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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2019-001689

Bettis C. Rainsford,

Appellant.

v.

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

Defendants.

Of whom, Matt Daniels and Brad Hailey are the Respondents.

FINAL BRIEF OF RESPONDENTS
MATT DANIELS AND BRAD HAILEY

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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT PROPERLY RULE ON RESPONDENT'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AS A THRESHOLD MATTER IN HEARING APPELLANT'S MOTION TO COMPEL?
2. DID THE CIRCUIT COURT PROPERLY GRANT RESPONDENT'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION WITHOUT PERMITTING BURDENSOME JURISDICTIONAL DISCOVERY?
3. DID THE CIRCUIT COURT PROPERLY GRANT RESPONDENTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION DUE TO LACK OF MINIMUM CONTACTS?

STATEMENT OF CASE

Appellant Bettis C. Rainsford (“Appellant”) filed a summons and complaint on May 31, 2016 against Apex Bank (“Apex”). (R. p. 003, Order, p.2.) Thereafter, the matter was removed to the United States Bankruptcy Court for the District of South Carolina on July 14, 2016. (Id.) On October 14, 2016, the Bankruptcy Court entered an order granting a Motion to Dismiss. (Id.) An appeal was taken from this order, and on August 3, 2017, the United States District Court reversed the order of dismissal. (Id.) On August 25, 2017, Apex answered the amended complaint and on November 1, 2017, the Bankruptcy Court remanded the matter to Edgefield County Court of Common Pleas. (Id.)

Appellant was granted leave to file a second amended complaint, which he did on April 30, 2018. The purpose of the second amended complaint was “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.” (R. p. 003, Order, p.2.) The nature of the action is that Appellant had an agreement with Apex that if he informed on his ex-partner Talmadge Knight (“Knight”) about Knight’s assets and gave Apex a deed-in-lieu of foreclosure on two pieces of property owned by Appellant’s company and subject to Apex’s mortgage, then Apex would not seek to collect on its \$1,454,739.39 judgment against Appellant or his companies. (R. p. 030, Resp. Mot. to Dismiss, p.2.) Appellant also alleged in the second amended complaint that Apex interfered with Gup’s Hill Plantation, LLC’s¹ (“Gup’s Hill”) efforts to reorganize by purchasing a mortgage from one of Gup’s Hill’s creditors when Appellant had arranged for his own investor to purchase the same mortgage. (Id.)

¹ According to the Second Amended Complaint, Gup’s Hill is 100% owned by Appellant. (R. p. 022, 2nd Am. Compl. at 61.)

On September 26, 2018, Respondents Matt Daniels and Brad Hailey (collectively the “Respondents”) filed a motion to dismiss pursuant to Rule 12(b)(2) of the *South Carolina Rules of Civil Procedure* for lack of personal jurisdiction or in the alternative, for summary judgment. (R. pp. 029-038, Resp. Mot. to Dismiss, p.1-10.) On June 19, 2019, Appellant filed a motion to compel Respondents to appear for jurisdictional depositions (R. p. 039, Mot. to Compel Depos., p.1) and a separate motion to compel Respondents and Apex to provide complete responses to Appellant’s interrogatories and requests for production of documents (R. p. 040, Mot. to Compel, p.1).

On June 28, 2019, Respondents filed separate affidavits in support of their motion to dismiss for lack of personal jurisdiction stating they had no contacts with South Carolina. (R. p. 042, Affidavit of Daniels, p.1; R. p. 041, Affidavit of Hailey, p.1.) Upon request of Appellant’s counsel, and in coordination with counsel for all defendants, the circuit court scheduled a hearing for August 13, 2019. (R. p. 048, Hearing Transcript, p.1.) On September 9, 2019, the circuit court issued an order dismissing Respondents for lack of personal jurisdiction and denying Appellant’s motion to compel jurisdictional discovery. (R. pp. 008-009, Order, p.7-8.) On October 8, 2019, Appellant served a notice of appeal of the September 9, 2019 Order. (R. p. 135, Notice of Appeal.)

