



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

OSVALDO RODRIGUEZ BORUNDA AND	§	No. 08-21-00135-CV
EDITORA PASO DEL NORTE, S.A. DE		
C.V.,	§	Appeal from the
Appellants,	§	448th Judicial District Court
v.	§	of El Paso County, Texas
FREE AND SOVEREIGN STATE OF	§	(TC# 2020DCV0628)
CHIHUAHUA,		
Appellee.		

OPINION

This interlocutory appeal arises from a trial court’s denial of a special appearance. The underlying case involves the Free and Sovereign State of Chihuahua’s (Chihuahua) lawsuit against Appellants Osvaldo Rodriguez Borunda (Rodriguez) and Editora Paso Del Norte, S.A. de C.V. (Editora). Chihuahua claims in the lawsuit that Rodriguez and Editora illicitly received state funds from the former governor of Chihuahua in exchange for writing favorable news stories about him. Rodriguez and Editora filed a special appearance that argued that the trial court lacked personal jurisdiction over them. The trial court denied Appellants’ special appearance. We affirm the trial court’s order as to Rodriguez, but reverse as to Editora.

I. FACTUAL AND PROCEDURAL BACKGROUND¹

In a Texas state court, Chihuahua filed suit against Cesar Horacio Duarte Jaquez (Duarte), several of his family members, and other individuals and entities. Duarte was the governor of Chihuahua from 2010 through 2016. The suit alleged that Duarte, along with the other defendants, conspired to divert public funds earmarked for social programs to phantom companies, and eventually used the funds to purchase real and personal properties in the United States. Chihuahua sought to recoup these funds from Duarte and those who acted in concert with him, and to recover any assets purchased with these funds. According to the petition, Duarte was indicted in Mexico, fled to the United States, and was later arrested on corruption and fraud charges in Florida.

In an amended petition, Chihuahua added Rodriguez and Editora as defendants. In a “Summary of this Case” section of the last live pleading, Chihuahua sets out its factual allegations against Rodriguez, along with assertions made against “El Diario de El Paso” (which is not a listed defendant to the lawsuit):

- “Further, Mr. Duarte sent tens (if not hundreds) of millions of dollars to his confederate Defendant [Rodriguez] and his newspaper El Diario de El Paso. The amounts paid to [Rodriguez] and his newspaper were not authorized, not approved, and far exceed any reasonable amount that should be paid to a newspaper and its owner - even for an improper purpose. . . . More specifically, Mr. Duarte was illegally and improperly sending state money to [Rodriguez] and El Diario to report negatively on Mr. Duarte's political adversaries and positively about Mr. Duarte and his administration.”
- “Mr. Duarte was also paying money to [Rodriguez] and El Diario for services that were never rendered, overpaying for services that were rendered, and outright bribing [Rodriguez] and El Diario at times.”

¹ Unless otherwise noted, all background facts are cited from Chihuahua’s second amended petition, which was its live pleading at the time the trial court denied Rodriguez and Editora’s special appearance, and Chihuahua’s response to the special appearance and the attached exhibits.

- “Indeed, once a new governor was elected, [Rodriguez] and the El Diario de El Paso began pressuring him for similar payoffs with the threat of bad and false articles should he not comply their demands.”
- “These funds stolen from the State of Chihuahua by [Rodriguez] and El Diario were ultimately sent to El Paso, Texas where [Rodriguez] was a resident, along with El Diario. These funds were deposited in banks in El Paso and used to purchase goods, services, and real estate in El Paso.”

The “Parties” section of the pleading alleges that Rodriguez resides and works in Texas. The same section alleges that Editora is a foreign corporation registered to do business in Texas with its registered agent located in El Paso, Texas.

The petition asserts four causes of action against Rodriguez and Editora: (1) conversion, (2) violation of the “Theft Liability Act”²; (3) civil conspiracy to steal, embezzle and commit fraud; and (4) violation of Texas Penal Code § 31.03(e)(7).³ The petition generally claims “all Defendants” committed these torts, and other than stating the elements of the claims, makes no specific factual allegation as to any specific defendant, including Rodriguez or Editora.

