THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
In the Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2020-000557

Alison Meyers, ……Appellant,

v.

Shiram Hospitality, LLC, ……Respondent.

INITIAL REPLY BRIEF OF APPELLANT

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Respondent's Initial Brief fails to address nearly every single case cited by Appellant. Instead, Respondent attempts to cast red herring arguments, based on its own version of events, to fit its narrative hoping that it will be absolved of paying a judgment that is based on its actions nearly a decade ago. Yet despite Respondent's protestations, Illinois case law unequivocally supports Appellant's arguments regarding the manner of service, apparent agency between Mike Mishra and Respondent, as well as jurisdiction over Respondent.

I. Service on Respondent was proper under Illinois law.

"[T]he burden of undermining the decree of a sister state '*rests heavily on the assailant'*…" Law Firm of Paul L. Erickson, P.A. v. Boykin, 383 S.C. 497, 504, 681 S.E.2d 575 (2009) (emphasis added). Here, Respondent did not meet that burden, especially pursuant to Illinois law.

A. Service of process on unregistered foreign limited liability companies is prescribed by the Illinois long arm statute.

Respondent contends that the Illinois Limited Liability Company Act prescribes that a foreign limited liability company "shall be served either upon the registered agent . . . or upon the Secretary of State as provided in this Section." 805 Ill. Comp. Stat. 180/1-50(a). It further asserts that due to the failure to serve either the registered agent or the Secretary of State, service on Mike Mishra was improper. Respondent's argument fails because the Act is not controlling.

As an initial matter, Respondent waived such an argument because it raised such argument for the first time in its Initial Brief. See Wilder Corp. v. Wilke, 330 S.C. 71, 76 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but *must have been raised to and ruled upon* by the trial judge to be preserved for appellate review."). Respondent notes that Appellant did not cite the Act, but that is because the underlying action was brought pursuant to the long arm statute of Illinois. (Trans. p. 4; ¶¶ 12-19.) Regardless, the Act prescribes service of

process upon a foreign LLC only when it registers to transact business in Illinois. See 805 Ill. Comp. Stat. 180/1-35 ("Each limited liability company and foreign limited liability company shall continuously maintain in this State a registered agent and registered office, which agent must be an individual resident of this State or other person authorized to transact business in this State.") Since Respondent had neither a registered agent nor a registered office in Illinois, Section 1-50(a) of the Act is inapplicable. Respondent's reliance upon Pickens v. Aahmes Temple #132, LLC , 2018 IL App (5th) 170226, 104 N.E.3d 507 (Ill. App. Ct. 2018), is misplaced.

Service upon the Illinois Secretary of State, as prescribed in the Act, is permitted only under specific circumstances:

> (1) Whenever the limited liability company shall fail to appoint or maintain a registered agent in this State; (2) Whenever the limited liability company's registered agent cannot with reasonable diligence be found at the registered office in this State or at the principal place of business stated in the articles of organization; (3) When a limited liability company has dissolved; (4) When a domestic limited liability company has been dissolved, the conditions of paragraph (1) or paragraph (2) exist, and a criminal proceeding has been instituted against or affecting the limited liability company; and (5) When the admission of a foreign limited liability company to transact business in this State has been revoked or withdrawn. 805 Ill. Comp. Stat. 180/1-50(b).

None of the aforementioned circumstances exist because Respondent is not registered in Illinois. Further, it is illogical that service upon every unregistered foreign LLC must be through the Illinois Secretary of State because every plaintiff would take advantage of that option, and then the burden would fall on the Secretary of State to give notice to every LLC.

Assuming*, arguendo*, that the Act did prescribe service on every unregistered foreign LLC, Respondent still was properly served pursuant to the catchall provision that states, "Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter

provided by law." 805 Ill. Comp. Stat. 180/1-50(d). As a result, statutory service on a corporation[1] or personal service outside the state[2] is satisfactory under the Act. Therefore, Respondent's argument is misplaced and service was proper.

B. Service on Mike Mishra was proper under Illinois Law.

Respondent contends that service was improper because service was effectuated in the same manner as upon a foreign corporation. It also argues that Mike Mishra did not have authority to accept service, that he did not understand what he received, that the Verified Complaint has no probative value, and that the documents presented to the trial court at the hearing were not admitted as evidence. All of the arguments, however, fail to address or distinguish any of the cases cited by Appellant and fail to meet the burden of clear and convincing evidence.

i. Corporate service or personal service outside Illinois is sufficient.

