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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger M. Young, Circuit Court Judge

Court of Appeals Appellate Case No. 2022-000346

Reid Fleming, Appellant,

v.

The Planet Vape, LLC; SCECIGARETTE, LLC; LG Chem
Ltd.; John Doe Distributor #1; John Doe Distributor #2; and
John Doe Distributor #3, Defendants,

Of which LG Chem Ltd. is the..... Respondent.

APPELLANT’S MOTION TO TRANSFER OR CERTIFY CASE FROM THE COURT OF APPEALS

Under Rule 204(b), SCACR, Appellant Reid Fleming moves to certify this case for the South Carolina Supreme Court’s review prior to determination by the Court of Appeals. Appellant filed his Notice of Appeal and a copy of the Circuit Court’s order with the South Carolina Court of Appeals as is required, a copy of which are attached as Exhibit A. This Court has discretion to certify any case pending before the Court of Appeals, transferring jurisdiction over the case to the Supreme Court before it has been determined by the Court of Appeals. *See* Rule 204(b), SCACR. Transfer is appropriate for the reasons stated below.

FACTUAL BACKGROUND

This is a products liability action. Appellant Reid Fleming is a South Carolina citizen who sustained serious burns and injuries in South Carolina when a lithium-ion battery manufactured by

Respondent LG Chem, Ltd., (“LG Chem”) suddenly exploded in his pocket. Mr. Fleming purchased the lithium-ion battery from Defendant SCECIGARETTE, LLC, in Charleston, South Carolina. Mr. Fleming filed this lawsuit on April 12, 2021, alleging *inter alia* that LG Chem designed, manufactured, and distributed the battery purchased by Mr. Fleming. Mr. Fleming also alleges that LG Chem expected that its lithium-ion batteries would be sent to and used in South Carolina by virtue of LG Chem’s business activities in South Carolina.

LG Chem is a Korean corporation headquartered in Seoul, South Korea. LG Chem’s wholly owned subsidiary, LG Chem America, Inc. (“LGCAI”), is a Delaware corporation with its principal place of business in Atlanta, Georgia. LGCAI is certified to conduct business in the state of South Carolina. LG Chem, with the help of its subsidiary LGCAI, manufactures and imports LG Chem lithium-ion batteries throughout the United States, including import shipments to South Carolina. Mr. Fleming alleges one such battery exploded and injured him in South Carolina.

LG Chem contracts to supply its s lithium-ion batteries into South Carolina and through the Port of Charleston to various of its customers in South Carolina and in neighboring states. Mr. Fleming provided the Circuit Court with import data showing LG Chem’s shipment of products, including lithium-ion batteries, into South Carolina and through the Port of Charleston from as early as November 1, 2006. Specifically, Mr. Fleming identified at least thirteen shipments of LG Chem’s lithium-ion battery shipments through the Port of Charleston to businesses operating throughout the State of South Carolina.

Following service of the summons and complaint, LG Chem filed a motion to dismiss for lack of personal jurisdiction, and Mr. Fleming responded. The Circuit Court held a hearing on January 18, 2022, and subsequently granted LG Chem’s motion to dismiss on February 7, 2022. Mr. Fleming filed a Motion for Reconsideration of the Circuit Court’s order, which was denied on

February 23, 2022. Mr. Fleming filed a timely notice of appeal to the Court of Appeals from the order granting LG Chem’s motion and the order denying Mr. Fleming’s motion to reconsider. Mr. Fleming appeals all of the grounds in the Circuit Court’s orders.

LG Chem’s dismissal leaves Mr. Fleming, a South Carolina resident, without a forum in which to seek recourse against the entity that manufactured the battery that exploded and injured him in South Carolina. The Circuit Court’s order granting LG Chem’s Motion to Dismiss relies chiefly on LG Chem’s factual assertion that it has not sold a specific subtype of lithium-ion battery—the 18650 lithium-ion battery¹—as a “standalone” battery to consumers in South Carolina. Mr. Fleming argued evidence to the contrary and that, regardless, this is not a sufficient basis to refrain from exercising personal jurisdiction over a global defendant that is selling and distributing numerous lithium-ion battery products into South Carolina that are frequently injuring South Carolina residents.

The lower court’s position in this matter is in direct conflict with at least five other South Carolina Circuit Court Judges’ rulings on this precise issue in cases where individuals have been harmed by the same LG Chem lithium-ion battery as Mr. Fleming.

Mr. Fleming maintains that exercising personal jurisdiction over LG Chem for his claim is proper and comports with due process. Mr. Fleming seeks clarification from this Court on the law regarding the “stream of commerce” theory of specific jurisdiction and its application to this matter. Notably, in a similar product liability action filed against LG Chem in South Carolina, in which LG Chem lost the motion to dismiss for lack of personal jurisdiction, LG Chem sought certification of this precise issue to this Court. *See Exhibit B, Thompson v. LG Chem Ltd., et al.*,

¹ “18650” is a size designation which reflects the outer dimensions of the battery being 18mm wide by 65mm long. LG Chem manufactures various types of 18650 batteries as well as many other sized lithium ion batteries.

2019-CP-44-00054. In so doing, LG Chem argued that this Court’s immediate review of this issue – and a reevaluation of this Court’s precedent in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008) – was necessary. This was both because of the number of lower courts who have exercised specific jurisdiction over LG Chem on virtually identical facts and because the issue is a matter of significant public interest by virtue of the number of identical claims against LG Chem. The circuit court’s order now creates a conflict amongst the lower courts on a legal principle of major importance. It also leaves Mr. Fleming without a forum in which to address significant injuries caused by LG Chem’s products. This matter is appropriate for certification.

ARGUMENT

The South Carolina Supreme Court may certify a case pending before but not yet determined by the South Carolina Court of Appeals “where the case involves an issue of significant public interest or a legal principle of major importance, or in other cases the court considers appropriate.” S.C. Code Ann. § 14-8-210(b); *see* SCACR 204(b). “Whether to transfer the case is within the Supreme Court’s discretion.” Toal, et al., *Appellate Practice in South Carolina*, 370 (3d ed. 2016). This case presents critical issues of significant public interest that have a critical impact on Mr. Fleming and other similarly situated plaintiffs. The circuit court’s dismissal order creates a conflict amongst the circuit courts and is an incorrect application of South Carolina law on exercising personal jurisdiction over a foreign defendant under the “stream of commerce” theory.

The circuit court’s decision dismissing LG Chem from this case creates a conflict within the South Carolina Circuit Courts regarding whether LG Chem may be brought into South Carolina Courts to be held accountable for the defective products it places into the stream of commerce in this State. Indeed, South Carolina courts found the exercise of personal jurisdiction over LG Chem

proper in five other suits involving South Carolina citizens injured or burned by LG Chem's lithium-ion batteries:

- *Roberts v. The Planet Vape, LLC, et al.*, 2020-CP-10-00912 (Charleston County), Order attached as Exhibit C.
- *Williamson v. Pirates Cove Vapor Lounge, LLC, et al.*, 2019-CP-07-02270 (Beaufort County), Order attached as Exhibit D.
- *Holtzendorff v. Vapor Tek USA, LLC, et al.*, 2019-CP-02-01518 (Aiken County), Order attached as Exhibit E.
- *Moore v. Planet Vapor Inc.*, 2018-CP-21-02884 (Florence County), Order attached as Exhibit F.
- *Thompson v. LG Chem Ltd., et al.*, 2019-CP-44-0054 (Union County), Order attached as Exhibit G.

In addition to the fact that the Circuit Court's decision in this case is directly contrary to at least five other decisions, LG Chem must concede and agree that the legal issues are important enough and appropriate for certification to the South Carolina Supreme Court. In the *Thompson* case, a Circuit Court order denied LG Chem's motion to dismiss for lack of personal jurisdiction. As a result, LG Chem filed a notice of appeal to the Court of Appeals and then filed a motion to certify and a Petition for a Writ of Certiorari to the Supreme Court seeking review of same issues before the Court here—asking this Court to clarify the application of South Carolina's specific jurisdiction law to the facts of this case and the "stream of commerce" theory of personal jurisdiction over a foreign defendant. *See State v. NV Sumatra Tobacco Trading, Co.* ("*Sumatra*"), 379 S.C. 81, 666 S.E.2d 218 (2008); *see also* Exhibit B, *LG Chem's Motion to Certify* at p.4. LG Chem's motion to certify should prohibit it from arguing against certification in this action. That the Court denied certification in that case is not dispositive here because LG Chem's appeal was an interlocutory appeal from an order *denying* a motion to dismiss, while this appeal is from an immediately appealable order *granting* a motion to dismiss. S.C. Code Ann. § 14-3-330.

Certification and transfer to this Court is necessary because this case implicates South Carolina’s law on the exercise of specific, personal jurisdiction over a foreign defendant who sends products into the state of South Carolina that cause injury in the state to South Carolina citizens. This issue has not been addressed since South Carolina’s landmark case on the “stream of commerce” theory of personal jurisdiction in South Carolina in *State v. NV Sumatra Tobacco Trading, Co.* (“*Sumatra*”), 379 S.C. 81, 666 S.E.2d 218 (2008). The *Sumatra* case is currently the binding precedent on this issue. *Sumatra* holds that a foreign manufacturer defendant has sufficient minimum contacts when it intends to serve a market in the United States, regardless of how the product arrived in South Carolina in the first place. *Id.* Under *Sumatra*, it is more than sufficient that Mr. Fleming alleged LG Chem placed the battery into the stream of commerce with the expectation that it would make its way to South Carolina. *Id.* Mr. Fleming supported these allegations with exhibits including import data showing LG Chem’s lithium-ion battery shipments to South Carolina companies.

Still, because *Sumatra* was decided over a decade ago, and the United States Supreme Court has issued a number of decisions regarding personal jurisdiction since that time, this issue remains an important one for this Court to revisit and clarify. First, *Bristol-Meyers* is the most obvious case to distinguish on the facts. See *Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cty.* (“*Bristol-Meyers*”), 137 S. Ct. 1773 (2017). In *Bristol-Myers*, nonresident plaintiffs attempted to sue a drug manufacturer in California—a forum where the manufacturer sold the product—because other plaintiffs who lived in California alleged similar injuries as the nonresidents. *Id.* at 1777-78. The nonresident plaintiffs did not live in the forum, were not injured in the forum, and did not ingest the product in the forum. *Id.* at 1778. The manufacturer did not

contest specific jurisdiction as to the resident plaintiffs' claims even though it neither developed nor manufactured the drug in California. *Id.* at 1778.

The United States Supreme found “missing” “a connection between the forum and the specific claims at issue” because the “nonresidents’ claims involve[d] no harm in California and no harm to California residents.” *Id.* at 1782-83 (emphasis added). *Bristol-Myers* holds simply that a nonresident who suffered no harm in the forum state cannot piggyback on the specific jurisdiction established by resident plaintiffs who suffered harm in the forum state. Applying *Bristol-Myers* to this case, there is plainly specific jurisdiction over LG Chem because Mr. Fleming lives in South Carolina; he purchased the battery in South Carolina; he used the battery in South Carolina; and he was severely injured by the battery in South Carolina. Further, LG Chem conducts business in South Carolina by selling its lithium-ion battery products and enjoying the benefits and profits of doing so. Therefore, it should be held accountable in South Carolina when one of its products causes injury here.

Exercising jurisdiction over LG Chem is also consistent with the Supreme Court’s most recent decision on specific jurisdiction, *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.* (“*Ford*”), 141 S. Ct. 1017 (2021). In *Ford*, the plaintiffs were residents of the forum state; they used the cars in the forum state although the cars were not purchased or manufactured in the forum; and the plaintiffs suffered injuries when those cars malfunctioned in the forum state. *Id.* at 1031. In *Ford*, the Supreme Court noted that the specific jurisdiction inquiry does not “requir[e] proof of causation—*i.e.*, proof that the plaintiff’s claim came about because of the defendant’s in-state conduct,” and repeatedly emphasized that the injuries occurred in the forum. *Id.* at 1026. Applying *Ford* to this case, Mr. Fleming is a resident of South Carolina; he used the battery in South Carolina; and he was injured in South Carolina. LG Chem conducts business in South Carolina,

specifically utilizing the Port of Charleston to distribute products—including lithium-ion batteries—to South Carolina. LG Chem enjoys the benefits and protections of South Carolina law and should be subject to this state’s regulation when one of its products causes in-state injury to South Carolina residents. Under the holding of *Ford*, the exercise of personal jurisdiction over LG Chem is proper where a foreign manufacturer defendant who serves a nationwide market for lithium-ion battery products (among many other products) specifically serves the South Carolina market and facilitates the distribution of a defective product that ultimately injures a South Carolina resident.

The Circuit Court relied on LG Chem’s misuse defense—that it did not intend its lithium-ion batteries for sales to consumers as a standalone product—as a basis to find a lack of specific jurisdiction. Misuse may be asserted as a defense to the merits of a product liability action, *see, e.g.*, S.C. Code Ann. 15-73-20, but is not relevant to a specific jurisdiction analysis.

For these reasons, Appellant Reid Fleming respectfully asks this Court to grant its motion to certify this issue in light of the existing conflict amongst the circuit courts both for its importance to the public, numerous other cases, and Reid Fleming. Because this appeal involves legal issues of major importance that will impact numerous cases of this type throughout South Carolina, transfer of the appeal to this Court is appropriate and warranted given the significant public interest that is at stake.

