

Appeal No. SC90536

In The

SUPREME COURT OF MISSOURI
EN BANC

PEOPLES BANK
Plaintiff/Appellant

vs.

STEPHEN M. FRAZEE and JENNIFER FRAZEE,
Defendants, and

H.L. FRAZEE, Defendant/Respondent

Appeal from the Circuit Court of
Wright County, Missouri
Case No. 08WR-CV00018

APPELLANT'S SUBSTITUTE BRIEF

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JURISDICTIONAL STATEMENT

This civil action involves the registration of a foreign judgment pursuant to Supreme Court Rule 74.11 by Plaintiff/Appellant Peoples Bank with the Circuit Court of Wright County, Missouri. (LF, p. 1, 5). Defendant/Respondent H.L. Frazee filed a Limited Entry of Appearance and Motion to Quash Registration of Foreign Judgment. (LF, p. 12). The trial court entered its Order and Judgment sustaining the Motion to Quash Registration of Foreign Judgment on November 13, 2008. (LF, p. 4, 61, 66). Peoples Bank filed its Notice of Appeal on December 22, 2008. (LF, p. 4, 67). The Court of Appeals affirmed the trial court's judgment by opinion issued October 15, 2009. Peoples Bank filed its Application for Transfer with the Court of Appeals on October 30, 2009, which was denied on November 6, 2009. Peoples Bank then filed its Application for Transfer with this Court on November 20, 2009, which this Court sustained on December 22, 2009.

This action does not involve the validity of a treaty, statute, or constitutional provision, the construction of any revenue laws, or title to any state office and is not within the exclusive jurisdiction of this Court under Article V, Section 3 of the Missouri Constitution; and original appellate jurisdiction was in the Court of Appeals, Southern District. This case is before this Court on transfer pursuant to Supreme Court Rule 83.04 and Article V, Section 10 of the Missouri Constitution.

STATEMENT OF FACTS

Plaintiff/Appellant Peoples Bank is an Oklahoma banking corporation with its business premises located in Tulsa, Oklahoma. (LF, p. 43). Defendants Stephen M. Frazee and Jennifer Frazee were, at all relevant times, husband and wife and resided in the County of Tulsa, Oklahoma. (LF, p. 43). Defendant/Respondent H.L. Frazee is a resident of the State of Missouri. (LF, p. 43; Supp. LF, p. 1). H.L. Frazee has never lived or resided in Oklahoma and does not own any property in Oklahoma. (Supp. LF, p. 1). Stephen Frazee is the son of H.L. Frazee. (LF, p. 39, 65, n. 2; Supp. LF, p. 1).

Prior to April 26, 2006, Stephen Frazee and Jennifer Frazee were in default on a promissory note payable to Peoples Bank. (LF, p. 39). The undisputed facts presented in the Affidavit of Bill Burnett, Executive Vice-President of Peoples Bank, indicate that:

4. Prior to April 26, 2006, I met in my office at Peoples Bank with Stephen Frazee to inform him that the Bank was calling his note, since it was in default. Stephen Frazee said that his father, H. L. Frazee would help him. H. L. Frazee was called or called me. H. L. Frazee spoke with me on the telephone and we discussed what would be required. H.L. Frazee then said that he would talk to Stephen and his wife.

5. Subsequently, H. L. Frazee called me and agreed to sign a guaranty of his son's Note.
6. I prepared and mailed the documents for the Guarantee which is the subject of this lawsuit to H. L. Frazee at his Missouri address. H. L. Frazee signed the Guarantee and returned it to me at the Bank.
7. H. L. Frazee was aware that he was doing business with an Oklahoma bank on behalf of his son who lived in Oklahoma, on his son's Note on which his son was behind in payments.

(LF, p. 39-40). None of the facts presented in the Affidavit of Bill Burnett were contradicted by the Affidavit of H.L. Frazee. (Supp. LF, p. 1-2).

The trial court believed there was some question regarding the relationship between H.L. Frazee and Stephen Frazee. (LF, p. 65, n. 2). In actuality, no conflict exists. The Affidavit of Bill Burnett indicates that Stephen Frazee is the son of H.L. Frazee. (LF, p. 39-40). The Affidavit of H.L. Frazee indicates that the only contact with Oklahoma he had at the time he signed the affidavit was "the presence of my grandchild in the state." (Supp. LF, p. 1). The Suggestions filed by H.L. Frazee likewise indicate that the only contact he then had with Oklahoma was "the presence of his son's child in the state." (LF, p. 21). Neither the Affidavit of H.L. Frazee nor his Suggestions specifically state that the grandchild is

Stephen Frazee. However, as the trial court indicated, any discrepancy regarding this relationship is irrelevant. (LF, p. 65, n. 2).

Peoples Bank filed its Petition for Breach of Promissory Note and Upon Guaranty in the District Court In and For Tulsa County, State of Oklahoma, on May 4, 2007. (LF, p. 43, 57-58). The Petition named Stephen M. Frazee, Jennifer Frazee, and H.L. Frazee as defendants. (LF, p. 43). The Summons was mailed to H.L. Frazee by certified mail, but delivery was refused. (LF, p. 52-56, 59). None of the defendants filed answers in the Oklahoma action, (LF, p. 7, 59), and the District Court entered its Journal Entry of Judgment by Default dated July 13, 2007 and filed July 17, 2007, hereinafter the Default Judgment. (LF, p. 6-7, 59). The Default Judgment was in favor of Peoples Bank and against Stephen M. Frazee, Jennifer Frazee, and H.L. Frazee, jointly and severally, for:

The principal sum of \$72,520.84, including interest accrued as of July 9, 2007, and accruing thereafter at the rate of 9.99 per cent per annum and a per diem rate of \$18.36 until paid. . . . For reasonable attorney fees in the amount of \$929.40, and costs in the amount of \$229.00.

(LF, p. 9).

Peoples Bank filed its Affidavit on Foreign Judgment on January 11, 2008, in the Circuit Court of Wright County, Missouri. (LF, p. 1, 5). H.L. Frazee filed

his Limited Entry of Appearance and Motion to Quash Registration of Foreign Judgment, hereinafter Motion to Quash, on February 8, 2008. (LF, p. 1, 12). Suggestions in Opposition and Suggestions in Support of the Motion to Quash were filed on March 3, 2008, and August 13, 2008, respectively. (LF, p. 2, 3, 14, 17). The Affidavit of H.L. Frazee was also filed on August 13, 2008. (LF, p. 3; Supp. LF., p. 1). Peoples Bank filed its Response to H.L. Frazee's Suggestions in Support on September 2, 2008, (LF, p. 3-4, 29), which included the Affidavit of Bill Burnett. (LF, p. 39).

In his motion, H.L. Frazee alleged only that the Default Judgment was "void due to lack of personal jurisdiction over the Defendant in the underlying judgment." (LF, p. 12). In his Suggestions in Support filed six months later, (LF, p. 1, 3), H.L. Frazee claimed that: (1) no service was had on H.L. Frazee, (2) the record in the Oklahoma action did not affirmatively demonstrate the existence of personal jurisdiction, and (3) he did not have sufficient contacts with Oklahoma to support personal jurisdiction in Oklahoma. (LF, p. 17, 18, 20). The trial court entered its Order and Judgment on November 13, 2008, hereinafter the Judgment. (LF, p. 4, 61). The trial court found that service of process on H.L. Frazee was sufficient under Oklahoma law. (LF, p. 62). The court also found that the Oklahoma court's record was not required to demonstrate personal jurisdiction

because the issue of personal jurisdiction was not litigated in that court. (LF, p. 62-63).

