

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
COUNTY OF BEAUFORT ) CIVIL ACTION NO: 2016-CP-07-02218

COVERT AIRE, A SOUTH CAROLINA )  
LIMITED LIABILITY COMPANY, )

Plaintiff, )

vs. )

ORDER GRANTING RULE 12 MOTION  
TO DISMISS PLAINTIFF'S COMPLAINT

ANIMALSCAN, LLC, A/K/A )  
ANIMALSCAN LEASING PARTNERS, )  
LLC, )

Defendant. )

This matter comes before the court pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure on the motion of Defendant, ANIMALSCAN, LLC (“Defendant” or “AnimalScan”), to Dismiss the Complaint filed by Plaintiff, COVERT AIRE, LLC (“Plaintiff” or “Covert Aire”). AnimalScan asserts that dismissal is appropriate on three grounds under Rule 12(b), SCRPC. First, AnimalScan contends that this Court lacks personal jurisdiction over it and dismissal is appropriate pursuant to Rule 12 (b)(2), SCRPC. Alternatively, it asserts that even if this Court finds that it has personal jurisdiction over AnimalScan, the complaint should be dismissed because of insufficient service of process pursuant to Rule 12(b)(5) and S.C. Code Ann. § 15-9-245. Lastly, as an additional alternative basis, AnimalScan argues that this matter should be dismissed pursuant Rule 12(b)(8), SCRPC, as another action between these parties relating to the same matter is pending in the Commonwealth of Pennsylvania.

## I. FACTUAL BACKGROUND

Plaintiff is a limited liability company organized and existing under the laws of the State of South Carolina. AnimalScan is a limited liability company organized and existing under the laws of the Commonwealth of Pennsylvania. Affidavit of Michael DeFrancesco, AnimalScan has its principal place of business in Pennsylvania and does not have any registered offices, places of business, employees or registered agents in South Carolina. Furthermore Mr. DeFrancesco affirms that AnimalScan has no relation to the State of South Carolina, and has never solicited or conducted business there. Additionally, I have reviewed and considered the affidavit of Michael Covert and find that his Affidavit does not directly refute these facts. Instead, he indicates that AnimalScan may have considered a future relationship with Covert Aire based on plans to have machines located in the Charleston area. Mr. Covert further affirms that the only part of the contract to be performed in South Carolina was that invoices were generated from and payment made to the Bluffton, SC office of Covert Aire.

Plaintiff's Complaint alleges that in "May of 2016, the Plaintiff entered into an agreement with the Defendant for the Plaintiff's provision of services, labor and/or materials for maintenance and/or repair of the heating and air conditioning system for a mobile MRI unit *located in Savannah, Georgia.*" (emphasis added). Plaintiff claimed that it "provided all services, labor and/or materials as requested," but AnimalScan failed to pay what Plaintiff claims it is allegedly owed.

Plaintiff asserts a claim for breach of contract in which AnimalScan allegedly failed to pay for service, labor, and/or materials supplied in the principal amount of \$26,958.58.

## II. LAW

### A. Personal Jurisdiction over AnimalScan pursuant to S.C. R. Civ. P. 12(b)(2).

In order for a South Carolina court to have personal jurisdiction over a person or entity, it must have either general jurisdiction or specific jurisdiction. Coggeshall v. Reproductive Endocrine Assocs. Of Charlotte, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007). General jurisdiction is present when a party “reach[es] out beyond one state and create[s] continuing relationships and obligations with citizens of another state.” Burger King Corp. v. Rudzewicz, 471 U.S. 462, 473 (1985), citing Travelers Health Assn. v. Virginia, 339 U.S. 643, 647 (1950). General jurisdiction is governed under South Carolina law at S.C. Code Ann. § 36-2-802:

A court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, doing business, or maintaining his or its principal place of business in, this State as to any cause of action.

S.C. Code Ann. § 36-2-802. This section particularly refers to “personal jurisdiction based upon *enduring relationship*.” Id. “An enduring relationship is indicated by contacts that are substantial, continuous, and systematic.” Coggeshall at 17, citing Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 495, 611 S.E.2d 505, 510 (2005). The exercise of either general or specific personal jurisdiction “must comport with due process requirements and must not offend traditional notions of fair play and substantial justice.” Coggeshall at 16. “Due process requires some act by which the

defendant purposefully avails itself of the privilege of conducting activities within the forum state.” Id., citing Hanson v. Denckla, 357 U.S. 235 (1958).