FACTS

Claims Against Apex

Apex is a bank with its principal place of business in Tennessee. (R. p. 012, 2nd Am. Compl. at 2.) Appellant’s second amended complaint revolves around Apex’s judgment² against Appellant and an alleged agreement between Apex and Appellant whereby Apex would not seek

² Appellant alleged that the judgment was originally held by SunTrust Bank and Apex acquired the judgment on October 29, 2015 in a “Non-Recourse Assignment of Judgment” (R. p. 021, 2nd Am. Compl. at 57-58.)

to collect on that judgment against Appellant. Appellant asserted causes of action for breach of this agreement and also violation of South Carolina Unfair Trade Practices Act and interference with prospective contractual advantage. (R. pp. 024-027, 2nd Am. Compl. at 77-95.)

Appellant alleged that Apex purchased loans on the golf course and town center at Mount Vintage Plantation, a community in Edgefield County, South Carolina. (R. p. 014, 2nd Am. Compl. at 8, 13.) Apex later foreclosed on the two loans and obtained deficiency judgments against Appellant's former business partner (Knight) and another individual. (R. p. 014, Id. at 9, 14.) Appellant alleged that because he had "deep appreciation" for Mount Vintage, he contacted Jim Clayton (a shareholder of Apex) to initiate discussion about purchasing unsold residential lots at Mount Vintage. (R. p. 015, Id. at 18-19.) Appellant alleges that he met with Respondent Hailey (Apex's Senior Vice President) in Knoxville, Tennessee on January 9, 2015. (R. pp. 013, 015, Id. at 5, 22.) Later in 2015, Appellant met in his office with Kevin Molony ("Molony"), an attorney representing Apex. (R. p. 016, Id. at 25, 32.) Appellant alleges clearly that Molony held himself out as attorney for Apex only. (R. p. 017, 2nd Am. Compl. at 36.) Appellant alleges that he and Molony discussed Apex's mortgage on two lots owned by Appellant's company and a separate judgment lien held by SunTrust Bank against Knight and Appellant. (R. pp. 016-017, Id. at 32, 34.)

At one of these meetings, Appellant claims he offered to provide information on Knight and a deed-in-lieu of foreclosure on two (2) lots if Apex would release him from the SunTrust judgment and not pursue him or his companies. (R. pp. 017-018, 2nd Am. Compl. at 37-39.) Appellant alleges that he drafted an agreement and a deed-in-lieu of foreclosure and sent it to Molony, who had indicated he had the authority from Apex to negotiate an agreement, but that Respondent Hailey would have to actually sign any agreement. (R. pp. 018-019, Id. at 39, 41-43.)

Appellant alleged that Apex, through its agent Molony, had made Appellant an offer that was accepted. (R. p. 019, Id. at 47.) Last, Appellant alleged that Apex purchased a mortgage on a property owned by Gup's Hill, preventing Appellant from reorganizing that company. (R. p. 022, Id. at 62-64.)

Claims Against Respondents

In the second amended complaint, Appellant added Respondent Daniels as a party, who is a citizen and resident of Knoxville, Tennessee and Apex's Chief Executive Officer. (R. p. 013, 2nd Am. Compl. at 4.) Additionally, Appellant added Respondent Hailey as a party, who is also a citizen and resident of Knoxville, Tennessee and Apex's Senior Vice President and Chief Credit Officer. (R. p. 013, Id. at 5.) Appellant alleges generally that Respondent Daniels directed and that Respondent Hailey participated in "Apex's campaign" against Appellant. (R. p. 013, Id. at 4-5.) Specifically, Appellant says Respondent Hailey managed attorney Molony and that Molony told him that Respondent Hailey had accepted the agreement as negotiated by Molony. (R. pp. 020, 024, Id. at 48-49, 76.) Regarding Respondent Daniels' involvement, Appellant alleges that Molony told him that Respondent Hailey said the Respondent Daniels had also "become involved" and was "in charge now" of Apex's dealings with Appellant. (R. pp. 020, 024, 025, Id. at 53, 75, 81, 85.)

No Minimum Contacts

Respondents submitted affidavits on June 28, 2019 stating that they are citizens and residents of Knoxville, Tennessee, that they were born and attended school in Tennessee, that they have never lived or owned property in South Carolina. (R. p. 042, Affidavit of Daniels; R. p. 041,

Affidavit of Hailey.) They further stated they never transacted business in South Carolina, worked in South Carolina, or contracted to supply goods or services in South Carolina. (Id.) They have no relatives in South Carolina and his children have not attended college in South Carolina. (Id.)

