

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Doyet Early, Circuit Court Judge

Mark Vinson Day.....Appellant

v.

Regions Bank .....Respondents

**APPELLANTS' INITIAL BRIEF**

s/ Mark Vinson Day  
Mark Vinson Day, Appellant, pro se  
944 Dexter St. NE  
Aiken, South Carolina 29801  
(803)226-3400

March 23, 2015

TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... **ii**

STATEMENT OF ISSUES ON APPEAL ..... 1

STATEMENT OF THE CASE ..... 2

STANDARD OF REVIEW ..... 3

CONCLUSION ..... 6

ARGUMENT

- I. THE COURT BELOW ERRED IN RULING THAT IT HAD JURISDICTION TO HEAR AND DECIDE THE CASE AS TO A MATTER OF LAW
- II. THE COURT BELOW ERRED IN CONSIDERING THE FEDERAL COURT NOTICE OF REMOVAL JURISDICTION AS TO A MATTER OF LAW

Whether any person is subject to the jurisdiction of the courts of this state as to any cause of action arising from the doing personally, through any employee, through an agent or through a subsidiary, of any of the following acts in another State:

- 1. Did the Court have jurisdiction over the transaction of any business within another state;
- 2. Did the Court have jurisdiction over the commission of the act which results in accrual within another state of a tort action;
- 3. Is there established jurisdiction of the Court over the ownership, use, or possession of any property, or of any interest therein, situated within another State;
- 4. the Court lacked jurisdiction over the entire matter because the Contracting to insure any person, property, or risk was located within another State at the time of contracting;

5. The Court lacked jurisdiction over the Appellant because Appellant, Acting as director, manager, trustee, or other officer of any corporation organized under the laws of, or having its principal place of business within another State.

**TABLE OF AUTHORITIES CASES**

*Bass v. Harbor Light Marina, Inc. F. Supp. 786 (D.C.S.C. (1974) .....1*

*ESBA Group, Inc. v. Centricent, Inc. 126 F.3d 617 (4th Cir. 1997) .....1*

*Johnson v. State 319 S.C. 62, 459 S.E.2d 840 (1995) .....2*

*GNDC Corp. v. Estate of Rhyne, 312 S.C. 86, 439 S.E.2d 334 (1971).....3*

*Dove v. Goldkist, 314 S.C. 235, 442 S.E.2d 598 (1998) .....4*

*Watson v. Watson, 319 S.C. 92, 460 S.E.2d 394 (1995) .....4*

*Pascal v. Causey, 309 S.C. 206, 209, 420 S.E. 2d 863, 865 (Ct. App. 1992) .....5*

*Bardoon Properties NV. v. Eldolon Corp., et al;*  
*326 S.C. 166, 169, 485 S.E. 2d 371, 372 (1997).....2*

*Southern Plastics Co. v. Southern Commerce Bank, 310 S.C. 256, 423 S.E.2d 128, 130 (1992);*

*International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 .Ct. 54, 158, 90 L.Ed. 95 (1945)*  
*(quoting Milliken v. Meyer, 311 U.S. 457, 463, 61 S.Ct. 339, 343, 85 L.Ed. 278 (1940)).*

*Stover v. O'Connell Assocs., Inc., 84 F.3d 132, 135-36 (4th Cir. 1996)*

*Lake v. Reeder Const. Co., 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct. App.1998).....5*

**STATUTES**

S.C. Code Ann. §15-3-30 .....3

S.C. Code Ann. §36-2-803 (Rev. 2007) .....3,4,

## STATEMENT OF ISSUES ON APPEAL

Whether any person is subject to the jurisdiction of the courts of this state as to any cause of action arising from the doing personally, through any employee, through an agent or through a subsidiary, of any of the following acts in another State:

1. Did the Court have jurisdiction over the transaction of any business within another state;
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3. Is there established jurisdiction of the Court over the ownership, use, or possession of any property, or of any interest therein, situated within another State;
4. the Court lacked jurisdiction over the entire matter because the Contracting to insure any person, property, or risk was located within another State at the time of contracting;
5. The Court lacked jurisdiction over the Appellant because Appellant, Acting as director, manager, trustee, or other officer of any corporation organized under the laws of, or having its principal place of business within another State.

## STATEMENT OF THE CASE

On or about January 15, 2013 Das Global Capital Corp. of 260 Peachtree St. NW Ste. 2200 Atlanta, Georgia entered into a Contract with Gwinnett Suzuki in Duluth Georgia. The Appellant signed as an officer of the Company, and as guarantor to the same. The subject automobile is and was always the property of the Company Das Global Capital Corp. The Company Das Global Capital Corp does not have offices in South Carolina. The car was never brought to South Carolina, the car was never registered in South Carolina, the Respondents filed Claim & Delivery Suit in Aiken County South Carolina. Appellant did not realize suit until Notice of default arrived at his home address at 944 Dexter St. NE Aiken, SC 29801. This appeal followed.

