

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Alison Meyers,)
)
Plaintiff,)
)
vs.)
)
Shiram Hospitality, LLC,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-26-05254

ORDER DENYING PLAINTIFF'S
MOTION FOR ENTRY OF FOREIGN
JUDGMENT **RECEIVED**

MAR 30 2020

SC Court of Appeals

This matter came before the Court on Plaintiff's Notice of Motion and Motion for Entry of Foreign Judgment, filed on October 14, 2019, pursuant to the Uniform Enforcement of Foreign Judgments Act (the "UEFJA"), §§ 15-35-940 et seq. of the laws of the State of South Carolina. Defendant timely filed its Notice of Defense and Response to Notice to Domesticated Foreign Judgment, as well as its Memorandum in Opposition to Plaintiff's Motion for Entry of Foreign Judgment. Accompanying Defendant's Memorandum was the Affidavit of Sanjay H. Mishra (the "Affidavit"). A hearing was held before me on December 4, 2019, at which both parties were present by their attorneys, Edward Grimsley for the Plaintiff Alison Meyers (the "Plaintiff") and Fred Newby for the Defendant Shiram Hospitality, LLC (the "Defendant").

FACTUAL BACKGROUND

Defendant is a South Carolina limited liability company. At all relevant times, its registered agent has been Sanjay H. Mishra, 201 S. Ocean Boulevard, North Myrtle Beach, South Carolina 29582. The Defendant, doing business as La Quinta North Myrtle Beach Inn, operates a hotel in North Myrtle Beach, South Carolina. Defendant is a manager-managed LCC; its manager is Sanjay H. Mishra, one of only two members of the LLC.

On November 5, 2015, Plaintiff filed a Verified Complaint in the Second Municipal District, Civil Division, Circuit Court of Cook County, Illinois, against Defendant; Haricharan J. (Mike) Mishra, an individual now deceased; and La Quinta Holdings, Inc., a Texas corporation. Plaintiff sought damages of \$3,120.74, plus interest, costs, punitive damages, and attorney's fees.

The Affidavit of Substituted Service for the Defendant in that case, dated February 17, 2015, states: “Personally appeared before me Miramane Cox, Deputy Sheriff, who being duly sworn, says that he served the Summons and Verified Complaint in this action on the defendant Shiram Hospitality, LLC, by delivering personally to Mike Mishra, a person of discretion father of agent Sanjay H. Mishra, and leaving with said person of discretion copies of the same at 1601B Old Highway 17 North, LaQuinta Inn, North Myrtle Beach, SC...” According to the Affidavit, Mike Mishra was the father of Defendant’s registered agent, but was never a member, officer, managing or general agent, or agent authorized to receive service of process. Affidavit, ¶ 9. Plaintiff offered no affidavit contradicting these facts. Further, the Affidavit stated that Mike Mishra did not inform his son that he received service.

Defendant made no answer, and, on March 8, 2016, more than one year after the purported service, Plaintiff obtained a Default Judgment against Defendant in the amount of \$34,571.77, comprised of \$3,120.74 in compensatory damages, \$6,907.03 in attorney’s fees and costs, and \$24,500.00 in punitive damages. Plaintiff seeks to domesticate its foreign judgment against Defendant, and Defendant contests the judgment on two grounds: insufficient service of process and lack of personal jurisdiction based on Defendant’s dearth of “minimum contacts” with Illinois.

APPLICABLE RULES OF LAW

“Before a court is bound by the judgment rendered in another State, it may inquire into the jurisdictional basis of the foreign court’s decree.” *Underwriters Nat’l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass’n*, 455 U.S. 691, 705, 102 S. Ct. 1357, 71 L. Ed. 2d 558 (1982). “A judgment of a court without jurisdiction of the person... is not entitled to recognition or enforcement in another state...” *Fin. Fed. Credit Inc. v. Brown*, 384 S.C. 555, 562-63, 683 S.E.2d 486, 490 (2009). In South Carolina, under the UEFJA, a judgment debtor may seek relief from a judgment due to a lack of personal jurisdiction, and “[t]he law against which a foreign judgment is evaluated for validity and effect is the law of the state rendering that judgment.” *PYA/Monarch, Inc. v. Sowell’s Meats & Servs., Inc.*, 327 S.C. 469, 473, 486 S.E.2d 766, 768 (Ct. App. 1997).

