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 FINAL BRIEF

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RECORD ON APPEAL

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)[1] 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.

[1] 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 Jrsd'tn at pp. 46-47 of R'crd Apl. 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

May 10, 2005 a contractual agreement was entered with Trafford Publishing Services for publishing of a book, "*Eternal Doctrine: The Bible in Sequence*". The company was located in Victoria, BC, Canada. It offered internet customers globally print-on-demand self-publishing via the World Wide Web. By company advertisement was it billed a convenient and cost effective alternative to vanity press and traditional publishing. Deferred revenue[2] payments totaling $4,749.00 were paid by electronic credit card transfers to Trafford Publishing, and to its Talent Pool, in 2005-2006 for certain services available for completion of a two volume set of books for the 1300 page manuscript. At the time Trafford out of Victoria was only attainable non-traditional publisher of its kind that would offer publishing services for books of that size volume.

On purchase of Trafford Publishing April 1, 2009, ASL became contractually obligated to fulfill terms and conditions of the publishing agreement made May 10, 2005 with newly acquired subsidiary Trafford. To gain third party consent[3], the Respondent forewent notifying Appellant by writing, in accordance with terms and conditions outlined in the May 10, 2005 agreement, of its plans to enter the business combination. ASL failed to notify thereafter its intent not to complete publishing in Victoria, BC, and failed to notify Appellant of an April 1, 2009 to November 10, 2010 **window for recovery of payments by refund**. Plnt'f Exhb C at p. 51 of R'crd Apl. ASL would not follow through on its contractual "duty" to complete publishing in Canada under a Canadian ISBN. Without notification had therefore contract terms been breached by Respondent, *Id.* Plnt'f Exhb B, pp. 16.1-2, 16.4, at p. 59-60 of R'crd Apl. Immediate request for cancellation nor recovery of payments could be made per notification failure. Plnt'f Exhb C at pp. 54-56 of R'crd Apl. ASL denied recovery of payments November 10, 2010 **after confirming Appellant's eligibility for refund;** stating to the Indiana Better Business Bureau(, hereinafter BBB,) and Indiana Attorney General(hereinafter AG) window for refund had closed. Plnt'f Exhb C at p. 51 of R'crd Apl. Respondent, *supra*, was never notified of such a window. Should he have been, through that window

[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 Exhb B, pp. 16 (item 16), at p. 60 of R'crd Apl.

[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.

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

B. Mediation Efforts.

Two separate unsuccessful efforts were made to reconcile by negotiation, with the Indiana BBB and Indiana AG who intervened at his discretion as third party mediation; noting ASL's history of deceptive practices. Once the BBB and Attorney General were led by ASL to believe it in compliance with an agreed on mediation resolution, they each ended their involvement, *Id.* Plnt'f Exhb C at pp.50-53 of R'crd Apl. Nevertheless, thereafter the company soon resumed actions to "purposely avail" itself by gaining additional pay; $2,199 more for marketing, and between $1,499-$5,500 more for completion of the second volume. Purchase of these marketing services, and for production of a second book of the two volumes, 650 pages per book, within their 700 page maximum, were previously made when the firm was in Victoria, British Columbia; therefore, other additional pay was refused. What the Respondent ASL sought were hundreds to thousands of dollars paid for services to Trafford when in the Victoria, BC location be repaid it in its Indiana location for the same exact services. Formal Complaint was therefore filed with the Anderson County Summary Court on September 29, 2015 detailing "nonperformance of obligation", fraudulence, and breached agreed upon mediation.

III. STATEMENT OF FACTS

A. South Carolina Magistrate's Court Jurisdiction.

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

Appeal's inferior court designated to hear small claims as that of the Appellant when filed properly and timely. After notice and service were issued Defendant's counsel entered on December 8, 2015, a Motion to Challenge Jurisdiction of the Anderson County Summary Court; identifying § 15-7-30 and SCRM[C] 4 (a) as a basis. Dfdn't Jrsd'tn Chln'g, pp. 1-2, at pp. 46-47 of R'crd Apl. Court's clerk assured Plaintiff that the court had State's constitutional power to proceed with the hearing. In reply to Defendant's Jurisdiction Challenge, Appellant filed a motion for Amendment to Complaint January 18, 2016 to correct errors and deficit not made available in original formal written Complaint brief.

