



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

GLOBAL ENERGY SOLUTIONS, LLC,	§	No. 08-20-00183-CV	
	Appellant,	§	Appeal from the
v.		§	143rd Judicial District Court
KERMIT PIPELINE, LLC,		§	of Ward County, Texas
	Appellee.	§	(TC# 20-02-25360-CVW)

OPINION

This interlocutory appeal arises from a trial court’s denial of a special appearance. The underlying case involves an Oklahoma company that sold an industrial water pump to a Texas entity. The water pump failed, leading the Texas entity to file suit against the Oklahoma company in Ward County, Texas. We affirm the order denying the special appearance because the record supports the trial court’s implied findings that the Oklahoma company did more than just sell a water pump to a Texas entity. Rather, the Oklahoma firm acted to select a particular pump that could be integrated into a Texas piping system, and then caused persons to try to fix the pump in Texas when it failed.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 2019, Appellee Kermit Pipeline, LLC (Kermit), a Texas water pipeline operator, bought

a water pump from Appellant Global Energy Solutions, LLC (GES), an Oklahoma company. The water pump was to be used in a pipeline in Ward and Winkler Counties, Texas. After GES shipped the pump to Kermit's property in Winkler County, the pump failed. Kermit tried to return the pump for a refund, but GES refused to accept it or issue a refund.

Kermit then sued GES in Ward County, alleging breach of implied and express warranties, fraud, negligent misrepresentation, and breach of contract. Kermit's original petition generally alleged that GES was "doing business in Texas" and "purposefully availed itself of the privileges and benefits of conducting business in Texas." The original petition, however, contained only a sparse measure of jurisdictional facts to support that claim: Kermit contacted GES to purchase a pump meeting certain criteria; GES recommended a particular pump to meet those needs; based on that recommendation, Kermit purchased the pump; the pump was delivered on October 24, 2019 and installed the next day; and the pump then failed to perform as promised.

GES responded by filing a special appearance alleging that it is an Oklahoma entity whose principal place of business is in Oklahoma. GES's special appearance challenged whether Kermit alleged any facts to sustain the exercise of either general or specific personal jurisdiction by a Texas court.

Kermit then filed an amended petition that tells this story: (1) Kermit pumps water from a location in Winkler County, Texas; (2) Kermit was referred to GES to obtain a water pump that could pump 25,000 barrels of water per day (or 13-14 barrels per minute); (3) Kermit and GES corresponded via telephone over the sale of the pump, and upon GES's request, Kermit provided GES specific topographical data from Kermit's Winkler County property and information on Kermit's water piping system; (4) the water pump was designed to be permanently affixed to Kermit's property; (5) based on GES's recommendation for a specific pump to suit Kermit's needs,

Kermit bought the pump from GES; (6) GES sent some of its employees to deliver the pump, and the pump was installed on Kermit's property; (7) after its faulty installation, the pump immediately failed and only pumped approximately 3.5 barrels of water per minute; (8) after Kermit and GES worked together to make several unsuccessful repairs to the pump, GES sent a repairperson to the property who spent "at least twelve hours" trying to get the pump running, but he failed to do so; (9) after the pump experienced several additional failures, Kermit was forced to install an alternate pump to meet its needs; (10) Kermit attempted to return GES's pump and be reimbursed for its purchase price, but GES did not respond to the request; and (11) Kermit suffered damages through the repair attempts, the cost to rent an alternate pump temporarily, and lost sales.

As part of its response to the special appearance, Kermit attached an affidavit from its manager, Russ Bourquein, that reiterates and expands on some allegations in the amended petition. According to Bourquein, Kermit is a Texas limited-liability company that supplies water through a system of pipelines to its customers, including oil-drilling companies with operations around Texas. Relevant here, Kermit pumps water from its property in Winkler County which required a pump that would achieve a flow rate of 25,000 barrels of water per day, or 13 to 14 barrels per minute. Another company, Sunbelt Rentals, referred Kermit to GES. Chris Larsen, a GES employee, communicated with Kermit via telephone and email representing that GES could provide a pump that satisfied Kermit's requirements. Based on a request, Kermit "provided Global specific topographical data from Kermit's Winkler County, Texas property and the design information for Kermit's water piping system." Kermit then contracted with GES to purchase and deliver the pump to Kermit's property in Winkler County, which GES did on October 19, 2019. But the pump never performed at its required flow rate, and it suffered a catastrophic failure on the day it was installed that caused it to repeatedly shut down and pump at a rate of only 3.5

barrels per minute. Kermit and GES then worked unsuccessfully for several days to repair the pump, at which point:

