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de la Cerda v. Hutchison
Tex.Co.Ct.,1994.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

County Court of Texas, El Paso County.
Maria Elena DE LA CERDA et al., Plaintiffs,
v.
J.E. HUTCHISON, Defendant.
No. 93-1743.

March 8, 1994.

[*Statement of Case*]

FASHING, Judge:
***1** Having reviewed the pleadings, the affidavits of the parties, the depositions, and the other evidence, and having heard the arguments of the parties, the Court makes the following findings of facts and conclusions of law on Defendant's Motion to Dismiss for Lack of Jurisdiction:

Findings of Fact

1) Plaintiffs currently, and at all times relevant to this lawsuit, are residents of El Paso, Texas.

2) Plaintiff ANTONIO DE LA CERDA has always been a United States citizen.

3) Plaintiff MARIA ELENA DE LA CERDA is currently, and at all times relevant to this lawsuit, a lawful permanent resident of the United States.

4) In the spring of both 1991 and 1992, Defendant J.E. HUTCHISON contracted with Ag Labor Services of America/Armando Alvarez, a farm labor contractor to be his agent and employ farm workers on his behalf.

5) At all times relevant to this action, Ag Labor Services of America/Armando Alvarez was a farm labor contractor with his principal place of business in El Paso, Texas.

6) Ag Labor Services of America/Armando Alvarez, at all times relevant to this action, was certified as a farm labor contractor by the United States Department of Labor (“D.O.L.”).

7) In 1991, Ag Labor Services of America/Armando Alvarez, at a meeting in Tennessee, provided Defendant HUTCHISON with a paper that listed the former's office address in Texas. In addition, it stated that his company (Ag Labor Services of America, Inc.) rendered services “under the Special Agricultural Program (S.A.W.).”

8) On March 18, 1992, Defendant signed a contract with Ag Labor Services of America/Armando Alvarez requesting that the latter recruit four farm workers to work in Tennessee. This contract states that Defendant will hire the four farm workers when they arrive in Tennessee (¶ 1.). It then states that the workers will all be legally in the United States. The contract goes on to provide the terms and conditions of employment, including the pay rate of $5.00 per hour, a guarantee of at least 60 hours of work every two weeks, employment from July 30, 1992 until at least September 30, 1992. The contract does not state whether or not Defendant has Workers' Compensation insurance (¶ 12.). It did state that the Defendant would withhold Social Security taxes (¶ 12.).

9) Nowhere in this contract is a provision that the workers will be recruited in Mexico. To the contrary, it states that they will all be legally in the United States. It does not mention the “H-2A” program for non-resident guest workers who are certified by the Department of Labor and the Immigration and Naturalization Service (I.N.S.) to work in the United States under limited circumstances. Defendant presents no evidence of having submitted an application to the I.N.S. for H-2A guest workers.

10) On March 18, 1992, Defendant provided his employment agent, Ag Labor Services of America/ Armando Alvarez with a check for $1056 in payment for recruitment of "contract" farm workers.

***2** 11) On or about July 13, 1992, Defendant's agent, Ag Labor Services of America/Armando Alvarez, hired the Plaintiffs to work for the Defendant in El Paso, Texas.

12) Ag Labor Services of America/Armando Alvarez provided Mr. and Mrs. DE LA CERDA with a contract that served as written disclosures of the terms and conditions of employment, as required by the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA"), 29 U.S.C. § 1801, *et seq.* Defendant received copies of these contracts.

13) The disclosure statements contained: a) the name and address of J.E. HUTCHISON as the employer, b) the social security numbers of the Plaintiffs, c) the D.O.L. farm labor contractor certification number of Ag Labor Services, Inc./Armando Alvarez, d) that both Mr. and Mrs. DE LA CERDA would be performing general farm work, e) that they would be paid $5.00 per hour, f) that they were guaranteed 40 hours a week of work (weather permitting), g) that free housing would be provided to the Plaintiffs, h) that transportation would be provided to the Plaintiffs, i) that these terms and conditions of employment are not less favorable than the employee provides other workers for similar work, and j) that any legal problems arising from the job have to be settled in Tennessee.

