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TABLE OF AUTHORITIES

JURISDICTIONAL STATEMENT

Respondent H. L. Frazee agrees that this Court has jurisdiction. There were no authorized after-trial motions that would extend finality of the judgment. L.F. 4. Appellant Peoples Bank filed a timely notice of appeal within 10 days after the judgment became final. Rules 81.04(a), 81.05(a)(1). The Bank's application for transfer in both the Court of Appeals and this Court were also timely. *See* App. Sub. Br. 7; Rules 83.02, 83.04.

STATEMENT OF FACTS

The following additional facts appear in the record:

The loan on which the Bank sued Respondent H. L. Frazee was initially made to Stephen and Jennifer Frazee. L.F. 39 ¶ 2.[1] The balance, as of the time in question, was $70,293.67. L.F. 48. The promissory note was secured by a security interest in favor of the Bank in two used cars, a 1993 Nissan and a 2001 Toyota. L.F. 48. Because the note was in default, the Bank's executive vice president, Bill Burnett, told Stephen that the Bank was calling the note. L.F. 39 ¶ 4.

Burnett said that he met with Stephen, who "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 he would talk to Stephen and his wife. . . . Subsequently, H. L. Frazee called me and agreed to sign a guaranty of his son's Note." L.F. 39 ¶¶ 4-5. Burnett said that he then prepared and mailed the guaranty to Frazee in Missouri and that Frazee signed and

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[1]To avoid repetition of the full names of all of the people, Respondent H. L. Frazee will be designated in this brief simply as "Frazee." References to Stephen and Jennifer Frazee will use their first names for clarity.

returned it. L.F. 39 ¶ 6.

The promissory note that Stephen and Jennifer executed on April 26, 2006, shows that the purpose of the loan was "REFINANCE." L.F. 48. It does not reflect that the Bank loaned them any additional money. L.F. 48. The renewal interest rate was 9.900%. L.F. 48. While the renewal note listed the 1993 Nissan and the 2001 Toyota as collateral, a related document dated the same day shows that the Bank instead took a security interest in two different used cars, a 1998 Mercedes and a 1999 Volvo. L.F. 11. The Bank subsequently alleged that it had a security interest in those cars, and the judgment ordered foreclosure of the vehicle liens. L.F. 9, 46.

The guaranty agreement stated that it was "an independent obligation which is separately enforceable from the obligation of the Debtor." L.F. 51.

The record does not show that Frazee had any interest in the vehicles. Only Stephen and Jennifer signed the security agreement. L.F. 11. Nor does it show that Frazee had any interest in the funds that Stephen and Jennifer had previously borrowed.

POINT RELIED ON

(*Responding to the Bank's Points I and II*)

The trial court did not err by quashing the attempted Missouri registration of the Oklahoma judgment against Frazee, because the judgment was invalid, in that Frazee had no financial stake in the transaction, derived no financial benefit from it, and had no other contact with Oklahoma sufficient to permit Oklahoma to exercise long-arm jurisdiction over him.

Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985).

Bond Leather Co. v. Q.T. Shoe Mfg. Co., 764 F.2d 928 (1st Cir. 1985).

International Shoe Co. v. Washington, 326 U.S. 310 (1945).

United Buying Group, Inc. v. Coleman, 296 N.C. 510, 251 S.E.2d 610

(1979).

ARGUMENT

(*Responding to both the Bank's Points I and II*)

The trial court did not err by quashing the attempted Missouri registration of the Oklahoma judgment against Frazee, because the judgment was invalid, in that Frazee had no financial stake in the transaction, derived no financial benefit from it, and had no other contact with Oklahoma sufficient to permit Oklahoma to exercise long-arm jurisdiction over him.