“[GES] then sent a repairperson to the Winkler County, Texas property. The repairperson attempted to triage why the pump was not functioning and to make the required repairs. The [GES] repairperson spent at least twelve hours trying to get the pump running. He was not able to do so.

Lastly, Bourquein states that Kermit was forced to rent and install another pump to meet the required flow rate.

GES then responded with an affidavit from Garrett Campbell, its President, who claimed that GES was put in contact with Kermit by a third party, Sunbelt Rentals. GES provided a quote based on specifications provided by Sunbelt. GES later shipped the purchased pump from Oklahoma City to Ward County through a third-party carrier, whose charges were included on Kermit’s invoice. GES was not involved in the installation of the pump, which Campbell asserted was the likely cause of any malfunction.

During a hearing on GES’s special appearance, Campbell also testified that the only other time GES interacted with the pump after sending it to Kermit occurred when “one of my sales guys went down there and kind of put eyes on it after the fact. But no, as far as if we want to get into the repairs of that [pump], no, that was another third-party group that came over there to assist with Kermit.” He testified that GES never entered into a service contract for the pump. On cross-examination, Campbell clarified that “down there” meant to Texas where the pump was installed, and that the GES employee, Chris Larsen, traveled to Kermit’s property to inspect the pump’s condition after Kermit had already installed another pump on the property. Campbell did not, however, have any personal knowledge of what Larsen may have done when he came to Texas.

Following the hearing, the trial court denied GES's special appearance without entering written findings of fact or conclusions of law. This appeal follows. GES raises one issue on appeal, arguing that the court should have granted its special appearance because the court lacked general or specific jurisdiction over GES. We resolve the appeal by addressing only whether the trial court had specific jurisdiction over GES.

II. STANDARD OF REVIEW AND APPLICABLE LAW

A. Standard of Review

Whether a court has personal jurisdiction over a defendant is a question of law. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002). To resolve the question of law, however, a trial court must frequently resolve questions of fact. *American Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002). When the parties agree on the relevant facts, our review is purely de novo. *See id.* But if the parties disagree over the facts, we must look to what the trial court found. When, as in this case, a trial court does not issue findings of fact and conclusions of law with its special appearance ruling, we imply all facts necessary to support the ruling that are supported by the evidence. *Marchand*, 83 S.W.3d at 795; *In re E.S.*, 304 S.W.3d 571, 574 (Tex.App.--El Paso 2010, pet. denied). A party can challenge any of the implied findings under traditional legal and factual sufficiency review standards. *Roberson v. Robinson*, 768 S.W.2d 280, 281 (Tex. 1989).

When examining a legal sufficiency challenge, we review the evidence in the light most favorable to the challenged finding and indulge every reasonable inference that would support it. *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005). We credit favorable evidence if a reasonable fact finder could and disregard contrary evidence unless a reasonable fact finder could

not. *Id.* at 827. The evidence is legally sufficient if it would enable a reasonable and fair-minded person to find the fact under review. *Id.* A legal sufficiency challenge will be sustained if the record reveals that evidence offered to prove a vital fact is no more than a scintilla. *Kia Motors Corp. v. Ruiz*, 432 S.W.3d 865, 875 (Tex. 2014). In a factual sufficiency challenge, we consider and weigh all the evidence, both supporting and contradicting the finding. *Mar. Overseas Corp. v. Ellis*, 971 S.W.2d 402, 406-07 (Tex. 1998). We may set aside the finding only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Id.* at 407. We may not substitute our own judgment for that of the fact finder or pass upon the credibility of witnesses. *Id.*

B. Personal Jurisdiction

A Texas court may exercise personal jurisdiction over a nonresident defendant doing business in Texas under the Texas long-arm statute. *See* TEX.CIV.PRAC. & REM.CODE ANN. §§ 17.041-.045. “Doing business in this state” includes a nonresident who:

- (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; [or]
- (2) commits a tort in whole or in part in this state[.]

