Opinion issued November 29, 2016

In The

Court of Appeals

For The

First District of Texas

NO. 01-14-01014-CV

LETICIA B. LOYA, Appellant

V.

IAN TAYLOR, JACOBUS STERKEN, STICHTING TINSEL GROUP, VITOL HOLDING, II S.A., AND TINSEL GROUP, S.A., Appellees

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On Appeal from the 190th District Court
Harris County, Texas
Trial Court Case No. 2012-33464

MEMORANDUM OPINION

Appellant, Leticia B. Loya, challenges the trial court's orders granting the special appearances of appellees, Ian Taylor, Jacobus Sterken, Stichting Tinsel Group ("Stichting"), Vitol Holding, II S.A. ("VHIISA"), and Tinsel Group, S.A.

("Tinsel"), in Leticia's lawsuit against them for breaches of fiduciary duty, conspiracy, fraud, and negligence in a stock transaction. In two issues, Leticia contends that the trial court erred in denying her motion for continuance and granting appellees' special appearances.

We affirm the orders of the trial court.

Background

In her second amended petition, Leticia alleged that prior to 2006, she and her then husband, Miguel, were "major shareholders" in VHIISA, which is based in Luxembourg and "one of the world's largest independent energy trading companies." Miguel was a member of its board of directors, and he was employed by an affiliated entity, Vitol, Inc.,[1] in Houston, Texas. In 2006, Leticia and Miguel exchanged their VHIISA shares for shares in Tinsel, a "newly created entity" affiliated with VHIISA and based in Luxembourg.

In 2008, Leticia and Miguel began divorce proceedings.[2] Leticia claimed a community property interest in the Tinsel shares, and Miguel filed a sworn inventory listing the value of the shares at $29,500,000. Leticia argued that Miguel's valuation was "false" because he failed to include the value of certain

[1] Vitol, Inc. is a defendant in the trial court, but not a party to this appeal. According to the record, Vitol Group is comprised of approximately 400 distinct business entities, including Vitol, Inc., which is Vitol Group's "main entity in the United States" and has its principal office in Houston.

[2] *Leticia B. Loya v. Miguel A. Loya*, No. 2008-24514 (257th Dist. Court of Harris Cty., Tex.).

rights included in the Tinsel shares and disclose that he and appellees were "actually in negotiations for [Vitol, Inc.] to acquire . . . equity in [Shell Oil Company's] downstream business in approximately nineteen . . . countries in Africa" for approximately "$1,000,000,000." Leticia asserted that this information would have "significantly and materially impacted the value of the shares" that she had agreed to sell to Miguel in the divorce; he "had a duty to disclose this information and refrain from acting on it, but did not do so," before she executed a June 13, 2010 mediated settlement agreement ("MSA") in the divorce; "about one month" after she signed the MSA," Shell announced that it was in "negotiations" with Vitol, Inc.; and "the next year, Vitol, Inc. increased its revenue, and Tinsel stock significantly increased in value."

Leticia brought claims for breach of fiduciary duty, conspiracy, fraud, and negligence in a stock transaction against VHIISA; Ian Taylor, a previous director of VHIISA and president of the Vitol Group; Tinsel; Jacobus Sterken, a director of Tinsel[3]; and Stichting, a passive trust office that holds shares and distributes to the shareholders the profits it receives from Tinsel. She alleged that they "conspired to aid and facilitate [Miguel's] scheme to defraud" her by "conceal[ing]" the "imminent acquisition of West African assets by [Vitol, Inc.]." And they breached their fiduciary duties to her by failing to "apprise her of all material information

[3] Sterken testified that from 2008 to 2010, he was a director of Vitol, Inc.

necessary for her to make an informed decision regarding a sale [of shares] to an insider [Miguel]"; 'implement appropriate safeguards to ensure stockholders, like [her] are not unfairly disadvantaged"; and "establish appropriate internal controls to protect non-insider shareholders." She argued that they "owed [her] both formal and informal fiduciary duties" because they had "dealt with each other" for such a "long period of time that such a duty was owed." They "intentionally plotted and carried out a plan to actually defraud [her] personally and the community estate." They "made material misrepresentations and omitted material facts regarding the valuation of Tinsel stock and the [appurtenant] rights to [her]," on which she relied to her detriment. And their conduct constituted "fraud in a stock transaction."[4] Leticia sought actual damages, punitive damages in the amount of $400,000,000, and attorney's fees.

Appellees each filed an amended special appearance, asserting, as discussed in detail below, that Leticia "ha[d] not sufficiently alleged jurisdiction" over them and Texas does not have general or specific jurisdiction. In her response to each special appearance, Leticia asserted that she had sufficiently alleged jurisdiction over each party. And, alternatively, she requested a continuance until each party responded to her discovery requests, which the trial court denied.

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[4] *See* TEX. BUS. & COM. CODE ANN. § 27.01 (Vernon 2015).

After a hearing,[5] the trial court granted appellees' special appearances and dismissed Leticia's claims against them.

Personal Jurisdiction

In her first issue, Leticia argues that the trial court erred in determining that appellees are not subject to the personal jurisdiction of a Texas court because "ample evidence demonstrated the presence of both general and specific jurisdiction." Appellees assert that their "occasional or sporadic contacts with Texas" do not establish general jurisdiction and, in regard to specific jurisdiction, "the only alleged contacts with a remote tie to this case are not substantially connected to the operative facts of this case, which is the relevant inquiry."