STANDARD OF REVIEW

“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, 415 S.C. 533, 539, 783 S.E.2d 839, 842 (Ct. App. 2016) (citing Moosally v. W.W. Norton & Co., 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004)). “The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law.” Id.

“It is well-settled that the party seeking to invoke personal jurisdiction over a nonresident defendant via our long-arm statute bears the burden of proving the existence of personal jurisdiction.” Id. “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.” Id. “When a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” Id. (quoting Sullivan v. Hawker Beechcraft Corp., 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012)).

ARGUMENT

I. THE CIRCUIT COURT DID NOT ERR IN DECIDING THE JURISDICTIONAL ISSUE AS A THRESHOLD MATTER TO RESPONDENTS' MOTION TO COMPEL, AND THE PROCEDURAL DUE PROCESS ISSUE WAS NEVER PRESERVED FOR APPEAL.

In its September 9, 2019 Order, the circuit court dismissed Respondents for lack of personal jurisdiction as a threshold matter to deciding any motion to compel against them. (R. p. 002, Order, p.1.) The circuit court stated, “[a]s 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*.” (Id.) “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.” (Id.)

Appellant now says this Court should reverse the circuit court’s order dismissing Respondents because he did not have notice that the circuit court would address personal jurisdiction during the August 13, 2019 hearing, violating procedural due process. However, this objection was not addressed to the circuit court and therefore was not properly preserved for appeal. Even if the Court finds the issue was preserved for appeal, it was proper for the circuit court to address the issue of personal jurisdiction at the same time as it addressed a motion to compel jurisdictional discovery. Further, Appellant had sufficient notice of Respondents’ outstanding motion to dismiss and Appellant had an opportunity to address the merits of the motion to dismiss at the hearing.

Appellant had Sufficient Notice of the Motion to Dismiss

Appellant had sufficient notice of Respondents' outstanding motion to dismiss for lack of personal jurisdiction. Respondents filed the motion on September 26, 2018 (R. p. 029, Resp. Mot. to Dismiss) and filed supporting affidavits on June 28, 2019 (R. p. 042, Affidavit of Daniels; R. p. 041, Affidavit of Hailey). One of Appellant's motions to compel was for the purpose of compelling "jurisdictional depositions." (R. p. 039, Mot. to Compel Depos., p.1.) At the August 13, 2019 hearing, counsel for Appellant acknowledges that "[w]e received today a memorandum ... that [Respondents and Apex] have filed in which they claim that there's no personal jurisdiction." (R. p. 054, lines 12-14, Hearing Transcript, p.7:12-14.) Appellant also acknowledged receiving Respondents' affidavits pertaining to the personal jurisdiction issue. (R. p. 054, lines 15-22, Id., p.7:15-22.) The issue was ripe for adjudication and Appellant had notice that the jurisdictional issue remained outstanding. It is foreseeable and probable that the circuit court would address personal jurisdiction in a motion to compel jurisdictional discovery.

Appellant had Opportunity to Address the Threshold Issue of Personal Jurisdiction

At the August 13, 2019 hearing, the circuit court addressed both the jurisdictional discovery issue and the issue of personal jurisdiction. Appellant did not object to the circuit court at the hearing. In fact, Appellant rightly referred to personal jurisdiction as a threshold issue, consenting to it being addressed. Early in the hearing, counsel for Appellant stated that the parties were in court on two motions to compel, and he also states, "[b]ut more importantly, I believe that we have before us a threshold issue, particularly as addressed by the defendants Hailey and Daniels and, I think, to some extent, also by—by Mr. Clayton." (R. p. 052, lines 12-16, Hearing Transcript, p.5:12-16.) Appellant's counsel goes on to describe the threshold issue in saying, "And that is that

... all the parties have moved to dismiss on the grounds of personal jurisdiction.” (R. p. 052, lines 18-22, Id., p.5:18-22.)