Rodriguez and Editora filed a special appearance, and subject to that, a Rule 91a Motion to Dismiss, and Answer. These pleadings collectively assert that Rodriguez and the current Governor of Chihuahua, have had a “contentious relationship for a number of years” and El Diario de Juarez (another entity also not part of the suit) has published “unflattering, but truthful” articles about the current Governor. Further, El Diario de Juarez and the current Governor are engaged in on-going litigation in Mexico over claims of libel and unpaid bills. The gist of the assertion is that

² No statutory citation for this cause of action is included in the petition.

³ This section of the Texas Penal Code only classifies a theft as a first-degree felony if the value of the stolen property is \$300,000 or more. TEX. PENAL CODE ANN. § 31.03 (e)(7).

the Governor had Rodriguez and Editora added to the U.S. lawsuit in response to their on-going, but unrelated disputes in Mexico.

The special appearance more specifically argues that Chihuahua failed to plead sufficient jurisdictional facts and that the trial court lacked general or specific jurisdiction over Rodriguez and Editora. As part of the jurisdictional challenge, Rodriguez and Editora filed an affidavit from Osvaldo Rodriguez Jimenez who is Editora's corporate secretary who stated:

"Editora is not a resident of Texas. Editora does not engage in any business in Texas other than hold certain accounts and neither it or Mr. Rodriguez have committed any tort, in whole or in part, within the State of Texas."

"Editora does not maintain a place of business in Texas and has no employees, servants, or agents within the State of Texas. Editora has no substantial connection with Texas arising from any action or conduct of Editora purposefully directed towards Texas. Editora does not own any real estate in Texas."

"Neither Editora nor Mr. Rodriguez publish newspapers, much less articles. No funds were ever paid directly to Editora or Mr. Rodriguez for the publishing of articles. The State of Chihuahua did purchase advertising and legally required notices from El Diario de Juarez, but, again, all those transactions took place in Mexico."

Chihuahua asked for and was granted time to conduct jurisdictional discovery. Its filed response to the special appearance asserts that Editora is subject to jurisdiction in Texas because documents filed with the State of Texas establish that the address of its principal office, principal place of business, and its managers' and officers' workplace are located in El Paso, Texas. Chihuahua further asserts that Rodriguez resides in Texas. Among other documents, Chihuahua attached to its response a filing from the Texas Secretary of State, which showed that Editora is incorporated in Mexico but has a registered office located in El Paso, Texas. The same filings listed Rodriguez as its director and president of Editora, and further showed his address as being in El Paso.

The trial court denied the special appearance. Although Rodriguez and Editora requested findings of fact and conclusions of law associated for the denial of the special appearance, none were entered. This interlocutory appeal follows. In its sole issue, Editora and Rodriguez argue that the trial court erred by denying the special appearance because: (1) Editora does not do business in Texas; and (2) the Chihuahua failed to plead that neither Editora or Rodriguez committed a tort in Texas.

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 reach the question of law, however, a trial court must sometimes resolve questions of fact. *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 805-06 (Tex. 2002). 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 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). But those implied findings are reviewable for legal or factual sufficiency. *Marchand*, 83 S.W.3d at 794.

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 lacks contacts with Texas, effectively disproving the plaintiff's allegations. *Id.* The plaintiff can then respond with evidence that affirms its allegations. *Id.* Legally, the defendant can show that even if the plaintiff's alleged facts are true, the evidence is legally insufficient to support jurisdiction. *Id.*

B. Applicable Law for 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 “commits a tort in whole or in part in this state.” *Id.* § 17.042(2). Yet even if a transaction falls within this definition, a court’s jurisdiction is also limited by the Due Process Clause of the U.S. 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 Adver., Inc. v. Burt*, 553 S.W.2d 760, 762 (Tex. 1977). 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. Nicaastro*, 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.’”).

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 475-76; *Michiana*, 168 S.W.3d at 790 (“[M]inimum-contacts analysis focuses solely on the actions and reasonable expectations of the defendant.”). 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.

C. General Jurisdiction

Personal jurisdiction can be either “general” or “specific.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984); *CSR Ltd. v. Link*, 925 S.W.2d 591, 594 (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). General jurisdiction “involves a court’s ability to exercise jurisdiction over a nonresident defendant based on any claim, including claims unrelated to the defendant’s contacts with the state.” *M&F Worldwide Corp. v. Pepsi-Cola Metro Bottling Co. Inc.*, 512 S.W.3d 878, 885 (Tex. 2017); *see also Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S.Ct. 1773, 1780 (2017) (“A court with general jurisdiction may hear any claim against that defendant, even if all the incidents underlying the claim occurred in a different State.”).

