

# Supreme Court of Missouri

en banc

SC96960

WD80480

January Session, 2018

Eldon Bugg,

Appellant,

vs. (TRANSFER)

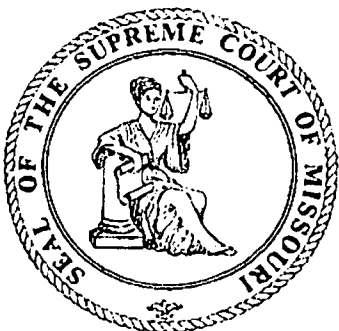
Mark Honey, William Marshall Hubbard,  
Cyril Gray, and Honey Law Firm, P.A.,  
Respondents.

Now at this day, on consideration of the Appellant's application to transfer the above-entitled cause from the Missouri Court of Appeals, Western District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, Betsy AuBuchon, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the January Session, 2018, and on the 3<sup>rd</sup> day of April, 2018, in the above-entitled cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Court, at my office in the City of Jefferson, this 3<sup>rd</sup> day of April, 2018.



Betsy AuBuchon, Clerk

Christina Shaw, Deputy Clerk

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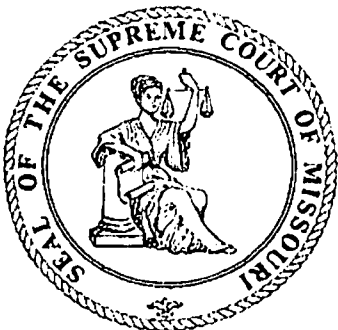
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**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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sufficient facts to support personal jurisdiction over the defendants in the state of Missouri. The judgment is affirmed.

### **Facts**

Cyril Gray entered into a Contract for Deed with Eldon Bugg in 2007 to purchase real estate located in Arkansas. The contract required monthly payments for principal and interest over the course of 30 years. Gray fell behind on his payments.

In October 2013, Gray filed for relief under the Federal Bankruptcy Code in the Bankruptcy Court for the Western District of Arkansas. Gray, a resident of Arkansas, hired the Honey Law Firm, an Arkansas firm, to represent him. Marc Honey and Wm. Marshall Hubbard were the attorneys from the Honey Law Firm working for Gray.

Gray listed Bugg as a secured creditor on Gray's primary residence. Gray proposed to treat the monthly payments on the home as a long-term debt. Gray claimed he had an equitable interest in the home equal to the amount that he had paid to Bugg pursuant to partial performance of the Contract for Deed. By February 2014, Gray was unable to afford the monthly bankruptcy plan payments.

On February 19, 2014, Gray filed a modification of his repayment plan to voluntarily surrender his interest in the home in satisfaction of the claim against the home held by Bugg. On February 20, 2014, the Bankruptcy Court held a hearing where the parties announced that Bugg's motion to terminate the automatic stay would not be opposed. Pursuant to Rule 4001(a)(3), the automatic stay remains in effect for fourteen days after the entry of an order terminating the automatic stay for collateral to be pursued under state law remedies. Gray did not waive this rule.

Bugg evicted Gray from the residence and removed his truck and personal effects therefrom. Gray, by and through his legal counsel, filed a Motion for Contempt for Violation of

the Automatic Stay the following week. He requested that all personal property be returned as part of the bankruptcy estate.

The Bankruptcy Court found that the stay had been violated and ordered Bugg to pay approximately \$12,800 in damages to Gray. Bugg appealed to the Bankruptcy Appellate Panel where the lower court's ruling was affirmed in part and overturned only as to the \$2,000 punitive damages award. Bugg appealed to the Eighth Circuit Court of Appeals where the trial court's ruling was overruled in its entirety. *In re Gray*, 642 F. App'x 641 (8th Cir. 2016). The April 2016 decision found that Bugg did not violate the stay. *Id.* at 643.

In July 2016, Bugg filed a petition in the Cooper County Circuit Court in Missouri. The named defendants were Gray, the Honey Law Firm, Marc Honey, and Wm. Marshall Hubbard.<sup>1</sup> The petition alleged: Count I – Abuse of Process, Bankruptcy; Count II – Abuse of Process, Stay Violation; Count III – Malicious Prosecution; Count IV – Conspiracy; Count V – Negligence; Count VI – Prima Facie Tort; and Count VII – Fraudulent Misrepresentation.