Peoples Bank seeks to change the constitutional debate. The United States Supreme Court has consistently said that a state's constitutional authority to assert jurisdiction over a nonresident defendant depends on the extent to which the defendant's contacts with the state "proximately result from actions by the defendant *himself*." *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 475 (1985). *See also, e.g., Asahi Metal Indus. Co. v. Superior Court,* 480 U.S. 102, 112 (1987); *Hanson v. Denckla,* 357 U.S. 235, 253 (1958). But the Bank insists that the focus should be not on the defendant's activities, but instead on the "*effects* or *consequences* in the forum state resulting from the defendant's actions." App. Sub. Br. at 17.

That turns the constitutional analysis on its ear. No lender will

ever admit that it did not rely on a guaranty as a condition of making or renewing a loan or postponing collection efforts. As a practical matter, then, accepting the Bank's argument would mean that a guarantor who has no contact with a state other than by mailing a signed guaranty to a lender located there will be subject to the state's long-arm jurisdiction, because the lender can simply tell the local court that it relied on the guaranty. That would gut the settled application of the due process clause that "an individual's contract with an out-of-state party *alone*" cannot "automatically establish sufficient minimum contacts in the other party's home forum," *Burger King,* 471 U.S. at 478, because the lender could prove reliance in that situation, too. Hence the due process clause would be meaningless, because applying it that loosely would swallow the very protections that it affords.

The trial court properly determined that Oklahoma's purported exercise of long-arm jurisdiction over Frazee was invalid. The Court of Appeals correctly held that Oklahoma could not constitutionally exercise jurisdiction over him "because his guaranty was not accompanied by any substantial activity in Oklahoma that Frazee purposefully directed toward that state or its residents." This Court should reach the same conclusion and affirm the judgment, and so it should affirm the judgment

quashing the attempted registration of the Oklahoma judgment in Missouri.

A. *Standard of review.*

The Bank correctly intones the familiar standard of review under *Murphy v. Carron,* 536 S.W.2d 30 (Mo. banc 1976) in connection with both of its Points. App. Sub. Br. at 16-17, 41-42.[2] *Murphy* applies when the question is whether a nonresident defendant is subject to extraterritorial jurisdiction. *See Lovenduski v. McGrain,* 69 S.W.3d 80, 84 (Mo. App. 2001). Consequently, this Court must affirm the judgment if it is supported by the evidence and is not against the weight of the evidence and if the trial court did not erroneously declare or apply the law. *Murphy,* 536 S.W.2d at 32.

Although the evidence is documentary, in the form of the parties' affidavits and copies of documents from the Oklahoma proceeding, this

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[2]Points I and II both turn on whether the trial court properly ruled that Frazee had insufficient minimum contacts with Oklahoma to sustain Oklahoma's exercise of long-arm jurisdiction over him. The Bank's argument in Point II that the trial court improperly placed the burden of proof on it is immaterial in view of the undisputed facts. Consequently, Frazee addresses Points I and II together here.

Court nevertheless must defer to the trial court's factual determinations "whether there is substantial evidence to support the judgment and whether that judgment is against the weight of the evidence, even where those facts are derived from pleadings, stipulations, exhibits and depositions.'" *MSEJ, LLC v. Transit Casualty Co.,* 280 S.W.3d 621, 623 (Mo. banc 2009). "In other words, even though this Court has the same opportunity to review the evidence as does the circuit court, the law allocates the function of fact-finder to the circuit court." *Id.*

In a bench-tried case, furthermore, this Court is primarily concerned with the correctness of the trial court's result, not its rationale. *Missouri Soybean Ass'n v. Missouri Clean Water Comm'n,* 102 S.W.3d 10, 22 (Mo. banc 2003). It therefore must affirm the judgment if the trial court reached the right result on any ground, regardless whether the trial relied on it. *Id.*

B. *The constitutional limits on a state's assertion of long-arm jurisdiction.*

The intent of the Oklahoma long arm statute is to extend the jurisdiction of the state courts "to the outer limits permitted by the Oklahoma Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution." *Gilbert v. Security Fin.*

Corp., 152 P.3d 165, 173 (Okla. 2006). The question whether Frazee was subject to Oklahoma long-arm jurisdiction thus turns on whether the United States Constitution permits it.