For an individual defendant, “the paradigm forum for the exercise of general jurisdiction is the individual’s domicile.” *Goodyear*, 564 U.S. at 924; *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014); *see also Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021) (“In what we have called the ‘paradigm’ case, an individual is subject to general jurisdiction in her place of domicile.”). “Domicile” has been defined as “[t]he place at which a person has been physically present and that the person regards as home; a person’s true, fixed, principal, and

permanent home, to which that person intends to return and remain even though currently residing elsewhere.” *Yahsi v. Visor Muhendislik Insaat Turizm Gida Ve Mekanik Taahhut Ticaret Ltd. Sirketi*, 651 S.W.3d 79, 92 (Tex.App.--Houston [14th Dist.] 2021, no pet.), quoting BLACK’S LAW DICTIONARY (11th ed. 2019); *Gaddy v. Fenenbock*, 652 S.W.3d 860, 868 (Tex.App.--El Paso 2022, no pet.). An individual may have multiple residences but only one domicile. *Yahsi*, 651 S.W.3d at 92; *Gaddy*, 652 S.W.3d at 868.

For a corporate defendant, the Supreme Court has recognized two paradigmatic bases for general jurisdiction: the defendant’s place of incorporation and its principal place of business. *BNSF Ry. Co. v. Tyrrell*, 137 S.Ct. 1549, 1558 (2017); *Daimler*, 571 U.S. at 137. The Court has interpreted the phrase “principal place of business” to mean the place where a corporation’s officers direct, control, and coordinate the corporation’s activities (i.e., its “nerve center.”). *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010). And although *Hertz* was not a general jurisdiction case, Texas courts have applied *Hertz*’s “principal place of business” definition in personal-jurisdiction cases involving corporate defendants. See, e.g., *Forever Living Products Int’l, LLC v. AV Europe GmbH*, 638 S.W.3d 719, 724 (Tex.App.--Dallas 2021, pet. denied); *Ascentium Capital LLC v. Hi-Tech the Sch. of Cosmetology Corp.*, 558 S.W.3d 824, 829 (Tex. App.--Houston [14th Dist.] 2018, no pet.).⁴

D. Specific Jurisdiction

A plaintiff asserting that a court has specific jurisdiction over a nonresident defendant carries the additional burden of showing that its claim arises out of or is related to the defendant’s contacts with the forum. *Helicopteros*, 466 U.S. at 414, n. 8; *Moki Mac*, 221 S.W.3d at 579 (“The

⁴ *Hertz* determined the meaning of “principal place of business” for the purposes of the federal diversity statute--28 U.S.C. 1332. *Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010).

‘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 the sense 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).⁵ Because the Chihuahua argued that both general and specific jurisdiction existed for Appellants and the trial court denied Appellants’ special appearance without entering findings and conclusions, we address its implied findings of both general and specific jurisdiction. *See Gaddy*, 652 S.W.3d at 868.

E. Special Appearances

A party challenges the lack of personal jurisdiction through a Rule 120a special appearance; the consideration of the special appearance entails shifting burdens. *Kelly*, 301 S.W.3d at 658; *see* TEX.R.CIV.P. 120a. A court must first determine whether the plaintiff has pleaded sufficient jurisdictional facts under the Texas long-arm statute. *See Moncrief Oil Intern. Inc. v. OAO Gazprom*, 414 S.W.3d 142, 149 (Tex. 2013), *citing* TEX.CIV.PRAC. & REM.CODE ANN. § 17.042(2). If the plaintiff’s pleading burden is not met, a defendant may defeat jurisdiction simply by proving that he or she is not a Texas resident. *Kelly*, 301 S.W.3d at 659. If that initial pleading burden is met, however, the burden shifts to the defendant to negate all potential bases

⁵ 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 Intern. Inc. v. OAO Gazprom*, 414 S.W.3d 142, 150-51 (Tex. 2013). Because Chihuahua’s claims all arise from the same forum contacts, we need not assess the contacts on a claim-by-claim basis. *See id.*

for personal jurisdiction the plaintiff pleaded. *Id.* A nonresident defendant may negate jurisdiction on either a factual or legal basis. *Id.* at 658. Factually, the defendant can present evidence that it has insufficient 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 seek to show that even if the plaintiff’s alleged facts are true, the evidence legally cannot support jurisdiction. *Id.*

