judgment is void based on arbitrability, as Shay did to the trial court.

Because Boykin does not address the issue presented in this case, Shay cannot claim that it rejects the settled rule that the language of the Act, and its reference to Rule 60, is limited by the Full Faith and Credit Clause. See DocRx, Inc. v. EMI Servs. of N.C., 758 S.E.2d 390 (N.C. 2014); Matson v. Matson, 333 N.W.2d 862, 867 (Minn. 1983) (en banc); 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.”). Thus, Shay’s position lacks merit. This Court should reverse the trial court and remand with instructions to enroll Directory Assistants’ judgment.

**b. Shay ignores this well-settled rule and asks this Court to affirm based on grounds not allowed by the Full Faith and Credit Clause.**

Shay claims entitlement to relief based on mistake and by claiming the Connecticut judgment was void. {Resp. Br. p. 19-20}. Even if Shay could present these grounds in a domestication action, Shay’s arguments fail. This Court should reject Shay’s claims.

First, Shay alleges that a mistake had been made because the arbitration judgment was entered in the name of Shay in his individual capacity. {Resp. Br. p. 20}. This argument fails as a matter of law. South Carolina law establishes that this is not the type of mistake that would entitle Shay to relief from the judgment under Rule 60, SCRPC. South Carolina courts only apply the “mistake” prong of Rule 60(b)(1), SCRPC, 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), SCRPC, does not contemplate relief from a judgment based on the collateral attack of a disputed fact. Thus, the issue of 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. Therefore, Shay’s reliance on mistake fails. The trial court erred in granting relief under Rule 60(b)(1), SCRPC.

Likewise, Shay’s Rule 60(b)(4), SCRPC, request for relief is premised on an improper basis. Shay claims the Connecticut judgment was void because there had been no judicial finding on the issue of arbitrability. {Resp. Br. p. 19}. This is not a valid basis for relief under Rule 60(b)(4), SCRPC. South Carolina law is settled that “[t]he 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.” See, e.g., 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. Therefore, Shay's argument fails.<sup>2</sup>

**c. Directory Assistants preserved its appellate arguments.**

Shay claims that Directory Assistants failed to preserve its appellate argument that the Full Faith and Credit Clause limited Shay's use of Rule 60, SCRPC, via the Act. {Brief of Respondent p. 15-17}. This argument fails. Shay distorts Directory Assistants' argument in an attempt to raise preservation when no such issue is present in this appeal. Directory Assistants properly preserved its argument for review by this Court.

Specifically, Shay claims that Directory Assistants never argued "the precise argument" that the Rule 60, SCRPC, "has no applicability" at all in an action to enforce a foreign judgment. {Id. at 16}. Shay is correct that Directory Assistants never argued the Full Faith and Credit Clause precludes **all** use of Rule 60, SCRPC, in a domestication action. However, that does not mean the argument is unpreserved. That is because that was not the issue before the trial court or what is before this Court. What Directory Assistants argued to the trial court was that the Full Faith and Credit Clause limited the grounds upon which a judgment debtor could utilize Rule 60, SCRPC, pursuant to the Act. {Trans. p. 20-21; R. \_\_\_\_}.<sup>3</sup> That argument was raised and ruled upon by the trial court. Directory Assistants also presented that identical

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<sup>2</sup> Shay's application of mistake and arbitrability is contrary to principles of res judicata and Full Faith and Credit. Rule 60(b), SCRPC, was never intended to allow re-litigation of issues already decided.

<sup>3</sup> Stated differently, Directory Assistants admitted Rule 60, SCRPC, could be used by a judgment debtor but not on the grounds advanced by Shay.

argument to this Court. Thus, Directory Assistants properly preserved that issue for review.

At the hearing, Shay first raised the issue of relief from the Connecticut judgment via Rule 60, SCRCF, under the Act. {Trans. p. 8; R. \_\_\_\_}. In direct response to that argument, Directory Assistants argued that the Full Faith and Credit Clause only allows a judgment debtor to use Rule 60, SCRCF, pursuant to the Act in a limited manner, and the full panoply of relief under Rule 60, SCRCF; is not available. 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. \_\_\_\_ (emphasis added)}. The trial court rejected that argument in ruling Shay was entitled to relief based on mistake under Rule 60(b)(1), SCRCF, and arbitrability<sup>4</sup> under Rule 60(b)(4), SCRCF. {Order at \_\_\_\_; R. \_\_\_\_}.