CONCLUSION

For the reasons stated above, Appellant respectfully requests this Court grant the Motion to Certify this case, transferring it from the South Carolina Court of Appeals, and to clarify the law on exercising specific personal jurisdiction over a foreign defendant whose products are sold in South Carolina and injure South Carolina residents, along with the “stream of commerce” theory.

Most respectfully,

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April 19, 2022

EXHIBIT

A

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Mar 21 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CHARLESTON
COURT OF COMMON PLEAS

The Honorable Roger M. Young, Circuit Court Judge

Case No. 2021-CP-10-01663

Reid Fleming,

Appellant,

v.

The Planet Vape, LLC;
SCECIGARETTE, LLC; LG Chem,
Ltd.; John Doe Distributor #1; John
Doe Distributor #2; and John Doe
Distributor #3,

Of which LG Chem, Ltd. is
Respondent.

NOTICE OF APPEAL

Reid Fleming appeals the order of the Honorable Roger M. Young dated February 7, 2022, attached hereto as Exhibit A. Plaintiff's Motion for Reconsideration was denied on February 23, 2022, attached hereto as Exhibit B.

Signature page below.

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CERTIFICATE OF SERVICE

Reid Fleming certifies he has served a copy of his Notice of Appeal on all counsel of record in this matter with the accompanying exhibits by providing a copy of all via electronic mail to counsel of record's electronic mail addresses that are on file with the Attorney Information System as set forth below:

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STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
REID FLEMING,	)	Civil Action No. 2021-CP-10-01663
)	
Plaintiff,)	
)	
vs.	)	ORDER GRANTING
	)	DEFENDANT LG CHEM, LTD.’S
THE PLANET VAPE, LLC;	)	MOTION TO DISMISS FOR
SCECIGARETTE, LLC; LG CHEM, LTD.;	)	LACK OF PERSONAL
	)	JURISDICTION
Defendants.)	
_____)	
)	
)	

Before the Court is Defendant LG Chem, Ltd.’s (“LG Chem”) Motion to Dismiss for Lack of Personal Jurisdiction. Having fully considered all of the parties’ arguments raised in the motions, memoranda, exhibits, submissions, and the arguments of counsel at the video hearing held on January 18, 2022, the Court grants LG Chem’s Motion to Dismiss for Lack of Personal Jurisdiction.

FACTS

The relevant facts are as follows: Plaintiff Reid Fleming is a resident of Anderson County, South Carolina. (Complaint, filed April 12, 2021, ¶ 1.) Plaintiff alleges that prior to the accident at issue, he purchased a number of lithium ion batteries from Defendants The Planet Vape (“Planet Vape”) and SCECIGARETTE, LLC (“SC E-Cigarette”) for use with his vaping device. He further alleges that these retailers marketed or represented the batteries as being an LG brand. (*Id.* ¶¶ 20, 21) Plaintiff also alleges that on or around May 24, 2018, he was injured when one of these lithium ion batteries exploded in his pocket (*id.* ¶ 31).

LG Chem, Ltd. is a Korean corporation with its headquarters and principal offices in Seoul, South Korea. (Aff. of Hwi Jae Lee, dated July 13, 2021, ¶ 7; Compl., ¶ 4.) The uncontroverted evidence shows the following: LG Chem has never designed, manufactured, distributed, advertised, or sold its lithium ion battery cells to consumers for use as standalone, replaceable batteries in South Carolina or anywhere else. (Lee Aff., ¶¶ 16–17.) Instead, the 18650 lithium ion cells that LG Chem manufactured are industrial component parts; they are not standalone, replaceable consumer batteries, and they were not designed to be handled by consumers. (*Id.* ¶ 16). LG Chem never authorized anyone to advertise, distribute, or sell its lithium ion cells to individual consumers for use as standalone, replaceable batteries in South Carolina, or anywhere else. (*Id.* ¶¶ 20, 21.)

In support of its motion, LG Chem provided two affidavits of Mr. Hwi Jae Lee, dated July 13, 2021 and January 11, 2022. In opposition to the Defendant’s Motion to Dismiss, Plaintiff provided the Affidavit of Plaintiff’s counsel, dated January 7, 2022, attaching copies of LG Chem’s 2018 and 2017 financial statements; import data; a Certificate of Authority and Business Registration for a subsidiary of LG Chem; and orders from a North Carolina federal district court and other South Carolina trial courts. Plaintiff also provided the Declaration of Nickie Bonenfant, dated August 10, 2021, and Appendices.

LEGAL STANDARD

“The party seeking to invoke personal jurisdiction over a non-resident defendant . . . bears the burden of establishing jurisdiction.” *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). “Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.” *Brown v. Inv. Mgmt. & Research*,

Inc., 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (resolving, in plaintiff’s favor, conflicting facts set forth in affidavits from witnesses in opposing parties).

Jurisdiction may be general or specific. *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007). Plaintiff conceded at the hearing that general jurisdiction is not at issue. To establish specific jurisdiction, a plaintiff must show that both South Carolina’s long-arm statute and constitutional due process are satisfied. Due process requires that a defendant has sufficient minimum contacts with the forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005).

To satisfy due process, the Court must find that (1) the defendant has the requisite minimum contacts with the forum, without which the court does not have the power to adjudicate the action (the power prong); and (2) the exercise of jurisdiction would be “reasonable” or “fair” (the fairness prong). *See S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992).

To meet the power prong, the suit must arise out of or relate to the defendant’s contacts with the forum. *See Cockrell*, 363 S.C. at 491–94, 611 S.E.2d at 509–10; *Power Prods.*, 379 S.C. at 433–35, 665 S.E.2d at 665–67; *Ford Motor Co. v. Montana Eighth Jud. Dist.*, 141 S. Ct. 1017, 1025 (2021); *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1780 (2017). Specifically, the court must “find that the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities.” *Southern Plastics*, 310 S.C. at 260, 423 S.E.2d at 131; *Power Prods.*, 379 S.C. at 432, 665 S.E.2d at 665.

DISCUSSION

The Court concludes that Plaintiff has not satisfied his burden of establishing personal jurisdiction over LG Chem, Ltd.

Plaintiff's suit arises from injuries he allegedly suffered from use of a 18650 lithium ion battery to power his electronic cigarette device. Plaintiff alleges he purchased the battery from either Defendant Planet Vape or SC E-Cigarette and that the battery was originally manufactured by LG Chem. LG Chem's motion was supported by admissible evidence that (1) it never designed, manufactured, distributed, advertised, or sold 18650 lithium ion cells for sale to or use by individual consumers as standalone, replaceable batteries; and (2) it never authorized anyone to sell its 18650 lithium ion cells directly to consumers as standalone, replaceable batteries.

1. The allegations of Plaintiff's complaint do not establish a prima facie case of jurisdiction.

At the pretrial stage, the plaintiff meets his burden of proving personal jurisdiction over a nonresident defendant by a prima facie showing of jurisdiction either (1) in the complaint or (2) in affidavits. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508; *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012).

The Court agrees with Defendant that the allegations of Plaintiff's complaint, even if true, are not sufficient to make a prima facie showing of jurisdiction. Plaintiff did not allege or argue that LG Chem supplied 18650 lithium ion cells to a consumer market for vaping batteries in South Carolina. Instead, Plaintiff generically alleged that LG Chem conducted business in South Carolina and that LG Chem placed its lithium ion batteries and battery products into the stream of commerce with the reasonable expectation that they would be used in South Carolina. Plaintiff did not plead any jurisdictional facts specific to the particular product at issue in this suit—a 18650 lithium ion cell that was re-sold as a standalone consumer battery. Plaintiff also did not plead any facts showing a connection between his claims and any action of the Defendant directed to South Carolina. Therefore, if the Court decided the motion based solely on the pleadings, the motion should be granted.

2. LG Chem’s evidence that it did not serve a consumer market for standalone 18650 batteries in South Carolina was uncontroverted.

Additionally, “[w]hen 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.” *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. LG Chem supported its Motion with affidavits, and Plaintiff filed his own Affidavit, Declaration, and voluminous exhibits with attachments in opposition to the Motion.

None of the facts offered by the Plaintiff in opposition supported his burden of proof on jurisdiction. LG Chem’s financial statements and the Certificate of Authority for its subsidiary do not provide evidence of any suit-related contacts between LG Chem and South Carolina. LG Chem submitted an uncontroverted affidavit showing that its subsidiary LG Chem America, Inc. (“LGCAI”), which is not a party to the case, is a separate and distinct entity with its own separate bank accounts, business records, and corporate officers, that manage and control its own day-to-day activities. (*See Reply Lee Aff.*, ¶¶ 7–8.) Plaintiff did not show that non-party LGCAI’s contacts could be imputed to LG Chem and, even if he had, he also did not show that non-party LGCAI engaged in any suit-related contacts with South Carolina.

In addition, the various charts described as import data, including those attached to the Affidavit of Plaintiff’s Counsel and those attached to the Declaration of Nickie Bonenfant, do not provide information showing any suit-related contacts between LG Chem and South Carolina. Instead, at best, if admissible,¹ the charts would show only that LG Chem directed unrelated

¹ LG Chem objected that the records, which purport to be summaries of information maintained by the United States Department of Customs, lack authentication and foundation and are inadmissible hearsay. The Court need not decide the issue of admissibility because it agrees with Defendant that, even if admissible, the records do not provide any information that would support Plaintiff’s burden of proof. Instead, the records further support LG Chem’s admissible evidence

business to South Carolina entities, including shipment of petrochemical products such as “methyl acrylate,” “acrylic acid,” and “synthetic rubber,” as well as shipment of electric vehicle batteries to car manufacturing companies. None of Plaintiff’s exhibits reflect shipment of 18650 lithium ion cells to anyone in South Carolina, let alone anyone engaged in the consumer vaping industry.

3. Business activities unrelated to the claims at issue do not support specific jurisdiction over LG Chem.

At the hearing, Plaintiff argued it was enough to show that LG Chem supplied other type of lithium ion battery products (such as electric vehicle batteries) to South Carolina entities and that such activities were sufficiently “related” to his claims to satisfy constitutional due process.

The U.S. Supreme Court has repeatedly made clear that unrelated business activities in the forum state cannot support the exercise of specific jurisdiction, no matter how extensive those in-state activities are. Even sales of the **very same product** at issue cannot support the exercise of specific jurisdiction if unrelated to the litigation. *Bristol-Myers*, 137 S. Ct. at 1781 (“[E]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales.”) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 930 n.6 (2011)).

And in *Ford*, the Supreme Court took care to point out that its decision was based on Ford’s admitted in-state activities for the specific vehicles at issue—not just Ford cars, but specifically Ford Explorers and Crown Victorias. *Ford*, 141 S. Ct. at 1028 (“Ford had advertised, sold, and serviced *those two car models* in both States for many years. (*Contrast a case, which we do not address, in which Ford marketed the models in only a different State or region.*) In other words, Ford had systematically served a market in Montana and Minnesota for the very vehicles that the

that it did not supply 18650 lithium ion cells to a consumer market in South Carolina for standalone 18650 batteries.

plaintiffs allege malfunctioned and injured them in those States.”) (emphasis added).

Therefore, the Court finds that even if Plaintiff’s exhibits were admissible, shipping petrochemical products or lithium ion batteries to manufacturers in South Carolina is not sufficiently related to Plaintiff’s personal injury claims to satisfy constitutional due process.

4. The “stream of commerce” theory does not support the exercise of specific jurisdiction over LG Chem on the facts of this case.

Plaintiff relied on a “stream of commerce” theory of jurisdiction as set forth in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 88, 666 S.E.2d 218, 221 (2008). Defendant argued that *Sumatra* is inconsistent with more recent U.S. Supreme Court precedents and that it is factually distinguishable in any event.

The Court need not resolve the question whether the *Sumatra* Court’s formulation of the “stream of commerce” theory of jurisdiction is consistent with more recent U.S. Supreme Court decisions because the facts of this case are materially distinguishable. *Id.* at 88, 666 S.E.2d at 221 (“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case.”).

In *Sumatra*, the Indonesian cigarette manufacturer admitted that it intended to sell its cigarettes to consumers throughout the United States, including almost seven million cigarettes sold to consumers in South Carolina in one year as the direct result of its intended chain of distribution. *Id.* at 87–92, 666 S.E.2d at 221–24. Further, in *Sumatra*, the Indonesian manufacturer sold its cigarettes to its designated distributor, which then distributed the cigarettes to South Carolina for the specific purpose of distributing them to consumers as a consumer product. *Id.* at 86, 666 S.E.2d at 220.

By contrast here, even if LG Chem was the original manufacturer of the 18650 lithium ion cells (which has not been established), Plaintiff did not allege that LG Chem distributed its 18650

lithium ion cells directly to South Carolina consumers as a standalone product, or to any distributor or other intermediary for the purpose of supplying the cells directly to South Carolina consumers as a standalone product. And LG Chem's admissible evidence shows that LG Chem did not design, manufacture, distribute, advertise, or sell its 18650 battery cells directly to or for use by consumers, in South Carolina or anywhere else, as standalone, replaceable batteries and that it never authorized anyone else to do so either. These important facts distinguish *Sumatra* from the case here.

Further, the fact that the Plaintiff purchased and used the Defendant's product in South Carolina is not sufficient, even if the Defendant was aware that third parties might sell its product to consumers in the state without its authorization. "[I]t is the defendant's actions, not his expectations, that empower a State's courts to subject him to judgment." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 883 (2011) (plurality op.); *Ford*, 141 S. Ct. at 1025 (the relevant "contacts must be the defendant's own choice").

