

INITIAL BRIEF OF RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2014-CP-02-01544
Appellate Case No. 2014-002359

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JUN 18 2015

SC Court of Appeals

Regions Bank,

Respondent,

v.

Mark V. Day a/k/a Mark
Vinson Day,

Appellant.

INITIAL BRIEF OF RESPONDENT

Gregory P. Cowan, SC Bar #100299
Brock & Scott, PLLC
1315 Westbrook Plaza Drive
Winston-Salem, NC 27103
Telephone: (336) 354-1797
Telefax: (336) 354-1588
Attorney for Respondent

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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT HAVE PERSONAL JURISDICTION OVER THE APPELLANT-DEFENDANT?
2. DID THE CIRCUIT COURT HAVE SUBJECT MATTER JURISDICTION OVER THE CONTRACT CLAIMS AGAINST THE APPELLANT-DEFENDANT?
3. DID THE COURT PROPERLY STRIKE THE NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT?

STATEMENT OF THE CASE

Respondent commenced this action with a Complaint filed on July 8, 2014, in the Court of Common Pleas of Aiken County, alleging default by Appellant on a loan and seeking judicial repossession of a vehicle purchased with the loan funds. This appeal concerns the loan for \$48,642.12, interest, and court costs, as well as possession of the vehicle. Appellant failed to respond to the Complaint, and Judge Early entered Default Judgment against Appellant on September 8, 2014.

On September 15, 2014, Appellant filed a Notice of Removal to the United States District Court. Such Notice of Removal was not filed with the United States District Court. Judge Early struck this Notice of Removal from the record on September 29, 2014, pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure, on motion by the Respondent.

On October 8, 2014, Appellant served a Notice of Appeal of the September 29 order striking the Notice of Removal, and the Court sent notice of the receipt of the Notice of Appeal on November 6, 2014. On November 17, 2014, the Court requested the parties serve and file memoranda addressing the issue of the immediate appealability of the appealed order within ten (10) days of the date of the letter. Respondent, through counsel, served and filed a memorandum dated December 4, 2014, which memorandum stated that Appellant may not appeal the order of Judge Early striking the Notice of Removal.

The Court ordered the appeal to proceed on January 12, 2015, and Appellant subsequently failed to furnish the Court within thirty (30) days with proof the Appellant ordered the transcript or to serve and file his initial brief and designation of matter for the

record on appeal. Accordingly, the Court dismissed the appeal by order on March 9, 2015.

On March 24, 2015, Appellant filed Motion to Reinstate Appeal, Request for Transcript, Motion for Permission to File Documents Out of Time, Appellant's Initial Brief, and Designation of Matter for the Record on Appeal. The Court acknowledged receipt of such filings in a letter dated March 30, 2015, and entered an order granting the motions and reinstating the appeal on May 20, 2015.

FACTS

On January 7, 2013, Das Global Capital Corporation (hereinafter “Das Global”), a Georgia Corporation, and Appellant executed a contract with Gwinnett Suzuki for the purchase of a used 2009 Mercedes B, with serial number ending in 3247 (hereinafter the “vehicle”), as co-buyers of the vehicle. (Complaint p. 1, Ex. Retail Installment Sale Contract). Such contract also created a loan contract between the co-buyers and Respondent, which loan financed the purchase of the vehicle. (Complaint p. 1, Ex. Retail Installment Sale Contract). The vehicle registration in Georgia lists two (2) owners, Das Global and Appellant. (Complaint p. 1, Ex. Title Application). All documentation of the contracts lists Appellant’s address as 944 Dexter Street NE, Aiken, SC 29801. (Complaint p. 1, Ex. Retail Installment Sale Contract). Appellant retained such residence from the time of the contract through the date of this appeal.

Appellant and co-buyer Das Global subsequently defaulted on the loan with Respondent by missing payments in February, March, April, May, and July 2013. (Complaint p. 1, Ex. Payment History Ledger). The only payments made on such loan occurred on June 6, 2013. (Complaint p. 1, Ex. Payment History Ledger). Due to Appellant’s continued default, the loan was charged off on July 30, 2013. (Complaint p. 1, Ex. Payment History Ledger). Respondent subsequently filed suit in the Circuit Court of South Carolina in the County of Aiken, seeking judicial repossession of the vehicle purchased with the loan funds and reserving the right to seek judgment following sale of the vehicle for any deficiency on the loan. (Complaint p. 1). The deputy sheriff of Aiken County served defendant at 944 Dexter Street NE, Aiken, SC 29801, on July 16, 2014. (Affidavit of Service p. 1).

