

related to a check in the amount of \$500. The check in question was written by a representative of the defendant to a third party who then took the check from Missouri, where the defendant is incorporated and does business, to the plaintiff's check-cashing place of business in Madison County and negotiated it. The defendant, meanwhile, had stopped payment on the check because the third party had not completed the work for which the check was payment. In the defendant's motion to dismiss, the defendant stated that it was a Missouri corporation, with its principal place of business in St. Louis, and that it did no business in the state of Illinois and did not transact any business in the state of Illinois. The defendant further contended that its issuance of the check in question to a third party who thereafter sought to negotiate that check in Illinois at a time during which the defendant had placed a stop payment order on the check "does not constitute transacting business within the [s]tate of Illinois and does not constitute any other acts sufficient to confer personal jurisdiction of an Illinois [c]ourt over the [d]efendant." By docket entry, the trial court denied the defendant's motion to dismiss. The court subsequently denied the defendant's motion to reconsider, which was again based on the lack of personal jurisdiction over the defendant. The cause eventually went to trial, the court found for the plaintiff, and following the denial of a posttrial motion in which the defendant once more raised the issue of personal jurisdiction, this timely appeal followed.

ANALYSIS

Where, as here, a trial court has taken no testimony on the issue of personal jurisdiction and has decided the question solely on the basis of documentary evidence and legal argument presented by the parties, we review *de novo* the decision of the trial court. *Gaidar v. Tippecanoe Distribution Service, Inc.*, 299 Ill. App. 3d 1034, 1039-40 (1998). When the issue of personal jurisdiction is decided in response to a motion to dismiss and no testimony has been presented at the hearing on that motion, it is the burden of the plaintiff

to show a *prima facie* case of jurisdiction. *Gaidar*, 299 Ill. App. 3d at 1040-41. However, the plaintiff's *prima facie* case may "be overcome by a defendant's uncontradicted evidence that defeats jurisdiction." *Gaidar*, 299 Ill. App. 3d at 1041.

In the case at bar, the plaintiff concedes that the defendant, a nonresident corporation, does not "directly" transact business in Illinois, but it contends that personal jurisdiction over the defendant nevertheless exists because "by placing a negotiable instrument described as an 'unconditional promise to pay' into the stream of commerce in St. Louis, it accepted the possibility of being sued in Illinois." Recognizing that, in Illinois, personal jurisdiction over a nonresident defendant exists only if the defendant has certain minimum contacts with Illinois so that requiring the defendant to defend a case in Illinois does not offend traditional notions of fair play and substantial justice (see *Zazove v. Pelikan, Inc.*, 326 Ill. App. 3d 798, 803 (2001) (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316, (1945))), the plaintiff asserts that "an unconditional promise to pay does not become void at the state line" and that accordingly the defendant cannot complain about being haled into court in the jurisdiction where the promise to pay was honored. Although the plaintiff attempts to ground this argument in the "bedrock law of negotiable instruments" and in principles of agency law, the plaintiff cites no cases, and presents no cogent argument, demonstrating how specific rules of personal jurisdiction could somehow be trumped by, or become subservient to, the generalities of these two unrelated areas of the law. Accordingly, the plaintiff has forfeited the consideration of this argument. See Ill. S. Ct. R. 341(h)(7) (eff. Mar. 16, 2007) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing).

The legitimate theory of personal jurisdiction most apposite to the position advocated by the plaintiff is what has become known as the "stream of commerce" theory. That theory

derives its name from *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98 (1980), a case in which the United States Supreme Court held that there is no constitutional due process problem when a forum state asserts jurisdiction over a nonresident defendant corporation that has delivered "products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." That is because "if the sale of a product of a manufacturer or distributor *** is not simply an isolated occurrence[] but arises from the efforts *** to serve[,] directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States." *World-Wide Volkswagen Corp.*, 444 U.S. at 297. Since its decision in *World-Wide Volkswagen Corp.*, the United States Supreme Court has split over the scope of the stream-of-commerce theory, with both a broad approach and a narrow approach emerging. See *Wiles v. Morita Iron Works Co.*, 125 Ill. 2d 144, 155-56 (1988). Although the Illinois Supreme Court noted in *Wiles* that it is not yet clear which United States Supreme Court approach is the "correct" one (125 Ill. 2d at 159-60), we conclude that even under the broad approach, which is the approach most favorable to the plaintiff in this case, there simply were no minimum contacts between the defendant and the state of Illinois.

As the *Wiles* court noted, "purposeful availment of the forum's market requires, at a *minimum*, that the alien defendant is 'aware that the final product is being marketed in the forum State.'" (Emphases added.) 125 Ill. 2d at 160 (quoting *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 117 (1987)). Put another way, for minimum contacts to be present, a nonresident defendant corporation must make a direct or indirect effort "to serve the market for its product in Illinois." *Wiles*, 125 Ill. 2d at 160. Moreover, "[t]he unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *Wiles*, 125 Ill. 2d at 160 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). We first note that the case at bar does not deal with a

"product" as contemplated in the decisions on the stream-of-commerce theory nor with traditional marketing. However, even if we indulge the plaintiff's theory, on the record before us, we cannot conclude that the defendant in this case made an effort, directly or indirectly, to serve a market for its products in Illinois, nor can we conclude that the defendant was ever aware that its "product" was being "marketed" in Illinois. There were no minimum contacts between Illinois and this defendant, and the trial court erred in concluding that personal jurisdiction over the defendant exists in this case.

CONCLUSION

Having concluded that the trial court erred in finding personal jurisdiction over the defendant, we hereby vacate the court's order entering a judgment against the defendant and remand for the dismissal of the case.

Vacated; cause remanded.