Id. § 17.042(1), (2). Yet even if a transaction falls within either of these definitions, a court’s jurisdiction is also limited by the Due Process Clause of the United States Constitution. *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 575 (Tex. 2007). The Texas long-arm statute extends a Texas court’s personal jurisdiction “as far as the federal constitutional requirements of due process will permit” but no further. *U-Anchor Advert., Inc. v. Burt*, 553 S.W.2d 760, 762 (Tex. 1977) (discussing prior version of Texas long-arm statute). Thus, the contours of federal due process guide our decision here.

Federal due process limits a court’s jurisdiction over nonresident defendants unless: (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. State of Washington, Off. of Unemployment Comp. and Placement*, 326 U.S. 310, 316 (1945). “As a general rule, the exercise of judicial power is not lawful unless the defendant ‘purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.’” *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 877 (2011), quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); see *Michiana Easy Livin’ Country, Inc. v. Holten*, 168 S.W.3d 777, 784 (Tex. 2005) (“For half a century, the touchstone of jurisdictional due process has been ‘purposeful availment.’”). Due process requires purposeful availment because personal jurisdiction “is premised on notions of implied consent—that by invoking the benefits and protections of a forum’s laws, a nonresident consents to suit there.” *Michiana*, 168 S.W.3d at 785.

Purposeful availment includes deliberately engaging in significant activities within a state or creating continuing obligations with residents of the forum. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475-76 (1985). It includes seeking profit, benefits, or advantage from the forum. *Michiana*, 168 S.W.3d at 785. It excludes, however, “random,” “fortuitous,” or “attenuated” contacts or the “unilateral activity of another party or a third person.” *Burger King Corp.*, 471 U.S. at 475; *Michiana*, 168 S.W.3d at 790 (“[M]inimum-contacts analysis focuses solely on the actions and reasonable expectations of the defendant.”) (internal quotation marks omitted). Moreover, a party may purposefully avoid a particular forum by structuring its transactions in such a way as to neither profit from the forum’s laws nor subject itself to jurisdiction there. *Moki Mac*, 221 S.W.3d at 575.

Personal jurisdiction can be either “general” or “specific.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 nn.8 & 9 (1984); *CSR Ltd. v. Link*, 925 S.W.2d 591, 595 (Tex. 1996). General (or all-purpose) jurisdiction describes a defendant with contacts so continuous and systematic “as to render [it] essentially at home in the forum State.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). No claim is made here that GES is subject to general jurisdiction in Texas.

Instead, the trial court denied GES’s special appearance because the court found sufficient evidence to support specific jurisdiction over GES. A plaintiff asserting that a court has specific jurisdiction over a nonresident defendant must show that its claim arises out of, or relates to, the defendant’s contacts with the forum. *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014), citing *Helicopteros*, 466 U.S. at 414 n.8; see also *Moki Mac*, 221 S.W.3d at 579 (“The ‘arise from or relate to’ requirement lies at the heart of specific jurisdiction by defining the required nexus between the nonresident defendant, the litigation, and the forum.”). Under the Texas application of that requirement, “for a nonresident defendant’s forum contacts to support an exercise of specific jurisdiction, there must be a substantial connection between those contacts and the operative facts of the litigation.” *Moki Mac*, 221 S.W.3d at 585. Specific jurisdiction is not as exacting as general jurisdiction in that the contacts may be more sporadic or isolated so long as the cause of action arises out of those contacts. *Spir Star AG v. Kimich*, 310 S.W.3d 868, 873 (Tex. 2010) (citation omitted).¹

When deciding whether a nonresident defendant is subject to jurisdiction, we first

