

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
SOHAIL ABDULLA,)
)
Plaintiff,)
v.)
SOUTHERN BANK,)
)
Defendant)

IN THE COURT OF COMMON PLEAS
IN THE SECOND JUDICIAL CIRCUIT

C/A: 2017-CP-02-00283

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SC Court of Appeals

ORDER DISMISSING CASE

This matter came before the Court on Southern Bank’s Motion to Dismiss for lack of Personal Jurisdiction on Monday, April 2, 2018. All parties were present and due and proper notice was made to all parties in interest.

Plaintiff’s Complaint alleges that jurisdiction is proper pursuant to the “South Carolina Long Arm Statute”. Defendant filed an Answer and Counterclaim to Plaintiff’s Complaint specifically reserving the defense that it was not subject to the Long Arm jurisdiction of South Carolina. Defendant subsequently filed this Motion to Dismiss which included the Affidavit of an officer of Southern Bank, along with attachments verifying that all business and loan transactions between Plaintiff and Defendant occurred in the State of Georgia. Plaintiff did not reside in the State of South Carolina during the time that he and/or his company, Sportsman’s Link Inc., conducted business with Southern Bank. Further, Plaintiff, by way of Affidavit and deposition, admitted under oath that he did not reside in South Carolina until 2010. Though Defendant filed an unsecured Amended Proof of Claim in 2011, the last loan transaction entered into by and between the parties was signed August 30, 2007 Georgia.

Standard of Review

The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case. *Engineered Prods. v. Cleveland Crane & Eng'g*, 262

S.C. 1, 201 S.E.2d 921 (1974). The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law. *Id.*, 262 S.C. at 4, 201 S.E.2d at 922; *see also Hammond v. Cummins Engine Co.*, 287 S.C. 200, 336 S.E.2d 867 (1985) (stating that this Court is bound by Circuit Court's finding that a nonresident defendant is subject to its jurisdiction absent determination that Circuit Court's ruling is without evidentiary support or controlled by error of law); *see also Industrial Equip. Co. v. Frank G. Hough Co.*, 218 S.C. 169, 173, 61 S.E.2d 884, 885 (1950) (“This Court has adhered to the rule that a finding by the Circuit Court as to jurisdiction or lack of jurisdiction will not be disturbed on appeal unless wholly unsupported by the evidence or manifestly influenced or controlled by error of law.”).

It is well-settled that the party seeking to invoke personal jurisdiction over a non-resident defendant via our long-arm statute bears the burden of proving the existence of personal jurisdiction. *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 423 S.E.2d 128 (1992); *Aviation Assocs. & Consultants, Inc. v. Jet Time, Inc.*, 303 S.C. 502, 402 S.E.2d 177 (1991); *South Carolina Dep't of Soc. Servs. v. Basnight*, 346 S.C. 241, 551 S.E.2d 274 (Ct. App. 2001). At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits. *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993); *White v. Stephens*, 300 S.C. 241, 387 S.E.2d 260 (1990); *International Mariculture Res. v. Grant*, 336 S.C. 434, 520 S.E.2d 160 (Ct. App. 1999).

Argument

Plaintiff argues that Defendant's filing of an unsecured Amended Proof of Claim on September 20, 2011 in the Chapter 11 Bankruptcy Case of Sportman's Link, Inc., Case No. 07-10454, United States Bankruptcy Court, Southern District of Georgia, Augusta Division, was a tortious act which conferred long arm jurisdiction over Defendant. The Amended Proof of Claim states that Defendant held several pieces of jewelry belonging to Plaintiff in its vault as collateral for a loan that Plaintiff

ultimately defaulted on. Plaintiff filed for Chapter 7 Bankruptcy in 2007, so the loan ceased to exist and the jewelry was no longer collateral. Defendant also noted at the hearing that a bank ledger, which was submitted to the Court, shows the jewelry in question was removed from the bank vault on March 9, 2004 as evidenced by two (2) bank employees. As set forth in Plaintiff's Affidavit, Plaintiff first requested specific information as to contents of the vault in 2016, approximately nine (9) years after the corporation filed bankruptcy in Georgia.