Finally, the trial court determined that the Oklahoma court did not have personal jurisdiction over H.L. Frazee. In reaching this conclusion, the trial court placed the burden of proof on Peoples Bank, stating “The burden of proof is upon Plaintiff, the party asserting jurisdiction, and jurisdiction over the nonresident must affirmatively appear from the record.” (LF, p. 63). The trial court then resolved an apparent ambiguity in the Affidavit of Bill Burnett based on its belief regarding the burden of proof, stating:

Because Plaintiff has the burden of proof on the issue of sufficiency of contacts with the State of Oklahoma, the court resolves the ambiguity of who initiated contact in Defendant’s favor and assumes that the Plaintiff initiated contact with Defendant Frazee regarding whether he would be willing to guaranty payment of a loan for Stephen and Jennifer Frazee. (LF, p. 65, n. 1). Finally, the trial court ruled “that the State of Oklahoma did not have personal jurisdiction over Defendant Frazee and hereby sustains Defendant H.L. Frazee’s Motion to Quash Registration of Foreign Judgment.” (LF, p. 66).

Peoples Bank filed its Notice of Appeal to the Court of Appeals, Southern District, on December 22, 2008. (LF, p. 4, 67). The Court of Appeals affirmed the

trial court's judgment by opinion issued October 15, 2009. Peoples Bank filed its Application for Transfer with the Court of Appeals on October 30, 2009, which the Court denied on November 6, 2009.

Peoples Bank thereafter filed its Application for Transfer with this Court on November 20, 2009, and this Court issued its Order sustaining the Application on December 22, 2009.

POINTS RELIED ON

I. The trial court erred in sustaining the Motion to Quash Registration of Foreign Judgment, because H.L. Frazee failed to overcome the strong presumption that personal jurisdiction existed, in that the affidavits filed in support and opposition to the Motion to Quash showed that the Oklahoma court had personal jurisdiction over H.L. Frazee since he had sufficient minimum contacts with the forum so that the maintenance of the suit did not offend traditional notions of fair play and substantial justice.

B.K. Sweeney Co. v. Colorado Interstate Gas Co., 429 P.2d 759 (Okla. 1967)

Hough v. Leonard, 867 P.2d 438 (Okla. 1993)

Klassen v. Lazik, 91 P.3d 90 (Okla.Ct.App. 2004)

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528

(1985)

12 Okl.Stat. § 2004(F)

II. The trial court erred in placing the burden of proof regarding personal jurisdiction on Peoples Bank, because H.L. Frazee had the burden of overcoming the presumption that the Oklahoma court had personal jurisdiction, in that the

Oklahoma Default Judgment was regular on its face and entitled to a strong presumption that the Oklahoma court had personal jurisdiction.

Gletzer v. Harris, 159 S.W.3d 462 (Mo.App.E.D. 2005)

L & L Wholesale, Inc. v. Gibbens, 108 S.W.3d 74 (Mo.App.S.D. 2003)

Phillips v. Fallen, 6 S.W.3d 862 (Mo.banc 1999)

Vance v. Molina, 28 P.3d 570 (Okla. 2001)

ARGUMENT

I. The trial court erred in sustaining the Motion to Quash Registration of Foreign Judgment, because H.L. Frazee failed to overcome the strong presumption that personal jurisdiction existed, in that the affidavits filed in support and opposition to the Motion to Quash showed that the Oklahoma court had personal jurisdiction over H.L. Frazee since he had sufficient minimum contacts with the forum so that the maintenance of the suit did not offend traditional notions of fair play and substantial justice.

A. Standard of Review

The standard of review from an order quashing the registration of a foreign judgment is the standard normally applied in cases tried without a jury. As has been stated:

The judgment of a trial court will be affirmed unless "there is no substantial evidence to support it, unless it is against [*63] the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law." *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976).

However, we do not defer to the trial court's determinations of law.

Community Trust Bank v. Anderson, 87 S.W.3d 58, 62-63 (Mo.App.S.D. 2002) (footnote omitted). A circuit court's decision not to allow registration of a foreign judgment is a legal conclusion, which is reviewed de novo. *Big Tex Trailer Mfg. v. Duff Motor Co.*, 275 S.W.3d 384, 386 (Mo.App.W.D. 2009); *L & L Wholesale, Inc. v. Gibbens*, 108 S.W.3d 74, 78-79 (Mo.App.S.D. 2003).

B. Consequences In Oklahoma Support Personal Jurisdiction

In this case, the trial court and the Court of Appeals both focused on the lack of financial benefit to H.L. Frazee from the execution of the guaranty in ruling that Oklahoma did not have personal jurisdiction over him. However, the majority of courts that have addressed the issue have determined that personal jurisdiction can be predicated on *effects* or *consequences* in the forum state resulting from the defendant's actions. *See Millette v. O'Neal Steel, Inc.*, 613 So.2d 1225, 1229 (Ala. 1992); *Keelean v. Central Bank of South*, 544 So.2d 153, 157 (Ala. 1989); *Perry v. Central Bank & Trust Co.*, 812 S.W.2d 166, 169-170 (Ky.App. 1991).

Considering the consequences resulting in the forum state from the defendant's actions explains why the majority of courts that have addressed the issue have found personal jurisdiction over a guarantor of a loan or debt in the forum state for the benefit of residents or businesses in that state. Courts in Alabama, Arizona, California, Texas, Florida, Kentucky, New Jersey,

Pennsylvania, and the District of Columbia have all exercised jurisdiction over out-of-state guarantors in similar situations. *See Keelean v. Central Bank of South*, 544 So.2d 153 (Ala. 1989); *Hamada v. Valley Nat'l Bank*, 27 Ariz.App. 433, 555 P.2d 1121 (1976); *Mellon Bank PSFS, Nat'l Ass'n v. Farino*, 960 F.2d 1217 (3rd Cir. 1992) (applying Pennsylvania law); *First Wyo. Bank, N.A. v. Trans Mountain Sales & Leasing, Inc.*, 602 P.2d 1219 (Wyo. 1979); *Sorokwasz v. Kaiser*, 549 So.2d 1209 (Fla.App. 1989); *Forsythe v. Overmyer*, 576 F.2d 779 (9th Cir. 1978) cert den 439 U.S. 864, 58 L.Ed.2d 174, 99 S.Ct.188 (1978) (applying California Code Civ. Proc. § 410.10); *Unicon Inv. v. Fisco, Inc.*, 137 N.J.Super. 395, 349 A.2d 117 (1975); *Marathon Metallic Bldg. Co. v. Mountain Empire Constr. Co.*, 653 F.2d 921 (5th Cir. 1981) (applying Texas law); and *Alabama Waterproofing Co. v. Hanby*, 431 So.2d 141 (Ala. 1983).

While the mere existence of a contract with a party in the forum state does not establish personal jurisdiction, the U.S. Supreme Court has indicated that the circumstances surrounding the contract can, and often will, create personal jurisdiction.

