Opinion issued August 28, 2008

In The
Court of Appeals
For The
First District of Texas

NO. 01-07-00972-CV

JOSEPH MONTEROSSO AND LUIS VARGAS, Appellants

V.

MARK VANCE, Appellee

On Appeal from the 190th District Court
Harris County, Texas
Trial Court Cause No. 05-78287

MEMORANDUM OPINION

Appellants, Joseph Monterosso and Luis Vargas, appeal the denial of their special appearance. *See* TEX. CIV. PRAC. & REM. CODE ANN § 51.014(a)(7) (Vernon 2008). We affirm.

BACKGROUND

TXCI Acquires CNS

This case stems from the purchase of Control Network Systems ("CNS"), a Texas corporation, by TotalAxcess ("TXCI"), a Delaware corporation headquartered in California. Mark Vance, appellee, and Steve Garvin founded CNS, an international telecommunications company, in 1998.[1] TXCI was also a telecommunications company. Monterosso, a California resident at the time,[2] was the CEO and President of TXCI; Vargas, also a California resident, was an accountant for TXCI.

In 2001, TXCI expressed interest in purchasing CNS. Garvin and Vance were not getting along, and, although there was money in the bank, CNS was not profitable. Believing that TXCI could make CNS profitable, on December 1, 2001, TXCI bought CNS for $1.00 (one dollar) and promises to (1) repay $600,000 that Vance and his father had loaned CNS and (2) pay off auto loans for Vance and Garvin. The Vance loans were to be repaid in installments beginning in January 2002. A December 15, 2001 letter from Monterosso to Vance confirmed Vance's security interest in CNS/TXCI accounts receivable.

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[1] According to Garvin, CNS "built network within [different countries and] . . . sold it to carriers within the United States." Vance and Garvin were the sole shareholders.

[2] Monterosso has since moved to Florida.

Both Vargas and Monterosso came to Texas to finalize the purchase agreement. Garvin testified that Monterosso came to Texas at least twice while negotiating the purchase of CNS and that Vargas came once. Vance testified that Vargas was "not just a bookkeeper," describing him as "the other partner in the business," and instrumental in making the deal. Vance testified that before, during, and after the December 15 closing, Vargas told him, "We will make the payments in the agreement." Vance also testified that in multiple conversations and emails, Vargas promised to deliver to Vance a UCC-1,[3] but he never did. Garvin said he spoke to Vargas at least twice a day after TXCI bought CNS. Vance said he spoke to Monterosso twenty or thirty times after the sale to discuss ways Vance might be able to help CNS prosper.

Corporate Officers and Directors

After the sale, Monterosso, acting as President and CEO of TXCI, the sole owner of CNS, appointed himself, Vargas, Garvin,[4] and two others to the CNS board of directors. Although Monterosso agreed that it was his signature on the "Action by Written Consent of the Sole Shareholder of CNS," which appointed the new CNS board of directors, Monterosso denied ever having served as a director for CNS. In

[3] The "UCC-1" is a financing statement under the Uniform Commercial Code, which evidences the lien. *See* TEX. BUS. & COM. CODE ANN. 9.501–.527 (Vernon 2002 & Supp. 2008).

[4] Garvin continued to work for CNS after the sale.

fact, he stated that no board meetings for CNS were ever held. However, Monterosso also testified that he was the chairman of the board of CNS.

In support of his jurisdictional claims, Vance offered unsigned letters and emails to customers in which Vargas represented himself as the CFO, Chief Financial Officer, or COO of CNS. However, both Monterosso and Vargas disputed that Vargas was a corporate officer or director for CNS. Monterosso said that there were no corporate records showing that Vargas ever accepted a position as corporate officer. Monterosso testified that Vargas used the term CFO only to indicate that he was doing accounting work for CNS. In addition, Monterosso stated that Vargas never acted as a director of CNS and that Vargas worked in California. By affidavit, Vargas also denied having served as a director or corporate officer of TXCI or CNS.[5]

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[5] "I was at all times only an employee of TXCI. I never had any authority to act or do anything with respect to TXCI or CNS, other than to perform the day-to-day accounting work of those companies. I was never aware of any document that purported to appoint me as a director of CNS, and I never agreed to serve as a director of CNS. Nor did I ever serve as a director of CNS. At no time did I ever attend any board meeting of CNS or otherwise take any action or purport to take any action as a director of CNS.

