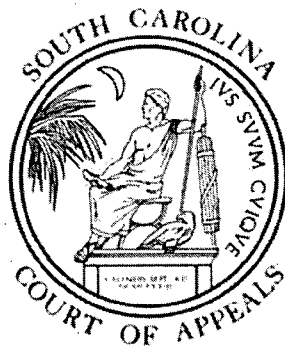


IN THE STATE OF SOUTH CAROLINA'S

Court of Appeals



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SC Court of Appeals

APPELLATE CASE NO. 2017-001448

McCullough, George C.

v.

Author Solutions, LLC

IN THE STATE OF SOUTH CAROLINA'S
Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas and General Sessions

R. Scott Sprouse Judge

Appellate Case No. 2017-001448

Appeal No. 2016-CP-04-00560

Civil Case No. 2015-CV-04101-03735

McCullough, George C. Pro Se

Appellant

v.

Author Solutions, LLC

Respondent

APPELLANT'S FORMAL PETITION FOR
REHEARING OF DECISION

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I. PRELIMINARY STATEMENT

A. Right to Rehearing of Decision.

The Appellant in the above and entitled civil case number, pursuant South Carolina Appeals Court Rule 221 and South Carolina Code of Laws §18-7-170 petitions the Court for a rehearing. Anderson County’s Court of Common Pleas and General Sessions’ Judge R. Scott Sprouse’s Order dated May 5, 2017 dismissed the cause of action against the Respondent Author Solutions, LLC(, herein after ASL,) upholding the Anderson County Summary Court’s Judge Wynee D. Eubank’s dismissal of the original claim for lack of jurisdiction. The Appellant failed to receive a written notice of entry of Order by mail from the issuing Circuit Court judge. Contact was made with the issuing court to attempt to attain a written Order on May 11, 2017. Rehearing was then filed May 17, 2017 with the Circuit Court, which on June 11, 2017 informed Appellant that request for a rehearing could not be accepted by the Circuit Court of appeals; delaying appropriate filing with the Court of Appeals.

STATEMENT OF ISSUES ON APPEAL

- A. IS DEFENDANT’S 2009 CONTRACT AND ITS ARBITRATION CLAUSE BINDING, SUPERCEDES ORIGINAL 2005 CONTRACT, AND FORM BASIS FOR DISMISSAL?
- B. WAS CIRCUIT COURT CORRECT TO UPHOLD THE MAGISTRATE COURT’S WRONGLY APPLYING SCMCR 4 (A) AND SC CODE § 15-7-30 (E)(1) IN DISMISSING APPELLANT’S CLAIM FOR LACK OF JURISDICTION?
- C. WAS RESPONDANT’S GENERAL APPEARANCE WAIVER AND SUBMISSION TO MAGISTRATE COURT’S JURISDICTION?
- D. WAS CIRCUIT COURT IN ERROR FOR FAILING TO RULE ON APPELLANT’S MOTION FOR ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE RESPONDENT?
- E. WAS CIRCUIT COURT IN ERROR WHEN NOT CONSIDERING MAGISTRATE TOLD AN UNTRUTH ABOUT APPELLANT’S NOT PRESENTING EVIDENCE IN THE REPLY ORDER AND AMENDED RETURN?

II. STATEMENT OF THE CASE

A. Breach of Contract Terms and Conditions.

¹SC Code § 15-7-30. Defense counsel cited this law in its Jurisdiction Challenge as support of its position against the lower court’s power to try case, id. Dfd’nt Jrst’dn at pp. 36-37 of Apndx. Scope of § 15-7-30 outlines factors to consider in determining venue of actions against resident and nonresident individuals and domestic and foreign corporations; SC Code § 15-5-150 refined these factors as State’s Long-arm or Door Closing Statute

1 May 10, 2005 a contractual agreement was entered with Trafford Publishing
2 Services for publishing of a book, “*Eternal Doctrine: The Bible in Sequence*”. The
3 company was located in Victoria, BC, Canada. It offered internet customers globally
4 print-on-demand self-publishing via the World Wide Web. By company advertisement
5 was it billed a convenient and cost effective alternative to vanity press and traditional
6 publishing. Several payments totaling \$4,749.00 were paid by electronic credit card
7 transfers to Trafford, and to its Talent Pool, in 2005-2006 for certain services available
8 for completion of a two volume set of the 1300 page book.