This Court finds the South Carolina Long Arm Statute, specifically S.C. Code Ann. 36-2-803, does not apply under these circumstances as to the conduct or relationship of the parties in to the underlying Complaint. As set forth above, Southern Bank has had no contact with Plaintiff in South Carolina at any time during their banking relationship. Additionally, Plaintiff did not reside in South Carolina during the applicable time period. Accordingly, Plaintiff cannot satisfy the requirements of due process which would subject Defendant to the jurisdiction of this Court.

~~This Court further finds Defendant's delay in requesting information concerning the contents of the vault some six (6) years after Plaintiff moved to South Carolina, and twelve (12) years after the jewelry was removed from the vault certainly raises the question of laches on the part of Plaintiff, as well as the issue of statute of limitations. Further, Plaintiff's allegation that Defendant's filing of an Amended unsecured Proof of Claim on September 20, 2011 is a tortious act, subjecting Defendant to the South Carolina Long Arm statute is not reasonable. Defendant's Amended unsecured claim, under oath, acknowledges that no collateral of any kind as pertains to this loan with Sportsman's Link, Inc. and its Guarantor, Sohail Abdulla, was in existence.~~

Plaintiff's additionally argues that Defendant's delay in filing a Motion to Dismiss waived its defense to in personam jurisdiction. Plaintiff cites *Maybank v. BB&T Corp.*, 416 S.C. 541, 787 S.E.2d 498 (2016), as controlling. There, the Court held "a delay in challenging personal jurisdiction by Motion to Dismiss may result in waiver, even where the defense was asserted in a timely answer....."

In *Maybank*, the original suit was brought in the Court of Common Pleas. BB&T reserved its objection based upon lack of in personam jurisdiction, but immediately removed the case to Federal Court along with other appellants and engaged in litigation by filing an Amended Answer, filing a Corporate Disclosure, opposing remand back to the State Court, and opposing a motion for attorney's fees. The Federal Court then remanded the case back to State Court, at which time BB&T continued to participate in litigation and discovery for another year. The case proceeded for 2 ½ years before BB&T Corporation finally filed their Motion to Dismiss.

This Court does not find the holding of *Maybank* to be controlling as pertains to the facts in this particular case. Correspondence received by counsel of both parties subsequent to the Motion to Dismiss hearing shows that Defendant responded to Plaintiff's request for Interrogatories and Production of Documents under the statement by Plaintiff's counsel that "it may expedite the disposition of the case". At no time did Defendant submit written Interrogatories or request for admissions. Furthermore, the depositions of Southern Bank and Plaintiff, took place on March 15, 2018. Defendant filed the underlying Motion to Dismiss on February 2, 2018, which was heard by this Court April 2, 2018. The deposition taken by Defendant of Plaintiff was done for the purpose of establishing, under oath, that Plaintiff did not move to the State of South Carolina until the year 2010. More importantly, Plaintiff acknowledges in the deposition that at no time was any business ever transacted in the State of South Carolina by and between Plaintiff and Defendant. The last business transaction conducted between the parties was August 30, 2007 in Georgia.

It is clear from the evidence presented that Plaintiff's underlying theory of long arm jurisdiction was lacking in the original Complaint, and further, was not rectified by any subsequent Affidavit of the Plaintiff.

WHEREFORE, IT IS HEREBY ORDERED that Plaintiff's Complaint against Southern Bank is **DISMISSED** for lack of jurisdiction under the South Carolina Long Arm Statute.

IT IS FURTHER ORDERED, by consent of Defendant, that Defendant's Counterclaim is hereby dismissed without prejudice. Further, Plaintiff and Defendant are each responsible for their own respective attorney's fees and costs associated with this Complaint.

This _____ day of _____, 2018.

HONORABLE MAITE D. MURPHY
JUDGE, COURT OF COMMON PLEAS

Prepared by:

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Aiken Common Pleas

Case Caption: Sohail Abdulla VS Southern Bank

Case Number: 2017CP0200283

Type: Order/Dismissal

IT IS SO ORDERED.

Maite Murphy