

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM COURT OF COMMON PLEAS
Aiken County, South Carolina**

**HONORABLE MAITE M. MURPHY, CIRCUIT COURT JUDGE
Civil Action No. 2017-CP-02-00283
Appellate Case No. 2019-001142**

**SOHAIL ABDULLA,
APPELLANT**

v.

**SOUTHERN BANK,
RESPONDENT**

RECEIVED
MAR 10 2020
SC Court of Appeals

RESPONDENT'S SUPPLEMENTAL BRIEF

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Maybank v. BB&T Corp., 416 S.C. 541, 787 S.E.2d 498 (2016)

United States v. Ziegler Bolt & Parts Co., 111 F.3d 878 (Fed. Cir., 1997).

ARGUMENT

Respondent deems that a brief supplemental argument is justified in this matter because of the obfuscation of the issues that Appellant has created and because of the remarkable admissions Appellant makes in his Reply Brief in this Court.

There are only two issues in this appeal: (1) has there ever been, from the beginning of this case, a basis for jurisdiction shown in the courts of South Carolina for this claim, and (2) if not, has Respondent somehow conceded jurisdiction by an implied waiver of the defense of lack of jurisdiction. The answers to these questions are no and no. The factual disputes that Appellant has sought (incorrectly) to create are irrelevant. Even if all the facts for which Appellant contends were to be taken as true, there would still be no jurisdiction in this State for this claim.

1. The complaint states no tenable claim for jurisdiction in South Carolina over this claim, because there is none.

Appellant's entire theory of this case is that Respondent converted tangible personal property belonging to Appellant. Appellant concedes that "[t]he entirety of Appellant's jurisdictional argument is based on a single, uncomplicated theory based on the long-arm statute: Respondent converted the property of Appellant while [Appellant] was a citizen of South Carolina." Respondent's Brief, p. 9. Appellant says that this supposed "tortious act of converting his property occurred in this state *as* [apparently meaning "because"] his rights were extinguished and his property was lost while he was a citizen of this State." Appellant's Reply Brief, p. 5 [emphasis supplied]. This is

verbal sleight of hand. The little word “as” betrays this. Appellant never claims, because he cannot, that the personal property at issue has ever been in the State of South Carolina. He makes the novel and completely insupportable claim that a conversion of *tangible* personal property which takes place outside the State of South Carolina, by a nonresident who has not entered the State in connection with the conversion, somehow comes within the cognizance of the courts of this State *simply because* Appellant happened to be residing in the State of South Carolina when (he claims without evidence) the supposed conversion occurred. Indeed, Appellant actually states that he established “a prima facie case [for jurisdiction] that Respondent committed a tort (conversion) [of tangible personal property in Georgia] while Appellant was a citizen and resident of South Carolina”. Respondent’s Brief, p. 11.

This would mean in effect that any tort committed to the detriment of a resident of South Carolina, whether it occurs in Georgia or Timbuktu, is a matter for South Carolina courts. To state this theory is to refute it.

Appellant has finally made it clear that he makes his claim under the South Carolina long arm statute. If his theory were correct, there would be no need for a long arm statute in the first place. It does not matter when the alleged conversion in Georgia took place, because the residence of Appellant is irrelevant to the analysis.¹ Appellant cites no case from any jurisdiction, and Respondent has found none, sustaining

¹ Though irrelevant to the legal analysis, Respondent notes Appellant admitted the property was provided to Respondent by Appellant in Georgia, so even the initial entrustment did not take place in South Carolina.

jurisdiction in a forum state over a conversion of tangible personal property in another state, on the sole basis that the plaintiff lives in the forum state or lived in the forum state at the alleged time of conversion.² That a conversion occurs “while [Appellant] was a citizen of this State [South Carolina]”, even if true, does not establish jurisdiction here.

2. Respondent has not waived its defense of lack of jurisdiction by impliedly submitting to jurisdiction.

Because there was never any tenable theory of jurisdiction in this State, Appellant is forced to his second issue. Did Respondent behave so irresponsibly in the course of this action as to waive its defense of lack of jurisdiction, which Respondent pleaded in its answer? As Appellant frames the question, was there “unreasonable delay [by Respondent] in raising the issue with the [circuit] court” (Appellant’s Brief, p. 6) so extreme as to constitute an implied waiver? As Appellant puts it in his Reply Brief, “the only issue before this Court and the lower court was whether Respondent took actions that created a constructive waiver through unnecessary and unreasonable delay”. Respondent’s Brief, p. 6 (emphasis supplied).

In its brief already filed, Respondent has discussed the obvious differences between the present case and *Maybank v. BB&T Corp.*, 416 S.C. 541, 787 S.E.2d 498

² The supposed fact issue as to the date of conversion is irrelevant and entirely manufactured by Appellant. Further, the only evidence of record in this case shows that the supposedly converted property was in fact released by Respondent on March 9, 2004, well before Appellant moved to South Carolina.

(2016), which states the controlling law. Here, in response to Appellant's reply brief, Respondent wishes to note the implications of the appropriate standard of review.

No South Carolina case explicitly discusses the standard of review that is appropriate when, as here, the trial court has ruled on whether a defendant has by its conduct in the trial court waived its defense of lack of personal jurisdiction. However, in recognizing the possibility of such a waiver, the Supreme Court in *Maybank* referred to parallel federal law, as determined by the leading federal case of *United States v. Ziegler Bolt & Parts Co.*, 111 F.3d 878 (Fed. Cir., 1997). The *Ziegler* court gave a careful explanation of why abuse of discretion is the appropriate standard of review for a decision on an implied waiver of personal jurisdiction. The court noted that a finding of waiver is a logical part of a trial court's "broad duties in managing the conduct of cases pending before it" and noted that an appellate court appropriately "defers to the judgment of the trial court on such matters closely associated with the standard functions of the adjudicative process, so long as that judgment is not an abuse of the trial court's discretion." *Id.* at 882-883. The *Ziegler* court went on to uphold the trial court's finding of no waiver, even though the circumstances in that case were considerably more favorable to waiver than those presented herein.

Respondent does not here repeat its discussion of the very good reasons that the trial court found no waiver by Respondent of its defense of personal jurisdiction. Respondent wishes simply to note two points: (1) as the trial court specifically found (Order of May 22, 2018 below, p. 4), Respondent's response to discovery was an

accommodation to Appellant, which Appellant represented might advance settlement possibilities (Respondent not having requested any discovery); and (2) because of Appellant's vague pleadings, Respondent was not even able to determine the basis of Appellant's claim of personal jurisdiction until March 29, 2018. See the next to last paragraph of the Order of May 22, 2018 below, p. 4, noting the lack of clarity in Appellant's pleading, and Respondent's Brief, pp. 13-15.

It would be a very real miscarriage of justice, a punishment of Respondent for the collegial efforts of its counsel and a reward to Appellant for its inadequate pleading, if this Court were to overturn the trial court's informed decision that Respondent, by its conduct in the trial court, did not waive its defense of personal jurisdiction.

This 5th day of March, 2020.



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CERTIFICATE OF SERVICE

This is to certify that a copy of **RESPONDENT'S SUPPLEMENTAL BRIEF** has been served upon the following via US Mail:

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Columbia, SC 29221

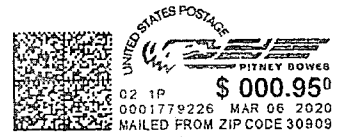
This 5th day of March, 2020.



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