As stated above, the underlying matter was brought pursuant to the Illinois long arm statute. Thus, "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.*" 735 Ill. Comp. Stat. 5/2-209(d) (emphasis added). Additionally, the long arm statute's catchall provision unequivocally states that, "[n]othing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law." 735 Ill. Comp. Stat. 5/2-209(g). Either way, statutory corporate service

[1] "A private corporation may be served (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; or (2) *in any other manner now or hereafter permitted by law*." 735 Ill. Comp. Stat. 5/2-204 (emphases added).
[2] "(a) Personal service of summons *may be made upon any party outside the State* . . . (b) The service of summons shall be made *in like manner as service within this State*." 735 Ill. Comp. Stat. 5/2-208(a)(b) (emphases added).

or personal service outside the state is appropriate. Subsequently, "service on *any agent*, *including a secretary or receptionist*, is generally sufficient to serve the corporation." In re Subpoena to Huawei Techs. Co., Ltd., 720 F. Supp. 2d 969, 976 (N.D. Ill. 2010) (emphasis added); *see also* Island Terrace Apartments v. Keystone Serv. Co., 35 Ill. App. 3d 95, 99, 341 N.E.2d 41, 44 (Ill. App. Ct. 1975).

ii. Respondent failed to impeach Deputy Cox's Affidavit.

Respondent now questions whether Deputy Cox's Affidavit of Substitute Service establishes a *prima facie* case under Illinois law, and contends that it "is poorly phrased and completely ambiguous." (Resp. Br., p. 8.) These arguments are likewise waived pursuant to Wilder, Corp., because the first time that Respondent raises such issue is in its Initial Brief. Additionally, the Illinois court already concluded that the affidavit established *prima facie* evidence when it entered the default judgment, and any challenge by Respondent should have been made in Illinois after receiving notice of the judgment. Respondent failed to do so and also failed to examine Deputy Cox regarding any ambiguity in the affidavit. Thus, Respondent cannot now challenge the language of Deputy Cox's affidavit; rather, it needed impeach the return of service by clear and convincing evidence. Charles Austin, Ltd. v. A-1 Food Services, Inc., 2014 IL App (1st) 132384, ¶16, 23 N.E.3d 534, 537 (Ill. App. Ct. 2014) (emphasis added).

iii. Illinois law does not require authorization in order to accept service.

Next, Respondent argues that under Illinois law, Mike Mishra did not have actual authority to accept service citing MB Financial Bank, N.A. v. Ted & Paul, LLC. It also argues that Mike Mishra did not understand what he received and cites Aspen Am. Ins. Co. v. Interstate Warehousing, Inc. Yet, pursuant to Wilder Corp., Respondent waived the issue of whether Mike

Mishra understood the legal import of what he received because the issue was never raised prior to this appeal. Beyond this, Mike Mishra did not need to be authorized to receive service.

In MB Financial, a default judgment on foreclosure was obtained after the trial court found that service was effectuated on an agent of the company via corporate service. MB Financial Bank, N.A. v. Ted & Paul, LLC, 2013 IL App (1st) 122077, ¶ 29, 990 N.E.2d 764 (Ill. App. Ct. 2013). In response, affidavits were filed by the agent and the president stating that the agent "has never been a director, officer, agent or registered agent." Id. at ¶ 30. The appellate court held that whether someone is a corporate agent for the purpose of receiving service of process on behalf of that corporation is a question of fact. Id. at ¶ 31. MB Financial is inapposite to the instant matter because the agent served, Mike Mishra, is unable to submit an affidavit denying a connection to Respondent and cannot be examined by either party due to his death. Further, Sanjay Mishra's affidavit only stated that "Mike Mishra was not, and never has been a Member, 'officer, managing or general agent, nor. [sic] any other agent authorized by appointment of [sic] by law to receive service of process . . .' It does not state that Mike Mishra was not a regular agent or *an employee of Respondent*, that he never held himself out to be an agent or employee, nor did it explain why Mike Mishra was at the hotel voluntarily accepting service if he was neither an employee or agent of Respondent nor holding himself out to be an agent or employee thereof. Consequently, Sanjay Mishra's uncorroborated affidavit is not clear and convincing evidence required to overcome the presumption of service. See Davis v. Dresback, 81 Ill. 393, 395 (Ill. 1876) ("If the return of a sheriff can be impeached and a judgment and decree vacated upon the evidence alone of the defendant, who has been served with process, that stability which characterizes our judicial proceedings will be lost and a wide door will be opened for the temptation to commit perjury [sic]

by the unscrupulous."). This is especially true because the underlying case is about Respondent's fraud.

