COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00313-CV

ASHOK B. PATEL, RAMESH PATEL, NARESH PATEL, AND MANILAL B. PATEL — APPELLANTS

V.

ROGER PATE AND PATE DEVELOPMENT, INC. — APPELLEES

FROM THE 17TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 017-278274-15

MEMORANDUM OPINION[1]

The resolution of this interlocutory appeal from the denial of special appearances turns on an application of the burden-shifting standards described in *Kelly v. General Interior Construction, Inc.*, 301 S.W.3d 653, 658–59 (Tex.

[1] *See* Tex. R. App. P. 47.4.

2010). Because the appellees in this case brought forward legally and factually sufficient evidence in support of their jurisdictional allegations, we affirm.

Factual and Procedural Background

Roger Pate, through his company Pate Development, Inc. (together, Pate), is a general contractor who invested in and helped develop several hotel properties with Ramesh, Amrit, Naresh, Ashok, and Manilal Patel. In 2005 and 2007, they formed various entities to own and invest in these projects, including Nextgen Hospitality, LLC, Lotustel Group, LLC, Premier Hotels Group, Inc., Bridged Hybrid Financing, LLC, and Premium Hotel Management, Inc. (the Hotel Entities). According to Roger, all of the Hotel Entities engaged Pate to develop hotels.

Around 2011, an accounting dispute arose among Pate and the members of the Hotel Entities. Eventually, Pate sued the Hotel Entities and the Patels individually alleging that they engaged him "for procurement, development, or rehabilitation" of hotel property and did not pay him what they promised. He also sought reimbursement of part of his capital contribution to Nextgen, which he contended that he had overpaid. Pate brought causes of action for breach of contract, quantum meruit, fraud by representation and omission, negligent misrepresentation, an accounting of all capital contributions to the Hotel Entities, a declaratory judgment of his rightful ownership interests in each respective entity, and dissolution of all the Hotel Entities; Pate also sought attorney's fees and exemplary damages.

Nonresidents[2] Ramesh, Naresh, Ashok, and Manilal (the Nonresidents) each filed a special appearance, in which they denied ever conducting business in Texas in their individual capacities and denied ever committing a tort in Texas.[3] The trial court held a series of evidentiary hearings on the special appearances, and—in between the second and third hearings—Pate filed a second amended petition alleging facts to support the exercise of personal jurisdiction over the Nonresidents. After the third evidentiary hearing, the trial court denied the special appearances as to all of the Nonresidents, and they filed this accelerated interlocutory appeal. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(7) (West Supp. 2016). Neither party requested findings of fact and conclusions of law.

Standard of Review

Whether a trial court has personal jurisdiction over a defendant is a question of law, which we review de novo based on all of the evidence. *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007); *TravelJungle v. Am. Airlines, Inc.*, 212 S.W.3d 841, 845 (Tex. App.—Fort Worth 2006, no pet.). We may review the trial court's resolution of disputed fact issues for legal and factual sufficiency under the same standards of review that we apply in reviewing

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[2]It is undisputed that none of the four reside in Texas.

[3]As the Nonresidents' counsel acknowledged at the first hearing, "They came [to Texas] in their capacity as members of the four companies. They didn't come in their individual capacities. . . . That is the gravamen of our special appearance . . . ."

a jury's or trial court's findings of fact at trial. *TravelJungle*, 212 S.W.3d at 845. When, as in this case, the trial court does not issue findings of fact and conclusions of law, all facts necessary to support the trial court's order that are supported by the evidence are implied. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002).

