Reverse and Remand and Opinion Filed March 19, 2018

In The

Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00571-CV

HADI ANTOUN KARAA, LISA CONDO, LLC, H& LK, LLC, AND LISA SALLOUM, DDS, PA, Appellants
V.
LILLIAN ARAMOONIE, INDIVIDUALLY, AND AS SETTLOR OF THE LILLIAN ARAMOONIE LIVING TRUST, AND ANTHONY ARAMOONIE, AS TRUSTEE OF THE LILLIAN ARAMOONIE LIVING TRUST, Appellees

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On Appeal from the 134th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-06928

MEMORANDUM OPINION

Before Justices Lang, Brown, and Whitehill
Opinion by Justice Whitehill

This is an appeal from the denial of a special appearance. The appellants are (i) Hadi Karaa, an individual residing in Beirut, Lebanon and Jacksonville, Florida and (ii) three Florida entities that do business solely in Florida. Because there is legally no evidence that any appellant, either directly or as the alter ego of another appellant, engaged in conduct that would subject it to personal jurisdiction before a Texas court in this case, we reverse and remand for further proceedings consistent with this opinion.[1]

[1] Because the parties well-know the facts, we recite them here only to the extent needed to explain our opinion. We issue a memorandum opinion because established legal principles govern this case.

I. BACKGROUND

Plaintiff Anthony Aramoonie is Lillian Aramoonie's nephew and the trustee of the Lillian Aramoonie living trust. Lillian was also a plaintiff when the suit and the live petition were filed, but she is now deceased.

Defendant Lisa Karaa, a dentist who lives in Florida, is Lillian's niece. Hadi, a cardiologist and Lisa's husband, lives primarily in Beirut but also lives in Florida three months out of the year. (RR 46-47).

There are three entity defendants: (i) Lisa Condo, LLC; (ii) Lisa Salloum, DDS, PA; and (iii) H&LK, LLC (collectively, the Entities). Lisa is the sole owner of Lisa Condo and Lisa DDS. Lisa and Hadi jointly own H&LK.

The Entities are all Florida domiciled entities, created under Florida law. Lisa Condo owns rental condos in Florida. H&LK owns a Florida office building. Lisa DDS is Lisa's Florida dental practice. None of the Entities has an office or agent in Texas, nor have they ever done business in Texas or with a Texan.

Anthony claims that Lisa and Hadi exercised undue influence over Lillian to acquire several hundred thousand dollars from her in a series of transactions in 2014 and 2015.

The undisputed facts are that in a series of transactions from June 12, 2014 to February 27, 2015, Lillian transferred several hundred thousand dollars to two different personal checking accounts owned by Lisa or Lisa and Hadi at Florida banks. From there, Lisa transferred money from those accounts to accounts belonging to H&LK or Lisa Condo, also at Florida banks.[2]

Lisa Condo and H&LK in turn bought Florida real estate assets. Lisa also withdrew personal use funds from one or more of the Entities' accounts, some of which were used to buy a

[2] It does not appear that any funds Anthony seeks to recover were transferred to Lisa DDS.

car from a Houston automobile dealer. There is uncontroverted evidence that those withdrawals were accounted for as income to Lisa and reported as such on her tax returns.

Although Lisa filed an answer without challenging personal jurisdiction, Hadi and the Entities filed special appearances, which the trial court denied and are the subject of this appeal.

II. Analysis

A. First Issue: Did the trial court err by denying Hadi's special appearance?

1. Standard of Review and Applicable Law

Whether a court has personal jurisdiction over a nonresident defendant is a question of law we review de novo. *Moncrief Oil Int'l, Inc. v. OAO Gazprom*, 414 S.W.3d 142, 150 (Tex. 2013) (citing *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007)).

Texas courts may exercise personal jurisdiction over a nonresident defendant only if (i) the Texas long-arm statute permits the exercise of jurisdiction and (ii) exercising the jurisdiction satisfies constitutional due-process guarantees. *Id.*

Constitutional due process permits a state to exercise jurisdiction only when a nonresident defendant has sufficient minimum contacts with the state, and the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. *M & F Worldwide Corp. v. Pepsi–Cola Metropolitan Bottling Co., Inc.*, 512 S.W.3d 878, 887 (Tex. 2017).