In addition, Respondent cites Nibco, Inc. v. Johnson. In that case, a member of the defendant's household was served, which constituted "substitute service" or "abode service". Nibco, Inc. v. Johnson, 98 Ill.2d 166 (Ill. 1983). In *dicta*, the Illinois Supreme Court compared substitute service to corporate service, and opined that service made upon a defendant may be denied and may put at issue by the affidavit, which if it stands unrebutted or uncontradicted may be a proper basis for quashing the service. Id. at 172. Here, the affidavit was rebutted and contradicted by evidence submitted to the Court, especially by way of the article using Mike Mishra's own words. As a result, Respondent's affidavit, which is the only evidence submitted and is self-serving by nature, does not rise to the level of clear and convincing evidence required to show that service was improper.

Notwithstanding the waiver, Respondent contends that a common corporate agent may not be served because there was no authorization to receive service. Yet, Illinois courts have held that the failure to authorize does not mean that he fails to qualify as a corporate agent to be served. Bober v. Kovitz, Shifrin, Nesbit, No. 16 C 5393, 2005 WL 2271861, ¶5 (2005). Respondent further argues that Illinois courts may inquire whether an employee understood the import of the documents received when served with process. See Aspen Am. Ins. Co. v. Interstate Warehousing, Inc., 2016 IL App (1st) 151876, 57 N.E.3d 656 (Ill. App. Ct. 2016). The court in Aspen, however, found that despite not being an agent authorized to receive service, the general manager was served properly. Id. Even if Mike Mishra was not explicitly authorized to receive service as an agent of Respondent, the Trial Court recognized that Mike Mishra held himself out as an agent through the evidence that was submitted at hearing. Thus, service was proper under Illinois law.

iv. Reliance on the Verified Complaint is appropriate.

Disingenuously, Respondent argues that the Verified Complaint should not be relied upon, despite its own reference to it. In its Notice of Defense, and Response to Notice to Domesticate Foreign Judgment, Respondent states "Plaintiff's complaint alleged that the defendant Shiram Hospitality, LLC, operator of the La Quinta Inn in North Myrtle Beach, overcharged Plaintiff's credit card following a stay at that hotel, seeking judgment in the amount of approximately $3,120.74" and that "matters complained of in the plaintiff's complaint did not occur in Illinois, but were solely related to a transaction occurring in Horry County, South Carolina." (Resp. Not. p. 2, ¶ 2; p. 3, ¶ 3(c).) Respondent also refers to the Verified Complaint in its Memorandum in Opposition to Plaintiff's Motion for Entry of Foreign Judgment by referencing the damages sought therein. (Resp. Memo. p. 1.) Further, Respondent refers to the Verified Complaint in its Initial Brief to argue that the allegations of agency are made upon information and belief. Respondent cannot have its cake and eat it too as a copy of the Verified Complaint could only be obtained by 1) being served or 2) appearing at the Clerk of the Circuit Court of Cook County to receive a printout (as documents are not normally accessible otherwise).

Further, Respondent argues that review of Verified Complaint is waived because the Appellant raises it for the first time on appeal. In support of its position, Respondent cites to Wilder Corp. v. Wilke, but this reliance is misplaced and meritless. The issue in Wilder Corp. related to a seller's and buyer's amortization schedules that were integral to the trial court's decision. Wilder Corp., 330 S.C. at 76. Further, the trial court ruled on the objections "by expressly adopting Buyer's amortization schedule in its order." Id. at 77. Here, in addition to Appellant's recitation of the facts in pleadings, specific reference to the underlying Complaint was made at the hearing and it is a matter of public record. *See* Trans., p. 4, ¶¶ 7 – 11 ("the complaint that was filed in this matter that

led to the judgment being rendered by the courts in Illinois provided and stated that that telephone call placed from Horry County to Illinois constituted a transaction of business.").