ARGUMENTS

I. THE CIRCUIT COURT PROPERLY EXERCISED PERSONAL JURISDICTION OVER APPELLANT.

A. Appellant's failure to contest personal jurisdiction either by answer or motion made before pleading constituted a waiver of this defense.

Pursuant to SCRCP, Rule 12(b), “[a] motion making any of these defenses shall be made before pleading if a further pleading is permitted.” Appellant failed to file an answer in response to the summons and complaint in the case below, and thus has waived any defense concerning a lack of personal jurisdiction.

B. Appellant is an individual domiciled in Aiken County, South Carolina.

“A court generally obtains personal jurisdiction by the service of a summons.” *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006). Personal jurisdiction is the power of a court to bind a party to its judgments. “Personal jurisdiction is exercised as ‘general jurisdiction’ or ‘specific jurisdiction’ . . . [and] general jurisdiction is determined under S.C. Code Ann. § 36-2-802.” *Coggeshall v. Reprod. Endocrine Assocs.*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007). S.C. Code Ann. § 36-2-802 provides that “[a] court may exercise personal jurisdiction over a person domiciled in . . . this State as to any cause of action.” “A man’s domicile is prima facie the place of his residence, but this may be rebutted by showing that such residence is either constrained or transitory.” *Graveley v. Graveley*, 25 S.C. 1, 17 (1886). “[The State Supreme Court] decisions have defined domicile as the place where a person has his true, fixed, and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning.” *Estate of O’Neill v. Tuomey Hosp.*, 254 S.C. 578, 583-84, 176 S.E.2d 527,

530 (1970) (internal quotations omitted). The Circuit Court may also attain personal jurisdiction over a Defendant through in-state service of process. *See Duckett v. Goforth*, 374 S.C. 446, 649 S.E.2d 72 (Ct. App. 2007) (holding personal jurisdiction may be established by in-state service of process).

Appellant maintains residence at 944 Dexter Street NE, Aiken, SC 29801, within the State of South Carolina, and the deputy sheriff served process on Appellant at such address. The contract in question in the Circuit Court also listed such address as the residence of Appellant, so Appellant has maintained such address for a minimum of two (2) years. Additionally, Appellant has made no showing, that his residence in South Carolina is either constrained or transitory, to rebut the presumption that his residence is his domicile. By reason of his primary residence being in the State of South Carolina, Appellant is domiciled in South Carolina. Therefore, pursuant to S.C. Code Ann. § 36-2-802, the Circuit Court may properly exercise personal jurisdiction over Appellant, and the Circuit Court properly exercised jurisdiction over Appellant in the previous proceedings.

Appellant argues that personal jurisdiction was improper because he acted only as a representative of Das Global, a foreign corporation. This characterization of Appellant's involvement in the transaction, however, is erroneous. Appellant did not act only as an agent of Das Global, but purchased the vehicle, and obtained the loan for such purchase, as an individual co-buyer with Das Global. (Complaint p. 1, Ex. Retail Installment Sale Contract). Appellant is listed individually as the second owner of the vehicle on the vehicle registration application, and acted as an individual in entering into the purchase and loan contracts. Since the language of the contract state the co-buyers' liability, Appellant is obligated under the contract.

A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it. A person signing a document is responsible for reading the document and making sure of its contents. Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. One who signs a written instrument has the duty to exercise reasonable care to protect himself. The law does not impose a duty on the bank to explain to an individual what he could learn from simply reading the document.

Regions Bank v. Smauch, 354 S.C. 648, 663-664, 582 S.E.2d 432, 440 (Ct. App. 2003) (internal citations omitted). Therefore, the law applies to Appellant as an individual, not solely as an agent of Das Global, and personal jurisdiction over Appellant was indeed proper in the Circuit Court. Even assuming Appellant *arguendo* that Appellant qualified as an out-of-state defendant, Appellant was served process in the state, making personal jurisdiction proper.

Appellant acted as a resident individual of the state of South Carolina, and Appellant is domiciled in South Carolina by keeping his primary residence in the State. Appellant was also served process in South Carolina. Therefore, the Circuit Court properly exercised personal jurisdiction over Appellant, pursuant to S.C. Code Ann. § 36-2-802.