B. South Carolina Magistrate Court Procedure.

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

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

2. From opening to close, tone of judge and trial was solidly partial toward defense counsel; that is nonprofessional Pro Se litigant despairing professional officers of the court. Little interest was expressed about plaintiff's grievance of complaint. Proceeding was moreless what could be best said "kangarooed". Omitting brief recess, a proximate five minutes was hearing's runtime. Court's ethics are governed by rules. SCRMC Rule 13 and SCRCP Rule 43 require judges to fairly question parties for complete presentation of claims, magistrate judge's actions failed to conform with procedural rules. When on objection to inadmissibility of her and defense counsel's actions to maintain supersede of the nonbinding contract's arbitration terms; Judge Eubanks abruptly, without deliberation, responded unto retort, "[Y]ou are entitled to Due Process . . . You don't understand, that's in another country!" Magistrate would consider no facts or evidence proving court's jurisdiction, nor objection to invalidity of the 2009 contract and its arbitration clause on which her decision to dismiss was based. Dfdn't Exhbt 2, pp. 6-7, at pp. 44-45 of R'crd Apl. The magistrate judge never ruled on allowance to enter, or entered Plaintiff's Amendment to Complaint satisfactorily proving Summary Court's jurisdiction into record. Plnt'f Exhbt A, pp.1-2, at pp. 61-62 of R'crd Apl.

3. On appearance in Summary Court, defense counsel for ASL's first action was to present the court with the April 3, 2009 contract, with its terms and conditions, to support its Jurisdiction Challenge. That contract had never been seen or agreed to by Plaintiff, and in its totality is nonbinding and irrelevant. Terms of that contract included a nonbinding arbitration clause stipulating "MUST" resolution through the American Arbitration Association(, hereinafter AAA,) in Bloomington, Indiana where the Respondent is incorporated. Aplnt Exhb D, pp. 15, at pp. 37-38 of R'crd Apl. Court's magistrate ruled the April 3, 2009 contract superseded cancelled May 10, 2005 contract Plaintiff originally agreed to and entered. Therefore, its arbitration clause was binding, and nulled court's jurisdiction. Defendant counsel on the spur improvised a non-binding escape clause that magistrate collusively made binding. Trial court's actions to so allow stood by no means a novation[4] of the 2005 contract.

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

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

[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 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.

countered with another Motion to Dismiss for Lack of Jurisdiction on May 3, 2016 opposing the Circuit Court's jurisdiction, which the presiding judge the Honorable J. Cordell Maddox dismissed on August 31, 2016. Two wrongs are at center of this appeal that warrant the Appeals Court's action to overturn the Circuit Court's upholding the Magistrate Court's dismissal. First of these is the Circuit Court upholding the inferior court's action to wrongly apply laws of the South Carolina State Law Code when nullifying jurisdiction of the Magistrate Court. Secondly, Judge Sprouse of the Circuit Court's decision to uphold the inferior court judge's nullifying its jurisdiction based on an arbitration clause in an invalid and irrelevant contract's terms and conditions as basis for dismissal. Hence, **magistrate addressing the merits dismissed Appellant's claim on the day of trail for a nonbinding arbitration clause; however, in the reply to the Circuit Court's requested Order and Amended Return upon Remand magistrate stated irrelevant State Law Codes § 15-7-30 (E) (1) and SCRM[C] 4 (a) as dismissal basis.** Apln't Exhb E, Sum'ry Crt Ord'r, pp.2-5, and Amn'd Rtn, pp. 6-7; C'rct Crt F'rms 4, pp. 1 and 1-3 at pp. 8-17 of R'crd Apl.