14) On July 13, 1992, Plaintiffs filled out INS forms "I-9" that were provided to them by Ag Labor Services/Armando Alvarez. The completed I-9 for ANTONIO DE LA CEHDA indicated that he was a United States citizen, with an address in El Paso, Texas. The completed I-9 for MARIA ELENA DE LA CERDA indicated that she was a lawful permanent resident of the United States, with an address in El Paso, Texas. Both I-9s contained the Social Security numbers of the Plaintiff.

15) On July 13, 1992, the Plaintiffs completed IRS forms "W-4" that were provided by Ag Labor Services of America/Armando Alvarez. The completed W-4s indicated that both Plaintiffs had Social Security numbers and lived in El Paso, Texas.

16) On or about July 13, 1992, the Plaintiffs were given Greyhound bus tickets to Clarksville, Tennessee by Ag Labor Services of America/Armando Alvarez. They were also given a sheet of paper titled "TRAVEL INFORMATION." This sheet of paper listed the name and phone number of J.E. HUTCHISON in case they became lost en route to Tennessee.

17) Ag Labor Services of America/Armando Alvarez called Defendant HUTCHISON to let him know when to pick up the Plaintiffs at the Clarksville, Tennessee bus station.

18) Upon being picked up in Tennessee by the Defendant, the Plaintiffs gave him the completed forms I-9 and W-4.

19) The Defendant paid unemployment taxes on behalf of the Plaintiffs.

20) On or about, March 9, 1993, Defendant HUTCHISON mailed a letter to the Plaintiffs in Texas threatening them with a criminal prosecution in Tennessee if they failed to dismiss this action against him.

21) The following violations of Plaintiffs' rights, giving rise to causes of action, arose from or are related to Defendant's acts in Texas:
***3** a) failure to provide Workers' Compensation insurance, in violation of V.A.C.S. Arts. 8308-3.07, 3.14, and 3.15;
b) failure to disclose lack of Workers' Compensation insurance in violation of V.A.C.S. art 8308-3.07 and Migrant and Seasonal Agricultural Worker Protection Act ("AWPA"), 29 U.S.C. §§ 1821(A) and 1822(c) and 29 C.F.R. 500.75(b)(6);
c) providing false and misleading information regarding the length of employment, the terms and

conditions of housing and transportation;
d) intentionally attempting to have Plaintiffs waive their right under the AWPA to adjudicate any claims for violations of that Act in their home state of Texas, in violation of the AWPA, 29 U.S.C. § 1856;
e) intentionally intimidating and threatening Plaintiffs to get them to waive their claims under the AWPA by sending to them in Texas a threatening letter, in violation of the AWPA, 29 U.S.C. §§ 1855 and 1856;
f) breach of contract; and
g) failure to have workers' compensation insurance for the personal injuries to the Plaintiffs that occurred on Defendant's farm.

Conclusions of Law

A. *Under T.R.C.P. 120a, Defendant HUTCHISON has the burden to negate all bases of personal jurisdiction. All factual disputes must be resolved in the Plaintiffs' favor.*

T.R.C.P. 120a provides:
3. The court shall determine the 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.

Under this rule, a nonresident defendant opposing long-arm jurisdiction has the burden of proof at the special appearance hearing to negate every possible base of personal jurisdiction. *Kawasaki Steel Corp. v. Middleton,* 699 S.W.2d 199, 203 (Tex.1985); *Siskind v. Villa Foundation for Education, Inc.,* 642 S.W.2d 434, 438 (Tex.1982). When a defendant's affidavit regarding his contacts with the forum state are contradicted by evidence presented by the plaintiff, "all conflicts between the facts contained in the parties' affidavits must be resolved in the plaintiff's favor for purposes of determining whether a *prima facie* case for personal jurisdiction exists." *D.J. Investments v. Metzeler Motorcycle Tire,* 754 F.2d 542, 546 (5th Cir.1985); *Wyatt v. Kaplan,* 686 F.2d 276 (5th Cir.1982); *Brown v. Flowers Indus., Inc.,* 688 F.2d 328 (5th Cir.1982), *cert. denied*,460 U.S. 1023 (1983). *See Neizel v. Williams,* [96 LC ¶ 34,328] 543 F.Supp. 899, 904 (M.D.Fla.1982) (the court should accept the factual allegations of the plaintiff as true in determining whether the due process requirement of long-arm jurisdiction have been met).