II. THE CIRCUIT COURT PROPERLY EXERCISED SUBJECT MATTER JURISDICTION OVER THE CONTRACT CLAIMS AGAINST APPELLANT AS A COURT OF GENERAL JURISDICTION, BECAUSE THE ACTION AGAINST APPELLANT WAS A CIVIL ACTION AGAINST A RESIDENT INDIVIDUAL OF SOUTH CAROLINA.

“Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong.” *Dove v. Gold Kist*, 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994) (internal quotations omitted). S.C. Const. art V, § 11 establishes the Circuit Court as a general trial court “vested with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts.” *Rainey v. Haley*, 404 S.C. 320, 323, 745 S.E.2d 81, 83 (2013) (citing S.C. Const. art V, § 11). Thus, the Circuit Court has subject matter jurisdiction over all civil claims, unless jurisdiction over such claims is explicitly relegated to different courts.

The claim against Appellant was one founded in the South Carolina common law of contract, and was properly brought in the South Carolina Circuit Court. Additionally, since the Circuit Court is a court of general jurisdiction, and there is no relegation of common law contracts claims to an alternative court, subject matter jurisdiction was properly exercised over the loan contract claim against Appellant. *See Riden v. Kemet Elecs. Corp.*, 313 S.C. 261, 437 S.E.2d 156 (Ct. App. 1993) (reasoning that subject matter jurisdiction exists in the Circuit Courts absent an express statutory exception to such jurisdiction).

Appellant, however, contends four (4) reasons why subject matter jurisdiction was improperly exercised, including: “(1) the court did not have jurisdiction over the transaction of any business within another state; (2) the court did not have jurisdiction

over the commission of the act which results in accrual within another state of a tort action; (3) the court did not have jurisdiction over the ownership, use, or possession of any property, or of any interest therein, situated in another state; and (4) the court lacked jurisdiction over the matter because the contracting to insure any person, property, or risk was located within another state at the time of contracting.” Each of these arguments will be treated in turn.

Appellant contends that the Circuit Court lacked jurisdiction over the claims against him, because the claim involved the transaction of business in another state. Appellant fails to note, however, that the Circuit Court is a court of general jurisdiction, and can hear all civil claims against litigants domiciled in South Carolina. The claim against Appellant was also a claim against an individual, and not over the transaction of business, but a simple contract claim.

Appellant also asserts that the Circuit Court lacked jurisdiction over the commission of an act resulting in the accrual of a tort action within another state. The claim against Appellant, however, was a claim for breach of contract, not a tort claim. Also, no facts have been alleged to support a tort action under the common law of South Carolina or Georgia, Appellant’s proposed state in which a tort action may have accrued due to his failure to pay the debt owed on the loan. Respondent’s action supported by the facts is an action for breach of contract.

Additionally, Appellant contends that the Circuit Court did not have jurisdiction over the ownership, use, or possession of any property, or of any interest therein, situated in another state. Respondent’s complaint against Appellant, however, was rooted in contract law, not property law, and the only reference to property was in the equitable

relief sought for possession of the vehicle purchased with the loan funds. Respondent sought such equitable relief through the provisions of the contract between Respondent and Appellant, only as relief for Respondent's contract claim, not a separate claim of interest in property.

Finally, Appellant contends that the Circuit Court lacked jurisdiction over the matter because the contracting to insure any person, property, or risk was located within another state at the time of contracting. In this assertion, Appellant erroneously characterizes the contract between Respondent and Appellant as a contract for insurance. The agreement between Respondent and Appellant is a contract for a loan and repayment of such loan, not a contract for the insurance of any person, property, or risk. (*See* Complaint p. 1-2).

Appellant also asserts in his Initial Brief that this Court should engage in an *in camera* review of the loan contract, applying the laws of Georgia. Such review is improper for two reasons: (1) the issue of the application of foreign law was not raised in the court below; and (2) the South Carolina courts are only to take notice of foreign law when such foreign law appears in the pleadings, pursuant to S.C. Code Ann. § 19-3-120. *Toyota of Florence v. Lunch*, 314 S.C. 257, 266, 442 S.E.2d 611, 617 (1994) (failing to reach an issue because it was not raised in the trial court). Respondent did not plead the application of foreign law, and Appellant failed to file an answer, so the Circuit Court correctly applied South Carolina law.