With respect to the two emails offered by Mr. Vance's counsel that referred to me as a "CFO" of CNS, that designation only meant that I was the chief accountant working for the companies, and was the person ultimately responsible for the financial records of both the companies. However, I did not intend to convey that I had, nor did I ever have, any authority to act on behalf of TXCI or CNS, other than my performance of the day-today accounting work. Nor did I intend to convey that I had been appointed as a corporate officer or director of either company."

Furthermore, Vargas denied signing and sending the unsigned letters that Vance offered to show that he had designated himself as CFO or COO. Vargas testified that he had never seen or approved the "Control Network System Carrier Support Escalation Referral List," which he described as an internal document that showed Vargas as the CFO, with a Houston, Texas address.

Monterosso signed at least one document as the President of CNS. However, Monterosso testified Garvin was the president and CEO of CNS from the date of the purchase until Garvin resigned on August 1, 2002.

Breach of the December 2001 Contract

CNS/TXCI did not pay Vance in accordance with their agreement. On July 22, 2002, Vance's attorney sent a demand letter to Monterosso stating that CNS and TXCI were in default. Vance's attorney contacted CNS customers, informed them that Vance held a security interest in CNS accounts receivable, and directed them to pay Vance directly, instead of paying CNS. On July 24, 2002, Vargas and Garvin sent letters to their customers denying that Vance held a valid security interest in CNS accounts receivable. Garvin testified that this was a "false statement." According to Garvin, many CNS customers stopped paying.

The July 2002 Agreement

Anxious for its customers to resume paying, Monterosso executed an "Indemnity and Hold Harmless Agreement" promising to indemnify one of CNS's customers against any action by Vance. Monterosso signed this agreement, "personally, and as the President of [TXCI] and President of [CNS]." In addition, Monterosso and Vance entered into a letter agreement, dated July 26, 2002, which affirmed CNS's obligation to Vance and modified the timeline for repayment. But Monterosso denied negotiating this agreement, stating that Garvin "would have been the only one to do this." Vance notified CNS's customers of the agreement and instructed them to pay CNS directly.

While Vargas conceded that he had six telephone calls with Vance after the December 2001 sale, he categorically denied any involvement in the July 2002 agreement, "*I had no involvement whatsoever with that agreement and I did not have any discussions by telephone or otherwise with Mr. Vance in connection with that agreement.* Thus, since I didn't speak to Mr. Vance, I gave him no promises or assurance that the payments would be made, nor did I make any representations to him that any of the payments would be made that are discussed in that letter agreement." (Emphasis original).

According to Garvin, within days of this agreement, Monterosso asked him to leave his employment with CNS to run Signature Communications, a competing business wholly owned by Monterosso. Garvin testified that Monterosso wanted him to take all of CNS's assets, customers, and vendors and establish Signature Communications in a new office. Garvin testified that Monterosso wanted it to appear as if Garvin owned Signature. Garvin said that Monterosso told him he wanted to do this because "I want to screw Mark [Vance] and make sure he doesn't get a penny." After consulting with an attorney, Garvin resigned on August 1, 2002.

Monterosso testified that due to Vance's attempt to exercise his security interest, customers stopped paying, and in August 2002, TXCI realized that CNS would not survive. Monterosso testified that to preserve valuable customer relationships, CNS customers were offered the option of doing business with Signature Communications instead of CNS, and some customers accepted.

Breach of the July 2002 Agreement

CNS/TXCI failed to pay in accordance with the terms of the July 2002 agreement, and Vance sued for breach of contract, fraud, misrepresentation, breach of fiduciary duty, violation of the Deceptive Trade Practices Act, and conspiracy. At the heart of his claims is Vance's allegation that Monterosso and Vargas came to

Texas and falsely assured him that CNS or CNS and TXCI would pay him in accordance with their agreements.