B. *This Court has jurisdiction over the Defendant under the Texas Long-Arm Statute and the federal and state constitutional guarantees of due process*

This Court has jurisdiction over Defendant HUTCHISON based on the following legal standards:
***4** *statutory bases*
1) The Texas Long-Arm Statute, at V.T.C.A., *Civil Practices & Rem.Code* § 17.042(3) provides for jurisdiction over nonresidents who recruit Texas residents for employment outside of the state;
constitutional bases
2) The Defendant purposefully performed an act in Texas;
3) The Plaintiffs claims against Defendant arise from or are related to the Defendant's specific acts in Texas; and
4) The assumption of jurisdiction by this Court over Defendant does not offend traditional notions of fair play and substantial justice.

Schlobohm v. Schapiro, 784 S.W.2d 355, 358 (Tex.1990).

The Texas Long-Arm Statute provides, at V.T.C.A., *Civil Practice and Remedies Code* § 17.042:
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.

Section 17.043 goes on to provide that a nonresident may be served with process regarding actions arising from business that he has done in Texas.

The prior long-arm statute, V.A.C.S. Art. 2031b (Acts 1959, 56th Leg., p. 85, ch. 43) originally did not contain the specific language of Section 17.042(3) that defines recruitment of workers in Texas as doing business in this state. In 1979, the Legislature added what is now Section 17.042(3) to V.A.C.S. Art. 2031b(4) (Acts 1979, 66th Leg., p. 522, ch. 245, § 1).[FN1] This action by the Legislature is a clear indication of their intent to specifically provide for the jurisdiction of Texas courts over nonresidents who recruit workers in Texas, directly or through an agent.

In *Garcia v. Vasquez,* 524 F.Supp. 40, 42 (S.D.Tx.1981), the court relied upon the amended long-arm statute to find jurisdiction over a North Carolina farmer who recruited farm workers by using job offers placed with the Texas Employment Commission ("T.E.C."). Even though the plaintiff workers were in Minnesota when they called the T.E.C. in Harlingen, the court held:

Defendant ... in his objection to this Court's jurisdiction recognizes the applicability of the Texas long-arm statute to this case, Tex.Rev.Civ.Stat.Ann. article 2031b(4)... But, relying on the fact that Plaintiffs were in Minnesota when they accepted his offer of employment, Defendant ... professes that he was not engaged in business in Texas and therefore the long-arm statute fails to confer the jurisdiction of this Court over his person.

... [T]his Court is forced to reach the opposite conclusion.

Due process requirements are also fulfilled. Defendant ... purposefully issued the job information in North Carolina. The T.E.C. officials merely acted on his behalf in processing the information. The privilege of conducting activities in Texas was intentionally invoked by [defendant]. This cause of action plainly arises from and is connected with the alleged Texas transaction.

***5** *See Neizel v. Williams,* 543 F.Supp. 899, 903-904 (M.D.Fla.1982) (favorably cites *Garcia* for the proposition that recruiting through an agent or intermediary in a state by a nonresident is doing business for the purpose of long-arm jurisdiction).

Under Texas law, a nonresident farmer who recruits workers in Texas, either directly or through an agent or other intermediary, to work in another state, is subject to the jurisdiction of the Texas courts for claims arising from that recruitment. Under this standard, J.E. HUTCHISON is amenable to this Court's jurisdiction because he recruited the Plaintiffs in El Paso through an intermediary.