Respondent also erroneously contends that the Verified Complaint has no probative value. Specifically, Respondent selectively argues that the allegations against Mike Mishra are uncorroborated because they were made upon information and belief. It also argues, without authority, that Illinois law requires an opposing affidavit, which it does not. Respondent's arguments are meritless not just because the proper venue to challenge the underlying pleading is in Cook County, Illinois, but also because the verification by certification of the Complaint is the equivalent of providing testimony under oath. *See* 735 Ill. Comp. Stat. 5/1-109 ("Any person who makes a false statement, material to the issue or point in question, which he does not believe to be true, in any pleading, affidavit or other document certified by such person in accordance with this Section shall be guilty of a Class 3 felony.") As a result, the underlying Complaint, as well as the evidence submitted at hearing, is appropriate for consideration because each and every allegation is corroborated in the same manner as an affidavit. See Nibco, Inc. v. Johnson, *supra*.

v. Plaintiff's evidence presented at hearing was properly admitted.

Moreover, when a trial court makes a ruling based on evidence submitted during a hearing, the issue is preserved for appeal. See Wilder, Inc., *supra*. Nonetheless, because Appellant asserts that the Trial Court improperly characterized the evidence at the hearing[3], Respondent now argues: 1) the record does not show the documents were ever filed or admitted into evidence; 2) the

[3] The Trial Court referred to Appellant's evidence simply as "some newspaper accounts in which Mishra called himself the 'owner' of Defendant's hotel . . ." (Order Denying Plaintiff's Motion for Entry of Foreign Judgment, p. 6.)

documents are hearsay; 3) they were not authenticated before the Trial Court; and 4) they are irrelevant and lack probative value. Respondent's arguments, however, all fail.

The reasoning in Wilder Corp. precludes Respondent's arguments because it failed to object at hearing as to the admissibility of evidence presented, including, but not limited to, authentication, foundation, relevance, or that the documents may be hearsay. *See also* Rule 103(a)(1), SCRE (Where a ruling is one admitting evidence, a timely objection or motion to strike must be made on the record and stating the specific ground of objection if not apparent from the context.) Specifically, there was no objection at the beginning of the hearing when Appellant's counsel stated, "I have a couple of exhibits, and I shared those with Mr. Newby, and I'll refer to these." (Trans., p. 2, ¶¶ 7 – 9.) Respondent failed to object or rebut Appellant's counsel when the evidence was introduced to the Trial Court:

> THE COURT: Is it your allegation that he is a member of the LLC, or he is some agency?
>
> MR. GRIMSLEY: Based on the documents I handed up to you *as exhibits*, there is an exhibit -- and that is -- he is not a member, but that he was an agent and possibly a manager for the LLC.
>
> If you will look at Exhibit A, this was an article that appeared in the Strand Hospitality Services and it states that Mr. Far (phonetic), who is pictured there with Mr. Mishra, was the owner of the La Quinta North Myrtle Beach hotel.
>
> * * * * * * * * *
>
> MR. GRIMSLEY: And Exhibit B is a LinkedIn printout, and in that Mr. Mishra states that he is the managing director of the Shiram, LLC. I would submit to the Court that an LLC can retain the services of managers, treasures [sic], bookkeepers and other people who are not members of the LLC. I think in this case that there is sufficient information to believe that Mr. Mishra was actively involved in the LLC.
>
> Then, there is a third article, Your Honor. It appears it was a reprint from the Sunday newspaper. It was in 2012, and in the article it states that Mishra -- referring to Mike Mishra -- signed an utility easement agreement in December stating that he is a managing member of Shiram, which is an anagram of Mishra.
>
> Later, it states that Mike Mishra reached out to the hotel last week and told news that he is managing the property for Shiram, and the

> corporation owner lives in Fayetteville, North Carolina. I think that based on this information, there is reason to believe that Mike Mishra was, in fact, actively involved in managing the LLC even though he was not named as a managing member of the LLC.