9 On purchase of Trafford Publishing April 1, 2009, ASL became contractually
10 obligated to fulfill terms and conditions of the publishing agreement made May 10, 2005
11 with newly acquired subsidiary Trafford. To gain third party consent³, the Respondent
12 forewent notifying Appellant by writing, in accordance with terms and conditions
13 outlined in the May 10, 2005 agreement, of its plans to enter the business combination.
14 Nor did it notify thereafter its intentions not to complete publishing in Victoria, BC. ASL
15 would not follow through on its contractual obligation to complete publishing in Canada
16 under a Canadian ISBN. Without notification had therefore contract terms been breached
17 by the Respondent, *Id.* Aplnt Exbh B, pp. 16.1-2, 16.4, at p. 31-34 of Apndx. For this
18 reason an immediate request for cancellation nor recovery of pay for services could be
19 made. Aplnt Exbh C at pp. 28-30 of Apndx. ASL denied recovery of pay on November
20 11, 2010. Cancellation was allowed. Hence, a contract was entered, the contractor took
21 pay for publishing services, but refused to perform those services unless it received more
22 additional pay from contractee. **Respondent acknowledges taking ownership of the**
23 **May 10, 2005 contract as its “performance obligation”, seeking to “purposely avail**
24 **itself” up until additional pay is refused and refund requested. Respondent insists**
25 **then that ownership of contract and obligation of its terms and conditions belong to**
26 **former owners of Trafford Publishing in Victoria, BC.** *[emphasis added]*

27 B. Mediation Efforts.

² *Deferred revenues* are revenues generated from upfront pay in advance of rendering services or goods. ASL has maintained that it acquired Trafford’s assets but not its liabilities that remain to the former owners. Cash receipts from Appellant created what is an assumed liability pending services for upfront pay that became ASL’s “performance obligation” on its purchase of Trafford Publishing. Assumed liabilities are such that cannot be avoided by a buyer by passing them on to the seller. The buyer ASL was obligated to complete performance of terms and conditions of the May 10, 2005 contract agreement until fulfillment, to include outstanding debt compensation for refund on termination. Apln’t Exbh B, pp. 16 (item 16), at p. 33 of Apndx.

³ *Third party contractual consent* required ASL enter business combination with Trafford’s former owners once written pre-closing consent was gained of third parties. This would allow plaintiff to exercise optional right of whether to terminate in accordance with terms of the May 10, 2005 agreement.

1 Two separate unsuccessful efforts were made to reconcile by negotiation, with the
2 Indiana Better Business Bureau(, hereinafter BBB,) and Indiana Attorney General who
3 intervened at his discretion as third party mediation. Once the BBB and Attorney General
4 were led by ASL to believe it in compliance with an agreed on mediation resolution, they
5 each ended their involvement, *Id.* Apln't Exbh C of Apndx at pp.24-27. Nevertheless,
6 thereafter the company soon resumed actions to gain additional pay; \$2,199 more for
7 marketing, and between \$1,499-\$5,500 more for completion of the second volume.
8 Purchase of these marketing services, and for production of a second book of the two
9 volumes, 700 pages maximum for each two, were previously made when the firm was in
10 Victoria, British Columbia; therefore, other additional pay was refused. What the
11 Respondent ASL sought were hundreds to thousands of dollars paid for services to
12 Trafford when it was in Victoria, BC location be repaid to it in its Indiana location for the
13 same exact services. Formal Complaint was therefore filed with the Anderson County
14 Summary Court on September 29, 2015 detailing "nonperformance of obligation",
15 fraudulence, and breached agreed upon mediation.

16 III. STATEMENT OF FACTS

17 A. South Carolina Magistrate's Court Jurisdiction.

18 Article V, The Judicial Department, of South Carolina's Constitution makes
19 provision for no other legal venue in the State to hear small claims as that presented
20 except Anderson County's Tenth Circuit Court of Appeals of South Carolina's Unified
21 Judicial System. Nor are any civil case causes of action below a threshold value of
22 \$75,000 in diversity lawsuits a matter a Federal court of the United States could exercise
23 jurisdiction, *Id.* 28 U.S. Code § 1332. The Summary Court is the Tenth Circuit Court of
24 Appeal's inferior court designated to hear small claims as that of the Appellant when
25 filed properly and timely. After notice and service were issued Defendant's counsel
26 entered on December 8, 2015, a Motion to Challenge Jurisdiction of the Anderson
27 County Summary Court; identifying § 15-7-30 and SCRM[C] 4 (a) as a basis. Dfdn't
28 Jrsd'tn Chln'g, pp. 1-2, at pp. 37-38 of Apndx. Court's clerk assured Plaintiff that the
29 court had State's constitutional power to proceed with the hearing. In reply to
30 Defendant's Jurisdictional Challenge, Appellant filed a motion for Amendment to
31 Complaint January 18, 2016 to correct errors and deficit not made available in original
32 formal written Complaint brief.