¹ Specific jurisdiction requires us to analyze jurisdictional contacts on a claim-by-claim basis, but we need not do so if all claims arise from the same forum contacts. See *Moncrief Oil Int’l Inc. v. OAO Gazprom*, 414 S.W.3d 142, 150-51 (Tex. 2013). Because Kermit’s claims all arise from the same forum contacts, we need not assess GES’s contacts on a claim-by-claim basis. See *id.*

determine whether the plaintiff pleaded sufficient jurisdictional facts under the Texas long-arm statute. *See Moncrief Oil Int'l Inc. v. OAO Gazprom*, 414 S.W.3d 142, 149 (Tex. 2013), *citing* TEX.CIV.PRAC. & REM.CODE ANN. § 17.042(2). If that initial burden is met, the burden shifts to the defendant to negate all potential bases for personal jurisdiction the plaintiff pleaded. *Id.* A nonresident defendant may negate jurisdiction on either a factual or legal basis. *Kelly v. Gen. Interior Const., Inc.*, 301 S.W.3d 653, 659 (Tex. 2010). Factually, the defendant can present evidence that it has no contacts with Texas, effectively disproving the plaintiff's allegations. *Id.* The plaintiff can then respond with evidence that affirms its allegations. *Id.* The defendant can then attempt to show that even if the plaintiff's alleged facts are true, the evidence legally cannot support jurisdiction. *Id.*

III. ANALYSIS

A. Kermit Sufficiently Pleaded Jurisdictional Facts

We first address whether Kermit met its initial burden to plead sufficient facts to invoke the Texas long-arm statute. *See Moncrief*, 414 S.W.3d at 149. In its live pleading, Kermit asserted claims for breach of implied warranty of merchantability, breach of implied warranty of fitness for a particular purpose, breach of express warranties, fraud, negligent misrepresentation, breach of contract, and unjust enrichment. Its pleading includes several specific factual allegations pertaining to the purchase, delivery, and then attempted repair of the water pump. Kermit alleged that: (1) it was referred to GES to obtain a pump that could move specified large volumes of water; (2) Kermit and GES communicated by telephone about the sale of the pump, and upon request, Kermit provided GES specific topographical data from Kermit's Winkler County property and information about Kermit's water piping system; (3) the water pump was

intended to be permanently affixed to Kermit's Texas property; and (4) based on GES's recommendation of a specific pump to suit Kermit's needs, Kermit contracted to buy the pump. The first amended petition further alleges that GES sent some of its employees to deliver the pump, and the pump was installed on Kermit's property. After its faulty installation, the pump immediately failed and only pumped a fraction of the required volume of water. Finally, Kermit alleges that it and GES worked together to make several unsuccessful repairs to the pump. As part of that process, GES sent a repairperson to the property who spent "at least twelve hours" trying to get the pump running, but to no avail. The pump then experienced several additional failures, and Kermit was forced to install an alternate pump to meet its needs.

Based on the amended petition, Kermit has met its initial burden to allege sufficient facts to bring GES under the ambit of the Texas long-arm statute. The allegations meet the long-arm statute by alleging a contract with delivery of the goods in Texas. The allegations meet the purposeful availment test by asserting that GES engaged in a transaction to select and then deliver a particular pump to be incorporated into a Texas piping system. When the pump initially failed, GES allegedly sent its personnel to Texas to rectify the problem.

B. GES Failed to Negate All Bases of Personal Jurisdiction

GES also challenged several of the factual allegations in Kermit's amended pleading through the affidavit of its president who depicted a different view of the purchase, installation, and repair process. Kermit then responded with its own affidavit that mostly supports its version of the purchase process and reiterates that a GES employee came to Ward County to attempt a repair of the pump. As for the repair issue, GES attempts to harmonize these discrepancies by suggesting that it was a third party that "came over there to assist" with a repair, and the GES employee only came to Texas to "put eyes on" the pump, and did so at a time when Kermit had

already bought a replacement pump.

Because the trial court did not enter findings of fact or conclusions of law, we must imply that the trial court found Kermit's assertions to be true. *See Marchand*, 83 S.W.3d at 795 (when a trial court does not issue findings of fact and conclusions of law with its special appearance ruling, a reviewing court must imply all facts necessary to support the trial court's ruling supported by the evidence). Our record includes conflicting evidence over some details of the purchase process, and the later repair efforts. As described below, we find sufficient evidence to support the trial court's implied findings on the purchase and repair issues favorable to Kermit.² And based on those implied findings, we conclude the trial court did not err in finding that it has jurisdiction over GES.