As the South Carolina Supreme Court recognized in *Sumatra*, "[t]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there." *Sumatra*, 379 S.C. at 89, 666 S.E.2d at 222 (emphasis added) (quoting *World-Wide Volkswagen Corp. v Woodson*, 444 U.S. 286, 297 (1980)). This standard was met in *Sumatra* in light of the volume of cigarettes the defendant admittedly distributed for sale to consumers throughout the United States, including seven million cigarettes to consumers in South Carolina. This standard is not met here, where LG Chem submitted uncontroverted evidence to establish that it did not distribute any 18650 battery cells to anyone for sale as a standalone product to consumers in South Carolina or anywhere else. (Affidavit of Hwi Jae Lee, ¶¶ 16–17, 19–21.)

5. Because Plaintiff has not met the “power prong” of the long-arm statute, the Court need not reach the fairness prong.

Because the power prong cannot be satisfied, the Court need not reach the fairness prong. Regardless, under the fairness prong, courts analyze factors such as “the burden on the defendant[;] . . . the forum state's interest in adjudicating the dispute; the plaintiff's interest in obtaining convenient and effective relief; the interstate judicial system's interest in obtaining the most efficient solution to controversies; and the shared interest of the several states in furthering fundamental substantive social policies.” *S. Plastics Co.*, 310 S.C. at 263, 423 S.E.2d at 132 (citing *World–Wide Volkswagen*, 444 U.S. 286). Subjecting LG Chem to specific jurisdiction in South Carolina would be constitutionally unreasonable and unfair when LG Chem has no contacts with South Carolina related to the claims at issue. Accordingly, even if the power prong were satisfied, which it is not, the exercise of specific jurisdiction over LG Chem would not comport with fundamental fairness.

CONCLUSION

Based on the above principles, the Court concludes that due process does not allow the exercise of personal jurisdiction over LG Chem in this case. It is undisputed that general jurisdiction is lacking. As to specific jurisdiction, Plaintiff has not shown that his claims “arise out of or relate to” any contacts formed by LG Chem with South Carolina. The Court therefore finds that Plaintiff has not met his burden of establishing that this Court can exercise personal jurisdiction over LG Chem.

It is therefore ORDERED that LG Chem, Ltd.’s Motion to Dismiss for Lack of Personal Jurisdiction is GRANTED.

It is further ORDERED that LG Chem, Ltd. is DISMISSED from this action without prejudice.

This the ____ day of _____, 2022.

Roger M. Young, Sr.
Circuit Court Judge, 9th Judicial Circuit



Charleston Common Pleas

Case Caption: Reid Fleming VS Planet Vape Llc The , defendant, et al

Case Number: 2021CP1001663

Type: Order/Dismissal

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

EXHIBIT
B

RECEIVED

May 21 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM UNION COUNTY
Court of Common Pleas
William A. McKinnon, Circuit Court Judge

Civil Action No. 2019-CP-44-00054

Dwayne Thompson, Respondent,

v.

LG Chem Ltd.; LG Chem America, Inc.; and Rolling Fog
Vapor Company, LLC..... Defendants,

Of which LG Chem Ltd. and LG Chem America, Inc., are
the..... Appellants.

MOTION TO TRANSFER OR CERTIFY CASE FROM THE COURT OF APPEALS

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, Appellants LG Chem, Ltd. (“LG Chem”) and LG Chem America, Inc. (“LGCAI”) (collectively, “Appellants”) move to certify these cases for review prior to determination by the Court of Appeals. Appellants filed their Notice of Appeal, as they are required to do, with the South Carolina Court of Appeals, a copy of which is attached hereto as **Exhibit A**. This Court has discretion to certify any case pending before the Court of Appeals and transfer the case for review by this Court before it has been determined by the Court of Appeals. *See* Rule 204(b), SCACR. Transfer is appropriate for the reasons set forth herein and in the Petition for a Writ of Certiorari filed simultaneously with this motion.

FACTUAL BACKGROUND

In this products liability action, Respondent Dwayne Thompson seeks to recover for injuries allegedly sustained when a lithium ion battery cell allegedly exploded in his pocket. Respondent asserts that he purchased the battery cell from Defendant Rolling Fog Vapor Company, LLC (“Rolling Fog”), as a standalone battery to use with his e-cigarette device. Respondent also alleges, generically and in conclusory fashion, that Appellants designed, manufactured, supplied, sold, imported, and distributed the subject battery and expected the battery to be sold in South Carolina.

LG Chem is a Korean corporation with its headquarters and principal offices in Seoul, South Korea. LGCAI is a Delaware corporation with its principal place of business in Atlanta, Georgia. LGCAI is a wholly-owned subsidiary of LG Chem, and is a separate and independent corporate entity. Appellants do not design, manufacture, distribute, advertise, or sell lithium ion battery cells to consumers for use as standalone, replaceable batteries with e-cigarette devices, or for any other purpose. Appellants have never conducted any business with the retailer (Rolling Fog) and have never sought to serve a consumer market for such standalone, replaceable batteries in South Carolina—or anywhere else.

Notwithstanding these facts, Respondent successfully argued to the circuit court that Appellants are subject to specific personal jurisdiction in South Carolina under a “stream of commerce” theory. In making this argument, Respondent relied almost entirely on this Court’s opinion in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008), which held that a defendant’s “nationwide contacts” are sufficient to confer specific personal jurisdiction in South Carolina. *Id.* at 90, 666 S.E.2d 218, 222-23 (“It is clear *Sumatra* has minimum contacts with the United States as a whole and, via the stream of commerce theory, the State has shown *Sumatra* has minimum contacts with South Carolina.”). Respondent further argued that he was

only required to allege in his complaint that Appellants placed the battery into the stream of commerce and expected that it would make its way to South Carolina.

However, Plaintiff's conclusory allegations should have been held insufficient to satisfy his burden of establishing personal jurisdiction, as the first circuit court judge to hear the motion initially determined when ordering that discovery should be conducted to determine who manufactured the battery cell and whether the defendants had sufficient contacts with South Carolina to establish personal jurisdiction.

No such contacts were adduced in jurisdictional discovery. To the contrary, Respondent Plaintiff expressly asked a second circuit court judge to decide the motions on the same allegations and facts he initially presented. There was not one fact offered to show any suit-related connection formed by either Appellant with South Carolina, as federal due process requires. Instead, the only facts in the record established that, if the subject battery cell was originally manufactured by LG Chem in Korea, it arrived in South Carolina solely as the result of the unilateral actions of third parties, and not as the result of or related to any action either of the Appellants directed to South Carolina. That is because LG Chem does not design, manufacture, distribute, advertise, or sell lithium ion battery cells for use by consumers as standalone, replaceable batteries, and neither Appellant ever took a single action to serve a consumer market for standalone, replaceable lithium ion batteries in South Carolina, or anywhere else. The "stream of commerce" metaphor cannot support the exercise of personal jurisdiction where, as here, the plaintiff's claims do not "arise out of or relate to" the defendant's contacts with the forum state.

This same issue of due process has arisen in four other recent lawsuits where Plaintiffs have successfully made similar arguments to other South Carolina circuit courts, defeating LG Chem’s and LGCAI’s motions to dismiss for lack of personal jurisdiction.¹

As detailed below, *Sumatra* is outdated in light of more recent United States Supreme Court precedent. The Court has not reevaluated *Sumatra* or its “stream of commerce” precedent in thirteen years, and absent review via immediate appeal or through a writ of certiorari, it is unlikely to have the opportunity to do so. Therefore, Appellants have simultaneously filed a notice of appeal to the Court of Appeals and a Petition for a Writ of Certiorari seeking review of the circuit court’s orders. Consideration by this Court will give it the opportunity to review and potentially overrule *Sumatra* and, at a minimum, clarify and modernize South Carolina law on the “stream of commerce” theory of personal jurisdiction.

ARGUMENT

Transfer of a case to the South Carolina Supreme Court is “normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance.” Rule 204(b), SCACR. These proceedings involve such interests as they present exceptional circumstances and raise critical issues that both affect the public interest and have a significant impact on Appellants’—and other similarly situated defendants’—fundamental rights, including their rights to due process and their rights to avoid expensive, burdensome, and serial litigation before a court that patently lacks jurisdiction over them.

¹ *Joshua Holtzendorff v. LG Chem, Ltd. et al.*, No. 2019-CP-02-01518 (Aiken Cnty.) (as to LG Chem); *Ranee Moore v. LG Chem, Ltd., et al.*, No. 2018-CP-21-02884 (Florence Cnty.) (as to LG Chem and LGCAI); *Eric Williamson v. LG Chem, et al.*, No. 2019-CP-07-02270 (Beaufort Cnty.) (as to LGCAI); *Nicholas Roberts v. LG Chem, et al.*, No. 2020-CP-10-00912 (Charleston Cnty.) (as to LG Chem and LGCAI). In the *Roberts* case, the plaintiff recently dismissed LG Chem and LGCAI after his expert determined that LG Chem did not manufacture the battery cell at issue.

This Court has not had the opportunity to clarify or potentially overrule *Sumatra*, its lone opinion on the “stream of commerce” theory of personal jurisdiction, since its issuance. *Sumatra* predates three United States Supreme Court opinions, which demonstrate that, as applied in products liability cases, *Sumatra* is not an accurate statement of the law governing specific jurisdiction. See *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 877-78 (2011); *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 137 S. Ct. 1773, 1781 (2017); and *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021). In *Nicastro*, the Supreme Court expressly rejected the type of “nationwide” stream of commerce jurisdiction that this Court *approved* in *Sumatra*. See 564 U.S. at 877-78. Moreover, in 2017, the Supreme Court reiterated in *Bristol-Myers* that specific jurisdiction requires “a connection between the defendant’s contacts with the forum and the specific claims at issue,” and “[e]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales.” 137 S. Ct. 1773, 1781 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 931 n.6 (2011)). Therefore, interpreting *Sumatra* to allow the exercise of personal jurisdiction based solely on allegations that a defendant placed a product into the stream of commerce with knowledge or awareness or expectation it might make its way to South Carolina, and without addressing whether the plaintiff’s claims are related to the defendant’s contacts with the forum state itself, *directly conflicts* with these United States Supreme Court decisions.

Unless this Court corrects its now-outdated discussion of stream of commerce jurisdiction, South Carolina circuit courts will continue to find foreign and out-of-state defendants subject to personal jurisdiction in South Carolina even when doing so is inconsistent with United States Supreme Court precedent, as articulated and clarified in cases decided since *Sumatra*. This practice infringes on manufacturers’ and suppliers’ due process rights, harms foreign relations, and further

burdens an already overburdened court system. Consideration of this issue by the Court will prevent South Carolina circuit courts from continuing to exercise jurisdiction where none exists and will thereby serve the interests of judicial economy.

Consequently, this appeal involves legal principles of major importance that will impact numerous cases of this type throughout South Carolina making transfer of this appeal to this Court appropriate. Transfer to this Court is warranted because of the importance of the legal issues presented in this action and the significant public interest that is at stake.

As Appellants explained in their Notice of Appeal, the circuit court's orders should be immediately appealable because they affect Appellants' substantial constitutional rights to due process. As this Court recently reiterated, whether an order is immediately appealable must be determined on a case-by-case basis. *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019) (emphasis added). For interlocutory orders, the appealability statute permits appellate jurisdiction when the order either involves the merits or affects a substantial right. S.C. Code Ann. § 14-3-330.

Although this Court first held in 1993 that “the denial of a motion to dismiss under Rule 12(b)(2), SCRCPP, is interlocutory and not directly appealable,” *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 336, 426 S.E.2d 777, 781 (1993), Appellants raised several arguments to the lower court that were not before the *Mid-State* court. Importantly, in *Mid-State*, the Court **did not** expressly address whether a ruling that the defendant had sufficient minimum contacts—such that exercising personal jurisdiction would comport with due process—affected a substantial right. Moreover, South Carolina courts have previously indicated that an order implicating a party's constitutional rights is immediately appealable because it affects a substantial right. *See, e.g., Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004).

Furthermore, South Carolina courts have frequently looked to North Carolina law for guidance on questions regarding whether an order is immediately appealable. *See, e.g., Salmonsens v. CGD, Inc.*, 377 S.C. 442, 451, 661 S.E.2d 81, 86-87 (2008); *Hagood v. Sommerville*, 362 S.C. 191, 197, 607 S.E.2d 707, 710 (2005); *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991); *Pocisk v. Sea Coast Constr. of Beaufort*, 380 S.C. 584, 588-89, 671 S.E.2d 98, 101 (Ct. App. 2008) (all looking to North Carolina case law on immediate appeal questions). North Carolina's appealability statute similarly permits interlocutory appeals of orders "affecting a substantial right." *See* N.C. Gen. Stat. Ann. § 7A-27(b)(3). Although the North Carolina statute permits "immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant," N.C. Gen. Stat. § 1-277(b), the North Carolina courts have interpreted this right to be *limited* to where the appeal raises questions concerning due process and minimum contacts, finding that those are the questions affecting a substantial right. As the North Carolina Court of Appeals explained in *Hardee ex rel. White v. Lowe's Companies, Inc.*, 640 S.E.2d 445, 2007 WL 329176 (N.C. Ct. App. 2007) (table), this is because a substantial right exists when the interlocutory order denying a motion to dismiss for lack of personal jurisdiction "raises questions concerning due process and minimum contacts." *Id.* at *2. This rule ensures that parties who have less than minimum contacts with the state "will never be forced to trial against their wishes," "promotes judicial economy[,] and protects the constitutional rights of foreign defendants." *Love v. Moore*, 291 S.E.2d 141, 146 (N.C. 1982).