33 B. South Carolina Magistrate Court Procedure.

1 1. Trial set on the February 3, 2016 hearing date was to be that of a bench trial on the
2 merits of record. Yet, *supra*, when the court convened the inferior court's magistrate
3 conducted the proceeding as a hearing on the defendant's Jurisdictional Challenge. In her
4 opening words trial judge asserted necessitation to first address jurisdiction in order for
5 the court to move forward on merits of subject matter. Federal and State law has been
6 clear in establishing correct manner whereby defendants may challenge a court's
7 jurisdiction before a hearing. Main v. Thiboutot, 100 S. Ct. 2502 (1980). SCOTUS has
8 affirmed that it is upon courts themselves to prove jurisdiction ***prior to trial***, not
9 on plaintiff's or defendant's arguments during the normal course of a trial proceeding.
10 Acknowledged on appeal to the Circuit Court was it that counsel in behalf of a defendant
11 subject can make such claim without making an appearance prior to trial. However, its
12 written motion request must bar subject matter and be limited solely to issues of
13 jurisdiction. Should defense counsel appear in person to so defend it creates an automatic
14 waiver and submission to the forum's jurisdiction. ASL's defense counsel made such an
15 appearance on February 3, 2016 trial date.

16 As was so for the valid 2005 contract and the invalid 2009 contract, Judge
17 Eubanks the Summary Court magistrate morphed together the defendant's Jurisdictional
18 Challenge with the bench trial. February 3, 2016 was without a doubt to be a bench trial
19 hearing on subject matters, and not a hearing on jurisdictional matters. Therefore,
20 General Appearance of counsel before the court on this date waived in itself Defendant's
21 right to challenge jurisdiction; however, trial court judge selected to bother none to
22 redress issues with regards to automatic waiver on defense counsel's General
23 Appearance. Counsel's appearance was not a Special Appearance to challenge Summary
24 Court's jurisdiction.

25 2. From opening to close, tone of judge and trial was solidly partial toward defense
26 counsel; that is nonprofessional Pro Se litigant despairing professional officers of the
27 court. Little interest was expressed about plaintiff's grievance of complaint. Proceeding
28 was moreless what could be best said "kangarooed". Omitting brief recess, a proximate
29 five minutes was hearing time. Court's ethics are governed by rules. SCRMC Rule 13
30 and SCRCP Rule 43 require judges to fairly question parties for complete presentation of
31 claims, magistrate judge's actions failed to conform with procedural rules. When on
32 objection to inadmissibility of her and defense counsel's actions to maintain supersede of
33 the nonbinding contract's arbitration terms; Judge Eubanks abruptly, without
34 deliberation, responded unto retort, "[Y]ou are entitled to Due Process . . . You don't

1 understand, that’s in another country!” Magistrate would consider no facts or evidence
 2 proving court’s jurisdiction, nor objection to invalidity of the 2009 contract and its
 3 arbitration clause on which her decision to dismiss was based. Dfdn’t Exhbt 2, pp. 8-9, at
 4 pp.6-8 of Apndx. The magistrate judge never ruled on allowance to enter, or entered
 5 Plaintiff’s Amendment to Complaint satisfactorily proving Summary Court’s jurisdiction
 6 into record. Aplnt’s Exhbt A, pp.1-2, at pp. 35-36 of Apndx.

7 3. On appearance in Summary Court, defense counsel for ASL’s first action was to
 8 present the court with an April 3, 2009 contract, with its terms and conditions, to support
 9 its Jurisdictional Challenge. That contract had never been seen or agreed to by the
 10 Plaintiff, and in its totality is nonbinding and irrelevant. Terms of that contract included a
 11 nonbinding arbitration clause stipulating “MUST” resolution through the American
 12 Arbitration Association(, hereinafter AAA,) in Bloomington, Indiana where the
 13 Respondent is incorporated. Aplnt Exhb D, pp. 15, at pp. 14-15 of Apndx. Court’s
 14 magistrate ruled the April 3, 2009 contract superseded the cancelled May 10, 2005
 15 contract the Plaintiff originally agreed to and entered. Therefore, its arbitration clause
 16 was binding, and nulled court’s jurisdiction. Trial court’s actions to so allow stood by no
 17 means a novation⁴ of the 2005 contract.

18 D. Anderson County Court of Common Pleas and General Sessions.

19 Appeal was filed with the Court of Common Pleas and General Sessions on March 4,
 20 2016. This court is the appellate court for South Carolina’s tenth circuit. Respondent
 21 countered with another Motion to Dismiss for Lack of Jurisdiction on May 3, 2016
 22 opposing the Circuit Court’s jurisdiction, which the presiding Judge J. Cordell Maddox
 23 dismissed on August 31, 2016. Two wrongs are at center of this appeal that warrant the
 24 Appeals Court’s action to overturn the Circuit Court’s upholding the Magistrate Court’s
 25 dismissal. First of these is the Circuit Court upholding the inferior court’s action to
 26 wrongly apply laws of the South Carolina State Law Code when nullifying jurisdiction of
 27 the Magistrate Court. Secondly, Judge Sprouse of the Circuit Court’s decision to uphold
 28 the inferior court judge’s nullifying its jurisdiction based on an arbitration clause in an
 29 invalid and irrelevant contract’s terms and conditions as basis for dismissal. Hence,
 30 magistrate dismissed Appellant’s claim on the day of trail for a nonbinding
 31 arbitration clause; however, in the reply to the Circuit Court’s requested Order and

