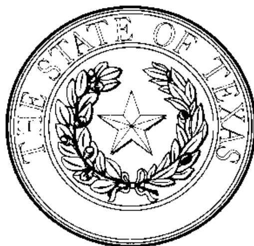
Opinion issued July 28, 2016



In The

Court of Appeals

For The

First District of Texas

NO. 01-15-01044-CV

DON PROCHASKA, Appellant

V.

MATTHEW BARNES, MONTCALM CO., LLC, AND SCHAIN LEIFER GURALNICK, Appellees

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On Appeal from the 334th District Court
Harris County, Texas
Trial Court Case No. 2013-35800

MEMORANDUM OPINION

Appellant, Don Prochaska, appeals the trial court's orders granting the special appearances of appellees, Matthew Barnes ("Barnes"), Montcalm Co., LLC ("Montcalm"), and Schain Leifer Guralnick ("SLG"). In two issues, Prochaska

contends that the trial court erred because appellees engaged in contacts with Texas sufficient to confer personal jurisdiction. We affirm.

Background

On June 13, 2013, Prochaska, a Nebraska resident, sued Montcalm, Barnes, SLG, Jonathan Feldman, Patriot Exploration, Company, LLC, Millenium Drilling Co., Inc., and Carter Henson, Jr.[1] alleging that he was induced to invest in oil and gas drilling partnerships based upon fraudulent misrepresentations that he would receive a significant investment return and favorable tax deductions. Prochaska asserted causes of action for breach of fiduciary duty, fraud, misrepresentation, breach of contract, conspiracy, unjust enrichment, and money had and received.

Montcalm is a Delaware limited liability company[2] with its principal place of business in Massachusetts. Montcalm is the managing partner of the following drilling partnerships in which Prochaska invested: Bronco Drilling Partners, Falcon Drilling Partners, Lion Drilling Partners, Terrapin Drilling Partners, and Titan Drilling Partners. Each of the partnerships is organized under the laws of Delaware and has a principal place of business in a state other than Texas. Barnes, a Vermont resident, is the sole member of Montcalm. Feldman is a Connecticut resident and the President of Patriot and Millenium. Patriot is an Alaska corporation which has

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[1] Feldman, Patriot, Millenium, and Henson are not parties to this appeal.

[2] Montcalm recently merged into a Vermont LLC

its principal place of business in Connecticut and an office in Texas. Millenium is a Delaware corporation with its principal place of business in Connecticut. Henson, a Texas resident, managed Patriot's Houston office. SLG, a public accounting firm, is organized under the laws of the state of New York.

After appellees filed special appearances contesting personal jurisdiction, the trial court held a hearing on December 12, 2014. On November 3, 2015, the trial court granted appellees' special appearances. This interlocutory appeal followed.

Discussion

In two issues, Prochaska contends that the trial court erred in sustaining appellees' special appearances because appellees' contacts with Texas are sufficient to confer personal jurisdiction.

A. Standard of Review

We review de novo a trial court's decision to grant or deny a special appearance. *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002). A plaintiff must plead allegations that bring a nonresident defendant within the provisions of the Texas long-arm statute. *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 793 (Tex. 2002). A nonresident defendant challenging the court's exercise of personal jurisdiction through a special appearance carries the burden of negating those allegations. *Id.*; *Curocom Energy LLC v. Young-Sub Shim*, 416 S.W.3d 893, 896 (Tex. App.—Houston [1st Dist.] 2013, no pet.). The defendant

can negate jurisdiction on either a factual or legal basis. *Kelly v. Gen. Interior Constr., Inc.*, 301 S.W.3d 653, 659 (Tex. 2010). When, as here, a trial court does not issue findings of fact and conclusion of law in support of a special appearance ruling, then "all facts necessary to support the judgment and supported by the evidence are implied." *BMC Software*, 83 S.W.3d at 795.