A court may assert personal jurisdiction over a nonresident defendant only if the requirements of both the Fourteenth Amendment's due process clause and the Texas long-arm statute are satisfied. *See* U.S. CONST. amend. XIV, § 1; TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (Vernon 2015); *Guardian Royal Exch. Assurance, Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 226–27 (Tex. 1991). The Texas long-arm statute allows a court to exercise personal jurisdiction over a nonresident defendant who does business in Texas. TEX. CIV. PRAC. & REM. CODE ANN. § 17.042. A nonresident "does business" in Texas if he, among other things, "contracts by mail or otherwise with a Texas resident and either party is to

[5] The trial court heard argument of counsel, but took no testimony and admitted no evidence.

perform the contract in whole or in part" in Texas, or he "commits a tort in whole or in part" in Texas. *Id*. The Texas Supreme Court has repeatedly interpreted this statutory language "to reach as far as the federal constitutional requirements of due process will allow." *Guardian Royal*, 815 S.W.2d at 226. Therefore, the requirements of the Texas long-arm statute are satisfied if the exercise of personal jurisdiction comports with federal due process limitations. *Id*.

The United States Constitution permits a state to assert personal jurisdiction over a nonresident defendant only if the defendant has some minimum, purposeful contacts with the state and if the exercise of jurisdiction will not offend traditional notions of fair play and substantial justice. *Dawson-Austin v. Austin*, 968 S.W.2d 319, 326 (Tex. 1998). A nonresident who has purposefully availed himself of the privileges and benefits of conducting business in the state has sufficient contacts with the state to confer personal jurisdiction. *Guardian Royal*, 815 S.W.2d at 226.

The "purposeful availment" requirement has been characterized by the Texas Supreme Court as the "touchstone of jurisdictional due process." *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 784 (Tex. 2005). In *Michiana*, the court articulated three important aspects of the purposeful availment inquiry. *Id*. at 785. First, only the defendant's contacts with the forum count. *Id*. This ensures that a defendant is not haled into a jurisdiction solely by the unilateral activities of a third party. *Id*. (citing *Burger King Corp. v. Rudzewicz*, 471 U.S.

462, 475, 105 S. Ct. 2174, 2183 (1985)). Second, the acts relied on must be purposeful; a defendant may not be haled into a jurisdiction solely based on contacts that are "random, isolated, or fortuitous." *Id*. (citing *Keeton v. Hustler Magazine, Inc*., 465 U.S. 770, 774, 104 S. Ct. 1473, 1478 (1984)). Third, a defendant "must seek some benefit, advantage, or profit by 'availing' itself of the jurisdiction" because "[j]urisdiction is premised on notions of implied consent" and by "invoking the benefits and protections of a forum's laws, a nonresident consents to suit there." *Id*. (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 567 (1980)).

A defendant's contacts with a forum can give rise to either general or specific jurisdiction. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002). General jurisdiction is present when a defendant's contacts are continuous and systematic, allowing 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.* at 796. General jurisdiction requires a showing that the defendant conducted substantial activities within the forum, a more demanding minimum contacts analysis than for specific jurisdiction. *PHC Minden, L.P. v. Kimberly Clark Corp.*, 235 S.W.3d 163, 168 (Tex. 2007). Specific jurisdiction, however, is established if the defendant's alleged liability arises from or is related to an activity conducted within the forum. *Marchand*, 83

S.W.3d at 796. When specific jurisdiction is asserted, the minimum contacts analysis focuses on the relationship between the defendant, the forum, and the litigation. *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 575–76 (Tex. 2007.).

Foreseeability is an important consideration in deciding whether the nonresident has purposefully established minimum contacts with the forum state. *Burger King Corp*., 471 U.S. at 475, 105 S. Ct. at 2183; *Guardian Royal*, 815 S.W.2d at 227. The concept of foreseeability is implicit in the requirement that there be a substantial connection between the nonresident defendant and Texas arising from actions or conduct of the nonresident defendant purposefully directed toward Texas. *Guardian Royal*, 815 S.W.2d at 227.

The existence of personal jurisdiction is a question of law, which must sometimes be preceded by the resolution of underlying factual disputes. *Marchand*, 83 S.W.3d at 794; *Paul Gillrie Inst., Inc. v. Universal Comput. Consulting, Ltd*., 183 S.W.3d 755, 759 (Tex. App.—Houston [1st Dist.] 2005, no pet.). When the underlying facts are undisputed or otherwise established, we review a trial court's grant of a special appearance de novo. *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002); *Paul Gillrie Inst., Inc*., 183 S.W.3d at 759. Where, as here, a trial court does not issue findings of fact or conclusions of law with its special appearance ruling, all fact findings

necessary to support the judgment and supported by the evidence are implied. *Marchand*, 83 S.W.3d at 795; *Paul Gillrie Inst., Inc*., 183 S.W.3d at 759.

A trial court determines a special appearance "on the basis of 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 Touradji v. Beach Capital P'ship, L.P*., 316 S.W.3d 15, 23 (Tex. App.—Houston [1st Dist.] 2010, no pet.) ("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."). The plaintiff bears the initial burden of pleading allegations sufficient to bring a nonresident defendant within the provisions of the Texas long-arm statute. *Coleman*, 83 S.W.3d at 807; *Paul Gillrie Inst., Inc*., 183 S.W.3d at 759. The burden of proof then shifts to the nonresident to negate all the bases of jurisdiction alleged by the plaintiff. *Kawasaki Steel Corp. v. Middleton*, 699 S.W.2d 199, 203 (Tex. 1985); *see also Kelly v. Gen. Interior Constr., Inc*., 301 S.W.3d 653, 658 (Tex. 2010) ("Because the plaintiff defines the scope and nature of the lawsuit, the defendant's corresponding burden to negate jurisdiction is tied to the allegations in the plaintiff's pleading.").

Where, as here, a case involves multiple defendants, the plaintiff must specify, and the court must examine, "each defendant's actions and contacts with

the forum"; the defendants' contacts cannot be aggregated. *See Morris v. Kohls-York*, 164 S.W.3d 686, 693 (Tex. App.—Austin 2005, pet. dism'd).