The application of the Texas Long-arm Statute must be consistent with federal and state guarantees of due process. *Burger King Corp. v. Rudzewicz,* 471 U.S. 462 (1985). These standards have been incorporated into Texas law by the Supreme Court of Texas in *Schlobohm v. Schapiro,* 784 S.W.2d 355, 358 (Tex.1990):

In an effort to ensure compliance with the federal constitutional standard, Texas has designed its own formula for specific jurisdiction:

(1) The nonresident defendant ... must purposefully do some act or consummate some transaction in the forum state;

(2)[FN2] The cause of action must arise from, or be connected with, such act or transaction. Even if the cause of action does not arise from a specific contact, jurisdiction may be exercised if the defendant's contacts are continuing and systematic; and

(3) The assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protections of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

As delineated above, the long-arm statute provides holds that the recruitment of Texas residents, through intermediaries or agents, constitutes a purposeful act done in Texas. If a nonresident defendant purposefully directed his activities at residents of the forum, he has "fair warning that a particular activity may subject [him] to the jurisdiction of a foreign sovereign." *Burger King* at 472.

Defendant HUTCHISON alleges that he contracted with Ag Labor Services of America/Armando Alvarez to supply with workers under the "H-2(A)" program for foreign guest workers,[FN3] not lawful residents present in the United States under the SAW program.[FN4] Defendant claims that he did not know that Ag Labor Services of America/Armando Alvarez would be recruiting Texas residents to work for him in Tennessee.

The first sentence on the information sheet that Defendant admitted receiving from Ag Labor Services of America/Armando Alvarez, states: "THE FOLLOWING IS A LIST OF FEES CHARGED BY OUR COMPANY FOR SERVICES RENDERED UNDER THE SPECIAL AGRICULTURAL PROGRAM (S.A.W.)." The contract between HUTCHISON and Ag Labor Services of America/Armando Alvarez from 1992 nowhere states that it is for the recruitment of H-2A workers. Rather, it specifically states that the farm workers recruited by Ag Labor Services of America/Armando Alvarez must have a "Green Card [FN5] or the equivalent." In other words, HUTCHISON was contracting for the recruitment of lawful permanent residents of the United States by his agent Ag Labor Services of America/Armando Alvarez. Defendant also knew that he was paying Social Security and unemployment taxes on behalf of the workers recruited for him in Texas by Ag Labor Services of America/Armando Alvarez. This is a powerful clue that he knew they were U.S. residents or citizens, entitled to the full protection of the laws of the United States and Texas.

***6** It is not credible that HUTCHISON could believe that he was contracting for certified guest workers from Mexico under the H-2A program. The federal laws requires that the farmer requesting guest workers make an application to the I.N.S. for such workers. 8 U.S.C. § 1184(c).[FN6] It is uncontested that Defendant made no such application for H-2A workers.

Even if Defendant HUTCHISON did not actually know that Ag Labor Services of America/Armando Alvarez were going to recruit the Plaintiffs in Texas, he knew that Ag Labor Services of America/Armando Alvarez maintained their place of business in El Paso. The various documents supplied by Ag Labor Services of America/Armando Alvarez all listed their El Paso address. In addition, HUTCHISON admits that he knew that the workers recruited for him would be taking the bus from El Paso. He received a phone call, presumably from Ag Labor Services of America/Armando Alvarez in El Paso, letting him know when to pick up the Plaintiffs at the bus station in Tennessee. HUTCHISON knew that his Texas farm labor contractor would be recruiting U.S. workers for him in some other state. All of the evidence shows that he knew of the "Texas nexus."

Defendant denies that he contracted with Ag Labor Services of America/Armando Alvarez to recruit Texas farm workers. However, based on the evidence submitted by the Plaintiffs, this Court finds that HUTCHISON purposefully recruited Plaintiffs in Texas through his agent. Defendant has not met his burden of proof to rebut the *prima facie* showing that he purposefully acted in Texas.

[*Ratification*]

Even if Defendant did not intend that Ag Labor Services of America/Armando Alvarez would be recruiting the Plaintiffs in El Paso, he is liable for the acts of his agent under the doctrine of "ratification."