In light of the foregoing, Appellants submit that the circuit court's orders are immediately appealable. If the Appellants are unable to immediately appeal the circuit court's rulings, their only appellate remedy would otherwise be to appeal the final judgment following a trial years in the future, all the while being compelled to litigate in the absence of minimum contacts required

to support personal jurisdiction under U.S. Supreme Court precedent. The substantial rights at stake warrant immediate appeal in this circumstance.

However, in the event the Court believes that the orders are not immediately appealable, Appellants have simultaneously filed an interlocutory Petition for a Writ of Certiorari, which only this Court can grant. As the Petition notes, these proceedings present exceptional circumstances and raise critical issues that both affect the public interest and have a significant impact on Petitioners'—and other similarly situated defendants'—fundamental rights, including their rights to due process and their rights to avoid expensive, burdensome, and serial litigation before a court that patently lacks jurisdiction over them. Therefore, even if the orders are not immediately appealable, this distinct problem warrants review through a writ of certiorari.

Appellants' simultaneous direct appeal and petition creates a unique procedural situation. The direct appeal, along with the question of immediate appealability, is pending in the Court of Appeals. However, the Certiorari Petition is pending in this Court. It is better for *all* the issues—appealability, the writ, and the merits—to be decided by this Court, which is the only proper forum. If the order is deemed immediately appealable, review via the Petition for a Writ of Certiorari becomes unnecessary and the appeal would proceed before this Court. On the other hand, if the orders are determined not to be immediately appealable, then this Court would proceed to consider whether it would nevertheless grant review of the orders by way of extraordinary writ.

Therefore, this Court should certify the appeal so it can address both appealability and the merits.

CONCLUSION

For the reasons stated above, Appellants respectfully requests that the Court grant this motion, transfer the case from the South Carolina Court of Appeals, and find the orders denying Appellants' motion to dismiss for lack of personal jurisdiction are immediately appealable.

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Columbia, SC
May 21, 2021

EXHIBIT A

(Notice of Appeal filed 05.21.21)

RECEIVED
May 21 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM UNION COUNTY
Court of Common Pleas
William A. McKinnon, Circuit Court Judge

Civil Action No. 2019-CP-4400054

Dwayne Thompson, Respondent,

v.

Rolling Fog Vapor Company, LLC,

Of whom LG Chem, Ltd. and LG Chem America, Inc. are
the.....

Appellants.

NOTICE OF APPEAL

LG Chem, Ltd. (“LG Chem”) and LG Chem America, Inc. (“LGCAI”) timely appeal the lower court’s Orders denying (1) LG Chem’s Renewed Motion to Dismiss and Quash Service of Process; (2) LG Chem’s Motion to Reconsider March 19, 2021 Order Denying its Renewed Motion to Dismiss and Quash Service of Process; (3) LGCAI’s Renewed Motion to Dismiss; and (4) LGCAI’s Motion to Reconsider March 19, 2021 Order Denying its Renewed Motion to Dismiss. Copies of the written orders are attached as **Exhibit A**. Appellants received written notice of the entry of the Orders denying LG Chem’s and LGCAI’s Motions to Reconsider March 19, 2021 Orders Denying their Renewed Motions to Dismiss on April 21, 2021. *See* Rule 203(b)(1), SCAR; Rule 59(f), SCRCP.

As the Supreme Court recently reiterated, whether an order is immediately appealable *must be determined on a case-by-case basis*. *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868,

870 (2019) (emphasis added). For interlocutory orders, the appealability statute permits appellate jurisdiction when the order either involves the merits or affects a substantial right. S.C. Code Ann. § 14-3-330. In relevant part, the statute explains that an order affects a substantial right when it “(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.” S.C. Code Ann. § 14-3-330(2).

In interpreting this language, the Supreme Court has stated that an order “involves the merits” when it “finally determine[s] some substantial matter forming the whole or part of some cause of action or defense.” *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (quoting *Jefferson v. Gene’s Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988)). Moreover, an order affects a substantial right “in situations where the substantial right could not be vindicated on appeal after the case,” such as for orders affecting the “mode of trial.” *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000).

Although the Supreme Court first held in 1993 that “the denial of a motion to dismiss under Rule 12(b)(2), SCRPC, is interlocutory and not directly appealable,” *Mid-State Distribs.*, 310 S.C. at 336, 426 S.E.2d at 781, Appellants raised several arguments to the lower court that were not before the *Mid-State* court. Importantly, in *Mid-State*, the Supreme Court’s opinion focused solely on whether the subject order was sufficiently final such that it “involved the merits.” *Id.* at 336–37, 426 S.E.2d at 780–81. The court **did not** expressly address whether a ruling that the defendant had sufficient minimum contacts—such that exercising personal jurisdiction would comport with due process—implicated a substantial right. *Mid-State* expressly overruled two prior cases to the extent they conflicted with the current definition of “involving the merits.” Notably, however, the

court *did not* expressly overrule *Keller v. Keller*, 296 S.C. 411, 373 S.E.2d 692 (Ct. App. 1988), which permitted an interlocutory appeal from an order denying a motion to dismiss for lack of personal jurisdiction when the sufficiency of minimum contacts was at issue. Finally, *Mid-State* is also factually inapposite due to the entirely different procedural posture there.

South Carolina courts have previously indicated that an order implicating a party's constitutional rights is immediately appealable because it affects a substantial right. *See, e.g., Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004). Here, the Appellants' constitutional guarantee of due process is at issue when the trial court finds sufficient minimum contacts and denies a motion to dismiss for lack of personal jurisdiction on that basis. The constitutional ramifications are heightened after the United States Supreme Court recently revisited the issue of personal jurisdiction in *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017 (2021), on Thursday, March 25, 2021, and reiterated the continued vitality of the precedents and principles supporting LG Chem's and LGCAI's motions to dismiss based on lack of personal jurisdiction, principles that are contrary to prior South Carolina Supreme Court precedent in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 90, 666 S.E.2d 218, 222-23 (2008) (basing jurisdiction on a finding that "Sumatra has minimum contacts with the United States as a whole and, via the stream of commerce theory, the State has shown Sumatra has minimum contacts with South Carolina").

If the Appellants are unable to immediately appeal the trial court's rulings, their only appellate remedy would otherwise be to appeal the final judgment following a trial years in the future, all the while being compelled to litigate in the absence of minimum contacts required to support personal jurisdiction under U.S. Supreme Court precedent.

Finally, South Carolina courts have frequently looked to North Carolina law for guidance on questions regarding whether an order is immediately appealable. *See, e.g., Salmonsens v. CGD, Inc.*, 377 S.C. 442, 451, 661 S.E.2d 81, 86–87 (2008); *Hagood v. Sommerville*, 362 S.C. 191, 197, 607 S.E.2d 707, 710 (2005); *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991); *Pocisk v. Sea Coast Constr. of Beaufort*, 380 S.C. 584, 589, 671 S.E.2d 98, 101 (Ct. App. 2008) (all looking to North Carolina case law on immediate appeal questions). North Carolina’s appealability statute is similar to South Carolina’s and also permits interlocutory appeals of orders “affecting a substantial right.” *See* N.C. Gen. Stat. Ann. § 7A-27(b)(3). Although the North Carolina statutory language has an additional provision permitting “immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant,” N.C. Gen. Stat. § 1-277(b), the North Carolina courts have interpreted this right to be *limited* to where the appeal raises questions concerning due process and minimum contacts, finding that those are the questions *affecting a substantial right*. As the North Carolina Court of Appeals explained in *Hardee ex rel. White v. Lowe’s Companies, Inc.*, 640 S.E.2d 445, 2007 WL 329176 (N.C. Ct. App. 2007) (table), this is because a substantial right exists when the interlocutory order denying a motion to dismiss for lack of personal jurisdiction “raises questions concerning due process and minimum contacts.” *Id.* at *2; *see also A.R. Haire, Inc. v. St. Denis*, 625 S.E.2d 894, 898 (N.C. Ct. App. 2006) (“Although this appeal is interlocutory, we note that it affects a substantial right which is one of the exceptions to the rule barring an immediate appeal from an interlocutory order. Indeed, motions to dismiss for lack of personal jurisdiction affect a substantial right and are immediately appealable.”) (citations omitted). This rule ensures that parties who have less than minimum contacts with the state “will never be forced to trial against their wishes,” “promotes judicial economy[,] and protects the constitutional rights of foreign

defendants.” *Love v. Moore*, 291 S.E.2d 141, 146 (N.C. 1982). The same concerns and points support appealability under South Carolina’s appealability statute, which also permits immediate appeals “affecting a substantial right.”

Therefore, in light of the foregoing authorities and the requirement that appealability must be determined on a case-by-case basis, immediate appeal of the lower court’s order is proper. However, to the extent the Court has any doubt or concern regarding appealability, Appellants respectfully request the opportunity to provide more fulsome briefing and analysis regarding the propriety of immediate appeal under these facts.

Respectfully submitted,

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Columbia, SC
May 21, 2021

On March 4, 2019, Plaintiff filed this action in Union County, South Carolina. The Complaint asserts causes of action for negligence, strict liability, and breach of warranty against all Defendants. Plaintiff alleges LG Chem has “continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7).

On November 2, 2020, LG Chem filed a renewed motion to dismiss for lack of personal jurisdiction, along with an affidavit of Sung Han Ryu, an LG Chem representative. Mr. Ryu states, *inter alia*, that LG Chem is a Korean company with its headquarters and principal offices in Seoul, South Korea. (Aff. ¶4). It does not own or lease property in South Carolina. *Id.* at ¶ 7. Mr. Ryu attests that LG Chem does not design, manufacture, distribute or sell a lithium-ion battery for use by individual consumers. *Id.* at ¶ 13.

On January 28, 2021, Plaintiff filed a memorandum in opposition to the renewed motion to dismiss, along with hundreds of import records for the Port of Charleston. The import records show that from December 2016 to February 2019 alone, LG Chem had approximately 296 shipments to the Port of Charleston in South Carolina. (Ex. 1 – Import Data). The import data indicates shipments to Carolina Covertech in North Augusta, Continental Tire in Sumter, Covidien in Greenwood, Fitesa in Simpsonville, Flex in West Columbia, Milliken Company in Spartanburg, and Volvo Car US Operations, Inc. in Ridgeville. (Ex. 1 – Import Data).

STANDARD

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case. The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law.” *Moosally v. W.W. Norton &*

Co., 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004) (internal citation omitted). When addressing a motion to dismiss for lack of personal jurisdiction, “‘Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.’ This includes any factual disputes brought up by submitted affidavits.” *Brown v. Investment Mgmt. & Research*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (quoting 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1351 (Supp. 1995)).

ANALYSIS

Taking as true all allegations of Plaintiff and resolving all factual disputes in his favor, the Court finds there are sufficient minimum contacts between LG Chem and South Carolina to support exercising specific personal jurisdiction¹ over LG Chem.

“Specific jurisdiction over a cause of action arising from a defendant’s contacts with the state is granted pursuant to the long arm statute.” *Id.* at 491, 611 S.E.2d at 508 (citing S.C. Code Ann. § 36-2-803 (2003)). “South Carolina’s long-arm statute . . . has been construed to extend to the outer limits of the due process clause.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). Therefore, “the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Id.*

“Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “[D]ue 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.* at 491-92, 611 S.E.2d at 508. This is the “‘stream of commerce’ theory” used by South Carolina courts. *State v. NV Sumatra Tobacco*

¹ Plaintiff did not dispute LG Chem’s argument as to general jurisdiction.

Trading, Co., 379 S.C. 81, 89, 89 n.5, 666 S.E.2d 218, 222, 222 n.5 (2008) (“declin[ing] to embrace the ‘stream of commerce plus’ theory”).² “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.” *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 332, 594 S.E.2d 878, 884 (Ct. App. 2004).

“The court must also find that the exercise of jurisdiction is reasonable or fair.” *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (internal quotation marks omitted). “Under the 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.*

Initially, the Court finds Plaintiff proves personal jurisdiction based on the pretrial stage pleadings. “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*, 363 S.C. at 491, 611 S.E.2d at 508. “There is no ‘other evidence’ requirement for personal jurisdiction where the complaint itself demonstrates jurisdiction.” *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 332, 426 S.E.2d 777, 779 (1993). Plaintiff alleges in the Complaint that LG Chem has “continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7). This demonstrates specific personal jurisdiction under the long-arm statute and due process analysis by asserting sufficient

² See also *Sheppard v. Mercedes-Benz USA, LLC*, C/A No. 2010-CP-38-1558 (Nov. 15, 2012), p. 7 (affirming South Carolina’s use of the stream of commerce theory pursuant to *Sumatra Tobacco*).

minimum contacts and the fairness and expectation of being haled into court in South Carolina under the stream of commerce theory.

Alternatively, the Court also finds that, based on the evidence submitted, Plaintiff demonstrates specific personal jurisdiction. LG Chem possesses sufficient minimum contacts with South Carolina so that it should reasonably anticipate being haled into court here.

Under South Carolina's long-arm statute,

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; . . . (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.