For a state court to exercise jurisdiction over a defendant, there must be adequate service upon that defendant, and the court must have personal jurisdiction over the defendant. Service of process on the defendant must be sufficient under the Due Process Clause of the Fourteenth Amendment *and* the laws of the forum state. In Illinois, LLCs are treated like corporations for

service of process purposes. See *MB Fin. Bank, N.A. v. Ted & Paul, LLC*, 990 N.E.2d 764 (Ill. Ct. App. 2013). Under the Illinois Civil Practice Act, corporations may be served “by leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State.” 735 ILCS § 5/2-204. As elsewhere in the Illinois Civil Practice Act and the Illinois Compiled Statutes generally, “the State,” refers to Illinois. The only other possible interpretation is “the State in which the corporation operates.” If that is what the statute meant, it would need to say so, since § 5/2-204 relates to service on corporations in general, not service on foreign corporations. Therefore, on its face, § 5/2-204 requires *in-state service*.

However, *out-of-state service* is permissible, subject to certain requirements. Subsection (d) of 735 ILCS § 5/2-209, Illinois’ long-arm statute, provides, “Service of process upon any person who is subject to the jurisdiction of the courts of this State, as provided in this Section, may be made by personally serving the summons upon the defendant outside this State, as provided in this Act, with the same force and effect as though summons had been personally served within this State.” This means that a person (or entity) may be served outside Illinois (“this State”) if, and only if, (i) the person or entity is subject to the jurisdiction of Illinois courts, and (ii) service is conducted according to the requirements of the Civil Practice Act (“this Act”). The first requirement raises the issue of personal jurisdiction independent of the question of adequate service; this is discussed more below. The second requirement of § 5/2-209 is reiterated in 735 ILCS § 5/2-208(a)-(b), which reads, “Personal service of summons may be made upon any party outside the State... The service of summons shall be made in like manner as service within this State...” Together with § 5/2-204, these provisions mean that an LLC operating outside Illinois may be served outside Illinois by leaving a copy of the process with the LLC’s registered agent, officer, or “agent” under § 5/2-204.

“The burden is upon the plaintiff to prove the existence of an agency relationship.” *Hickey v. Union Nat’l Bank & Trust Co.*, 547 N.E.2d 4, 8 (Ill. App. Ct. 3rd Dist. 1989). Whether an individual is an “agent” is a question of fact, and its determination tends to be influenced by the actions taken by the recipient with respect to the summons after service is effected. See *Island Terrace Apts. v. Keystone Serv. Co.*, 341 N.E.2d 41 (Ill. App. Ct. 1st Dist. 1975) (upholding a trial court finding that an employee who was served, who did not recognize or understand the legal import of service of process, and who did not communicate the service to her employer was not an “agent” under § 5/2-204).

Notwithstanding the fact that, “Under section 2-204... service on a private corporation may be made ‘(1) by leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State,’” “Illinois courts may not exercise jurisdiction pursuant to this section over nonresident corporations who are not licensed in Illinois unless the corporations are ‘doing business’ in this State.” *Radosta v. Devil's Head Ski Lodge*, 526 N.E.2d 561, 563 (Ill. App. Ct. 1st Dist. 1988). Such a finding generally requires that the corporation conducts business in Illinois of such a character and extent as to warrant the inference that it has subjected itself to the jurisdiction and laws of Illinois. *Loggans v. Jewish Community Center*, 447 N.E.2d 919 (Ill. App. Ct. 1st Dist. 1983). The “doing business” test is “not to be equated with the mere satisfaction of the minimum contacts requirement under the due process clause of the fourteenth amendment to the United States Constitution.” *Huck v. Northern Indiana Public Service Co.*, 453 N.E.2d 1365, 1368 (Ill. App. Ct. 1st Dist. 1983). “There is no all-inclusive test for determining whether a foreign corporation is doing business in this State... Although there may be no such all-inclusive test, almost all Illinois cases determining the existence of personal jurisdiction over foreign corporations have based their findings upon the existence of factors such as offices or sales activities in Illinois.” *Id.*

The “doing business” test is therefore a higher bar than the minimum contacts requirement for the exercise of personal jurisdiction under the Due Process Clause. This, combined with the first requirement of § 5/2-209 – that an entity be subject to the jurisdiction of Illinois courts – and with the fact that adequate service, while necessary, is not alone sufficient for a state court to exercise personal jurisdiction over a defendant, points the Court beyond the issue of adequate service to the independent issue of whether the Illinois court had personal jurisdiction over Defendant.