If the question is [***545] whether an individual's contract with an out-of-state party *alone* can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is

that it cannot. The Court long ago rejected the notion that personal jurisdiction might turn on "mechanical" tests, [citation omitted], or on "conceptualistic . . . theories of the place of contracting or of performance," *Hoopeston Canning Co. v. Cullen*, 318 U.S., at 316. [*479] Instead, we have emphasized the need for a "highly realistic" approach that recognizes that a "contract" is "ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." *Id.*, at 316-317. It is these factors -- prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing -- that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum.

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 478-79, 105 S.Ct. 2174, 2185, 85 L.Ed.2d 528, 544-45 (1985) (emphasis in original). In evaluating the "prior negotiations and contemplated future consequences", courts should consider both the consequences to the defendant as well as the consequences to others in the forum state in determining whether the necessary minimum contacts exist for personal jurisdiction over the defendant.

In the present case, the circumstances surrounding the guaranty establish the necessary minimum contacts if Missouri courts consider consequences or effects in Oklahoma and not just the financial benefits to H.L. Frazee. The lender, Peoples Bank, is an Oklahoma corporation doing business in Oklahoma. (LF, p. 43). The borrowers, Stephen and Jennifer Frazee, were residents of Oklahoma. (LF, p. 43). H.L. Frazee spoke with Bill Burnett, Executive Vice-President of Peoples Bank, on more than one occasion regarding the guaranty. (LF, p. 39). He returned the guaranty to Oklahoma after signing it. (LF, p. 39). H.L. Frazee knew that the loan was from an Oklahoma bank to Oklahoma residents and that his guaranty would have consequences in Oklahoma. (LF, p. 39-40). Without the execution of the guaranty by H.L. Frazee, the loan to Stephen and Jennifer Frazee would have been called in 2006. Consideration of the “prior negotiations and contemplated future consequences”, *Burger King Corp.*, 471 U.S. at 479, involved in the loan and guaranty in this case justify the assertion of personal jurisdiction over H.L. Frazee.

Additionally, H.L. Frazee enjoyed a personal, intangible benefit as a result of his family relationship with Stephen and Jennifer Frazee, even if he may not have gained a monetary benefit from his execution of the guaranty. Further, he gained the benefits and protections afforded by Oklahoma law to guarantors with respect to any claims made under the guaranty. He was entitled to any defenses

available under Oklahoma law and was, therefore, provided the benefits of Oklahoma law concerning the guaranty.

H.L. Frazee had control over whether he would be subject to personal jurisdiction in Oklahoma. He could have refused to sign the guaranty. Additionally, he could have assisted Stephen Frazee and Jennifer Frazee in obtaining a loan from a Missouri bank. In either case, H.L. Frazee would not have been subject to personal jurisdiction in Oklahoma. Instead, he chose to guaranty the loan from Peoples Bank, an Oklahoma banking corporation, to Stephen and Jennifer Frazee, residents of Oklahoma. (LF, p. 39-40, 43). “These acts, as [H.L. Frazee] knew or could know and anticipate, would have potential consequences in [Oklahoma].” *B.K. Sweeney Co. v. Colorado Interstate Gas Co.*, 429 P.2d 759, 763 (Okla. 1967).

A non-resident who has purposefully directed activities at forum residents must present a compelling case that jurisdiction would be unreasonable, or that the contacts were so insignificant that the exercise of in personam jurisdiction [*443] would offend the traditional notions of substantial justice and fair play.

Hough v. Leonard, 867 P.2d 438, 442-43 (Okla. 1993) (footnotes omitted). H.L. Frazee has not shown that it was unreasonable for Oklahoma to assert jurisdiction over him in this case.

The burden of proof was on H.L. Frazee, as the party seeking to quash registration of a foreign judgment, to overcome the strong presumption that personal jurisdiction existed. Under the undisputed facts, he failed to meet this burden. H.L. Frazee either called or was called by Bill Burnett to discuss the possibility of H.L. Frazee guarantying the note from Stephen and Jennifer Frazee. (LF, p. 39). He indicated that he would speak with “Stephen and his wife”, (LF, p. 39), presumably by phone to Oklahoma. H.L. Frazee then called Bill Burnett, in Oklahoma, and agreed to sign the guaranty. (LF, p. 39). The guaranty was mailed to him in Missouri, where he signed it and mailed it back to Oklahoma. (LF, p. 39). Peoples Bank’s claim against H.L. Frazee arose from the guaranty. (LF, p. 46-47, 51). Nothing in the Affidavit of H.L. Frazee disputes any of these facts. (Supp. LF, p. 1-2).

The exercise of personal jurisdiction by the District Court In and For Tulsa County, Oklahoma, was reasonable and did not “offend the traditional notions of substantial justice and fair play.” *Hough*, 867 P.2d at 443. The trial court misapplied the law in placing the burden on Peoples Bank to prove the existence of

personal jurisdiction and finding that the Oklahoma court did not have personal jurisdiction over H.L. Frazee. This Court should reverse the trial court's Judgment and remand with directions to deny the Motion to Quash.

C. H.L. Frazee Failed To Overcome Presumption of Jurisdiction

The Default Judgment was entered in favor of Peoples Bank and against H.L. Frazee on the basis of the personal guaranty he signed which guaranteed a loan from Peoples Bank, an Oklahoma banking corporation, to Stephen and Jennifer Frazee, Oklahoma Residents. (LF, p. 39-40, 43). As discussed under Point II, a presumption existed that the District Court In and For Tulsa County, Oklahoma, had personal jurisdiction over H.L. Frazee. In addition, the undisputed evidence regarding the circumstance surrounding the execution of the guaranty show that H.L. Frazee had sufficient contacts with the state of Oklahoma such that maintenance of the action in Oklahoma did not offend traditional notions of fair play and substantial justice. Therefore, the trial court erred in quashing registration of the Default Judgment and this Court should remand with directions to deny the Motion to Quash.

“Missouri is obligated to give full faith and credit to a judgment of a sister state unless that judgment is void for lack of jurisdiction over the person or over the subject matter, or is obtained by fraud.” *Phillips v. Fallen*, 6 S.W.3d 862, 864

(Mo.banc 1999). H.L. Frazee did not question the subject matter jurisdiction of the Oklahoma court or claim that the Default Judgment was the product of fraud. (LF, p. 12, 17). Therefore, the issue before this Court is whether the Oklahoma court properly exercised personal jurisdiction over H.L. Frazee.

Since H.L. Frazee did not litigate the question of personal jurisdiction in Oklahoma, he was entitled to raise that issue in response to the registration of the Default Judgment in Missouri. *See Phillips*, 6 S.W.3d at 864. However, because this case involves registration of a foreign judgment that is valid on its face, a strong presumption arises that the court had personal jurisdiction.

With respect to a judgment rendered by a court of general jurisdiction of another state, we presume not only that the court had both personal and subject matter jurisdiction, but that the court followed its laws and entered a valid judgment in accordance with the issues in the case. [Citation omitted]. A party asserting the invalidity of such a judgment has the burden of overcoming the presumption of validity, unless the proceedings show that the judgment is not entitled to that presumption.

L & L Wholesale, Inc., 108 S.W.3d at 79.

Oklahoma law governs the interpretation and application of Oklahoma's long-arm statute, *see Community Trust Bank*, 87 S.W.3d at 63, which determines

whether the Oklahoma court had personal jurisdiction over H.L. Frazee.