VHIISA

In her second amended petition, Leticia alleged that VHIISA is a public limited liability company organized under the laws of Luxembourg. She argued that jurisdiction over VHIISA is proper because it "purposefully availed itself of conducting activities within the State of Texas by soliciting contracts with Texas residents," including Miguel, "conduct[ing] meetings in Texas," and "plac[ing] phone calls, [and sending] emails, mail, and faxes intended to solicit contracts and other business with Texas residents," including Miguel. Leticia asserted that VHIISA "has directed both continuous and systematic contacts with the State of Texas, as well as activities purposefully directed to Texas that caused injury arising to and relating to those activities that form the basis of this lawsuit."

In its amended special appearance, VHIISA argued[6] that Texas does not have general jurisdiction over it because the alleged contacts on which Leticia

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[6] VHIISA first asserted that Leticia "insufficiently allege[d] personal jurisdiction over [it] in her First Amended Petition." *See Kelly v. Gen. Interior Constr., Inc*., 301 S.W.3d 653, 658–59 (Tex. 2010) ("If the plaintiff fails to plead facts bringing the defendant within reach of the long-arm statute (i.e., for a tort claim, that the defendant committed tortious acts in Texas), the defendant need only prove that it does not live in Texas to negate jurisdiction."); *Collection, Inc. v. Coleman*, 83 S.W.3d 801, 807 (Tex. 2002) (plaintiff bears initial burden to plead allegations sufficient to bring nonresident within provisions of Texas long-arm statute); *see also* TEX. R. CIV. P. 63 (amendment of deficient pleadings to include necessary jurisdictional allegations). The record shows, however, that before the hearing on

relies do not constitute continuous and systematic contacts with Texas such that it is "at home" in Texas. *See Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014). VIISA attached to its amended special appearance the affidavit of Jonathan Marsh, Vitol Group's in-house attorney. Marsh testified that VHIISA is not a resident, domiciliary, or citizen of Texas. Rather, it is a Luxembourg company with its principal place of business in Luxembourg City. Marsh noted that VHIISA has not employed anyone in Texas; paid Texas state taxes; owned or leased any real or personal property in Texas; maintained a place of business, office mailing address, or telephone in Texas; maintained a registered agent for service or any other agents in Texas; maintained any bank accounts, brokerage accounts, or other similar accounts in Texas; engaged in any marketing or solicitation activity in Texas; or done any business in Texas.

In her response, Leticia, who largely combined her analysis of general and specific jurisdiction, argued that general jurisdiction over VHIISA is proper because it "participated in multiple contracts with Texas residents" and executed a shareholder's agreement with Miguel. She asserted that VHIISA has "executed multiple contracts with [Miguel,] which specifically relate to the stock valued in

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VHIISA's special appearance, Leticia filed a Second Amended Petition, in which she modified her jurisdictional allegations to include specific jurisdictional facts. Thus, the burden shifted to VIISA to negate each of Leticia's alleged bases of jurisdiction. *See Kawasaki Steel Corp. v. Middleton*, 699 S.W.2d 199, 203 (Tex. 1985); *see also Kelly*, 301 S.W.3d at 658.

the Loya divorce." And "[g]iven the number of contracts" it executed with Miguel, a "resident of Houston, Texas heading the company's subsidiary in Houston," it "can hardly protest that is could not reasonably anticipate being brought into court there." To her response, Leticia attached a copy of the VHIISA shareholder's agreement, signed by Miguel; "cancelled" promissory notes, from 2002 and 2003, evidencing loans by VHIISA to Miguel; the December 2006 "Share Transfer Agreement," in which Miguel transferred his VHIISA shares to Tinsel shares; and a December 2006 "Share Repurchase Agreement," in which Miguel sold shares back to VHIISA.

Leticia also attached to her response an excerpt of Marsh's deposition testimony. *See* TEX. R. CIV. P. 120a(3) (trial court determines special appearance "on the basis of 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"); *Touradji*, 316 S.W.3d at 23 ("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."). Marsh, who has since August 2013 served as a director of VHIISA, testified that VHIISA executed shareholder's agreements with 50 to 60 shareholders in Houston and has since then sent one communication annually.

We are not concerned with the quantity of the contacts; instead, we are concerned with the nature and quality of those contacts. *See Coleman*, 83 S.W.3d at 809–10. Here, the agreements at issue are not contracts for the sale of goods or services in Texas or with Texas residents. Rather, they are agreements with "all shareholders—whether residents of Texas or not." The inquiry is not "whether a foreign corporation's in-forum contacts "can be said to be in some sense 'continuous and systematic,' it is whether the entity's 'affiliations with the State are so continuous and systematic as to render it essentially at home in the forum State.'" *Daimler*, 134 S. Ct. at 761. And general jurisdiction requires a showing that the defendant conducted substantial activities within the forum. *Guardian Royal*, 815 S.W.2d at 228. The mere presence of VHIISA shareholders in Texas does not constitute "substantial activities" within the state such that the more onerous burden of proving general jurisdiction is satisfied. *See Marchand*, 83 S.W.3d at 797.

Further, the shareholder's agreements and promissory notes contain choice-of-law and forum-selection clauses mandating the application of Dutch law and a Luxembourg forum. This weighs against VHIISA's having purposefully availed itself of a Texas forum in executing the agreements. *See Michiana*, 168 S.W.3d at 792 (noting clause designating foreign forum suggested no local availment intended); *see also Burger King*, 471 U.S. at 482, 105 S. Ct. at 2187

(holding choice-of-law provisions should be considered when determining purposeful availment); *J.A. Riggs Tractor Co. v. Bentley*, 209 S.W.3d 322, 332 (Tex. App.—Texarkana 2006, no pet.) ("[W]e note that the forum selection clause in the credit agreement suggests that Riggs anticipated suit in Arkansas and further suggests that [he] was not availing itself of the benefit of Texas laws. . . .").

