

91081

RECEIVED

Apr 08 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2016-CP-19-00168

RECEIVED

OCT 08 2019

SC Court of Appeals

Bettis C. Rainsford,.....Appellant,

v.

Apex Bank, Jim Clayton, Matt Daniels, and Brad Hailey,.....Defendants,

Of which, Matt Daniels and Brad Hailey are.....Respondents.

NOTICE OF APPEAL

The Appellant hereby appeals the attached Order dated September 9, 2019. Counsel for the Appellant received written notice of the entry of the Order on September 9, 2019.

R. Hawthorne Barrett

John S. Wilkerson
Turner Padget Graham & Laney, P.A.
P.O. Box 22129
Charleston, SC 29413
(843) 576-2801
jwilkerson@turnerpadget.com

R. Hawthorne Barrett
Turner, Padget Graham & Laney, P.A.
P.O. Box 1473
Columbia, SC 29202
(803) 227-4219
tbarrett@turnerpadget.com

October 8, 2019

Attorneys for the Appellant

Other Counsel of Record:

James H. Cassidy
Joshua J. Hudson
Ross B. Plyler
Roe Cassidy Coates & Price, P.A.
1052 N. Church St.
Greenville, SC 29601
(864) 349-2600

Attorneys for Respondents and for Defendant Apex Bank

H. Freeman Belser
Michael J. Polk
Belser & Belser, P.A.
P.O. Box 96
Columbia, SC 29202
(803) 929-0096

Attorneys for Defendant Jim Clayton

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2016-CP-19-00168

RECEIVED
OCT 08 2019
SC Court of Appeals

Bettis C. Rainsford,.....Appellant,

v.

Apex Bank, Jim Clayton, Matt Daniels, and Brad Hailey,.....Defendants,

Of which, Matt Daniels and Brad Hailey are.....Respondents.

PROOF OF SERVICE

The undersigned, an attorney in this matter for the Appellant, certifies that I have this **8th**
day of October, 2019, served copies of the **Notice of Appeal** upon all other counsel of record by
causing them to be deposited in the United States mail with sufficient postage, addressed to:

James H. Cassidy
Joshua J. Hudson
Ross B. Plyler
Roe Cassidy Coates & Price, P.A.
1052 N. Church St.
Greenville, SC 29601
Attorneys for Respondents and Defendant Apex Bank

H. Freeman Belser
Michael J. Polk
Belser & Belser, P.A.
P.O. Box 96
Columbia, SC 29202
Attorneys for Defendant Jim Clayton

R. Hawthorne Barrett

John S. Wilkerson
Turner Padget Graham & Laney, P.A.
P.O. Box 22129
Charleston, SC 29413
(843) 576-2801
jwilkerson@turnerpadget.com

R. Hawthorne Barrett
Turner, Padget Graham & Laney, P.A.
P.O. Box 1473
Columbia, SC 29202
(803) 227-4219
tbarrett@turnerpadget.com

October 8, 2019

Attorneys for the Appellant

Turner | Padget

R. Hawthorne Barrett

REPLY TO:

**E-Mail: TBarrett@TurnerPadget.com
Writer's Direct Dial: (803) 227-4219
Writer's Direct Fax: (803) 400-1454**

October 8, 2019

Via Hand Delivery

Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Bettis C. Rainsford v. Apex Bank, Inc., et al.
Civil Action No. 2106-CP-19-00168
Our File No. 14919.00101

RECEIVED
OCT 08 2019
SC Court of Appeals

Dear Ms. Kitchings:

Enclosed are the originals and one copy each of the Notice of Appeal and Proof of Service. Also enclosed is a check for the filing fee. Please file the originals and return the stamped copies to our courier. Thank you for your kind assistance.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.

R. Hawthorne Barrett

R. Hawthorne Barrett

RHB
Enclosures

cc: James H. Cassidy, Esq.
Joshua J. Hudon, Esq.
Ross B. Plyler, Esq.

Hon. Jenny Abbott Kitchings

October 8, 2019

Page 2

H. Freeman Belser, Esq.

Michael J. Polk, Esq.