Oklahoma's long-arm statute provides that "A court of this state may exercise jurisdiction on any basis consistent with the Constitution of this state and the Constitution of the United States." 12 Okl.Stat. § 2004(F); *Vance v. Molina*, 28 P.3d 570, 573 (Okla. 2001). This Court recently recognized that long-arm statutes in most states "expand the state courts' jurisdictional reach to the maximum extent permitted by the federal constitution." *J.C.W. v. Wyciskalla*, 275 S.W.3d 249, 253 (Mo.banc 2009) (footnote omitted). The determination of personal jurisdiction under Oklahoma law, therefore, is reduced to a determination of whether jurisdiction can properly be maintained under the U.S. Constitution.

The Supreme Court of Oklahoma recently explained that the exercise of personal jurisdiction must comport with due process, which requires minimum contacts and a determination of reasonableness.

In personam jurisdiction, the power of the court to render a binding judgment against a defendant, depends on reasonable notice and "a sufficient connection between the defendant and the forum State to make it fair to require defense of the action in the forum." Oklahoma's "long-arm statute is to extend the jurisdiction of the Oklahoma courts to the outer limits permitted by the Oklahoma Constitution and the Due Process Clause of the

Fourteenth Amendment to the United States Constitution." Therefore, our inquiry is whether this state courts' exercise of *in personam* jurisdiction over the [] defendants comports with due process. Due process is satisfied if a non-resident defendant has "minimum contacts" with the forum state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" "The defendant's conduct and connection with the forum State [must be] such that he should reasonably anticipate being haled into court there."

Whether a court exercises general or specific *in personam* jurisdiction depends on the nature and quality of the defendant's contacts. A forum exercises [**174] "specific jurisdiction" when "the controversy is related to or 'arises out of' the defendant's contacts with the forum." The "relationship among the defendant, the forum, and the litigation" is essential for the exercise of specific personal jurisdiction. One act of substantial quality may satisfy the minimum contacts test for purposes of specific jurisdiction.

Gilbert v. Sec. Fin. Corp. of Okla., Inc., 152 P.3d 165, 173-74 (Okla. 2006)

(footnotes omitted). The Supreme Court of Oklahoma has also stated:

The United States Supreme Court has long held that in order for out-of-state service of process to satisfy constitutional requirements and

serve to acquire jurisdiction of a court over a nonresident defendant, "minimum contacts" must exist between the defendant and the forum state. The protection against inconvenient litigation is often described in terms of "reasonableness" or "fairness." The defendant's contacts with the forum state "must be such that maintenance of the suit 'does not offend traditional notions of fair play and substantial justice.'" *World Wide Volkswagen Corporation v. Woodson*, 444 U.S. 286, 291-92, 100 S. Ct. 559, 563-64, 62 L. Ed. 2d 490 (1980), citing *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95, 161 A.L.R. 1057 (1945).

Vance, 28 P.3d at 573.

Minimum contacts generally exist when the cause of action arises from the defendant's activities directed at the forum state. At that point, the remaining question is whether notions of fair play and substantial justice have been satisfied.

A finding of specific jurisdiction is a two-step process. First, a court must determine whether the non-resident defendant had the requisite minimum contacts with the forum such that he should have "reasonably anticipated being haled into court there." [**93] *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 567, 62 L. Ed. 2d 490 (1980). What constitutes minimum contacts varies with the "quality and nature of

the defendant's activity." *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240, 2 L. Ed. 2d 1283 (1958). Generally, however, this requirement is satisfied when the cause of action relates to or arises out of the defendant's forum-related activities. [Citation omitted].

Second, if minimum contacts have been established, a court must determine whether "the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476, 105 S. Ct. 2174, 2184, 85 L. Ed. 2d 528 (1985) (quoting *Int'l Shoe*, 326 U.S. at 320, 66 S. Ct. at 160). The assertion of in personam jurisdiction comports with "fair play and substantial justice" if it is reasonable to require the defendant to defend suit in the forum. *World-Wide Volkswagen*, 444 U.S. at 292, 100 S. Ct. at 564. A court considers the following factors to determine the necessary reasonableness: 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 resolution of controversies; and the shared interest of the several states in furthering fundamental substantive social policies." *Id.* (footnotes omitted).

Klassen v. Lazik, 91 P.3d 90, 92-93 (Okla.Ct.App. 2004).

When determining if it is reasonable to assert personal jurisdiction, Oklahoma courts rely on factors established by the Supreme Court of the United States.

A court should consider the following factors when determining reasonableness:

the burden on the defendant . . . the forum State's interest in adjudicating the dispute, . . . the plaintiff's interest in obtaining convenient and effective relief, . . . at least when that interest is not adequately protected by the plaintiff's power to choose the forum, . . . the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies.

Lively v. IJAM, Inc., 114 P.3d 487, 495 (Okla.Ct.App. 2005) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292, 100 S. Ct. 559, 564, 62 L.Ed.2d 490 (1980)). Except in unusual circumstances, a defendant that takes actions that have significant consequences in Oklahoma is subject to personal jurisdiction in Oklahoma.

When a non-resident deliberately engages in significant activities in a forum state or creates continuing obligations between the non-resident and the

residents of the forum, the non-resident submits to the jurisdiction of the state." [sic] Jurisdiction may not be avoided merely because the non-resident did not physically enter the forum state. Jurisdiction under the long-arm statute is predicated on foreign state activity which results in forum state harm. *A non-resident who has purposefully directed activities at forum residents must present a compelling case that jurisdiction would be unreasonable, or that the contacts were so insignificant that the exercise of in personam jurisdiction [*443] would offend the traditional notions of substantial justice and fair play.*

Hough v. Leonard, 867 P.2d 438, 442-43 (Okla. 1993) (emphasis added) (footnotes omitted).

In the present case, the Affidavit of H.L. Frazee does not address the circumstances surrounding the execution of the guaranty. (Supp. LF, p. 1-2). The burden of proof was on H.L. Frazee to show that Oklahoma did not have personal jurisdiction over him and the facts should be considered in light of the strong presumption that personal jurisdiction did exist. Under these circumstances, it is reasonable to assume that the execution of the guaranty was actually done at the request of H.L. Frazee. A reasonable interpretation of the facts supplied by the affidavits is that:

- H.L. Frazee called Bill Burnett, expressed a desire to help Stephen and Jennifer Frazee, and asked how he could prevent the loan from being called.
- Bill Burnett informed H.L. Frazee that he could execute a personal guaranty of the loan.
- “H.L. Frazee then said that he would talk to Stephen and his wife.” (LF, p. 39).
- H.L. Frazee subsequently called Bill Burnett, stated that he would sign the guaranty, and requested that it be mailed to him at his Missouri address.
- Bill Burnett prepared the guaranty and mailed it to H.L. Frazee.
- H.L. Frazee signed the guaranty and returned it to Bill Burnett.

These facts constitute a reasonable interpretation of the evidence in this case consistent with the strong presumption that Oklahoma had personal jurisdiction.

H.L. Frazee did not present any evidence indicating that he did not initiate contact with Peoples Bank at his son’s request or ask for the opportunity to execute the guaranty. In fact, his affidavit purposely avoids the issue by stating “The only contact I *currently* have with Oklahoma is the presence of my grandchild in the state.” (Supp. LF, p. 1) (emphasis added). Such statement fails to address the contacts he had at the time he executed the guaranty or provide any information regarding the nature or extent of his contacts involved in the execution of the

guaranty. It is possible that he had several telephone conversations with Stephen and Jennifer Frazee prior to deciding to execute the guaranty. H.L. Frazee simply has not provided any evidence concerning his actions involved in executing the guaranty.