A state court may exercise personal jurisdiction over a nonresident defendant only if there are "minimum contacts" between the defendant and the forum state. This is the "constitutional touchstone" of a state's exercise of extraterritorial jurisdiction. *Burger King,* 471 U.S. at 474. There must be such contacts that maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945). Thus, a nonresident's "conduct and connection" with the forum state must be such that the nonresident "should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297 (1980). It "is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla,* 357 U.S. 235, 253 (1958). The test "is not susceptible of mechanical application," but instead "the facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present." *Kulko v. Superior Court,* 436 U.S. 84, 92 (1978).

As noted above, a nonresident's contract with a party in the forum state does not, of itself, establish sufficient minimum contacts between the nonresident and the forum state. *Burger King,* 471 U.S. at 478. "Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." *International Shoe,* 326 U.S. at 319. The United States Supreme Court has "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.*'" *Burger King,* 471 U.S. at 479 (emphasis added). Thus, to the extent that a nonresident "exercises the privilege of conducting activities within a state," he or she "enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, *so far as those obligations arise out of or are connected with the activities within the state,* a procedure which requires" the nonresident "to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." *International Shoe,* 326 U.S. at 319 (emphasis added).

Contrary to the Bank's argument, however, the focus is not on the

"*effects* or *consequences* in the forum state resulting from the defendant's actions," App. Sub. Br. at 17, but on the defendant's actions themselves. "Jurisdiction is proper . . . where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State." *Burger King,* 471 U.S. at 475. The "substantial connection" between the defendant and the forum state necessary to support a finding of minimum contacts "must come about by *an action of the defendant purposefully directed toward the forum State." Asahi,* 480 U.S. at 112. It "is essential in each case that there be some act by which *the defendant purposefully avails itself* of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. *Hanson,* 357 U.S. at 253 (emphasis added).

The issue, then, is not the commercial consequences of a defendant's actions in the forum state, but "the 'quality and nature' of the defendant's activity." *Kulko,* 436 U.S. at 92.

C. *Long-arm jurisdiction over a nonresident guarantor.*

In the case of a guaranty of a third party's financial obligation, "the nonresident party has plainly taken action with commercial consequences" in the forum state, but nevertheless a guarantor is not "truly akin to a seller who solicits revenue from a resident of the forum state." *Bond*

Leather Co. v. Q.T. Shoe Mfg. Co., 764 F.2d 928, 933 (1st Cir. 1985). Thus, "the inquiry must narrow to whether the commercial action taken, in light of the contacts with the forum state it entailed, amounts to a purposeful decision by the nonresident to 'participate' in the local economy and to avail itself of the benefits and protections of the forum." *Id.* at 933-34. The execution of a guaranty is not "a purposeful decision which is *independently* sufficient to support jurisdiction." *Id.* at 934.

Many courts have considered whether a nonresident guarantor is amenable to another state's long-arm jurisdiction. They have routinely held that when, as here, the guarantor has no financial stake in a transaction and derives no financial benefit from it, due process prevents the forum state's exercise of extraterritorial jurisdiction. *E.g., Bond Leather,* 764 F.2d at 932-35; *Reverse Vending Assocs. V. Tomra Syss. US, Inc.,* 655 F. Supp. 1122, 1127 (E.D. Pa. 1987); *Sibley v. Superior Court,* 16 Cal. 3d 442, 546 P.2d 322, 325, 128 Cal. Rptr. 34 (1976); *FDIC v. Hiatt,* 117 N.M. 461, 872 P.2d 879, 882 (1994); *United Buying Group, Inc. v. Coleman,* 296 N.C. 510, 251 S.E.2d 610, 615-16 (1979); *Mustang Tractor & Equip. Co. v. Sound Environmental Servs., Inc.,* 104 Ohio Misc. 2d 1, 727 N.E.2d 977, 985 (1999). *Cf. Arkansas Poultry Coop. v. Red Barn Sys., Inc.,* 468 F.2d 538, 540 n.2 (8th Cir. 1972) (in finding a lack of minimum

contacts, court noted but did not consider that lender did not rebut guarantor's denial that debtor was a wholly owned subsidiary of guarantor). At least one court has gone further, holding that even a nonresident guarantor who owns stock in the resident debtor, and who may have been involved in its financial decisions, is not subject to long-arm jurisdiction to enforce a guaranty signed outside the forum state. *Edwards v. Geosource, Inc.,* 473 So. 2d 36, 37 (Fla. Ct. App. 1985).

