

TABLE OF CONTENTS

Table of Authorities ..... ii

Preliminary Statement..... 1

Statement of Issues on Appeal ..... 1

Statement of the Case..... 1-3

Facts ..... 3-5

Arguments..... 5-14

Conclusion ..... 14

**RECEIVED**  
JAN 31 2018  
SC Court of Appeals

CASES

Moosally v. W. W. Norton Company, 594 S.E.2d 878 (S.C. App. 2004) .....8

Russ v Barnes, 329 A.2d 767, 23 Md.App. 691 (1974)..... 11

Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119 (W.D. Pa. 1997) ..... 9-10

STATUTES

S.C. Code Ann. § 15-5-150..... 1, 9

S.C. Code Ann. § 15-5-130 A (7) and (E)(1).....1, 3, 7

SC Code Ann § 22-3-10 (1).....7

SC Code Ann § 36-2-803.....6

SCMCR 4 (a) and (b).....1, 3, 5-7

28 U.S. Code § 1332.....3

OTHER AUTHORITIES

American Arbitration Association’s Consumer Arbitration Rules (R-9 (a))..... Apndx 14-15

APPENDIX

Appellant’s Exhibit A, Summary Court: Case History..... 34-35

Appellant’s Exhibit B, Trafford Publishing Terms and Conditions (2005)..... 30-33

Appellant’s Exhibit C, contract cancellation correspondence ..... 23-29

Appellant’s Exhibit D, American Arbitration Association’s Consumer Arbitration  
Rules R-9 (a) ..... 14-15

Appellant’s Exhibit E, Tenth Circuit Court records ..... 1-13

Defendant’s Exhibit 2, Trafford Publishing Terms and Conditions (2009) ..... 16-22

Defendant’s Jurisdiction Challenge ..... 36-37

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. DEFENDANT’S 2009 CONTRACT AND ITS ARBITRATION CLAUSE IS NOT BINDING, NOR SUPERCEDES ORIGINAL 2005 CONTRACT, AND FORMS NO BASIS FOR DISMISSAL.

B. CIRCUIT COURT WAS ERRANT TO UPHOLD THE MAGISTRATE COURT’S APPLYING SCMCR 4 (A) AND SC CODE § 15-7-30 (E)(1)<sup>1</sup> IN DISMISSING APPELLANT’S CLAIM FOR LACK OF JURISDICTION.

C. RESPONDANT COUNSEL’S GENERAL APPEARANCE WAS WAIVER AND SUBMISSION TO MAGISTRATE COURT’S JURISDICTION.

D. CIRCUIT COURT WAS IN ERROR FOR FAILING TO RULE ON APPELLANT’S MOTION FOR ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE RESPONDENT.

E. CIRCUIT COURT WAS 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.

<sup>1</sup>SC 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 Jrstd’n 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. Deferred revenue<sup>2</sup> payments totaling \$4,749.00 were paid by electronic credit  
7 card transfers to Trafford Publishing, and to its Talent Pool, in 2005-2006 for certain  
8 services available for completion of a two volume set of books for the 1300 page  
9 manuscript. At the time Trafford out of Victoria was only attainable non-traditional  
10 publisher of its kind that would offer publishing services for books of that size volume.

11 On purchase of Trafford Publishing April 1, 2009, ASL became contractually  
12 obligated to fulfill terms and conditions of the publishing agreement made May 10, 2005  
13 with newly acquired subsidiary Trafford. To gain third party consent<sup>3</sup>, the Respondent  
14 forewent notifying Appellant by writing, in accordance with terms and conditions  
15 outlined in the May 10, 2005 agreement, of its plans to enter the business combination.  
16 ASL failed to notify thereafter its intent not to complete publishing in Victoria, BC, and  
17 failed to notify Appellant of an April 1, 2009 to November 10, 2010 **window for**  
18 **recovery of payments by fund**. Aplnt Exbh C at p. 26 of Apndx. ASL would not follow  
19 through on its contractual "duty" to complete publishing in Canada under a Canadian  
20 ISBN. Without notification had therefore contract terms been breached by Respondent,  
21 *Id.* Aplnt Exbh B, pp. 16.1-2, 16.4, at p. 31-34 of Apndx. Immediate request for  
22 cancellation nor recovery of payments could be made per notification failure. Aplnt Exbh  
23 C at pp. 28-29 of Apndx. ASL denied recovery of payments November 10, 2010 **after**  
24 **confirming Appellant's eligibility for refund**; stating to the Indiana Better Business  
25 Bureau(, hereinafter BBB,) and Indiana Attorney General( hereinafter AG) window for  
26 refund had closed. Aplnt Exbh C at pp. 27 of Apndx. Respondent, *supra*, was never  
27 notified of such a window. Should he have been, through that window the Appellant

<sup>2</sup> *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.