H.L. Frazee knew that he was dealing with an Oklahoma bank regarding a loan to Oklahoma residents. (LF, p. 40, ¶ 7). He knew or should have known that his actions would result in consequences in Oklahoma because Peoples Bank would make the loan to Stephen and Jennifer Frazee as a result of his guaranty. He should also have expected that any litigation arising from the loan would occur in Oklahoma. H.L. Frazee subjected himself to the possibility of litigation in Oklahoma by agreeing to execute the guaranty. He could easily have avoided the possibility of having to defend an action in Oklahoma by choosing not to guaranty the loan.

D. Assertion of Jurisdiction Was Reasonable

While H.L. Frazee's contacts with Oklahoma are relatively few, such contacts "are direct and are the very contacts that give rise to Plaintiff's claim." *Klassen v. Lazik*, 91 P.3d 90, 93 (Okla.Ct.App. 2004). H.L. Frazee chose to guaranty a loan from an Oklahoma bank to Oklahoma residents. Other than the fact that H.L. Frazee lives in Missouri, Missouri has no connection with the loan or

with Peoples Bank's claims against H.L. Frazee. In contrast, Oklahoma was the situs of Peoples Bank, Stephen and Jennifer Frazee, the loan, and the guaranty. It is not unreasonable that H.L. Frazee be required to defend a claim on the guaranty in Oklahoma.

Courts in various states, including Missouri, have found personal jurisdiction on the basis of guaranty agreements. In *State ex rel. Farmland Industries, Inc. v. Elliott*, 560 S.W.2d 60 (Mo.App. 1977), a Kansas corporation with its principal offices in Missouri filed suit against a New Jersey corporation for breach of contract and against two individual New Jersey residents, the principal stockholders of the New Jersey corporation, for breach of their guaranty agreement. *Elliott*, 560 S.W.2d at 61-62. The individuals sought to avoid personal jurisdiction by arguing that the negotiations that occurred in Missouri related only to the underlying contracts, and not to the guaranty. *Elliott*, 560 S.W.2d at 63.

The Court disagreed, explaining:

This attempted distinction is utterly unrealistic. The Marketing Agreement and the guarantee were interrelated aspects of an integrated transaction. The guarantee would never have been executed had the Marketing Agreement not been agreed upon. Therefore, negotiations for the

Marketing Agreement necessarily "contributed to the consummation and execution of" the guarantee.

Elliott, 560 S.W.2d at 63. The wife also argued that she was never present in Missouri and no evidence established her husband as her agent. *Elliott*, 560 S.W.2d at 63. The Court again disagreed, stating:

The failure of Sally to be personally present in Missouri and the absence of advance agency on her behalf by those who did come to Missouri is all beside the point. The important fact is that the acts of her husband and other corporate representatives led up and contributed to the consummation of the Marketing Agreement and the related guarantee, and the latter document was signed freely and voluntarily by Sally. These documents and the transaction represented by them put her into position to reap benefits as a major stockholder of Lyle Farms. By executing the guarantee agreement, she adopted and ratified the negotiations which led up to it.

Elliott, 560 S.W.2d at 63.

In *Hamada v. Valley Nat'l Bank*, 555 P.2d 1121 (Ariz.Ct.App. 1976), defendant Hamada wrote a letter to the plaintiff bank agreeing, upon demand, to purchase certain stock that had been pledged to the bank as collateral. *Hamada*, 555 P.2d at 1122. In reversing summary judgment for the plaintiff bank, the Court

of Appeals of Arizona found that a latent ambiguity existed regarding whether the letter “was intended by the parties to be an unconditional agreement to purchase the stock or whether it was a guarantee.” *Hamada*, 555 P.2d at 1124. The Court concluded by finding that the letter provided a sufficient basis for personal jurisdiction, stating:

We believe that the execution of the letter which Mr. Hamada knew was going to be used in a transaction in Arizona provided sufficient minimal contact with this state for it to exercise jurisdiction under the foregoing rule.

Hamada, 555 P.2d at 1124.

In *Gubitosi v. Buddy Schoellkopf Products, Inc.*, 545 S.W.2d 528 (Tex.Civ.App. 1976), the out of state individual defendant signed, as president, two promissory notes from the out of state corporate defendant to the plaintiffs. *Gubitosi*, 545 S.W.2d at 531. He also executed two personal guaranty agreements guarantying payment of the two notes. *Gubitosi*, 545 S.W.2d at 531. The notes and guaranties were executed to resolve the corporate defendant’s delinquent accounts owed to the plaintiffs. *Gubitosi*, 545 S.W.2d at 531-32. The evidence indicated that the individual defendant did not have any direct communication, by phone or mail, with the plaintiffs regarding the notes or guaranties, and that the notes and guaranties, after being signed by the individual defendant, were given to

a subordinate that actually mailed the notes and guaranties to the plaintiffs.

Gubitosi, 545 S.W.2d at 532, 534. Despite the lack of direct contact between the individual defendant and Texas, the Court found that the individual defendant was not denied due process by having to defend the action in Texas. *Gubitosi*, 545 S.W.2d at 535. See also *National Truckers Service, Inc. v. Aero Systems, Inc.*, 480 S.W.2d 455 (Tex.Civ.App. 1972) (Florida corporation subject to personal jurisdiction in Texas on guaranty of subsidiary's debt to corporation in Texas.).

In *Giger v. District Court for the County of Summit*, 540 P.2d 329 (Colo.banc 1975), a Missouri resident guaranteed performance of a lease of real property located in Colorado. *Giger*, 540 P.2d at 329. The guaranty was prepared in Colorado and executed by the Missouri guarantor in St. Louis. *Giger*, 540 P.2d at 330. The Supreme Court of Colorado held:

Applying the same analysis we utilized in *Van Schaack [and Co. v. District Court*, 538 P.2d 425 (Colo.banc 1975),] to the facts here, it is apparent that personal jurisdiction over this petitioner exists. In executing the contract of guarantee, petitioner induced the Theobalds to furnish their consent, as lessors, for the assignment to Harold Giger of a lease of Colorado real property. Allegedly, the lessee, Harold Giger, subsequently violated the covenants and agreements of the lease, thus causing the lessors

damages. In our view, the facts here amply justify long-arm jurisdiction over the person of this petitioner.

Giger, 540 P.2d at 330.

The underlying rationale of these cases appears to be that the consequence in the forum state as a result of the out of state guaranty justify the exercise of personal jurisdiction. Oregon courts have specifically recognized that “[r]eliance on a guaranty is a critical factor’ in determining the reasonableness of asserting personal jurisdiction over a nonresident guarantor.” *Nike USA, Inc. v. Pro Sports Wear, Inc.*, 145 P.3d 321, 328 (Ore.Ct.App. 2006). In the present case, Peoples Bank relied on the guaranty signed by H.L. Frazee when it renewed the loan to Stephen Frazee and Jennifer Frazee. Such reliance shows that H.L. Frazee’s actions had significant consequences within Oklahoma. Further, while H.L. Frazee was not present in Oklahoma, his guaranty related to and was part of a transaction negotiated between an Oklahoma bank and Oklahoma residents and he freely signed the guaranty as part of that transaction in Oklahoma. *See Elliott*, 560 S.W.2d at 63. “By executing the guarantee agreement, [he] adopted and ratified the negotiations which led up to it.” *Elliott*, 560 S.W.2d at 63.