S.C. Code Ann. § 36-2-803(A). LG Chem has a presence in South Carolina in the form of continuously and regularly using a South Carolina port to conduct its business activities, and deriving revenue from South Carolina. Along with the evidence of LG Chem's activities and conduct discussed below, this satisfies the minimum contacts analysis.

Plaintiff submitted an exhibit showing approximately 296 product shipments from LG Chem through the Port of Charleston, South Carolina, from December 2016 to February 2019. Plaintiff also demonstrated that these products are delivered to seven (7) different locations in South Carolina. This is ample evidence that LG Chem transacted business in South Carolina; contracted to supply things in South Carolina; and caused injury in South Carolina when it regularly does or solicits business, or engages in a persistent course of conduct, or derives substantial revenue from goods used or consumed in South Carolina. *See* S.C. Code Ann. § 36-5-803(A); *Moosally*, 358 S.C. at 336, 594 S.E.2d at 886 (“W.W. Norton’s continual practice of marketing and distributing books in South Carolina satisfies the power prong of the due process analysis.”); *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 22 (D. Md. 1984) (“By using

the port of Baltimore as a site for regularly scheduling cruises, Carnival has purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”). LG Chem participated in the economic markets of this state and derived revenue from this state. Therefore, the minimum contacts prong is satisfied.

LG Chem does not dispute that they distribute and sell various products that come through the Port of Charleston. However, they argue that because, according to them, they do not ship lithium-ion batteries through a South Carolina port that this Court does not have jurisdiction over them. Defendant concedes, however, that vehicle batteries were shipped through Charleston. Defendants are correct that both *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011) and *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773 (2017) provide that the conduct in question in the forum state must be “related” or “connected” to the injuries. The Court finds the sale of batteries is a sufficient connection. Defendant seeks to have the Court impose a rule that unless the evidence indicates Defendant sold the particular product in question to buyers in the forum state, specific jurisdiction is not proper. The Court does not find either *J. McIntyre* or *Bristol-Myers* mandate such a narrow view of specific jurisdiction.

The exercise of personal jurisdiction is also reasonable and fair. First, LG Chem has conducted activities in South Carolina for a sufficient duration. The import records show its use of the Port for over ten years. Second, the character and circumstances of the commission of LG Chem’s acts support exercising personal jurisdiction. It consistently and repeatedly uses the Port of Charleston and receives products directly to South Carolina. Third, there is no inconvenience to the parties by conferring jurisdiction over LG Chem. LG Chem is actively litigating cases around the country involving the same type of battery at issue in this case. Fourth, South Carolina has an interest in exercising jurisdiction over LG Chem. “South Carolina has an interest in

providing redress for its citizens.” *Cribb v. Spatholt*, 382 S.C. 490, 504, 676 S.E.2d 714, 721 (Ct. App. 2009) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985) (“A State generally has a ‘manifest interest’ in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.”)). Finally, three other circuit court judges in South Carolina have examined this precise issue and determined that South Carolina has personal jurisdiction over LG Chem. (Ex. 2, Order from the Honorable Michael G. Nettles, Ex. 3, Order from the Honorable Courtney Clyburn Pope, and Ex. 4, Order from the Honorable Bentley Price). The Court has specific personal jurisdiction over LG Chem.

CONCLUSION

After reviewing all relevant cases presented by the parties, the Court is bound by *Sumatra*. Based on *Sumatra* and the additional authority cited above, the Court denies LG Chem’s motion.³

AND IT IS SO ORDERED.

Dated: _____

York, South Carolina

William A. McKinnon
Circuit Court Judge

³ Defendant also asserts the Court’s Order is inconsistent with Judge Maddox’s July 20, 2020 Order. The Court disagrees, as Judge Maddox specifically states “lack of information prevents a decision” – declining to decide is not the same as finding a lack of personal jurisdiction.



Union Common Pleas

Case Caption: Dwayne Thompson VS Lg Chem, Ltd. , defendant, et al

Case Number: 2019CP4400054

Type: Order/Dismissal

So Ordered

/s William A. McKinnon, Chief Judge for
Administrative Purposes, 16th Cir., #2761

On March 4, 2019, Plaintiff filed this action in Union County, South Carolina. The Complaint asserts causes of action for negligence, strict liability, and breach of warranty against all Defendants. As to LGA, Plaintiff alleges LGA has “continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7).

On November 2, 2020, LGA filed a renewed motion to dismiss for lack of personal jurisdiction, along with an affidavit of HyunSoo Kim, an LGA Compliance Manager. Mr. Kim states, *inter alia*, that LGA is incorporated in Delaware with its principal place of business in Georgia. (Aff. ¶5). It does not own or rent property in South Carolina. *Id.* at ¶ 6. Mr. Kim attests that LGA did not design, manufacture, distribute or sell a lithium-ion battery for use by individual consumers. *Id.* at ¶ 10.

On January 28, 2021, Plaintiff filed a memorandum in opposition to the renewed motion to dismiss, along with a South Carolina Certificate of Authority for LGA and hundreds of import records for the Port of Charleston. On September 15, 2010, LGA obtained a Certificate of Authority from the South Carolina Secretary of State that authorizes it to transact business in South Carolina. (Ex. 1). LGA maintains a registered agent in Columbia, South Carolina. *Id.* The import records show that from December 2016 to February 2019, LGA received as consignee approximately 244 product shipments from LG to the Port of Charleston in South Carolina. (Ex. 2). LGA is a wholly-owned subsidiary of LG, and LGA’s business activities for LG are “sales and trading” of its products within the United States.¹

¹ See LG Chem, Ltd. and Subsidiaries, *Consolidated Interim Financial Statements*, June 30, 2018 and 2017, http://www.lgchem.com/upload/file/audit-report/2018_2Q_ConFS_ENG.pdf at p. 10.

STANDARD

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case. The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law.” *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004) (internal citation omitted). When addressing a motion to dismiss for lack of personal jurisdiction, “‘Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.’ This includes any factual disputes brought up by submitted affidavits.” *Brown v. Investment Mgmt. & Research*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (quoting 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1351 (Supp. 1995)).

ANALYSIS

Taking as true all allegations of Plaintiff and resolving all factual disputes in his favor, the Court finds there are sufficient minimum contacts between LGA and South Carolina to support exercising specific personal jurisdiction² over LGA.

“Specific jurisdiction over a cause of action arising from a defendant’s contacts with the state is granted pursuant to the long arm statute.” *Id.* at 491, 611 S.E.2d at 508 (citing S.C. Code Ann. § 36-2-803 (2003)). “South Carolina’s long-arm statute . . . has been construed to extend to the outer limits of the due process clause.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). Therefore, “the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Id.*

“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

² Plaintiff did not dispute LGA’s argument as to general jurisdiction.

substantial justice.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “[D]ue 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.* at 491-92, 611 S.E.2d at 508. This is the “‘stream of commerce’ theory” used by South Carolina courts. *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 89, 89 n.5, 666 S.E.2d 218, 222, 222 n.5 (2008) (“declin[ing] to embrace the ‘stream of commerce plus’ theory”).³ “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.” *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 332, 594 S.E.2d 878, 884 (Ct. App. 2004).

“The court must also find that the exercise of jurisdiction is reasonable or fair.” *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (internal quotation marks omitted). “Under the 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.*

Initially, the Court finds Plaintiff proves personal jurisdiction based on the pretrial stage pleadings. “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*, 363 S.C. at 491, 611 S.E.2d at 508. “There is no ‘other evidence’ requirement for personal jurisdiction where the complaint itself demonstrates jurisdiction.” *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 332, 426 S.E.2d 777, 779 (1993). Plaintiff alleges in the Complaint that LGA has

³ See also *Sheppard v. Mercedes-Benz USA, LLC*, C/A No. 2010-CP-38-1558 (Nov. 15, 2012), p. 7 (affirming South Carolina’s use of the stream of commerce theory pursuant to *Sumatra Tobacco*).

“continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7). This demonstrates specific personal jurisdiction under the long-arm statute and due process analysis by asserting sufficient minimum contacts and the fairness and expectation of being haled into court in South Carolina under the stream of commerce theory.

Alternatively, the Court also finds that, based on the evidence submitted, Plaintiff demonstrates specific personal jurisdiction. LGA possesses sufficient minimum contacts with South Carolina so that it should reasonably anticipate being haled into court here.

Under South Carolina’s long-arm statute,

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; . . . (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.

S.C. Code Ann. § 36-2-803(A). LGA has a presence in South Carolina in the form of being registered to transact business here, having a registered process agent here, continuously and regularly using a State port to conduct its business activities, and deriving revenue from South Carolina. Plaintiff points to LGA’s Certificate of Authority to transact business as evidence that supports the exercise of personal jurisdiction. The Court agrees. Section 33-15-101 of the South Carolina Code lists 13 categories of activities that are **not** considered transacting business in South Carolina. S.C. Code Ann. § 33-15-101. LGA’s decision to obtain a Certificate of Authority demonstrates that its activities in South Carolina are more substantial than those listed in § 33-15-101. Further, by obtaining a Certificate of Authority, LGA agreed at a minimum to the jurisdiction of the South Carolina Department of Revenue and our Courts to determine its South Carolina tax

liability. S.C. Code Ann. § 33-15-105(d). Along with the evidence of LGA's activities and conduct discussed below, this satisfies the minimum contacts analysis.

Plaintiff submitted an exhibit showing approximately 244 product shipments from LG to LGA as consignee through the Port of Charleston, South Carolina, from December 2016 to February 2019. This is ample evidence that LGA transacted business in South Carolina; contracted to supply things in South Carolina; and caused injury in South Carolina when it regularly does or solicits business, or engages in a persistent course of conduct, or derives substantial revenue from goods used or consumed in South Carolina. *See* S.C. Code Ann. § 36-5-803(A); *Moosally*, 358 S.C. at 336, 594 S.E.2d at 886 (“W.W. Norton’s continual practice of marketing and distributing books in South Carolina satisfies the power prong of the due process analysis.”); *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 22 (D. Md. 1984) (“By using the port of Baltimore as a site for regularly scheduling cruises, Carnival has purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”). LGA participated in the economic markets of this state and derived revenue from this state. Therefore, the minimum contacts prong is satisfied and it should come as no surprise to LGA that the subject battery ended up in South Carolina and injured a South Carolina citizen.

The exercise of personal jurisdiction is also reasonable and fair. First, LGA has conducted activities in South Carolina for a sufficient duration. It obtained a Certificate of Authority to transact business in South Carolina over ten years ago and the import records show its use of the Port for over ten years. Second, the character and circumstances of the commission of LGA's acts support exercising personal jurisdiction. It consistently and repeatedly uses the Port of Charleston and receives products directly to South Carolina. Third, there is no inconvenience to the parties by conferring jurisdiction over LGA. It is a U.S. corporation with a Certificate of Authority and

registered agent in South Carolina. Fourth, South Carolina has an interest in exercising jurisdiction over LGA. “South Carolina has an interest in providing redress for its citizens.” *Cribb v. Spatholt*, 382 S.C. 490, 504, 676 S.E.2d 714, 721 (Ct. App. 2009) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985) (“A State generally has a ‘manifest interest’ in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.”)). Finally, four other circuit court judges in South Carolina have examined this precise issue and determined that South Carolina has personal jurisdiction over LGA. (Ex. 3, Order from the Honorable Michael G. Nettles, Ex. 4, Order from the Honorable Courtney Clyburn Pope, Ex. 5, Order from the Honorable Perry M. Buckner, III, and Ex. 6, Order from the Honorable Bentley Price). The Court has specific personal jurisdiction over LGA.

CONCLUSION

After reviewing all relevant cases presented by the parties, the Court is bound by *Sumatra*. Based on *Sumatra* and the additional authority cited above, the Court denies LGA’s motion.⁴

AND IT IS SO ORDERED.

Dated: _____

York, South Carolina

William A. McKinnon
Circuit Court Judge

⁴ Defendant also asserts the Court’s Order is inconsistent with Judge Maddox’s July 20, 2020 Order. The Court disagrees, as Judge Maddox specifically states “lack of information prevents a decision” – declining to decide is not the same as finding a lack of personal jurisdiction.



Union Common Pleas

Case Caption: Dwayne Thompson VS Lg Chem, Ltd. , defendant, et al

Case Number: 2019CP4400054

Type: Order/Dismissal

So Ordered

/s William A. McKinnon, Chief Judge for
Administrative Purposes, 16th Cir., #2761

Dwayne Thompson
PLAINTIFF(S)

Lg Chem, Ltd. et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (*CHECK REASON*):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (*CHECK REASON*):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendants' Motions to Reconsider the Court's March 19, 2021 orders are denied, for the reasons stated by the Court in its prior orders.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/21/2021 .

Rolling Fog Vapor Company, Llc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Union Common Pleas

Case Caption: Dwayne Thompson VS Lg Chem, Ltd. , defendant, et al

Case Number: 2019CP4400054

Type: Order/Electronic Form 4

So Ordered

/s William A. McKinnon, Chief Judge for
Administrative Purposes, 16th Cir., #2761

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM UNION COUNTY
Court of Common Pleas
William A. McKinnon, Circuit Court Judge

Civil Action No. 2019-CP-4400054

RECEIVED

May 21 2021

SC Court of Appeals

Dwayne Thompson, Respondent,

v.

Rolling Fog Vapor Company, LLC,

Of whom LG Chem, Ltd. and LG Chem America, Inc. are
the.....

Appellants.