⁴ *Novation* is a contract invention that would allow parties to mutually agree voluntarily to extinguish an old contract and substitute it with a new. It cannot be performed within legal bounds without the tripartite of parties’ consent. Author Solutions, LLC presenting a 2009 contract during Summary Court’s trial wrongly implied novation of contract aptly occurred upon its purchase of Trafford Publishing Services. Appellant would not have and did not agree to that 2009 contract and its terms and conditions.

1 Amended Return upon Remand magistrate stated irrelevant State Law Codes § 15-
 2 7-30 and SCRM[C] 4 (a) as dismissal basis. Apln't Exhb E, Sum'ry Crd Ord'r, pp.2-5,
 3 and Amn'd Rtn, pp. 6-7; C'rct Crd F'rms 4, pp. 1 and 1-3, of pp. 1-10 of Apndx.

4 IV. ARGUMENTS

5 IGNORED STATE LAW CODES
 6 DENIED APPELLANT DUE PROCESS RIGHTS

7 A. South Carolina Rules of the Magistrate Court (SCRMC).

8 1. In her Order reply to the Court of Common Pleas and General Sessions, Judge
 9 Eubanks gave three particular reasons for her action to dismiss. Among them to first was
 10 Rule 4 (a) of SCRMC that states:

11 *Rule 4. Filing civil action; action against corporation; long arm statute.*
 12 *(a) A civil action may be filed in any magistrates court in the county in which at*
 13 *least one defendant resides or where the most substantial part of the cause of*
 14 *action arose, except that civil actions against ***domestic corporations*** may*
 15 *be filed in the county where such corporation shall have its principal place of*
 16 *business.*

17 2. The magistrate, Judge Eubanks, selected to cite only a part of that rule thereby
 18 invocation of Rule 4 (a), as was discussed in the Respondent's December 8, 2015
 19 Jurisdictional Challenge to the Summary Court, *Id.* Dfnd't Jrsd'tn Chln'g, pp. 1-2, of
 20 Apndx pp. 37-38; Plnt'f Frml Brf pp. 6 (ln 5) thru 8 (ln 27). Sublet (a) of Rule 4 is with
 21 regards to litigation between individuals or corporations within the State of South
 22 Carolina (; i.e. domestic). The Long Arm or Door Closing Statute became a legal
 23 construct for courts to determine suitability with regards to reasonable convenience of
 24 venues, diversity of forums, and diversity of States' laws within the United Sates, or
 25 foreign States abroad. Remainder of the rule governs disputes arising outside of the State
 26 (; i.e. foreign), and it is as follows:

27 *(b) A civil action may be filed in any magistrates court in the county in which*
 28 *the plaintiff resides or where the cause of action arose ***when the defendant*
 29 *does not reside in this State*** and jurisdiction is based upon S.C. Code Ann. §*
 30 *36-2-803. [emphasis added]*

31 Sublet (b) is imperative for the State Long Arm Statute, and more so with regards to
 32 cases as that presented before and dismissed by her in the Summary Court on February 3,
 33 2016. A non-resident of South Carolina, the Respondent ASL is a "foreign" limited
 34 liability company incorporated outside the State, having its principle place of business in

1 Bloomington, Indiana; therefore, thereby Rule 4 (b) and other State Statutes does
2 Summary Court magistrates have exercise of personal as well as subject matter
3 jurisdiction in the civil case action presented before it. S.C. Code Ann. § 36-2-803 itself
4 is as follows:

5 *SECTION 36-2-803. Personal jurisdiction based upon conduct.(A) A court may*
6 *exercise personal jurisdiction over a person who acts directly or by an agent as to*
7 *a cause of action arising from the person's: (1) transacting any business in this*
8 *State; [emphasis added]*

9 Courts define and treat every corporate business, as is the Respondent ASL, same as
10 individual persons in lawsuits. Personal jurisdiction, *in personam* as opposed to *in-rem*,
11 of the Summary Court is thus established by this statutory code. Subject matter
12 jurisdiction is established by virtue of the cause being a civil action falling within the
13 small claims' forum for damages of \$7,500 or less. State Law giving circuit court
14 magistrates subject matter jurisdiction is:

15 *S.C. Code § 22-3-10. Concurrent civil jurisdiction.*
16 *Magistrates have concurrent civil jurisdiction in the following cases:*
17 *(1) in actions arising ***on contracts*** for the recovery of money only, if the*
18 *sum claimed does not exceed seven thousand five hundred dollars; [emphasis*
19 *added]*

