

**THE JONES COMPANY, INC., Appellant v. JRW AVIATION, INC., Appellee**

**No. 05-04-00528-CV**

**COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, DALLAS**

**October 19, 2004, Opinion Filed**

**PRIOR HISTORY:** On Appeal from the 191st Judicial District Court, Dallas County, Texas. Trial Court Cause No. 3-11272.

**DISPOSITION:** AFFIRMED.

**COUNSEL:** For APPELLANT: Mr. Brian Carl Newby, Shayne D. Moses, Kevin Norton, CANTEY & HAN-GER, L.L.P., Fort Worth, TX.

For APPELLEE: Charles H. Smith, SMITH & MOORE, David Bryan, Dallas, TX, David B. Joeckel, Jr., Arlington, TX.

**JUDGES:** Before Justices Whittington, Bridges, and Francis. Opinion By Justice Francis.

**OPINION BY:** MOLLY FRANCIS

**OPINION**

MEMORANDUM OPINION

Opinion By Justice Francis

In this interlocutory appeal, The Jones Company brings four issues challenging the trial court's order denying its special appearance. The facts of this case are well known to the parties, and we do not recite them in detail. Because all issues are well settled, we issue this memorandum opinion. *See TEX. R. APP. P. 47.4*. We affirm the trial court's order.

Appellee is a Texas corporation that had a 1990 Beechcraft King Air 350 for sale. In August 2003, Warren Cochran of Epps Aviation contacted appellee and said appellant was interesting in purchasing the aircraft. Appellant's chief pilot came to Texas to inspect the aircraft. Appellee and Epps negotiated a purchase agreement that was contingent on certain modifications being made. These modifications were made in Texas, and delivery of the plane was to be in Texas. However, appellant did not purchase the plane, and appellee sued for breach of contract and conversion.

At the special appearance hearing, James Jones, appellant's chairman and chief executive officer, testified he believed Epps was the appellee's agent in the deal, but

in his affidavit attached to the special appearance motion, Jones asserted that Epps was "the broker for the purchaser." In other words, Jones stated Epps was appellant's broker. Randy Bowman, vice president of aircraft sales for appellee, testified appellee did not hire Epps as the broker in this sale and believed Epps was negotiating the transaction on appellant's behalf.

The trial court denied appellant's special appearance and made findings of fact and conclusions of law. This appeal ensued.

The standard of review in special appearance cases and the law regarding in personam jurisdiction, and in particular specific jurisdiction, is well established. *See BMC Software Belgium, N.V. v. Marchand, 83 S.W.3d 789, 793-96, 45 Tex. Sup. Ct. J. 930 (Tex. 2002); N. Coast Commercial Roofing Sys., Inc. v. RMAX, Inc., 130 S.W.3d 491, 494-95 (Tex. App.-Dallas 2004, no pet.)*. Analyzing the facts of this case under the applicable law, we conclude there is specific jurisdiction. In particular, we conclude the following facts establish that appellant "purposefully directed" its activities to Texas and this litigation results from injuries arising out of or relating to those activities:

- (1) Epps was appellant's broker in the sale of the plane;
- (2) appellant's chief pilot came to Texas to inspect the plane;
- (3) appellant knew it was purchasing a plane located in Texas and owned by a Texas corporation;
- (4) appellant knew that modifications to the plane were being made in Texas by Raytheon Dallas;
- (5) final review, inspection, and delivery was expected and contemplated by the parties to take place in Texas.

From these acts, we believe appellant could reasonably anticipate being haled into a Texas court.

In its brief, appellant attempts to isolate each of these facts and argue that, standing alone, these activities are insufficient to rise to specific jurisdiction. Although appellant argues there was only "one contact," which was a "one-time morning visit" to Texas by its chief pilot, the activities outlined above belie that claim. To the extent

appellant argues Epps was acting on behalf of appellee in this deal, there is legally and factually sufficient evidence to support the trial court's finding to the contrary. We conclude appellant had sufficient minimum contacts with Texas to establish specific jurisdiction. Issues one and two are without merit.

In issue three, appellant asserts it is unfair to exercise jurisdiction in this case. Appellant has offered no briefing on this issue, and it is therefore waived. *See*

*TEX. R. APP. P. 38.1(h)*. Our disposition of the first and second issues makes it unnecessary to address issue four. *See TEX. R. APP. P. 47.1*.

We affirm the trial court's order.

MOLLY FRANCIS

JUSTICE