Id. at p. 6, ¶ 8 : p. 7; ¶ 21 (emphasis added). At the end of the hearing, Respondent again failed to object when the Trial Court asked to keep these exhibits. Id., pp. 15, ¶¶ 8 – 9. Therefore, Respondent failed to preserve any objection and it cannot argue for the first time on appeal that the exhibits should be given no consideration.

Even assuming, *arguendo*, that arguments as to the admissibility of evidence are not waived, Respondent argues in general that Appellant's exhibits should not be given any weight pursuant to South Carolina Rule of Evidence 801 regarding hearsay, Rule 901 regarding authentication, and Rule 401 regarding relevancy. Despite failing to specify how the exhibits did not comply with the rules, Respondent's arguments are flawed.

"Preliminary questions concerning . . . the admissibility of evidence shall be determined by the court" and "[i]n making its determination it is not bound by the rules of evidence except those with respect to privileges." (Rule 104(a), SCRE.) In the instant matter, the Trial Court admitted the exhibits at hearing by expressly asking to keep them and referencing them in its ruling.

Exhibit A is a photograph and caption posted on Facebook that makes a statement about Strand Hospitality Services' President John Pharr joining "Mike Mishra, owner of the La Quinta North Myrtle Beach to celebrate his birthday." The declarant's availability is immaterial because, pursuant to Rules 803(1) and 803(21), the post is a statement describing or explaining an event made immediately thereafter, and it also shows the reputation of Mike Mishra in the community. Further, it was authenticated pursuant to Rule 901(b)(1) by its appearance, contents, and substance taken in conjunction with the circumstances. *See also* Trans., p. 6, ¶¶ 20 – 23. As to probative

value, Exhibit A is relevant pursuant to Rule 403 because it tends to make the existence of agency between Mike Mishra and Respondent probable.

Exhibit B, Mike Mishra's LinkedIn profile, is likewise admissible. The hearsay exception under Rule 804(a)(4) applies because Mike Mishra is unable to be present or to testify at the hearing due to his death. Additionally, pursuant to Rule 804(b)(3), Mike Mishra's statement that he is a managing director is contrary to his alleged pecuniary or proprietary interest stated in Sanjay Mishra's affidavit that a reasonable person in his position would not have made the statement that he was a managing director at any time unless believing it to be true. See also State v. Doctor, 306 S.C. 527, 529 (1992) ("We now hold out-of-court statements made by an unavailable declarant are admissible in both civil and criminal trials.").

Exhibit C is a Hotel-Online.com article that reprinted David Wren's article from The Sun News and McClatchy-Tribune Regional News. Thus, the article is self-authenticating pursuant to Rule 902(6) because it purports to be, and is, a newspaper/periodical. It is also not hearsay within hearsay under Rule 805 because: 1) it shows the reputation of Mike Mishra's character in the community pursuant to 803(21); 2) it is an exception under Rule 804(a)(4) because Mike Mishra is unable to be present or to testify at the hearing because of his death; and 3) Mike Mishra's statements pursuant to Rule 804(b)(3) are again contrary to his alleged pecuniary or proprietary interest set forth in Sanjay Mishra's affidavit that a reasonable person in his position would not have made the statements unless believing it to be true. Moreover, the statements in the periodical are not hearsay pursuant to Rule 801(d)(2)(D) because the statement is offered against a party, by the party's agent, concerning a matter within the scope of the agency or employment, made during the existence of the relationship. See also Hunter v. Hyder, 236 S.C. 378, 387 (1960) ("acts,

declarations or admissions, within the scope of his agency, was competent evidence against the principals.")

vi. Mike Mishra's understanding of the legal import of documents served cannot be challenged.

Lastly, Respondent argues that the "purportedly numerous lawsuits involving Mike Mishra . . . are also unavailing, as these too were never before the trial court, nor preserved for appeal, and do not reference or serve as evidence of agency." (Resp. Br., pp. 10-11.) Respondent's argument, however, is misplaced and lacks merit because it was raised by the Trial Court in its order, drafted by Respondent's counsel.

As previously stated, the question of whether Mike Mishra understood the legal import of the documents served upon him was never raised as a question of fact by Respondent previously. Had it been raised, Appellant would have had the opportunity to present evidence in support of her position. Further, understanding the import of the documents is not evidence of agency.