Special Appearances

Monterosso and Vargas filed special appearances, and each attached an affidavit. Monterosso testified by affidavit that: (1) he never lived or resided in Texas; (2) he did not engage in any business in Texas, except as a duly authorized representative of a company he worked for; (3) he visited Texas twice on behalf of companies he worked for, for no more than 5 days, total; (4) he has had a limited number of phone calls with Texas residents, and all on behalf of a company he worked for; (5) he personally met with Vance only twice, and spoke with him no more than six times in three years. In addition, Monterosso denied having committed fraud in Texas and denied owing Vance a fiduciary duty.

Likewise, Vargas testified that: (1) he never lived or resided in Texas; (2) he owned no property in Texas; (3) he was never a party to a contract to be performed in whole or in part within the State of Texas; (4) except as a duly authorized representative of a company for which he worked, he did not engage in any business in Texas; (5) on behalf of companies for which he worked, he visited Texas once for one day; (6) he has had a limited number of phone calls with Texas residents, and all on behalf of a company for which he worked; (7) he personally met with Vance only

once, and spoke with him by telephone no more than three times in November and December 2001. In addition, Vargas denied having committed fraud in Texas and denied owing Vance a fiduciary duty. Finally, Vargas testified that he did accounting for TXCI and for CNS, solely because CNS was a subsidiary of TXCI, and many accounting functions, like accounts receivables, were combined.

The Appeal

After a hearing, the trial court denied appellants' special appearances. Monterosso and Vargas appeal, arguing that: (1) Vance failed to establish with adequate specificity allegations sufficient to bring them under the Texas long-arm statute; (2) the fiduciary shield applies because all of their actions were on behalf of TXCI; and (3) the evidence was legally and factually insufficient to support the trial court's order.

Standard of Review

The existence of personal jurisdiction is a question of law reviewed de novo by this Court. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002). However, this question must sometimes be preceded by resolving underlying factual disputes. *Id.* When, as here, the trial court does not issue fact findings, we presume that the trial court resolved all factual disputes in favor of its

ruling. *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002).

Personal Jurisdiction

"Texas courts may assert personal jurisdiction over a nonresident defendant only if the Texas long-arm statute authorizes jurisdiction and the exercise of jurisdiction is consistent with federal and state due process standards." *Id.* (citing *Guardian Royal Exch. Assur. Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 226 (Tex. 1991); *see* TEX. CIV. PRAC. & REM. CODE ANN. §§ 17.041–045 (Vernon 2008) (Texas's long-arm statute). The long-arm statute allows Texas courts to exercise jurisdiction over a nonresident defendant that "does business" in the state. TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (Vernon 2008).

> In addition to other acts that may constitute doing business, a nonresident does business in this state if the nonresident:
>
> > (1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state;
> >
> > (2) commits a tort in whole or in part in this state; or
> >
> > (3) recruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state.

Id.

This list, however, is not exhaustive. *BMC Software*, 83 S.W.3d at 795. The Texas Supreme Court has held that "section 17.042's broad language extends Texas

courts' personal jurisdiction as far as the federal constitutional requirements of due process will permit." *Id.* (citation omitted).

Initially, the plaintiff bears the burden of pleading allegations sufficient to bring a nonresident defendant within the terms of the Texas long-arm statute. *Am. Type Culture Collection*, 83 S.W.3d at 807. However, when a nonresident defendant files a special appearance, that defendant assumes the burden of negating all bases of personal jurisdiction that the plaintiff has alleged. *Id.*

Personal jurisdiction over nonresident defendants is constitutional when two conditions are met: (1) the defendant has established minimum contacts with the forum state and (2) the exercise of jurisdiction comports with traditional notions of fair play and substantial justice. *Id.* at 806 (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945)). A nonresident defendant's minimum contacts must derive from purposeful availment: a nonresident defendant must have "purposefully availed" itself of the privileges and benefits of conducting business in the foreign jurisdiction to establish sufficient contacts with the forum to confer personal jurisdiction. *Id.* (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-76, 105 S. Ct. 2174, 2183-84 (1985)); *Xenos Yuen v. Fisher*, 227 S.W.3d 193, 200 (Tex. App.—Houston [1st Dist.] 2007, no pet.). An act or acts "by which the *defendant purposefully avails* itself of the privilege of conducting activities" in Texas

and "thus invok[es] the benefits and protections" of Texas law, constitutes sufficient contact with Texas to confer personal jurisdiction. *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 784 (Tex. 2005) (emphasis in original) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240 (1958)).