IV. ARGUMENTS

IGNORED STATE LAW CODES DENIED APPELLANT DUE PROCESS RIGHTS

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

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

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

2. The magistrate, Judge Eubanks, selected to cite only a part of that rule thereby invocation of Rule 4 (a), as was discussed in the Respondent's December 8, 2015 Jurisdiction Challenge to the Summary Court, *Id.* Dfnd't Jrsd'tn Chln'g, pp. 1-2 at pp. 46-47 of R'crd Apl; Apln't Frml Brf at pp. 23-35 of R'crd Apl. Sublet (a) of Rule 4 is with regards to litigation between individuals or corporations within the State of South Carolina (; i.e. domestic). The Long Arm or Door Closing Statute became a legal

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

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

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

> *SECTION 36-2-803. Personal jurisdiction based upon conduct.(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;*** *[emphasis added]*

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

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

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

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

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

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

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

> *(A) As used in this section:*
> *(7) "Foreign limited liability company" means a "foreign limited liability partnership" as defined in Section 33-41-1150* ***with its principal place of business ***outside this State***.***

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

IGNORED ESTABLISHED CASE LAW PRECEDENTS DENIED APPELLENT DUE PROCESS

A. Extraterritorial Jurisdiction or "Long Arm Statute".

ASL is not new to lawsuits filed against it in other states outside of the state of Indiana. Per numerous claims of deceptive practices, a lengthy list of Federal and foreign

State litigation cases are pending or have been brought in high profile class action suits against the corporate entity in venues outside of the state of Indiana since its inception. In this very similar case before the Court of Appeals, acknowledged is South Carolina court's "Door Closing Statute" apparatus that closes the door on or disallows cases of diversity not within exercise power of the State's "Long-arm Statute". However, the South Carolina appellate in a historical case of national interest, Moosally v. W.W. Norton Company, 594 S.E. 2d 878 (S.C. App. 2004), set a legal precedence in establishing the states extraterritorial jurisdiction when it rendered in its decision:

> *"Appellants assert the trial court erred in determining they were barred from bringing suit against W.W. Norton by South Carolina's door closing statute. We agree.*
>
> *South Carolina's door closing statute reads:*
> *'An action against a corporation created by or under the laws of* ******any other state******, government[,] or country may be brought* ***in the circuit court****:*
>
> *(1) By any resident of this State for any cause of action; or*
> *(2) By a plaintiff not a resident of this State when the cause of action shall have arisen or the subject of the action shall be situated within this State. S.C. Code Ann. § 15-5-150 (1977).'*
>
> *Initially, the parties incorrectly frame the issue of the door closing statute as one of subject matter jurisdiction. Although there has been some confusion on this matter, our Supreme Court recently clarified: '§ 15-5-150 does not involve subject matter jurisdiction but rather determines the capacity of a party to sue.' Farmer v. Monsanto Corp., 353 S.C. 553, 557, 579 S.E.2d 325, 327 (2003) (overruling previous holding otherwise).]"* Apln't Frml Brf at p. 23-35 of R'crd Apl.

ASL is a corporation "foreign" to the State of South Carolina. In error, the magistrate judge in the reply Order either intentionally or unintelligibly asserted the Respondent to be that of a "domestic" entity. As a foreign based business outside of South Carolina would the cause of action against the Respondent ASL be subject to State's constitutional laws. More readily, S.C. Code Ann. § 15-5-150 is of appropriate enforceability for the State Long-Arm statute governing foreign firms. Discussed in briefs submitted to the Circuit Court was how this is a comprehensive State statute setting jurisdiction over defendant subjects of foreign states, foreign governments, and foreign countries. Including not only liabilities for personal injuries, but foregoes this limitation to encompass any sustained injuries or damages. And, therein has it a provisional clause to guarantee even non-resident citizens of the State a right to due process of the law against

such foreign corporations. **Consideration was not given to this key State law proving the Summary Court's specific personal jurisdiction, in *personam*.***[emphasis added]*

