

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60604  
Summary Calendar

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GARY L. CURRY,

Plaintiff-Appellant,

VERSUS

ROBERT D. WILLIAMS,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
(C.A. C-94-59)

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(February 24, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:<sup>1</sup>

Gary L. Curry appeals from the dismissal, for lack of personal jurisdiction, of his breach of contract claims. We **AFFIRM**.

I.

In 1992, Curry, a resident of Texas, entered into discussions, by telephone, with Robert D. Williams, a resident of Kansas, concerning the purchase of Williams' automobile dealership in Missouri. These negotiations, which included numerous telephone and mail communications, continued through December 6, 1993, when

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<sup>1</sup> Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

Curry alleges he entered into a contract, by mail, with Williams for the sale of the dealership. On December 19, 1993, however, Curry was notified that Williams had sold the dealership to another.

Curry filed an action in Texas state court against Williams.<sup>2</sup> Williams removed the action to federal court, and moved for dismissal for lack of personal jurisdiction. A hearing was held on the motion; and, despite a contrary recommendation from the magistrate judge, the district judge found personal jurisdiction lacking.

## II.

We review *de novo* a dismissal for lack of personal jurisdiction. Curry bears the burden of proving a *prima facie* case for personal jurisdiction, but all "genuine, material conflicts between the facts as established by [Curry's and Williams'] appropriate affidavits ... must be resolved in [Curry's] favor". ***Jones v. Petty-Ray Geophysical Geosource, Inc.***, 954 F.2d 1061, 1067 (5th Cir.), *cert denied*, 113 S. Ct. 193 (1992).

A personal jurisdiction analysis involves two questions: (1) is Williams amenable to service of process under Texas' long arm statute; and (2) is the exercise of jurisdiction over Williams consistent with the Due Process Clause of the Fourteenth Amendment? ***Id.*** Because Texas' long arm statute has been interpreted to extend to the limits of due process, ***id.*** (citing ***Schlobohm v. Schapiro***,

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<sup>2</sup> Curry claimed, among other things, breach of contract, fraud, misrepresentation, and various violations of the Texas Deceptive Trade Practices and Consumer Protection Act.

784 S.W.2d 355, 357 (Tex. 1990)), our analysis focuses solely on the constitutional question. *Id.*

Curry asserts specific personal jurisdiction over Williams; such jurisdiction requires that the defendant "purposefully direct" his activities to a resident of the forum state, and the cause of action must "arise out of or relate to" those activities. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985); *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 (1984).<sup>3</sup> A defendant's random, fortuitous, or attenuated contacts with the forum state are insufficient. *Burger King*, 471 U.S. at 475. Moreover, the contacts must establish the defendant's "purposeful availment" of the benefits and protections of the laws of the forum state. *Id.* Only from this type of connection with the forum state can a defendant "reasonably anticipate being haled into court there." *World-wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

Curry's evidence that Williams "purposefully directed" his activities to him in Texas consists of numerous telephone and mail communications with Williams concerning the purchase of the dealership, including Williams' sending several drafts of the sales contract to Curry in Texas. Curry also states that he learned of the offer to sell the dealership through a notice placed by

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<sup>3</sup> Personal jurisdiction can be "specific" or "general". *Helicopteros*, 466 U.S. at 414 nn.8-9. General jurisdiction is based on extensive, "continuous and systematic" contacts with the forum state such that the defendant may be subject to jurisdiction for causes of action *unrelated* to those contacts. *Id.* at 415-16.

Williams in a national publication. Significantly, however, Curry initiated the negotiations with Williams, and although Curry made two trips to Kansas City, Williams never visited Curry in Texas.

Curry cites **Burger King**, wherein the Supreme Court upheld specific personal jurisdiction based on contractual dealings between the parties. 471 U.S. at 482. The facts of the present case are quite distinguishable from those in **Burger King**. There, Burger King, a Florida corporation based in Miami, entered into a franchise contract allowing Rudzewicz to operate a Burger King restaurant in Michigan. *Id.* at 479-80. Not only did this contract create a twenty-year relationship between Rudzewicz and the Florida-based entity, it also required certain performance in Florida, and specifically noted that Florida law would govern any dispute between the parties. *Id.* at 480-81. The Court was persuaded that the totality of the circumstances established a sound basis for personal jurisdiction over Rudzewicz in Florida. *Id.* at 482.

In **Holt Oil & Gas Corp. v. Harvey**, 801 F.2d 773 (5th Cir. 1986), *cert denied*, 481 U.S. 1015 (1987), our court, applying **Burger King**, denied the application of specific jurisdiction on facts very similar to the present case:

(1) Harvey [defendant] entered into a contract with Holt [plaintiff], a Texas corporation; (2) Harvey sent a final revised joint operating agreement from Oklahoma to Texas; (3) Harvey sent three checks from Oklahoma to Texas in partial performance of its contractual obligations; and (4) Harvey engaged in extensive telephonic and written communications with Holt.

*Id.* at 778.

In **Holt**, our court was persuaded by the fact that the "material performance" of the contract occurred in Oklahoma. **Id.** By comparison, the present case involves a contract for a single transaction -- the sale of a dealership in Missouri -- and provided for the closing of that transaction in Missouri. In sum, and in contrast to **Burger King**, neither **Holt** nor the present case involved "a contract which had a *substantial* connection with [the forum] State". **Burger King**, 471 U.S. at 479. In such a circumstance, we believe, as did the **Holt** court, that Williams' contacts with Texas "rested on nothing but `the mere fortuity that [Curry] happens to be a resident of [Texas].'" 801 F.2d at 778 (citing **Patterson v. Dietze, Inc.**, 764 F.2d 1145, 1147 (5th Cir. 1985)). Consequently, Curry did not establish the requisite contacts by Williams with the state of Texas.<sup>4</sup>

III.

For the foregoing reasons, the judgment is

**AFFIRMED.**

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<sup>4</sup> Noting that he presented several tort-based claims, see note 2 *supra*, Curry relies on **Brown v. Flowers Indus., Inc.**, 688 F.2d 328 (1982), for his contention that a single tortious act directed to Texas establishes jurisdiction. **Brown** is distinguishable. That case involved a single, unsolicited defamatory telephone call into the forum state. The **Brown** court was particularly persuaded by the fact that the plaintiff there neither initiated nor solicited the defendant's contact with the forum state. **Id.** at 334. As noted, the business transaction in the present case was initiated and maintained by Curry. Thus, unlike in **Brown**, Williams did not deliberately reach out to create contacts with Texas. His actions were not a "purposeful availment" of the laws of Texas. **Burger King**, 471 U.S. at 475.