20 B. South Carolina Code of Laws Title 15 Civil Remedies and Procedures Chapter Venue
21 Section 15-7-30 (E)(1).

22 1. Item #2 of her Amended Return to the Court of Common Pleas specifying basis for
23 dismissal invoked § 15-7-30⁴ (E)(1), a law code addressing domestic entities within the
24 State of South Carolina. The Respondent ASL would correctly be defined as a “foreign”
25 limited liability company thereby § 15-7-30 A (7) of the title of that same Statute. Both
26 statutory codes are as follows:

27 *(E) A civil action tried pursuant to this section against a domestic corporation,*
28 *domestic limited partnership, domestic limited liability company, or domestic*
29 *limited liability partnership, must be brought and tried in the county in which the:*
30 *(1) corporation, limited partnership, limited liability company, or limited liability*
31 *partnership has its principal place of business at the time the cause of action*
32 *arose;*

33 2. In Comity, such laws reflect the necessity laid on States to take recognition of
34 residence complacency of multiple owners of business partnerships being possibly
35 distributed in any number of locations domestically or abroad (; i.e. foreign), and what
36 proportionate sum of liability each must rightly assume that might could act to create
37 jurisdictional issues. ASL is a “foreign” limited liability company as correctly defined by

1 § 15-7-30 A (7) as so,

2 (A) As used in this section:

3 (7) "Foreign limited liability company" means a "foreign limited liability
4 partnership" as defined in Section 33-41-1150 with its principal place of
5 business ***outside this State***.

6 Magistrate either intentionally frustrated the issues or unintelligibly mistook "foreign" to
7 apply only to international abroad States as opposed to states foreign to states within the
8 United States, and "domestic" to apply only to within the United States as opposed to
9 domestic within the State of South Carolina. Section 33-41-1150 does not at all involve
10 matters concerning jurisdiction, but acts to instead stir clear the State of South Carolina's
11 courts from disputes that might arise among partners in a foreign partnership created
12 outside of it, though licensed to conduct business herein the State. The Circuit Court of
13 appeals did not consider in its ruling that Federal nor State law codes Respondent
14 counsel and magistrate identified as basis for dismissal are in any way relevant to
15 jurisdictional power of the Summary Court. Nor did it weigh the critical fact that
16 the discussed Federal and State law codes on which the Appellant based his appeal
17 are applicable Statutes clearly giving the Anderson County Summary Court and its
18 magistrates jurisdiction. [emphasis added]

19 IGNORED ESTABLISHED CASE LAW
20 PRECEDENTS DENIED APPELLENT DUE PROCESS

21 A. South Carolina Long-arm Statute.

22 ASL is not new to lawsuits filed against it in other states outside of the state of
23 Indiana. A lengthy list of Federal and foreign State litigation cases have been brought in
24 high profile class action suits against the corporate entity in venues outside of the state of
25 Indiana since its inception. Acknowledged is South Carolina court's "Door Closing
26 Statute" apparatus that closes the door on or disallows cases of diversity not within
27 exercise power of the State's "Long-arm Statute". However, the South Carolina appellate
28 in a historical case of national interest, Moosally v. W.W. Norton Company, 594 S.E. 2d
29 878 (S.C. App. 2004), rendered in its decision:

30 *Appellants assert the trial court erred in determining they were barred from*
31 *bringing suit against W.W. Norton by South Carolina's door closing statute.*
32 *We agree.*

33 *South Carolina's door closing statute reads:*

1 *An action against a corporation created by or under the laws of ***any*
 2 *other state***, government[,] or country may be brought in the circuit*
 3 *court:*

4 *(1) By any resident of this State for any cause of action; or*

5 *(2) By a plaintiff not a resident of this State when the cause of action shall*
 6 *have arisen or the subject of the action shall be situated within this State.*

7 *S.C. Code Ann. § 15-5-150 (1977). Initially, the parties incorrectly frame the*
 8 *issue of the door closing statute as one of subject matter jurisdiction.*

9 *Although there has been some confusion on this matter, our Supreme Court*
 10 *recently clarified: “§ 15-5-150 does not involve subject matter jurisdiction but*
 11 *rather determines the capacity of a party to sue.” Farmer v. Monsanto Corp.,*
 12 *353 S.C. 553, 557, 579 S.E.2d 325, 327 (2003) (overruling previous holding*
 13 *otherwise).] Pln’tf Frml Brf at p. 6 (ln 19-24).*