The supreme court has explained how the burdens shift between the plaintiff and defendant in a special appearance:

> Our special-appearance jurisprudence dictates that the plaintiff and the defendant bear shifting burdens of proof in a challenge to personal jurisdiction. We have consistently held that the plaintiff bears the initial burden to plead sufficient allegations to bring the nonresident defendant within the reach of Texas's long-arm statute. Once the plaintiff has pleaded sufficient jurisdictional allegations, the defendant filing a special appearance bears the burden to negate all bases of personal jurisdiction alleged by the plaintiff. 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.
>
> 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. When the pleading is wholly devoid of jurisdictional facts, the plaintiff should amend the pleading to include the necessary factual allegations, thereby allowing jurisdiction to be decided based on evidence rather than allegations, as it should be.
>
> The defendant can negate jurisdiction on either a factual or legal basis. Factually, the defendant can present evidence that it has no contacts with Texas, effectively disproving the plaintiff's allegations. The plaintiff can then respond with its own evidence that affirms its allegations, and it risks dismissal of its lawsuit if it cannot present the trial court with evidence establishing personal jurisdiction. Legally, the defendant can show that even if the plaintiff's alleged facts are true, the evidence is legally insufficient to

> establish jurisdiction; the defendant's contacts with Texas fall short of purposeful availment; for specific jurisdiction, that the claims do not arise from the contacts; or that traditional notions of fair play and substantial justice are offended by the exercise of jurisdiction.

Kelly, 301 S.W.3d at 658–59 (footnotes omitted) (citations omitted).

We may sustain a legal sufficiency challenge only when (1) the record discloses a complete absence of evidence of a vital fact, (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact, (3) the evidence offered to prove a vital fact is no more than a mere scintilla, or (4) the evidence establishes conclusively the opposite of a vital fact. *Ford Motor Co. v. Castillo*, 444 S.W.3d 616, 620 (Tex. 2014); *Uniroyal Goodrich Tire Co. v. Martinez*, 977 S.W.2d 328, 334 (Tex. 1998), *cert. denied*, 526 U.S. 1040 (1999). In determining whether there is legally sufficient evidence to support the finding under review, we must consider evidence favorable to the finding if a reasonable factfinder could and disregard evidence contrary to the finding unless a reasonable factfinder could not. *Cent. Ready Mix Concrete Co. v. Islas*, 228 S.W.3d 649, 651 (Tex. 2007); *City of Keller v. Wilson*, 168 S.W.3d 802, 807, 827 (Tex. 2005).

When reviewing an assertion that the evidence is factually insufficient to support a finding, we set aside the finding only if, after considering and weighing all of the evidence in the record pertinent to that finding, we determine that the credible evidence supporting the finding is so weak, or so contrary to the overwhelming weight of all the evidence, that the answer should be set aside and

a new trial ordered. *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986) (op. on reh'g); *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *Garza v. Alviar*, 395 S.W.2d 821, 823 (Tex. 1965).

Applicable Law

A Texas court may assert personal jurisdiction over a nonresident defendant only if the requirements of due process under the Fourteenth Amendment and the Texas long-arm statute are satisfied. U.S. Const. amend. XIV, § 1; Tex. Civ. Prac. & Rem. Code Ann. §§ 17.041–.045 (West 2015); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413–14, 104 S. Ct. 1868, 1871–72 (1984); *Moki Mac*, 221 S.W.3d at 574.

A. Long-arm Statute

The Texas long-arm statute governs Texas courts' exercise of jurisdiction over nonresident defendants. Tex. Civ. Prac. & Rem. Code Ann. §§ 17.041–.045; *BMC Software*, 83 S.W.3d at 795; *TravelJungle*, 212 S.W.3d at 845. That statute permits Texas courts to exercise jurisdiction over a nonresident defendant who "does business" in Texas. Tex. Civ. Prac. & Rem. Code Ann. § 17.042; *BMC Software*, 83 S.W.3d at 795; *TravelJungle*, 212 S.W.3d at 845. The statute lists some activities that constitute "doing business" in Texas, including committing a tort, in whole or in part, in Texas. Tex. Civ. Prac. & Rem. Code Ann. § 17.042; *Moki Mac*, 221 S.W.3d at 574; *TravelJungle*, 212 S.W.3d at 845. The list of activities set forth in section 17.042 is not exclusive, however. *BMC Software*, 83 S.W.3d at 795; *TravelJungle*, 212 S.W.3d at 845.