The action was removed by Honey to the federal bankruptcy Court of the Western District of Missouri in September 2016. Bugg filed a First Amended Petition with the bankruptcy court alleging the same seven counts. Honey filed a motion to dismiss. The case was remanded back to Missouri state court in December 2016.

In December 2016, Honey filed an amended motion to dismiss alleging, inter alia, that the court lacked personal jurisdiction. The trial court found that Bugg's First Amended Petition failed "to allege sufficient facts to support personal jurisdiction over the defendants in the state of Missouri." It granted the motion to dismiss.

This appeal followed.

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<sup>1</sup> The defendants are collectively referred to as Honey in this opinion unless otherwise noted.

### Standard of Review

“A trial court’s dismissal of a case for lack of personal jurisdiction presents a question of law to be reviewed *de novo*.” *Andra v. Left Gate Prop. Holding, Inc.*, 453 S.W.3d 216, 224 (Mo. banc 2015). “A plaintiff has the burden to establish that a ‘defendant’s contacts with the forum state were sufficient.’” *Id.* (quoting *Angoff v. Marion A. Allen, Inc.*, 39 S.W.3d 483, 486 (Mo. banc 2001)). “A reviewing court will take the allegations of the pleadings as true to determine whether they establish facts adequate to subject the defendant to jurisdiction in the forum state.” *Id.*

### Point I

In his first point on appeal, Bugg argues the trial court erred in using minimum contacts to determine whether Missouri acquired personal jurisdiction over Honey. He states Missouri acquired personal jurisdiction over Honey as a matter of law. Bugg claims (1) bankruptcy law attached “general and specific jurisdiction” to Honey; (2) Honey consented to personal jurisdiction by entering general appearances; and (3) Honey failed to timely plead and thus defaulted.

Bankruptcy courts only have subject matter jurisdiction to adjudicate matters of equity that arise under Title 11 (Bankruptcy), in a Title 11 case, or are related to a Title 11 case. *See* 28 U.S.C. §1334. If a creditor brings a civil action in his home forum against his debtor, a threshold question arises whether the claims in the civil action will impact the administration of a debtor’s estate. The issue turns on whether the claims have their origin in Title 11 or in state law (origin of claims). Bankruptcy and state courts have concurrent jurisdiction under 28 USC §1334(a), and either can determine the origin of claims.

Under 28 USC §1452(a) a debtor “may” remove the civil action to the Federal District Court for the district where the civil action is pending, provided the district court has jurisdiction

under 28 USC §1334. Federal District Courts refer all bankruptcy matters to bankruptcy court. In a permissive removal, bankruptcy courts make the origin-of-claims determination. If the origin of claims is under Title 11, the bankruptcy court has subject matter jurisdiction. If the origin of claims is state law, the bankruptcy has no power except to remand. Bankruptcy courts can also remand on equitable grounds.

Bugg filed his suit in Missouri state court. Honey removed the suit to federal court pursuant to §1452. The bankruptcy court determined that the origin of claims was not under Title 11 and that it did not have subject matter jurisdiction over the case. It remanded the matter back to Missouri state court. Bugg now argues on appeal that Honey consented to personal jurisdiction when he filed the removal under §1452.

Removing a case to federal court does not waive personal jurisdiction. *See Morris & Co. v. Skandinavia Ins. Co.*, 279 U.S. 405, 409, 49 S. Ct. 360, 362, 73 L. Ed. 762 (1929) (“Petitioner suggests that, by removal of the case to the federal court, objection to jurisdiction over the person of respondent was waived. Our decisions are to the contrary.”). Bugg, however, argues that this does not apply to removal pursuant to §1452. He frames this as an issue of first impression.

