

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF CHARLESTON)

Case No.: 2019-CP-10-04492)

Cyrus Kamini,)

Plaintiff,)

v.)

**ORDER GRANTING MOTIONS TO
DISMISS OF DEFENDANT RICHARD
KOZLOWSKI**

Heideh Larijani, Chris Khamnei, and Richard)
Kozlowski, Warren Westbrook Wills III)

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Defendants.)

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SC Court of Appeals

THIS MATTER CAME BEFORE THE COURT by way of two Motions to Dismiss filed by Defendant Richard Kozlowski (hereinafter "Kozlowski"). After due notice, a hearing was held on September 22, 2020 in Charleston County, South Carolina. Present at the hearing were: *Pro se* Plaintiff Cyrus Kamini, Warren Westbrook Wills, III, Esq. for himself, and Amanda C. Williams, Esq. for Defendant Richard Kozlowski. *Pro se* Defendant Chris Khamnei participated by telephone. To date, Heideh Larijani has not made an appearance in the case.

The Court has carefully considered the motions, arguments of counsel, memoranda submitted in support of the parties' respective positions, declarations, affidavits, and the law. This Court finds that Defendant Richard Kozlowski's Motion to Dismiss Plaintiff's Amended Complaint and Second Amended Complaint should be GRANTED and Defendant Richard Kozlowski's Motion to Dismiss Defendant Chris Khamnei's Cross-Claims should also be GRANTED. The grounds for the dismissal of these claims is the Court lacks personal jurisdiction over Kozlowski.

LEGAL STANDARD

Rule 12(b)(2) of the South Carolina Rules of Civil Procedure governs motions to dismiss for lack of personal jurisdiction. The party seeking to invoke personal jurisdiction over a

nonresident defendant bears the burden of proving the existence of personal jurisdiction. *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004). “The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case.” *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.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). When a nonresident defendant attacks the allegations of a complaint based on jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction. *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008).

FACTS

Both Plaintiff Cyrus Kamini (“Plaintiff”) and his brother, Defendant Chris Khamnei (“Khamnei”), have asserted various claims against Defendant Richard Kozlowski, Esq., a Vermont attorney and a Vermont citizen, for purported actions taken by Kozlowski in the course of representing Heideh Larijani (“Larijani”), Plaintiff’s and Khamnei’s mother, in a guardianship proceeding in Vermont Probate Court.

Plaintiff claims in the Amended Complaint¹ that Kozlowski, his mother (Larijani), and his brother (Khamnei) colluded with a South Carolina Solicitor to bring forgery charges against Plaintiff in order to gain an advantage in a pending civil action in the South Carolina Court of Common Pleas known as *Cyrus Kamini v. Heideh Larijani, et al*, Case No. 2016-CP-10-3990 –

¹ On November 27, 2019, Kozlowski removed the case to federal court. On December 9, 2019, while the federal court still had jurisdiction, Plaintiff filed a Second Amended Complaint in state court alleging new claims against attorney Warren Westbrook Wills III, his brother’s lawyer. Because the South Carolina state court did not have jurisdiction of the matter when the Second Amended Complaint was filed, the Second Amended Complaint was not properly filed and Khamnei’s Cross-Claims in response to the Second Amended Complaint are also procedurally improper. Even if the Second Amended Complaint was properly filed, the Court still lacks personal jurisdiction over Kozlowski.

one of many lawsuits involving Plaintiff, Khamnei, and their various family members, regarding a piece of property located at 24 Chalmers Street. Defendant Khamnei, a Vermont citizen, asserted eleven (11) cross-claims against Kozlowski for libel per se, slander per se, and defamation and one claim for intentional and negligent infliction of emotional distress. All of the allegedly false statements that form the basis of Khamnei's cross-claims arise out of statements made by Kozlowski in Vermont during the course of his representation of Larijani in Vermont Probate Court.

Kozlowski is a citizen and resident of Vermont. Kozlowski has never represented anyone, including Larijani, in the pending civil matters in South Carolina and has never provided testimony in any pending criminal matter involving Plaintiff. Kozlowski has never represented Plaintiff or Khamnei. He has never participated in any discovery, depositions, or other proceedings relating to Civil Action No. 2016-CP-10-3990. He is an attorney licensed to practice law in Vermont and has never been licensed to practice law in South Carolina. Kozlowski's only contact with South Carolina includes a few phone calls and written correspondence relating to the representation of Heideh Larijani in Vermont Probate Court. It has been over twenty years since Kozlowski set foot in South Carolina, and he has never been in South Carolina for business purposes.