Because the long-arm statute reaches "as far as the federal constitutional requirements for due process will allow," a Texas court may exercise jurisdiction over a nonresident if doing so "comports with federal due process limitations." *TV Azteca v. Ruiz*, 490 S.W.3d 29, 36 (Tex. 2016) (quoting *Spir Star AG v. Kimich*, 310 S.W.3d 868, 872 (Tex. 2010)), *cert. denied*, 2017 WL 2722433 (June 26, 2017). Therefore, in determining whether such requirements have been met, we rely on precedent from the United States Supreme Court and other federal courts, as well as our own state's decisions. *BMC Software*, 83 S.W.3d at 795; *TravelJungle*, 212 S.W.3d at 845–46.

B. Due Process

Due process is satisfied when (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. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945); *TV Azteca*, 490 S.W.3d at 36; *TravelJungle*, 212 S.W.3d at 846. A nonresident defendant who has "purposefully availed" himself of the privileges of conducting business in a foreign jurisdiction, invoking the benefits and protections of its laws, has sufficient minimum contacts with the forum to confer personal jurisdiction on a court in that forum. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474–76, 105 S. Ct. 2174, 2183–84 (1985); *Moki Mac*, 221 S.W.3d at 575. Three factors important in determining whether a defendant has purposefully availed itself of the forum are (1) only the defendant's contacts with the forum count, (2) the acts relied on must

be purposeful rather than merely fortuitous, and (3) the defendant must seek some benefit, advantage, or profit by availing itself of the forum. *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 785 (Tex. 2005); *TravelJungle*, 212 S.W.3d at 846.

C. General v. Specific Jurisdiction

Personal jurisdiction exists if the nonresident defendant's minimum contacts give rise to either specific jurisdiction or general jurisdiction. *Helicopteros Nacionales de Colombia*, 466 U.S. at 413–14, 104 S. Ct. at 1872; *TV Azteca*, 490 S.W.3d at 37; *TravelJungle*, 212 S.W.3d at 846. A trial court has general jurisdiction over a nonresident defendant when that defendant's contacts in a forum are continuous and systematic so that the forum may 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. *Moki Mac*, 221 S.W.3d at 575; *TravelJungle*, 212 S.W.3d at 846. In contrast, specific jurisdiction is present if the nonresident defendant's alleged liability arises from or is related to an activity conducted within the forum. *Moki Mac*, 221 S.W.3d at 576; *TravelJungle*, 212 S.W.3d at 846–47. In other words, "there must be a substantial connection between those contacts and the operative facts of the litigation." *Moki Mac*, 221 S.W.3d at 585. When a plaintiff asserts that a trial court has specific jurisdiction over a nonresident defendant, the minimum contacts analysis focuses on the relationship among the defendant, the forum, and the litigation. *Moki Mac*, 221 S.W.3d at 575–76; *Guardian Royal Exch.*

Assurance, Ltd. v. English China Clays, P.L.C., 815 S.W.2d 223, 228 (Tex. 1991); *TravelJungle*, 212 S.W.3d at 847.

Here, Pate's second amended petition alleged that the trial court had specific jurisdiction over the Nonresidents because they made negligent or fraudulent misrepresentations while physically present in the State of Texas.

Jurisdictional Facts in Second Amended Petition and Brief in Support Sufficient

In their first issue, the Nonresidents contend that Pate did not allege sufficient facts in his original and amended petitions; therefore, their proof of nonresidency conclusively defeated the exercise of jurisdiction. *See Kelly*, 301 S.W.3d at 658. The Nonresidents argue, alternatively, that (1) the trial court erred by considering the jurisdictional facts alleged in Pate's second amended petition because it was not filed until after the evidentiary hearings had begun and Pate neither sought nor obtained leave from the trial court to file it, and (2) even if the trial court did not err by considering the second amended petition, Pate did not allege sufficient jurisdictional facts in that petition.

