

**AFFIRM; and Opinion Filed July 14, 2016.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

---

**No. 05-16-00072-CV**

---

**DJRD, LLC D/B/A DARCARS TOYOTA OF BALTIMORE, Appellant  
V.  
SKOPOS FINANCIAL, LLC, Appellee**

---

**On Appeal from the 44th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-15-09176**

---

**MEMORANDUM OPINION**

**Before Justices Francis, Fillmore, and Schenck  
Opinion by Justice Schenck**

This is an interlocutory appeal from an order denying the special appearance of appellant DJRD, LLC d/b/a Darcars Toyota of Baltimore (“Darcars”) in a lawsuit instituted by appellee SKOPOS Financial, LLC (“SKOPOS”). On appeal, Darcars argues it has no contacts with Texas to support specific or general jurisdiction, and traditional notions of fair play and substantial justice are offended by the exercise of jurisdiction in this case. We conclude Darcars has sufficient minimum contacts with Texas to support specific jurisdiction and the exercise of jurisdiction over Darcars does not offend traditional notions of fair play and substantial justice. Accordingly, we affirm the trial court’s order denying Darcars’s special appearance. Because the dispositive issues in this case are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

## FACTUAL AND PROCEDURAL BACKGROUND

This case involves a dispute between SKOPOS, a Delaware limited liability company headquartered in Dallas County, Texas, and Darcars, a Maryland automobile dealership. SKOPOS is in the business of purchasing automobile retail installment sales contracts from automobile dealers like Darcars. In 2013, SKOPOS approached Darcars about a potential business relationship whereby Darcars could resell retail installment sales contracts to SKOPOS. By this arrangement with SKOPOS, Darcars is able to accelerate its receipt of payment for the sale of vehicles. Negotiations ensued and culminated in the parties entering into a Non-Recourse Dealer Retail Agreement (“Agreement”), governed by the laws of the state of Texas. The parties operated under the Agreement for more than two years until the default occurred that prompted this lawsuit.

Under the Agreement, Darcars had the option of offering to sell and assign retail installment sales contracts to SKOPOS, with Darcars retaining control over final approval of the sale. In carrying out the Agreement, Darcars granted SKOPOS an irrevocable power-of-attorney to act as Darcars’s agent, including the right to sign Darcars’s name to documents and checks.

During the course of their relationship, Darcars sold and assigned 72 separate retail installment sales contracts to SKOPOS with an aggregate value of more than one million dollars.<sup>1</sup> Among those contracts was one for the purchase of a 2014 Toyota Camry, which obligated the purchaser to make a down payment of \$500, which she failed to do. As a result, and pursuant to the Agreement, SKOPOS demanded that Darcars repurchase the contract or pay the unpaid balance. Darcars refused to do so. SKOPOS then filed suit against Darcars in Texas

---

<sup>1</sup> The retail installment sales contracts that Darcars sold and assigned to SKOPOS included a statement that “[Darcars] assigns its interest in this contract to [SKOPOS] under the terms of Darcars’s agreement with [SKOPOS],” which, as previously noted, is governed by the laws of the state of Texas.

for breach of the Agreement. In response, Darcars filed a special appearance challenging the trial court's jurisdiction over it.

Darcars supported its special appearance with the affidavit of its General Manager generally disavowing having done business in Texas, detailing the nature of Darcars's business, and attaching a copy of the Agreement. SKOPOS responded by presenting the affidavit of its Manager detailing the nature of the relationship between SKOPOS and Darcars, the procedures utilized to consummate the sale of individual retail installment sales contracts, the volume of sales and the dollars involved, the contractual default by Darcars, and attaching the Agreement and the retail installment sales contract for the 2014 Toyota Camry that triggered the alleged default by Darcars. In reply, Darcars filed an amended affidavit attempting to limit the relevant number of contracts sold to those associated with the dealership location that sold the Toyota Camry that gave rise to the claim. The trial court denied Darcars's special appearance. This interlocutory appeal followed.

#### **STANDARD OF REVIEW**

Whether a trial court has personal jurisdiction over a nonresident defendant is a question of law. *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 790-91 (Tex. 2005). Consequently, we review a trial court's determination of a special appearance *de novo*. *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007). If, as is the case here, the trial court does not issue findings-of-fact and conclusions-of-law, we must imply all findings of fact necessary to support the trial court's findings that are supported by the evidence. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002); *Lewis v. Indian Springs Land Corp.*, 175 S.W.3d 906, 913 (Tex. App.—Dallas 2005, no pet.). In this case, the trial court impliedly found the Texas long-arm statute permits the exercise of jurisdiction over Darcars,

Darcars established purposeful “minimum contacts” with the forum state, and the exercise of jurisdiction over Darcars comports with “traditional notions of fair play and substantial justice.”