B. Personal Jurisdiction

Texas courts may assert personal jurisdiction over a nonresident defendant if: (1) the Texas long-arm statute authorizes the exercise of jurisdiction; and (2) the exercise of jurisdiction is consistent with federal and state due process standards. *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007). The Texas long-arm statute allows Texas courts to exercise personal jurisdiction "as far as the federal constitutional requirements of due process will permit." *BMC Software*, 83 S.W.3d at 795. Federal due process requires that the nonresident defendant have purposefully established minimum contacts with the forum state, such that the defendant reasonably could anticipate being sued there. *Curocom Energy LLC*, 416 S.W.3d at 896. The exercise of personal jurisdiction must also comport with traditional notions of fair play and substantial justice. *Id.*

A nonresident's contacts can give rise to either general or specific personal jurisdiction. *Moncrief Oil Int'l, Inc. v. OAO Gazprom*, 414 S.W.3d 142, 150 (Tex. 2013). Specific jurisdiction arises when the defendant purposefully avails itself of

conducting activities in the forum state, and the cause of action arises from or is related to those contacts or activities. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 2182 (1985); *Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 338 (Tex. 2009). In a specific jurisdiction analysis, "we focus . . . on the 'relationship among the defendant, the forum [,] and the litigation.'" *Moki Mac*, 221 S.W.3d at 575–76 (citing *Guardian Royal Exch. Assurance Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 228 (Tex. 1991)). The plaintiff must show a substantial connection between the defendant's contacts with the forum state and the operative facts of the litigation. *Moki Mac*, 221 S.W.3d at 585. The "purposeful availment" inquiry has three parts. *See Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 784 (Tex. 2005). First, only the defendant's contacts with the forum are relevant, not the unilateral activity of another party or a third person. *Id.* at 785. Second, the contacts relied upon must be purposeful rather than random, fortuitous, or attenuated. *Id.; see also Burger King Corp.*, 471 U.S. at 475 n.18, 105 S. Ct. at 2184 n.18. Third, the "defendant must seek some benefit, advantage or profit by 'availing' itself of the jurisdiction." *Michiana*, 168 S.W.3d at 785.

General jurisdiction, on the other hand, allows a forum to exercise jurisdiction over a defendant even if the cause of action did not arise from or relate to a defendant's contacts with the forum where the defendant's contacts with the State

are so "continuous and systematic" so as to render it "essentially at home" there. *Daimler AG v. Bauman*, ___ U.S. ___, ___, 134 S. Ct. 746, 760–61 (2014); *PHC-Minden, L.P. v. Kimberly-Clark Corp.*, 235 S.W.3d 163, 168 (Tex. 2007) (noting proper general jurisdiction query should evaluate whether defendant engaged in activities in forum state similar in frequency and nature to the activities of local businesses) (citation omitted). The minimum contacts analysis is broader and more demanding when general jurisdiction is alleged, requiring a showing of substantial activities in the forum state. *Guardian Royal*, 815 S.W.2d at 228.

Montcalm and Barnes

A. Specific Jurisdiction

Prochaska alleges that Montcalm and Barnes are subject to the jurisdiction of Texas courts by virtue of the following ties to Texas: (1) Montcalm and Barnes manage drilling partnerships which have oil and gas wells located in Texas; (2) Montcalm and Barnes made decisions on how to manage the Texas oil and gas wells based on the input and guidance of Henson through Patriot's Houston office; (3) several of the drilling partnerships are governed by Texas law; (4) Montcalm and Barnes profit directly from the revenue generated from the Texas-based oil and gas wells; and (5) Barnes and Montcalm directly communicated with individual general partners of the drilling partnerships who were Texas residents.

1. Management and Operation of Drilling Partnerships

Prochaska argues that Montcalm and Barnes are subject to specific jurisdiction because they manage and operate drilling partnerships whose oil and gas wells are located largely in Texas. In support of his argument, Prochaska relies on *Retamco Operating, Inc.*, 278 S.W.3d 333 (Tex. 2009) and *Crithfield v. Boothe*, 343 S.W.3d 274, 284 (Tex. App.—Dallas 2011, no pet.).

Retamco, a Texas corporation, sued Republic, a California corporation, in a Texas district court under the Uniform Fraudulent Transfer Act for receiving oil and gas interests located in Texas through what Retamco alleged were fraudulent transfers. *Retamco*, 278 S.W.3d at 336. Noting that "Republic, by taking assignment of Texas real property, reached out and created a continuing relationship in Texas," the supreme court concluded that Republic's conduct in purchasing the Texas real property interests amounted to purposeful availment of the privilege of conducting activities in Texas. *Id.* at 341.