The Supreme Court of Oklahoma long ago recognized that a single contact with Oklahoma can be sufficient grounds for assertion of personal jurisdiction.

Absence of multiple acts within the state is not necessarily fatal to the exercise of state power over a foreign corporation. . . . There exists no constitutional barrier to holding that a foreign corporation which does a single act or consummates a single transaction in the forum state would be amenable to suit for damages arising out of that transaction, irrespective of whether additional contacts with the state exist or not. The state may reach non-resident defendants in suits growing out of acts or transactions which have created "minimum contacts" with the forum state, however limited or transient such contacts may be.

B.K. Sweeney Co. v. Colorado Interstate Gas Co., 429 P.2d 759, 762 (Okla. 1967).

The Court went on to explain:

These acts, as Sweeney knew or could know and anticipate, would have potential consequences in this state. If a foreign corporation voluntarily elects to act here, whether directly or indirectly, it should be answerable in our courts in accordance with our laws. The consequences we impute to it lie within its control. It need not act, or agree to act, within this state at all, unless it so desires.

B.K. Sweeney Co., 429 P.2d at 763. More recently, the Supreme Court of Oklahoma explained, "Regardless of who initiated the contact, the non-residents

could have refused to enter into a contract and thereby alleviated the risk of defending a suit commenced in Oklahoma.” *Hough v. Leonard*, 867 P.2d 438, 444 (Okla. 1993) (footnote omitted).

Courts applying Oklahoma law have exercised long-arm jurisdiction under circumstances similar to the facts in the present case. In *Federal Nat'l Bank & Trust Co. v. Moon*, 412 F.Supp. 644 (W.D. Okla. 1976), the Court accepted as true the facts asserted by the defendants, including that “(1) That negotiations for the loan guaranteed by Defendants were conducted in Alabama; (2) That Defendant Theolene Moon never came to the State of Oklahoma in connection with the loan in question; and (3) The documents were executed in the State of Alabama.” *Federal Nat'l Bank & Trust Co.*, 412 F.Supp. at 645. In discussing the defendants’ contacts with Oklahoma, the District Court explained:

Defendant's contacts with the State of Oklahoma in regard to the events giving rise to the instant litigation? One very dominant contact that appears to be present is that the Defendants guaranteed the payment of a loan made by an Oklahoma lending institution which has been assigned to another such institution also located in Oklahoma. Even if the negotiations for said loan were made in another state as contended by Defendants, the "source" of the money for the loan in question comes from the State of Oklahoma. It is the

consummation of the loan process and not the negotiations for same which give rise to the instant action against the guarantors of said loan.

Federal Nat'l Bank & Trust Co., 412 F.Supp. at 646. The Court then held:

Considering the "totality of contacts" by Defendants in regard to the loan guaranty agreement giving rise to the instant action, it appears that same constitutes the maintenance of a relation to the State of Oklahoma which affords a basis for the exercise of personal jurisdiction by this Court consistent with the due process provisions of the United States Constitution.

Federal Nat'l Bank & Trust Co., 412 F.Supp. at 647.

The same dominate contact justified personal jurisdiction in Oklahoma in the present case. H.L. Frazee guarantied a loan from an Oklahoma bank. In addition, the loan was made to Oklahoma residents, which increases the significance of his connection with the state. H.L. Frazee knew when he signed the guaranty to Peoples Bank and mailed it back to Oklahoma that he could and would be hailed into an Oklahoma court if his son failed to pay Peoples Bank on the loan. It does not offend the requirements of due process to exercise personal jurisdiction over H.L. Frazee because he knew he was guarantying an Oklahoma Bank's loan for the benefit of his son and daughter-in-law, Oklahoma residents, and he could reasonably expect that the Bank would seek to enforce that guaranty in an

Oklahoma court, if necessary. “The assertion of in personam jurisdiction comports with ‘fair play and substantial justice’ if it is reasonable to require the defendant to defend suit in the forum.” *Klassen v. Lazik*, 91 P.3d 90, 93 (Okla.Ct.App. 2004). Under the facts of this case, it was reasonable to require H.L. Frazee to defend a claim on the guaranty in Oklahoma and the trial court erred in granting the Motion to Quash.

II. The trial court erred in placing the burden of proof regarding personal jurisdiction on Peoples Bank, because H.L. Frazee had the burden of overcoming the presumption that the Oklahoma court had personal jurisdiction, in that the Oklahoma Default Judgment was regular on its face and entitled to a strong presumption that the Oklahoma court had personal jurisdiction.

A. Standard of Review

The standard of review from an order quashing the registration of a foreign judgment is the standard normally applied in cases tried without a jury. As has been stated:

The judgment of a trial court will be affirmed unless "there is no substantial evidence to support it, unless it is against [*63] the weight of the

evidence, unless it erroneously declares the law, or unless it erroneously applies the law." *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976).

However, we do not defer to the trial court's determinations of law.

Community Trust Bank v. Anderson, 87 S.W.3d 58, 62-63 (Mo.App.S.D. 2002) (footnote omitted). A circuit court's decision not to allow registration of a foreign judgment is a legal conclusion, which is reviewed de novo. *Big Tex Trailer Mfg. v. Duff Motor Co.*, 275 S.W.3d 384, 386 (Mo.App.W.D. 2009); *L & L Wholesale, Inc. v. Gibbens*, 108 S.W.3d 74, 78-79 (Mo.App.S.D. 2003).

B. Burden of Proof

All of the defendants, including H.L. Frazee, "refused and neglected to file an answer" in the Oklahoma action. (LF, p. 7). As a result, the Default Judgment was entered in favor of Peoples Bank and against H.L. Frazee and the other defendants. (LF, p. 7-10). Peoples Bank then filed the Default Judgment with the Circuit Court of Wright County, Missouri, for registration as a foreign judgment. (LF, p. 1, 5). As a result, a presumption exists that the Oklahoma court had both personal jurisdiction and subject matter jurisdiction and the burden was on H.L. Frazee to overcome such presumption and prove that jurisdiction was not present in Oklahoma. The trial court erred in placing the burden on Peoples Bank to show the existence of personal jurisdiction. In addition, the undisputed evidence, when

considered in conjunction with the presumption that jurisdiction existed, shows that H.L. Frazee failed to meet his burden to overcome the presumption and prove personal jurisdiction did not exist.

Missouri must generally give full faith and credit to judgments entered by courts of other states and only in limited circumstances may Missouri refuse full faith and credit to such judgments.

Missouri is compelled to give full faith and credit to a judgment of another state unless the judgment of the rendering state is void for lack of jurisdiction over the person or subject matter, or is obtained by fraud.

