

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-2496

Summary Calendar

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SOUTHWEST EARTH RESOURCES, INC.,  
and GARY A. SHEPHERD,

Plaintiffs-Appellants,

versus

MINERAL EXTRACTORS, INC., ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CA H 92 2427)

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(December 9, 1993)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

I.

This case concerns an alleged contract for the sale of an airplane and information and assistance in recovering precious metals from certain ores. The purchasers, Texas residents, sued for deceptive trade practices and fraud. Defendant sellers are residents of California. The sellers persuaded the district court

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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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

to dismiss the case for lack of personal jurisdiction. This appeal followed. We affirm.

## II.

A district court has personal jurisdiction over a foreign defendant to the extent permitted by the state in which that court sits. Familia de Boom v. Arosa Mercantil, S.A., 629 F.2d 1134, 1138 (5th Cir. 1980), cert. denied, 451 U.S. 1008 (1981). In Texas, courts look to the Texas long-arm statute to determine personal jurisdiction, Tex. Civ. Prac. & Rem. Code Ann. § 17.042 (West 1986), which extends as far as federal constitutional requirements of due process permit. U-Anchor Advertising, Inc. v. Burt, 553 S.W.2d 760, 762 (Tex. 1977), cert. denied, 434 U.S. 1063 (1978).

The Due Process Clause of the Fourteenth Amendment requires minimum contacts between the defendant and the forum state. World-Wide Volkswagen Corp. v. Woodsen, 444 U.S. 286, 291 (1980); International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). A court can exercise personal jurisdiction only if the defendant has purposefully established minimum contacts with the forum state and if the assertion of jurisdiction comports with notions of fair play and substantial justice. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475-76 (1985).

To have minimum contacts, the defendant must have purposely directed substantial activity toward the forum state. Any unilateral activity of the plaintiff or a third party should not enter into the calculation. Instead, only the quality and nature

of the defendant's contacts with the forum state are important. Product Promotions, Inc. v. Cousteau, 495 F.2d 483, 499 (5th Cir. 1974). We look here only to the relationship between the defendant, the forum, and the litigation because this case arises out of an isolated incident, not out of any continuing or systematic contacts with the forum state. Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 414 & n.8 (1984).

The Texas residents did not allege the performance of a contract or the commission of a fraud in the state. Tex. Civ. Prac. & Rem. Code Ann. § 17.042 (West 1986). The only arguable contact with Texas resulted from the Texas purchasers' unilateral choice to write a check on a Texas bank account. Turncock v. Cope, 816 F.2d 332, 335 (7th Cir. 1987). Even if the California sellers agreed to send some information to Texas, the isolated act would be insufficient to support jurisdiction. Loumar v. Smith, 698 F.2d 759, 763 (5th Cir. 1983). We agree with the district court that the Texas purchasers did not allege sufficient facts to support personal jurisdiction.

AFFIRMED.