The facts before us are distinguishable from those in *Retamco*. Here, Prochaska's allegations involve only interests in drilling partnerships which have oil and gas wells in Texas and which were managed and operated by Barnes and Montcalm outside of Texas. In his deposition, Barnes testified that Montcalm, as managing general partner, assisted in creating the partnership documents and opening bank accounts in the partnerships' names at a Bank of America branch in a

Boston suburb, and maintained and stored the books and records for each partnership at a storage facility outside of Boston. Further, Prochaska's reliance on the fact that the partnerships managed by Barnes and Montcalm have or have had leases to drill on oil and gas properties located in Texas is unavailing. Although oil and gas leases are considered real property in Texas, the leases in question are the partnership property of the respective drilling partnerships, not the individual partners. *See* TEX. BUS. ORGS. CODE ANN. §§ 152.101, 152.102(a) (West 2012).

In *Crithfield*, the court of appeals found that the trial court had personal jurisdiction over Crithfield, a Florida resident, because he had actively solicited Texas residents to invest in Texas real property before diverting the money to another use. *See Crithfield*, 343 S.W.3d at 289–90. Noting that Crithfield had made detailed representations directly to the Texas residents while they were in Texas regarding the nature of the investment, include using a Powerpoint presentation to market the investment opportunity, the court of appeals concluded that Crithfield had committed enough acts directly connected to Texas to be subject to specific jurisdiction there. *See id.* at 292. Here, by contrast, Prochaska, a Nebraska resident, does not allege that Montcalm, a Delaware company with its principal place of

business in Massachusetts, or Barnes, a Vermont resident, made any representations to him in Texas or, indeed, ever entered the State.[3]

2. Relationship with Patriot

Prochaska asserts that Barnes and Montcalm's ongoing relationship with Patriot supports a finding of specific jurisdiction. Specifically, he alleges that as managing partners, Montcalm and Barnes made decisions regarding how to manage the Texas oil and gas wells based on the input of Henson, a Texas resident, in Patriot's Houston office.

The record reflects that several years after Prochaska began investing, Patriot, whose principal office was originally in New York and later moved to Connecticut, opened a satellite office in Houston. The drilling partnerships, which were formed to acquire interests in oil and natural gas properties, entered into a prospect agreement with Patriot pursuant to which Patriot identified and sold interests in oil and gas properties to the respective partnerships. Henson, who worked in the Houston office for two years, was responsible for identifying wells and reporting to Feldman. Barnes testified that any information he received regarding the wells came from Feldman, in either New York or Connecticut, not from Henson. Further, neither Barnes nor Henson recalled having an actual conversation, and Henson

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[3] Moreover, a review of Prochaska's second amended petition reflects that discussions regarding investment in the drilling partnerships were with Feldman.

testified that when Barnes did call the Houston office it was to reach Feldman. Prochaska disputes this assertion, pointing to an August 2005 email in which Henson forwarded information regarding a specific well prospect to Barnes. However, this unilateral act by Henson does not constitute a jurisdictional contact by Barnes. *See Michiana*, 168 S.W.3d at 784–85 (noting that only defendant's contacts with forum are relevant, not unilateral activity of another party or third person).

3. Choice-of-Law Provision

Prochaska also points to evidence showing that several of the drilling partnerships agreements signed by Barnes on behalf of Montcalm (specifically, Titan, Bronco, and Falcon) were governed by the laws of Texas. He argues that this evidence clearly shows that Barnes and Montcalm have chosen to invoke the benefits and protections of Texas law.

Although it may be a factor in the minimum contacts analysis, a choice-of-law provision by itself is insufficient to create personal jurisdiction or put a defendant on notice that it might be subject to suit in a specific forum. *See PCC Sterom, S.A. v. Yuma Expl. & Prod. Co., Inc.*, No. 01-06-00414-CV, 2006 WL 2864478, at *9 (Tex. App.—Houston [1st Dist.] Oct. 5, 2006, no pet.) (mem. op.). By agreeing to a Texas choice-of-law provision, a party does not avail itself of any protection from Texas courts or voluntarily submit to personal jurisdiction in Texas courts, absent an express understanding to that effect. *See Alenia Spazio, S.P.A. v. Reid*, 130 S.W.3d

201, 219 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). This is so because a choice-of-law provision addresses the law to be applied to a contract, not the forum for disputes involving the contract. *See PCC Sterom, S.A.*, 2006 WL 2864478, at *9 (noting that "Fifth Circuit Court of Appeals has held that such a 'provision contemplates a choice of law not forum.'").

