



# In the Missouri Court of Appeals Eastern District

## DIVISION FIVE

ISSIAH ANDRA,	)	No. ED99334
	)	
Appellant,	)	
	)	Appeal from the Circuit Court
vs.	)	of St. Louis County
	)	
LEFT GATE PROPERTY	)	
HOLDING, INC.,	)	
	)	Honorable Barbara W. Wallace
	)	
Respondent.	)	Filed: November 26, 2013

Issiah Andra appeals the judgment of the trial court dismissing Andra's claims against Left Gate Property Holding, Inc., d/b/a Texas Direct Auto ("Left Gate") for lack of personal jurisdiction. We affirm.

### **I. BACKGROUND**

In July 2011, Andra purchased a 2007 GMC Yukon XL Denali ("the vehicle") which was offered for sale by Left Gate on the eBay website. Andra reviewed the information on eBay about the vehicle from his computer in Missouri, and he submitted his "buy it now" bid from Missouri as well. Andra also signed the retail installment sales contract for the vehicle in Missouri. The vehicle was delivered to Andra in Missouri shortly after his purchase. The vehicle subsequently underwent several repairs for issues that were immediately apparent, and thereafter, the vehicle failed the Missouri safety

inspection and underwent additional repairs. Andra contacted Left Gate to discuss payment for the repairs, and Left Gate refused to pay for the repairs.

Andra filed suit against Left Gate alleging multiple claims, including negligent misrepresentation, negligence per se, and violation of the Missouri Merchandising Practices Act (“MMPA”). Left Gate filed a motion to dismiss for lack of personal jurisdiction, and the trial court granted the motion. The court found it lacked personal jurisdiction over Left Gate because the use of “[a]n on-line auction process such as eBay does not rise to the level of purposeful conduct necessary to assert specific personal jurisdiction.” Andra now appeals.

## **II. DISCUSSION**

### **A. Standard of Review**

We must affirm the trial court’s ruling regarding personal jurisdiction if the evidence shows facts adequate to invoke the provisions of the Missouri long-arm statute and supports a finding of minimum contacts with Missouri sufficient to satisfy due process. *Bryant v. Smith Interior Design Group, Inc.*, 310 S.W.3d 227, 231 (Mo. banc 2010). We defer to the trial court’s determination of credibility and its resolution of conflicting evidence. *Consolidated Elec. & Mechanicals, Inc. v. Schuerman*, 185 S.W.3d 773, 776 (Mo. App. E.D. 2006) (internal citation omitted). However, the sufficiency of the evidence to support the trial court’s determination is a question of law, which we review independently on appeal. *Id.*

### **B. Personal Jurisdiction**

In his first point on appeal, Andra claims the trial court erred in dismissing his petition because Left Gate is subject to the personal jurisdiction of Missouri courts.

According to Andra, Left Gate's allegedly tortious conduct, committed in Missouri, brings Left Gate under the purview of Section 506.500 RSMo (2000),<sup>1</sup> and Left Gate's use of eBay to sell the vehicle provided sufficient minimum contacts with Missouri to subject it to the jurisdiction of Missouri courts.

In order to subject a non-resident defendant to the long-arm jurisdiction of Missouri, a plaintiff must plead and prove both that the defendant engaged in an act enumerated in Missouri's long-arm statute, Section 506.500, and that the defendant had sufficient minimum contacts with Missouri to satisfy due process. *Consolidated Elect. & Mechanicals, Inc.*, 185 S.W.3d at 776. Section 506.500.1 states, in relevant part:

Any person or firm, whether or not a citizen or resident of this state, or any corporation, who in person or through an agent does any of the acts enumerated in this section, thereby submits such person, firm, or corporation, . . . to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any such acts:

- (1) The transaction of any business within this state;
- (2) The making of any contract within this state;
- (3) The commission of a tortious act within this state . . .

Although the trial court did not make any specific finding regarding this issue, it is clear Left Gate's conduct falls within the acts enumerated in Section 506.500.1.

However, the due process clause of the Fourteenth Amendment further requires a non-resident defendant to have sufficient minimum contacts with Missouri so the maintenance of the suit in Missouri does not offend traditional notions of fair play and substantial justice. *Consolidated Elec. & Mechanicals, Inc.*, 185 S.W.3d at 776 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985)). To determine whether Left Gate had sufficient minimum contacts with Missouri to satisfy due process, we may consider five

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<sup>1</sup> All further statutory references are to RSMo (2000).

factors. *Id.*; *See also Bryant* 310 S.W.3d at 233 n.4 (the five-factor minimum contacts test is not mandatory, but simply a tool to assist in determining the issue). These factors are: (1) the nature and quality of Left Gate's contacts with the state; (2) the quantity of those contacts; (3) the relationship of the cause of action to those contacts; (4) the interest in Missouri in providing a forum for its residents; and (5) the convenience to the parties. *Consolidated Elec. & Mechanicals, Inc.*, 185 S.W.3d at 776. The first three factors are the primary considerations in evaluating minimum contacts, and the remaining two factors are of secondary importance. *Id.* The factors must be evaluated on a case-by-case basis to determine whether the requisite contacts occurred to subject the non-resident defendant to Missouri's long-arm jurisdiction. *Id.* To establish minimum contacts within the forum state, the plaintiff must show the defendant's contacts were purposeful and such that the defendant should reasonably anticipate being brought into court in the forum state. *Id.* at 776-77.