DISCUSSION

The Court finds that Plaintiff and Khamnei have failed to establish that this Court has personal jurisdiction over Kozlowski. "South Carolina treats its long-arm statute as coextensive with the due process clause." *Moosally*, 358 S.C. at 329, 594 S.E.2d at 883. Thus, "the sole question becomes whether the exercise of personal jurisdiction would violate due process." *Id.* The "Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or

relations.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)). This minimum contacts requirement “protects a defendant from burdensome litigation in a far-flung jurisdiction and vindicates the status of states as co-equal sovereigns within the federal system.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-92 (1980). It also upholds the general principle of law that “those who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts.” *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 879 (2011). This Court lacks both general jurisdiction and specific jurisdiction over Kozlowski.

A. This Court Lacks General Personal Jurisdiction Over Kozlowski.

General jurisdiction refers to a state’s right to hear “any and all claims” against a defendant, even where the claims are not related to the defendant’s affiliations with the forum. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011); *see also Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007). “For an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile.” *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). “A court may assert general jurisdiction over foreign (sister-state or foreign-country) [defendants] to hear any and all claims against them when their affiliations with the State are so “continuous and systematic” as to render them essentially at home in the forum State.” *See Goodyear*, 564 U.S. at 919.

Kozlowski is a citizen of Vermont, he has no “continuous and systematic” contacts in South Carolina, and he cannot be considered “at home” in South Carolina.² He has not set foot in South Carolina in over twenty years, and Plaintiff’s and Khamnei’s references to a few

² Following the Supreme Court’s recent narrowing of general jurisdiction, exercising general jurisdiction over a non-resident defendant is exceedingly rare even if the defendant has contacts or conducts activities within the forum state. For example, in *Fidrych v. Marriott Int’l, Inc.*, the Fourth Circuit declined to find that Marriott was subject to general jurisdiction in South Carolina despite ninety Marriott branded hotels being operated within the state. *Fidrych v. Marriott Int’l, Inc.*, 952 F.3d 124, 134 (4th Cir. 2020).

communications by Kozlowski with residents of South Carolina in the course of representing their mother in the Vermont probate action are insufficient to establish that Kozlowski had continuous and systematic contacts in South Carolina.

B. This Court Lacks Specific Personal Jurisdiction Over Kozlowski.

Specific personal jurisdiction is also lacking because none of the alleged events giving rise to Plaintiff's or Khamnei's claims occurred in South Carolina. For specific personal jurisdiction, due process mandates that a defendant possess sufficient minimum contacts with the forum state such that he could reasonably anticipate being haled into court there, and such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Power Prod. & Servs. Co.*, 379 S.C. at 431, 665 S.E.2d at 665. Guided by these principles, "[t]he determination of whether the requirements of due process are satisfied involves a two-prong analysis of (1) the 'power' prong, under which minimum contacts grant a court the 'power' to adjudicate the action; and (2) the 'fairness' prong, which requires the exercise of jurisdiction to be 'reasonable' or 'fair.'" *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 541–42, 783 S.E.2d 839, 843 (Ct. App. 2016) (citing *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992)). The plaintiff bears the burden of satisfying both prongs of the test. *Id.* If the plaintiff is unable to satisfy both prongs, the exercise of personal jurisdiction over the nonresident defendant fails to comport with the requirements of due process. *S. Plastics*, 310 S.C. 256 at 260, 423 S.E.2d at 131.

1. There are Insufficient Minimum Contacts to Grant This Court the Power to Adjudicate the Action.

The power prong of the due process test requires "a minimum contacts analysis" to determine whether a defendant has "directed its activities to residents of South Carolina and that the cause of action arises out of or relates to those activities." *S. Plastics*, 310 S.C. 256 at 260, 423 S.E.2d at 131. "It is essential in each case that there be some act by which the defendant

purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. The 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts. Whether the constitutional requirement of minimum contacts has been met depends on the facts of each case." *Moosally*, 358 S.C. at 331-332, 594 S.E.2d at 884-85 (emphasis added) (internal citations omitted). Without minimum contacts, the court does not have the 'power' to adjudicate the action.