14 ASL is a corporation “foreign” to the State of South Carolina. In error, the magistrate
 15 judge in the reply Order either intentionally or unintelligibly asserted the Respondent to
 16 be that of a “domestic” entity. As a foreign based business outside of South Carolina
 17 would the cause of action against the Respondent ASL be subject to its constitutional
 18 laws. More readily, S.C. Code Ann. § 15-5-150 is of appropriate enforceability for the
 19 State Long-Arm statute governing foreign firms. Discussed in briefs submitted to the
 20 Circuit Court was how this is a comprehensive State statute setting jurisdiction over
 21 defendant subjects of foreign states, foreign governments, and foreign countries.
 22 Including not only liabilities for personal injuries, but foregoes this limitation to
 23 encompass any sustained injuries or damages. And, therein has it a provisional clause to
 24 guarantee even non-resident citizens of the State a right to due process of the law against
 25 such foreign corporations. **Consideration was not given to this key State law proving**
 26 **the Summary Court’s specific personal jurisdiction, in personam.***[emphasis added]*

27 B. Federal Long-arm Statute and Internet.

28 Statutes and legal authorities with regards to diversity are distinctive and
 29 clairvoyant on Federal and State level. Unanimously have states adopted SCOTUS’
 30 measures to resolve jurisdictional issues. Its “Three Pronged Test” implemented has been
 31 effective toward retaining fair play, substantial justice, and protecting parties’ individual
 32 constitutional Fourteenth Amendment Due Process rights. Paramount a case involving
 33 jurisdictional issues and the Internet was Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F.
 34 Supp. 1119 (W.D. Pa. 1997). Nationally did Zippo v.’s ruling become recognized for
 35 establishing case precedents for every diversity case between states involving defendant
 36 corporations reaching out to forum States by way of the Internet. In Zippo v., divide over

1 power of an out of state forum to entertain Internet cases, a borderless communication
 2 medium, circumvented application of a three prong test for jurisdiction. Pennsylvania's
 3 Federal appellate ruled:

4 *A three-pronged test has emerged for determining whether the exercise of*
 5 *specific personal jurisdiction over a non-resident defendant is appropriate:*
 6 *(1) the defendant must have sufficient "minimum contacts" with the forum*
 7 *state, (2) the claim asserted against the defendant must arise out of those*
 8 *contacts, and (3) the exercise of jurisdiction must be reasonable. Id. The*
 9 *"Constitutional touchstone" of the minimum contacts analysis is embodied in*
 10 *the first prong, "whether the defendant purposefully established" contacts*
 11 *with the forum state. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475, 105*
 12 *S.Ct. 2174, 2183-84, 85 L.Ed.2d 528 (1985) (citing International Shoe Co. v.*
 13 *Washington, 326 U.S. 310, 319, 66 S.Ct. 154, 159- 60, 90 L.Ed. 95*
 14 *(1945)). Defendants who "reach out beyond one state" and create*
 15 *continuing relationships and obligations with the citizens of another state*
 16 *are subject to regulation and sanctions in the other State for consequences*
 17 *of their actions." Id. (citing Travelers Health Assn. v. Virginia, 339 U.S. 643,*
 18 *647, 70 S.Ct. 927, 929, 94 L.Ed. 1154 (1950)). "[T]he foreseeability that is*
 19 *critical to the due process analysis is ... that the defendant's conduct and*
 20 *connection with the forum State are such that he should reasonably expect*
 21 *to be haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444*
 22 *U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980). This protects*
 23 *defendants from being forced to answer for their actions in a foreign*
 24 *jurisdiction based on "random, fortuitous[,] or attenuated" contacts. Keeton*
 25 *v. Hustler Magazine, Inc., 465 U.S. 770, 774, 104 S.Ct. 1473, 1478, 79*
 26 *L.Ed.2d 790 (1984). "Jurisdiction is proper, however, where contacts*
 27 *proximately result from actions by the defendant himself that create a*
 28 *'substantial connection' with the forum State." Burger King, 471 U.S. at*
 29 *475, 105 S.Ct. at 2183-84 (citing McGee v. International Life Insurance Co.,*
 30 *355 U.S. 220, 223, 78 S.Ct. 199, 201, 2 L.Ed.2d 223 (1957)).][emphasis*
 31 *added]*

32 *We conclude that this Court may appropriately exercise personal jurisdiction*
 33 *over the Defendant and that venue is proper . . .*

34 What's at issue is the Respondent's breach on refusing to complete its "performance
 35 obligation", and refusing refund. Internet and jurisdiction is mildly of issue.
 36 Requirements of the test are met to prove Summary Court's jurisdiction in this case
 37 involving commerce and the Internet. Corporate businesses are not reaching out to any
 38 particular state but every State when doing ecommerce via the World Wide Web. With
 39 such well hailed litigation establishing common law precedent between States having to
 40 do with jurisdictional issues, magistrate had a plethora of notable cases and statutes
 41 accessible for a method to establish correct precedents for her ruling. None were though

considered nor heeded by the magistrate or the Circuit Court of appeals judge.