The Circuit Court properly exercised subject matter jurisdiction over the breach of contract claim against Appellant. As the South Carolina court of general jurisdiction in civil cases, the Circuit Court held the proper authority to hear the class of claim made

against Appellant. The claim was based on the South Carolina common law of contracts, and the Circuit Court held proper subject matter jurisdiction.

III. THE CIRCUIT COURT PROPERLY STRUCK THE NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT, BECAUSE APPELLANT'S NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT DID NOT CONFORM TO THE REQUIREMENTS OF 28 U.S.C. § 1446.

A. Standard of Review

“It is well settled that a motion to strike is addressed to the sound discretion of the trial court . . . [and] will not be reversed absent an abuse of discretion.” *Totaro v. Turner*, 273 S.C. 134, 134, 254 S.E.2d 800, 800 (1979). When an order is “left to the sound discretion of the presiding judge,” such discretion is not abused “unless manifest injustice has been done.” *Lipscomb v. Poole*, 247 S.C. 425, 431, 147 S.E.2d 692, 695 (1966).

B. The trial judge did not abuse his discretion in striking the Notice of Removal.

28 U.S.C. § 1446 governs removal of actions from state courts to the United States District Court. The statute states as follows:

(a) Generally.—A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) Requirements; Generally.—

(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

Appellant's Notice of Removal to the United States District Court (hereinafter "Notice of Removal"), failed to comply with the requirements of 28 U.S.C. § 1446 in four (4) ways: (1) Appellant failed to file the Notice of Removal in the United States District Court; (2) The action which Appellant purposed to remove was no longer pending at the time of the Notice of Removal, because Default Judgment had been entered against Appellant; (3) Appellant's Notice of Removal did not state a basis for subject matter jurisdiction in federal court, and, indeed, could not state such basis, because no claim stated in the Complaint was based on federal law, as set forth in 28 U.S.C. § 1331, and the amount in controversy did not exceed \$75,000, as required by 28 U.S.C. § 1332; and (4) Appellant did not file the Notice of Removal within 30 days after receipt of a copy of the initial pleading through service.

Appellant has alleged no reasoning supporting his contention that the Circuit Court erred in striking the Notice of Removal. Due to Appellant's failure to comply with the requirements of 28 U.S.C § 1446 and failure to allege any reason why the order striking the Notice of Removal was improper, the Circuit Court judge did not abuse his

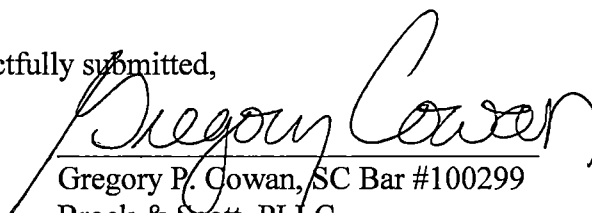
discretion, and Judge Early properly struck the Notice of Removal.

CONCLUSION

For the reasons stated, this Court should affirm the order of the Circuit Court striking Appellant's Notice of Removal to the United States District Court, and remand the case to the Circuit Court to proceed on the default judgment previously entered against Appellant.

Respectfully submitted,

June 15, 2015



Gregory P. Cowan, SC Bar #100299
Brock & Scott, PLLC
1315 Westbrook Plaza Drive
Winston-Salem, North Carolina 27103
Telephone: (336) 354-1797
Telefax: (336) 354-1588
Attorney for Respondent

**PROOF OF SERVICE OF DESIGNATION OF MATTER FOR THE
RECORD ON APPEAL OF RESPONDENT**

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PROOF OF SERVICE

I certify that I have served the Designation of Matter for the Record on Appeal of Respondent on Mark V. Day a/k/a Mark Vinson Day by depositing a copy of it in the United States Mail, postage prepaid, addressed to his residence of record, 944 Dexter Street NE, Aiken, SC 29801.

This the 15th day of June, 2015

Elizabeth K. Yach

Paralegal

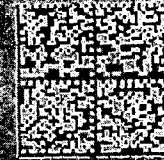
Brock & Scott, PLLC

1315 Westbrook Plaza Drive

Winston-Salem, NC 27103

Telephone: (336) 354-1797

Telefax: (336) 354-1588



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1315 WESTBROOK PLAZA DRIVE
WINSTON-SALEM, NC 27103

SC Clerk of Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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