United Buying Group perfectly contrasts the rights of a guarantor who has a financial stake and one who does not. The case involved two brothers who individually signed conditional promissory notes guaranteeing payment to United Buying Group, a North Carolina corporation, for shoes that it ordered for Coleman Shoe Company, a member of the group. *United Buying Group,* 251 S.E.2d at 612. One brother, Lawrence Coleman, a Virginia resident, was the president and primary shareholder of Coleman Shoe Company and a shareholder in United Buying Group. *Id.* The other brother, Morton Coleman, a New York resident, was a physician who had no ownership or other interest in either Coleman Shoe Company or United Buying Group. *Id.* at 612, 615. When Coleman Shoe Company became insolvent, United Buying Group sued the brothers on their respective guarantees. *Id.* at 612.

Both brothers moved to dismiss on the ground that the court lacked personal jurisdiction over them. *Id.* The trial court denied Lawrence's motion but dismissed the case as to Morton. *Id.* The Court of Appeals held that both brothers were subject to personal jurisdiction in North Carolina, but the North Carolina Supreme Court reversed as to Morton.

Morton's only contact with North Carolina, the court said, "was the conditional promissory note he signed in New York which was payable to plaintiff in North Carolina." *Id.* at 615. He merely helped his brother, gaining nothing for himself. *Id.* That, the court said, did not establish minimum contacts sufficient to support long-arm jurisdiction over him:

> By agreeing to guarantee Coleman's account indebtedness with Buying Group, Dr. Coleman incurred a potential liability to a North Carolina corporation with no attending commercial benefits to himself enforceable in the courts of North Carolina. The only conceivable benefit accruing to Dr. Coleman as a result of signing the note was the personal satisfaction of helping his brother Lawrence. Needless to say, such a benefit, while substantial, does not give rise to legal rights enforceable in the courts of North Carolina. The attainment of such personal gratification can hardly be said to constitute a purposeful

> invocation of the benefits and protection of North Carolina's laws under the minimum contacts standard articulated in *International Shoe* and its progeny.

Id. Thus, the North Carolina Supreme Court said, the guaranty was "an isolated, fortuitous contact with Buying Group, a North Carolina corporation that his brother Lawrence happened to be doing business with." *Id.* Hence the court held that "assumption of in personam jurisdiction over Morton Coleman by the courts of North Carolina would violate due process of law." *Id.*

Bond Leather is similar. There, a shoe manufacturer bought leather from Bond, a Massachusetts corporation. *Bond Leather,* 764 F.2d at 930. Because of its precarious financial condition owing to the president's illness, however, Bond agreed to continue extending it credit only if it were assured of payment. *Id.* The manufacturer's president, who was its majority shareholder, arranged for his brother's Ohio corporation to guarantee the manufacturer's debt. *Id.* The brother then sent Bond a letter by which the Ohio corporation guaranteed payment for all of the manufacturer's purchases. *Id.* The manufacturer paid half of its outstanding debt, and its president fraudulently induced Bond to release his brother's corporation from the remaining guaranty. *Id.* Bond

later sued in Massachusetts, and the trial court refused to dismiss the Ohio corporation from the claim on the guaranty on jurisdictional grounds. *Id.* at 930-31.