INVALID CONTRACT’S ARBITRATION CLAUSE
DID NOT FORM BASIS FOR DISMISSAL

A. Novation of Contract.

1. Magistrate judge maintained an untrue assertion that a novation of contract occurred with the original May 10, 2005 contract, *vinculum juris*, and the April 3, 2009 invalid contract. Material existence of the latter became only disclosed to the Appellant when produced of Respondent’s counsel on the trial date. In Russ v Barnes, 329 A.2d 767, 23 Md.App. 691, Maryland’s state court of appeals rendered:

Analyzing appellees' assertion that . . . the contract effected a novation, we must consider the necessary elements of that legal metamorphosis:

“ ‘A ‘novation’ is a new contractual relation, and contains four essential requisites: (1) A previous valid obligation; (2) the agreement of all the parties to the new contract; (3) the validity of such new contract; and (4) the extinguishment of the old contract, by the substitution for it of the new one’ ”
Balt. Academy of the Visitation v. Schapiro, 169 Md. 332, 338-339 quoting Dist. Nat. Bank of Wash. v. Mordecai, 133 Md. 419.

‘A novation “necessarily involves the immediate discharge of an old debt or duty, or part of it, and the creation of a new one. There is no novation until this has been accomplished.”

A previous valid “performance obligation”⁵ existed, as of the May 10, 2005 signed and dated contract, yet not any other three of the four requirements were met of ASL to prove novation, creating a new duty, ever occurred. Appellant altogether canceled the 2005 contract itself. Respondent’s counsel and the magistrate judge insist it be believed that the Appellant knowingly and willfully agreed to a novation of contract, without producing written proof. As pretentious proof, Magistrate and Respondent counsel by slide forced a written unsigned copy of the April 3, 2009 contract and its terms and conditions on the Appellant that he had never seen before, as if to imply he had agreed to it. Simple facts were collusively and intentionally frustrated thereby their actions. **Yet the Circuit Court of appeals did not consider the fact that defense counsel and magistrate clearly gave an outright untruth about the signing of a new contract, with its terms and conditions, that never occurred.** [emphasis added]

B. American Arbitration Association’s small claims option.

1. The magistrate had leeway to therefore insist validity of a non-binding arbitration clause included in the April 3, 2009 contract’s terms, stipulating “MUST” arbitration

1 with the state of Indiana's American Arbitration Association (, herein on AAA). This was
2 adequately proven untrue, *Id.* Dfn't Exhb 2, pp. 6-7, at pp. 22-23 of Apndx. AAA, in
3 avoidance of usurping powers of the courts, specifically states in a plain language of its
4 Consumer Arbitration Rules, *Id.* rule R-9 (a),

5 *"If a party's claim is within the jurisdiction of a small claims court, either party*
6 *may choose to take the claim to that court instead of arbitration as follows: (a)*
7 *the parties may take their claim to *** small claims court*** without first filing*
8 *with AAA." [emphasis added]*

9 Brought up before the Circuit Court of appeals was how Respondent counsel's
10 Jurisdictional Challenge was argued solely on the premise that counsel could incline the
11 magistrate of South Carolina's Summary Court to nullify its jurisdiction as of the AAA
12 rule reference in the invalid April 3, 2009 contract. The Circuit Court of appeals gave
13 no recognition to invalidity of the April 3, 2009 contract in its totality, nor
14 recognition of AAA's small claims court option. It likewise pretended to be
15 unintelligible about interpret of the plain language option in its actions to dismiss.
16 *[emphasis added]*

17 MOTION FOR ENTRY OF DEFAULT AND
18 DEFAULT JUDGMENT RECEIVED NO RULING

19 A. Failed Court Appearances.

20 1. Jurisdiction of the Court was established on the Respondent counsel's Special
21 Appearance to challenge became that of a General Appearance when upon its defense of
22 ASL on the merits on February 3, 2016 which, *supra*, in itself was submission to the
23 Summary Court venue and forum, and gave automatic waiver thereto challenge thereof
24 jurisdiction. After this was argued in the Appellant's initial Formal Brief before the
25 Circuit Court of appeals, defense counsel made no further appearances so to avoid the
26 automatic waiver to challenge jurisdiction. The Circuit Court of appeals gave no
27 recognition of argument of automatic waiver when it was brought up before it.

28 2. The Respondent was not present for scheduled or rescheduled hearing dates in the
29 Circuit Court. On the Respondent's failure to be present during the May 31, 2016 hearing
30 date the Appellant moved the Circuit Court on August 8, 2016 for Entry of Default and
31 Default Judgment against the Respondent. Aplnt Exhb E at pp. 11-13 of Apndx. But, the
32 Appellant's formal written Motion for Entry of Default and Default Judgment
33 received no ruling from the Circuit Court judge.