"[O]nly a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there." *See Daimler*, 134 S. Ct. at 761–62. We conclude that the agreements in the instant case are insufficient to constitute continuous and systematic operations, or activities so substantial and of such nature as to justify general jurisdiction over VHIISA. *See id*. at 754.

VHIISA further argued that the trial court does not have specific jurisdiction over it because Leticia's "alleged causes of action do not arise out of or relate to any real or alleged contacts with Texas by VHIISA." Rather, she generally complained of collective misconduct by appellees.

In her response, Leticia asserted that "[s]oliciting a Texas resident to enter a contract clearly establishes sufficient contacts to impose specific jurisdiction" and "[c]ontracting with a Texas resident also submits a defendant to specific jurisdiction." However, simply contracting with a Texas resident, alone, is insufficient to establish specific jurisdiction. *See Burger King*, 471 U.S. at 478, 105 S. Ct. at 2185. Marsh testified that VHIISA has "never sold any shares" to

Leticia, she was "never named as a 'permitted assignee' of any other person's shares," and it has "never considered her a shareholder." Further, it has never communicated with her, her attorneys, or her expert witnesses. Leticia does not identify any specific act or omission by VHIISA that gave rise to her claims. When, as here, there are multiple defendants, each defendant's actions and contacts with the forum must be tested separately. *See Morris*, 164 S.W.3d at 693.

Further, Leticia, in her amended petition, complains of misrepresentations and omissions that she alleges occurred during the divorce proceedings, which began in 2008. And she asserts that "the Loyas" exchanged "their" VHIISA shares for Tinsel shares in 2006. Thus, according to Leticia's own allegations, any interest she had in the VHIISA shares ended before the facts giving rise to her lawsuit. *See Marchand*, 83 S.W.3d at 796 (specific jurisdiction established if defendant's liability arises from or relates to activity conducted within forum).

We conclude that VHIISA has negated all bases for an assertion of general or specific jurisdiction over it. *See Middleton*, 699 S.W.2d at 203. Because VHIISA does not have sufficient minimum contacts with Texas to subject it to personal jurisdiction, we hold that the trial court did not err in granting its special appearance.

Tinsel

In her second amended petition, Leticia alleged that Tinsel is a public limited liability company organized under the laws of Luxembourg. She argued that jurisdiction over Tinsel is proper because it "purposefully availed itself of conducting activities within the State of Texas by soliciting contracts with Texas residents," including Miguel, "conduct[ing] meetings in Texas," and "plac[ing] phone calls, [and sending] emails, mail, and faxes intended to solicit contracts and other business with Texas residents," including Miguel. Leticia asserts that Tinsel has "directed both continuous and systematic contacts with the State of Texas that caused injury arising to and relating to those activities that form the basis of this lawsuit."

In its amended special appearance, Tinsel argued[7] that Texas does not have general jurisdiction over it because Leticia has not "pled facts showing that it has the continuous and systematic contacts with Texas which would render it 'at home' in Texas." *See Daimler AG*, 134 S. Ct. at 760. Tinsel attached to its amended special appearance, the affidavit of Karl Pardaens, a Tinsel director. Pardaens testified that Tinsel is not a resident, domiciliary, or citizen of Texas. Rather, it is

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[7] Tinsel first asserted that Leticia "insufficiently allege[d] personal jurisdiction over [it] in her First Amended Petition." As noted above, Leticia, before the hearing on Tinsel's special appearance, filed a Second Amended Petition, in which she modified her jurisdictional allegations.

a Luxembourg company with its principal place of business in Luxembourg City. Pardaens noted that Tinsel has not employed anyone in Texas; paid Texas state taxes; owned or leased any real or personal property in Texas; maintained a place of business, office mailing address, or telephone in Texas; maintained a registered agent for service or any other agents in Texas; maintained any bank accounts, brokerage accounts, or other similar accounts in Texas; purchased or sold any goods in Texas; contracted with any Texas resident for services; or engaged in any marketing or solicitation activity in Texas.

Pardaens explained that the "shareholders of Tinsel are employees (or former employees) of the Vitol Group who have been awarded [by VHIISA] the opportunity to buy shares at a nominal price." Tinsel "does not solicit any person to purchase shares in Tinsel." And the shares represent VHIISA profits and "function as an employee incentive plan." Pardaens noted that "[a]ll shares of Tinsel are held by [Stichting], which acts as a trustee for the beneficial owners."

In her response, Leticia, who again largely combined her analysis of general and specific jurisdiction, argued that general jurisdiction over Tinsel is proper because it also "participated in multiple contracts with Texas residents" and "executed contracts with Houston resident [Miguel] which specifically relate to the stock valued in the Loya divorce." To her response, she attached copies of Tinsel's shareholder's agreements with Miguel, Metz, and Maarraoui, and the 2006

"Share Transfer Agreement," in which Miguel transferred his VHIISA shares to Tinsel shares. Leticia emphasizes in her appellate brief that Pardaens, in his deposition, testified that two of Tinsel's four directors reside in Texas.

As discussed above, a single stock transfer and the mere presence of Tinsel shareholders in Texas does not constitute "substantial activities" within the forum such that Tinsel is subject to general jurisdiction. *See Marchand*, 83 S.W.3d at 797. And, again, the shareholder's agreement contains choice-of-law and forum-selection clauses mandating the application of Dutch law and a Luxembourg forum. This weighs against Tinsel having purposefully availed itself of a Texas forum in executing the shareholder's agreement. *See Michiana*, 168 S.W.3d at 792 (noting clause designating foreign forum suggested no local availment intended); *see also Burger King*, 471 U.S. at 482, 105 S. Ct. at 2187) (holding choice-of-law provisions should be considered when determining purposeful availment). These activities, without more, are insufficient to demonstrate that Tinsel's contacts with Texas were so continuous and systematic that general jurisdiction is established. *See Guardian Royal*, 815 S.W.2d at 228.