The Nonresidents contend that rule of civil procedure 63 should govern which pleading the trial court may consider for purposes of measuring the sufficiency of evidence supporting jurisdictional allegations. *See* Tex. R. Civ. P. 63. Rule 63 allows parties to freely amend their pleadings until seven days before trial; after that, a party may amend pleadings only upon leave of court. *Id.* At least two intermediate court opinions hold that even if rule 63 applies to the

amendment of pleadings before the resolution of special appearances, a party must object to the trial court's consideration of an amended pleading filed less than seven days before the evidentiary hearing. *Lombardo v. Bhattacharyya*, 437 S.W.3d 658, 665 (Tex. App.—Dallas 2014, pet. denied); *Hale v. Richey*, No. 10-11-00187-CV, 2012 WL 89920, at *5–6 (Tex. App.—Waco Jan. 11, 2012, no pet.) (mem. op.); *see Nichols v. Bridges*, 163 S.W.3d 776, 782–83 (Tex. App.—Texarkana 2005, no pet.) (applying rule 63 to special appearance proceedings but concluding that "[w]hen the record is silent of any basis to conclude that the amended pleading was not considered by the trial court and when no surprise or prejudice is shown, leave of court is presumed."). Not only did the Nonresidents fail to object to the trial court's consideration of the second amended petition, they asked the trial court to take judicial notice of it at the third evidentiary hearing. Accordingly, we conclude and hold that the Nonresidents did not preserve any complaint that the jurisdictional allegations at issue should be those in either the original or first amended—but not the second amended—petitions. *See Lombardo*, 437 S.W.3d at 665; *Hale*, 2012 WL 89920, at *5–6; *Johnson v. Coca-Cola Co.*, 727 S.W.2d 756, 759 (Tex. App.—Dallas 1987, writ ref'd n.r.e.) (holding that plaintiff could not complain on appeal about trial court's consideration of pleadings in summary judgment proceeding when plaintiff asked the trial court to take judicial notice of them); *see also Kelly*, 301 S.W.3d at 658 n.4 ("While the pleadings are essential to frame the jurisdictional dispute, they

are not dispositive. . . . [A]dditional evidence merely supports or undermines the allegations in the pleadings.”).

The Nonresidents further argue that even if the pleading by which the sufficiency of the jurisdictional evidence must be measured is the second amended petition, that petition did not allege sufficient jurisdictional facts; thus, their evidence of nonresidency was all that was needed to defeat its allegations. In the second amended petition, Pate claimed as a basis for jurisdiction that

> [f]or each entity named as a defendant, each member met in Texas, negotiated each respective hotel development agreement with Roger [Pate] and Pate Development, except for Premier Hotels Group, Inc., which was developed in Missouri. These meetings occurred in Texas prior to creation of each respective entity. Thereafter, each entity ratified the individuals’ agreements and what turned out to be misrepresentations. Each individual therefore established specific contacts in Texas sufficient for this Court to exercise personal jurisdiction.

He raised the following claims against the Nonresidents and the Hotel Entities:

> ***Fraud by Representation and Omission***
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> 21. Defendants have made material misrepresentations or failed to disclose material information to Pate despite having a duty to do so, relating to the subject projects. The Defendants knew of the falsity of their misrepresentations and/or omissions, or exercised a reckless disregard for such representations and/or omissions, with the specific intent that Pate rely on same. As a result, Pate relied to his detriment. Such fraud was intentional and malicious thereby justifying an award of punitive damages in the maximum amount allowed by law.
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> ***Negligent Misrepresentation***
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> 22. Defendants misrepresented their ability and willingness to fairly and properly compensate Pate for Pate’s services, advances, and contributions. Pate had an exclusive pecuniary interest. The

> Defendants supplied false information to Pate and failed to exercise reasonable care in communicating the information to Pate. As a result, Pate suffered compensable monetary harm.

A liberal construction of Pate's second amended petition is that it alleges the Nonresidents made either negligent or fraudulent misrepresentations related to the projects for which the Hotel Entities were formed while physically present in the State of Texas. *See Roark v. Allen*, 633 S.W.2d 804, 809 (Tex. 1982) (holding that we are to liberally construe allegations in pleadings). A nonresident who, while physically present in the State of Texas, either makes statements alleged to be fraudulent or fails to disclose material information that he is under a duty to disclose is subject to specific jurisdiction in Texas in a subsequent action arising from the statement or nondisclosure. *Jani-King Franchising, Inc. v. Falco Franchising, S.A.*, No. 05-15-00335-CV, 2016 WL 2609314, at *4 (Tex. App.—Dallas May 5, 2016, no pet.) (mem. op.); *Petrie v. Widby*, 194 S.W.3d 168, 175 (Tex. App.—Dallas 2006, no pet.) (citing *Stein v. Deason*, 165 S.W.3d 406, 415 (Tex. App.—Dallas 2005, no pet.) (op. on reh'g)).