PROOF OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for LG Chem, Ltd. and LG Chem America, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow by manner identified below, pursuant to Supreme Court Order, as Amended May 29, 2020, § (g)(3), on May 21, 2021, and a copy of that electronic mail is attached to this certificate.

Pleading(s): **NOTICE OF APPEAL**

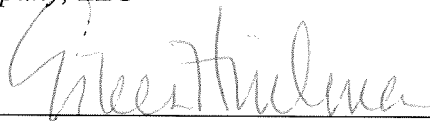
Served: **Via E-Mail**
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Via E-Mail

Ronnie L. Crosby
William F. Barnes, III
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wbarnes@pmped.com
acrosby@pmped.com
Attorneys for Plaintiff Dwayne Thompson

Via U.S. Mail:

Gina Marie Surace
317 Greenway Drive
Chesnee, SC 29323
*Registered Agent for Defendant Rolling Fog Vapor
Company, LLC*



Eileen Hindman

May 21, 2021

Eileen Hindman

From: Eileen Hindman
Sent: Friday, May 21, 2021 10:31 AM
To: Alex.lewis@cummingslewis.com; Blake.cummings@cummingslewis.com; rcrosby@pmped.com; wbarnes@pmped.com; acrosby@pmped.com
Cc: Mitch Brown; Matt Bogan; Rachel Hedley; Scott Moise; Ann Boney; Meredith Keane
Subject: Dwayne Thompson v. LG Chem, Ltd. and LG Chem America, Inc
Attachments: Thompson (SC) - LGC's and LGCAI's Notice of Appeal.pdf; POS - NOA.pdf

May 21 2021

Counsel,

Attached for service upon you in the above matter please find the Notice of Appeal and proof of service. Service is made via email pursuant to subsection (g)(3) of the Supreme Court Administrative Order (as Amended May 29, 2020).

Thank you,



EILEEN HINDMAN SENIOR ADMINISTRATIVE ASSISTANT
eileen.hindman@nelsonmullins.com

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RECEIVED
May 21 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM UNION COUNTY
Court of Common Pleas
William A. McKinnon, Circuit Court Judge

Civil Action No. 2019-CP-4400054

Dwayne Thompson, Respondent,

v.

Rolling Fog Vapor Company, LLC,

Of whom LG Chem, Ltd. and LG Chem America, Inc. are
the.....

Appellants.

PROOF OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for LG Chem, Ltd. and LG Chem America, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow, by manner identified below, pursuant to Supreme Court Order, as Amended May 29, 2020, § (g)(3), on May 21, 2021, and a copy of that electronic mail is attached to this certificate.

Pleading(s): **MOTION TO TRANSFER OR CERTIFY CASE FROM
THE COURT OF APPEALS**

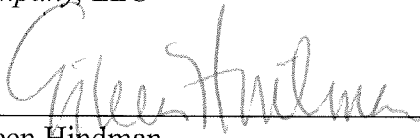
Served: **Via E-Mail**
Alexander P. Lewis
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Via E-Mail

Ronnie L. Crosby
William F. Barnes, III
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Attorneys for Plaintiff Dwayne Thompson

Via U.S. Mail:

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317 Greenway Drive
Chesnee, SC 29323
*Registered Agent for Defendant Rolling Fog Vapor
Company, LLC*



Eileen Hindman

May 21, 2021

Eileen Hindman

From: Eileen Hindman
Sent: Friday, May 21, 2021 2:55 PM
To: Alex.lewis@cummingslewis.com; Blake.cummings@cummingslewis.com; rcrosby@pmped.com; wbarnes@pmped.com; acrosby@pmped.com
Cc: Mitch Brown; Matt Bogan; Rachel Hedley; Scott Moise; Ann Boney; Meredith Keane
Subject: Dwayne Thompson v. LG Chem, Ltd. and LG Chem America, Inc
Attachments: Motion to Transfer or Certify with exhibits [Thompson v. LG Chem].pdf; 2021.05.21 Proof of Service to Motion to Transfer or Certify [Thompson].pdf; Thompson - Petition for Writ of Certiorari with exhibits.pdf; 2021.05.21 Proof of Service to Petition for Writ of Certiorari.pdf

Tracking:	Recipient	Read
	Alex.lewis@cummingslewis.com	
	Blake.cummings@cummingslewis.com	
	rcrosby@pmped.com	
	wbarnes@pmped.com	
	acrosby@pmped.com	
	Mitch Brown	Read: 5/21/2021 2:56 PM
	Matt Bogan	Read: 5/21/2021 2:56 PM
	Rachel Hedley	
	Scott Moise	Read: 5/21/2021 2:55 PM
	Ann Boney	
	Meredith Keane	

Counsel,

Attached for service upon you in the above matter please find the Motion to Transfer or Certify Case From the Court of Appeals with proof of service and Petition for Writ of Certiorari with proof of service. Service is made via email pursuant to subsection (g)(3) of the Supreme Court Administrative Order (as Amended May 29, 2020).

Thank you,



EILEEN HINDMAN SENIOR ADMINISTRATIVE ASSISTANT

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NELSONMULLINS.COM

Nicholas Keith Roberts
PLAINTIFF(S)

Planet Vape Llc The et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (*CHECK REASON*):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (*CHECK REASON*):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendant LG Chem Ltd's Motion to Dismiss is denied. Defendant LG Chem America Inc.'s Motion to Dismiss is denied.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/17/2020 .

Scecigarette LLC
Duke Raleigh Highfield for Ecig Charleston Llc
Brandt R. Horton for Ecig Charleston Llc
Christian Edwin Wayne Fober for Ecig Charleston Llc
James D Durham for Nicholas Keith Roberts
R Brian Tanner for Nicholas Keith Roberts
Shannon C O'Reilly for Nicholas Keith Roberts
Deirdre Shelton McCool for Lg Chem America Inc,Lg Chem Ltd
Rachel Atkin Hedley for Lg Chem America Inc,Lg Chem Ltd
Elizabeth Scott Moise for Lg Chem America Inc,Lg Chem Ltd
Joyetech Usa Inc
Daphne S. Withrow for Nicholas Keith Roberts
Planet Vape Llc The **NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Nicholas Keith Roberts VS Planet Vape Llc The , defendant, et al

Case Number: 2020CP1000912

Type: Order/Electronic Form 4

IT IS SO ORDERED!

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

Id. at Paragraph 21. The Plaintiff alleges that LGC “regularly conduct[s] business in South Carolina and [has] continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” Id. at 2-3. The Plaintiff further alleges that LGC “markets, distributes, and sells LG branded 18650 batteries throughout the United States [and] in the state of South Carolina[,]” and “transacts [and] solicits business in the state of South Carolina.” Id. at Paragraphs 12-15.

Defendant LGC submits that dismissal is proper as LGC is not subject to personal jurisdiction in this case. LGC asserts that it is a Korean company with its headquarters and principal offices in Seoul, South Korea, that it does not have continuous and systematic contacts with the State of South Carolina sufficient to render it essentially at home in South Carolina, and that it never designed, manufactured, distributed, advertised, or sold 18650 lithium ion cells for use by individual consumers as standalone, replaceable batteries for any purpose. See LGC’s Motion to Dismiss at 1-2.

For the following reasons, Defendant LGC’s Motion to Dismiss is heard and respectfully Denied.

CONCLUSIONS OF LAW¹

I. Defendant LGC’s Motion to Dismiss pursuant to Rule 12(b)(2), SCRCP is Denied.

Rule 12(b)(2), SCRCP permits dismissal of a claim for “lack of jurisdiction over the person.” If a court lacks in personam jurisdiction over the defendant the action is barred by Rule 12(b)(2), SCRCP. Keller v. Keller, 296 S.C. 422, 373 S.E.2d 692 (Ct. App. 1988). “The question

¹ The findings of fact and conclusions of law stated herein are made to determine the viability of the movant’s arguments to dismiss this cause of action based on a lack of jurisdiction. The findings and conclusions are not intended to establish conclusively any of the material facts of this case.

of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case. Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). “The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law.” Moosally v. W.W. Norton & Co., 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004) (internal citation omitted).

“A prima facie showing of personal jurisdiction can be made through factual allegations in the complaint or through affidavits that establish a basis for the court to assert jurisdiction over an out-of state- defendant.” Sullivan v. Hawker Beechcraft Corp., 397 S.C. 143, 151, 723 S.E.2d 835, 839 (Ct. App. 2012) (citing S. Plastics Co. v. S. Commerce Bank, 310 S.C. 256, 259, 423 S.E.2d 128, 130 (1992)). When addressing a motion to dismiss for lack of personal jurisdiction, “[c]ourts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.’ This includes any factual disputes brought up by submitted affidavits.” Brown v. Investment Mgmt. & Research, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (quoting 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1351 (Supp. 1995)).

“The concept of jurisdiction refers to the authority of a court over a particular person (personal jurisdiction) or the authority of a court to entertain a particular action (subject matter jurisdiction), but the concept does not refer to the validity of the claim on which an action against a person is based.” Cribb v. Spatholt, 382 S.C. 490 497, 382 S.E.2d 714, 718 (Ct. App. 2009) (citing Boan v. Jacobs, 296 S.C. 419, 421, 373 S.E.2d 697, 698 (Ct.App.1988)). Personal jurisdiction is exercised as “general jurisdiction” or “specific jurisdiction.”² Id. (citing Coggeshall v. Reprod. Endocrine Assocs. of Charlotte, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)).

² The Plaintiff does not appear to allege that this Court can exercise general jurisdiction over the Defendant LGC, therefore, the Court will only consider whether the Court can exercise specific jurisdiction over the Defendant LGC.

A. Specific Personal Jurisdiction

Courts may have specific jurisdiction over a cause of action arising from a defendant's contacts with the state pursuant to the long-arm statute.³ State v. NV Sumatra Tobacco Trading, Co., 379 S.C. 81, 88, 666 S.E.2d 218, 222 (2008). “Traditionally, our courts have conducted a two-step analysis to determine whether specific jurisdiction is proper by 1) determining if the long arm statute applies and 2) determining whether the nonresident's contacts in South Carolina are sufficient to satisfy due process requirements. However, a more recent trend compresses the analysis into a due process assessment only.” Cribb, 382 S.C. at 498-99, 676 S.E.2d at 718-19 (internal citations omitted); see also Cockrell, 363 S.C. at 491, 611 S.E.2d at 508 (“Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process.”).

Due process requires a defendant possess minimum contacts with the forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice. Coggeshall, 376 S.C. at 16, 655 S.E.2d at 478. “Further, the due process requirement mandates the defendant possess sufficient minimum contacts with the forum state such that he could reasonably

³ Under South Carolina’s long arm statute, a court may exercise personal jurisdiction over an individual acting directly or through an agent for causes of action arising from the individual'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.

S.C. Code Ann. § 36–2–803.

anticipate being haled into court there.” Power Prods. & Servs. Co. v. Kozma, 379 S.C. 423, 431, 665 S.E.2d 660, 664 (Ct.App.2008).

Courts apply a two-pronged analysis when determining whether a defendant possesses minimum contacts with the forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice. Cribb, 382 S.C. at 498-99, 676 S.E.2d at 718-19 (citing Power Prods., 379 S.C. at 432, 665 S.E.2d at 665). “The court must (1) find that the defendant has the requisite minimum contacts with the forum, without which, the court does not have the ‘power’ to adjudicate the action and (2) find the exercise of jurisdiction is reasonable or fair.” Id. To support a finding of due process, both prongs must be satisfied. Id.

For the following reasons, the Court finds that the Plaintiff has satisfied both the power and fairness prongs to establish specific personal jurisdiction over Defendant LGC.

1. Power Prong

To satisfy the power prong, the court must find that a defendant directed its activities to residents of South Carolina and that the cause of action arises out of or relates to those activities. Moosally v. W.W. Norton & Co., Inc., 358 S.C. 320, 331–32, 594 S.E.2d 878, 884-85 (Ct. App. 2004). The Moosally court stated: “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.” Id.

The court must look to whether a defendant has sufficient minimum contacts in the forum and whether the claims at issue “arise out of,” are “connected with,” or “relate to” the defendant’s

activities in the forum – bearing in mind “reasonableness” and “other relevant factors.” See Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980); International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945); see also Moosally, 594 S.E.2d 884.

As an initial matter, the allegations of the Plaintiffs’ Complaint are sufficient for the exercise of jurisdiction over Defendant LGC pursuant to the South Carolina Long Arm Statute. S.C. Code Ann. § 36-2-803 (8)(a) provides:

A Court may exercise jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person’s... production, manufacture, or distribution of goods with the reasonable expectation that the goods are to be used or consumed in this State and the goods are so consumed.

Further, a comprehensive review of the applicable case law from World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S. Ct. 559, 62 L.E.2d 490 (1980) through the United States Supreme Court’s most recent decision in Bristol-Myers Squibb Co. v. Superior Court of California, 137 S. Ct. 1773 (2017), this Court is satisfied that the exercise of jurisdiction over Defendant LGC is consistent with due process. Defendant LGC’s minimum contacts with the State of South Carolina is premised on the “stream of commerce” theory.⁴ A plaintiff may establish a defendant’s sufficient minimum contacts with the forum to satisfy this prong of the analysis by showing the defendant placed goods into the stream of commerce with the expectation that the “‘regular...flow’ or ‘regular course’ of sales” could lead the product to the forum state. See J. McIntyre Machinery, Ltd. v. Nicastro, 564 U.S. 873, 888-889 (2011) (Breyer, J., concurring in judgment); see also Asahi

⁴ “[I]t is that the defendant’s conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there. This theory of personal jurisdiction is known as the ‘stream of commerce’ theory.” State v. NV Sumatra Tobacco Trading, Co., 379 S.C. 81, 89, 666 S.E.2d 218, 222 (2008) (citing World-Wide Volkswagen Corp., 444 U.S. at 297, 100 S.Ct. 559).