<sup>3</sup> *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 would have immediately requested refund. Cancellation was allowed. Hence, a contract  
2 was entered, the contractor took pay for publishing services, but refused to perform those  
3 services unless it received more additional pay from contractee: **Respondent**  
4 **acknowledges taking ownership of the May 10, 2005 contract as its “duty” or**  
5 **“performance obligation”, seeking to “purposely avail” itself up until additional pay**  
6 **was refused and refund requested. Respondent insists then that ownership of**  
7 **contract and obligation of its terms and conditions belong to former owners of**  
8 **Trafford Publishing in Victoria, BC.** [emphasis added]

9 B. Mediation Efforts.

10 Two separate unsuccessful efforts were made to reconcile by negotiation, with the  
11 Indiana BBB and Indiana AG who intervened at his discretion as third party mediation;  
12 noting ASL’s history of deceptive practices. Once the BBB and Attorney General were  
13 led by ASL to believe it in compliance with an agreed on mediation resolution, they each  
14 ended their involvement, *Id.* Apn’t Exbh C at pp.24-27 of Apndx. Nevertheless,  
15 thereafter the company soon resumed actions to “purposely avail” itself by gaining  
16 additional pay; \$2,199 more for marketing, and between \$1,499-\$5,500 more for  
17 completion of the second volume. Purchase of these marketing services, and for  
18 production of a second book of the two volumes, 650 pages per book, within their 700  
19 page maximum, were previously made when the firm was in Victoria, British Columbia;  
20 therefore, other additional pay was refused. What the Respondent ASL sought were  
21 hundreds to thousands of dollars paid for services to Trafford when in Victoria, BC  
22 location be repaid it in its Indiana location for the same exact services. Formal Complaint  
23 was therefore filed with the Anderson County Summary Court on September 29, 2015  
24 detailing “nonperformance of obligation”, fraudulence, and breached agreed upon  
25 mediation.

26 III. STATEMENT OF FACTS

27 A. South Carolina Magistrate’s Court Jurisdiction.

28 Article V, The Judicial Department, of South Carolina’s Constitution makes  
29 provision for no other legal venue in the State to hear small claims as that presented  
30 except Anderson County’s Tenth Circuit Court of Appeals of South Carolina’s Unified  
31 Judicial System. Nor are any civil case causes of action below a threshold value of  
32 \$75,000 in diversity lawsuits a matter a Federal court of the United States could exercise  
33 jurisdiction, *Id.* 28 U.S. Code § 1332. The Summary Court is the Tenth Circuit Court of

1 Appeal's inferior court designated to hear small claims as that of the Appellant when  
2 filed properly and timely. After notice and service were issued Defendant's counsel  
3 entered on December 8, 2015, a Motion to Challenge Jurisdiction of the Anderson  
4 County Summary Court; identifying § 15-7-30 and SCRM[C] 4 (a) as a basis. Dfdn't  
5 Jrsd'tn Chln'g, pp. 1-2, at pp. 37-38 of Apndx. Court's clerk assured Plaintiff that the  
6 court had State's constitutional power to proceed with the hearing. In reply to  
7 Defendant's Jurisdiction Challenge, Appellant filed a motion for Amendment to  
8 Complaint January 18, 2016 to correct errors and deficit not made available in original  
9 formal written Complaint brief.

10 B. South Carolina Magistrate Court Procedure.

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

26 As was so for the valid 2005 contract and the invalid 2009 contract, Judge  
27 Eubanks the Summary Court magistrate morphed together the defendant's Jurisdiction  
28 Challenge with the bench trial. February 3, 2016 was without a doubt to be a bench trial  
29 hearing on subject matters, and not a hearing on jurisdictional matters. Therefore,  
30 General Appearance of counsel before the court on this date waived in itself Defendant's  
31 right to challenge jurisdiction; however, trial court judge selected to bother none to  
32 redress issues with regards to automatic waiver on defense counsel's General  
33 Appearance. Counsel's appearance was not a Special Appearance to challenge Summary  
34 Court's jurisdiction.