Additionally, Pate contended in a brief in support of the exercise of personal jurisdiction[4] that even if the Nonresidents had made the alleged

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[4]Courts may consider jurisdictional grounds alleged in responses to special appearances as well as the plaintiff's petition. *See, e.g.*, *Mi Gwang Contact Lens Co. v. Chapa*, No. 13-13-00306-CV, 2015 WL 3637846, at *3 n.2 (Tex. App.—Corpus Christi June 11, 2015, no pet.) (mem. op.); *Accelerated Wealth, LLC v. Lead Generation & Mktg., LLC*, No. 04-12-00647-CV, 2013 WL 1148923, at *2 (Tex. App.—San Antonio Mar. 20, 2013, no pet.) (mem. op.); *Alliance Royalties, LLC v. Boothe*, 329 S.W.3d 117, 120–21 (Tex. App.—Dallas 2010, no pet.); *Ennis v. Loiseau*, 164 S.W.3d 698, 705 (Tex. App.—Austin 2005, no pet).

misrepresentations while in Texas after the formation of the Hotel Entities, the Nonresidents could nevertheless be held liable in their individual capacities for making those misrepresentations. *See Jani-King*, 2016 WL 2609314, at *1–2 (declining to apply fiduciary shield doctrine to shareholders and director because corporate agents may be held liable for tortious acts committed while in service of corporation); *Atiq v. CoTechno Grp., Inc.*, No. 03-13-00762-CV, 2015 WL 6871219, at *4–5 (Tex. App.—Austin Nov. 4, 2015, pet. denied) (mem. op. on reh'g); *SITQ E.U, Inc. v. Reata Rests., Inc.*, 111 S.W.3d 638, 651 (Tex. App.—Fort Worth 2003, pet. denied).

Accordingly, we conclude and hold that the allegations in Pate's second amended petition and brief in support are sufficient to shift the burden to the Nonresidents to attempt to negate those allegations. We overrule the Nonresidents' first issue.

Jurisdictional Allegations Supported by Sufficient Evidence

In their second issue, the Nonresidents contend that if Pate met the pleading burden, they nevertheless conclusively disproved Pate's allegations, and Pate's evidence was therefore legally and factually insufficient to support the allegations.

The Nonresidents' Evidence About Contacts

The evidence showed that the Hotel Entities were formed on the following dates:

- July 26, 2005 Premium

- November 1, 2005 Premier
- May 17, 2007 Lotustel
- June 13, 2007 Nextgen
- November 7, 2007 Bridged Hybrid

The evidence also included deposition testimony from Ashok, Naresh, Ramesh, and Manilal. Ashok testified that the first time he was in Texas was in November 2007 for a wedding; after the wedding, he and Amrit, Ramesh, Manilal, and Naresh met with Roger about the Premium project. Everyone but Naresh also met with Roger about the Premier project. Ashok initially testified that he could not recall attending any meetings in Texas for the purpose of discussing the formation of the Premier, Premium, or Lotustel entities, but he later denied attending any such meetings. He also denied attending any meetings in Texas for the purpose of discussing the formation of Nextgen and Bridged Hybrid. Ashok admitted meeting in Texas regarding Nextgen, but only in 2010-2012. Finally, Ashok testified that he, Amrit, Manilal, Ramesh, Naresh, and Roger met in 2011 and 2012 to discuss an accounting problem with Lotustel; they also talked a little about Premium. Ashok contended that he was a "silent partner" who was not involved with any of the construction or financing.