Tinsel further argued that the trial court lacked specific jurisdiction over it because Leticia's "alleged causes of action do not arise out of or relate to any real or alleged contacts with Texas by Tinsel." Rather, she generally complained of collective misconduct by appellees.

In her response, Leticia asserted that "[s]oliciting a Texas resident to enter a contract clearly establishes sufficient contacts to impose specific jurisdiction" and "[c]ontracting with a Texas resident also submits a defendant to specific jurisdiction." However, nothing in the evidence presented demonstrates that Tinsel solicited a Texas resident. And simply contracting with a Texas resident, alone, is insufficient to establish specific jurisdiction. *See Burger King*, 471 U.S. at 478, 105 S. Ct. at 2185. Pardaens testified that Tinsel has "never sold any shares" to Leticia; she was "never named as a 'permitted assignee' of any person's shares," as governed by the shareholder's agreement, and Tinsel has never communicated with Leticia, her attorneys, or her expert witnesses in her divorce from Miguel. Leticia does not identify any specific act or omission by Tinsel that gave rise to her claims. When, as here, there are multiple defendants, each defendant's actions and contacts with the forum must be tested separately. *See Morris*, 164 S.W.3d at 693.

We conclude that Tinsel has negated all bases for an assertion of general or specific jurisdiction over it. *See Middleton*, 699 S.W.2d at 203. Because Tinsel does not have sufficient minimum contacts with Texas to subject it to personal jurisdiction, we hold that the trial court did not err in granting its special appearance.

Stichting

In her second amended petition, Leticia alleged that Stichting is a "foundation organized and existing under the laws of the Netherlands" and is a "trustee for the benefit of shareholders, such as Miguel and Leticia Loya, who live in Harris County, Texas." She argued that jurisdiction over Stichting is proper because it "purposefully availed itself of conducting activities within the State of Texas by soliciting contracts with Texas residents," including Miguel, "conduct[ing] meetings in Texas," and "plac[ing] phone calls, [and sending] emails, mail, and faxes intended to solicit contracts and other business with Texas residents," including Miguel. Leticia asserted that Stichting "has directed both continuous and systematic contacts with the State of Texas, as well as activities purposefully directed to Texas[,] that caused injur[y] arising to and relating to those activities that form the basis of this lawsuit."

In its amended special appearance, Stichting argued[8] that Texas does not have general jurisdiction over it because Leticia has not "pled facts showing that it has the continuous and systematic contacts with Texas which would render it 'at home' in Texas." Stichting attached to its amended special appearance, the

[8] Stichting first asserted that Leticia "insufficiently alleges personal jurisdiction over [it] in her First Amended Petition." As noted above, Leticia, before the hearing on Stichting's special appearance, filed a Second Amended Petition, in which she modified her jurisdictional allegations.

affidavit of Sam Lambroza, a Stichting director. Lambroza testified that Stichting is not a resident, domiciliary, or citizen of Texas. Rather, it is a Dutch foundation with its principal place of business in Rotterdam, the Netherlands. Lambroza noted that Stichting has not employed anyone in Texas; paid Texas state taxes; owned or leased any real or personal property in Texas; maintained a place of business, office mailing address, or telephone in Texas; maintained registered agents for service or any other agents in Texas; maintained any bank accounts, brokerage accounts, or other similar accounts in Texas; or engaged in any marketing or solicitation activity in Texas. Stichting "does not solicit any person to purchase shares in Tinsel or in Stichting." Stichting is "merely a passive trust office that holds the Tinsel shares and distributes to the shareholder the profits it receives from Tinsel." And Stichting's business "takes place entirely in the Netherlands." It has "never engaged in business in Texas."

In her response, Leticia asserted that Stichting "participated in multiple contracts with Texas residents," including with Miguel; "executed multiple other contracts with Houston resident Miguel"; and "was a signatory to the shareholder agreement." To her response, she attached copies of the VHIISA shareholder's agreement, signed by Miguel; Tinsel's shareholder's agreements with Miguel, Metz, and Maarraoui; the December 2006 "Share Transfer Agreement," in which

Miguel transferred his VHIISA shares to Tinsel shares; and a December 2006 "Share Repurchase Agreement," in which Miguel sold shares back to VHIISA.

Leticia emphasizes in her appellate brief that Lambroza, in his deposition, testified that Stichting has entered into similar agreements with approximately 70 Texas residents who are employees of Vitol.

Again, we are not concerned with the quantity of the contacts; instead, we are concerned with the nature and quality of those contacts. *See Coleman*, 83 S.W.3d at 809–10. The evidence shows that Stichting is merely a trustee for the benefit of shareholders and does not solicit the sale of stock. The mere presence of a trust beneficiary in Texas does not confer jurisdiction over a trustee. *Dowdy v. Miller*, 122 S.W.3d 816, 823 (Tex. App.—Amarillo 2003, no pet.). Stichting's "participation" in the agreements, without more, is insufficient to demonstrate that it conducted substantial activities within Texas. *Guardian Royal*, 815 S.W.2d at 228.

Further, the shareholder's agreements contain choice-of-law and forum-selection clauses mandating the application of Dutch law and a Luxembourg forum, which weighs against Stichting having purposefully availed itself of a Texas forum in executing the agreements. *See Michiana*, 168 S.W.3d at 792 (noting clause designating foreign forum suggested no local availment intended);

see also Burger King, 471 U.S. at 482, 105 S. Ct. 2174 (holding choice-of-law provisions should be considered when determining purposeful availment).

"[O]nly a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there." *See Daimler*, 134 S. Ct. at 761–62. We conclude that the agreements in the instant case are insufficient to constitute continuous and systematic operations that are so substantial and of such nature as to justify general jurisdiction over Stichting. *See id*. at 754.