1 2. From opening to close, tone of judge and trial was solidly partial toward defense  
2 counsel; that is nonprofessional Pro Se litigant despairing professional officers of the  
3 court. Little interest was expressed about plaintiff's grievance of complaint. Proceeding  
4 was moreless what could be best said "kangarooed". Omitting brief recess, a proximate  
5 five minutes was hearing's runtime. Court's ethics are governed by rules. SCRMC Rule  
6 13 and SCRCR Rule 43 require judges to fairly question parties for complete presentation  
7 of claims, magistrate judge's actions failed to conform with procedural rules. When on  
8 objection to inadmissibility of her and defense counsel's actions to maintain supersede of  
9 the nonbinding contract's arbitration terms; Judge Eubanks abruptly, without  
10 deliberation, responded unto retort, "[Y]ou are entitled to Due Process . . . You don't  
11 understand, that's in another country!" Magistrate would consider no facts or evidence  
12 proving court's jurisdiction, nor objection to invalidity of the 2009 contract and its  
13 arbitration clause on which her decision to dismiss was based. Dfdn't Exhbt 2, pp. 8-9, at  
14 pp. 6-8 of Apndx. The magistrate judge never ruled on allowance to enter, or entered  
15 Plaintiff's Amendment to Complaint satisfactorily proving Summary Court's jurisdiction  
16 into record. Aplnt's Exhbt A, pp.1-2, at pp. 35-36 of Apndx.

17 3. On appearance in Summary Court, defense counsel for ASL's first action was to  
18 present the court with the April 3, 2009 contract, with its terms and conditions, to support  
19 its Jurisdiction Challenge. That contract had never been seen or agreed to by Plaintiff,  
20 and in its totality is nonbinding and irrelevant. Terms of that contract included a  
21 nonbinding arbitration clause stipulating "MUST" resolution through the American  
22 Arbitration Association(, hereinafter AAA,) in Bloomington, Indiana where the  
23 Respondent is incorporated. Aplnt Exhb D, pp. 15, at pp. 14-15 of Apndx. Court's  
24 magistrate ruled the April 3, 2009 contract superseded cancelled May 10, 2005 contract  
25 Plaintiff originally agreed to and entered. Therefore, its arbitration clause was binding,  
26 and nulled court's jurisdiction. Defendant counsel on the spur improvised a non-binding  
27 escape clause that magistrate collusively made binding. Trial court's actions to so allow  
28 stood by no means a novation<sup>4</sup> of the 2005 contract.

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

30 Appeal was filed with the Court of Common Pleas and General Sessions on March 4,  
31 2016. This court is the appellate court for South Carolina's tenth circuit. Respondent

<sup>4</sup> *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 and magistrate's imposing on 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 countered with another Motion to Dismiss for Lack of Jurisdiction on May 3, 2016  
 2 opposing the Circuit Court's jurisdiction, which the presiding judge the Honorable J.  
 3 Cordell Maddox dismissed on August 31, 2016. Two wrongs are at center of this appeal  
 4 that warrant the Appeals Court's action to overturn the Circuit Court's upholding the  
 5 Magistrate Court's dismissal. First of these is the Circuit Court upholding the inferior  
 6 court's action to wrongly apply laws of the South Carolina State Law Code when  
 7 nullifying jurisdiction of the Magistrate Court. Secondly, Judge Sprouse of the Circuit  
 8 Court's decision to uphold the inferior court judge's nullifying its jurisdiction based on  
 9 an arbitration clause in an invalid and irrelevant contract's terms and conditions as basis  
 10 for dismissal. Hence, magistrate addressing the merits dismissed Appellant's claim  
 11 on the day of trial for a nonbinding arbitration clause; however, in the reply to the  
 12 Circuit Court's requested Order and Amended Return upon Remand magistrate  
 13 stated irrelevant State Law Codes § 15-7-30 (E) (1) and SCRMC 4 (a) as dismissal  
 14 basis. Apln't Exhb E, Sum'ry Cr't Ord'r, pp.2-5, and Amn'd Rtn, pp. 6-7; C'rt Cr't F'rms  
 15 4, pp. 1 and 1-3 at pp. 1-10 of Apndx.