Manilal testified that he visited Texas one time in 2005 or 2006 for a wedding but did not discuss any hotel project with anyone. He also said he attended the 2007 wedding; he admitted discussing the Premium project but denied looking at any future construction sites on that trip. He believed everyone

was at that meeting but Naresh. According to Manilal, at that meeting, they generally discussed how the construction was going and what it was costing; they did not discuss the membership agreement for Premium or how any members or partners were to be paid. Manilal also admitted visiting construction sites in Texas in 2008. Manilal further testified to attending two meetings in Texas in 2011 regarding Lotustel; the parties discussed accounting problems, funding, and capital calls, but they did not discuss paying Roger. Finally, Manilal attended meetings in Texas in 2012 and 2013 regarding the extent of each members' investment in Lotustel and a settlement between Roger and the members to make up for Roger's alleged failure to fully contribute to the Hotel Entities.

Naresh testified that the first time he came to Texas was for a wedding in 2007 or 2008; when asked whether November 2007 sounded familiar, he answered, "I believe so." At that meeting, the members discussed the status of construction plans for the Premium project as well as the Lotustel project but did not discuss Pate's[5] compensation. The Premium entity had already been formed and was almost complete. Naresh thought that he might have visited the Premium construction site after construction had already been started. But he also thought that he had been invited to participate as an investor in the Hotel

[5]Roger is the sole owner of Pate Development; he testified that when he referred to the Nonresidents' agreements with him, he meant with Pate Development.

Entities after they had already been formed, and he claimed to be only a passive investor. Naresh admitted to attending a meeting in Texas in 2009 or 2010 to discuss the Premium project and accounting issues; he denied ever discussing whether Roger should be paid at any meetings.

Finally, Ramesh testified that the first time he recalled meeting regarding the projects in Texas was in 2007 for the wedding; all of the members were there except Naresh. Although Ramesh could not recall the content of the discussion, he did testify that only the Premium project was discussed at that meeting, and the group viewed the construction site. The parties did not discuss who was going to invest what and how. The next time Ramesh went to Texas was about a year and a half to two years later after the Premium hotel had opened. Naresh was not at that meeting, but Manilal was there; Ramesh was not sure if Ashok attended that meeting or not. At a 2010 meeting, the parties discussed the Premium project, and everyone had to prove the extent of their investments. Additionally, at a meeting in 2012, they discussed accounting matters regarding the extent of each party's investment. Ramesh also testified generally that he met Naresh in Texas a total of four times: during three of those times, they discussed the hotel projects, and during two of them, they attended a wedding.

Accordingly, the Nonresidents presented evidence meeting their burden to negate Pate's allegation that while they were physically present in Texas, either before or after the formation of the Hotel Entities, they had made misrepresentations to Pate about payment related to those projects and entities.

Thus, under the burden-shifting standard described in *Kelly*, we must review whether Pate brought forward legally and factually sufficient evidence affirming the allegations.

Roger's Testimony About Contacts

Roger testified at two of the special appearance hearings and by deposition. According to Roger, all of the Nonresidents—Manilal, Ashok, Ramesh, and Naresh—"came to Texas every time [they] decided on selection of land and selection of franchise to build a hotel. They physically came to Texas, checked all the sites, every site [they] decided to build a hotel, and they came here, stayed here for a week and did all the accounting for all the companies." With respect to any agreements to compensate Pate, Roger testified that

> A. Whenever they all came first time and we decided to build a hotel in Garland, which is owned by LotusTel Group, L.L.C., they all came here, and that's when I told them what kind of compensation my company needs to develop the hotel, and they all had a meeting here, and they all discussed and finalized that for every hotel I develop the companies will pay $125,000, each hotel that is developed or under development.
>
> Q. And they were --
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> A. They were physically here and we discussed everything here in Texas.
>
> *Q. And did they make the agreement here in Texas?*
>
> *A. Yes, they did.*

[Emphasis added.] Roger further stated that "[a]ll the deals for every hotel and every company . . . were all made in Texas. Everybody flew in here and we had

a meeting here and everything was discussed about the contribution of me and my company, was finalized here in Texas."