Directory Assistants continued that exact argument in brief to this Court, noting that 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.” {Brief of

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<sup>4</sup> Shay did not seek relief from the Connecticut judgment based on fraud pursuant to Rule 60(b)(3), SCRCF. Shay's arbitrability argument cannot be construed as fraud because Shay expressly moved for relief based on the “judgment being void” under Rule 60(b)(4), SCRCF.

Appellant at p. 14-15; see also Brief of Appellant at p. 10-20 for full argument on this issue}. Thus, Directory Assistants unequivocally preserved the argument before this Court, and the issue is ripe for appellate review. Shay's mischaracterization of Directory Assistants' argument does not alter this fact.

**II. Because Shay failed to properly contest the jurisdiction of the Connecticut Court under Connecticut law, Shay is precluded from raising the issue in South Carolina under the guise of arbitrability.**

In his brief, Shay claims a South Carolina court should determine arbitrability, and thus jurisdiction of the Connecticut court, under South Carolina law. {Brief of Respondent p. 22-25}. Shay alleges he can raise this issue under the Act and Rule 60, SCRCF.<sup>5</sup> {Id. at 24}. This is incorrect for two reasons. First, the trial court erred in even entertaining this argument because the Full Faith and Credit Clause precludes Shay from raising this issue under the Act or Rule 60, SCRCF, as fully set forth in Section I, supra. This Court should reverse on that basis alone.

Second, South Carolina law mandates that the validity and effect of a foreign judgment must be determined by the laws of the state that rendered the judgment, including the rendering state's law regarding jurisdiction.<sup>6</sup> Shay ignores this rule and asks this Court to do the same. This Court should adhere to the settled rule that

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<sup>5</sup> Shay's claim that Rule 60(b)(4), SCRCF, allows for such relief is incorrect. Shay claims that the Connecticut judgment was void because there had been no judicial finding on the issue of arbitrability. This is not a valid basis for relief under Rule 60(b)(4), SCRCF. The rule is unambiguous: "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. Therefore, the trial court erred in granting relief under Rule 60(b)(4), SCRCF.

<sup>6</sup> 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).

recognizes a foreign 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. See, e.g., Taylor v. Taylor, 229 S.C. 92, 97, 91 S.E.2d 876, 879 (1956).

Connecticut law provides the unambiguous procedure and time frame for a party to challenge personal or subject matter jurisdiction of the Connecticut Court. See Conn. Practice Book § 10-30 (emphasis added). This rule 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 follow Connecticut’s mandatory procedure to challenge jurisdiction of the Connecticut Court. Shay appeared in Connecticut via counsel but elected to not file the required motion to dismiss with the Connecticut Court for lack of

personal jurisdiction within the time frame imposed by Connecticut Practice Rule 10-30. The Connecticut Court acquired personal jurisdiction over Shay as a result. Thus, the Connecticut judgment was regular on its face based on applicable Connecticut law.<sup>7</sup>

Because Shay failed to adhere to Connecticut's mandatory jurisdictional rules, the trial court was required to find the Connecticut Court had jurisdiction over the subject matter and over Shay under Connecticut law. As a result, Shay's reliance on South Carolina law affords him no relief, and the Full Faith and Credit Clause does not allow Rule 60, SCRCF, to alter that fact.

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. Rule 60, SCRCF, required Shay to introduce independent evidence of a meritorious defense, and Shay's attempt to fashion a meritorious defense should be rejected.**

Shay's argument that he is entitled to relief under Rule 60, SCRCF, ignores his obligation to present independent evidence of a meritorious defense. Shay's reliance on his Rule 60, SCRCF, grounds does not constitute evidence of a meritorious defense. Not only did Shay fail to present evidence of a meritorious defense to the trial court, but the record does not support the existence of one.

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<sup>7</sup> Moreover, 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), SCRCF, to raise any jurisdictional defect with the Connecticut Court. See Minorplanet Systems, 368 S.C. at 149, 628 S.E.2d at 45.

A party seeking relief under Rule 60 must not only present evidence of one of the grounds set forth in Rule 60(b), SCRPC, **but also** has an affirmative duty to present evidence of a meritorious defense. McClurg v. Deaton, 395 S.C. 85, 87, 716 S.E.2d 887, 888 (2011). While the meritorious defense need not be perfect, the party still must present evidence of a defense which is separate and distinct from the Rule 60(b) grounds for relief. See Thompson v. Hammond, 299 S.C. 116, 120, 382 S.E.2d 900, 903 (1989). Thus, Rule 60(b) requires a two-pronged analysis. Id.