“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” Blanton v. Stathos, 351 S.C. 534, 542, 570 S.E. 565, 569 (Ct. App. 2002) (citing S.C. Dep’t. of Social Servs. v. Holden, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995)). Appellant had an opportunity to present his side of the personal jurisdiction issue and contest Respondents’ affidavits and he actually did so at the hearing. At the hearing, Appellant asserted personal jurisdiction as to Respondent Hailey because “Hailey had agreed to the terms of an agreement they they—that they had that we are suing on.” (R. p. 060, lines 7-9, Hearing Transcript, p.13:7-9.) Appellant argued personal jurisdiction as to Respondent Daniels because he “has taken control of this and is in charge” and because “he had a personal interest in this because of his substantial ownership of [Apex].” (R. p. 060, lines 10-13, Id., p.13:10-13.) Appellant argues directly that he has made *prima facie* showing of personal jurisdiction. (R. p. 061, line 25 – p. 062, line 25, Id., p.14:25-15:25.)

Appellant Did not Object to Circuit Court Addressing Personal Jurisdiction

Appellant did not object to the circuit court addressing or ruling on the jurisdictional issue and never raised procedural due process concerns either at the hearing or in a motion to reconsider the September 9, 2019 Order. The circuit court announced the ruling at the hearing in saying, “I’m just not satisfied, I should say, that Daniels and Hailey are []—from what I’m seeing, [] have been involved in this case [] sufficiently to reach out and grab them. I just don’t see it.” (R. p. 074, lines 10-14, Hearing Transcript, p.27:10-14.) While Appellant’s counsel expresses some surprise, in the following exchange, he confirms the ruling and moves on to other matters:

MR. WILKERSON: Okay. So the basis of the Court’s ---

THE COURT: Not sufficient ---

MR. WILKERSON: ---order is ----

THE COURT: ---to---

MR. WILKERSON: ---is personal jurisdiction?

THE COURT: Yeah.

MR. WILKERSON: Okay.

...

THE COURT: This is simply personal jurisdiction.

MR. WILKERSON: All right.

(R. p. 075, lines 6-18, Id., p.28:6-18.)

The issue of lack of notice of a hearing or violation of procedural due process was not raised to the circuit court, and therefore it was not preserved for appeal. “Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review.” Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (quoting Queen’s Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006)). “At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge.” Id. (citing Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)). “It is axiomatic that an issue cannot be raised for the first time on appeal.” Id. “Imposing such a requirement on the appellant ‘is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.’” Id. (citing I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)).

Appellant did not object to the court addressing personal jurisdiction as a threshold matter during the hearing or after the circuit court's ruling, did not seek a continuance of the hearing, and did not raise objection or procedural due process violation in post-hearing motion to alter or amend. Appellant relies on Dedes v. Strickland, 307 S.C. 152, 414 S.E.2d 132 (1992) in contending the circuit court violated his procedural due process, but in Dedes, the appellant contested the late notice at the hearing, moved for a continuance, and objected because he was not allowed to submit opposing affidavits. See id. Appellant took none of those steps in the present case to address the issue with the circuit court or to preserve the issue for appeal. Appellant raises the issue for the first time in his initial brief with this Court, and therefore, it is not preserved for appeal and not properly before this Court.

II. THE CIRCUIT COURT DID NOT ERR IN GRANTING RESPONDENTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION WITHOUT PERMITTING JURISDICTIONAL DISCOVERY.

The circuit court correctly denied Appellant's request for jurisdictional discovery in the course of dismissing Respondents for lack of personal jurisdiction. "[A] court should ordinarily permit discovery [to meet a challenge to personal jurisdiction] 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. 2012) (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 the issues of personal jurisdiction if it will be a fishing expedition." Id. at 151, 723 S.E.2d at 839-840. "When a plaintiff offers only speculation or

conclusory assertions about contacts with a forum state, a court is within its discretion in denying jurisdictional discovery.” *Id.* at 151-152, 723 S.E.2d at 840 (quoting Tuttle Dozer Works, Inc. v. Gyro-Trac (USA) Inc., 463 F.Supp.2d 544, 548 (D.S.C. 2006)). The circuit court used the proper standard and applied it correctly to deny Appellant’s motion to compel jurisdictional discovery.