The law considers that an act performed by a principal through an agent is done by the principal him-

self. In other words, a principal is liable for acts of his agent. *Nahm v. J.R. Fleming & Co.,* 116 S.W.2d 1174 (Tex.App.-Eastland-1938). An employment contract made by an agent is binding on the principal, unless the former's authority was effectively limited. *Fairbanks, Morse, & Co. v. Carsey,* 109 S.W.2d 985 (Tex.App.-Dallas-1937, err. dismissed).

"Ratification may be defined generally as the adoption by an alleged principal of the benefits of, as well as the liability involved in, an act done by an alleged agent on the principal's behalf, but without the principal's authorization. [note] 1.... [I]t is assumed that the act in question is unauthorized. However, by reason of the principal's subsequent words or conduct ratifying the act, the legal consequences of the act are the same as if it had been authorized at the time it was done. [note] 2.... Ratification ... may be express, or it may be implied from the course of conduct of the principal. [note] 4." 3 *TexJur3d,* Agency Sec. 88, pp. 138-139, notes 1, 2, and 4 (contain numerous citations).

***7** "Whenever a principal ratifies unauthorized acts of his agent, he will be required to adopt such acts in their entirety. In other words, he must adopt not only such acts as are beneficial to him, but also those acts that are prejudicial. [note] 39 ... In brief, on ratifying the agent's contract, the principal becomes liable thereunder ... [note] 41."

"[N]ot only is the principal rendered liable on the contract itself, he is also thus deemed to have assumed responsibility for the particular means employed by the agent to procure the agreement.... [note] 42"3 *TexJur3d,* Agency Sec. 92, pp. 144-145, notes 39, 41, and 42 (contain numerous citations).

"Ratification is equivalent to prior authority, [note] 44 and operates retroactively. In other words, a principal's ratification of his agent's act will be deemed to relate back to the inception of the transaction. [note 45] Stated otherwise, ratification of an unauthorized contract relates back to the original transaction and renders it valid, as though the agent had been fully authorized in the first instance. [note] 46 Moreover, where such ratification is deliberately made by the principal with full knowledge of the circumstances involved, it may not subsequently be revoked or recalled by him. [note] 47"3 *TexJur3d,* Agency Sec. 93, p. 146, notes 44, 45, and 46 (contain numerous citations).

"Generally, where an agent exceeds his authority or one without authority assumes to act as an agent, the principal, if he knowingly receives and retains he benefits of the unauthorized transaction, will then be held liable for any obligations incurred thereunder. [note] 32"3 *TexJur3d,* Agency Sec. 107, p. 164, note 32 (contains numerous citations).

Even if Defendant did not purposefully recruit the Plaintiffs in Texas initially, he later ratified their recruitment in Texas by his agent. Both the I-9s and the W-4s give Texas addresses for the Plaintiffs. The I-9 of ANTONIO DE LA CERDA states that he is a U.S. citizen, while the I-9 of MARIA ELENA DE LA CERDA states that she is a lawful permanent resident of the United States. The disclosure forms also contain the Plaintiffs' Social Security numbers. When the Plaintiffs gave these documents to the Defendant, he had actual knowledge that they were not guest workers from Mexico. He knew that they were Texas residents. Even if HUTCHISON did not want Ag Labor Services of America/Armando Alvarez to recruit Texas residents for him, he ratified such recruitment by accepting the benefit of having the Plaintiffs work for him.

The Plaintiffs have satisfied the first part of the constitutional test for long-arm jurisdiction by showing that HUTCHISON purposefully recruited them in Texas or that he ratified their recruitment by his agent. HUTCHISON had fair warning that he could be subject to the jurisdiction of another state by recruiting workers who were lawful permanent residents or citizens residing in another state.

***8** To meet the constitutional requirements for

long-arm jurisdiction, some injuries of the plaintiffs must be related to or arise out of the activities in the forum state. *Helicopteros Nacionales de Colombia v. Hall,* 466 U.S. 408, 414 (1984); *Burger King, supra; Aviles v. Kunkle,* [123 LC ¶ 35,741] 978 F.2d 201 (5th Cir.1992). The court in *Van Pelt v. Best Workover, Inc.,* 798 S.W.2d 14 (Tex.App.-El Paso-1990) provides a good tutorial on what does, and what does not, constitute an injury arising out of the activity in Texas:

The recruitment in Texas is not alone sufficient. The cause of action must arise from or be connected with that act of recruitment. This suit is not for a breach of an employment contract made in a phone call to Texas. Van Pelt does not contend that he was not paid as agreed in any recruitment call to Texas....