B. Federal Long-arm Statute and Internet.

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

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

355 U.S. 220, 223, 78 S.Ct. 199, 201, 2 L.Ed.2d 223 (1957)).][emphasis added]

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

What's at issue is the Respondent's breach on refusing to complete its "performance obligation", and refusing refund. Internet jurisdiction is mildly of issue. It has been demonstrated and established that ASL on taking ownership of the May 10, 2005 contract reached out to, and created a continuing relationship with the Appellant in South Carolina when seeking to further "purposely avail" itself. When ASL refused to execute its "performance obligation" it should have expected legal action in the forum State. Respondent's purchase of Trafford Publishing to inherit an assumed liability was that of its own action and not that of the Appellant. Requirements of the test are met to prove Summary Court's personal jurisdiction. Corporations are not reaching out to any particular state but every State when transacting ecommerce business interactively via the World Wide Web. With such well hailed litigation establishing common law precedent between states having to do with jurisdictional issues, magistrate had a plethora of notable cases and statutes 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" 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, *Id.* Dfnd't Exhb 2, p. 7, at pp. 44 of R'crd Apl. As pretentious proof, Magistrate and Respondent counsel by sleight 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 that the defense counsel and magistrate clearly made up 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, supra, had leeway to therefore insist validity of a non-binding arbitration clause included in the April 3, 2009 contract's terms, stipulating "MUST" arbitration with the state of Indiana's American Arbitration Association (, herein on AAA). This was adequately proven untrue, *Id.* Dfn't Exhb 2, pp. 6-7, at pp. 44-45 of R'crd Apl. AAA, in avoidance of usurping powers of the courts, specifically states in a plain language of its Consumer Arbitration Rules, *Id.* rule R-9 (a),

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

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

MOTION FOR ENTRY OF DEFAULT AND
DEFAULT JUDGMENT RECEIVED NO RULING

A. Failed Appearances.

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

2. The Respondent was not present for scheduled or rescheduled hearing dates in the Circuit Court. On the Respondent's failure to be present during the May 31, 2016 hearing date the Appellant moved the Circuit Court on August 8, 2016 for Entry of Default and Default Judgment against the Respondent. Aplnt Exhb E at pp. 20-22 of R'crd Apl; Plnt'f Exhb A at pp. 61-62 of R'crd Apl; . **The Appellant's formal written Motion for Entry of Default and Default Judgment received no ruling from the Circuit Court judge.**

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

EVIDENCE REMOVED

A. Suppression of Evidence.

What else other Judge Eubanks returned for an answer to the Court of Common Pleas and General Sessions' requested Order and Amended Return wasn't of weighing fact. *Id.* Apln't Exhb E, Sum'ry Crt Ord'r at pp. 9-12 of R'crd Apl and Amn'd Rt at pp. 13-14 of R'crd Apl. The Respondent's Exhibit 1 (D# 1) and its Exhibit 2 presented in Summary Court on the day of the trial are holistically irrelevant and non-binding. *Id.* Apln't Frml Brf at pp. 33-34 of R'crd Apl. *Supra*, Appellant was disallowed to speak, present evidence, raise arguments in his behalf, nor was questioned of Judge Eubanks for thorough a presentation of his claim. A large volume of evidence was submitted for the

court's review in the initial Formal Complaint submission. That included:

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

Not any of these were docketed into record, considered for deliberation by the magistrate, or mentioned at all on the trial date. *Id.* Plnt'f Exhb A at pp. 61-62 of R'crd Apl. She overlooked as if no such evidence had ever been submitted, and made no remarks on them. She stated in the Amended Return to the Circuit Court of Common Pleas and General Sessions,

> *"Evidence presented in Court on the day of trial:*
> *Appellant: No evidence*
> *Respondent: D#1 – Services offered; Prepare for Publication; Trafford Publishing Terms and Conditions", Id.* Aplnt Exhb E, Amn'd Rtrn of pp. 13-14 of R'crd Apl.

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

V. CONCLUSION

Wherefore South Carolina Constitution Article V, Section 11 makes none a-provision for any other court in this State to hear small claims as that presented except other than the Summary Court of the South Carolina Unified Judicial System; wherefore the cause of action is not a matter a Federal court of the United States could exercise jurisdiction; and whereof the facts set forth above, the State of South Carolina Court of Appeals should overturn the Circuit Court's judgment that the matter may be heard *de novo* by a fair and impartial judge of the court.

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

Signed George C. McCullough,
George C. McCullough, Appellant (Pro Se)
on this 22nd day of March, 2018