Stichting further argued that the trial court lacked specific jurisdiction over it because Leticia's "alleged causes of action do not arise out of or relate to any real or alleged contacts with Texas by Stichting." Rather, she generally complained of collective misconduct by appellees.

In her response, Leticia again asserted that "[s]oliciting a Texas resident to enter a contract clearly establishes sufficient contacts to impose specific jurisdiction" and "[c]ontracting with a Texas resident also submits a defendant to specific jurisdiction." However, nothing in the evidence presented demonstrates that Stichting "solicited" a Texas resident. And simply contracting with a Texas resident is insufficient to establish specific jurisdiction. *See Burger King*, 471 U.S. at 478, 105 S. Ct. at 2185. Further, Lambroza testified that Stichting has never communicated with Leticia, her attorneys, or her expert witnesses in her divorce from Miguel. Leticia does not identify any specific act or omission by Tinsel that

gave rise to her claims. When, as here, there are multiple defendants, each defendant's actions and contacts with the forum must be tested separately. *See Morris*, 164 S.W.3d at 693.

We conclude that Stichting has negated all bases for an assertion of general or specific jurisdiction over it. *See Middleton*, 699 S.W.2d at 203. Because Stichting does not have sufficient minimum contacts with Texas to subject it to personal jurisdiction, we hold that the trial court did not err in granting its special appearance.

Taylor

In her second amended petition, Leticia sued Taylor in his individual capacity and alleged that although he is "an individual residing in London, England . . . [and] a citizen of the United Kingdom," he has "actively participated in Texas businesses, including being an officer and a director of Texas businesses and soliciting business from Texas residents,." Thus, he has "sufficient minimum contacts to be availed of this forum for purposes of this litigation."

In his amended special appearance, Taylor argued[9] that Texas does not have general jurisdiction over him because he does not have the continuous and

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[9] Taylor first asserted that Leticia "insufficiently allege[d] personal jurisdiction over [him] in her First Amended Petition." Again, however, Leticia, before the hearing on Taylor's special appearance, filed a Second Amended Petition, in which she modified her jurisdictional allegations.

systematic contacts with Texas that would render him, in his individual capacity, essentially "at home" in Texas. *See Daimler AG*, 134 S. Ct. at 760. Taylor attached to his amended special appearance his affidavit. He testified that he is a citizen of the United Kingdom and has neither resided nor been domiciled in Texas; been employed in Texas; paid Texas state taxes; been eligible to vote in Texas; owned or leased any real or personal property in Texas; maintained a place of business, office mailing address, or telephone in Texas; maintained registered agents for service in Texas; maintained any bank accounts, brokerage accounts, or other similar accounts in Texas; or engaged in any business in Texas in his individual capacity. And Taylor is "not an officer or director of any Texas business."

Taylor asserted that, even were Leticia's jurisdictional allegations in her petition true, the fiduciary-shield doctrine protects a corporate officer or employee from a trial court's exercise of general jurisdiction when the individual's contacts with Texas are on behalf of his employer. *See Wellness Wireless, Inc. v. Vita*, No. 01-12-00500-CV, 2013 WL 978270, at *9 (Tex. App.—Houston [1st Dist.] 2002, no pet.) (mem. op.) ("Texas courts have adopted the fiduciary-shield doctrine to protect a corporate officer or employee from the trial court's exercise of general jurisdiction when all of the individual's contacts with Texas were on behalf of his employer." (internal quotations omitted)); *see also Garner v. Furmanite Austl.*

Pty., Ltd., 966 S.W.2d 798, 803 (Tex. App.—Houston [1st Dist.] 1998, pet. denied); *Vosko v. Chase Manhattan Bank*, 909 S.W.2d 95, 99 (Tex. App.—Houston [14th Dist.] 1995, writ denied).

In her response, Leticia asserted that Taylor "personally signed on numerous contracts with Miguel, a Houston, Texas resident, regarding the stock to be divided in the Loya divorce"; sent "frequent letters to Miguel at his Houston, Texas address, inviting him to participate in the new class of shares"; "has taken advantage of Texas courts" by managing a limited liability company organized in Texas, Knightsbridge Realty Holding, LLC.; granted Miguel power of attorney to manage its operations; and contracted for the purchase of real property in Texas and then suing on that contract in a Harris County district court. To her response, Leticia attached copies of two "cancelled" promissory notes, dated 2002 and 2003, evidencing loans by VHIISA to Miguel; two "Share Transfer Agreements," dated 2005 and 2006; a 2004 "Share Repurchase Agreement," in which Miguel sold shares back to VHIISA; various correspondence; a 2008 real property purchase agreement; a durable power of attorney; and the petition in Taylor's Harris County district court suit.

Leticia also attached to her response an excerpt of Taylor's deposition testimony. *See* TEX. R. CIV. P. 120a(3); *Touradji*, 316 S.W.3d at 23. Taylor testified that he is the president of Vitol Group and is employed by Vitol Services,

Limited, a United Kingdom company. He previously served as a director of VHIISA. The Vitol Group is comprised of approximately 400 distinct business entities, including Vitol, Inc., which is Vitol Group's "main entity in the United States." Vitol, Inc. has its principal office in Houston. And Taylor has never been a director of, or served in any other capacity in, Vitol, Inc.

The record reveals that Taylor executed the share transfer and repurchase agreements on behalf of VHIISA. And it contains letters signed by Taylor as "President, Vitol Group of Companies" and letters signed by Taylor on Vitol Holdings letterhead and addressed to "Dear Shareholder." There is no evidence of activity that may be attributed to Taylor in his individual capacity. *See Vosko*, 909 S.W.2d at 99.

