

**Summary of SC93984, *Issiah Andra v. Left Gate Property Holding Inc.***

Appeal from the St. Louis County circuit court, Judge Barbara W. Wallace  
Argued and submitted September 24, 2014; opinion issued February 24, 2015

**Attorneys:** Andra was represented by Bryan E. Brody of the Gusdorf Law Firm LLC in St. Louis, (314) 721-3230; and Left Gate was represented by Bharat Varadachari and Katherine E. Jacobi of HeplerBroom LLC in St. Louis, (314) 241-6160. The attorney general, who filed a brief as a friend of the Court, was represented by Solicitor General James R. Layton and Nathan J. Aquino of the attorney general's office in Jefferson City, (573) 751-3321.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A Missouri man who sued a Texas company from which he purchased a vehicle through eBay appeals the circuit court's dismissal of his case for lack of personal jurisdiction (authority) over the company. In a unanimous decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. The Court need not analyze personal jurisdiction based solely on the company's Internet conduct because substantial enough non-Internet contacts exist between the man and the company, including within the realm of mail and telephone communication, to use a traditional minimum contacts analysis. The company's conduct satisfies Missouri's long-arm statute for jurisdiction over nonresident defendants, and the company has sufficient minimum contacts with Missouri to satisfy due process under the federal constitution. The company purposely availed itself of the privilege of doing business in Missouri and made intentional and continuing contacts directed toward the man in Missouri such that the company reasonably could foresee being sued in a Missouri court. Further, the company has not shown Missouri's exercise of jurisdiction over the company is not reasonable.

**Facts:** Missouri resident Issiah Andra used the eBay auction website to purchase a vehicle in July 2011 from Left Gate Property Holding Inc. for the total sale price of about \$32,640. Left Gate, which is based in Stafford, Texas, has no offices, facilities or employees in Missouri but is the largest eBay vehicle dealership in the world and is designated as a "top-rated seller" on eBay. About 35 to 40 percent of Left Gate's total vehicle sales begin on eBay, and the company's website states the company will deliver a vehicle bought on eBay to anywhere within the United States. While the exact number of or total revenue from vehicles Left Gate sells to Missouri residents is not known, Missouri vehicle sales account for about 0.86 percent of Left Gate's total transactions. Andra reviewed information about the vehicle on eBay from his computer in Humansville, Missouri. The eBay listing provided a description of the vehicle's features and condition, and the vehicle's purchase price included one or more warranties. Andra agreed to purchase the vehicle by clicking the "Buy it Now" option. He then had a telephone conversation with a Left Gate employee who represented that the vehicle was in excellent condition and had received only minor repairs. Left Gate then mailed to Andra's address in Missouri a sales contract and the required federal buyer's guide, which he signed at his Missouri home. Left Gate then called Andra at his Missouri telephone number to arrange to have the vehicle transported to him in Missouri, quoting Andra a price for this service. The day after receiving the vehicle,

Andra contacted Left Gate because, he alleges, the vehicle was missing many of the described features, was in poor condition and purportedly had been in an accident two years earlier. Andra alleges the company told him it would cover the cost of repairs. A Missouri dealer attempted to repair the vehicle, but after it subsequently failed a Missouri inspection, the vehicle underwent three additional repairs in August and September 2011. Andra alleges Left Gate told him it would cover the costs of these additional repairs as well as associated towing, taxi and rental costs. Left Gate subsequently refused to pay for any of the repairs, and Andra sued the company in October 2011, alleging negligent misrepresentation, negligence per se, violations of the state's merchandising practices act and violation of a federal trade act. Left Gate filed a motion to dismiss for lack of personal jurisdiction. Following an October 2012 hearing, the circuit court dismissed Andra's suit, determining an online auction process such as eBay does not rise to the level of purposeful conduct necessary to assert specific personal jurisdiction. Andra appeals.

**REVERSED AND REMANDED.**

**Court en banc holds:** Missouri may assert personal jurisdiction over Left Gate. Missouri courts use a two-prong test to evaluate personal jurisdiction over nonresident defendants. First, the defendant's conduct must fall within Missouri's long-arm statute. Second, the defendant must have sufficient minimum contacts with Missouri to satisfy due process under the 14th Amendment to the United States Constitution.