Texas special appearance law dictates that the plaintiff and the defendant bear shifting burdens of proof in a personal jurisdiction challenge. *Id.*; *see also* TEX. R. CIV. P. 120a. The plaintiff bears the initial burden to plead sufficient allegations to invoke jurisdiction under the Texas long-arm statute. *Moki Mac*, 221 S.W.3d at 574. If the plaintiff pleads sufficient jurisdictional allegations, a defendant who contests the trial court's exercise of personal jurisdiction bears the burden of negating all bases of jurisdiction alleged by the plaintiff. *Id.*

Personal jurisdiction may be either general or specific. *See Moncrief Oil*, 414 S.W.3d at 152. General jurisdiction arises when a defendant's "affiliations with the state are 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). On the other hand, courts may exercise specific jurisdiction when the defendant's forum contacts are "isolated or sporadic," but only if the plaintiff's cause of action arises from or relates to those contacts. *TV Azteca v. Ruiz*, 490 S.W.3d 29, 37 (Tex. 2016). Specific jurisdiction focuses on two prongs: (i) purposeful availment and (ii) relatedness. *See Retamco Operating, Inc. v. Republic Drilling Co*., 278 S.W.3d 333, 338 (Tex. 2009).

Purposeful availment is the touchstone of jurisdictional due process. *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 784 (Tex. 2005). Thus, it is "essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). The purposeful availment prong analyzes (i) the defendant's own actions but not the unilateral activity of another party; (ii) whether the defendant's actions were purposeful rather than random, isolated, or fortuitous; and (iii) whether the defendant sought some benefit, advantage, or profit by availing itself of the privilege of doing business in Texas. *Jani–King Franchising Inc. v. Falco Franchising, S.A*., No. 05–15–00335–CV, 2016 WL 2609314, at *3 (Tex. App.—Dallas May 5, 2016, no pet.) (mem. op.). The defendant's activities must justify a conclusion that the defendant could reasonably anticipate being called into a Texas court. *Am. Type Culture Collection v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002) (citing *World–Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297 (1980)). The "quality and nature of the defendant's contacts, rather than their number" governs the inquiry in the minimum contacts analysis. *Id*.

The "relatedness" prong analyzes the relationship among the defendant, the forum, and the litigation. *Searcy v. Parex Res., Inc.*, 496 S.W.3d 58, 67 (Tex. 2016). A cause of action arises from or relates to the forum contacts if there is a "substantial connection between [the] contacts and the operative facts of the litigation." *Moki Mac*, 221 S.W.3d at 579, 585. Thus, we consider the claims involved in the litigation to determine the operative facts. *Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 340 (Tex. 2009).

Applying the above principles, we analyze whether a Texas court may properly exercise general or specific jurisdiction over Hadi, a resident of Beirut, Lebanon and Jacksonville, Florida.[3]

2. Jurisdictional Facts

The gist of Anthony's claims are that Lisa and Hadi exercised undue influence in causing Lillian to make the disputed transfers while her heart valve condition rendered her mentally incapable of the required donative intent needed to make valid gifts. But there is no evidence that any act of undue influence occurred while Lisa or Hadi was in Texas (instead of when Lillian was visiting in Florida). Conclusory statements and speculation are legally no evidence. *See, e.g., Coastal Transp. Co., Inc. v. Crown Cent. Petro Corp.,* 136 S.W.3d 227, 233 (Tex. 2004) (conclusory statements constitute no evidence).

There is no evidence that Lisa or Hadi mentioned money in any communication with Lillian while they were in Texas. Indeed, no written communications with Lillian while she was in Texas are in evidence. Although Lillian's counsel had her make a video-recorded statement regarding these events, nothing in that video establishes what was said in any particular disputed conversation or where the parties were when the conversations occurred. Likewise, although Anthony submitted a declaration stating that he recalled two specific times in 2014 when Hadi twice visited with Lillian in Texas, he did not provide any substance from those conversations.

[3] Because appellants do not contest whether the long arm statute was met, we assume without deciding that it was.

Anthony also recalled another time Hadi visited Lillian in Dallas, but he did not recall when that was or relate what Hadi said or did on that trip. Indeed, the evidence shows that the four trips Hadi made to Texas were for travel, entertainment, and purchasing a car.

Anthony also relies on the following to establish specific jurisdiction over Hadi: (i) funds that are the basis of this lawsuit were transferred from Lillian's Texas bank account,[4] (ii) Hadi communicated with Lillian in Texas through emails and phone calls, and (iii) Hadi conspired to commit torts and aided and abetted the commission of a tort while he was in Florida.

None of these facts support Texas jurisdiction over Hadi. Bank accounts or transactions partially occurring in Texas are insufficient to create jurisdiction over an out of state defendant. *O'Daire v. Rowand Recovery, LLC*, No. 05-16-01097-CV, 2017 WL 930036, at *4 (Tex. App.—Dallas Mar. 9, 2017, no pet.) (mem. op). The same holds true for phone calls and emails. *Id*. at *3. And "directing a tort at Texas from afar" is likewise insufficient to confer specific jurisdiction. *Moncrief Oil*, 414 S.W.3d at 157.