#### 16 IV. ARGUMENTS

##### 17 IGNORED STATE LAW CODES 18 DENIED APPELLANT DUE PROCESS RIGHTS

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

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

23 *Rule 4. Filing civil action; action against corporation; long arm statute.*

24 *(a) A civil action may be filed in any magistrates court in the county in which at*  
 25 *least one defendant resides or where the most substantial part of the cause of*  
 26 *action arose, except that civil actions against \*\*\*domestic corporations\*\*\* may*  
 27 *be filed in the county where such corporation shall have its principal place of*  
 28 *business.*

29 2. The magistrate, Judge Eubanks, selected to cite only a part of that rule thereby  
 30 invocation of Rule 4 (a), as was discussed in the Respondent's December 8, 2015  
 31 Jurisdiction Challenge to the Summary Court, *Id.* Dfnd't Jrsd'tn Chln'g, pp. 1-2 at pp.  
 32 37-38 of Apndx ; Plnt'f Frml Brf pp. 6 (ln 5) thru 8 (ln 27). Sublet (a) of Rule 4 is with  
 33 regards to litigation between individuals or corporations within the State of South  
 34 Carolina (; i.e. domestic). The Long Arm or Door Closing Statute became a legal

1 construct for courts to determine suitability with regards to reasonable convenience of  
 2 venues, diversity of forums, and diversity of States' laws within the United States, or  
 3 foreign States abroad. Remainder of the rule governs disputes arising outside of the State  
 4 (; i.e. foreign), and it is as follows:

5  
 6 *(b) A civil action may be filed in any magistrates court in the county in which*  
 7 *the plaintiff resides or where the cause of action arose \*\*\*when the defendant*  
 8 *does not reside in this State\*\*\* and jurisdiction is based upon S.C. Code Ann.*  
 9 *§ 36-2-803. [emphasis added]*

10 Sublet (b) is imperative for the State Long Arm Statute, and more so with regards to  
 11 cases as that presented before and dismissed by her in the Summary Court on February 3,  
 12 2016: A non-resident of South Carolina, the Respondent ASL is a “foreign” limited  
 13 liability company incorporated outside the State, having its principle place of business in  
 14 Bloomington, Indiana; therefore, thereby Rule 4 (b) and other State Statutes does  
 15 Summary Court magistrates have exercise of personal as well as subject matter  
 16 jurisdiction in the civil case action presented before it. S.C. Code Ann. § 36-2-803 itself  
 17 is as follows:

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

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

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

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

35 1. Item #2 of her Amended Return to the Court of Common Pleas specifying basis for  
 36 dismissal invoked § 15-7-30<sup>4</sup> (E)(1), a law code addressing domestic entities within the  
 37 State of South Carolina. The Respondent ASL would correctly be defined as a “foreign”

1 limited liability company thereby § 15-7-30 A (7) of the title of that same Statute. Both  
2 statutory codes are as follows:

3 *(E) A civil action tried pursuant to this section against a domestic corporation,  
4 domestic limited partnership, domestic limited liability company, or domestic  
5 limited liability partnership, must be brought and tried in the county in which the  
6 (1) corporation, limited partnership, limited liability company, or limited liability  
7 partnership has its principal place of business at the time the cause of action  
8 arose;*

9 2. In Comity, such laws reflect the necessity laid on States to take recognition of  
10 residence complacency of multiple owners of business partnerships being possibly  
11 distributed in any number of locations domestically or abroad (; i.e. foreign), and what  
12 proportionate sum of liability each must rightly assume that might could act to create  
13 jurisdictional issues. ASL is a “foreign” limited liability company as correctly defined by  
14 § 15-7-30 A (7) as so,

15 *(A) As used in this section:*

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

19 Magistrate either intentionally frustrated the issues or unintelligibly mistook “foreign” to  
20 apply only to international abroad States as opposed to states foreign to states within the  
21 United States, and “domestic” to apply only to within the United States as opposed to  
22 domestic within the State of South Carolina. Section 33-41-1150 does not at all involve  
23 matters concerning jurisdiction, but acts to instead stir clear the State of South Carolina’s  
24 courts from disputes that might arise among partners in a foreign partnership created  
25 outside of it, though licensed to conduct business herein the State. **The Circuit Court of  
26 appeals did not consider in its ruling that Federal nor State law codes Respondent  
27 counsel and magistrate identified as basis for dismissal are in any way relevant to  
28 jurisdictional power of the Summary Court. Nor weighed it critical fact that the  
29 discussed Federal and State law codes on which the Appellant based his appeal are  
30 applicable Statutes clearly giving the Anderson County Summary Court and its  
31 magistrates jurisdiction. [emphasis added]**