In Coggeshall, the Supreme Court found that the defendant fertility clinic did not have substantial, continuous, or systematic contacts with South Carolina, despite performing services for thousands of South Carolina residents, earning over \$2 million from South Carolina patients, and doing business with five vendors from South Carolina, among other contacts. Coggeshall at 17. Despite contracting and serving South Carolina residents, no services were actually performed in the state, and so no business activities were directed to this forum. Id. at 18-19.

Similarly, AnimalScan has not made sufficient contacts with the State of South Carolina to justify it being subject to personal jurisdiction there. It has not entered into any relationship with the state, let alone an “enduring relationship” indicated by “contacts that are substantial, continuous, and systematic.” It is not domiciled in or organized under the laws of South Carolina. It further does not do business or maintain its principal place of business in South Carolina. No services were ever rendered by AnimalScan in the state of South Carolina.

In support of this, AnimalScan submitted the Affidavit of Michael DeFrancesco, Chief Financial Officer of AnimalScan, demonstrating that it lacks these contacts with South Carolina. AnimalScan is a limited liability company organized and existing under the laws of the Commonwealth of Pennsylvania. AnimalScan does not have any registered offices, places of business, employees or registered agents in South Carolina. AnimalScan has no relation to the State of

South Carolina, and has never solicited or conducted business there. As such, South Carolina has no general jurisdiction over AnimalScan.

The other method by which a court can attain personal jurisdiction over a party is through specific jurisdiction, which “is the State’s right to exercise personal jurisdiction because the cause of action arises specifically from a defendant’s contacts with the forum.” Coggeshall at 16, citing Cockrell at 495. Specific jurisdiction is governed under South Carolina law under what is commonly referred to as the “Long-arm Statute” codified at S.C. Code Ann. § 36-2-803:

(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;
- ...
- (5) having an interest in, using, or possessing real property in this State;
- ...
- (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.

S.C. Code Ann. § 36-2-803. The Coggeshall court explains that “[a]s noted in subsection (B), jurisdiction under this section is limited to a cause of action arising from a specific activity within this State,” and only the actions enumerated under subsection (A) apply. Coggeshall at 20.

Here, AnimalScan did not take part in any of the activities listed in § 36-2-803(A). AnimalScan did not transact any business in South Carolina. The contract entered into between AnimalScan and Covert Aire was not to provide services or things in the State of South Carolina, nor was it to be performed in whole or in part by either party in this State. The agreement allegedly entered into was, by Plaintiff’s own admission, for Covert Aire’s “services, labor and/or materials for maintenance and/or repair of the heating and air conditioning system for a mobile MRI unit *located in Savannah, Georgia.*” (emphasis added). Contrary to Plaintiff’s assertions in the Complaint, the contract was to be performed in Georgia, and not in Beaufort County, South Carolina.

The Plaintiff argues that payment was due in South Carolina. This does not, in and of itself, justify the exercise of personal jurisdiction over AnimalScan. Indeed, the Coggeshall Court expressly held that “payment on the contract in South Carolina is the only part of the contract performed here and this alone is not sufficient to justify the exercise of personal jurisdiction.” Coggeshall at 20; see also Companion Property & Cas. Ins. Co. v. GTE Fed. Credit Union, Civ. A. No. 12-1529, 2012 WL 3834843 at \*3 (D. S.C. Sept. 4, 2012) (granting motion to dismiss on personal jurisdiction grounds and holding that payments sent to South Carolina on contract were insufficient to justify the exercise of personal jurisdiction); Loyd & Ring’s

Wholesale Nursery, Inc. v. Long & Woodley Landscaping, Inc., 315 S.C. 88, 93, 431 S.E.2d 632, 635 (Ct. App. 1993) (“[a]lthough we presume payment was to be mailed to the seller’s place of business in Florida, the ‘quality and nature’ of this single contact was so ‘fortuitous and attenuated’ such that it would be unfair to find the buyer availed himself of the benefit of conducting business in Florida and could reasonably have anticipated being haled into court there.”). Thus, in this case, even assuming that payment was to be made to Plaintiff in South Carolina, this was the only part of the contract performed in this State and under existing precedent is not enough to warrant the exercise of personal jurisdiction over a non-resident defendant such as AnimalScan. Furthermore, the only provision of the S.C. Long-arm Statute set forth above that arguably payment under the contract would be considered under would be subsection (2) “contracting to supply services or things in the State.” However, this contract was specifically to supply services in the State of Georgia.