We consider three elements of purposeful availment. *See Michiana Easy Livin' Country*, 168 S.W.3d at 785; *see First Oil PLC v. ATP Oil & Gas Corp.*, No. 01-07-00703-CV, 2008 WL 2186781, *12 (Tex. App.—Houston [1st Dist.] May 22, 2008, no pet.). First, we consider only the defendant's own actions, not those of the plaintiff or any other third party. *Michiana Easy Livin' Country*, 168 S.W.3d at 785; *First Oil PLC*, 2008 WL 2186781 at *12; *see also U-Anchor Adver., Inc. v. Burt*, 553 S.W.2d 760, 762–63 (Tex. 1977).

Second, the activities must be purposeful, not random, isolated, or fortuitous. *Michiana Easy Livin' Country*, 168 S.W.3d at 785; *First Oil PLC*, 2008 WL 2186781 at *12. "It is the *quality*, rather than the *quantity* of the contacts that is determinative." *First Oil PLC*, 2008 WL 2186781 at *12 (emphasis original). Third, the defendant must seek some benefit, advantage, or profit by virtue of its activities in the proposed forum state, because this element is based on the notion of implied consent. *Michiana Easy Livin' Country*, 168 S.W.3d at 785; *First Oil PLC*, 2008 WL 2186781, at *12.

Our jurisdictional analysis is further divided into general and specific personal jurisdiction. *CSR, Ltd. v. Link*, 925 S.W.2d 591, 595 (Tex. 1996). General jurisdiction will attach when "a defendant's contacts are continuous and systematic, permitting the forum to exercise personal jurisdiction over the defendant even if the cause of action did not arise from or relate to activities conducted within the forum state.." *Id.* To support general jurisdiction, the defendant's forum activities must have been "substantial," which requires stronger evidence of contacts than for specific personal jurisdiction. *Preussag Aktiengesellschaft v. Coleman*, 16 S.W.3d 110, 114 (Tex. App.—Houston [1st Dist.] 2000, pet. denied). General jurisdiction is premised on the nonresident having consented to jurisdiction through its continuous contact invoking the benefits and protections of Texas. *Am. Type Culture Collection*, 83 S.W.3d at 808. This analysis focuses on the nature and quality of the contacts, as opposed to the quantity. *Id.* at 810.

Specific jurisdiction lies when the defendant's alleged liability arises from or is related to an activity conducted within the forum. *BMC Software*, 83 S.W.3d at 796. "For a nonresident defendant's forum contacts to support an exercise of specific jurisdiction, there must be a substantial connection between those contacts and the operative facts of the litigation." *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d

569, 585 (Tex. 2007). This requirement assesses "the strength of the necessary connection between the defendant, the forum, and the litigation." *Id.* at 584.

Adequate Specificity of Jurisdictional Allegations

Monterosso and Vargas contend that Vance failed to plead a sufficient basis for subjecting them to personal jurisdiction, and therefore, the trial court's denial of their special appearances should be reversed. The plaintiff's original pleadings *as well as* its response to the defendant's special appearance can be considered in determining whether the plaintiff satisfied its burden. *Wright v. Sage Eng'g, Inc.*, 137 S.W.3d 238, 249 n.7 (Tex. App.—Houston [1st Dist.] 2004, pet. denied). Rule 120a also states that, in determining whether the special appearance should be granted or denied, courts may consider evidence from "the pleadings, any stipulations made by and between the parties, such affidavits and attachments as may be filed by the parties, the results of discovery processes, and any oral testimony." TEX. R. CIV. P. 120a(3); *see also Gutierrez v. Deloitte & Touche*, 100 S.W.3d 261, 273 (Tex. App.—San Antonio 2002, pet. dism'd).