IV. JURISDICTION OVER RODRIGUEZ

A. Chihuahua’s Pleading Burden

Chihuahua alleges that Rodriguez resides and works in El Paso. Chihuahua pleaded that Rodriguez and his newspaper, El Diario, illicitly received public funds from Duarte in exchange for writing positive stories about him and negative stories about his political opponents. The funds stolen from Chihuahua were allegedly sent to El Paso banks and used by Rodriguez and El Diario to purchase goods, services, and real estate in El Paso. These allegations satisfy the requirements of the long-arm statute by alleging Rodriguez committed tort claims in Texas. And based on the allegation—not challenged—that Rodriguez resides in Texas, the trial court properly denied his special appearance.

B. The Trial Court Properly Exercised General Jurisdiction over Rodriguez

In addition to the allegations in its petition, Chihuahua’s response to the special appearance included several filings associated with Editora from the Texas Secretary of State, which listed Rodriguez’s mailing address in El Paso. For instance, Editora’s “Application for Certificate of Authority,” which was filed in 2001, lists Rodriguez’s status as Editora’s proposed registered agent and president, and further denotes Rodriguez’s residential address in El Paso. A “Texas Franchise Tax Public Information Report” for Editora lists Rodriguez as Editora’s president. And another

franchise tax report for two unrelated businesses lists Rodriguez’s status as president, secretary, and treasurer of those businesses with mailing addresses in El Paso. On appeal, Rodriguez does not contest the allegation that he resides and works in El Paso.

The record supports the trial court’s implied finding that Rodriguez is domiciled in Texas for general jurisdiction purposes. Because individual defendants are subject to general jurisdiction in the place they are domiciled, the trial court did not err by denying the special appearance on this basis as to Rodriguez individually. *See Goodyear*, 564 U.S. at 924; *Daimler*, 571 U.S. at 137.⁶ Based on the implied finding—not attacked on appeal—that Rodriguez is a Texas resident, our inquiry ends. On appeal, Rodriguez argues that exercising jurisdiction over him would be unreasonable because he is a Mexican citizen and he agrees to jurisdiction in Mexico. But as a Texas resident, he is subject to general all purpose jurisdiction. Any argument about where he must be sued is then a matter of venue, or possibly *forum non conveniens*, but not personal jurisdiction.

This part of Appellants’ Issue One is overruled.

V. JURISDICTION OVER EDITORA

A. General Jurisdiction

Chihuahua pleaded that Editora’s principal place of business and registered agent are located on Texas Avenue in El Paso. Principal place of business is one of the paradigmatic bases for general jurisdiction: *Tyrrell*, 137 S.Ct. at 1558; *Daimler*, 571 U.S. at 137. But in its special appearance, Editora challenged this assertion with an affidavit asserting it is not a resident of Texas, and does not engage in business, does not maintain a place of business, and has no employees, servants, agents in the State of Texas. Responding to those claims, Chihuahua

⁶ Because the trial court properly exercised general jurisdiction over Rodriguez, we need not discuss whether the court had specific jurisdiction over him.

proffered Editora’s Application for Certificate of Authority filed with the Texas Secretary of State, which shows Editora is incorporated in Mexico and its registered office is on Texas Avenue in El Paso. A “Texas Franchise Tax Public Information Report” from 2020 likewise shows Editora’s principal office and principal place of business located on Texas Avenue in El Paso. The form also lists Rodriguez as president, Adrian Rodriguez as treasurer and registered agent, and Osvaldo Rodriguez Jimenez as secretary of Editora, all with mailing addresses at the same Texas Avenue location. Also attached to Chihuahua’s response was a printout from a website belonging to “Paso del Norte Publishing, Inc.,” which lists the same Texas Avenue address listed on the Secretary of State filings.⁷

