

NOT DESIGNATED FOR PUBLICATION

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| STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, AS SUBROGEE OF ROBERT F. DUZAC | * | NO. 2006-CA-1569 |
| | * | COURT OF APPEAL |
| VERSUS | * | FOURTH CIRCUIT |
| | * | STATE OF LOUISIANA |
| BAYOU CITY AUCTION POOL, INC. | ***** | |

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2005-4512, DIVISION "A-5"
Honorable Carolyn Gill-Jefferson, Judge

Judge David S. Gorbaty

(Court composed of Judge Charles R. Jones, Judge Michael E. Kirby, Judge David S. Gorbaty)

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AFFIRMED

State Farm Mutual Automobile Insurance Company, as subrogee of Robert F. Duzac, appeals a judgment granting an exception of lack of personal jurisdiction in favor of Bayou City Auction Pool, Ltd. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY:

Enterprise Leasing Company of Houston was the original owner of the vehicle in question. The Enterprise-owned vehicle was auctioned to Bosfor, Inc. (hereinafter Bosfor), through Bayou City Auction Pool, Ltd. (hereinafter Bayou City), a Houston company. The auction took place July 25, 2002. Bosfor in turn sold the vehicle to John Duzac, the owner of J&R Wholesale Auto of New Orleans on or about August 22, 2002. The vehicle was brought to New Orleans from Houston, and was sold by J&R Wholesale to Robert F. Duzac (John's father) on or about September 5, 2002.

Unbeknownst to John or Robert Duzac, the Bosfor company draft tendered to Bayou City for the vehicle was not honored by the bank. In October of 2002, the vehicle was reported stolen by Bayou City to the Houston authorities. In the meantime, Robert Duzac obtained a policy of insurance from State Farm on the vehicle he had purchased from his son.

Upon learning that the vehicle had been reported stolen, John Duzac (a New Orleans Police Department officer), contacted the Houston Police Department (hereinafter HPD) to inform them that he had purchased the vehicle from Bosfor, and then resold it to his father. The HPD contacted the Louisiana State Police and the NOPD Internal Affairs Division regarding John and/or Robert Duzac's alleged possession of a stolen vehicle. Internal Affairs decided the matter was civil in nature and refused to take further action against John Duzac. However, John Duzac's superior at the NOPD advised him that if the HPD attempted to seize the vehicle, NOPD would have to allow it in the absence of a court order. John Duzac subsequently contacted Bayou City, and a representative was sent to New Orleans to retrieve the vehicle.

Following the seizure, Robert Duzac filed a claim under his State

Farm policy for the loss. State Farm determined that Robert Duzac was a buyer in good faith, and paid him for his loss. In turn, Mr. Duzac subrogated his rights to State Farm.

State Farm made amicable demand upon Bayou City for the amount paid to Mr. Duzac. Bayou City rejected the demand, and this litigation followed.

Bayou City filed an exception of lack of personal jurisdiction. Following a hearing and submission of memoranda, the trial court ruled that there were insufficient minimum contacts between Bayou City and the State of Louisiana to warrant the exercise of jurisdiction by a Louisiana court.

LAW AND ANALYSIS:

The standard of review is governed by two rules: 1) As to the trial court's legal ruling, a *de novo* standard of review is applied; and 2) the trial court's factual findings are reviewed under the manifest error standard.

SteriFX, Inc. v. Roden, 41,383, p.3 (La.App. 2d Cir. 8/25/06); 939 So.2d 533, 535, citing *Walker v. Super 8 Motels, Inc.*, 04-2206 (La.App. 4 Cir. 12/7/05), 921 So.2d 983.

The parties agree that it is State Farm's burden to establish that Bayou

City had sufficient minimum contacts with Louisiana to support the exercise of jurisdiction. *Bonilla v. Commodore Cruise Lines Ltd.*, 02-2182, p.4 (La.App. 4 Cir 4/2/03), 844 So.2d 1025, 1028.

State Farm argues that it established that minimum contacts existed between Bayou City and the State Louisiana. Specifically, Bayou City reported the vehicle stolen to the HPD (despite the fact that Bayou City did not own the vehicle), which caused the HPD to constantly contact John Duzac through harassing phone calls. It is State Farm's position that the HPD continued to harass the Duzac's because of Bayou City's insistence that the vehicle be returned to Houston. As such, the HPD acted as an agent for Bayou City.

Bayou City counters that it is a Texas partnership; it operates in Houston; it has no offices or employees in Louisiana; it does not conduct business in Louisiana; and, its only contact with Louisiana occurred when its employee came to New Orleans to retrieve the vehicle. Further, HPD did not act as Bayou City's agent, but was instead following its own procedures in investigating the theft and recovery of a stolen vehicle.

State Farm cites La. R.S. 13:3201(A)(3), which states in pertinent

part: “A court may exercise personal jurisdiction over a non-resident, who acts directly or by an agent, as to a cause of action arising from any one of the following activities performed by the non-resident: . . . (3) causing injury or damage by an offense or quasi-offense committed through an act or omission in this state. State Farm argues that the law regarding jurisdiction requires that a defendant purposefully direct activity toward a forum state to be subject to that state’s jurisdiction. It argues that by investigating a stolen vehicle report, the HPD was acting as an agent of Bayou City.

State Farm is attempting to create a principal/agent relationship where none exists. While the record contains evidence that the HPD did perhaps overzealously handle the matter, there is simply no evidence that the HPD was acting on behalf of Bayou City.

Lastly, State Farm argues that when the Bayou City employee came to New Orleans to retrieve the vehicle **being voluntarily surrendered by John Duzac**, Bayou City subjected itself to Louisiana jurisdiction. State Farm concedes that the sole act of retrieving the vehicle does not support a finding of sufficient minimum contacts, however, when coupled with the actions of the HPD, sufficient contacts exist between Bayou City and

Louisiana to establish personal jurisdiction.

Because we have already determined that the HPD's actions in locating a vehicle reported stolen by Bayou City did not make the HPD Bayou City's agent, the sole act of Bayou City's retrieval of the vehicle in Louisiana does not subject it to jurisdiction in Louisiana.

We also find no error in the trial court's denial of State Farm's request to allow further discovery. Accordingly, we affirm the trial court's judgment in its entirety.

AFFIRMED