Metal Ind. Co., Ltd. v. Superior Court of California, 480 U.S. 102, 117, 120-21 (Brennan, J. concurring in part and in the judgment).

The Plaintiff alleges that LGC “regularly conduct[s] business in South Carolina and [has] continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” Amended Complaint at 2-3. The Plaintiff further alleges that LGC “markets, distributes, and sells LG branded 18650 batteries throughout the United States [and] in the state of South Carolina[,]” and “transacts [and] solicits business in the state of South Carolina.” Id. at Paragraphs 12-15. Moreover, the Plaintiff alleges that Defendant LG Chem America, Inc., a wholly-owned subsidiary of Defendant LGC, maintains a registered agent and has a certificate of authority to conduct business in South Carolina since September 15, 2010. See Affidavit of Harris Yegelwel, Ex. 2-6.

It is clear from the record that Defendant LGC markets and sells the subject batteries in the State of South Carolina.⁵ Therefore, it can reasonably be said that Defendant LGC distributed the subject batteries with the reasonable expectation that subject batteries would be used in the State of South Carolina. Moreover, the subject batteries were purchased and used by the Plaintiff in South Carolina, and allegedly caused injury to the Plaintiff in South Carolina. Therefore, the allegations of the Plaintiff’s Complaint are sufficient for this Court’s exercise of jurisdiction over Defendant LGC pursuant to S.C. Code § 36-2-803.

⁵ Plaintiff alleges that Defendant LGC has been importing its products, including the subject batteries, through the Port of Charleston and other ports within South Carolina since November 1, 2006. See Exhibit 4 to Affidavit of Harris Yegelwel, LGC US Customs Import Data. Moreover, the Plaintiff alleges that Defendant LG Chem America, Inc., a wholly-owned subsidiary of Defendant LGC, aided in importing 984 shipments of Defendant LGC’s products. Id.

Accordingly, the Court finds that the Plaintiff has met its burden in establishing that Defendant LGC maintains minimum contacts with the State of South Carolina so as to empower the Court to exercise personal jurisdiction over Defendant LGC.

1. Fairness Prong

Finally, under the fairness prong, the court must consider the following factors: (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. NV Sumatra Tobacco Trading, Co., 379 S.C. at 91, 666 S.E.2d at 223.

First, the Plaintiff alleges that Defendant LG Chem America, Inc., a wholly-owned subsidiary of Defendant LGC, maintains a registered agent and has a certificate of authority to conduct business in South Carolina since September 15, 2010. See Affidavit of Harris Yegelwel, Ex. 2-6. The Court finds that nearly eleven (11) years of business activity in South Carolina is sufficient time to put Defendant LGC on notice that it may be haled into court in South Carolina.

Second, the character and circumstances of Defendant LGC's acts, as discussed more fully, supra, evince that Defendant LGC has purposefully availed itself of the benefits of doing business in South Carolina. The Plaintiff alleges that Defendant LGC's product presence in South Carolina is pervasive, with approximately 40 shipments by Defendant LGC through Defendant LG Chem America, Inc., to customers in South Carolina, including shipments of the subject batteries.

Third, the Court cannot discern any inconvenience to Defendant LGC, as its wholly-owned subsidiary, LG Chem American, Inc. has a Certificate of Authority to transact business in South Carolina, and a registered agent in South Carolina. Moreover, any inconvenience to Defendant LGC is outweighed by South Carolina's interest in protecting its residents that have been potentially injured by out-of-state actors. Further, the alleged incident occurred in Beaufort

County, South Carolina, therefore conceivably the majority of witnesses to the alleged incident reside in Beaufort County, South Carolina.

Fourth, and finally, South Carolina has a manifest interest in exercising jurisdiction over Defendant LGC. “South Carolina has an interest in providing redress for its citizens.” Cribb v. Spatholt, 382 S.C. 490, 504, 676 S.E.2d 714, 721 (Ct. App. 2009) (citing Burger King, 471 U.S. at 473 (“A State generally has a ‘manifest interest’ in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.”))).

Accordingly, the Court finds that the Plaintiff has met his burden in proving that this Court’s exercise of personal jurisdiction over Defendant LGC is fair and does not offend traditional notions of fair play and substantial justice.

CONCLUSION

Therefore, having found that Defendant LGC has sufficient minimum contacts with the State of South Carolina, and having found that exercising personal jurisdiction over Defendant LGC does not defeat the fairness considerations of due process, the Court concludes that the Plaintiff has established specific personal jurisdiction over Defendant LGC. Accordingly, Defendant LGC’s Motion pursuant to Rule 12(b)(2), is heard and respectfully Denied.

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge
Fourteenth Judicial Circuit

June _____, 2021
Charleston, South Carolina
At Chambers



Beaufort Common Pleas

Case Caption: Eric Chase Williamson VS Pirates Cove Vapor Lounge Llc ,
defendant, et al

Case Number: 2019CP0702270

Type: Order/Other

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

EXHIBIT
E

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
JOSHUA HOLTZENDORFF,)
)
Plaintiff,)
)
vs.)
)
VAPOR TEK USA, LLC, and LG CHEM)
LTD.)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
CIVIL ACTION NO. : 2018-CP-0201518

**[PROPOSED] ORDER DENYING
LG CHEM, LTD.’S MOTION TO
DISMISS FOR LACK OF PERSONAL
JURISDICTION**

Defendant LG Chem, Ltd.’s motion to dismiss for lack of personal jurisdiction, pursuant to South Carolina Rule of Procedure 12(b)(2), came before the Court for a hearing on February 3, 2020. After considering the pleadings, the evidence submitted by both parties, and the arguments of counsel, the Court denies LG Chem, Ltd.’s motion to dismiss. Defendant LG Chem, Ltd. shall file and serve its answer within 15 days of service of this order.

AND IT IS SO ORDERED.

Dated: _____
Aiken, South Carolina

Hon. Courtney Clyburn Pope
Circuit Court Judge

ELECTRONICALLY FILED - 2020 May 06 12:06 PM - AIKEN - COMMON PLEAS - CASE#2019CP0201518



Aiken Common Pleas

Case Caption: Joshua Holtzendorff VS Vapor Tek Usa Llc , defendant, et al

Case Number: 2019CP0201518

Type: Order/Form 4

So Ordered

The Honorable Courtney Clyburn Pope

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF FLORENCE	)	TWELFTH JUDICIAL CIRCUIT
)	
RANEE MICHELLE MOORE,	)	CIVIL ACTION NO. 2018-CP-21-02884
)	
Plaintiff,)	
)	
v.	)	ORDER DENYING LG CHEM,
	)	AMERICA, INC.’S, MOTION TO
	)	DISMISS
PLANET VAPOR, INC., LG CHEM,)	
LTD., and LG CHEM AMERICA, INC.)	

This matter came before the Court for a hearing on April 2, 2019, on Defendant LG Chem America, Inc.’s (“LGA”) motion to dismiss for lack of personal jurisdiction. After reviewing the parties’ submissions and hearing argument of counsel, the Court denies LGA’s motion for the reasons stated below.

FACTS AND PROCEDURAL HISTORY

This is a product liability action involving an allegedly defective lithium ion battery used for an e-cigarette device. Plaintiff, a South Carolina citizen, alleges that on March 9, 2016, the battery, while in her pants pocket, exploded and burst into flames, causing severe burn injuries. The injuries occurred in Florence, South Carolina. Defendant Planet Vapor, Inc., is a retail store in Columbia, South Carolina, that sold the battery and e-cigarette device to Plaintiff. (Cmplt. ¶ 2). Defendant LGA, a Delaware corporation, and Defendant LG Chem, Ltd., (“LG”), a South Korean corporation, allegedly designed, manufactured, imported, and sold the battery. *Id.* at ¶¶ 3-6.

On October 31, 2018, Plaintiff filed this action in Florence County, South Carolina. The Complaint asserts causes of action for negligence, strict liability, and breach of warranty against all Defendants. As to LGA, Plaintiff alleges LGA has “continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling

goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7).

On December 21, 2018, LGA filed a motion to dismiss for lack of personal jurisdiction, along with an affidavit of HyunSoo Kim, an LGA Compliance Manager. Mr. Kim states, *inter alia*, that LGA is incorporated in Delaware with its principal place of business in Georgia. (Aff. ¶3). It does not own or rent property in South Carolina. *Id.* at ¶ 5. In 2017, LGA generated 1.27% of its revenue in South Carolina. *Id.* at ¶ 7. Mr. Kim attests that LGA did not design, manufacture, import or sell a lithium-ion battery in South Carolina. *Id.* at ¶ 8.

On April 2, 2019, Plaintiff filed a memorandum in opposition to the motion to dismiss, along with a South Carolina Certificate of Authority for LGA and hundreds of import records for the Port of Charleston. On September 15, 2010, LGA obtained a Certificate of Authority from the South Carolina Secretary of State that authorizes it to transact business in South Carolina. (Exh. 2). LGA maintains a registered agent in Columbia, South Carolina. *Id.* The import records show that from December 2016 to February 2019, LGA received as consignee approximately 244 product shipments from LG to the Port of Charleston in South Carolina. (Exh. 3). LGA is a wholly-owned subsidiary of LG, and LGA’s business activities for LG are “sales and trading” of its products within the United States.¹

STANDARD

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case. The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law.” *Moosally v. W.W. Norton &*

¹ See LG Chem, Ltd. and Subsidiaries, *Consolidated Interim Financial Statements*, June 30, 2018 and 2017, http://www.lgchem.com/upload/file/audit-report/2018_2Q_ConFS_ENG.pdf at p. 10.

Co., 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004) (internal citation omitted). When addressing a motion to dismiss for lack of personal jurisdiction, “‘Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.’ This includes any factual disputes brought up by submitted affidavits.” *Brown v. Investment Mgmt. & Research*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (quoting 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1351 (Supp. 1995)).

ANALYSIS

Taking as true all allegations of Plaintiff and resolving all factual disputes in her favor, the Court finds there are sufficient minimum contacts between LGA and South Carolina to support exercising specific personal jurisdiction² over LGA.

“Specific jurisdiction over a cause of action arising from a defendant’s contacts with the state is granted pursuant to the long arm statute.” *Id.* at 491, 611 S.E.2d at 508 (citing S.C. Code Ann. § 36-2-803 (2003)). “South Carolina’s long-arm statute . . . has been construed to extend to the outer limits of the due process clause.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). Therefore, “the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Id.*

“Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “[D]ue 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.* at 491-92, 611 S.E.2d at 508. This is the “‘stream of commerce’ theory” used by South Carolina courts. *State v. NV Sumatra Tobacco*

² Plaintiff did not dispute LGA’s argument as to general jurisdiction.

Trading, Co., 379 S.C. 81, 89, 89 n.5, 666 S.E.2d 218, 222, 222 n.5 (2008) (“declin[ing] to embrace the ‘stream of commerce plus’ theory”).³ “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.” *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 332, 594 S.E.2d 878, 884 (Ct. App. 2004).

“The court must also find that the exercise of jurisdiction is reasonable or fair.” *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (internal quotation marks omitted). “Under the 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.*

Initially, the Court finds Plaintiff proves personal jurisdiction based on the pretrial stage pleadings. “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*, 363 S.C. at 491, 611 S.E.2d at 508. “There is no ‘other evidence’ requirement for personal jurisdiction where the complaint itself demonstrates jurisdiction.” *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 332, 426 S.E.2d 777, 779 (1993). Plaintiff alleges in the Complaint that LGA has “continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7). This demonstrates specific personal jurisdiction under the long-arm statute and due process analysis by asserting sufficient

³ See also *Sheppard v. Mercedes-Benz USA, LLC*, C/A No. 2010-CP-38-1558 (Nov. 15, 2012), p. 7 (affirming South Carolina’s use of the stream of commerce theory pursuant to *Sumatra Tobacco*).

minimum contacts and the fairness and expectation of being haled into court in South Carolina under the stream of commerce theory.

Alternatively, the Court also finds that, based on the additional evidence submitted, Plaintiff demonstrates specific personal jurisdiction. LGA possesses sufficient minimum contacts with South Carolina so that it should reasonably anticipate being haled into court here.

Under South Carolina's long-arm statute,

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; . . . (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.

S.C. Code Ann. § 36-2-803(A). LGA has a presence in South Carolina in the form of being registered to transact business here, having a registered process agent here, continuously and regularly using a State port to conduct its business activities, and deriving revenue from South Carolina. Plaintiff points to LGA's Certificate of Authority to transact business as evidence that supports the exercise of personal jurisdiction. The Court agrees. Section 33-15-101 of the South Carolina Code lists 13 categories of activities that are **not** considered transacting business in South Carolina. S.C. Code Ann. § 33-15-101. LGA's decision to obtain a Certificate of Authority demonstrates that its activities in South Carolina are more substantial than those listed in § 33-15-101. Further, by obtaining a Certificate of Authority, LGA agreed at a minimum to the jurisdiction of the South Carolina Department of Revenue and our Courts to determine its South Carolina tax liability. S.C. Code Ann. § 33-15-105(d). Along with the evidence of LGA's activities and conduct discussed below, this satisfies the minimum contacts analysis.