Jurisdictional Claims Clearly Frivolous

Appellant offered only speculation and bare and conclusory assertions to support attenuated personal jurisdiction over Respondents. Respondents filed affidavits specifically denying any jurisdictional contacts and argued that the Appellant’s jurisdictional claim was frivolous and could be decided without jurisdictional discovery. (R. p. 064, line 4 – p. 066, line 14, Hearing Transcript, p.17:4-19:14.) Appellant offered only mere speculation that he “strongly suspected that [Respondent] Daniels had decided Apex would not uphold the agreement to which both Mr. Molony and Mr. Hailey had agreed.” (R. p. 021, 2nd Am. Compl. at 54.) Appellant alleges “upon information and belief” that Respondent Daniels directed Apex not to sign an agreement with Appellant and that Respondents Daniels and Hailey “upon information and belief” purchased a loan in order to interfere with Appellant’s prospective advantage. (R. p. 025, 026, 2nd Am. Compl. at 81, 91.) Therefore, the circuit court correctly found the jurisdictional claim clearly frivolous, speculative, attenuated and based on bare allegations contradicted by Respondents’ specific denials.

The record shows the circuit court addressed the jurisdictional “hook” alleged by Appellants. In analyzing the claim of personal jurisdiction over Respondent Daniels, the circuit court read the allegation in paragraph 75 of the Second Amended Complaint and stated, “the bank’s CEO has become involved and ... that he’s in charge now? ... is that your hook?” (R. p. 058, lines

16-24, Hearing Transcript, 11:16-24.) The circuit court also considered the alleged “hook” on Respondent Hailey—that Hailey had agreed to the terms of Apex’s agreement with Appellant. (R. p. 059, line 25 – p. 060, line 9, Id., p.12:25-13:9). The circuit court properly considered the allegations and found “[Appellant] has only offered speculation and conclusory allegations to support his request for jurisdictional discovery” and that “permitting jurisdictional discovery would be a fishing expedition.” (R. p 008, Order, p.7.)

Sullivan v. Hawker Beechcraft Standard Correctly Applied

The circuit court did not misapply the standard outlined in *Sullivan v. Hawker Beechcraft*, and Appellant’s contention the circuit court improperly applied a prima facie standard in denying jurisdictional discovery is without merit. While the circuit court made the finding that there was no prima facie case for personal jurisdiction, this finding was in addition to the finding that the jurisdictional claims were clearly frivolous, speculative and conclusory and did not warrant jurisdictional discovery. (R. p. 008, Order, p.7.) In denying jurisdictional discovery, the circuit court’s order stated that “[Appellant] 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.” (R. p. 008, Order, p.7.) The court goes on to state, “permitting jurisdictional discovery would be a fishing expedition.” (Id.) In the same order, the circuit court also ruled on the motion to dismiss for lack of personal jurisdiction. In support of this additional ruling, the circuit court found “[Appellant] cannot make a prima facie showing of personal jurisdiction under Rule 8(a) SCRCF and the long-arm statute” and that “[t]here is no personal jurisdiction over [Respondents].” (Id.) The circuit court used the correct standard to make each finding, and these findings are consistent.

Last, Appellant now claims that the circuit court should have allowed jurisdictional discovery because “the nature of Appellant’s allegations against Respondents are that they participated in a conspiracy with Apex and Defendant Clayton...to injure Appellant” and that “the secretive nature of conspiracies make discovery in this case necessary.” (Appellant Initial Brief, p.19.) However, Appellant did not assert a cause of action of civil conspiracy against Respondents in his second amended complaint. Allowing jurisdictional discovery to bring Respondents into a lawsuit for a cause of action Appellant never asserted is clearly frivolous and attenuated, and the circuit court correctly denied Appellant’s motion to compel. The circuit court considered the claims of personal jurisdiction, analyzed them properly under the Sullivan v. Hawker Beechcraft standard, and correctly denied Appellant the requested jurisdictional discovery. This Court should affirm the circuit court’s order.

III. THE CIRCUIT COURT DID NOT ERR IN DISMISSING RESPONDENTS FOR LACK OF PERSONAL JURISDICTION AS THE LONG ARM STATUTE DOES NOT APPLY AND RESPONDENTS HAVE NO CONTACTS WITH SOUTH CAROLINA.