1. Applicable law

When deciding whether a nonresident defendant purposefully availed themselves of the privilege of conducting activities in Texas, we consider: (1) the defendant's contacts with the forum rather than the unilateral activity of another party; (2) whether the contacts were purposeful rather than random, isolated, or fortuitous; and (3) whether the defendant has sought some benefit, advantage, or profit by availing himself of the jurisdiction. *Moncrief*, 414 S.W.3d at 151 (citations omitted). We also consider whether there is a substantial connection between the defendant's contacts and the operative facts of the litigation. *Id.* at 156, *citing Moki Mac*, 221 S.W.3d at 585. This analysis focuses on the quality and nature of the contacts, not the quantity. *Id.* at 151. As a result, a single contact may be sufficient to establish jurisdiction. *Id.* In sum,

² We acknowledge that the Russ Bourquein's affidavit fails to sustain its pleaded factual allegation that GES itself delivered and installed the pump. At most the record supports that GES arranged and then billed for the third party that transported the pump to Kermit's facility in Texas. We do not, therefore, ascribe any significance to the suggestion that GES installed the pump.

the purposeful availment analysis seeks to determine whether a nonresident defendant's conduct and connection are such that they could reasonably anticipate being hailed into court in Texas. *Id.* at 152.

For sales transactions, sellers who reach beyond one state and create continuing relationships with residents of another state are subject to the specific jurisdiction of the latter in suits arising from those activities. *Moki Mac*, 221 S.W.3d at 575. Yet “a seller’s awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.” *Spir Star AG*, 310 S.W.3d at 873, quoting *CSR*, 925 S.W.2d at 595 (Tex. 1996) (internal quotation marks omitted); see also *Asahi Metal Indus. Co., Ltd. v. Superior Court of Cal.*, 480 U.S. 102, 112 (1987) (O’Conner, J., plurality opinion). Rather, the Texas Supreme Court has required some “additional conduct” beyond merely placing the product in the stream of commerce that shows “an intent or purpose to serve the market in the forum State.” *Spir Star AG*, 310 S.W.3d at 873, citing *Asahi*, 480 U.S. at 112; *Michiana*, 168 S.W.3d 786. Examples of this other conduct include: (1) designing the product for the market in the forum state; (2) advertising in the forum state; (3) establishing channels for providing regular advice to customers in the forum state; (4) marketing the product through a distributor who has agreed to serve as the sales agent in the forum state; and (5) creating, controlling, or employing the distribution system that brought the product into the forum state. *Id.*, citing *Asahi*, 480 U.S. at 112, *Moki Mac*, 221 S.W.3d at 577; *Michiana*, 168 S.W.3d at 786; *Kawasaki Steel Corp. v. Middleton*, 699 S.W.2d 199, 201 (Tex. 1985); see also *Luciano v. SprayFoamPolymers.com, LLC*, 625 S.W.3d 1, 10 (Tex. 2021), citing *CSR*, 925 S.W.2d at 595.

2. *GES had purposeful contacts with Texas*

To be sure, nothing shows that GES maintains a place of business in Texas, and it does not have employees, advertise, or maintain a registered agent in the state. But the evidence in the record supports jurisdiction. We start with the facts associated with GES's sale of the pump to Kermit. Pointing to Bourquien's affidavit, Kermit argues that GES purposefully directed its sales to Texas, primarily through its telephone conversations with GES before the sale of the pump, as well as reviewing topographical conditions on Kermit's Winkler County property. Campbell acknowledged that after learning of Kermit's specific requirements, GES provided a pump for Kermit's needs. In this sense, it specified a product for the Texas market. The evidence further suggests that GES would have understood the pump was to be permanently used at a particular location in Texas. GES arranged for the shipping with a delivery point within Texas. Its actions amount to more than "merely foresee[ing its] product ending up there." *See Luciano*, 625 S.W.3d at 13; *see also Spir Star AG*, 310 S.W.3d at 873 (recognizing that designing a product for the market in the forum state can constitute purposeful availment); *compare with Michiana*, 168 S.W.3d at 787 (holding that a nonresident manufacturer was not subject to jurisdiction because among other things, the manufacturer "had no say" in where its product would be taken).