Appellant relies upon the holding in *Garcia v. Vasquez,* 524 F.Supp. 40 (S.D.Tex.1981).

That case involved a phone call to Texas by a North Carolina employer to recruit farm laborers. But, in that case suit did involve wages, housing, and hours of employment and arose out of the act of recruitment in Texas. *Ramm v. Rowland,* 658 F.Supp. 705 (S.D.Tex.1987) involved a claim for alienation of affection and arose out of phone calls to Texas which could cause a "tortious injury in Texas." *Riggs v. Coplon,* 636 S.W.2d 750 (Tex.App.-El Paso-1982, writ ref'd n.r.e.) involved a California judgment against a Texas resident and suit arose from phone calls to California which resulted from phone calls to California which resulted in Coplon being fired from her job in California.

In a claim for tortious misrepresentation, the "minimum contacts" test allowing long-arm jurisdiction is satisfied when the misrepresentation occurred, in whole or in part, in Texas. *D.J. Investments v. Metzeler Motorcycle Tire Co., supra* at 546-548; *Brown v. Flowers Industries, Inc.,* 688 F.2d 328, 333-34 (5th Cir.1982) (Even where the nonresident's only contact with the forum state was the introduction of a single misrepresentation via a telephone conversation, there has been sufficient injury to meet the due process test)." In a negligent misrepresentation case, even if the representation occurs outside the state of Texas, a tort is committed in Texas, if reliance thereon occurs in Texas." *Memorial Hospital System v. Fisher Insurance Co.,* 835 S.W.2d 645, 648 (Tex.App.-Houston 14, 1992); *Murphy v. Erwin-Wasey, Inc.,* 460 F.2d 661 (1st Cir.1972).

In the instant case, unlike in *Van Pelt* or *Aviles v. Kunkle,* many of Plaintiffs' alleged claims arise out of their recruitment in Texas by Defendant. *Van Pelt* specifically states that wage and hour and housing violations against farm workers, arising out of Texas recruitment, are sufficient to meet the constitutional standard of an act giving rise to or being related to a plaintiff's claims.

The federal claims for misrepresentation under the AWPA arose in Texas, when they were given false and misleading information regarding the term of employment and the provision of free housing and transportation. 29 U.S.C. § 1821(f). In addition, the Defendant's failure to inform them about his lack of Workers' Compensation insurance, in violation of V.A.C.S. Art. 8308-3.07, occurred in El Paso. In Texas, the Defendant attempted to have Plaintiffs waive their right under the AWPA to choose the venue for disputes arising under the AWPA, in violation of 29 U.S.C. § 1856. Further, the Defendant wrote a threatening letter to the Plaintiffs in Texas in an attempt to coerce them into renouncing their rights, in violation of 219 U.S.C. § 1855.

***9** The Plaintiffs acted in reliance upon their contract with HUTCHISON in Texas. They undertook a long and arduous bus trip to Tennessee based upon the representations of the Defendant. This represents partial performance of the contract by them. The failure to provide Workers' Compensation insurance in Texas, in violation of Texas law, also gives rise to the personal injury claims of the Plaintiffs.

It was the very fact of that the Defendant recruited the Plaintiffs in Texas which triggered the former's legal obligation under 29 U.S.C. § 1821(a) to make

written disclosures to the Plaintiffs in writing in Texas. In other words, it was the very nature of Defendant's contacts with Texas (recruitment activities) which created this legal obligation and which defined when the Defendant was required to fulfill that legal obligation. The AWPA requires agricultural employers to comply with the terms and conditions of employment that they provide in writing to migrant farm workers. 29 U.S.C. § 1822(c). And it is the AWPA that statutorily forbids providing false or misleading information to farm workers when they are being recruited. 29 U.S.C. § 1821(f). *See Garcia v. Vasquez, supra* and *Neizel v. Williams, supra* (both holding that causes of action for violations of the federal farm worker protection laws directly arise from recruiting farm workers in the forum states).