The First Circuit reversed. It rejected Bond's argument that the guaranty, of itself, was sufficient to confer long-arm jurisdiction. *Id.* at 933-34. It found "absolutely no supplemental contacts" linking the Ohio corporation to Massachusetts. *Id.* at 934. The guaranty "called for no active role" for the Ohio corporation. *Id.* Nor did the guaranty create any contract right that the Ohio corporation could have enforced in Massachusetts "and which could fairly be said to represent an intent by [the Ohio corporation] to reap the benefits of Massachusetts law." *Id.* Furthermore, no commercial benefits flowed to the Ohio corporation as a result of its guaranty: It received no compensation for the guaranty, and it had no financial interest in the debtor manufacturer. *Id.* Finally, it "had no presence in Massachusetts, no direct business dealings with parties there and no intent to initiate its own business dealings with Bond or any other Massachusetts party." *Id.* "Rather than marking any move by it into the Massachusetts marketplace," its action "represented an apparently isolated attempt to assist [the manufacturer's president's] flagging corporation in the wake of his illness." *Id.*

D. *Frazee lacked sufficient minimum contacts with Oklahoma.*

To some degree, the Bank's argument is circular. The Bank asserts that Frazee "knew that the loan was from an Oklahoma bank to Oklahoma residents and that his guaranty would have consequences in Oklahoma." App. Sub. Br. at 20. But since "an individual's contract with an out-of-state party *alone*" cannot "automatically establish sufficient minimum contacts in the other party's home forum," *Burger King,* 471 U.S. at 478, long-arm jurisdiction cannot arise here just because the guaranty was directed to the Oklahoma resident to whom the act of making the guaranty itself would be insufficient.

Frazee is not, and has never been, an Oklahoma resident. Supp. L.F. 1. He owns no property there and has never owned any there. *Id.* He has never had any business interests in Oklahoma. *Id.* He has never purposely availed himself of the privilege of conducting activities in Oklahoma. *Id.* At no time has he ever had the minimum contacts constitutionally necessary to subject himself to personal jurisdiction in the Oklahoma courts. *Id.* at 1-2.

United Buying Group, Bond Leather, and similar cases compel the conclusion that Frazee lacked the minimum contacts with Oklahoma constitutionally sufficient to support its exercise of long-arm jurisdiction

over him in this case. These factors coalesce to support the trial court's determination:

- There are "absolutely no supplemental contacts" linking Frazee to Oklahoma. *Bond Leather,* 764 F.2d at 934. *See deMco Technologies, Inc., v. C.S. Engineered Castings, Inc.,* 769 So. 2d 1128, 1131-32 (Fla. Ct. App. 2000); *Holton v. Prosperity Bank,* 602 So. 2d 659, 662-63 (Fla. Ct. App. 1992); *Lazzaro v. Charlevoix Lakes,* 108 Mich. App. 120, 310 N.W.2d 295, 297, 298-99 (1981); *United Buying Group,* 251 S.E.2d at 615.
- "The guaranty agreement called for no active role" by Frazee. *Bond Leather,* 764 F.2d at 934. The most that it required him to do, other than pay the debt, was give the bank such financial information as it periodically requested. L.F. 51.
- Nor is there anything in this record to show that there was any negotiation of the terms of the guaranty. *See Bond Leather,* 764 F.2d at 934. Instead, the guaranty appears on a standard, printed bank form with names and addresses added. L.F. 51.
- Nothing in either the guaranty or the record as a whole

identifies "any contract rights created by the guaranty" in Frazee that "could have been enforced in the [Oklahoma] courts and which could fairly be said to represent an intent by [Frazee] to reap the benefits of [Oklahoma] law." *Bond Leather,* 764 F.2d at 934. *See Sibley,* 546 P.2d at 325; *United Buying Group,* 251 S.E.2d at 615. "Although [Frazee] may have reasonably foreseen that his execution or breach of the guaranty agreement would have some impact in [Oklahoma], it does not appear that [the Bank] assumed any obligations to [Frazee] which he might have sought to enforce in [Oklahoma]." *Sibley,* 546 P.2d at 325. The most that can be said is that Steven and Jennifer Frazee got to continue to use the cars that they mortgaged to the bank. Nothing suggests that Frazee himself had any interest in the cars or any right to use them.