In sum, the order of the Trial Court should be reversed because Respondent failed to present clear and convincing evidence to show that the manner of service on Respondent through Mike Mishra was not proper under Illinois law.

II. Jurisdiction Over the Respondent was Properly Exercised by the Illinois Court.

The sole support for Respondent's argument that Illinois did not have personal jurisdiction is the self-serving affidavit of Sanjay Mishra. Respondent, however, fails to: 1) address any of the precedential authority cited by Appellant in her brief; 2) raise facts that were not previously known and would be at issue; and 3) cite to any authority that Appellant must file a counter-affidavit where relevant or necessary facts are not disputed.

A. Respondent fails to meet its burden of proof.

The crux of Respondent's argument regarding jurisdiction is that Appellant failed to file an opposing affidavit and that Appellant's Verified Complaint should not be considered because Appellant did not reference it in her memorandum or at hearing. For the reasons stated below, Respondent's contentions are without merit.

The exercise of specific personal jurisdiction over a nonresident defendant who purposefully directs its activities toward the forum is permitted *"even if only for single or occasional acts in the forum state*." Russell v. SNFA, 2013 IL 113909, ¶ 41 (Ill. 2013) (emphasis added). Respondent fails to address this law whatsoever in its initial brief. Instead, it simply argues that if "facts alleged in a defendant's affidavit contesting jurisdiction are not refuted by a counter-affidavit filed by the plaintiff, then those facts are accepted as true." Aspen Am. Ins. Co. v. Interstate Warehousing, Inc., *supra*. Still, Respondent fails to recognize that the Appellant is not challenging or attempting to contradict Respondent's formation, ownership of property outside of Horry County, its presence in Illinois, or even where it deposits its money. Rather, Respondent purposefully directed its activities toward her in Illinois. Thus, while Sanjay Mishra states in his affidavit that Respondent does not carry on business outside of Horry County, he fails to deny that Respondent purposefully directed called Illinois to solicit payment from Appellant, enter into an agreement, and that Appellant's money was deposited (repeatedly) into its bank account(s) in Horry County.

Respondent falsely states that Appellant did not reference the Verified Complaint in her memorandum or at the hearing. In reality, Appellant's memorandum explicitly stated that

> *The Complaint giving rise to the Illinois Judgment* stems from the Defendant operating a LaQuinta Inn in Horry County, South Carolina and asserts that it continually and flagrantly overcharged Plaintiff's credit card beyond what was explicitly authorized by her, and its subsequent refusal to

> the refund the retained funds. The explicit authorization by the Plaintiff occurred when *she received an interstate phone call at her residence in Glenview, Illinois from an employee of the Defendant in South Carolina.*

(App. Memo, p. 2.) (Emphasis added.)

Conversely, Respondent asks this Court to turn a blind eye to its own references to the Verified Complaint in its Memorandum in Opposition to Plaintiff's Motion for Entry of Foreign Judgment and its Initial Brief. Instead, it asks the Court to rely only on the oral descriptions given at the hearing by its attorney, which were not verified by Respondent or contained in the affidavit of Sanjay Mishra. Even if the Trial Court relied on only the oral descriptions at hearing, there is no rule mandating that a Verified Complaint filed as a matter of public record in a sister state be filed or submitted with the foreign judgment.

In all, Respondent fails to overcome Appellant's *prima facie* case because Sanjay Mishra's affidavit does not contain any facts or statements sufficient to meet its burden to defeat jurisdiction from its targeted actions. See Russell, 2013 IL 113909 at ¶ 28. Rather, there are no statements in the affidavit that touch upon jurisdiction of the Illinois court. Exhibits A, B, and C were presented at hearing to rebut and contradict Sanjay Mishra's affidavit to which the Trial Court stated, "I'll tell you, it is my impression that Mr. Mishra was an agent." *See* Trans., p. 14, ¶¶ 6-7.)