The Amended Complaint and Second Amended Complaint both fail to demonstrate that Kozlowski has minimum contacts with South Carolina. The only factual allegations regarding Kozlowski, reference communications between Kozlowski and a South Carolina state prosecutor regarding alleged forgery by Plaintiff. This allegation is clearly insufficient for this Court to exercise personal jurisdiction over Kozlowski. In regards to the factual allegations asserted by Khamnei in his cross-claims against Kozlowski, Khamnei alleges that Kozlowski, in the course of his representation of Larijani, made false statements regarding Khamnei. However, Khamnei's cross-claim reflects that these allegedly false statements were made as part of Kozlowski's representation of Larijani in the Vermont Probate Court matter. Accordingly, they are also insufficient to establish minimum contacts in South Carolina.

During the hearing on the Motions to Dismiss, both Plaintiff and Khamnei referenced an email in which Kozlowski purportedly expressed the *possibility* of representing Larijani in South Carolina as support for their claim that the South Carolina courts have personal jurisdiction over Kozlowski. However, any reference to *possible future* representation of Larijani in South Carolina is insufficient to establish minimum contacts. Kozlowski attested in both his Declaration and Affidavit that he did not represent Larijani or anyone else in South Carolina.

Kozlowski is an out-of-state attorney who was representing a Vermont resident with contacts and family in South Carolina. Kozlowski's communications to individuals in South Carolina as part of his representation of his client, who used to reside in South Carolina, is insufficient to establish that Kozlowski directed his actions at South Carolina. "Generally speaking, correspondence and phone calls from out-of-state defendants to in-state [residents] are insufficient as a matter of law to establish the minimum contacts that satisfy due process." *Cape v. von Maur*, 932 F. Supp. 124, 128 (D. Md. 1996); *see also Hume v. Durwood Med. Clinic, Inc.*, 282 S.C. 236, 241, 318 S.E.2d 119, 122 (Ct. App. 1984) (holding follow-up medical treatment to a South Carolina resident conducted by mail and telephone was an insufficient basis for a medical malpractice against non-resident defendants to proceed in South Carolina); *Stover v. O'Connell Assocs., Inc.*, 84 F.3d 132 (4th Cir. 1996) (finding that a defendant could not reasonably have anticipated being haled into court by occasionally telephoning investigation firms within the forum state and where no employees were present in the forum state); *Cape*, 932 F. Supp. at 128 (holding that "providing out-of-state legal representation is not enough to subject an out-of-state lawyer or law firm to the personal jurisdiction of the state in which the client resides."); *Leather Masters (PVT) Ltd. v. Giampier Ltd.*, 836 F. Supp. 328, 331 (D. Md. 1993) (noting that "communications made from outside of the State to a Maryland resident are not enough to justify the exercise of personal jurisdiction over an out-of-state defendant.").

Conclusory allegations that Kozlowski communicated with a South Carolina Solicitor and referenced *potential future* representation of Larijani in South Carolina are insufficient to establish personal jurisdiction over Kozlowski in South Carolina. Though the court must construe plaintiff's and defendant's pleadings, affidavits, and other supporting documents in light most favorable to plaintiff, the court "need not 'credit conclusory allegations or draw farfetched inferences.'" *Gault v. Thacher*, 967 F. Supp. 3d 469, 474 (D.S.C. 2018) (quoting

Masselli & Lane, PC v. Miller & Schuh, PA, 215 F. 3d 1320, 2000 WL 691100, at *1 (4th Cir. 2000).

2. The Exercise of Personal Jurisdiction Over Kozlowski Does Not Comport with the Traditional Notions of Fair Play and Substantial Justice.

In evaluating personal jurisdiction, the court must also consider whether the exercise of personal jurisdiction comports with “traditional notions of fair play and substantial justice.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. at 491, 611 S.E.2d at 508 (citing *Burger King Corp.*, 471 U.S. at 464). Under this fairness prong, “the court must consider: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction.” *Id.* (citing *Clark v. Key*, 304 S.C. 497, 405 S.E.2d 599 (1991)).