1 On three rescheduled rehearings was the Respondent's presence not there; on
2 August 25, 2016, December 1, 2016, and March 30, 2017 rehearings on its own Motion
3 to Dismiss for Lack of Jurisdiction. **Yet, regardless of each failure to appear the**
4 **Circuit Court of appeals continued with multiple reschedules before ruling to**
5 **dismiss against the Appellant on May 5, 2017.** [emphasis added]

6 EVIDENCE REMOVED

7 A. Suppression of Evidence.

8 What else other Judge Eubanks returned for an answer to the Court of Common
9 Pleas and General Sessions' requested Order and Amended Return wasn't of weighing
10 fact. Id. Apln't Exhb E, Sum'ry Crt Ord'r, pp.2-5, and Amn'd Rtn, pp. 6-7. The
11 Respondent's Exhibit 1 (D# 1) and its Exhibit 2 presented in Summary Court on the day
12 of the trial are holistically irrelevant and non-binding. Apln't Frml Brf at pp. 9&10.
13 *Supra*, Appellant was disallowed to speak, present evidence, raise arguments in his
14 behalf, nor was questioned of Judge Eubanks for thorough a presentation of his claim. A
15 large volume of evidence was submitted for the court's review in the initial Formal
16 Complaint submission. That included:

- 17
- 18 • Complaint filed of Complainant, dated September 9, 2015.
 - 19 • Complainant's Exhibit A, Trafford Publishing Guide, copyrighted 2005 with
20 (1) copy of an original contract Publishing Agreement, entered May10,
21 2005, pp. 16 (16.1-2 and 16.4).
 - 22 • Payment receipts of proof of pay made to Trafford.
 - 23 • Electronic flash drive containing (1) copy of *Eternal Doctrine: The Bible in*
24 *Sequence* to explain delay in editing process.
 - 25 • Complainant's Exhibit B, contract cancellation correspondence of June 22,
26 2010
 - 27 • Exhibits of correspondence letters establishing "minimum contacts" of ASL
in its repeated demands for further pay for services previously paid.

28 Not any of these were considered for deliberation by the magistrate, or mentioned at all
29 on the trial date. She overlooked as if no such evidence had ever been submitted, and
30 made no remarks on them. She stated in the Amended Return to the Court of Common
31 Pleas and General Sessions,

32 "Evidence presented in Court on the day of trial:

33 Appellant: No evidence

34 Respondent: D#1 – Services offered; Prepare for Publication; Trafford
35 Publishing Terms and Conditions." Apndx at p. 5 Amn'd Rtn.

THE STATE OF SOUTH CAROLINA
Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas and General Sessions

R. Scott Sprouse Judge

Appellate Case No. 20017-001448

Appeal No. 2016-CP-04-00560

Civil Case No. 2015-CV-04101-03735

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SC Court of Appeals

George C. McCullough, Pro Se Appellant

v.

Author Solutions Respondent

PROOF OF SERVICE

I certify that I have served the Appellant's Formal Petition for Rehearing by depositing a copy of it in the United States Mail, postage prepaid, on October 9, 2017 addressed to: Honorable Jenny A. Kitchings, Clerk of Court, P.O. Box 11629, Columbia, SC 29211; and Author Solutions, LLC, 1663 Liberty Dr., Bloomington, Indiana 47403.

October 9, 2017

George C. McCullough
1106 Erskine Rd
Anderson, South Carolina 29621
(864) 642-1867
Pro Se

Signed George C. McCullough
George C. McCullough, Appellant (Pro Se)

on this 16th day of October, 2017

George C. McCullough
1106 Erskine Rd
Anderson, SC 29621
Email: George012@Hughes.Net
Phone: (864) 642-1867

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SC Court of Appeals

Honorable Jenny Abbot Kitchings
Clerk of the South Carolina Court of Appeals
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George C. McCullough v. Author Solutions, LLC Case No. 2016-CP-04-00560

Dear Honorable Jenny Abbot Kitchings:

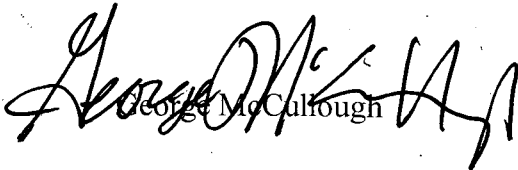
this letter of enclosure is with regards to South Carolina Appeals Court Rule 211 which requires (15) copies of an Appellant's Final Briefs. Inside the USPS shipping mailer this letter was forwarded in are those copies, one unbound and fourteen bound.

One copy of this brief has already been served on the Respondent Author Solutions, LLC October 13, 2017 by USPS mail.

For any matters of concern with this letter, please write the above mailing address, or call the phone number listed. Quickest way of contact is at the email address given.

I thank you, and apologize in advance if this request is of an inconvenience.

Sincerely,


George C. McCullough

October 16, 2017

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TO: Jenny A. Kitchings
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