## DISCUSSION

### A. Personal Jurisdiction

In its first and second issues, Darcars argues it has no contacts with the state of Texas to support the exercise of either specific or general jurisdiction. Texas courts may exercise personal jurisdiction over a nonresident defendant only if (1) the Texas long-arm statute permits the exercise of jurisdiction, and (2) the jurisdiction satisfies constitutional due-process guarantees. *Schlobohm v. Schapiro*, 784 S.W.2d 355, 356 (Tex. 1990).

#### 1. Long-Arm Statute

Our long-arm statute allows jurisdiction over a nonresident that does business in Texas. TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (West 2015). The Texas long-arm statute includes a list of acts that may constitute doing business in this state, including contracting with a Texas resident where either party is to perform the contract in whole or in part in Texas. *Id.* § 17.042(1).

SKOPOS’s breach of contract claim is based on the parties’ Agreement, which is to be performed, at least in part, through Darcars’s submission of sales proposals and documentation to SKOPOS and SKOPOS’s review of same, in Texas. Thus, SKOPOS satisfied its burden to plead sufficient allegations to invoke jurisdiction under the plain meaning of the Texas long-arm statute. *Moki Mac*, 221 S.W.3d at 574–75. Having determined a basis for jurisdiction over Darcars exists, we now consider whether the exercise of jurisdiction over Darcars is consistent with federal and state constitutional guarantees of due process. *See Schlobohm*, 784 S.W.2d at 356.

#### 2. Due-Process Guarantees

Constitutional due-process guarantees are satisfied when (1) the nonresident defendant has established “minimum contacts” with the forum state, and (2) the exercise of jurisdiction comports

with “traditional notions of fair play and substantial justice.” *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (emphasis added). Minimum contacts are established when a defendant “purposefully avails” itself of the privilege of conducting activity in the forum state, thus invoking the benefits and protections of its laws. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474–76 (1985) (emphasis added). There are three aspects of purposeful availment applicable to the minimum contacts analysis. First, it is only the defendant’s contacts with the forum that count. *Id.* at 475. Second, the acts relied on must be “purposeful” rather than fortuitous. *Id.* Third, a defendant must seek some benefit, advantage, or profit by “availing” itself of the jurisdiction. *Id.*

### 3. *Specific or General Jurisdiction*

A defendant’s contacts with a forum can give rise to either specific or general jurisdiction. *Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 337 (Tex. 2009). If the defendant has made continuous and systematic contacts with the forum, general jurisdiction is established whether or not the defendant’s alleged liability arises from those contacts. *BMC Software*, 83 S.W.3d at 796. In contrast, when specific jurisdiction is alleged, we focus the minimum-contacts analysis on the “relationship among the defendant, the forum [,] and the litigation.” *Guardian Royal Exch. Assurance, Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 226 (Tex. 1991) (citing *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 (1984)). Specific jurisdiction is established if the defendant’s alleged liability “aris[es] out of or [is] related to” an activity conducted within the forum. *Helicopteros*, 466 U.S. at 414 n. 8.

## **B. Jurisdictional Analysis**

### 1. *Minimum Contacts*

First, in determining whether Darcars purposefully availed itself of the privilege of

conducting business in the state of Texas, we consider only Darcars's contacts with the state. *Michiana*, 168 S.W.3d at 785. While SKOPOS may have initiated contact with Darcars, Darcars occupied the driver's seat in their relationship. Darcars reached out to SKOPOS in Texas on at least 72 separate occasions over a two year period to solicit the purchase of retail installment sales contracts valued collectively at more than one million dollars. This lawsuit arises from one of those 72 contracts. These contacts are not the unilateral acts of SKOPOS, they are contacts of Darcars.

Second, we consider whether Darcars's contacts with Texas were purposeful rather than fortuitous. The supreme court has stated that the contacts of "[s]ellers who 'reach out beyond one state and create continuing relationships and obligations with citizens of another state'" are purposeful rather than fortuitous. *Id.* at 785 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984)). Darcars voluntarily entered into the Agreement with SKOPOS whereby it created a continuing relationship and obligations with a resident of Texas. Pursuant to that Agreement, Darcars had the option to solicit SKOPOS for the purpose of selling its retail installment agreements. Under these circumstances, we conclude Darcars's contacts with the state were purposeful rather than fortuitous.

