

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No.: 2014-CP-23-5266  
Appellate Case No.: 2015-001667

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FEB 16 2016

SC Court of Appeals

Blanche G. Creswell,.....Appellant,

v.

Robin Culbertson and Chip Culbertson d/b/a Asheville Cotton Company, and  
Asheville Cotton Company,.....Respondents.

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INITIAL REPLY BRIEF OF THE APPELLANT

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Gregory A. Morton  
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Attorney for Appellant

Other Counsel of Record

James P. Walsh, Esquire  
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Clarkson, Walsh, Terrell &  
Coulter, PA  
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Attorney for Respondents

## Argument

The parties agree in this matter that the applicable legal question is whether requiring the Defendant corporation to appear and defend this matter in South Carolina, involving a serious injury to a South Carolina resident, violates due process (Defendants' Brief at 8). Plaintiff submits that requiring Defendant to defend this matter just fifty miles from its store is not a violation of due process given Defendant's contacts with the State of South Carolina.

Defendants' Brief takes too narrow of a view and relies inappropriately on cases involving only passive websites. Simply stated, this is not a mere "passive website" case, rather Defendants' contacts are much more than those involved in a passive website case.

The evidence shows substantial and intentional contact with the State of South Carolina. None of this evidence was discussed or addressed by the trial court in the very short four sentence Order dismissing this case. (Order, ROA \_\_\_\_). Nevertheless, the evidence establishes the necessary substantial contacts with South Carolina.

Defendants e-mail list shows two hundred seventy-three customers in South Carolina. (Robert Culbertson Deposition, Exhibit 2, ROA \_\_\_\_). The records themselves show where the customers are located. Defendant regularly and continuously send emails every three weeks to solicit the South Carolina customers to come to the North Carolina store for sales and classes taught in the store. (Robert Culbertson Deposition, pp. 41 to 44, ROA \_\_\_\_ to \_\_\_\_). This would be reaching out to two hundred seventy-three customers every three weeks, or over 4,700 solicitations per year directed to South Carolina residents.

Defendant also shipped more orders to South Carolina than any other state besides its home state of North Carolina (Robert Culbertson Deposition, Exhibits 1 and 2, ROA \_\_\_\_ to \_\_\_\_).

The shipments to South Carolina comprised fourteen percent of the total shipments, and twenty-five percent of all shipments outside of North Carolina.


The Defendant also made one live presentation in Landrum, South Carolina to South Carolina residents, and advertised for six years on the television station that broadcasts directly into upstate South Carolina.

Conclusion

The exercise of jurisdiction of this matter over the company Defendant is reasonable, fair, and does not violate traditional notions of fair play and substantial justice. Defendant should not be able to solicit customers to drive less than fifty-five miles from Greenville to its store, yet not be required to make the same short trip to defend this action. Plaintiff's medical treatment occurred here, and at least the corporate Defendant should be required to appear and defend this matter in South Carolina.

Accordingly, it is requested that the Order dismissing this action be reversed.

Respectfully submitted,

  
\_\_\_\_\_  
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February 11, 2016

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SC Court of Appeals

C. A. No.: 2014-CP-23-5266  
Appellate Case No.: 2015-00167

Blanche G. Creswell,.....Appellant,

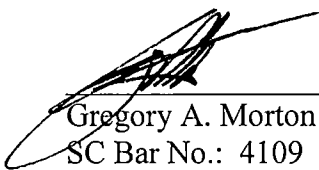
v.

Robin Culbertson, Chip Culbertson d/b/a Asheville Cotton Company, and  
Asheville Cotton Company,.....Respondents.

PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of the Appellant by depositing one copy in the United States Mail, postage prepaid, on February 11, 2016, addressed to their attorneys of record James P. Walsh and John D. Harjehausen, Clarkson, Walsh, Terrell & Coulter, P.A., P. O. Box 6728, Greenville, SC 29606.

February 11, 2016

  
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February 11, 2016

The Honorable Jenny Abbott Kitchings  
Clerk of Court of the South Carolina  
Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211

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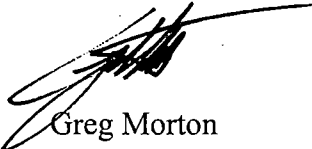
RE: Blanche G. Creswell v. Robin Culbertson, Chip Culbertson d/b/a Asheville  
Cotton Company, and Asheville Cotton Company  
Appellate Case No.: 2015-001667  
Our File No.: IND-12-281

Dear Ms. Kitchings:

Please find enclosed herein for filing the Initial Reply Brief of the Appellant and the Certificate of service for the same. By copy of this letter, the same documents are being forwarded to all counsel of record.

Please do not hesitate to contact my office if I need to provide anything further at this time.

Sincerely yours,

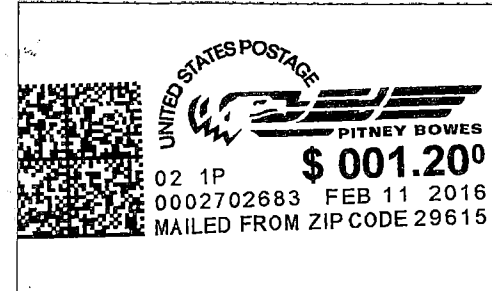
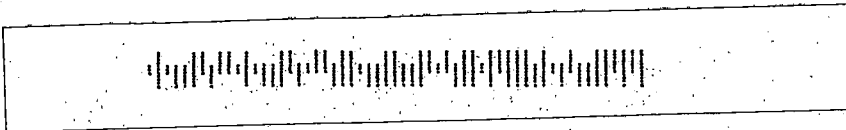


Greg Morton

GAM:mb

CC: James P. Walsh, Esquire – with enclosures

Enclosures



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**TO:**  
Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
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