Shay's argument neglects his affirmative duty to present separate and distinct evidence of a meritorious defense. Instead, Shay relies solely on the grounds set forth in Rule 60(b), SCRPC, i.e. the allegation that Directory Assistants fraudulently obtained the Connecticut judgment by "a false representation . . . ." {Resp. Br. at p. 28}. This evidence may go towards establishing the grounds to relief under Rule 60(b) but does not serve as evidence of a separate meritorious defense. See McClurg, 395 S.C. at 87, 716 S.E.2d at 888.

Shay glosses over his obligation to present evidence of a meritorious defense by relying on our Supreme Court's opinion in Thompson. Shay argues that Thompson stands for the proposition that the defense does not have to be perfect, but can "be only one which is worthy of a hearing . . . ." {Resp. Br. at p. 29}. This reliance is misplaced. Instead, Thompson actually supports Directory Assistants' argument that a party seeking relief must establish grounds under Rule 60, SCRPC, **in addition to a separate and distinct meritorious defense.**

In Thompson, a landowner challenged a judgment closing a boat landing after failing to formerly appear in the action. Thompson, 299 S.C. at 117, 382 S.E.2d at

901. To determine whether the landowner was entitled to relief from the judgment, our Supreme Court first analyzed whether the landowner established the existence of a meritorious defense. Id. at 120, 382 S.E.2d at 903. After the landowner presented evidence that the county had been using the boat landing, calling into question the trial court's finding that the county had abandoned it twenty years prior, our Supreme Court concluded that the landowner had established a meritorious defense. Id.

After this conclusion, the court conducted a second analysis—separate and distinct from its meritorious defense analysis—to determine whether the landowner's failure to appear in the action was the product of excusable neglect. Id. at 120, 382 S.E.2d at 903. The court determined that the landowner was excused from formally appearing because of his mistaken belief that the county council would oppose the boat landing's closing. Id. at 121, 382 S.E.2d at 903. Instead, the evidence presented established that the county had changed its position on the landing's closing in an executive session just days before the hearing. Id. Thus, the landowner had no way of knowing that the closing would not be contested absent his appearance. Id. Only after concluding that these separate facts established excusable neglect did the court hold that the landowner was entitled to relief under Rule 60. Id.

Departing from Thompson, Shay attempts to blend the two prongs of the Rule 60 analysis in an effort to overcome the fact that he failed to introduce any evidence of a meritorious defense. Shay relies on the allegations of fraud to argue his entitlement to relief from the Connecticut judgment. Even if these allegations are true, they can only establish the Rule 60(b), SCRCF, grounds for relief, not a separate meritorious defense. In attempting to use these allegations to simultaneously present a meritorious

defense, Shay ignores our Supreme Court's precedent in Thompson—precedent cited in his brief—which requires a two-pronged analysis.

Shay attempts to combine the two prongs because the record does not support the existence of a separate meritorious defense. Shay has already admitted the existence of the contract, and his actions illustrate he breached the contract. {Shay Letter dated May 29, 2009 to American Dispute Resolution Center; R. \_\_\_; July 30, 2009 Letter from Shay to Ford, Exhibit A to Directory Assistants Motion to Reconsider; R. \_\_\_}. Thus, the record lacks of any evidence supporting a meritorious defense. This Court should reverse.

#### 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. Ultimately, Shay chose not to litigate his claimed defenses in Connecticut. The Connecticut Court entered a valid judgment against Shay.

The Full Faith and Credit Clause prevents 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. Moreover, the Full Faith and Credit Clause limits the relief available to Shay under the Act and Rule 60, SCRPC. Shay did not seek any proper relief under the Act and Rule 60, SCRPC.

Thus, the trial court erred in granting Shay relief from the Connecticut judgment. Therefore, this Court should reverse and remand with instructions to enroll the Connecticut judgment in South Carolina.

{Signature Page Follows}

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February 18, 2015

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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

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Case No. 2011-CP-38-00853

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Directory Assistants, Inc., ..... Appellant,

v.

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

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PROOF OF SERVICE

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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):

Pleadings: Initial Reply Brief of Appellant

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**SC Court of Appeals**



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February 18, 2015

## Hand Delivered

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1015 Sumter Street - 5th Floor  
Columbia, SC 29201

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 the Initial Reply 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 parties.

Very truly yours,



Michael J. Anzelmo

MJA:jlee  
Enclosures

cc: David Maxfield, Esquire  
John S. Nichols, Esquire  
Blake A. Hewitt, Esquire

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**SC Court of Appeals**