Jurisdiction is generally defined as ‘the authority to decide a given case one way or the other. Without jurisdiction, a court cannot proceed at all in any cause; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.’ Specifically, ‘[j]urisdiction is composed of three elements: (1) personal jurisdiction; (2) subject matter jurisdiction; and (3) the court's power to render the particular judgment requested.

## STANDARD OF REVIEW

The Contract that governs this case specifically states that the applicable law shall be the address of the Lender on the front of the Contract . See Contract at 6.

### **6. Applicable Law**

**Federal law and the law of the State of our address shown on the front of this Contract.**

It is well settled that issues relating to subject- matter jurisdiction may be raised at any time. See Johnson v. State 319 S.C. 62, 459 S.E. 2d 840 (1995); GNDC Corp. v. Estate of Rhyne, 312 S.C. 86, 439 S.E.2d 334 (1971). Subject-matter jurisdiction refers to the Court's power to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Goldkist, 314 S.C. 92, 460 S.E.2d 394. in Bass v. Harbor Light Marina, Inc. F. Supp. 786 (D.C.S.C. 1974) (holding that traditional notion of fair play and substantial justice would be offended if a foreign corporation is allowed to entice residents of this State across the border to enter into Contracts governed by foreign law, (Georgia) and thereafter avoid liability for any breaches arising therefrom when presented to a forum in this state.

S.C. Code 1976 § 36-2-803§ 36-2-803. Personal jurisdiction based upon conduct.

Currentness

(A) A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's:

- (1) transacting any business in this State;
- (2) contracting to supply services or things in the State;
- (3) commission of a tortious act in whole or in part in this State;
- (4) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State;
- (5) having an interest in, using, or possessing real property in this State;
- (6) contracting to insure any person, property, or risk located within this State at the time of contracting;
- (7) entry into a contract to be performed in whole or in part by either party in this State; or
- (8) production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.

(B) When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him.

## ARGUMENT

A threshold question in every case is whether the court has subject matter jurisdiction over the controversy before it. "Subject matter jurisdiction of a court depends upon the authority granted to the court by the constitution and laws of the state." Paschal v. Causey, 309 S.C. 206, 209, 420 S.E.2d 863, 865 (Ct. App.1992). It "refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong." Bardoon Properties, NV v. Eidolon Corporation, et al; 326 S.C. 166, 169, 485 S.E.2d 371, 372 (1997). "Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court." Lake v. Reeder Const. Co., 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct. App.1998).

South Carolina long-arm statute provides in relevant part:

A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's ... (c) commission of a tortious act in whole or in part in the State; [or] (d) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this State.

S.C.Code Ann. §§ 36-2-803(1)(c) & (d). South Carolina's long-arm statute has been interpreted to reach the outer bounds permitted by the Due Process Clause. *See Southern Plastics Co. v. Southern Commerce Bank, 310 S.C. 256, 423 S.E.2d 128, 130 (1992); Hammond v. Cummins Engine Co., 287 S.C. 200, 336 S.E.2d 867, 868 (1985); Triplett v. R.M. Wade & Co., 261 S.C. 419, 200 S.E.2d 375, 379 (1973); see also Federal Ins. Co. v. Lake Shore, Inc., 886 F.2d 654, 657 n. 2 (4th Cir.1989).* Consequently, "the statutory

inquiry necessarily merges with the constitutional inquiry, and the two inquiries essentially become one." Stover v. O'Connell Assocs., Inc., 84 F.3d 132, 135-36 (4th Cir. 1996). We thus turn to the constitutional question of whether Centricut and Aley have established "minimum contacts with [South Carolina] such that the maintenance of the suit does not offend `traditional notions of fair play and substantial justice.'" International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463, 61 S.Ct. 339, 343, 85 L.Ed. 278 (1940)).

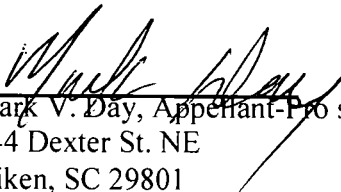
Since *in personam* jurisdiction of a state court is limited by that state's laws and by the Fourteenth Amendment, we first inquire whether the state long-arm statute authorizes the exercise of jurisdiction over the defendant. See Wolf v. Richmond County Hosp. Auth., 745 F.2d 904, 909 (4th Cir.1984). If it does, we must then determine whether the state court's exercise of such jurisdiction is consistent with the Due Process Clause of the Fourteenth Amendment.

## CONCLUSION

The Aiken Court erred in the instant case and erred also by denying the Appellant's Notice of Removal. because all of these issues are formed out of an action that was and is based in the State of Georgia. South Carolina courts lacked jurisdiction to act or to enter judgment against the Appellant.

This court should conduct its own *in camera* review of the Contract requested by appellants, reverse the ruling of the court below and remand the case for reconsideration of appellants' motion for removal to federal court in light of the determination that the Contract is govern under the laws for the State of Georgia and not governed under any laws from South Carolina.

Respectfully submitted.

  
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