The record also supports an inference that GES arranged for either one of its employees or a third-party contractor to come to Texas to attempt a repair of the pump. Bourquien's affidavit recites that a GES employee came to the site and attempted for twelve hours to fix the problem to no avail. Campbell's testimony acknowledges that a third party was dispatched to attempt the repair. While the unilateral actions of third parties cannot create minimum contacts, the inference in this record is that GES arranged for the third party's attempted repair. And while the attempted repair itself is not the origin of the claim, it does show that for a time GES recognized some

continuing obligations to make good on its sale and delivery of the pump to Texas. Or parsed in the language of purposeful-availment jurisprudence, it engaged in deliberate activities that created “continuing obligations with residents of the forum.” *Burger King*, 471 U.S. at 475-76.

We agree that the exercise of jurisdiction based on a single sale in the forum often cannot support jurisdiction. *See Michiana*, 168 S.W.3d at 786-87, citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980). But viewing these contacts in their totality, we cannot say that GES’s contacts with Texas resulted from the “mere fortuity” that the pump *could* be used in Texas. *See Luciano*, 625 S.W.3d at 13. Rather, GES’s contacts evince its intent to select and sell a product to be permanently incorporated into a Texas pipe network. Thus, we conclude that GES purposefully availed itself of the forum, such that it could have reasonably anticipated being hailed into a Texas court because of its activities. *See, e.g., GJP, Inc. v. Ghosh*, 251 S.W.3d 854, 878, 881 (Tex.App--Austin 2008, no pet.) (holding that a nonresident purposefully availed himself of the forum when he contracted with a buyer via telephone to sell an automobile and traveled to Texas to complete the sale); *H. Heller & Co., Inc. v. Louisiana-Pacific Corp.*, 209 S.W.3d 844, 852-53 (Tex.App.--Houston [14th Dist.] 2006, pet. denied) (holding that an Alabama judgment could be enforced against a Texas manufacturer where it had direct contact with the Alabama purchaser, issued a purchase order requiring shipment to Alabama, paid a rail carrier for shipment to Alabama, and certified that its product met the purchaser’s requirements); *Ball v. Bigham*, 990 S.W.2d 343, 349 (Tex.App.--Amarillo 1999, no pet.) (holding that a nonresident purposefully availed himself of the forum when, inter alia, he accepted payment for an engine and shipped it to the buyer in Texas).

We contrast this case with *CMMC v. Salinas*, where the Texas Supreme Court held that a nonresident defendant was not subject to specific jurisdiction based on a single sale. 929 S.W.2d

435, 440 (Tex. 1996). There, CMMC, a French manufacturer, sold a winepress to a Texas winery through an independent seller and distributor of wine equipment. *Id.* at 436. CMMC and the winery never had direct contact with each other during the sale, and the manufacturer shipped the winepress to Texas through a third-party carrier. *Id.* at 436-37. A winery employee was injured while using the winepress and sued CMMC in Texas. *Id.* at 437. The Austin court of appeals concluded that CMMC was subject to jurisdiction in Texas based solely on CMMC's knowledge that the winepress would be shipped to Texas. *Id.* at 437. The Supreme Court disagreed, reasoning that Salinas never had any contact with CMMC in Texas and that "[a] manufacturer cannot fairly be expected to litigate in every part of the world where its products may end up[.]" *Id.* at 440. But here, GES and Kermit directly corresponded with each other prior to, during, and after the sale of the water pump. Second, unlike the winepress from *CMMC*, there is evidence suggesting that the water pump was to be *exclusively* used on Kermit's property in Texas, and not used elsewhere. Third, unlike *CMMC*, GES had the pump delivered to Kermit's property and later through its employee, or through its selected agents, it tried to repair the pump in Texas. For these reasons, we find *CMMC* inapposite.

2. *GES's benefits, advantages, and profits sought*

The evidence also supports a finding that GES sought to benefit from doing business in Texas. After GES and Kermit consulted on a pump that would satisfy Kermit's specific needs, GES sold the pump to Kermit for approximately \$80,000. This evidence supports the trial court's implied finding that GES sought to profit from its sale of the pump to Kermit.