The relevant factors weigh heavily against this case continuing in South Carolina. Kozlowski has not conducted any activity in South Carolina. As to the second element, no act or omission Kozlowski in South Carolina gives rise to Plaintiff's or Khamnei's claims. Third, the inconvenience to Kozlowski is readily apparent. He has not stepped foot in South Carolina in over twenty years and should not be required to litigate in a forum over one thousand miles from his home. Finally, South Carolina has no interest in exercising jurisdiction over a nonresident defendant with absolutely no connection to South Carolina. For all of these reasons, it would be unfair for this this court to exercise jurisdiction over Kozlowski.

C. The Court Also Lacks Personal Jurisdiction Due to Insufficiency of Service of Process.

The Court also lacks personal jurisdiction due to insufficiency of service of process. Specifically, Plaintiff failed to file or serve a summons with the Amended Complaint or Second Amended Complaint. Rule 5 of the South Carolina Rules of Civil Procedure provides, “The

summons and complaint shall be filed before service.” “The summons and complaint must be served together.” Rule 4(d), SCRCPP (emphasis added). “Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court’s own initiative or upon application of any party.” Rule 5(d), SCRCPP.

Insufficiency of service of process confers no personal jurisdiction on the court and constitutes grounds for an involuntary dismissal. *See* Rule 12(b)(5), SCRCPP. Because Plaintiff failed to file and serve a Summons with the Amended Complaint and Second Amended Complaint, the court does not have personal jurisdiction over Kozlowski, and the Amended Complaint and Second Amended Complaint must be dismissed for insufficiency of service of process.

CONCLUSION

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED this Court has no personal jurisdiction over Defendant Richard Kozlowski, and the claims asserted against Kozlowski by Plaintiff and Defendant Chris Khamnei are dismissed with prejudice.

AND IT SO ORDERED.

THE HONORABLE BENTLEY PRICE

October __, 2020

Charleston, South Carolina



Charleston Common Pleas

Case Caption: Cyrus Kamini VS Heideh Larijani , defendant, et al
Case Number: 2019CP1004492
Type: Order/Dismissal

IT IS SO ORDERED!

- - - /s Hon. Bentley-D. Price, Circuit-Judge 2766 - - -

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CYRUS KAMINI

Plaintiff

vs.

HEIDEH LARIJANI, et al

Defendants

CASE NO.: 2019-CP-10-4492

**MOTION FOR
RECONSIDERATION**

TO ALL PARTIES:

YOU WILL PLEASE TAKE NOTICE that Plaintiff Cyrus Kamini, In Pro Per, will advance the foregoing Motion for Reconsideration of the Honorable Court's Order dated, October 7th, 2020, granting Defendants Motion to Dismiss with Prejudice. This Motion was received by mail and post marked October 9th but received on Saturday October 10th.

The Plaintiff is a Pro Se Litigant out of necessity and should be considered as it is a long held constitutional right as a citizen to have access to and remedy of the court.

The Plaintiff has made procedural errors in his filings. These errors do not warrant or are not grave enough in nature to deprive the Plaintiff of his right to take leave, revise and reassert his claims.

The Defendants together have been involved in a scheme to dispossess the Plaintiff of his Sweat Equity and investments in a number of properties downtown Charleston by and through abuse of their working knowledge of the legal system and have engaged in gross illegal conduct that puts them outside the umbrella of immunity and should be held accountable for their actions.

A dismissal with Prejudice would essentially rob the Plaintiff of his remedy for the wrongdoing of the ^{DEFENDANTS} Plaintiffs which are of a serious nature and deserving of fair hearings, access to courts and deciders of fact as a constitutional issue.

SCRCP Rues 12(b)(1),(4), (6) and 15 (a) are clear that a dismissal of the Plaintiff's case should be made without prejudice

Cyrus Kamini

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CERTIFICATE OF SERVICE

I Cyrus Kamini, certify that on this ~~Oct 19~~²⁰²⁰, I served a true and correct copy of the foregoing Motion for Inspection on the Defendants, via email, and delivered

VIA VS MAIL

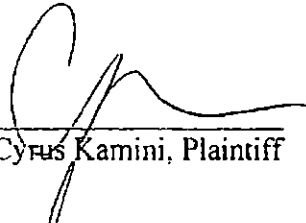
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