Hadi's contacts will also not support general jurisdiction. General jurisdiction involves a "more demanding minimum contacts analysis" with a "substantially higher threshold." *PHC-Minden*, 235 S.W.3d at 168.

Hadi testified that he is not a Texas resident, has never done business in Texas, or been employed by a Texas entity, and he has never owned property in Texas. Thus, his only Texas contacts are the four trips he made for travel, entertainment, and to purchase a car, and his communications with a Texas resident. These contacts fall short of the continuous and systematic contacts general jurisdiction requires. *See id.*

Finally, Anthony maintains that Hadi consented to Texas jurisdiction because Lillian named him (i) successor agent under a durable power of attorney, (ii) alternate successor trustee

[4] None of these transfers were made directly to Hadi.

and beneficiary of her trust, and (iii) successor executor of her estate. Anthony provides no authority, nor are we aware of any, that deems Hadi to have consented to jurisdiction simply by being named in estate planning documents. Furthermore, none of these contingency appointments ever occurred, so Hadi did not accept any benefits or obligations or take any action in any of these capacities. *See Stauffer v. Nicholson*, 438 S.W.3d 205, 213 (Tex. App.—Dallas 2014, no pet.) (no personal jurisdiction over successor trustee because no facts demonstrating that he had any contacts with Texas in this capacity). Purposeful availment involves contacts that a defendant purposefully directs into the forum state. *Searcy*, 496 S.W.3d at 67. There was no purposeful availment here.

Because there is nothing to establish that Hadi had continuous and systematic contacts with Texas or that Anthony's causes of action arises from Hadi's isolated and sporadic contacts, a Texas court may not properly exercise personal jurisdiction over Hadi. Appellants' first issue is sustained.

B. Issues Two, Three, and Four: Did the trial court err by denying the entities' special appearances?

Next, we consider whether the trial court erred in its jurisdictional determination concerning the Entities. Anthony contends that the Entities are the alter egos of Lisa, Hadi, and each other, and because Lisa admitted that the trial court has jurisdiction over her, the court also has jurisdiction over the Entities. We disagree.

There is no direct, general jurisdiction over any Entity because the Entities are Florida companies that do business only in Florida. They have no Texas presence whatsoever.

Furthermore, there is no alter ego jurisdiction over the Entities through Lisa or Hadi. Under Texas law, a corporation is presumed to be a separate entity from its officers and shareholders. *See Grain Dealers Mut. Ins. Co. v. McKee*, 943 S.W.2d 455, 458 (Tex. 1997). But, in certain circumstances, an alter ego theory may be used to establish personal jurisdiction by imputing the

jurisdictional contacts of a corporate entity to its owners or parent corporation. *Davey v. Shaw*, 225 S.W.3d 843, 854 (Tex. App.—Dallas 2007, no pet.). Here, we have the reverse: Anthony seeks to establish jurisdiction over the Entities through Lisa and Hadi.

When the primary party is an individual owner or shareholder, "[t]he corporate fiction is disregarded . . . when a corporation is organized and operated as a mere tool or business conduit" of that individual. *Castleberry v. Branscum*, 721 S.W.2d 270, 272 (Tex. 1986). In other words, "[a]lter ego applies when there is such unity between a corporation and an individual that the separateness of the corporation has ceased and holding only the corporation liable would result in an injustice." *Nichols v. Tseng Hsiang Lin*, 282 S.W.3d 743, 747 (Tex. App.—Dallas 2009, no pet.) (quoting *Mancorp, Inc. v. Culpepper*, 802 S.W.2d 226, 228 (Tex. 1990)). A plaintiff who relies on the existence of an alter-ego relationship to ascribe a defendant's contacts with Texas to a distinct foreign corporation must prove that such a relationship exists. *Washington DC Party Shuttle, LLC v. IGuide Tours*, 406 S.W.3d 723, 738–39 (Tex. App.—Houston [14th Dist.] 2013, pet. denied).

Jurisdictional veil-piercing involves different elements of proof than substantive veil piercing because personal jurisdiction also involves due process considerations. *See PHC-Minden, L.P. v. Kimberly-Clark Corp.*, 235 S.W.3d 163, 174 (Tex. 2007). Thus, for jurisdictional veil-piercing, the degree of control exercised by the parent "must be greater than that normally associated with common ownership and directorship; the evidence must show that the two entities cease to be separate so that the corporate fiction should be disregarded to prevent fraud or injustice." *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 799 (Tex. 2002).