The Plaintiffs meet the second prong of the due process test for exercising long-arm jurisdiction over Defendant HUTCHISON. There claims under AWPA, contract, and tort all arise from or are related to their recruitment in Texas by the Defendant.

"Once it has been decided that a defendant purposefully established minimum contacts within the forum state, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.' ...Thus courts in 'appropriate case[s]' may evaluate 'the burden on the defendant,' 'the forum State's interest in adjudicating the dispute,''the plaintiff's interest in obtaining convenient and effective relief,''the interstate judicial system's interest in obtaining the most efficient resolution of controversies,' and the 'shared interest of the several states in furthering fundamental social policies.' " *Burger King*, at 476-477 (citations omitted). "[J]urisdictional rules may not be employed in such a way as to make litigation 'so gravely difficult and inconvenient' that a party unfairly is at a 'severe disadvantage' in comparison to his opponent." *Burger King*, at 478.

Congress has provided, in 29 U.S.C. § 1854(c), that any person aggrieved by a violation of the AWPA "may file suit in any district court of the United States having jurisdiction of the parties, ... without regard to the citizenship of the parties...." This is a special venue statute that permits farm worker plaintiffs to choose the venue for causes of action arising under the AWPA in any district that has jurisdiction over the defendant. *Stewart v. Woods,* [114 LC ¶ 35,344] 730 F.Supp. 1096 (M.D.Fla.1990). It codifies the significant policy interests behind insuring that migrant farm workers have access to the judicial system. *Aguero v. Christopher,* 481 F.Supp. 1272, 1275 (S.D.Tex.1980). In *Aguero,* the farm worker plaintiffs were recruited in Texas by a North Dakota farmer.[FN7] The farmer moved to dismiss on the grounds of improper venue or for a change of venue. The court held that it was fair to maintain venue in Texas:

***10** For the following reasons, the Court finds the balance to be in favor or the [p]laintiffs. The [p]laintiffs are two migrant worker families and the [d]efendants are two farmers residing in North Dakota. It would appear less burdensome on the [d]efendants to defend in this district than it would be on the [p]laintiffs to prosecute their cause in North Dakota. Even if a trial in the Southern District of Texas would burden the [d]efendants, the uncontroverted fact remains that they chose this district "as the convenient location to transact business with the Plaintiffs.... Additionally, the [d]efendants have made no showing that a trial in this district would prejudice their rights to a fair trial....

Finally, it should be noted that factors of public interest have a place in determining whether or not to transfer this cause.... Congress expressed a public interest in protecting the migrant laborers.... It is well known that many migrant laborers do not have the financial resources necessary to prosecute a claim hundreds of miles from home. To require the [p]laintiffs to prosecute this case in North Dakota would seriously dilute the Congressional effort to protect migrant workers.

Therefore, both as a matter of Congressional intent

and law, it is inherently fair and appropriate that this action be heard by this Court.

Substantial justice is served by maintaining this action in Texas. In Section 17.042(3), the Texas legislature wanted to protect residents from being recruited, lured away, and injured without recourse to the Texas courts in Section 17.042(4) of the long-arm statute. The Texas Workers' Compensation act also expresses an interest in protecting Texas residents who are injured in other states.

In the instant case, the Defendant already has the highest quality legal representation in this Court. It is unlikely that the indigent Plaintiffs would be able to locate any counsel in Tennessee. It is unlikely that Tennessee would adequately apply the Texas Workers' Compensation Act.

The Plaintiffs have shown that they have met the first two prongs of the due process test for long-arm jurisdiction over Defendant HUTCHISON. There is no glaring unfairness that would defeat the clear constitutionality of the jurisdiction over Defendant HUTCHISON by this Court. In fact, both state and federal law indicate that fairness is *best* served by determining Plaintiffs' claims in Texas.

