UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-5662
Summary Calendar

DONALD N. NULL, JR.,

Plaintiff-Appellant,

versus

BANK ONE OF COLUMBUS, N.A.,
ET AL.,

Defendants,

MIDBANC INC FINANCIAL SERVICES
CORPORATION and F.M.M.T., INC.,

Defendants-Appellees.

Appeal from the United States District Court
For the Western District of Texas
(SA-91-CV-1130)

(March 11, 1993)

Before POLITZ, Chief Judge, DUHÉ and DeMOSS, Circuit Judges.

POLITZ, Chief Judge:[*]

Donald N. Null, Jr. appeals the lack of personal jurisdiction dismissal of his usury law complaint. We find no error and affirm.

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

Null, a Texas resident, responded to an ad in the nationally circulated Hemming's Motor News. He telephoned Midbanc, Inc. Financial Services Corporation and F.M.M.T, Inc. at their Ohio offices to inquire about financing the purchase of a 1963 Corvette located in Arizona. Midbanc and FMMT are Ohio corporations which provide financing for the purchase or lease of antique and classic cars. They proposed that FMMT would purchase the vehicle with a loan provided by Bank One of Columbus, N.A. and lease it for five years to Null, who would guarantee payment thereafter of the vehicle's "ending value."

Midbanc and FMMT mailed Null the financing documents, including a lease with an Ohio choice-of-law clause. Null executed the documents in Texas and returned them to Ohio. FMMT purchased the car which was then delivered to Null in Texas where he operated and maintained it.

Approximately two years later, Null inquired about the payoff balance. Learning that he owed only $1,300 less than the sum originally borrowed, despite monthly payments of $505, Null ceased payments and sued Midbanc and FMMT in Texas state court for violation of Texas usury laws. Defendants removed to federal court and sought dismissal under Fed.R.Civ.P. 12(b)(2) for lack of personal jurisdiction. The district court agreed and dismissed the case. Null timely appealed.

Analysis

Federal courts may exercise jurisdiction over nonresident defendants served out of state only if the nonresidents are amenable to service of process under the forum state's long-arm statute, and the assertion of jurisdiction comports with the fourteenth amendment due process clause. Here, these two inquiries merge because the Texas long-arm statute authorizes the exercise of jurisdiction to the full extent of the due process clause.[1]

Due process permits the exercise of jurisdiction if: (1) the nonresident defendant has sufficient minimum contacts with the forum state to indicate that it purposefully availed itself "of the privilege of conducting activities within the forum [s]tate,"[2] and (2) the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.[3] Minimum contacts may give rise to specific jurisdiction when the litigation results from injuries that arise out of or relate to these contacts. Otherwise, more extensive contacts, generally characterized as "continuous and systematic," are required to support general

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[1] **Jones v. Petty-Ray Geophysical Geosource, Inc.**, 954 F.2d 1061 (5th Cir.), cert. denied, _____ U.S. _____, 113 S.Ct. 193 (1992).

[2] **Burger King Corp. v. Rudzewicz**, 471 U.S. 462, 475, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985), quoting **Hanson v. Denckla**, 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958).

[3] **Id.**; **Jones**.

jurisdiction.[4] To defeat a challenge to personal jurisdiction decided prior to trial, the plaintiff need only make a *prima facie* showing.[5] Null has failed to do so.

The theory of general jurisdiction is not applicable in this case. Midbanc and FMMT own no property in Texas and have no offices, agents, or employees there. Defendants' advertising in a publication with national circulation does not support a finding of general jurisdiction.[6] Their total of 15 Texas customers indicates at best sporadic contacts with the forum state.[7] Null argues that defendants owned the cars of these 15 customers, assuming the same financing arrangements as his own. Accepting this assumption *arguendo*, defendants' ownership of the cars is merely incidental to the financing arrangements and hence no more sufficient to support general jurisdiction than the financing arrangements themselves. Null has not demonstrated continuous or systematic contacts.

Nor does specific jurisdiction lie. Null's claim arises out of defendants' contacts with him in Texas. These contacts, however, do not indicate that defendants purposefully availed

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[4] **Burger King**; **Dalton v. R & W Marine, Inc.**, 897 F.2d 1359 (5th Cir. 1990).

[5] **Dalton**.

[6] **Bearry v. Beech Aircraft Corp.**, 818 F.2d 370 (5th Cir. 1987).

[7] See **Asarco, Inc. v. Glenara, Ltd.**, 912 F.2d 784 (5th Cir. 1990).

themselves of the privilege of doing business in Texas. Indeed, defendants' only contact with Texas was their agreement to provide financing to a Texas resident. Like a contract, a financing arrangement in itself does not establish sufficient minimum contacts.[8] Nor do communications leading up to the agreement.[9] Null invites our attention to his performance of lease terms related to the operation and maintenance of the car in Texas. These activities, however, constitute unilateral partial performance by Null, not purposeful activities by the defendants in Texas.[10] While relevant, the fact of national advertising alone cannot establish specific jurisdiction.[11] Militating against the exercise of jurisdiction in Texas are the situs of the payments, which were made in Ohio, and the choice of Ohio law, as embodied in the lease.[12]

The lack of minimum contacts precludes the assertion of personal jurisdiction. We need not address the second prong of the

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[8] **Burger King**; **Savin v. Ranier**, 898 F.2d 304 (2d Cir. 1990).

[9] **Stuart v. Spademan**, 772 F.2d 1185 (5th Cir. 1985); **Hydrokinetics, Inc. v. Alaska Mechanical, Inc.**, 700 F.2d 1026 (5th Cir. 1983), cert. denied, 466 U.S. 962 (1984).

[10] **Jones**; **Hydrokinetics**; **Barnstone v. Congregation Am Echad**, 574 F.2d 286 (5th Cir. 1978).

[11] **Growden v. Ed Bowlin and Associates, Inc.**, 733 F.2d 1149 (5th Cir. 1984).

[12] **Burger King**; **Jones**.

jurisdictional analysis. Personal jurisdiction over the defendants is lacking.

The judgment of the district court is AFFIRMED.