But from an evidentiary standpoint, none of Chihuahua’s evidence hits the mark. Principal place of business, for jurisdictional purposes, must be a corporation’s nerve center—where company’s officers direct, control, and coordinate the company’s activities. *See Hertz*, 559 U.S. at 92-93. Neither the corporate forms, nor the website, provide any information regarding where Editora’s officers regularly meet or exercise control over the company at the El Paso office. And the Supreme Court has recognized that filing a form that lists an address for a company’s principal place of business is not sufficient by itself to establish a location as the company’s nerve center. *See Hertz*, 559 U.S. at 97 (“[W]e reject suggestions such as . . . that the mere filing of a form like the Securities and Exchange Commission’s Form 10-K listing a corporation’s ‘principal executive offices’ would, without more, be sufficient proof to establish a corporation’s ‘nerve center.’”). At least one Texas case has applied that rule to a “Texas Franchise Tax Public Report,” (which is like

⁷ Although this screenshot from the website does not explicitly contain Editora’s name, Chihuahua’s counsel asserted that he acquired the screenshot from Editora’s website. Because the trial court denied the special appearance and did not enter findings of fact and conclusions of law associated with its order, we imply all facts supported by the evidence in favor of the court’s denial of the special appearance, and thus we imply that this website belongs to Editora. *See BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002).

the document Chihuahua provided in this case) because the Franchise Tax Report “[did] not provide any information regarding where [the defendant’s] center of direction, control, and coordination is located.” See *Aqua Terra U.S. Holdings, LLC v. Pappas Harris Capital, LLC*, No. 14-20-00858-CV, 2022 WL 3365265, at *4 (Tex.App.--Houston [14th Dist.] Aug. 16, 2022, no pet) (mem.op.). And during the special-appearance hearing, Chihuahua conceded that being registered to do business in Texas “in and of itself does not confer jurisdiction[,] nor should it.”

Chihuahua does not point to, and we do not find, any additional evidence in the record suggesting that Editora’s El Paso office is where the company’s officers direct, control, and coordinate the company’s activities. See *Hertz*, 559 U.S. at 92-93. When considering the statements in Jimenez’s affidavit stating that the Editora lacks any place of business or employees in Texas, does not own property in Texas, and does not carry out business in Texas, the trial court’s implied finding that Editora’s El Paso office is its “nerve center” fails for lack of sufficient supporting evidence. See *id.*; see also *Aqua Terra*, 2022 WL 3365265, at *3-4 (holding that a nonresident corporate defendant successfully negated general jurisdiction through its affidavit asserting that its principal place of business was not in Texas, and rejecting a Texas Franchise Tax Report form as sufficient evidence because the form failed to provide any information about the defendant’s “nerve center”). Accordingly, the trial court would have erred in finding general jurisdiction for Editora.

B. Specific Jurisdiction

1. Chihuahua Failed its Pleading Burden

As for specific jurisdiction, we first consider whether Chihuahua met its initial pleading burden to invoke the operation of the long-arm statute. See *Moncrief*, 414 S.W.3d at 149. Appellants argue that Chihuahua failed to sufficiently plead causes of action to invoke the

operation of the Texas long-arm statute. Chihuahua responds that its live petition alleges multiple causes of action against “All Defendants” (which presumably includes Editora), and that the petition “pleads that the illegal funds were sent to El Paso multiple times throughout the pleading.” In its live petition, Chihuahua asserted claims against all defendants for conversion, theft under the Theft Liability Act, and for civil conspiracy. Chihuahua sought a constructive trust on the funds improperly paid, and asserted that all defendants were jointly and severally liable for the damages.

Editora responds that Chihuahua failed its pleading burden by conflating Editora and El Diario, which they contend are two separate and distinct entities. Editora further argues that Chihuahua’s petition contains no allegations that Editora committed any of the alleged actions in Texas and that all Chihuahua’s allegations point to El Diario’s activities. Our review of Chihuahua’s petition and its response to the special appearance confirms that other than the general allegation that Editora’s principal place of business and registered agent are located in El Paso, there are no allegations of any specific activities within Texas committed by Editora, the named defendant in this case. Neither do Chihuahua’s pleadings explain the relationship, if any, between Editora and El Diario. In contrast, the entirety of Chihuahua’s allegations name El Diario, not Editora, as the entity that committed the alleged torts. Because Chihuahua has not pleaded that Editora committed a tort or contracted within Texas, it failed its burden to plead sufficient jurisdictional facts to invoke the long-arm statute regarding Editora. *See id.*, citing TEX.CIV.PRAC. & REM.CODE ANN. § 17.042(2).