- The trial court found that Frazee "received no apparent pecuniary benefit or gain from signing the guaranty." L.F. 65. There is, indeed, no basis "to conclude that any commercial benefits did, in fact, flow to" Frazee as a result of the guaranty. *Bond Leather,* 764 F.2d at 934. *See Reverse*

Vending, 655 F. Supp. at 1127; *Hiatt,* 872 P.2d at 882. The record does not suggest that Frazee had any financial interest in the loan transaction, *id.*; *United Buying Group,* 251 S.E.2d at 615, or participate in the benefits of the local Oklahoma economy, *Bond Leather,* 764 F.2d at 934; *Reverse Vending,* 655 F. Supp. at 1127; *J.C. Snavely & Sons v. Springland Assocs.,* 411 Pa. Super. 1, 600 A.2d 972, 975 (1991). "Rather than marking any move by [Frazee] into the [Oklahoma] marketplace," Frazee's execution of the guaranty "represented an apparently isolated attempt to assist [Stephen and Jennifer Frazee] in the wake of their [financial difficulty]." *Bond Leather,* 764 F.2d at 934. "The only conceivable benefit accruing to [Frazee] was the personal satisfaction of helping [Stephen and Jennifer]." *United Buying Group,* 261 S.E.2d at 615.

- Indeed, nothing in the record shows that the Bank advanced any additional money to Stephen and Jennifer Frazee, much less to Frazee himself. *Cf. Moran v. Bombardier Credit, Inc.,* 39 Ark. App. 122, 839 S.W.2d 538, 539 (1992) (insufficient minimum contacts despite creditor advancing additional

financing after execution of guaranty).

- As the trial court also noted, the guaranty here contains no forum selection clause designating Oklahoma as the venue for resolving any dispute. L.F. 66. This, too, is a pertinent consideration. *Labry v. Whiteney Nat. Bank,* 8 So. 3d 1239, 1242 (Fla. Ct. App. 2009); *Hiatt,* 872 P.2d at 882.

Hence this guaranty was not "an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." *Burger King,* 471 U.S. at 479. That is true for two reasons. First, although the Bank argues that Frazee "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," App. Sub. Br. at 32, the note that the guaranty secured was simply a renewal of the old loan, not a new loan—for under Oklahoma law, the "execution of a renewal note in lieu of a note previously given is not a payment or extinguishment of the original demand." *Drum Standish Comm'n Co. v. First Nat. Bank & Trust Co.,* 168 Okla. 400, 31 P.2d 843, 848 (1934). And indeed there is no evidence that the Bank loaned any additional funds. Second, by definition, since the guaranty recited that it was "an

independent obligation which is separately enforceable from the obligation of the Debtor," L.F. 51, the guaranty itself *was* the object of the transaction. Frazee's obligation under it does not arise out of, and is not connected with, other activities in which he engaged in Oklahoma—because there were none. It thus was wrong to require him to respond to a suit brought there to enforce the guaranty. *International Shoe,* 326 U.S. at 319.

E. *The Bank's complaint about the trial court's allocation of the burden of proof is immaterial.*

In Point II, the Bank complains that the trial court improperly placed the burden on it to demonstrate that Oklahoma had the power to exercise personal jurisdiction over Frazee. App. Sub. Br. at 41-53. In the overall context of the trial court's decision, and given the Bank's failure to demonstrate any prejudice from the asserted error, this point makes much ado about nothing.

The facts in this case derive from the documents. Apart from what the Bank calls the "apparent ambiguity" in the statement of its executive vice president Ben Burnett that "H. L. Frazee was called or called me," App. Sub. Br. at 12, there is no real dispute about what happened. All the court did by placing the burden of proof on the Bank was resolve that

ambiguity in favor of a finding that the Bank "initiated contact with Defendant Frazee regarding whether he would be willing to guarantee payment of a loan for Stephen and Jennifer Frazee," L.F. 65. The Bank concedes as much. App. Sub. Br. at 12. The judgment shows that otherwise the trial court simply dealt with the facts as the documents showed them to be, and since the facts were not disputed, it was immaterial who bore the burden of proof.

