

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Henry Masten II,
Plaintiff,

v.

Stephen Barton Corboy, Jennifer Suzanne
Corboy, and Alexander S. Corboy,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No: 2019-CP-40-3118

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SC Court of Appeals

ORDER

THIS MATTER came before the undersigned upon Defendant Jennifer Suzanne Corboy's motion to dismiss, filed August 27, 2019, pursuant to Rule 12(b) for lack of personal jurisdiction. At a hearing on the motion held at the Richland County Judicial Center on December 9, 2019, Andrew S. Radeker, Esquire appeared on behalf of the Plaintiff Henry Masten, II, and Benjamin C. Bruner, Esquire appeared on behalf of Ms. Corboy.

Masten filed this action seeking damages based upon allegations of negligent misrepresentation and violation of the South Carolina Residential Property Disclosure Act, S.C. Code Ann. §§ 27-50-10 to 270 ("the Act") in connection with his purchase of a home located at 15 Hunters Pond Drive, Columbia, South Carolina ("the Home") on December 5, 2013. Ms. Corboy and the other defendants are heirs to the estate of their father, Stephen Corboy, Sr., who owned the Home when he passed on September 22, 2012. Masten alleges the defendants "misrepresented and failed to disclose to the Plaintiff a) that the house had a geothermal heating and cooling system at all and b) that the system had been damaged in the past." (Complaint ¶ 15.) Ms. Corboy, a non-resident defendant, moves for dismissal for lack of personal jurisdiction because she has been a resident of Colorado at all times relevant to this action and because she never purposefully availed herself of the privilege of conducting activities in South Carolina. *See* Complaint ¶ 4 (alleging Ms. Corboy is a resident of Colorado). The Court finds the motion should be granted.

“The question of whether a court may exercise personal jurisdiction over a nonresident defendant is one that must be resolved upon the facts of each particular case.” *Hidria, USA, Inc. v. Delo, d.d.*, 415 S.C. 533, 539, 783 S.E.2d 839, 842 (Ct. App. 2016). “When jurisdiction is challenged, the plaintiff has the burden of presenting facts sufficient to support jurisdiction.” *Yarborough & Co. v. Schoolfield Furniture Indus., Inc.*, 275 S.C. 151, 153, 268 S.E.2d 42, 43 (1980); *see also Hidria*, 415 S.C. at 539, 783 S.E.2d at 842. “Personal jurisdiction is exercised as ‘general jurisdiction’ or ‘specific jurisdiction.’” *Hidria*, 415 S.C. at 539, 783 S.E.2d at 842 (quoting *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)).

Masten argues this Court has specific jurisdiction over Ms. Corboy. This Court disagrees. A determination of specific jurisdiction is based upon South Carolina’s Long Arm Statute, S.C. Code Ann. § 36-2-803 (2003), and must also take due process principles into consideration. *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. “Whether employing the traditional two-step analysis, or following the more recent determination that the analysis is compressed into a due process assessment alone, it is clear that personal jurisdiction over a non-resident defendant may be invoked only if the nonresident’s contacts in South Carolina are sufficient to satisfy due process requirements.” *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 431, 665 S.E.2d 660, 664-65 (Ct. App. 2008). “The exercise of personal jurisdiction under either statute must comport with due process requirements and must not offend traditional notions of fair play and substantial justice . . . Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.” *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478 (citing *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 611 S.E.2d 505 (2005), and *Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958)). I find Masten has failed to carry his burden of proving personal jurisdiction over Ms. Corboy. Masten does not contend Ms. Corboy was a party to the contract to sell the Home. In fact, the contract for sale was entered on October 4, 2013 between Masten and Stephen

Corboy, the Personal Representative.¹ Similarly, Masten does not argue that Ms. Corboy gave him the Residential Property Disclosure Statement. The Personal Representative did that prior to entering the contract. Thus, Ms. Corboy had no contact with Masten, verbal or otherwise. Masten argues, however, that Ms. Corboy's signature on the deed conveying her one-third interest in the property to him is sufficient to trigger jurisdiction. The sale to Masten was closed on December 5, 2013. The deed of distribution from the Personal Representative to the heirs and deeds from the heirs to Masten were all filed that day within one second of each other.² While Ms. Corboy did sign one of the deeds, she did that in Colorado. She had no active involvement in the transaction, and her role was at most a passive one based upon her status as an heir to her father's estate. The Court concludes Masten has failed to identify anything Ms. Corboy did that could be construed as purposefully availing herself of the privilege of conducting activities in this State. *See Coggeshall, supra*. Finding personal jurisdiction under these facts would contravene traditional notions of fair play and substantial justice.

Masten also argues that Ms. Corboy had a duty to disclose pursuant to the Act, which she breached. However, the plain language of the Act belies that argument. S.C. Code Ann. §§ 27-50-30(1) & (3) (providing the Act does not apply to transfers in administration of an estate or by a fiduciary in the course of the administration of a decedent's estate).

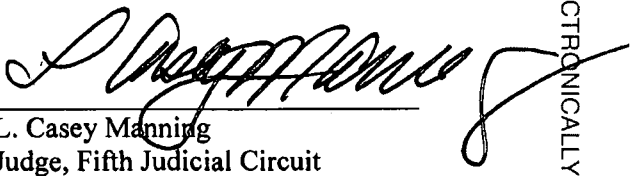
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant Jennifer Corboy's Motion to Dismiss for lack of personal jurisdiction shall be and hereby is GRANTED.

AND IT IS SO ORDERED.

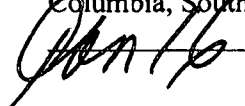
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¹ At the hearing, defense counsel submitted, without objection, the Probate Court order appointing the Personal Representative, a filed copy of the deed of distribution from the estate to the heirs, filed copies of the deeds to Masten, the contract for sale, and the residential property condition disclosure statement.

² According to the file stamp on the deeds, all four deeds were recorded on December 25, 2013 between 15:55:36 and 15:55:37.



L. Casey Manning
Judge, Fifth Judicial Circuit

Columbia, South Carolina
 , 2019.