Plaintiff submitted an exhibit showing approximately 244 product shipments from LG to LGA as consignee through the Port of Charleston, South Carolina, from December 2016 to

February 2019. This is ample evidence that LGA transacted business in South Carolina; contracted to supply things in South Carolina; and caused injury in South Carolina when it regularly does or solicits business, or engages in a persistent course of conduct, or derives substantial revenue from goods used or consumed in South Carolina. *See* S.C. Code Ann. § 36-5-803(A); *Moosally*, 358 S.C. at 336, 594 S.E.2d at 886 (“W.W. Norton’s continual practice of marketing and distributing books in South Carolina satisfies the power prong of the due process analysis.”); *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 22 (D. Md. 1984) (“By using the port of Baltimore as a site for regularly scheduling cruises, Carnival has purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”). LGA participated in the economic markets of this state and derived revenue from this state. Therefore, the minimum contacts prong is satisfied.

LGA lists in its memorandum and in Mr. Kim’s affidavit various products it sells and distributes, but specifically omits lithium-ion batteries from the list. The Court rejects this assertion because another court already found that “LGCAI is responsible for marketing LGC petrochemicals, information and electronic materials, and *batteries* to customers in the United States.” *Celgard, LLC v. LG Chem, Ltd.*, 2015 U.S. Dist. LEXIS 66600, *74, 2015 WL 2412467 (W.D.N.C. May 21, 2015) (emphasis added). Therefore, it should come as no surprise to LGA that the subject battery ended up in South Carolina and injured a South Carolina citizen.

The exercise of personal jurisdiction is also reasonable and fair. First, LGA has conducted activities in South Carolina for a sufficient duration. It obtained a Certificate of Authority to transact business in South Carolina over eight years ago and the import records show its use of the Port for over three years. Second, the character and circumstances of the commission of LGA’s acts support exercising personal jurisdiction. It consistently and repeatedly uses the Port of

Charleston and receives products directly to South Carolina. Third, there is no inconvenience to the parties by conferring jurisdiction over LGA. It is a U.S. corporation with a Certificate of Authority and registered agent in South Carolina. Fourth, and finally, South Carolina has an interest in exercising jurisdiction over LGA. “South Carolina has an interest in providing redress for its citizens.” *Cribb v. Spatholt*, 382 S.C. 490, 504, 676 S.E.2d 714, 721 (Ct. App. 2009) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985) (“A State generally has a ‘manifest interest’ in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.”)). The Court has specific personal jurisdiction over LGA.

CONCLUSION

For the reasons stated above, the Court denies Defendant LG Chem America, Inc.’s motion.

AND IT IS SO ORDERED.

Dated: _____
 Florence, South Carolina

 Michael G. Nettles
 Circuit Court Judge



Florence Common Pleas

Case Caption: Ranee Machel Moore , plaintiff, et al VS Planet Vapor Inc ,
defendant, et al

Case Number: 2018CP2102884

Type: Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF UNION	)	CIVIL ACTION NO.: 2019-CP-44-00054
)	
DWAYNE THOMPSON,)	
)	
Plaintiff,)	
)	
v.	)	ORDER DENYING LG CHEM, LTD.’S
	)	MOTION TO DISMISS
LG CHEM, LTD., LG CHEM AMERICA,)	
INC., and ROLLING FOG VAPOR)	
COMPANY, LLC,)	
)	
Defendants.)	
)	

This matter came before the Court for a hearing on February 1, 2020, on Defendant LG Chem LTD.’s (“LG Chem”) renewed motion to dismiss for lack of personal jurisdiction. After reviewing the parties’ submissions and hearing argument of counsel, the Court denies LG Chem’s motion for the reasons stated below.

FACTS AND PROCEDURAL HISTORY

This is a product liability action involving an allegedly defective lithium-ion battery used for an e-cigarette device. Plaintiff, a South Carolina citizen, alleges that on July 27, 2018, the battery, while in his pants pocket, exploded and burst into flames, causing severe burn injuries. The injuries occurred in Spartanburg, South Carolina. Defendant Rolling Fog Vapor Company, LLC, is a retail store in Spartanburg, South Carolina, that sold the battery and e-cigarette device to Plaintiff. (Cmplt. ¶ 2). Defendant LGA, a Delaware corporation, and Defendant LG Chem, Ltd., (“LG”), a South Korean corporation, allegedly designed, manufactured, imported, and sold the battery. *Id.* at ¶¶ 3-6.

On March 4, 2019, Plaintiff filed this action in Union County, South Carolina. The Complaint asserts causes of action for negligence, strict liability, and breach of warranty against all Defendants. Plaintiff alleges LG Chem has “continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7).

On November 2, 2020, LG Chem filed a renewed motion to dismiss for lack of personal jurisdiction, along with an affidavit of Sung Han Ryu, an LG Chem representative. Mr. Ryu states, *inter alia*, that LG Chem is a Korean company with its headquarters and principal offices in Seoul, South Korea. (Aff. ¶4). It does not own or lease property in South Carolina. *Id.* at ¶ 7. Mr. Ryu attests that LG Chem does not design, manufacture, distribute or sell a lithium-ion battery for use by individual consumers. *Id.* at ¶ 13.

On January 28, 2021, Plaintiff filed a memorandum in opposition to the renewed motion to dismiss, along with hundreds of import records for the Port of Charleston. The import records show that from December 2016 to February 2019 alone, LG Chem had approximately 296 shipments to the Port of Charleston in South Carolina. (Ex. 1 – Import Data). The import data indicates shipments to Carolina Covertech in North Augusta, Continental Tire in Sumter, Covidien in Greenwood, Fitesa in Simpsonville, Flex in West Columbia, Milliken Company in Spartanburg, and Volvo Car US Operations, Inc. in Ridgeville. (Ex. 1 – Import Data).

STANDARD

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case. The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law.” *Moosally v. W.W. Norton &*

Co., 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004) (internal citation omitted). When addressing a motion to dismiss for lack of personal jurisdiction, “‘Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.’ This includes any factual disputes brought up by submitted affidavits.” *Brown v. Investment Mgmt. & Research*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (quoting 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1351 (Supp. 1995)).

ANALYSIS

Taking as true all allegations of Plaintiff and resolving all factual disputes in his favor, the Court finds there are sufficient minimum contacts between LG Chem and South Carolina to support exercising specific personal jurisdiction¹ over LG Chem.

“Specific jurisdiction over a cause of action arising from a defendant’s contacts with the state is granted pursuant to the long arm statute.” *Id.* at 491, 611 S.E.2d at 508 (citing S.C. Code Ann. § 36-2-803 (2003)). “South Carolina’s long-arm statute . . . has been construed to extend to the outer limits of the due process clause.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). Therefore, “the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Id.*

“Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. “[D]ue 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.* at 491-92, 611 S.E.2d at 508. This is the “‘stream of commerce’ theory” used by South Carolina courts. *State v. NV Sumatra Tobacco*

¹ Plaintiff did not dispute LG Chem’s argument as to general jurisdiction.

Trading, Co., 379 S.C. 81, 89, 89 n.5, 666 S.E.2d 218, 222, 222 n.5 (2008) (“declin[ing] to embrace the ‘stream of commerce plus’ theory”).² “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.” *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 332, 594 S.E.2d 878, 884 (Ct. App. 2004).

“The court must also find that the exercise of jurisdiction is reasonable or fair.” *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (internal quotation marks omitted). “Under the 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.*

Initially, the Court finds Plaintiff proves personal jurisdiction based on the pretrial stage pleadings. “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*, 363 S.C. at 491, 611 S.E.2d at 508. “There is no ‘other evidence’ requirement for personal jurisdiction where the complaint itself demonstrates jurisdiction.” *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 332, 426 S.E.2d 777, 779 (1993). Plaintiff alleges in the Complaint that LG Chem has “continuing contacts with South Carolina by transacting substantial business in this state and manufacturing, distributing, and/or selling goods with the reasonable expectation that they will be used in this state and which are in fact used in this state.” (Cmplt. ¶ 7). This demonstrates specific personal jurisdiction under the long-arm statute and due process analysis by asserting sufficient

² See also *Sheppard v. Mercedes-Benz USA, LLC*, C/A No. 2010-CP-38-1558 (Nov. 15, 2012), p. 7 (affirming South Carolina’s use of the stream of commerce theory pursuant to *Sumatra Tobacco*).

minimum contacts and the fairness and expectation of being haled into court in South Carolina under the stream of commerce theory.

Alternatively, the Court also finds that, based on the evidence submitted, Plaintiff demonstrates specific personal jurisdiction. LG Chem possesses sufficient minimum contacts with South Carolina so that it should reasonably anticipate being haled into court here.

Under South Carolina's long-arm statute,

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; . . . (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.

S.C. Code Ann. § 36-2-803(A). LG Chem has a presence in South Carolina in the form of continuously and regularly using a South Carolina port to conduct its business activities, and deriving revenue from South Carolina. Along with the evidence of LG Chem's activities and conduct discussed below, this satisfies the minimum contacts analysis.

Plaintiff submitted an exhibit showing approximately 296 product shipments from LG Chem through the Port of Charleston, South Carolina, from December 2016 to February 2019. Plaintiff also demonstrated that these products are delivered to seven (7) different locations in South Carolina. This is ample evidence that LG Chem transacted business in South Carolina; contracted to supply things in South Carolina; and caused injury in South Carolina when it regularly does or solicits business, or engages in a persistent course of conduct, or derives substantial revenue from goods used or consumed in South Carolina. *See* S.C. Code Ann. § 36-5-803(A); *Moosally*, 358 S.C. at 336, 594 S.E.2d at 886 (“W.W. Norton’s continual practice of marketing and distributing books in South Carolina satisfies the power prong of the due process analysis.”); *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 22 (D. Md. 1984) (“By using

the port of Baltimore as a site for regularly scheduling cruises, Carnival has purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”). LG Chem participated in the economic markets of this state and derived revenue from this state. Therefore, the minimum contacts prong is satisfied.

LG Chem does not dispute that they distribute and sell various products that come through the Port of Charleston. However, they argue that because, according to them, they do not ship lithium-ion batteries through a South Carolina port that this Court does not have jurisdiction over them. Defendant concedes, however, that vehicle batteries were shipped through Charleston. Defendants are correct that both *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011) and *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773 (2017) provide that the conduct in question in the forum state must be “related” or “connected” to the injuries. The Court finds the sale of batteries is a sufficient connection. Defendant seeks to have the Court impose a rule that unless the evidence indicates Defendant sold the particular product in question to buyers in the forum state, specific jurisdiction is not proper. The Court does not find either *J. McIntyre* or *Bristol-Myers* mandate such a narrow view of specific jurisdiction.

The exercise of personal jurisdiction is also reasonable and fair. First, LG Chem has conducted activities in South Carolina for a sufficient duration. The import records show its use of the Port for over ten years. Second, the character and circumstances of the commission of LG Chem’s acts support exercising personal jurisdiction. It consistently and repeatedly uses the Port of Charleston and receives products directly to South Carolina. Third, there is no inconvenience to the parties by conferring jurisdiction over LG Chem. LG Chem is actively litigating cases around the country involving the same type of battery at issue in this case. Fourth, South Carolina has an interest in exercising jurisdiction over LG Chem. “South Carolina has an interest in

providing redress for its citizens.” *Cribb v. Spatholt*, 382 S.C. 490, 504, 676 S.E.2d 714, 721 (Ct. App. 2009) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985) (“A State generally has a ‘manifest interest’ in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.”)). Finally, three other circuit court judges in South Carolina have examined this precise issue and determined that South Carolina has personal jurisdiction over LG Chem. (Ex. 2, Order from the Honorable Michael G. Nettles, Ex. 3, Order from the Honorable Courtney Clyburn Pope, and Ex. 4, Order from the Honorable Bentley Price). The Court has specific personal jurisdiction over LG Chem.

CONCLUSION

After reviewing all relevant cases presented by the parties, the Court is bound by *Sumatra*. Based on *Sumatra* and the additional authority cited above, the Court denies LG Chem’s motion.³

AND IT IS SO ORDERED.

Dated: _____

York, South Carolina

William A. McKinnon
Circuit Court Judge

³ Defendant also asserts the Court’s Order is inconsistent with Judge Maddox’s July 20, 2020 Order. The Court disagrees, as Judge Maddox specifically states “lack of information prevents a decision” – declining to decide is not the same as finding a lack of personal jurisdiction.



Union Common Pleas

Case Caption: Dwayne Thompson VS Lg Chem, Ltd. , defendant, et al

Case Number: 2019CP4400054

Type: Order/Dismissal

So Ordered

/s William A. McKinnon, Chief Judge for
Administrative Purposes, 16th Cir., #2761

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger M. Young, Circuit Court Judge

Court of Appeals Appellate Case No. 2022-000346

Reid Fleming, Appellant,

v.

The Planet Vape, LLC; SCECIGARETTE, LLC; LG Chem
Ltd.; John Doe Distributor #1; John Doe Distributor #2; and
John Doe Distributor #3, Defendants,

Of which LG Chem Ltd. is the..... Respondent.

PROOF OF SERVICE

I certify that a copy of the pleading listed below was served on all counsel of record in this action in the manner indicated below and a copy of any service by electronic mail is attached to this proof.

Pleading(s): Appellant’s Motion to Transfer or Certify Case from the Court of Appeals

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April 19, 2022