In his supplemental affidavit, Taylor testified:

> In 2008, I became the sole manager of Knightsbridge Realty Holdings, LLC, a Texas limited liability company. This company was formed for the sole purpose of the potential purchase of a condominium unit in Houston, Texas. This purchase never closed, and the company never acquired the condominium or any other real property in Texas or anywhere else. The company never engaged in any other business, and its existence was terminated in 2010. I never traveled to Texas for any business related to this company. The company maintained a registered agent in Texas during its existence, but the address of the registered agent was never my personal or business address.

The record shows that in 2008, Taylor, as "Manager" of Knightsbridge, executed, on behalf of "Buyer: Knightsbridge Realty Holdings, LLC.," a

"Condominium Purchase Agreement" with "Seller: Kirby Tower, LP, a *New York* Limited Partnership." (Emphasis added.) Taylor then appointed Miguel, as agent of Knightsbridge, to act for Taylor "solely in [his] capacity as Manager of Knightsbridge." In 2009, however, Knightsbridge filed a petition suing Kirby Tower LP, among others, for the return of its earnest money because the sale "was not completed."

"[O]nly a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there." *See Daimler*, 134 S. Ct. at 761–62. Taylor's 2008 contract with a New York entity, which did not culminate in a purchase of Texas real estate, and resulted in a single lawsuit to recover earnest money does not demonstrate that he conducted substantial activities within the forum. *See Guardian Royal*, 815 S.W.2d at 228; *see also Moni Pulo Ltd. v. Trutec Oil & Gas, Inc*., 130 S.W.3d 170, 181 (Tex. App.—Houston [14th Dist.] 2003, pet. denied).

Taylor further argued that Texas does not have specific jurisdiction over him because Leticia did not, in her petition, allege that he had "engaged in any activity in Texas, let alone any activity which gave rise to or relates to the claims at issue in this case. Indeed, not one single act—a meeting, phone call, or conversation—by Taylor is alleged to have occurred in Texas." He asserts that he has "never

communicated with [Leticia] or her expert witnesses and [only] communicated with her attorneys at a deposition in London."

In her response, Leticia argued that the trial court has specific jurisdiction over Taylor because he "admits in his own affidavit that he was deposed by [her] attorneys in London" in the underlying divorce case based on his knowledge of the valuation of the stock.[10] Leticia does not, however, direct us to any authority to support her assertion that having been previously compelled to attend a deposition at his home in London now subjects Taylor to the jurisdiction of a Texas court in a separate action against him. Specific jurisdiction requires that Taylor have purposely directed his activities toward Texas or purposely availed himself of the privilege of conducting activities in Texas. *See Moki Mac*, 221 S.W.3d at 576, 579. Moreover, Leticia does not allege any misrepresentations or omissions by Taylor in his deposition. *See id.*

We conclude that Taylor has negated all bases for an assertion of general or specific jurisdiction over him. *See Middleton*, 699 S.W.2d at 203. Because Taylor does not have sufficient minimum contacts with Texas to subject him to personal jurisdiction, we hold that the trial court did not err in granting his special appearance.

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[10] *In re Taylor*, 401 S.W.3d 69, 71 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding).

Sterken

In her second amended petition, Leticia also sued Sterken in his individual capacity and alleged that although Sterken "is an individual residing in Geneva" and a "citizen of Switzerland," he has "actively participated in Texas businesses, including being a director of Vitol Resources Inc., a Delaware corporation and Texas businesses [sic] and therefore [he] has sufficient minimum contacts to be availed of this forum for purposes of this litigation."

In his amended special appearance, Sterken asserted that Leticia "insufficiently allege[d] personal jurisdiction over [him] in her First Amended Petition." *See Coleman*, 83 S.W.3d at 807 (plaintiff bears initial burden to plead allegations sufficient to bring nonresident within provisions of Texas long-arm statute). Although Leticia filed a Second Amended Petition, her jurisdictional allegations against him did not change. *See* TEX. R. CIV. P. 63 (deficient pleadings should be amended to include necessary jurisdictional allegations). Sterken asserted that Leticia "has not made any allegations that [he] has committed a single act in Texas. Nor has [she] alleged any activity 'purposefully directed' at Texas." Leticia did not, in her petition, allege any acts by Sterken individually. If a plaintiff does not plead sufficient jurisdictional facts, the defendant can satisfy his burden to negate jurisdiction by proving that he is a nonresident. *See Kelly*, 301 S.W.3d at 658–59.

Sterken attached to his amended special appearance his affidavit. He asserted that he is a citizen of the Netherlands and he has never resided or been domiciled in Texas; been employed in Texas; paid Texas state taxes; been eligible to vote in Texas; owned or leased any real or personal property in Texas; maintained a place of business, office mailing address, or telephone in Texas; maintained registered agents for service in Texas; maintained any bank accounts, brokerage accounts, or other similar accounts in Texas; or engaged in any business in Texas in his individual capacity. Sterken "is not an officer or director of any Texas business," and, even if he were, a trial court "cannot exercise jurisdiction over a nonresident corporate officer if his only contacts with Texas are those the officer encounters by virtue of his role as an officer on behalf of the corporation." *See Vita*, 2013 WL 978270, at *9.

"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." *See Touradji*, 316 S.W.3d at 23. In her response, Leticia asserted that "Sterken himself has executed multiple contracts with Houston resident Miguel" and he sent to Miguel in Houston a "memorandum detailing the value of share dividends and the intrinsic value of [Miguel's] shares in Vitol entities." To her response, Leticia attached a copy of the Tinsel shareholder's agreement, share transfer agreement, "Statement[s] of Shareholding," and correspondence.

The record shows that Sterken, on behalf of Tinsel, signed the Tinsel shareholder's agreement, share transfer agreement, "Statement[s] of Shareholding," and other correspondence. Leticia does not direct us to any contacts by Sterken that may be attributed to him in his individual capacity. *See Vita*, 2013 WL 978270, at *9.