B. Respondent purposefully directed its activity in Illinois at the Appellant.

Respondent argues that all of the underlying events took place in South Carolina, including entering into contract, charging Appellant's credit card, and depositing her money. This argument, aside from its falsity, is a red herring because the call to the Appellant in Illinois could not verify a transaction that had yet to take place. In actuality, the money was sent by Appellant from Illinois *after* the oral contract was formed following negotiations between Respondent and Appellant in Illinois. See Kalata v. Healy, 312 Ill. App. 3d 761, 766-767, 728 N.E.2d 648 (Ill. App. Ct. 2000)

("we hold that personal jurisdiction has been established under section 2–209(a)(2) . . . Defendant made telephone calls to plaintiff in Illinois . . . the money was sent from Illinois, and the injury suffered by plaintiff occurred in Illinois.") Further, Appellant's friend was merely a beneficiary of the contract formed between these parties. Appellant suffered injury in Illinois by Respondent's continued credit card charges for numerous weeks after their initial agreement..

C. Respondent's contacts with Illinois were sufficient.

Confusingly, Respondent contends that its contacts with Illinois were insufficient because its desk clerk confirmed and obtained authorization for an agreement existing between Appellant and her friend. Respondent also asserts that it did not rent a hotel room located in Illinois, nor did Respondent obtain payment in Illinois, as all actions were conducted in South Carolina only. As rebutted above, this argument frivolous because *the Respondent obtained Appellant's payment from Illinois* after coming to a mutual understanding about the terms of the agreement.

D. Requiring the Respondent to litigate in Illinois is reasonable.

Respondent contends that it is unreasonable to litigate the underlying matter in Illinois because the only element in favor of the Appellant is her interest in obtaining relief at home. Even more surprising is Respondent's assertion that Illinois would not have any interest "in a hotel room and credit card dispute that took place in South Carolina." (Resp. Br., p. 15.) Respondent's arguments are without merit.

Where a nonresident party's activities are purposefully directed at Illinois residents, that party must present a "compelling case" that jurisdiction is unreasonable. Ores v. Kennedy, 218 Ill.App.3d 866, 874, 578 N.E.2d 1139 (Ill. App. Ct. 1991), citing to Burger King Corp., 471 U.S. at 477. Here, Respondent fails to present any case, let alone a compelling one. It fails to dispute Appellant's argument that Illinois "has *a manifest interest* in providing its residents with a

convenient forum for redressing injuries caused by nonresidents." Russell, 2013 IL 113909 at ¶ 41. It also fails to address that when a nonresident defendant purposefully derives benefit from its interstate activities in other jurisdictions, *it would be unfair* to allow that defendant to avoid any legal consequences that proximately arose from those same activities. Id. It is clear that the benefit derived by the Respondent was the money from Illinois belonging to Appellant, and thus would be unfair to allow Respondent to avoid legal consequences in Illinois.

Further, Respondent fails to argue that such litigation could be too costly in Illinois or that its owners could be inconvenienced by the travel, despite residing outside of South Carolina. Consequently, there is no substantive or compelling reason that it would be unreasonable for the Respondent to litigate the matter in Illinois.

CONCLUSION

Based upon the foregoing authorities and evidence, the Trial Court's order should be reversed with a finding that service was properly effectuated and personal jurisdiction was properly exercised by the Illinois court.

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Alison Meyers,

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v.

Shiram Hospitality, LLC,

Respondent.

PROOF OF SERVICE

I certify that I have served Appellant's Initial Reply Brief on Respondent Shiram Hospitality, LLC by email on August 7, 2020, addressed to its attorneys of record, Fred B. Newby, Sr. and C. Scott Masel, 4593 Oleander Drive, Myrtle Beach, South Carolina 29577, fnewby@newbylaw.com, smasel@newbylaw.com.

August 7, 2020

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August 7, 2020
By Email

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Re: Alison Meyers v. Shiram Hospitality, LLC
C.A. No.: 2019-CP-26-05254
Appellate Case No.: 2020-000557

Dear Ms. Kitchings:

We are enclosing for filing Appellant's Initial Reply Brief and Proof of Service for same. By copy of this letter, we are serving copies of these documents by email, pursuant to the May 29, 2020 Order RE: Operation of the Appellate Courts During the Coronavirus Emergency, on counsel for Respondent Shiram Hospitality, LLC.

With kind regards,

Yours very truly,

GIBBES BURTON, LLC

Stephanie H. Burton

SHB/bre
Enclosures
cc: Mr. Fred B. Newby, Sr. (w/enclosures)(by email)
Mr. C. Scott Masel (w/enclosures)(by email)