Bugg essentially argues that the removal suit under §1452 is a new lawsuit, filed in this case in Missouri. He says that, through the removal, Honey availed himself of Missouri law, sought affirmative judicial relief in Missouri, and entered a general appearance in Missouri. Bugg says that if a party takes a risk and removes to federal court pursuant to §1452 and that party loses the removal lawsuit then that party has consented to personal jurisdiction. If they did not want to consent to personal jurisdiction, Bugg says Honey could have filed a motion under Rule 55.27 contesting the Cooper County court’s power over their persons.



Bugg cites no authority in support of his contention that removal to federal court pursuant to §1332 (Diversity of citizenship) is different from removal pursuant to §1452 (Removal of claims related to bankruptcy cases) with respect to consenting to personal jurisdiction. We note that §1452 allows removal to federal district court if the district court has jurisdiction pursuant to §1334. Both §1334 and §1332 fall under Chapter 85 of the United State Code: District Courts; Jurisdiction. They set out alternate methods through which federal district courts have original jurisdiction.

Bugg also focuses on the fact that removal pursuant to §1452 is optional. We note that removal pursuant to §1332 is not mandatory and can be denied. *See SII MegaDiamond, Inc. v. Am. Superabrasives Corp.*, 969 P.2d 430, 432 (Utah 1998) (wherein the federal court determined that removal was untimely and remanded back to state court).

Bugg argues that removal under §1452 is special because the removed lawsuit has its own rules of procedure, has a separate case number, and requires a response admitting or denying the allegations in the removal notice. Cases removed to federal court pursuant to federal diversity also have a separate case number and operate under the federal rules of procedure as opposed to state rules. We see no difference with respect to waiver of personal jurisdiction between these two types of cases.

Bugg next contends that Honey consented to personal jurisdiction in the federal court and was in default in the federal court. He says that the case came back to Missouri state court with Honey in default. In removal under §1452, a case comes to the bankruptcy court in the same procedural posture as in the state court. *In re Montalvo*, 559 B.R. 825, 837–38 (Bankr. S.D. Tex. 2016). “The state court receives the case on remand from federal court removal in the posture it

is in when remanded.” *Craig v. Missouri Dep’t of Health*, 80 S.W.3d 457, 460 (Mo. banc 2002) (internal quotation omitted).

The case was removed to federal court on September 6, 2016. Honey first filed a motion to dismiss the petition for lack of personal jurisdiction on September 9, 2016 in federal court. Bugg filed an amended petition on September 27, 2016. Federal Rule 15(a) gave Honey fourteen days to answer. Honey filed a motion to dismiss the amended petition for lack of personal jurisdiction on October 21, 2016. Bugg says that because the motion to dismiss was untimely, Honey had defaulted in bankruptcy court. Thus, he concludes they were out of time to contest personal jurisdiction because the case came back to Missouri state court in the same posture it left the bankruptcy court.

While Bugg has concluded that Honey was in default, no court has ever reached such a conclusion. Neither the bankruptcy court nor the state court ever entered a default judgment against Honey because of late pleadings. Bugg does not contend that the bankruptcy court or state court had no other option but to enter a default judgment because of late pleadings. And, they did not.

In this case, the bankruptcy court expressly stated that it would not make a determination about whether personal jurisdiction existed or any other substantive matter. The judge stated: “I must determine whether I have subject matter jurisdiction. If I don’t, I don’t have the power to do anything else.” The court concluded it did not have subject matter jurisdiction.

Upon remand to the state court, Bugg moved for order of default based on late pleadings. The state court did not enter a default judgment. Instead, it determined it lacked personal jurisdiction over Honey.

The point is denied.

## Point II

In his second point on appeal, Bugg argues the trial court erred in dismissing his petition for failure to allege sufficient facts to support personal jurisdiction over Honey. He claims the petition did allege sufficient facts. Bugg states the petition alleges extraterritorial tortious acts and alleges their consequences in Missouri.

“Missouri courts employ a two-step analysis to evaluate personal jurisdiction.” *Bryant v. Smith Interior Design Grp., Inc.*, 310 S.W.3d 227, 231 (Mo. banc 2010). “First, the court inquires whether the defendant's conduct satisfies Missouri's long-arm statute, section 506.500.” *Id.* “If so, the court next evaluates whether the defendant has sufficient minimum contacts with Missouri such that asserting personal jurisdiction over the defendant comports with due process.” *Id.*

Section 506.500 states in relevant part:

Actions in which outstate service is authorized--jurisdiction of Missouri courts applicable, when

1. Any person or firm, whether or not a citizen or resident of this state, or any corporation, who in person or through an agent does any of the acts enumerated in this section, thereby submits such person, firm, or corporation, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of such acts:

(3) The commission of a tortious act within this state;

...