In his original petition, Vance alleged that Monterosso and Vargas had sufficient minimum contacts with Texas to bring them under the Texas long-arm statute and that all or part of the cause of action arose in Texas. In his response to their special appearances, Vance alleged that: (1) general jurisdiction exists as to

Vargas, who served as the CFO of CNS, a Texas corporation; (2) Vargas signed documents on behalf of CNS, a Texas corporation, from a Houston address; (3) Monterosso and Vargas both served on the board of directors of CNS, a Texas corporation; (4) while in Dallas, Texas, Monterosso executed an indemnity agreement individually and as president of CNS, a Texas corporation; (5) Monterosso came to Texas at least twice while negotiating the acquisition of CNS; (6) Monterosso spoke to Garvin at least twice a day while Garvin worked for CNS, after the acquisition; (7) Monterosso was an officer and director of CNS; (8) Monterosso and Vargas came to Texas in December 2001 to finalize the sale of CNS; (9) Monterosso spoke with Vance at least twenty times by telephone; (10) Monterosso and Vargas negotiated the second agreement with Vance; (11) Vargas spoke to Vance by telephone up to 40 times; (12) Vargas promised, in conversations and in writing to Vance, a UCC-1 to evidence his security interest in the accounts receivable; and (13) Vargas promised, on behalf of CNS, to have Vance's car paid off. We conclude Vance satisfied his burden of pleading. *See Ennis v. Loiseau*, 164 S.W.3d 698, 705 (Tex. App.—Austin 2005, no pet.).

We overrule this issue.

Long Arm Statute

We begin our jurisdictional analysis by noting that Vance alleged that both Monterosso and Vargas committed torts—fraud, misrepresentation, conspiracy, breach of fiduciary duty—at least in part in Texas. He also provided some evidence that Monterosso and Vargas made false representations to him while in Texas. While this is sufficient to satisfy the Texas long-arm statute, it does not end our analysis; rather, we must also determine whether the exercise of jurisdiction would comport with due process. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 17.042(2); *see also Am. Type Culture Collection*, 83 S.W.3d at 806.

Fiduciary Shield Doctrine

Monterosso and Vargas argue that because all of their actions in Texas were on behalf of TXCI, they are not subject to personal jurisdiction. The fiduciary shield doctrine holds that an employee of a company is protected from personal jurisdiction when the employee's actions have been taken on behalf of his employer. *Garner v. Furmanite Australia Pty., Ltd.*, 966 S.W.2d 798, 803 (Tex. App.—Houston [1st Dist.] 1998, pet. denied). However, Texas courts applying the "fiduciary shield doctrine have expressly limited its application to attempts to exercise *general* jurisdiction over a nonresident defendant." *Wright*, 137 S.W.3d at 250; *see also SITQ E.U., Inc. v. Reata Rests., Inc.*, 111 S.W.3d 638, 650–51 (Tex. App.—Fort Worth 2003, pet.

denied). The fiduciary shield doctrine does not protect a corporate officer or agent from specific personal jurisdiction as to intentional torts or fraudulent acts for which he may be individually liable. *Wright*, 137 S.W.3d at 250; *see also Gen. Elec. Co. v. Brown & Ross Int'l Distribs., Inc.*, 804 S.W.2d 527, 532–33 (Tex. App.—Houston [1st Dist.] 1990, writ denied) (holding that corporate officers who had, inter alia, made misrepresentations to customers were subject to personal jurisdiction in Texas). A corporate agent can be held individually liable for fraudulent statements or knowing misrepresentations even when the agent makes them in his capacity as a corporate representative. *Wright*, 137 S.W.3d at 250. The causes of action asserted by Vance against Monterosso and Vargas individually, which are based on their alleged misrepresentations, are claims for which they could be held individually liable. *See id.* Therefore, the fiduciary shield doctrine is not available to Monterosso and Vargas as a defense to the trial court's exercise of specific personal jurisdiction based on their alleged misrepresentations. *Id.* at 251; *see D.H. Blair Inv. Banking Corp. v. Reardon*, 97 S.W.3d 269, 278 (Tex. App.—Houston [14th Dist.] 2002, pet. dism'd w.o.j.) (refusing to apply fiduciary shield doctrine to protect defendant from personal jurisdiction based on alleged misrepresentations that were directed into Texas and foreseeably relied on in Texas, despite defendant's claim that he acted only in corporate capacity).

It "is 'the defendant's conduct and connection with the forum' that are critical." *Michiana Easy Livin' Country*, 168 S.W.3d at 789 (citing *Burger King*, 471 U.S. at 474, 105 S. Ct. at 2183 (1985)). To determine such, we need only ascertain whether there is "more than a scintilla" of evidence to support the trial court's finding that Monterosso and Vargas performed individual acts that allow for specific jurisdiction. *BMC Software*, 83 S.W.3d at 795–96.