Appellant next claims that the circuit court erred in dismissing Respondents pursuant to Rule 12(b)(2) of the *South Carolina Rules of Civil Procedure* for lack of personal jurisdiction. However, the circuit court utilized the proper standard and applied it correctly to find lack of personal jurisdiction and to dismiss Respondents. In this case, the circuit court properly applied the two-step analysis and correctly held that Appellant made no prima facie showing of personal jurisdiction. Therefore, Respondents’ dismissal was proper.

“The Due Process Clause of the Fourteenth Amendment limits the power of a state court to exert personal jurisdiction over a nonresident defendant.” Moosally v. W.W. Norton & Co., 358

S.C. 320, 330, 594 S.E.2d 878, 883 (Ct. App. 2004) (citing Asahi Metal Ind. Co. v. Superior Court, 480 U.S. 102, 107 (1987)). “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. 2012) (quoting Aviation Assocs. & 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)).

“The defendant must have sufficient contacts with South Carolina so that the constitutional standards of due process are not violated.” Moosally, 358 S.C. at 328, 594 S.E.2d at 882. “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.” Id. at 330, 594 S.E.2d at 883 (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985)). Further, due process requirement 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 330, 594 S.E.2d at 884 (citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 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 minimum contacts, the court does not have the ‘power’ to adjudicate the action.” Id. at 332, 594 S.E.2d at 884 (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. at 331, 594 S.E.2d at 884.

Circuit Court Addressed Long-Arm Statute

Appellant alleged the long-arm statute³ provides jurisdiction over Respondent Daniels because he is a shareholder and CEO of Apex, owns an interest in Apex, and directed Apex in its campaign against Appellant. (R p. 013, 024, 2nd Am. Compl. at 4, 75; (citing S.C. Code Ann. § 36-2-803(A)(1), (3)-(5), and (7)). At the hearing, Appellant directed the circuit court to his Second Amended Complaint where he alleges that he was told that Respondent Daniels “has become involved and that he’s in charge now.” (R. pp. 020, 024, 2nd Am. Compl. at 53, 75; R. p. 060, lines 6-16, Hearing Transcript, p.13:6-16.) Further, Appellant points to his allegation that Respondent Daniels (“upon information and belief”) instructed Apex to not execute the agreement with Appellant, thus breaching a contract. (R. p. 025, Id. at 81.)

Regarding application of the long-arm statute to Respondent Hailey, Appellant alleges he “participated” in Apex’s campaign against Appellant. (R. p. 013, 2nd Am. Compl. at 5.) Further, Appellant points to his Second Amended Complaint where he alleges that Apex’s attorney had

³ (A) A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person’s:

- (1) transacting any business in this State;
- (2) contracting to supply services or things in the State;
- (3) commission of a tortious act in whole or in part in this State;
- (4) causing 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;
- (5) having an interest in, using, or possessing real property in this State;
- (6) contracting to insure any person, property, or risk located within this State at the time of contracting;
- (7) entry into a contract to be performed in whole or in part by either party in this State; or
- (8) production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.

(B) When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him.

S.C. Code Ann. § 36-2-803.

told Appellant that Respondent Hailey had agreed to an arrangement (to not pursue Appellant through a judgment) but had not yet signed and returned a writing confirming any such agreement. (R. p. 020, 2nd Am. Compl. at 48-51.)

Addressing each provision of the long arm statute in turn, the circuit court held that “no provision of the long-arm statute...applies to [Respondents], and [Appellant] fails the first step of the two-step personal jurisdiction analysis.” (R. p. 006, Order, p.5.) Specifically, the circuit court held “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.” (R. p. 005, Order, p.4.) The circuit court found that Appellant only alleges he was dealing with an attorney “who clearly disclosed that he was representing Apex in some capacity.” (Id.) Next, the circuit court held that there is no evidence or allegations that the [Respondents] entered South Carolina, committed a tortious act here, regularly did or solicited business in South Carolina, engaged in any other persistent course of conduct, or derived substantial revenue from goods used or consumed or services rendered in South Carolina. R. p. 006, (Id., p.5.) The circuit court found that being a shareholder of an officer in a corporate defendant is “not sufficient” for personal jurisdiction. (R. p. 006, Id., p.5.) Last the circuit court held there is no evidence or allegation that Respondents have an interest in real property in South Carolina. (Id.)