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)
)
Bettis C. Rainsford,)
)
Plaintiff,)
)
vs.)
)
Apex Bank, Jim Clayton, Matt Daniels)
and Brad Hailey,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-19-00168

**ORDER GRANTING DEFENDANTS BRAD
HAILEY AND MATT DANIELS'
MOTION TO DISMISS**

RECEIVED
OCT 08 2019
SC Court of Appeals

This matter is before the Court on Plaintiff Bettis C. Rainsford's ("Plaintiff" or "Rainsford") motions to compel jurisdictional discovery against Defendants Matt Daniels ("Daniels") and Brad Hailey ("Hailey"). Specifically, Plaintiff seeks an order compelling Hailey and Daniels to submit to limited jurisdictional depositions and to provide complete responses to Plaintiff's Interrogatories and Requests for Production of Documents. A hearing was held at Richland County Courthouse on August 13, 2019. John Wilkerson appeared on behalf of Plaintiff and Ross B. Plyler appeared on behalf of Apex Bank ("Apex"), Matt Daniels, and Brad Hailey.

As a threshold issue to the motions to compel, the Court also noted Daniels and Hailey's pending motions to dismiss Plaintiff's Second Amended Complaint pursuant to lack of personal jurisdiction under Rule 12(b)(2) of the *South Carolina Rules of Civil Procedure*. Because the personal jurisdiction question is a threshold issue and must be decided in conjunction with Plaintiff's motions to compel, the Court now addresses both motions to compel and the motions to dismiss.

Procedural History

Plaintiff filed this action in Edgefield County on May 31, 2016. Thereafter, the matter was removed to the United States Bankruptcy Court for the District of South Carolina on July 14, 2016. On October 14, 2016 the bankruptcy court entered an Order granting a Motion to Dismiss under Rule 12(b) of the *South Carolina Rules of Civil Procedure*. Appeal was taken from this order on October 28, 2016. On August 3, 2017, the Honorable Mary Geiger Lewis, United States District Judge for the District of South Carolina Anderson/Greenwood Division, reversed the Order of Dismissal by the bankruptcy court. Thereafter, on August 25, 2017, the defendant Apex answered the amended complaint in this case. On November 1, 2017, the Honorable David R. Duncan, Chief United States Bankruptcy Judge for the District of South Carolina, remanded this matter back to Edgefield County. Plaintiff was granted leave to file the present Second Amended Complaint “to clarify certain allegations, to include new allegations that have come to light, and to add Jim Clayton, Matt Daniels, and Brad Hailey as defendants.”

Distilled to its essence, Plaintiff alleges that he had an agreement with Apex that if he agreed to inform on his ex-partner Talmadge Knight (“Knight”) to Apex about Knight’s assets and give Apex a deed-in-lieu of foreclosure on two lots subject to Apex’s mortgage, then Apex would not seek to collect on its \$1,454,739.39 judgment against Rainsford or his companies. Plaintiff also alleges that Apex interfered with Gup’s Hill Plantation, LLC’s efforts to reorganize by purchasing a mortgage from one of Gup’s Hill’s creditors at a discount when Rainsford had arranged another investor to purchase the mortgage.

LACK OF PERSONAL JURISDICTION

In the Second Amended Complaint, Rainsford added Daniels and Hailey individually as parties to this action. However, these individual defendants should be dismissed under Rule

12(b)(2) SCRCF for lack of personal jurisdiction. As noted by Rainsford in the Second Amended Complaint, both of these individuals are residents of Knoxville, Tennessee. Rainsford makes no attempt to allege the court can assert general jurisdiction¹ over the individual defendants. Plaintiff instead relies on specific jurisdiction under the long-arm statute, S.C. Code Ann. § 36-2-803.

“The determination of whether a court may exercise personal jurisdiction over a nonresident involves a two-step analysis.” *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2011) (quoting *Aviation Assoc. & Consultants, Inc. v. Jet Time, Inc.*, 303 S.C. 502, 505, 402 S.E.2d 177, 179 (1991)). “The trial court must (1) determine whether the South Carolina long-arm statute applies and (2) whether the nonresident’s contacts in South Carolina are sufficient to satisfy due process.” *Id.* (citing *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 431, 665 S.E.2d 660, 664 (Ct. App. 2008)).

“Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985)). “Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that he could reasonably anticipate being hauled into court there.” *Id.* at 491-92, 611 S.E.2d at 508 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980); *Atlantic Soft Drink Co. v. S.C. Nat’l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985)). “Without

¹ “A court may assert general jurisdiction if the defendant has an ‘enduring relationship’ with the forum state.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 495, 611 S.E.2d 505, 510 (2005). To satisfy the “enduring relationship” requirement of general jurisdiction, the defendant’s contacts must be “continuous and systematic” as well as “so substantial and of such a nature as to justify suit against the defendant on causes of action arising from dealings entirely different from those activities.” *Cribb v. Spatholt*, 382 S.C. 475, 482, 676 S.E.2d 706, 710 (Ct. App. 2009) (citing *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 318, 66 S. Ct. 154, 90 L. Ed. 95 (1945)).

minimum contacts, the court does not have the ‘power’ to adjudicate the action.” *Id.* (citing *So. Plastics Co. v. So. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131(1992)). “The court must also find that the exercise of jurisdiction is ‘reasonable’ or ‘fair.’” *Id.*

**THE LONG-ARM STATUTE IS NOT APPLICABLE
TO THESE INDIVIDUAL DEFENDANTS**

First, the South Carolina long-arm statute, S.C. Code Ann § 36-2-803, does not apply to Daniels and Hailey.

a. No Allegation Hailey or Daniels was Transacting Business in South Carolina

S.C. Code Ann. § 36-2-803(A)(1) provides personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person’s transacting any business in this state. In this case, there is no evidence that Hailey or Daniels transacted business in this state directly or by an agent as to any of the causes of action alleged. There is no allegation or evidence that at any time Rainsford believed he was allegedly transacting business with an individual defendant and not Apex. The only person who Rainsford alleges he dealt with in South Carolina was an attorney who clearly disclosed that he was representing Apex in some capacity. (Second Amended Complaint, ¶27).

Also, the alleged contract which Rainsford is trying to enforce, and which was drafted by him, does not include the names of any of the individual defendants as party to the contract. (Second Amended Complaint, Exhibit A). There is no allegation that the individual defendants transacted business in this state and they are not subject to personal jurisdiction.

b. No Evidence Hailey or Daniels Committed Tortious Act in South Carolina

S.C. Code Ann. § 36-2-803(A)(3)-(4) provides jurisdiction over a person who commits “a tortious act in whole or in part in this State” or a person who causes “tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or

engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State.”

In this case, there is no evidence or allegations that the individual defendants entered this state, much less committed a tortious act here. Hailey and Daniels’ only interactions with Plaintiff were either in Knoxville or by email and then only as officers or agents of Apex. There are no allegations or evidence that the individual defendants regularly do or solicit business, or engage in any other persistent course of conduct, or derive substantial revenue from goods used or consumed or services rendered in this State. The mere allegation that they are shareholders or officers in Apex is not sufficient. If that were true, every shareholder, officer and employee of a company that transacts business in any state could be hauled into court in any state in which their company transacts business, regardless of their contacts.

c. No Evidence Hailey or Daniels Have Real Property Interests in South Carolina.

Last, S.C. Code Ann. § 36-2-803(A)(5) provides jurisdiction over a person “having an interest in, using, or possessing real property in this State.” Apex has an interest in real property in this state, but there is no evidence or allegation that the individual defendants have such an interest. Furthermore, Plaintiff’s causes of action do not concern Apex’s interest in real property in this state.

In summary, no provision of the long-arm statute, S.C. Code Ann. § 36-2-803, applies to the individual defendants, Hailey and Daniels, and Plaintiff fails the first step of the two-step personal jurisdiction analysis.