As such, there is no sufficient specific jurisdiction over AnimalScan in South Carolina. AnimalScan has not purposefully availed itself of the privilege of conducting activities in South Carolina. Because AnimalScan does not have sufficient contacts with the State of South Carolina, there is no personal jurisdiction over AnimalScan in South Carolina, and I find the Plaintiff’s Complaint should be dismissed.

**B. Sufficiency of Plaintiff’s Service of Process upon Defendant, AnimalScan, pursuant to S.C. R. Civ. P. 12(b)(5) and S.C. Code Ann. § 15-9-245.**

Plaintiff also failed to properly serve the Complaint upon AnimalScan as required by South Carolina law under S.C. R. Civ. P. 12(b)(5) and S.C. Code Ann. § 15-9-245. AnimalScan was served with a copy of the Summons and Complaint on November 12, 2016, via a letter from the South Carolina Office of the Secretary of State dated November 7, 2016.

Under S.C. Code Ann. § 15-9-245, service can be made upon a foreign corporation by the South Carolina Secretary of State *only* if that corporation conducts business in the State of South Carolina but is not authorized to do business there.

Every foreign business or nonprofit corporation which is not authorized to do business in this State, by doing in this State, either itself or through an agent, any business ... is considered to have designated the Secretary of State as its agent upon whom process against it may be served in any action or proceeding arising in any court in this State out of or in connection with the doing of any business in this State.

S.C. Code Ann. § 15-9-245(b). However, as previously asserted, AnimalScan has not conducted business or even made any contacts with the State of South Carolina. Since it has not done business in South Carolina, service may not be made upon the Secretary of State acting as AnimalScan's agent.

Proper service would be had under S.C. R. Civ. P. 4(d)(3) as against corporations. S.C. R. Civ. P. 4(d)(3) provides that service can be made upon a corporation

by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to

receive service and the statute so requires, by also mailing a copy to the defendant.

In the alternative, S.C. R. Civ. P. 4(d)(8) provides that service could also be made upon a corporation by certified mail. However, Covert Aire chose to serve the Secretary of State acting as AnimalScan's agent with the Summons and Complaint.

Because Plaintiff utilized neither method of service that would be proper upon a foreign corporation that has never done business in the state of South Carolina like AnimalScan, the service of process in this matter was legally insufficient, and Plaintiff's Complaint should be dismissed.

**C. Pendency of Another Action in the Commonwealth of Pennsylvania**

S.C. R. Civ. P. 12(b)(8) provides that a case may be dismissed if "another action is pending between the same parties for the same claim." The current case must be dismissed, as another action is currently pending between the same parties for the same claim in another jurisdiction. AnimalScan filed a praecipe for a writ of summons in the Commonwealth of Pennsylvania on August 29, 2016 against both Covert Aire and Michael Covert, the owner of Covert Aire, which was provided to this court. Under the law of Pennsylvania, the filing a writ of summons commences a civil action. See Pa. R. Civ. P. 1007(1) ("An action may be commenced by filing with the prothonotary ... a praecipe for a writ of summons."). Therefore, as another action is currently pending between the same parties for the same claim in the Commonwealth of Pennsylvania, this claim in South Carolina should be dismissed, as the parties have a matter pending to resolve this dispute elsewhere.

**III. CONCLUSION**

For the foregoing reasons, the complaint against Defendant, ANIMALSCAN, LLC, is dismissed pursuant to Rule 12(b)(2), (5), and (8), due to the lack of personal jurisdiction over AnimalScan, the insufficiency of service, and the pendency of another action,

IT IS SO ORDERED.

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JUDGE CARMEN MULLEN  
FOURTEENTH JUDICIAL CIRCUIT

Beaufort, South Carolina

March \_\_\_\_\_, 2017



Beaufort Common Pleas

**Case Caption:** Covert Aire Llc A South Carolina Limited Liability Company VS  
Animalscan Llc  
**Case Number:** 2016CP0702218  
**Type:** Order/Dismissal

So Ordered

s/Carmen T Mullen 2142