3. Only causes of action arising from acts enumerated in this section may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

Bugg argues that Honey used the bankruptcy process to commit torts upon his person. He says that he was injured in Missouri because that is where he felt the consequences. This, he asserts, is sufficient to satisfy Missouri's long-arm statute. We need not decide this issue, however, because Bugg's personal jurisdiction argument fails with respect to due process analysis.

“The Fourteenth Amendment’s Due Process Clause bars Missouri courts from exercising personal jurisdiction over a defendant where to do so offends ‘traditional notions of fair play and substantial justice.’” *Bryant*, 310 S.W.3d at 232 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945)). “Accordingly, absent one of the traditional territorial bases of personal jurisdiction—presence, domicile or consent—a court may assert personal jurisdiction over a defendant only if certain minimum contacts between Missouri and the defendant are established.” *Id.* “When evaluating minimum contacts, the focus is on whether ‘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.’” *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958)). “This inquiry ‘cannot be simply mechanical or quantitative.’” *Id.* (quoting *Int’l Shoe*, 326 U.S. at 319, 66 S.Ct. 154).

The debtor (an Arkansas resident) entered into a contract with Bugg (a Missouri resident). The contract was entered into in Arkansas. The subject of the contract was land located in Arkansas. The debtor hired an Arkansas law firm to file bankruptcy in Arkansas. All of the bankruptcy proceedings occurred in Arkansas.

Other than Bugg being a Missouri resident, the only other connection with Missouri are the documents sent to Bugg in Missouri, often by the Arkansas bankruptcy court, as part of the bankruptcy proceedings. Bugg argues that the 450 plus notices he received in Missouri as part of the bankruptcy proceedings are sufficient. He cites cases that “show many means tortfeasors use to cause consequences and effects in this modern, technological age.” These include mail and the internet. He compares his case to “an Arkansas deer hunter firing his rifle across the state line accidentally killing a Missouri farmer’s prize bull.” He concludes: “To find that killing the prize

bull happened in Arkansas, merely because that's where the hunter pulled the trigger is not well reasoned."

Bugg's argument is without merit. Unlike the cases he cites and his hypothetical, Bugg's petition does not assert that the contacts from the bankruptcy proceeding caused the alleged torts. Instead, he claims the filing of the bankruptcy proceeding itself, and naming him as a creditor, is what caused the torts. That all happened in Arkansas.

To use Bugg's hypothetical, imagine a Missouri resident bought a bull in Arkansas. The bull was kept in Arkansas. An Arkansas resident shot the bull in Arkansas. The Arkansas resident then sent mail to the Missouri resident concerning the deceased bull. That correspondence would not be sufficient to convey personal jurisdiction over the Arkansas shooter in a Missouri court.

"The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way." *Walden v. Fiore*, 134 S. Ct. 1115, 1125, 188 L. Ed. 2d 12 (2014). The Walden court found that the "[p]etitioner's relevant conduct occurred entirely in [another state], and the mere fact that his conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction." *Id.* at 1126. The same is true here as well.

Bugg also argues that due process was satisfied when Honey hired a Missouri attorney. Bugg relies on *Strobehn v. Mason*, 397 S.W.3d 487, 500 (Mo. App. W.D. 2013). Unlike in *Strobehn*, though, Honey hired the Missouri attorney after Bugg filed suit in Missouri state court. That attorney represented Honey in Missouri state court and Missouri federal court, all the while asserting a lack of personal jurisdiction. That is not sufficient to comport with due process. Moreover, Bugg does not refer to the hiring of a Missouri attorney in his amended petition.

The point is denied.

**Conclusion**

**The judgment is affirmed.**

**Additional material  
from this filing is  
available in the  
Clerk's Office.**