(1) The parties do not dispute that Left Gate's conduct satisfies Missouri's long-arm statute, which confers personal jurisdiction over a company that transacts any business within Missouri, makes any contract within Missouri and commits a tortious act within Missouri. The latter requirement includes fraudulent acts that create consequences in Missouri.

(2) Left Gate has sufficient minimum contacts with Missouri to satisfy due process.

(a) This Court need not analyze personal jurisdiction based solely on Left Gate's Internet conduct. The law for personal jurisdiction based solely on Internet use still is developing. Missouri has not yet adopted any test or standard for assessing personal jurisdiction based solely on Internet contacts and need not make this decision now because a substantial number of contacts between Andra and Left Gate exist outside the Internet and within the traditional realm of mail and telephone communications. As such, this Court will use a traditional minimum contacts analysis to determine whether Missouri can assert personal jurisdiction over Left Gate. Minimum contacts traditionally are evaluated on a case-by-case basis; the inquiry must not be mechanical. To evaluate whether a defendant's contact with the forum state (where jurisdiction is sought) satisfies due process, a court considers whether the defendant purposely availed itself of the privileges of conducting activities within the forum state, enjoys the protections of the state's laws and, therefore, reasonably should anticipate being haled into court in that state.

(b) Left Gate purposely availed itself of the privilege of doing business in Missouri. It allowed and promoted business in Missouri over the last five years and has used eBay as a broad platform to conduct regular commercial business in Missouri. It consciously transmitted advertising information to all Internet users, including many potential

Missouri customers, and advertises it will ship vehicles anywhere in the United States. Left Gate derives about 0.86 percent of its annual business from sales to Missouri residents. The company's regular eBay transactions with Missouri residents created intentional, substantial connections with Missouri.

(c) Left Gate made intentional and continuing contacts directed toward Andra in Missouri. To complete the sale, the company had to reach out to Missouri to mail the purchase order and federal buyer's guide to Andra's Missouri address, to receive Andra's signature from Missouri on these legal documents, and to arrange shipping of the vehicle into Missouri. These business transactions required significant coordination between Left Gate and Andra. Andra also alleges that Left Gate made verbal representations about its willingness to honor the vehicle's warranty and pay for repairs, creating continuing obligations between Left Gate and Andra. Because the company was aware of the vehicle's location, having just shipped the vehicle to Missouri days before, it is reasonable to conclude Left Gate knew the vehicle would be repaired in Missouri. Moreover, Left Gate's verbal representations over the telephone about the vehicle's features and condition created foreseeable future consequences and continuing effects in Missouri when the vehicle did not live up to Andra's expectations.

(d) It was reasonable for Left Gate to foresee it would be sued in a Missouri court. Although the company included in its contract a clause selecting a Texas forum for litigation, a forum selection clause does not determine automatically a court's personal jurisdiction over a defendant. Left Gate is a highly sophisticated seller with a long history of sales to Missouri. It advertised its vehicles on eBay with the expectation that they would be purchased in Missouri. It intentionally reached into Missouri by telephoning Andra in Missouri to make representations about the vehicle, shipped sales documents to him in Missouri, and arranged to have the vehicle delivered to Andra in Missouri. Sellers cannot avail themselves of the benefits of doing commercial business in Missouri and cannot reach out to Missouri to create ongoing relationships with and obligations to Missouri residents without accepting the legal responsibilities that accompany these transactions.

(e) Missouri's exercise of personal jurisdiction over Left Gate is reasonable. Though defending itself against a lawsuit in Missouri may be a burden to Left Gate, the company has not alleged that doing so would place it at a severe disadvantage. On the other hand, Missouri clearly is the most convenient forum for Andra, given that he lives in Missouri and the vehicle is located in Missouri. Further, Missouri has expressed a clear intent to ensure its consumers can adjudicate claims under the state's merchandising practices act in Missouri courts. Accordingly, Left Gate has not met its burden to make a compelling case that jurisdiction in Missouri would be unreasonable. As such, traditional notions of fair play and substantial justice are not offended if Missouri courts assert personal jurisdiction over the company.