For the courts of a state to have jurisdiction over a defendant, the forum state’s statute granting personal jurisdiction, the forum state’s constitutional due process protections, and the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution must be satisfied. Illinois’ long-arm statute, 735 ILCS § 5/2-209, provides that jurisdiction may be exercised over any person (or entity) “on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States.” § 5/2-209(c). Subsections (a) and (b) of that statute address general and specific personal jurisdiction, but the broad grant of jurisdiction in § 5/2-209(c) reflects a “conscious purpose to assert jurisdiction over nonresident defendants to the extent permitted by

the due-process clause” of the Fourteenth Amendment, and thus permits Illinois to maintain jurisdiction over a nonresident if there are sufficient contacts or ties with the forum to make it reasonable and just according to traditional concepts of fair play and substantial justice (see below). *Green v. Advance Ross Electronics Corp.*, 408 N.E.2d 1007, 1009 1980 (Ill. App. Ct. 1st Dist. 1980), *aff'd*, 427 N.E.2d 1203 (Ill. 1981).

Under the Due Process Clause of the Fourteenth Amendment, if the defendant is not incorporated in the forum state, has not been served in the forum state, or has not consented to the jurisdiction of the forum state (by filing a responsive pleading), then the defendant must have certain “minimum contacts” with the forum state, and the exercise of jurisdiction over the defendant must not offend “traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945). The defendant’s connection with the forum state must be “such that it should reasonably anticipate being hauled into court there.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985). The defendant must “purposefully avail itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). “Random,” “fortuitous,” or “attenuated” contacts, or the “unilateral activity of another party or a third person,” is insufficient. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984).

ARGUMENTS OF THE PARTIES – SERVICE OF PROCESS

On the matter of insufficient service of process, Plaintiff argued, in its Memorandum in Support of Plaintiff’s Notice of Intent to Domesticate a Foreign Judgment, that Defendant’s position is that “service on the Defendant was ineffectual since the Illinois Court did not have jurisdiction over the Defendant.” Plaintiff’s Memorandum, p. 1. On the contrary, Defendant argues the opposite, that the Illinois court lacked jurisdiction over Defendant because service on Defendant was ineffectual. Based on this misunderstanding, Plaintiff, in its Memorandum, moves directly to the question of “minimum contacts” and overlooks the prior, independent question of adequate service.

Defendant argues Plaintiff failed to effect sufficient service of process on Defendant under Illinois law because (i) the Defendant served Mike Mishra, the father of agent Sanjay Mishra, outside the State of Illinois, and Mike Mishra was not the registered agent, an officer, or an “agent”

of the Defendant as the term is used in § 5/2-204; and (ii) regardless, § 5/2-204 is of no avail to Plaintiff because Defendant has never “done business” in Illinois.

On the first point, Defendant notes that the Affidavit of Substituted Service itself refers to Mike Mishra as “Father of Agent Sanjay Mishra,” not as an agent in his own right. “Sanjay Mishra affirms that Mike Mishra was never a member, officer, managing or general agent, or agent of the LLC authorized to receive service of process. Affidavit, ¶ 9. Plaintiff bears the burden of proving Mike Mishra was an “agent,” but has offered no evidence to contradict the Affidavit in that regard, other than some newspaper accounts in which Mike Mishra called himself the “owner” of Defendant’s hotel, even though the public record shows otherwise. Defendant argues that had Mike Mishra understood the legal import of the documents he received, he would not have failed to communicate them to his son Sanjay.

On the second point, Defendant argues that, even if Mike Mishra was an “agent” under § 5/2-204, jurisdiction may not be exercised pursuant to that section unless the defendant was “doing business” in Illinois by maintaining offices or conducting sales activities in the state. According to Sanjay Mishra, Defendant “does not own, and has never owned any property outside Horry County, South Carolina”; it “does not carry on business, nor has it ever carried on business, outside Horry County, South Carolina”; it “has no presence, nor does it do any business in, the State of Illinois; and it “provides its services to guests who are present in Horry County, and collects payments in Horry County,” with all payments “deposited in the Company’s bank accounts located in local, Horry County Banks.” Affidavit, ¶ 3-6.

ARGUMENTS OF THE PARTIES – MINIMUM CONTACTS

On the matter of Defendant’s “minimum contacts” with Illinois, the party asserting personal jurisdiction has the burden to establish such jurisdiction where it is challenged by a preponderance of the evidence. *Finnegan v. Les Pourvoiries Fortier, Inc.*, 562 N.E.2d 989 (Ill. App. Ct. 1st Dist. 1990). Plaintiff first cites § 5/2-209, Illinois’ long-arm statute. But a state statute cannot extend personal jurisdiction beyond what is allowed by the U.S. Constitution, and § 5/2-209 does not purport to do so. For that reason, Plaintiff next notes that, under the Due Process Clause of the Fourteenth Amendment, “a nonresident defendant may be subject to a forum state’s jurisdiction based on certain ‘single or occasional acts.’” Memorandum in Support of Plaintiff’s Notice of Intent to Domesticate a Foreign Judgment, p. 3, citing *Goodyear Dunlop Tires*

Operations, S.A. v. Brown, 564 U.S. 915, 923, 131 S. Ct. 2846, 2853 (2011). Plaintiff does not identify by which act Defendant purportedly availed itself of Illinois jurisdiction, whether it be Defendant's contract with Plaintiff, which was in South Carolina, or Defendant's processing of Plaintiff's credit card, which was also in South Carolina.