Here, there is legally no evidence to support jurisdictional alter ego over any Entity. Lisa testified that she, the bookkeeper, and her CPA kept the Entities financially separate. Withdrawals to her were accounted for as income distributions and were reported as such on the tax returns.

Tax returns for Lisa, Hadi, and the Entities are filed separately. There is no evidence controverting these facts.

Nonetheless, Anthony relies on evidence that the Entities have no other investors or employees, have no office, and use Lisa's cell phone number. He further maintains that Lisa and Hadi "used the Entities' profits to pay personal debts and travel expenses," and moved money around in the accounts to make sure there were sufficient funds for various transactions.

Failure to observe corporate formalities is no longer a factor in considering whether alter ego exists. *Sparks v. Booth*, 232 S.W.3d 853, 868–69 (Tex. App.—Dallas 2007, no pet.) (citing TEX. BUS. CORP. ACT art. 21.223(a)(3)). Mere control and ownership of a corporation's stock is also not a sufficient basis for ignoring the corporate fiction. *Grain Dealers Mut. Ins. Co. v. McKee*, 943 S.W.2d 455, 458 (Tex. 1997). Moreover, any funds taken from a corporate account were marked "personal." And taking a draw does not establish such unity between owner and company that the separateness of the corporation ceases to exist. *See Morris v. Powell*, 150 S.W.3d 212, 220 (Tex. App.—San Antonio 2004, no pet.).

Anthony's reliance on *Staffacher v. Lone Star Mud, Inc.*, 54 S.W.3d 810 (Tex. App.—Texarkana 2001, no pet.) is misplaced. In that pre-*BMC Software* case, the non-resident corporate owner, acting in his individual capacity, engaged in substantial Texas activities that supported the imposition of alter ego liability on him. *Id*. at 817. In the present case, however, there is no evidence that any of the Entities did anything in Texas that would support liability against them.

Anthony also argues that Lisa and Hadi created Lisa Condo to purchase condominiums with funds provided by Lillian. According to Anthony, these transactions illustrate how the Entities were used to accomplish the alleged tortious acts. But there is no evidence that Lisa or Hadi committed a tort while in Texas. To the contrary, all of the alleged misdeeds occurred while Lisa and Hadi were in Florida. This will not suffice. *See M&F Worldwide Corp. v. Pepsi-Cola*

Metropolitan Bottling Co., Inc., 512 S.W.3d 878, 887–89 (Tex. 2017). And there is also no evidence that any entity was used as a vehicle by which Lisa or Hadi committed fraud.

In short, there is legally no evidence that Lisa or Hadi engaged in transactions with the Entities outside the normal ownership relationships with these types of businesses such that they are "fused" for jurisdictional purposed. *See BMC Software*, 83 S.W.3d at 799. Therefore, the trial court erred in determining that alter ego could be used as a basis for a Texas court to exercise jurisdiction over the Florida Entities. We resolve appellants' second, third, and fourth issues in their favor.

III. CONCLUSION

Having resolved all of appellants' issues in their favor, we reverse the trial court's order and remand the case for further proceedings consistent with this opinion.

/Bill Whitehill/
BILL WHITEHILL
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

HADI ANTOUN KARAA, LISA CONDO, LLC, H& LK, LLC, AND LISA SALLOUM, DDS, PA, Appellant

No. 05-17-00571-CV V.

LILLIAN ARAMOONIE, INDIVIDUALLY, AND AS SETTLOR OF THE LILLIAN ARAMOONIE LIVING TRUST, AND ANTHONY ARAMOONIE, AS TRUSTEE OF THE LILLIAN ARAMOONIE LIVING TRUST, Appellee

On Appeal from the 134th Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-16-06928.
Opinion delivered by Justice Whitehill.
Justices Lang and Brown participating.

In accordance with this Court's opinion of this date, the trial court's order is **REVERSED** and this cause is **REMANDED** to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that appellant HADI ANTOUN KARAA, LISA CONDO, LLC, H& LK, LLC, AND LISA SALLOUM, DDS, PA recover their costs of this appeal from appellee LILLIAN ARAMOONIE, INDIVIDUALLY, AND AS SETTLOR OF THE LILLIAN ARAMOONIE LIVING TRUST, AND ANTHONY ARAMOONIE, AS TRUSTEE OF THE LILLIAN ARAMOONIE LIVING TRUST.

Judgment entered March 19, 2018.