As we noted earlier, the trial court did not issue findings of fact, so we must presume that the trial court resolved all factual disputes in favor of its ruling. *Am. Type Culture Collection*, 83 S.W.3d at 806. With that guiding principle in mind, we now examine whether sufficient evidence supporting the trial court's ruling existed in the record.[6]

Monterosso

Monterosso approached CNS about TXCI's purchase of CNS. Monterosso appointed himself to the board of directors of CNS, and he held himself out as the president of CNS, a Texas corporation. He personally indemnified one of CNS's

[6] Monterosso and Vargas objected to Vance's evidence in the trial court, but the record does not show that the trial court ruled on these objections. Therefore, we will examine the entire record. *See* TEX. R. APP. P. 33.1(a)(2)(A) (preservation of error); *see also Gen. Elec. Co. v. Brown & Ross Int'l Distribs., Inc.*, 804 S.W.2d 527, 534 (Tex. App.—Houston [1st Dist.]1990, writ denied) ("The appropriate standard of review in the appeal of a special appearance case is to review all the evidence in the record.")

customers in a document signed in Texas. In addition, Monterosso came to Texas to negotiate and finalize the purchase of CNS, and he had regular communications with Garvin, a Texas employee of CNS between December 2001 and July 2002. According to Garvin, Monterosso also instructed Garvin to strip the assets from CNS to deprive Vance of the benefit of his bargain. We conclude that sufficient evidence exists in the record to show that Monterosso purposefully availed himself of the privileges of conducting business in Texas.

In addition, there is a substantial connection between these contacts and the operative facts of the litigation. *See Moki Mac River Expeditions*, 221 S.W.3d at 585. Vance alleges fraud, misrepresentation, conspiracy, and his other causes of action based on actions and representations made by Monterosso in the initial negotiations and when he served as an officer and director of CNS. The evidence at trial will necessarily include testimony and documentary evidence regarding the sale, Vance's attempted enforcement of his security interest, and appellants' efforts to dissuade him from collecting on his security interest.

Finally, there is nothing in the record to show that having to defend the suit in Texas would be excessively burdensome to Monterosso, so we conclude that the exercise of specific, personal jurisdiction as to Monterosso will not offend traditional notions of fair play and substantial justice.

We conclude that specific, personal jurisdiction exists as to Monterosso, and we hold that the court properly denied Monterosso's special appearance.

Vargas

Vargas also traveled to Texas to review the books of CNS and to finalize the sale. In email communications, he held himself out to be the CFO of CNS, and he signed documents on behalf of CNS using a Houston, Texas address. He had regular communications with a Texas employee of CNS and with Vance. He made representations to Vance that he would provide a UCC-1 and ensure that Vance's auto loan was paid off. According to Vance, Vargas negotiated the second agreement with Vance. We conclude that sufficient evidence exists in the record to show that Vargas purposefully availed himself of the privileges of conducting business in Texas.

In addition, there is a substantial connection between these contacts and the operative facts of the litigation. *See id.* Vance alleges fraud, misrepresentation, conspiracy, and his other causes of action based on actions and representations made by Vargas in the initial negotiations and subsequent negotiations. The evidence at trial will necessarily include testimony and documentary evidence regarding the sale, Vance's attempted enforcement of his security interest, and appellants' efforts to dissuade him from collecting on his security interest.

Finally, there is nothing in the record to show that having to defend the suit in Texas would be excessively burdensome to Vargas, so we conclude that the exercise of specific, personal jurisdiction as to Vargas will not offend traditional notions of fair play and substantial justice.

We conclude that specific, personal jurisdiction exists as to Vargas, and we hold that the court properly denied Vargas's special appearance.

General Jurisdiction

Because we find that specific, personal jurisdiction exists as to both Monterosso and Vargas, we need not consider whether general, personal jurisdiction exists as to them.

We overrule appellants' remaining issues.

Conclusion

We affirm the order of the trial court.

Sam Nuchia
Justice

Panel consists of Justices Nuchia, Alcala, and Hanks.