32 IGNORING ESTABLISHED CASE LAW  
33 PRECEDENTS DENIED APPELLANT DUE PROCESS

34 A. Extraterritorial Jurisdiction.

35 ASL is not new to lawsuits filed against it in other states outside of the state of  
36 Indiana. A lengthy list of Federal and foreign State litigation cases have been brought in

1 high profile class action suits against the corporate entity in venues outside of the state of  
2 Indiana since its inception. Acknowledged is South Carolina court's "Door Closing  
3 Statute" apparatus that closes the door on or disallows cases of diversity not within  
4 exercise power of the State's "Long-arm Statute". However, the South Carolina appellate  
5 in a historical case of national interest, Moosally v. W.W. Norton Company, 594 S.E. 2d  
6 878 (S.C. App. 2004), set a legal precedence in establishing the states extraterritorial  
7 jurisdiction when it rendered in its decision:

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

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

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

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

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

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

20 *Although there has been some confusion on this matter, our Supreme Court*  
21 *recently clarified: "§ 15-5-150 does not involve subject matter jurisdiction but*  
22 *rather determines the capacity of a party to sue." Farmer v. Monsanto Corp.,*  
23 *353 S.C. 553, 557, 579 S.E.2d 325, 327 (2003) (overruling previous holding*  
24 *otherwise).] Pln'tf Frml Brf at p. 6 (ln 19-24).*

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

1 B. Federal Long-arm Statute and Internet.  
2 Statutes and legal authorities with regards to diversity are distinctive and clairvoyant on  
3 Federal and State level. Unanimously have states adopted SCOTUS' measures to resolve  
4 jurisdictional issues. Its "Three Pronged Test" implemented has been effective toward  
5 retaining fair play, substantial justice, and protecting parties' individual constitutional  
6 Fourteenth Amendment Due Process rights. Paramount a case involving jurisdictional  
7 issues and the Internet was Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119  
8 (W.D. Pa. 1997). Nationally did Zippo v.'s ruling become recognized for establishing  
9 case precedents for every diversity case between states involving defendant corporations  
10 reaching out to forum States by way of the Internet. In Zippo v., divide over power of an  
11 out of state forum to entertain Internet cases, a borderless communication medium,  
12 circumvented application of a three prong test for jurisdiction. Pennsylvania's Federal  
13 appellate ruled:

14 *A three-pronged test has emerged for determining whether the exercise of*  
15 *specific personal jurisdiction over a non-resident defendant is appropriate:*  
16 *(1) the defendant must have sufficient "minimum contacts" with the forum*  
17 *state, (2) the claim asserted against the defendant must arise out of those*  
18 *contacts, and (3) the exercise of jurisdiction must be reasonable. Id. The*  
19 *"Constitutional touchstone" of the minimum contacts analysis is embodied in*  
20 *the first prong, "whether the defendant purposefully established" contacts*  
21 *with the forum state. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475, 105*  
22 *S.Ct. 2174, 2183-84, 85 L.Ed.2d 528 (1985) (citing International Shoe Co. v.*  
23 *Washington, 326 U.S. 310, 319, 66 S.Ct. 154, 159- 60, 90 L.Ed. 95*  
24 *(1945)). Defendants who "reach out beyond one state' and create*  
25 *continuing relationships and obligations with the citizens of another state*  
26 *are subject to regulation and sanctions in the other State for consequences*  
27 *of their actions." Id. (citing Travelers Health Assn. v. Virginia, 339 U.S. 643,*  
28 *647, 70 S.Ct. 927, 929, 94 L.Ed. 1154 (1950)). "[T]he foreseeability that is*  
29 *critical to the due process analysis is ... that the defendant's conduct and*  
30 *connection with the forum State are such that he should reasonably expect*  
31 *to be haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444*  
32 *U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980). This protects*  
33 *defendants from being forced to answer for their actions in a foreign*  
34 *jurisdiction based on "random, fortuitous[,] or attenuated" contacts. Keeton*  
35 *v. Hustler Magazine, Inc., 465 U.S. 770, 774, 104 S.Ct. 1473, 1478, 79*  
36 *L.Ed.2d 790 (1984). "Jurisdiction is proper, however, where contacts*  
37 *proximately result from actions by the defendant himself that create a*  
38 *'substantial connection' with the forum State." Burger King, 471 U.S. at*  
39 *475, 105 S.Ct. at 2183-84 (citing McGee v. International Life Insurance Co.,*  
40 *355 U.S. 220, 223, 78 S.Ct. 199, 201, 2 L.Ed.2d 223 (1957)).][emphasis*  
41 *added]*