It appears as though the specific question presented in this case of whether the purchase of a vehicle through an online website such as eBay provides sufficient purposeful contacts with Missouri to subject a defendant to the state's long-arm jurisdiction is one of first impression. Although there have been cases in which Missouri courts have considered personal jurisdiction in the context of internet use, no case directly addressing personal jurisdiction resulting from the use of online auction sites such as eBay to sell items has been decided.<sup>2</sup> *See, e.g., State ex rel. Nixon v. Beer Nuts, Ltd.*, 29 S.W.3d 828 (Mo. App. E.D. 2000) (foreign corporation using internet website, among other advertising, to reach Missouri consumers to sell memberships to beer-of-

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<sup>2</sup> The trial court cites a decision from the civil court, City of New York, *Sayeedi v. Walser*, 835 N.Y.S.2d 840 (N.Y. Civ. Ct. 2007), as support for its decision, but does not cite any Missouri case therein.

the-month club); *Baldwin v. Fischer-Smith*, 315 S.W.3d 389 (Mo. App. S.D. 2010) (nonresident defendants used website to libel plaintiffs in Missouri); and *Office Supply Store.com v. Kansas City School Bd.*, 334 S.W.3d 574 (Mo. App. W.D. 2011) (foreign corporation contacted by Missouri school district to purchase items in response to website for company). Thus, we believe evaluation of Left Gate's contacts with Missouri under the five-factor minimum contacts test is useful.

Here, the deposition of Ed Williams, the operations director for Left Gate, was submitted to the trial court. Williams testified that the company operates a vehicle dealership in Texas. Left Gate has its own website, but also sells vehicles on eBay. According to Williams, roughly 60 to 65 percent of their sales are conducted within the state of Texas. He estimated that approximately 30 to 35 percent of Left Gate's auto sales involved the use of eBay, and .86 percent of the total sales over the last five years were to Missouri residents. Williams testified Left Gate does not maintain any offices in Missouri, does not have any employees in Missouri, and does not advertise in Missouri.

Based upon this evidence, when considering two of the primary factors discussed above concerning the nature and quality of Left Gate's contacts with the state and the quantity of those contacts, we do not believe Left Gate had sufficient minimum contacts with Missouri to satisfy due process. Although Andra filed an affidavit enumerating the conduct occurring in Missouri related to the vehicle and its purchase, such as submission of the bid, review of information about the vehicle, execution by Andra of the retail sales installment contract, acceptance of delivery of the vehicle, and repairs to the vehicle, these actions were performed by Andra, not by Left Gate. There was no evidence that Left Gate engaged in conduct intentionally designed to solicit business from consumers

in Missouri. Left Gate did not advertise in Missouri, and did not have any employees or offices in Missouri. Based upon the evidence, there was nothing to indicate Left Gate used eBay as a forum to establish regular business with Missouri residents.<sup>3</sup> Instead, this was a single transaction on eBay, and the fact that Andra, as purchaser, was a resident of Missouri, without more, does not constitute sufficient purposeful conduct to satisfy minimum contacts in this particular case.

Andra claims Left Gate's subsequent communications with him following his online purchase of the vehicle also satisfy the minimum contacts required for personal jurisdiction. However, the mere fact that Left Gate followed Andra's purchase of the vehicle via eBay with communications concerning the sale is not sufficient to satisfy minimum contacts. *See Elaine K. v. Augusta Hotel Assoc. Ltd. Partnership*, 850 S.W.2d 376, 379 (Mo. App. E.D. 1993) (limited mail and phone contact with forum state did not constitute sufficient minimum contacts to satisfy traditional notions of fair play and substantial justice requirement of due process); and *Mello v. Giliberto*, 73 S.W.3d 669, 678 (Mo. App. 2002) (telephone calls and mailings did not satisfy either the transaction of business or the minimum contacts requirements for personal jurisdiction).

Without something more to show Left Gate availed itself of the privilege of conducting business with Missouri residents by using directed advertising or other purposeful contacts with the state, we do not believe Left Gate should have reasonably anticipated being brought into court in Missouri on the basis of its eBay sale to Andra.

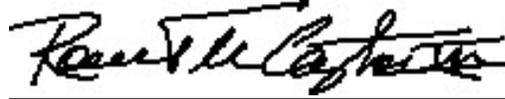
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<sup>3</sup> Andra argues Left Gate uses eBay as a broad vehicle for commercial activity, and therefore, Left Gate has sufficient minimum contacts with Missouri to satisfy due process. In support of his argument, Andra cites *Furminator v. Wahba*, 2011 WL 3847390 (E.D. Mo. 2011). However, unreported federal district court opinions have no authority in Missouri courts. *See Thornburgh Insulation, Inc. v. J.W. Terrill, Inc.*, 236 S.W.3d 651, 656 n. 4 (Mo. App. E.D. 2007).

Therefore, we cannot conclude the trial court erred in dismissing Andra's petition against Left Gate for lack of personal jurisdiction. Point one on appeal is denied.<sup>4</sup>

### III. CONCLUSION

The judgment of the trial court dismissing Andra's petition for lack of personal jurisdiction is affirmed.



ROBERT M. CLAYTON III, Chief Judge

Angela T. Quigless, J., and  
Lisa Van Amburg, J., concur.

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<sup>4</sup> In his second point on appeal, Andra claims the trial court erred in dismissing his petition because the forum selection clause contained in the contract entered between Andra and Left Gate was unenforceable. Because the trial court dismissed the action on the basis of lack of personal jurisdiction, it did not reach the substantive issue concerning the enforceability of the forum selection clause, and therefore, we do not consider the issue on appeal.