Circuit Court Addressed Minimum Contacts

Next, the circuit court evaluated whether jurisdiction over the non-resident parties was consistent with due process. “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.” Delta Apparel, Inc. v. Farina, 406 S.C. 257, 269-70, 750 S.E.2d

615, 622 (Ct. App. 2013) (quoting Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005)). “Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that he could reasonably anticipate being haled into court there.” Id. (quoting Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 491-492, 611 S.E.2d 505, 508 (2005)). “Without minimum contacts, the court does not have the ‘power’ to adjudicate the action” and “[t]he court must also find that the exercise of jurisdiction is reasonable or fair.” Id. (quoting Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 492, 611 S.E.2d 505, 508 (2005)).

At the hearing, the trial judge stated, “I’m just not satisfied...that [Respondents] ... from what I’m seeing...have been involved in this case sufficiently to reach out and grab them.” (R. p. 074, Hearing Transcript, p.27.) In its Order, the circuit court focused on both the allegations in the second amended complaint and Respondents’ affidavits pertaining to their lack of minimum contacts. The circuit court found that “[e]ven if [Appellant] could somehow establish the long-arm statute was applicable to [Respondents], these individual defendants do not have sufficient minimum contacts with South Carolina that would justify them being brought to court here.” (R. p. 007, Order, p.6.) The circuit court specifically found the only contact Respondent Daniels was that he is alleged to have become personally involved in Apex’s campaign against Appellant based on a statement from an attorney that upon information and belief Respondent Hailey had said Apex’s CEO (Respondent Daniels) was “in charge now.” (R. p. 007, Order, p.6) (quoting R. p. 024, 2nd Am. Compl. at 75). The circuit court looked to the alleged contacts with Respondent Hailey and found the allegation that he was “personally involved in Apex’s campaign against [Appellant] because he met with Appellant and managed Apex’s attorney” was simply “insufficient contact.” R. p. 007, (Order, p.6) (quoting R. p. 024, 2nd Am. Compl. at 76).

Further, the circuit court reviewed the affidavits filed by Respondents on June 28, 2019. The circuit court noted these affidavits state that both Respondents were born, attended school, and currently reside in Tennessee. (R. p. 007, Order, p.6.) The circuit court noted the Respondents further state in their affidavits that they have not lived or owned property in South Carolina, have not transacted business or contracted to supply goods or services in South Carolina, and have never worked in South Carolina. (Id.)

Appellant's Theories of Personal Jurisdiction Fail

For the first time in a late attempt to apply the long arm statute to Respondent Daniels, Appellant in this appeal now asserts that Respondent Daniels was a principal and used Apex as his agent. See S.C. Code Ann. § 36-2-803(A) (stating a court may exercise jurisdiction over “a person who acts directly or by an agent”). Appellant now seeks to impute Apex’s conduct to that of Apex’s corporate officers for purposes of establishing personal jurisdiction. First, the novel theory that Apex was an agent for Respondent Daniels was never alleged or raised with the circuit court. In fact, Appellant has previously argued the opposite position that Respondent Daniels is an agent of Apex. At the hearing, counsel for Appellant said the tortious interference with a contract is “a tort that we’ve alleged that [Daniels] committed *as an agent of the bank.*” (R. p. 060, lines 13-19, Hearing Transcript, p.13:13-19.) Respondent Daniels cannot be an agent of Apex at the same time Apex is an agent of Respondent Daniels. In fact, Respondents conceded they are agents of Apex in arguing their presence as party defendants was frivolous as Appellant’s allegations are really only against Apex. (R. p. 064, line 4 – p. 065, line 17, Hearing Transcript, p.17:4-18:17.) This Court need not now address the question of whether a corporation can be deemed an agent of an officer in order to establish personal jurisdiction over the officer. This was never raised with the circuit court and not preserved for appellate review.

Appellant also asserts a new argument for why personal jurisdiction attaches to Respondent Hailey as well. Appellant argues a corporate officer is liable if he commits or participates in the commission of a tort by his corporation. See Hunt v. Rabon, 275 S.C. 475, 272 S.E.2d 643 (1980). However, Appellant improperly conflates the concepts of liability and personal jurisdiction. In Hunt, the only question was whether a plaintiff validly stated a cause of action against individual trustees of a hospital. Id. Personal jurisdiction over the corporate officer was never disputed. Hunt stands only for the rule that an officer can be independently liable if he is “shown to have in some way participated in or directed the tortious act.” Id. at 477, 272 S.E.2d at 644. This question is not reached when there is no personal jurisdiction over the corporate officer.