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

3                    What's at issue is the Respondent's breach on refusing to complete its "performance  
 4                    obligation", and refusing refund. Internet and jurisdiction is mildly of issue.  
 5                    It has been demonstrated and established that ASL on taking ownership of the May 10,  
 6                    2005 contract reached out to, and created a continuing relationship with the Appellant in  
 7                    South Carolina when seeking to further purposely avail itself. When ASL refused to  
 8                    execute its "performance obligation" it should have expected legal action in the forum  
 9                    State. Respondent's purchase of Trafford Publishing to inherit an assumed liability was  
 10                    that of its own action and not that of the Appellant. Requirements of the test are met to  
 11                    prove Summary Court's personal jurisdiction. Corporations are not reaching out to any  
 12                    particular state but every State when transacting ecommerce business interactively via the  
 13                    World Wide Web. With such well hailed litigation establishing common law precedent  
 14                    between States having to do with jurisdictional issues, magistrate had a plethora of  
 15                    notable cases and statutes accessible for a method to establish correct precedents for her  
 16                    ruling. None were though considered nor heeded by the magistrate or the Circuit  
 17                    Court of appeals judge.

18                    INVALID CONTRACT'S ARBITRATION CLAUSE  
 19                    DID NOT FORM BASIS FOR DISMISSAL

20                    A. Novation of Contract.

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

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

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

34                    'A novation "necessarily involves the immediate discharge of an old debt or duty,  
 35                    or part of it, and the creation of a new one. There is no novation until this has

1           *been accomplished.*"

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

14          B. American Arbitration Association's small claims option.

15          1. The magistrate had leeway to therefore insist validity of a non-binding arbitration  
16          clause included in the April 3, 2009 contract's terms, stipulating "MUST" arbitration  
17          with the state of Indiana's American Arbitration Association (, herein on AAA). This was  
18          adequately proven untrue, *Id.* Dfn't Exhb 2, pp. 6-7, at pp. 22-23 of Apndx. AAA, in  
19          avoidance of usurping powers of the courts, specifically states in a plain language of its  
20          Consumer Arbitration Rules, *Id.* rule R-9 (a),

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

25          Brought up before the Circuit Court of appeals was how Respondent counsel's  
26          Jurisdiction Challenge was argued solely on premise that counsel could incline the  
27          magistrate of South Carolina's Summary Court to nullify its jurisdiction as of the AAA  
28          rule reference in the invalid April 3, 2009 contract. **The Circuit Court of appeals gave**  
29          **no recognition to invalidity of the April 3, 2009 contract in its totality, nor**  
30          **recognition of AAA's small claims court option. It likewise fell unintelligible about**  
31          **interpret of the plain language option in its actions to dismiss.** [*emphasis added*]

32                                 MOTION FOR ENTRY OF DEFAULT AND  
33                                 DEFAULT JUDGMENT RECEIVED NO RULING

## 1 A. Failed Court Appearances.

2 1. Jurisdiction of the Court was established on the Respondent counsel's Special  
3 Appearance to challenge became that of a General Appearance when upon its defense of  
4 ASL on the merits on February 3, 2016 which, *supra*, in itself was submission to the  
5 Summary Court venue and forum, and gave automatic waiver thereto challenge thereof  
6 jurisdiction. After this was argued in the Appellant's initial Formal Brief before the  
7 Circuit Court of appeals, defense counsel made no further appearances so to avoid the  
8 automatic waiver to challenge jurisdiction. **The Circuit Court of appeals applied non-**  
9 **a-recognition of argument of automatic waiver when it was brought up before it.**

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

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

## 21 EVIDENCE REMOVED

## 22 A. Suppression of Evidence.

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

- 32
- Complaint filed of Complainant, dated September 9, 2015.