Indeed, the Bank's argument under Point II does not explain how the trial court's use of the burden of proof to resolve the ambiguity in Burnett's statement supposedly prejudiced it. Rather than demonstrate prejudice, the Bank devolves this narrow claim of error into a much broader discussion, more appropriate to Point I, whether Oklahoma had long-arm jurisdiction over Frazee at all. *Id.* at 51-53. The alleged error in placing the burden of proof on the Bank, then, does not require reversal. *Burk v. Burk,* 936 S.W.2d 144, 145-46 (Mo. App. 1996).

While the trial court placed some emphasis on who initiated contact with whom, it noted the parties' agreement that Frazee's "only contact with the State of Oklahoma for purposes of this lawsuit was via telephone and though the mail," and who initiated contact was but one factor that it cited in considering the totality of the circumstances. L.F. 65-66. In the

grand scheme of things, the trial court correctly concluded that Frazee's contacts with Oklahoma were not sufficient to satisfy the constitutional jurisdictional requirement that he have the requisite "minimum contacts" through purposefully availing himself "of the privilege of conducting activities within" Oklahoma, "thus invoking the benefits and protections of its laws." *Hanson,* 357 U.S. at 253. Even assuming, then, that the trial court's reasoning was incorrect, its result is not.

F. *The judgment should be affirmed.*

The trial court reached the right decision. "This was doubtless a purposeful act for which some consideration, even if non-pecuniary, flowed to" Frazee. *Bond Leather,* 764 F.2d at 934. Consideration can inhere in affection between family members under both Missouri and Oklahoma law. *E.g., Studybaker v. Cofield,* 159 Mo. 596, 61 S.W. 246, 252 (1901); *In re Marriage of Harp,* 278 S.W.3d 681, 688 (Mo. App. 2008); *Richards v. Lowery,* 135 Okla. 243, 275 P. 335, 338 (1929). "Viewing this transaction as a whole, however," one must "conclude that, absent any intent by [Frazee] to exploit the local economy, as has been required not only in prior cases addressing jurisdiction over nonresident guarantors, but more generally in cases upholding jurisdiction," it cannot be said that Frazee, "on the basis of [his] isolated act, availed [himself] of the benefits of

transacting business in [Oklahoma] and should reasonably have anticipated being haled into court there." *Bond Leather,* 764 F.2d at 934-35. Accordingly, the judgment is correct and should be affirmed.

CONCLUSION

Frazee did nothing more than what any good person would do: He helped his relatives in time of financial distress. In doing so, he created an obligation to the Bank, but he did not subject himself to suit in Oklahoma, where he has no other financial interest and no other activities. His was no "purposeful decision . . . to 'participate' in the local economy and to avail [himself] of the benefits and protections of the forum." *Bond Leather,* 764 F.2d at 933-34. The trial court properly quashed the attempted registration of the Oklahoma judgment against him, and this Court should affirm.

Respectfully submitted,

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By_____

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CERTIFICATE OF COMPLIANCE WITH RULE 84.06

I certify the following:

1. The foregoing Brief complies with the type and volume limitation of Rule 84.06. The typeface is Century 725 BT.

2. The signature block of the foregoing Brief contains the information required by Rule 55.03(a). To the extent that Rule 84.06(c)(1) may require inclusion of the representations appearing in Rule 55.03(b), those representations are incorporated herein by reference.

3. The foregoing Brief, excluding the cover, certificate of service, this certificate, and the signature block, contains 5,356 words as counted by Word Perfect 9.

4. This Brief has been prepared using Word Perfect 9 for Windows.

5. The disk submitted herewith as required by Rule 84.06(g) has been scanned for viruses and is virus free.

_____

Richard L. Schnake, # 30607

CERTIFICATE OF SERVICE

I certify that I served one copy of this Respondent's Substitute Brief in the form specified by Rule 84.06 and one copy of the disk required by Rule 84.06(g) on all counsel for Appellant by mailing them to them at their addresses of record on February 17, 2010.

_____

Richard L. Schnake, # 30607