Finally, we consider whether Darcars sought and obtained some profit from conducting business with a Texas resident. The stream of commerce Darcars tapped into was significant. As noted, over approximately a two year period, Darcars sold and assigned 72 retail installment sales contracts valued in excess of one million dollars to SKOPOS. Pursuant to the parties' Agreement, the relationship was to be governed by Texas law. By entering into an open-ended Agreement that expressly provides that Texas law governs its relationship with SKOPS, had SKOPOS reneged on any of its agreements to pay Darcars for an installment contract, Darcars had the contractually assured right to invoke Texas law and a Texas remedy. We conclude,

therefore, that Darcars both sought and obtained the benefits of Texas law. *Burger King*, 471 U.S. at 482 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). Consequently, Darcars sought and obtained benefits from doing business in Texas.

We conclude Darcars has sufficient purposeful contact with Texas to satisfy the first prong of jurisdictional due process. But purposeful availment alone will not support an exercise of specific jurisdiction. Specific-jurisdiction analysis has two co-equal components. For specific-jurisdiction purposes, purposeful availment has no jurisdictional relevance unless the defendant's liability arises from or relates to the forum contacts.

## 2. *Relatedness of Darcars's Contacts*

In order for a nonresident defendant's forum contacts to support an exercise of specific jurisdiction, there must be a substantial connection between those contacts and the operative facts of the litigation. See *Moki Mac*, 221 S.W.3d at 585 (citing *Guardian Royal*, 815 S.W.2d at 229–33). We find the supreme court's decision in *Siskind v. Villa Found. for Educ., Inc.* is instructive in this case. 642 S.W.2d 434, 436 (Tex. 1982). In that case, the evidence established a school solicited students in Texas through national magazines and local telephone books. A contract between Siskind and the school provided that if Siskind's son left during the school year his tuition would be reimbursed. *Id.* at 435–36. The school subsequently expelled Siskind's son and refused to refund Siskind's tuition. *Id.* Siskind sued the school in Texas for the promised refund. *Id.* Under these circumstances, the supreme court held there was “a connection between Siskind's claim for breach of contract and the school's contacts with Texas.” *Id.* at 437.

Here, Darcars solicited SKOPOS's purchase of retail installment sales contracts and its Agreement with SKOPOS specifically provided that, if Darcars fails to collect the down payment in full prior to SKOPOS's purchase of the contract, the contract shall be subject to immediate repurchase. SKOPOS alleges Darcars failed to collect the down payment from the purchaser of

the 2014 Toyota Camry and refused to repurchase the contract. By its lawsuit, SKOPOS seeks to recover the damages it suffered due to Darcars's alleged failure to repurchase the contract as promised. Under these circumstances, we conclude there is a connection between SKOPOS's breach of contract claim and Darcars's contacts with Texas.

Darcars's contacts with Texas support the exercise of specific personal jurisdiction. Accordingly, we overrule Darcars's first issue. Because the trial court has specific personal jurisdiction over Darcars, we pretermit Darcars's second issue concerning the existence of general jurisdiction.

### **C. Fair Play and Substantial Justice**

In its third issue, Darcars argues the exercise of personal jurisdiction over it would offend traditional notions of fair play and substantial justice. Fair play and substantial justice should be considered in relation to (1) the burden on the defendant, (2) the interests of the forum state in adjudicating the dispute, (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and (5) the shared interest of the several states in furthering fundamental social policies. *Burger King*, 471 U.S. at 477. "When a nonresident defendant has purposefully established minimum contacts with the forum state, it will be only a rare case when the exercise of jurisdiction does not comport with traditional notions of fair play and substantial justice." *Lombardo v. Bhattacharyya*, 437 S.W.3d 658, 675 (Tex. App.—Dallas 2014, pet. denied). In a special appearance, a defendant bears the burden of presenting "a compelling case that the presence of some consideration would render jurisdiction unreasonable." *Burger King*, 471 U.S. at 477.

Despite this burden, Darcars presented no evidence to support a finding that the exercise of jurisdiction over it would offend traditional notions of fair play and substantial justice. On



appeal, Darcars argues (1) the burden on Darcars to defend this case in Texas is substantially high because potential witnesses are located in Maryland, (2) Texas’s interest in the dispute is relatively low, (3) SKOPOS can obtain effective relief in Maryland, and (4) the most efficient forum is Maryland. Darcars concedes that the shared interest of the several states in furthering fundamental social policies is not a consideration in this case.