**THESE INDIVIDUAL DEFENDANTS DO NOT HAVE SUFFICIENT
MINIMUM CONTACTS WITH SOUTH CAROLINA TO
SATISFY DUE PROCESS REQUIREMENTS SUCH THAT THE
EXERCISE OF JURISDICTION IS REASONABLE AND FAIR**

Even if Plaintiff could somehow establish the long-arm statute was applicable to Hailey and Daniels, these individual defendants do not have sufficient minimum contacts with South Carolina that would justify them being brought to court here. Plaintiff's only allegations of these individual defendants' contacts with South Carolina are that Daniels was "personally involved in Apex's campaign against the Plaintiff" based on a statement from an attorney that he had been informed, "upon information and belief" by Hailey that the bank's CEO was "in charge now." (Second Amended Complaint, ¶75). Plaintiff alleges that Hailey was "personally involved in Apex's campaign against the Plaintiff" because he met with Plaintiff and then managed Apex's attorney. (Second Amended Complaint, ¶76). These are insufficient contacts.

Based on affidavits filed by Hailey and Daniels on June 28, 2019, both individuals were born, attended school, and currently reside in Tennessee. Neither have lived in South Carolina or owned property here. Neither have transacted business or contracted to supply goods or services in South Carolina. Neither have ever worked in South Carolina. Neither have had their children attend school or college in South Carolina.

Therefore, without application of the long-arm statute and without minimum contacts with South Carolina, the Court dismisses Hailey and Daniels as individual defendants under Rule 12(b)(2) SCRPC for lack of personal jurisdiction.

MOTION TO COMPEL AGAINST HAILEY AND DANIELS

Plaintiff's motion to compel requests that the Court require jurisdictional discovery against Hailey and Daniels. Specifically, Plaintiffs seeks an order of the court requiring Hailey and Daniels

to submit to a limited deposition in order to determine and test their contention that they are not subject to personal jurisdiction in South Carolina.

“When [the] plaintiff can show that discovery is necessary in order to meet defendant’s challenge to personal jurisdiction, a court should ordinarily permit discovery on that issue unless plaintiff’s claim appears to be clearly frivolous.” *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 151, 723 S.E.2d 835, 839 (Ct. App. 2011) (quoting *Rich v. KIS Cal., Inc.*, 121 F.R.D. 254, 259 (M.D.N.C. 1988)). “However, where a plaintiff’s claim of personal jurisdiction appears to be both attenuated and based on bare allegations in the face of specific denials made by defendants, the court need not permit even limited discovery confined to issues of personal jurisdiction if it will be a fishing expedition.” *Id.* at 151, 723 S.E.2d 835, 839-840. “When a plaintiff offers only speculation or conclusory allegations about contacts with a forum state, a court is within its discretion in denying jurisdictional discovery.” *Id.* at 151-152, 723 S.E.2d 835, 840 (quoting *Tuttle Dozer Works, Inc. v. Gyro-Trac (USA) Inc.*, 463 F.Supp.2d 544, 548 (2006)).

Plaintiff has only offered speculation and conclusory allegations to support his request for jurisdictional discovery, and affidavits filed by Hailey and Daniels deny jurisdictional acts or conduct. The Court finds that Plaintiff cannot make a prima facie showing of personal jurisdiction under Rule 8(a) SCRCP and the long-arm statute. There is no personal jurisdiction over Daniels and Hailey, and permitting jurisdictional discovery would be a fishing expedition.

THEREFORE, IT IS ORDERED that Hailey and Daniels are dismissed with prejudice for lack of personal jurisdiction.

IT IS FURTHER ORDERED that Plaintiff’s motions to compel against Hailey and Daniels are denied.

IT IS TO ORDERED.

September 9 , 2019

G. Thomas Cooper, Jr.
Judge, Eleventh Judicial Circuit

ELECTRONICALLY FILED - 2019 Sep 09 10:29 AM - EDGEFIELD - COMMON PLEAS - CASE#2018CP1900183



Edgefield Common Pleas

Case Caption: Bettis C Rainsford VS Apex Bank et al , defendant, et al

Case Number: 2016CP1900168

Type: Order/Dismissal

So Ordered

s/ Honorable G. Thomas Cooper, Jr. Circuit
Judge 2126

Electronically signed on 2019-09-09 10:20:35 page 9 of 9