Phillips v. Fallen, 6 S.W.3d 862, 864 (Mo.banc 1999). To be entitled to full faith and credit, the rendering court's exercise of jurisdiction must not only be permissible under the federal law of due process, but it must also be valid under the state law of the rendering court. *Adamson v. Harris*, 726 S.W.2d 475, 478 (Mo.App.W.D. 1987). A foreign judgment, which is regular on its face, is entitled to a strong presumption that the rendering court had jurisdiction over the parties and the subject matter of the suit. *Phillips*, 6 S.W.3d at 868, quoting *Johnson v. Johnson*, 770 S.W.2d 483, 485 (Mo.App.E.D. 1989). A party asserting the invalidity of a foreign judgment

has the burden of overcoming the presumption of validity. *L & L Wholesale, Inc. v. Gibbens*, 108 S.W.3d 74, 79 (Mo.App.S.D. 2003).

Gletzer v. Harris, 159 S.W.3d 462, 465 (Mo.App.E.D. 2005). The Southern District has explained that:

With respect to a judgment rendered by a court of general jurisdiction of another state, we presume not only that the court had both personal and subject matter jurisdiction, but that the court followed its laws and entered a valid judgment in accordance with the issues in the case. [Citation omitted]. *A party asserting the invalidity of such a judgment has the burden of overcoming the presumption of validity, unless the proceedings show that the judgment is not entitled to that presumption.*

L & L Wholesale, Inc., 108 S.W.3d at 79 (emphasis added); *Gibson v. Epps*, 352 S.W.2d 45, 48 (Mo.App. 1961). Stated another way:

"[A] foreign judgment, regular on its face, . . . is entitled to a strong presumption that the foreign court had jurisdiction both over the parties and the subject matter and that the court followed its laws and entered a valid judgment." *Johnson v. Johnson*, 770 S.W.2d 483, 485 (Mo. App. 1989).

Phillips did not attack the Washington order as irregular on its face, so his burden was to overcome the presumption of validity and jurisdiction with

"the clearest and most satisfactory evidence." *Trumbull v. Trumbull*, 393 S.W.2d 82, 89 (Mo. App. 1965).

Phillips v. Fallen, 6 S.W.3d 862, 868 (Mo.banc 1999); *Waterloo Lumber Co. v. Gardner*, 806 S.W.2d 513, 515 (Mo.App.E.D. 1991). The fact that the foreign judgment was entered by default does not affect the presumption or burden of proof.

Most of the courts that have considered the issue have either directly or implicitly held that the presumption of jurisdiction and placement of the burden on the party resisting recognition of the foreign judgment to prove lack of jurisdiction apply even when the foreign judgment was entered by default.

Legum v. Brown, 909 A.2d 672, 679 (Md. 2006) (citing *L & L Wholesale, Inc.*, 108 S.W.3d 74; *Gletzer*, 159 S.W.3d 462).

The Motion to Quash and H.L. Frazee's Suggestions in Support do not attack the subject matter jurisdiction of the District Court In and For Tulsa County or claim that the Default Judgment was the product of fraud. (LF, p. 12, 17). As a result, the only issue is whether the Oklahoma court had personal jurisdiction over H.L. Frazee.

The trial court, in the Judgment, misapplied the law in finding that Peoples Bank had the burden of proving the Oklahoma court had personal jurisdiction. The Judgment incorrectly states that “The burden of proof is upon Plaintiff, the party asserting jurisdiction, and jurisdiction over the nonresident must affirmatively appear from the record.” (LF, p. 63) (citing *Razorsoft, Inc. v. Maktal, Inc.*, 907 P.2d 1102, 1104 (Okla.Ct.App. 1995)). In actuality, there is a presumption that the Oklahoma court had personal jurisdiction and the “party asserting the invalidity of [the] judgment has the burden of overcoming the presumption of validity”. *L & L Wholesale, Inc.*, 108 S.W.3d at 79.

The trial court’s reliance on *Razorsoft* was misplaced as that case did not involve registration of a foreign judgment. In *Razorsoft*, an Oklahoma corporation filed suit, in Oklahoma, against various California defendants. *Razorsoft, Inc.*, 907 P.2d at 1103. A default judgment was entered by the Oklahoma court against the appellants. *Razorsoft, Inc.*, 907 P.2d at 1103. The trial court denied the appellants’ motions to vacate the default judgment and the appeal followed. *Razorsoft, Inc.*, 907 P.2d at 1103. Given this procedural history, the discussion by the Court of Appeals of Oklahoma regarding the burden of proof is irrelevant to the present case. The Court in *Razorsoft* was concerned with personal jurisdiction in the context of an Oklahoma appeal from an order by an Oklahoma district court

refusing to set aside a default judgment entered by the same Oklahoma district court. The Court did not address the burden of proof involved in a motion to quash registration of a foreign judgment.

C. Misapplication of the Law Materially Affected the Merits

The trial court's mistaken placement of the burden of proof affected the Judgment in several respects. First, the trial court resolved an ambiguity in the Affidavit of Bill Burnett based on its incorrect belief regarding the burden of proof, stating:

Because Plaintiff has the burden of proof on the issue of sufficiency of contacts with the State of Oklahoma, the court resolves the ambiguity of who initiated contact in Defendant's favor and assumes that the Plaintiff initiated contact with Defendant Frazee regarding whether he would be willing to guaranty payment of a loan for Stephen and Jennifer Frazee.

(LF, p. 65, n. 1). Second, the trial court assumed that virtually all of H.L. Frazee's contacts with Oklahoma were initiated by or at the request of Peoples Bank, stating:

In this case, Plaintiff initiated contact via telephone with Mr. Frazee in Missouri. Mr. Frazee called Plaintiff back, apparently at the request of Plaintiff, to inform the Plaintiff he would sign a guaranty as requested by

Plaintiff and/or Stephen Frazee. Mr. Frazee signed and returned the guaranty documents to Plaintiff in Oklahoma at the request of Plaintiff.

(LF, p. 65) (emphasis in original) (quoted in the Court of Appeals' Opinion, p. 4).

Such assumptions, based on an improper placement of the burden of proof, are simply not supported by the record.

The undisputed facts presented in the Affidavit of Bill Burnett, Executive Vice-President of Peoples Bank, indicate that:

4. Prior to April 26, 2006, I met in my office at Peoples Bank with Stephen Frazee to inform him that the Bank was calling his note, since it was in default. Stephen Frazee said that his father, H. L. Frazee would help him. H. L. Frazee was called or called me. H. L. Frazee spoke with me on the telephone and we discussed what would be required. H.L. Frazee then said that he would talk to Stephen and his wife.
5. Subsequently, H. L. Frazee called me and agreed to sign a guaranty of his son's Note.
6. I prepared and mailed the documents for the Guarantee which is the subject of this lawsuit to H. L. Frazee at his Missouri address. H. L. Frazee signed the Guarantee and returned it to me at the Bank.

7. H. L. Frazee was aware that he was doing business with an Oklahoma bank on behalf of his son who lived in Oklahoma, on his son's Note on which his son was behind in payments.

(LF, p. 39-40). None of these facts were contradicted by the Affidavit of H.L. Frazee. (Supp. LF, p. 1-2). Regardless of whether Bill Burnett initially called H.L. Frazee or H.L. Frazee made the initial call to Bill Burnett, such call occurred at the request of Stephen Frazee, H.L. Frazee's son. During that call, "H.L. Frazee then said that he would talk to Stephen and his wife", (LF, p. 39), presumably by telephone. There is no indication that such call was made at the request of Peoples Bank. Rather, it appears that H.L. Frazee chose to make that call. Additionally, nothing in the affidavit indicates that the return call in which H.L. Frazee agreed to sign the guaranty was done at the request of Peoples Bank. Likewise, nothing in the Affidavit indicates that the execution and return of the guaranty were done at the request of Peoples Bank. The Affidavit simply indicates that the guaranty was mailed to H.L. Frazee in Missouri, he signed it, and returned it to Peoples Bank. (LF, p. 39).