*1. Undue burden on nonresident defendant*

Darcars argues it is unduly burdensome for it to defend this suit in Texas because all of the potential witnesses related to the case are located in Maryland, including the consumer who purchased the car and the individuals involved in the transaction. Darcars further argues there is nothing to indicate that these individuals anticipated traveling to Texas, and the third-party consumer could not be compelled by subpoena to travel to Texas. Darcars fails to recognize that some of the witnesses are located in Texas and that the purchaser of the Toyota Camry is not a party defendant whose interests are at issue in this context.<sup>2</sup> While subjecting Darcars to suit in Texas certainly imposes a burden on it, the same can be said of all litigants, resident and nonresident alike. Indeed, it is inevitable that someone will have to travel to resolve contract disputes between citizens of different states whenever they contract. *See MedCost L.L.C. v. Loiseau*, 166 S.W.3d 421, 442 (Tex. App.—Austin 2005, no pet.) (Patterson, J., dissenting) (“Travel required by a corporate defendant and its employee witnesses to the forum does not constitute a substantial burden or undue hardship as to violate the Due Process Clause if the defendant has purposefully availed itself of that forum.”). Moreover, distance alone cannot ordinarily defeat jurisdiction. *Spir Star AG v. Kimich*, 310 S.W.3d 868, 879 (Tex. 2010) (“Nor is distance alone ordinarily sufficient to defeat jurisdiction: ‘modern transportation and

---

<sup>2</sup> The rules of civil procedure list various locations at which an individual may be deposed. TEX. R. CIV. P. 199.2(b)(2). Individuals who are nonparties and nonresidents of Texas may be deposed in the county where the witness is served with a subpoena, or within 150 miles of the place of service. *Id.*

communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.’” (quoting *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223 (1957)). Therefore, we conclude the trial court did not err in impliedly finding this consideration weighs in favor of jurisdiction.

2. *Interests of the forum state in adjudicating the dispute*

The dispute in this case concerns SKOPOS’s financing of the sale of a vehicle and the Agreement between the parties. Because this dispute involves a Texas resident, Texas courts have a substantial interest in adjudicating the claims. *Lewis v. Indian Springs Land Corp.*, 175 S.W.3d 906, 919 (Tex. App.—Dallas 2005, no pet.). Moreover, Texas has a manifest interest in ensuring “a convenient forum for redressing injuries inflicted by out-of-state actors.” *Burger King*, 471 U.S. at 473. Therefore, we conclude the trial court did not err in impliedly finding this consideration weighs in favor of jurisdiction.

3. *Plaintiff’s interest in obtaining convenient and effective relief*

As a Texas resident, SKOPOS’s interest in obtaining convenient and effective relief weigh in favor of the exercise of jurisdiction. *Royal American Const. Co. v. Comerica Bank*, 164 S.W.3d 466, 470 (Tex.App.—Dallas 2005, no pet.). Therefore, we conclude the trial court did not err in impliedly finding this consideration weighs in favor of jurisdiction.

4. *The interstate judicial system’s interest in obtaining the most efficient resolution of controversies*

In order to overcome the interstate interest in litigating in Texas, Darcars must make a compelling case as to why jurisdiction would be unreasonable. *Id.* at 477. Both Darcars and SKOPOS will have evidence relating to the case located at their respective offices, but neither will likely have a great deal more than the other to tip the balance. Darcars’s claim that it has documents in Maryland is not compelling enough to create the possibility of more efficient

resolution. Therefore, we conclude the trial court did not err in impliedly finding this consideration weighs in favor of jurisdiction.

For the reasons stated above, Darcars has failed to present a compelling case as to why jurisdiction in Texas does not comport with traditional notions of fair play and substantial justice. We overrule Darcars third issue.

#### **CONCLUSION**

Because the long-arm statute confers jurisdiction over Darcars, because Darcars's contacts with Texas were direct and purposeful, because SKOPOS's claim arises out of Darcars's contacts with Texas, and because jurisdiction over Darcars comports with traditional notions of fair play and substantial justice, the trial court may exercise specific jurisdiction over Darcars. Accordingly, we affirm the trial court's order denying Darcars's special appearance and remand this case to the trial court for further proceeding consistent with this opinion.

/David J. Schenck/  
DAVID J. SCHENCK  
JUSTICE

160072F.P05



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

DJRD, LLC D/B/A DARCARS TOYOTA  
OF BALTIMORE, Appellant

No. 05-16-00072-CV      V.

SKOPOS FINANCIAL, LLC, Appellee

On Appeal from the 44th Judicial District  
Court, Dallas County, Texas

Trial Court Cause No. DC-15-09176.

Opinion delivered by Justice Schenck.

Justices Francis and Fillmore participating.

In accordance with this Court's opinion of this date, the trial court's order denying DJRD, LLC D/B/A DARCARS TOYOTA OF BALTIMORE'S special appearance is **AFFIRMED**.

It is **ORDERED** that appellee SKOPOS FINANCIAL, LLC recover its costs of this appeal from appellant DJRD, LLC D/B/A DARCARS TOYOTA OF BALTIMORE.

Judgment entered this 14th day of July, 2016.