

**PAUL D. BISSBORT d/b/a PRINTING TECHNOLOGY, APPELLANT v.  
WRIGHT PRINTING AND PUBLISHING COMPANY, APPELLEE**

**No. 2-90-094-CV**

**COURT OF APPEALS OF TEXAS, Second District, Fort Worth**

**December 19, 1990**

**PRIOR HISTORY:** From the 342nd District Court of Tarrant County; Hon. Joe Bruce Cunningham.

**COUNSEL:** ATTORNEY FOR APPELLANT: David L. Whaley, P.C. and David L. Whaley and Mary L. Enox, Fort Worth, Texas.

ATTORNEY FOR APPELLEE: Cantey & Hanger and Shayne D. Moses and Evelyn R. Leopold, Fort Worth, Texas.

**JUDGES:** Weaver, C.J.; David Farris and Meyers, JJ.

**OPINION BY:** FARRIS

**OPINION**

OPINION

Bissbort appeals an order sustaining Wright's special appearance and dismissing Bissbort's suit against Wright. We reverse the trial court's order because the record does not support the trial court's findings that Wright did not purposefully do some act or consummate some transaction in the State of Texas and that the exercise of jurisdiction over Wright would be inconsistent with fair play and substantial justice.

Bissbort sued Wright for breach of a written contract to repair a printing press belonging to Wright. The parties stipulated that: Wright was a Des Moines, Iowa corporation; Bissbort was a resident of Tarrant County, Texas; and each party signed the contract at its office. The initial contact between the parties was a telephone call from Dave Schwierman, Wright's foreman, to Bissbort inquiring if Bissbort would be interested in purchasing a surplus press from Wright and repairing the press described in the contract. Bissbort went to Des Moines to discuss both transactions with Wright, and after returning to Texas, mailed Wright a proposal describing the repairs to be performed, his charge for those repairs, and the terms of payment. After Wright accepted his proposal Bissbort prepared and mailed the contract to Wright. The parties did not contract for the sale of the other press.

Wright returned the signed contract to Bissbort and wired Bissbort \$ 51,230.00, forty per cent of the contract price. Bissbort returned to Des Moines, disassembled the press, and transported parts to Texas to be repaired. Bissbort sued Wright for breach of the contract alleging Wright had failed to pay the agreed contract price for Bissbort's services.

The Texas long-arm statute authorizes the exercise of state court jurisdiction over nonresidents who do business in this state, and one is doing business within the state if he contracts by mail with a Texas resident and the contract is to be performed in whole or in part within the state. *See TEX. CIV. PRAC. & REM. CODE ANN. secs. 17.041-17.042* (Vernon 1986). In addition, the exercise of jurisdiction must be consistent with federal and state constitutional guarantees. *See Schlobohm v. Schapiro, 784 S.W.2d 355, 356 (Tex. 1990)*. The long-arm statute is construed to reach as far as federal constitutional requirements of due process will permit. *Id. at 357*.

The Texas Supreme Court has adopted a three-part formula to ensure that the exercise of specific jurisdiction complies with the federal constitutional standard:

(1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state.

(2) The cause of action must arise from, or be connected with, such act or transaction. Even if the cause of action does not arise from a specific contract, jurisdiction may be exercised if the defendant's contacts with Texas are continuing and systematic.

(3) The assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

*Id. at 358.*

Wright purposefully acted or consummated a transaction in Texas in initiating negotiations with its telephone call to Bissbort, by executing and returning to Texas a contract requiring it to make payment in Texas and by wiring the \$ 51,230.00 to Bissbort's account with a bank in Texas. Because Bissbort's cause of action was one for nonpayment under the contract, an exercise of jurisdiction would meet the second requirement of the Texas formula. It is applying the third part of the formula which is difficult because it requires us to ask if, despite the existence of minimum contacts, is there any reason why our assertion of jurisdiction in this case would offend traditional notions of fair play and substantial justice. *Id. at 359.*

Wright's Texas contacts are few and limited; nevertheless we hold that because of the quality of those acts,

particularly the act of wiring a large sum of money to a Texas bank, Wright has availed itself of the protection and remedies of Texas law and Texas courts. When Wright wired \$ 51,230.00 to Texas, it took advantage of the protection from misappropriation provided by Texas law and implicitly expressed confidence in Texas courts to provide a remedy if misappropriation occurred. Additionally, there is nothing in the record which indicates Wright would be excessively burdened or inconvenienced by litigating in a Texas court. Therefore, we hold an exercise of jurisdiction over Wright in this case does not offend traditional notions of fair play and substantial justice and reverse the order of the trial court.

We reverse the trial court's order sustaining the jurisdictional plea and remand the case for trial on its merits.