Sterken further argued that Texas does not have specific jurisdiction over him because Leticia's alleged causes of action "do not arise out of or relate to any real or alleged contacts with Texas by him." And she did not, in her petition, allege that he had "engaged in any activity in Texas, let alone any activity which gave rise to or relates to the claims at issue in this case. Indeed, not one single act—a meeting, phone call, or conversation—by Sterken is alleged to have occurred in Texas." Rather, she generally complained of collective misconduct by appellees.

In her response, Leticia asserted that "[s]oliciting a Texas resident to enter a contract clearly establishes sufficient contacts to impose specific jurisdiction" and "[c]ontracting with a Texas resident also submits a defendant to specific jurisdiction." Nothing in the evidence presented, however, demonstrates that Sterken individually solicited or contracted with a Texas resident. Further, Sterken testified in his affidavit that he has never communicated with Leticia, her attorneys, or her expert witnesses. Leticia does not identify any specific act or

omission by Sterken that gives rise to her claims. When, as here, there are multiple defendants, each defendant's actions and contacts with the forum must be tested separately. *See Morris*, 164 S.W.3d at 693.

We conclude that Sterken has negated all bases for an assertion of general or specific jurisdiction over him. *See Middleton*, 699 S.W.2d at 203. Because Sterken does not have sufficient minimum contacts with Texas to subject him to personal jurisdiction, we hold that the trial court did not err in granting his special appearance.

We overrule Leticia's first issue.

Motion for Continuance

In her second issue, Leticia argues that the trial court erred in denying her motion to continue the hearing on the appellees' special appearances because she did not have sufficient opportunity to conduct written discovery.

We review a trial court's decision to deny a motion for continuance for a "clear abuse of discretion." *Marchand*, 83 S.W.3d at 800. A trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law. *Id.*

A court "shall determine [a] special appearance on the basis of the pleadings, any stipulations made by and between the parties, such affidavits and attachments as may be filed by the parties, [and] the results of discovery processes and any oral

testimony." TEX. R. CIV. P. 120a(3). "Should it appear from the affidavits of a party opposing the [special appearance] that [s]he cannot for reasons stated present by affidavit facts essential to justify [her] opposition, the court may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as just." *Id.* The Texas Supreme Court has considered the following nonexclusive factors when deciding whether a trial court abused its discretion by denying a motion for continuance seeking additional time to conduct discovery: the length of time the case has been on file, the materiality and purpose of the discovery sought, and whether the party seeking the continuance has exercised due diligence to obtain the discovery sought. *Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 161 (Tex. 2004).

Here, the record shows that appellees filed special appearances on July 26, 2014. And the parties agreed to a hearing date of October 6, 2014. Subsequently, at Leticia's request, the parties reset the hearing for November 10, 2014. On October 28, 2014, Leticia first requested the depositions of special-appearance declarants, Marsh, Pardaens, Lambroza, Taylor, and Sterken. Appellees agreed make them available by telephone on November 3, 2014. On October 29, 2014, Leticia served on appellees her first requests for production. Appellees' responses were not due, however, until November 28, 2014, well after the hearing.

On November 3, 2014, Leticia moved to continue the November 10, 2014 hearing, asserting that she had requested depositions and was awaiting appellees' discovery responses. She asserted that she had "acted diligently in trying to obtain the information sought by requesting the deposition[s] . . . , by immediately taking the depositions when offered, and by propounding discovery requests limited to information inquiring as to jurisdiction." With regard to diligence, Leticia's counsel, in her affidavit, states only, "I have exercised diligence in obtaining discovery." She did not assert that she could not present facts essential to justify her position or prepare for the special-appearance hearing, and she did not articulate "reasons." *See* TEX. R. CIV. P. 120a(3). "Rule 120a(3) gives the trial court the discretion to continue a special-appearance hearing and thereby extend the time in which evidence may be served, but this power applies only to a party opposing the special appearance who avers that he cannot adequately prepare for the special appearance hearing." *Said v. Maria Invs., Inc.*, No. 01-08-00962-CV, 2010 WL 457463, at *3 (Tex. App.—Houston [1st Dist.] Feb. 11, 2010, no pet.) (mem. op.).

Again, appellees filed their special appearances on July 26, 2014, and the trial court held the hearing almost four months later on November 10, 2014. Leticia does not address why she waited until days before the hearing to make her first requests to depose the special-appearance declarants, most of whom,

according to their affidavits, reside overseas. And she does not address why her first requests for production were not served until days before the hearing.

The record shows that, before the hearing, Leticia was able to depose all of the declarants, obtain transcripts, and file supplemental responses to the appellees' special appearances.

At the November 10, 2014 hearing, appellees objected to a continuance pending their written discovery responses because the requests were overly broad and not narrowly tailored to the jurisdiction issue at hand. Leticia responded, "Judge, I will represent that they are broad based basically because we didn't want to limit it to only that particular basis of allegation." The trial court responded, "Well, my problem is you are even saying that they are overbroad."

"The scope of discovery is largely within the discretion of the trial court." *Dillard Dep't. Stores, Inc. v. Hall*, 909 S.W.2d 491, 492 (Tex. 1995). And we must defer to that discretion, absent abuse. *See Colonial Pipeline*, 968 S.W.2d at 941. Here, the trial court's decision to deny Leticia's motion for continuance was not arbitrary or unreasonable and was not made without reference to guiding rules and principles. *See Marchand*, 83 S.W.3d at 800.

Accordingly, we hold that the trial court did not err in denying Leticia's motion for continuance.

We overrule Leticia's second issue.

Conclusion

We affirm the orders of the trial court.

Terry Jennings
Justice

Panel consists of Justices Jennings, Keyes, and Brown.