- 1 • Plaintiff's Exhibit A, Trafford Publishing Guide, copyrighted 2005 with
- 2 (1) copy of an original contract Publishing Agreement, entered May10,
- 3 2005, pp. 16 (16.1-2 and 16.4).
- 4 • Payment receipts of proof of pay made to Trafford.
- 5 • Electronic flash drive containing (1) copy of *Eternal Doctrine: The Bible in*
- 6 *Sequence* to explain delay in editing process.
- 7 • Plaintiff's Exhibit B, contract cancellation correspondence of June 22,
- 8 2010
- 9 • Exhibits of correspondence letters establishing "minimum contacts" of ASL
- 10 in its repeated demands for further pay for services previously paid.

11 Not any of these were considered for deliberation by the magistrate, or mentioned at all  
 12 on the trial date. Sum'ry Crt Cs Hstry, pp. 1-2, at pp. 34-35 of Apndx. She overlooked as  
 13 if no such evidence had ever been submitted, and made no remarks on them. She stated in  
 14 the Amended Return to the Court of Common Pleas and General Sessions,

15 *"Evidence presented in Court on the day of trial:*

16 *Appellant: No evidence*

17 *Respondent: D#1 – Services offered; Prepare for Publication; Trafford*  
 18 *Publishing Terms and Conditions."* Amn'd Rtrn at p. 5 of Apndx.


19 **Summary Court's magistrate judge made an untrue statement about the evidence** to  
 20 give the appeals court the appearance that the Appellant had no knowledge of court  
 21 procedure, nor any evidence to support his claim. [*emphasis added*] She would instead,  
 22 *supra*, review, mention, and force terms of a contract on the Appellant that he never  
 23 agreed to, never saw, or ever signed. **Magistrate made an untrue statement that**  
 24 **Appellant \*\*\*signed their April 3, 2009 contract\*\*\*** in the requested Order reply to  
 25 the Circuit Court judge. Her actions were solely toward collusively acting as counsel for  
 26 the Respondent. With despite, **magistrate intentionally mixed up the facts, and the**  
 27 **Circuit Court of appeals made no mention of any of these facts in its decision to**  
 28 **dismiss his appeal regardless of Appellant's written opposing memorandum**  
 29 **detailing it.** Aplnt' Amn'd Ops'n Memo' [*emphasis added*]

#### 30 V. CONCLUSION

31 Wherefore South Carolina Constitution Article V, Section 11 makes none a-  
 32 provision for any other court in this State to hear small claims as that presented except  
 33 other than the Summary Court of the South Carolina Unified Judicial System; wherefore  
 34 the cause of action is not a matter a Federal court of the United States could exercise  
 35 jurisdiction; and whereof the facts set forth above, the State of South Carolina Court of

1 Appeals should overturn the Circuit Court's judgment that the matter may be heard *de*  
2 *novo* by a fair and impartial judge of the court.

3 *I declare under penalty of perjury that the foregoing is correct and true.*

Signed   
George C. McCullough, Appellant (Pro Se)

on this 29<sup>th</sup> day of January, 2018

THE STATE OF SOUTH CAROLINA  
Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas and General Sessions

R. Scott Spróuse Judge

Appellate Case No. 20017-001448

Appeal No. 2016-CP-04-00560

Civil Case No. 2015-CV-04101-03735

**RECEIVED**  
JAN 31 2018  
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 Brief depositing a copy of it in the United States Mail, postage prepaid, on January 8, 2018 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.

January 29, 2018

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

Signed

  
George C. McCullough, Appellant (Pro Se)

on this 29th day of January, 2018



UNITED STATES  
POSTAL SERVICE®

Click-N-Ship®

**P**

usps.com

\$13.65

9405 8036 9930 0583 1570 23 0136 5000 0022 9211

US POSTAGE

MD Flat Rate Box



01/29/2018

Mailed from 29621

062S0000000314

**PRIORITY MAIL 2-DAY™**

GEORGE C MCCULLOUGH

Expected Delivery Date: 01/31/18

1106 ERSKINE RD

ANDERSON SC 29621-5053

**0024**

**RECEIVED**

JAN 31 2018

**B012**

**SC Court of Appeals**

SHIP

TO:

JENNY A KITCHINGS

SOUTH CAROLINA CLERK OF APPEALS COURT

PO BOX 11629

COLUMBIA SC 29211-1629

**USPS TRACKING #**



**9405 8036 9930 0583 1570 23**

Electronic Rate Approved #038555749