Long-arm jurisdiction in this case where Defendant recruited Plaintiffs in Texas does not "make litigation 'so gravely difficult and inconvenient' that [HUTCHISON] unfairly is at a 'severe disadvantage' in comparison to the [Plaintiffs]." *Burger King. See Garcia v. Vasquez, supra* and *Neizel v. Williams, supra* (non-resident farmers were required to defend violations of federal farm worker protection laws in the forum states of Texas and Florida).

Conclusion

This Court has jurisdiction over the Defendant.

***11** *All claims of the Plaintiffs are dismissed, with prejudice, pursuant an agreement of the parties.*

In the instant case, the pleadings, the affidavits, and the depositions of the parties, unambiguously make out a *prima facie* case for personal jurisdiction. The Defendant has not met his burden of negating *all* bases of personal jurisdiction alleged by the Plaintiffs. Therefore, this Court denies Defendant's Motion to Dismiss for Lack of Jurisdiction. The Court holds that it does have long-arm jurisdiction over Defendant J.E. HUTCHINSON arising from his violations of the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA"), 29 U.S.C. § 1801, *et seq.* and from his breach of the Texas contract. The Court does not have to reach the issue of whether or not it has subject matter jurisdiction over the personal injury claims of the Plaintiff that arose from events occurring in Tennessee.

On the date indicated below, the parties to the above-captioned proceeding, through their counsel of record, announced to the Court that they have entered into a settlement of all issues in the case and that they, accordingly, agree to its dismissal, with prejudice.

It is therefore, Ordered, that the above-entitled and numbered case be dismissed, with prejudice to its refiling, with each party to bear its own cost.

FN1. In 1985, Art. 2031b was repealed and codified at the current section of the Civil Practices and Remedies Code.

FN2. Paragraph 2, as reproduced here, actually appears in the *Schlobohm* decision two paragraphs below the quoted paragraph, with the introduction: "According, we modify the second part of the formula ... The requirement should now read: (2) ..." In other words, the Court has replaced the superseded paragraph 2 with the current one for the sake of clarity and simplicity.

FN3. "H-2A" workers refer to guest workers authorized to enter the United States under the Immigration and Nationality Act,

> 8 U.S.C. § 1101(a)(15)(H)(ii)(a) as "an alien ... having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services ..."

The INS has promulgated twenty pages of regulations, at 8 C.F.R. § 214.2(h), that tightly control and regulate the entry of H-2A guest workers into the United States. There is a complicated process to assure that qualified workers are not available in the United States and that employment of such guest workers will not adversely affect the wages and working conditions of workers in the United States. 8 C.F.R. § 214.2(h).

> FN4. The "S.A.W." program is the section of the Immigration and Nationality Act, 8 U.S.C. § 1160 for Special Agricultural Workers. This was enacted as part of amnesty law to permit workers who performed agricultural labor for at least 90 days between May 1, 1985 and May 1, 1986 to obtain lawful permanent residency in the United States. After first obtaining temporary legal residency and work authorization in the United States, applicants were permitted to obtain full legal residency in the United States after two years. People who adjusted their immigration status to lawful permanent resident under the S.A.W. may reside in and perform any type of work in the United States. 8 C.F.R. § 274a.

> FN5. "Green Card" is the common slang term for the INS form I-551, the card establishing lawful permanent residency in the United States as provided by 8 C.F.R. § 264.2. (Even though the actual card is no longer green!)

> FN6. 8 U.S.C. § 1184(c)(1) provides: "The question of importing any alien as a nonimmigrant under section 101(a)(15)(H) ... of this title in any specific case ... shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer...."

> FN7. The workers' claims were under the Wagner-Peyser Act, 29 U.S.C. § 49, *et seq.*, a statute enacted to protect the migrant farm workers who are recruited to work outside of their home states.

Tex.Co.Ct.,1994.
de la Cerda v. Hutchison
Not Reported in S.W.2d, 1994 WL 255873 (Tex.Co.Ct.), 127 Lab.Cas. P 33,067

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