Because Chihuahua failed its pleading burden, Editora may negate jurisdiction by proving that it is not a resident of Texas. *See Kelly*, 301 S.W.3d at 659. Through Jimenez’s affidavit, Editora asserted that: (1) it is not a resident of Texas; (2) it does not engage in any activities in Texas other than holding accounts; (3) it does not own real estate here; and (4) none of the alleged

activities forming the basis of Chihuahua’s claims occurred in Texas. These declarations are sufficient to establish that Editora is not a resident of Texas, and thus Editora has successfully defeated jurisdiction on this basis. *See, e.g., Tenace v. Thurman Health Holdings, LLC*, No. 09-21-00199-CV, 2022 WL 2719478, at *6 (Tex.App.--Beaumont July 14, 2022, no pet.) (mem. op.) (holding that where the plaintiff failed to plead sufficient facts to invoke the Texas long-arm statute, the defendants proved they were not Texas residents through an affidavit stating that they were not a resident of Texas, owned no property in Texas, and did not contract with a Texas resident); *Stanton v. Gloersen*, No. 05-16-00214-CV, 2016 WL 7166550, at *10 (Tex.App.--Dallas Nov. 30, 2016, pet. denied) (mem. op.) (holding that where the plaintiff failed to plead sufficient facts to invoke the Texas long-arm statute, the defendant successfully established her nonresident status by stating in her declaration that “she is not a resident of Texas.”).

2. Editora Negated all Bases for Jurisdiction

Even if Chihuahua had satisfied its initial pleading burden, Editora raises another issue: Chihuahua cannot show a connection between any alleged act of Editora in Texas and the pleaded causes of action. *See Moki Mac*, 221 S.W.3d at 585 (“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.”). Chihuahua’s claims for conversion and civil conspiracy, and under the Texas Theft Liability Act arose out of Editora’s alleged receipt of converted public funds from Duarte in exchange for Editora’s publication of favorable news stories. Yet Editora rebutted these claims with an affidavit attesting that it does not publish newspapers, does not engage in business in Texas, and “none of the acts complained of by Plaintiff took place or would have taken place in Texas.” In reply, Chihuahua relies on a printout of Editora’s website, which states that it is “[t]he Southwest’s largest Printing Operation” and lists

under “Services” the printing of “newspaper[s],” “tabloids,” “magazines,” “books,” and other types of publications. But this evidence suggests Editora’s involvement is the physical printing of paper publications, not writing or publishing news articles. None of the other exhibits admitted by Chihuahua mention Editora’s involvement in publishing news articles. And although Chihuahua included an “Application for Certificate of Authority” filed with the Texas Secretary of State, the document only states that the “purpose or purposes of the corporation which it proposes to pursue in the transaction of business in Texas are [to] purchase and operate commercial rental property,” and the filing does not mention news publication or similar activities. Finally, Chihuahua attached a series of bank statements written in Spanish, but these documents appear to be from banks located in Mexico.

In sum, there is a lack of evidence supporting Chihuahua’s claims establishing that Editora is engaged in the business of writing news articles in Texas. In contrast, Jimenez’s affidavit states that Editora is not engaged in the business of publishing articles in Texas. Although the evidence suggests that Editora maintains some business presence and engages in some activity in Texas, the record contains insufficient evidence that any of Editora’s contacts are substantially connected to Chihuahua’s claims. *See Moki Mac*, 221 S.W.3d at 585. Thus, even if Chihuahua had met its initial pleading burden, Editora has negated all bases for specific jurisdiction.⁸

This part of Appellants’ Issue One is sustained.

VI. CONCLUSION

Because the trial court’s exercise of personal jurisdiction complied with due process as to Rodriguez, we conclude that the trial court did not err by denying that part of Appellants’ special

⁸ Because the State has not met its pleading burden and Editora has successfully negated all grounds for personal jurisdiction, we need not discuss whether exercising jurisdiction over Editora would offend traditional notions of fair play and substantial justice.

appearance. But because Chihuahua failed to satisfy its initial pleading burden as to Editora and because Editora sufficiently negated all bases for jurisdiction, the trial court erred by denying the special appearance as to that party. We affirm the part of the trial court's order denying Appellants' special appearance as to Rodriguez. We reverse the trial court's order denying the special appearance as to Editora and render judgment dismissing Chihuahua's claims against Editora for lack of personal jurisdiction. We remand this case to the trial court for further proceedings consistent with this opinion.

JEFF ALLEY, Justice

December 09, 2022

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