3. *Substantial connection between Texas and operative facts*

Specific jurisdiction also requires a substantial connection between the nonresident defendant's forum contacts and the operative facts of the litigation. *Moncrief*, 414 S.W.3d at 156;

see also Luciano, 625 S.W.3d at 14. Here, GES's contacts with Texas include its sale of the pump to Kermit, GES's subsequent shipment of the pump to Kermit's property in Texas, and GES's subsequent travel to Texas by its employee, or agents to attempt repairs on the pump. These contacts form the basis for Kermit's claims. Kermit's claims all directly relate to the purchase of a pump that could not perform the task for which it was intended. We conclude that there is sufficient evidence to support the trial court's implied finding that there is a substantial connection between GES's Texas contacts and the operative facts of the litigation.

4. Conclusion

In sum, GES has failed to negate all potential bases for personal jurisdiction. The evidence supports the trial court's implied findings that in recommending, selling, shipping, and attempting the repair of a pump which was to be incorporated into a Texas piping network, GES purposefully availed itself of the benefits of the forum state. Moreover, there is a substantial connection between GES's contacts with Texas and the operative facts of the litigation.

C. The Exercise of Jurisdiction is Consistent with Traditional Notions of Fair Play and Substantial Justice

Finally, we must decide whether the trial court's exercise of personal jurisdiction over GES offends traditional notions of fair play and substantial justice. *Moncrief*, 414 S.W.3d at 154; *see also Int'l Shoe*, 326 U.S. at 316. We conclude that it does not.

"If a nonresident has minimum contacts with the forum, rarely will the exercise of jurisdiction over the nonresident not comport with traditional notions of fair play and substantial justice." *Moncrief*, 414 S.W.3d at 154-55, *citing Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 341 (Tex. 2009). In making this determination, we consider as appropriate: (1) the burden on the defendant; (2) the interests of the forum in adjudicating the dispute; (3) the

plaintiff's interest in obtaining convenient and effective relief; (4) the judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several jurisdictions in furthering fundamental substantive social policies. *Id.* at 155, *citing Asahi*, 480 U.S. at 113; *Spir Star AG*, 310 S.W.3d at 878. A nonresident defendant has the burden to present "a compelling case that the presence of some consideration would render jurisdiction unreasonable." *Guardian Royal Exch. Assur., Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 231 (Tex. 1991).

On appeal, GES offers no reason why the trial court's exercise of jurisdiction would be unfair or unreasonable. Nor would the relevant factors support a finding that asserting personal jurisdiction over GES offends traditional notions of fair play and substantial justice. Although we recognize that traveling to Texas from Oklahoma to defend against Kermit's claims might impose some burden, GES offers no evidence that doing so would impose an unreasonable burden, especially considering GES's acknowledgment that on one occasion a GES employee traveled to Texas to visually inspect the pump after its installation. Moreover, because the trial court is already familiar with the parties, their claims, and the operative facts of the case, judicial economy is served by allowing Kermit to litigate its claims against GES in Texas. In addition, Texas has an interest in providing a forum to litigate claims from Kermit, a Texas company. We also recognize that Texas has an interest in resolving claims for disputes concerning alleged torts and contractual breaches committed in Texas against a Texas entity. *See Moncrief*, 414 S.W.3d at 155 (recognizing that there is a "serious state interest in adjudicating [a] dispute" for causes of action occurring in Texas).

We conclude that the trial court's exercise of jurisdiction over GES would not offend traditional notions of fair play and substantial justice. *See Yujie Ren v. ANU Res., Inc.*, 502

S.W.3d 840, 852 (Tex.App.--Houston [14th Dist.] 2016, no pet.) (holding that a defendant failed to show that the burden of imposing jurisdiction on him was *unreasonable* considering, among other things, that the defendant had traveled to Texas from China more than once).

GES's single issue is overruled.

IV. CONCLUSION

Because the trial court's exercise of personal jurisdiction complied with the Texas long-arm statute and due process, we conclude that the trial court did not err by denying GES's special appearance. We affirm the trial court's order denying GES's special appearance and remand this case to the trial court for further proceedings consistent with this opinion.

JEFF ALLEY, Justice

August 11, 2022

Before Rodriguez, C.J., Palafox, and Alley, JJ.