In response, Defendant reiterates that it "does not own, and has never owned any property outside Horry County, South Carolina"; that it "does not carry on business, nor has it ever carried on business, outside Horry County, South Carolina"; that it "has no presence, nor does it do any business in, the State of Illinois; and that it "provides its services to guests who are present in Horry County, and collects payments in Horry County," with all payments "deposited in the Company's bank accounts located in local, Horry County Banks." Affidavit, ¶ 3-6.

Defendant explains that Plaintiff traveled from Illinois to South Carolina, executing a contract with Defendant. The subject matter of that contract was the provision of hotel services at Defendant's facility in North Myrtle Beach, South Carolina. It was only by chance that Plaintiff's home state was Illinois. When Defendant executed its contract with Plaintiff, it is likely that the Defendant did not even know where Plaintiff was traveling from. When Defendant charged the Plaintiff's card for payment under the contract, it is also likely that Defendant did not even know where Plaintiff banked. In other words, from Defendant's perspective, the fact that Plaintiff hailed from Illinois was of no matter and certainly had no bearing on the transaction. This, argues Defendant, is the epitome of the type of "fortuitous" contact that the courts have ruled does not support personal jurisdiction. See *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984). A hotel operator in such a situation cannot be said to "purposefully avail itself of the privilege of conducting activities within the forum State," and to find otherwise would be to set a precedent that offends "traditional notions of fair play and substantial justice." Under Plaintiff's theory, nearly every hotel in the country could be subject to the jurisdiction of all fifty states.

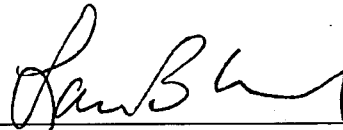
Defendant points out that Illinois courts have found a defendant to have insufficient minimum contacts in the state even when the defendant purposefully conducts business with Illinois in mind. Examples include an Indiana corporation that made an agreement to purchase power generated in Illinois and transmit power into Illinois (*Huck v. Northern Indiana Public Service Co.*, 453 N.E.2d 1365 (Ill. App. Ct. 1st Dist. 1983)); and a Delaware corporation manufacturing and selling dinnerware from its place of business right across the Mississippi River from Illinois, in St. Louis, Missouri (*Cook Associates Inc. v. Lexington United Corp.*, 407 N.E.2d

944 (Ill. App. Ct. 1st Dist. 1980), aff'd, 429 N.E.2d 847 (Ill. 1981)). Nor, Defendant concludes, will financial benefits accruing to a defendant from a collateral relation to the forum state support jurisdiction absent constitutionally cognizable contacts making it both fair and reasonable that the defendant defend the lawsuit in that forum. *Stephens v. Northern Indiana Public Service Co.*, 409 N.E.2d 423 (Ill. App. Ct. 5th Dist. 1980).

RULING

Based on the foregoing, I find: (i) that Plaintiff has presented insufficient evidence that Mike Mishra, the father of agent Sanjay H. Mishra, was an “agent” for service of process under 735 ILCS § 5/2-204; (ii) that, even if Plaintiff had presented sufficient evidence of the foregoing, § 5/2-204 is of no avail to Plaintiff since Defendant was not “doing business” in Illinois; and (iii) that, aside from the question of service of process, Plaintiff lacked the “minimum contacts” with Illinois necessary for the courts of the state to exercise personal jurisdiction over Defendant under the requirements of the Due Process Clause of the Fourteenth Amendment. Specifically, by its unwilling, single, and fortuitous contact with Illinois, Defendant did not “purposefully avail itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” See *Hanson v. Denckla*, *supra*. Under *Burger King Corp.*, *supra*, Defendant could not have “reasonably anticipate[d] being hauled into court” in Illinois under the facts presented. Because there was insufficient service of process and because the Illinois court lacked jurisdiction over Defendant in the case in which the foreign judgment was entered, this Court determines, pursuant to the Uniform Enforcement of Foreign Judgments Act, §§ 15-35-940 et seq. of the laws of the State of South Carolina, that the foreign judgment should not be afforded full faith and credit and is null and void in South Carolina.

THEREFORE, IT IS HEREBY ORDERED, that Plaintiff’s Motion for Entry of Foreign Judgment is DENIED.



The Honorable Judge Larry B. Hyman, Jr.

Conway, South Carolina

2-18- , 2020