The Affidavit of H.L. Frazee does not address the circumstances surrounding the execution of the guaranty. (Supp. LF, p. 1-2). The burden of proof was on H.L. Frazee to show that Oklahoma did not have personal jurisdiction

over him and the facts should be considered in light of the strong presumption that personal jurisdiction did exist. Under these circumstances, it is reasonable to assume that the execution of the guaranty was actually done at the request of H.L. Frazee. A reasonable interpretation of the facts supplied by the affidavits is that:

- H.L. Frazee called Bill Burnett, expressed a desire to help Stephen and Jennifer Frazee, and asked how he could prevent the loan from being called.
- Bill Burnett informed H.L. Frazee that he could execute a personal guaranty of the loan.
- “H.L. Frazee then said that he would talk to Stephen and his wife.” (LF, p. 39).
- H.L. Frazee subsequently called Bill Burnett, stated that he would sign the guaranty, and requested that it be mailed to him at his Missouri address.
- Bill Burnett prepared the guaranty and mailed it to H.L. Frazee.
- H.L. Frazee signed the guaranty and returned it to Bill Burnett.

These facts constitute a reasonable interpretation of the evidence in this case consistent with the strong presumption that Oklahoma had personal jurisdiction.

H.L. Frazee did not present any evidence indicating that he did not initiate contact with Peoples Bank at his son’s request or ask for the opportunity to execute the guaranty. In fact, his affidavit purposely avoids the issue by stating “The only

contact I *currently* have with Oklahoma is the presence of my grandchild in the state.” (Supp. LF, p. 1) (emphasis added). Such statement fails to address the contacts he had at the time he executed the guaranty or provide any information regarding the nature or extent of his contacts involved in the execution of the guaranty. It is possible that he had a dozen telephone conversations with Stephen and Jennifer Frazee prior to deciding to execute the guaranty. It is impossible to know because H.L. Frazee has not provided any evidence regarding the matter.

As discussed under Point I, once the burden is properly placed on H.L. Frazee to overcome the presumption that the Oklahoma court had personal jurisdiction, it is clear that he failed to meet such burden and the trial court’s Judgment should be reversed. H.L. Frazee took actions that had direct, financial consequences in the state of Oklahoma by agreeing to personally guaranty the debt of Stephen and Jennifer Frazee. The note H.L. Frazee guarantied was payable to an Oklahoma bank from two Oklahoma residents. (LF, p. 39-40, 43). H.L. Frazee knew he was dealing with an Oklahoma bank. (LF, p. 40). It was reasonable to expect that any litigation arising from the note would be instituted and maintained in Oklahoma. H.L. Frazee’s action in guarantying the note was intended to, and did, induce Peoples Bank to renew the loan to Stephen and Jennifer Frazee, which was then in default. It is reasonable to assume that the execution of the guaranty

was done at the request of H.L. Frazee and that he purposefully sought involvement in this transaction so as to help Stephen and Jennifer Frazee.

The undisputed facts, viewed in light of the strong presumption of jurisdiction, show that H.L. Frazee had sufficient contacts with Oklahoma to allow the assertion of personal jurisdiction there. H.L. Frazee either called or was called by Bill Burnett to discuss the possibility of H.L. Frazee guarantying the note from Stephen and Jennifer Frazee. (LF, p. 39). He indicated that he would speak with “Stephen and his wife”, (LF, p. 39), presumably by phone to Oklahoma. H.L. Frazee then called Bill Burnett, in Oklahoma, and indicated that he would sign the guaranty. (LF, p. 39). The guaranty was mailed to him in Missouri, where he signed it and mailed it back to Oklahoma. (LF, p. 39). Peoples Bank’s claim against H.L. Frazee arose from the guaranty. (LF, p. 46-47, 51). Nothing in the Affidavit of H.L. Frazee disputes any of these facts. (Supp. LF, p. 1-2).

H.L. Frazee could have avoided the possibility of being sued in Oklahoma by simply choosing not to sign the guaranty. As the Supreme Court of Oklahoma has explained, “Regardless of who initiated the contact, the non-residents could have refused to enter into a contract and thereby alleviated the risk of defending a suit commenced in Oklahoma.” *Hough v. Leonard*, 867 P.2d 438, 444 (Okla. 1993) (footnote omitted). H.L. Frazee had the option of refusing to sign the

guaranty. Instead, he chose to take actions that induced Peoples Bank to renew the loan to Stephen and Jennifer Frazee. The loan was from an Oklahoma bank to Oklahoma residents and H.L. Frazee mailed his guaranty to Peoples Bank in Oklahoma. H.L. Frazee could reasonably expect any dispute regarding the loan to be resolved in Oklahoma. His actions clearly had significant consequences in Oklahoma and his contacts with Oklahoma were sufficient so that ““maintenance of the suit “does not offend traditional notions of fair play and substantial justice.””” *Vance v. Molina*, 28 P.3d 570, 573 (Okla. 2001) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-92, 100 S.Ct. 559, 563-64, 62 L.Ed.2d 490 (1980), citing *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945)).

The trial court erroneously declared the law and erroneously applied the law in placing the burden of proof regarding personal jurisdiction on Peoples Bank. A strong presumption existed that the Oklahoma court had personal jurisdiction and H.L. Frazee had the burden of overcoming that presumption. When the facts are considered in the proper context, it is clear that the trial court should have denied the Motion to Quash. This Court should reverse the Judgment and remand with instructions to deny H.L. Frazee’s Motion to Quash.

CONCLUSION

A strong presumption exists that the District Court In and For Tulsa County, Oklahoma, had personal jurisdiction over H.L. Frazee when it entered the Default Judgment. The burden was on H.L. Frazee to overcome the presumption by clear evidence showing that he was not subject to personal jurisdiction in Oklahoma and he failed to meet this burden. Further, the trial court erroneously declared and erroneously applied the law in placing the burden of proof on Peoples Bank and finding that H.L. Frazee did not have sufficient minimum contacts with Oklahoma to support personal jurisdiction there. The undisputed evidence shows that the exercise of personal jurisdiction by the Oklahoma court was reasonable and did not “offend the traditional notions of substantial justice and fair play.” *Hough*, 867 P.2d at 443. This Court should reverse the trial court’s Judgment and remand with directions to deny H.L. Frazee’s Motion to Quash.

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CERTIFICATE OF SERVICE

I hereby certify that I have served one copy of Appellant's Substitute Brief together with a copy of the CD-ROM required by Supreme Court Rule 84.06(g) on the following counsel of record by depositing in the United States Mail, postage prepaid, on this 11th day of January, 2010.

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RULE 84.06(c) AND (g) CERTIFICATE

I hereby certify that this Appellant's Substitute Brief complies with the limitations contained in Supreme Court Rule 84.06(b) and that the entire brief contains 11,231 words. I hereby further certify that the CD-ROM disks containing the brief and filed with the Court and served on the Attorney for Respondent were scanned for viruses by an anti-virus program and are virus-free according to such program.

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