Appellant next argues the circuit court erred in dismissing Respondents for lack of personal jurisdiction because they were involved in a conspiracy with the remaining defendants (Apex and Jim Clayton) to injure Appellant. (R. pp. 025, 026, 027, 2nd Am. Compl. at 82, 86, 92.) While Appellant uses the word “conspired” in outlining his causes of action for breach of contract, violation of the South Carolina Unfair Trade Practices Act, and Interference with Prospective Advantage, Appellant never asserted a cause of action for civil conspiracy. In an attempt to establish personal jurisdiction over Respondents, Appellant now contends that Respondents conspired with the corporate party-defendant (Apex) and the conduct of one co-conspirator (Apex) is sufficient to create personal jurisdiction for other officers Apex. Even if Appellant had asserted a cause of action for civil conspiracy, “[it] is not enough that other members of the alleged conspiracy have numerous contacts with South Carolina.” Allen v. Columbia Fin. Mgmt., Ltd., 297 S.C. 481, 490, 377 S.E.2d 352, 357 (Ct. App. 1988). “Due Process requires [the appellate court] to examine each [parties’] own contacts with South Carolina.” Id. This court should affirm

the circuit court and “decline to attribute the contacts of one alleged conspirator to another alleged conspirator.” Id.

Appellant further states the circuit court ignored allegations that Respondents “purposefully directed” activities at Appellant, a resident of South Carolina. However, circuit court carefully reviewed the allegations of the second amended complaint and correctly held there was no allegation Respondents purposefully directed activities toward the forum state. Appellant only alleged that he heard Respondent Daniels had become “in charge,” which is a conclusory allegation consistent with his role as CEO of Apex and not an allegation of purposefully directing conduct toward Appellant in South Carolina.

Appellant’s only allegation against Respondent Hailey is that he participated in some campaign against Appellant, that he had apparently approved the agreement Appellant had with Apex Bank, and that he managed Apex’s attorney (Molony). These contacts are too attenuated to create personal jurisdiction. Further, even if Respondent Daniels had “taken charge” or Respondent Hailey had participated in some campaign against Appellant, these activities, decisions, and conduct all occurred in Tennessee. Even though Apex as the corporate defendant may be subject to personal jurisdiction, individual officers or employees do not necessarily anticipate being haled into court in every state where the corporation has contacts.

Appellant has really only alleged that Respondents (in their roles with the corporate defendant, Apex) had involvement with the alleged contract between Appellant and Apex. Even if Respondents had actually entered into a contract, “our courts have held entering into a contract or mere negotiations inside South Carolina without more is not enough to establish minimum contacts.” Cribb v. Spatholt, 382 S.C. 490, 501, 676 S.E.2d 714, 720 (Ct. App. 2009). Here, Appellant has not even alleged Respondents entered into a contract. Appellant alleges his alleged

contract is with Apex and was negotiated by Apex's attorney. Appellant only alleges Respondents merely had a tenuous or attenuated relationship with the negotiations. This alleged connection is much more attenuated and insufficient to be even minimum contacts.

While a single act can be sufficient to establish personal jurisdiction over a non-resident defendant, that single act must create a "substantial connection" with the forum. Moosally, 358 S.C. at 331, 594 S.E.2d at 884; see also Cribb, 382 S.C. at 499, 676 S.E.2d at 719 (holding the fairness prong requires a court to consider "(1) the duration of the defendant's activity in this State; (2) the character and circumstances of its acts; (3) the inconvenience to the parties; and (4) the State's interest in exercising jurisdiction."). No single act by Respondents establishes any substantial connection, and the circuit court's dismissal for lack of personal jurisdiction was proper.

CONCLUSION

The circuit court's decision on the question of personal jurisdiction was neither unsupported by the evidence nor influenced by an error of law. See Indus. 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."). For the reasons stated, the Court should affirm the judgment of the circuit court to deny jurisdictional discovery and dismiss Respondents for lack of personal jurisdiction.

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Respectfully submitted,
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