At the second hearing, Roger testified that "[b]efore when these entities were formed, all the individuals flew in here and decided that they wanted to develop hotels. That's how those entities were formed." According to Roger, this was in 2008. He said Ashok, Manilal, Ramesh, and Naresh individually promised him that development costs would be paid to Pate by Lotustel for that project. When asked if Naresh's promise occurred in 2008, Roger replied, "I cannot remember exact dates, but I have to look it up, and I can give you exact dates, but it was 2007 or 2008." He further narrowed the time frame to "late 2007 or 2008." Still later, he said, "I can't remember the exact date, but it was somewhere 2007." Finally, when asked whether the "conversations" with all of the Nonresidents occurred "in 2007," Roger answered, "Yes, if I recall correctly."

Pate also offered Roger's deposition, taken after the first two special appearance hearings. Roger testified at the beginning that he had problems with his short-term memory and had trouble remembering dates. However, he unequivocally stated that, with respect to Lotustel, "I found the site, and then all the members flew in and approved the site before even Lotustel was formed," and that "all the members, before even Lotustel was formed, agreed that I'll be compensated $125,000 to develop the project." Furthermore, "When they agreed to pay me, the company was not formed, and it was agreed that either the members will pay it or the company will pay."

Roger testified that before Bridged Hybrid was formed in approximately 2007 or 2008, at a meeting in Texas, he told the other members, including the Nonresidents, that he needed $125,000 for the project, and all of them told Roger that he would be paid "[w]hen the company was formed and when [he] started doing the work."

But also according to Roger's deposition testimony, the first meeting at which the Nonresidents discussed the Premier project in Texas was in 2006 or 2007, and the last such meeting was in 2009 or 2010. Roger testified that the Nonresidents did not make representations to Pate regarding payment at that meeting. Instead, those representations were made at a meeting sometime in between the first and last meeting.

Asked to describe the specific misrepresentations, Roger said, "[A]ll the members agreed to pay me on development, and I didn't know they had no intentions to pay me."

In his deposition, Amrit—one of the members of the Hotel Entities but a Texas resident—testified that up until 2007, the Nonresidents had made "maybe quite a few" visits to Texas "to discuss or go over [the] development deals." According to Amrit, all of the Nonresidents except Naresh had been to Texas in 2005 to look for land for the Premium project. The earliest he could remember Naresh coming to Texas was for the wedding "sometime in Thanksgiving time" in 2007. He confirmed that the only project discussed at the wedding was the Premium project. The Premium entity had already been formed.

When asked if the Nonresidents had come to Texas before Lotustel was formed “to discuss creating Lotustel,” Amrit responded, “They came to see the location.” Construction of the hotel had not begun at that point, but although Amrit testified that Lotustel was formed in 2007, he did not say whether this trip occurred before or after the formation date. Amrit denied that the Nonresidents ever came to Texas to discuss the Bridged Hybrid project before formation of that entity. When asked if any of the Nonresidents discussed Nextgen while physically present in the State of Texas, Amrit answered, “I don’t know at that time.”

Pate’s Evidence Sufficient

Although Pate did not refute the Nonresidents’ evidence that they did not attend any meetings in Texas before at least November 2007 with evidence about specific dates the pre-entity formation meetings Roger testified about occurred, Roger did unequivocally testify that the Nonresidents made misrepresentations while physically present for meetings in Texas regarding whether Lotustel and Bridged Hybrid would reimburse Pate before those entities were formed. And Amrit testified that the Nonresidents had made “maybe quite a few” visits to Texas to discuss the deals before 2007. Moreover, even if the Hotel Entities had already been formed by the time the meetings occurred, the Nonresidents’ evidence that no misrepresentations were made at those meetings is not conclusive proof in light of Roger’s directly contradictory testimony that all of the Nonresidents made misrepresentations at those meetings about the intent

to reimburse Pate. Thus, we conclude and hold that Pate presented sufficient evidence of the existence of personal jurisdiction as pleaded in his second amended petition and as set forth in the brief in support of jurisdiction. We overrule the Nonresidents' second issue.

Conclusion

Having overruled both of the Nonresidents' issues based upon an application of the standard of review, we affirm the trial court's order denying the special appearances.

/s/ Terrie Livingston

TERRIE LIVINGSTON
CHIEF JUSTICE

PANEL: LIVINGSTON, C.J.; GABRIEL and PITTMAN, JJ.

DELIVERED: July 6, 2017