In his deposition, Barnes acknowledged that by executing the agreements on behalf of Montcalm, he decided that Montcalm would be bound by its terms, but he also testified that he was unaware that his attorneys had included the Texas choice-of-law provision in the agreements. This lack of knowledge does not establish an express understanding by Montcalm that it was voluntarily submitting itself to personal jurisdiction in Texas. Further, Barnes was not a party to the agreements but executed them only on Montcalm's behalf. This choice-of-law provision in the partnership agreements is insufficient to confer personal jurisdiction over Montcalm and Barnes.

4. Revenue from Wells

Prochaska also contends that Barnes and Montcalm profited directly from the revenue generated from the Texas-based oil and gas wells which supports a finding of specific jurisdiction. However, the record reflects that the oil and gas revenue did not go to Barnes or Montcalm but, instead, went directly from the driller to the general partners, such as Prochaska. Barnes testified that an oil and gas distribution

company owned by Feldman sent checks to the general partners of the drilling partnerships. Thus, all revenue flowed through the drilling partnerships as partnership distributions to the individual partners, including Montcalm which, as managing partner, had a 1% interest in each of the partnerships.[4]

5. Communication with General Partners

Prochaska also alleges that Barnes and Montcalm directly communicated with individual general partners of the drilling partnerships who were Texas residents, including sending them general information about their investments, drilling reports, and capital contribution requests. However, the record reflects that of the 152 investors in the drilling partnerships, only two are Texas residents, and Prochaska, a Nebraska resident, is not one of them. Barnes testified that communication with the individual partners originated from Boston via regular mail and that no emails were sent or phone calls made to contact individual partners.

Prochaska has not shown a substantial connection between Barnes and Montcalm's contacts with the forum state and the operative facts of the litigation. *Moki Mac*, 221 S.W.3d at 585. Thus, the trial court properly found that it lacked specific jurisdiction over Montcalm and Barnes.

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[4] Further, to the extent Barnes benefited from such a distribution, he would have received funds as Montcalm's sole member.

B. General Jurisdiction

Prochaska contends that Barnes and Montcalm's overall history and business activities reflect continuous and systematic contacts with Texas that support general jurisdiction. In support of his contention, Prochaska alleges that Barnes and Montcalm have induced at least two Texas residents to invest in drilling partnerships.[5] He argues that the fact that these residents have maintained their investments through the years and received revenue from oil and gas wells in Texas demonstrates that Barnes and Montcalm have engaged in continuous and systematic contacts sufficient to confer general jurisdiction.

At the outset, we note that neither Barnes nor Montcalm has ever been a resident of Texas, conducted business in Texas, or maintained an office in Texas. Neither Barnes nor Montcalm have any employees, agents, salespeople, or other representatives in Texas, maintain any facilities, bank accounts, post office boxes, or telephone listings in Texas, or have any real estate or other interest in property in Texas. *See Curocom Energy LLC*, 416 S.W.3d at 897 (noting that when general jurisdiction exists, defendant is usually engaged in longstanding business in forum

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[5] Prochaska alleges that, in or around 2006, Barnes and Montcalm induced Aledo, Texas resident Lloyd Douglas to invest in the Lion Drilling Partnership (one of the partnerships managed by Barnes and Montcalm) and Dallas, Texas residents Scott and Linda Greet to invest in the Cowboy Drilling Partnership.

state, such as marketing or shipping products to state, performing services within it, or maintaining one or more offices there).

Only two of the 152 investors in the drilling partnerships are Texas residents, neither of whom is Prochaska. As previously noted, Barnes testified that the general partners of the drilling partnerships received payments from an oil and gas distribution company, not from Montcalm or Barnes. Although sending funds to Texas is a fact to be considered along with other contacts, it may not necessarily be enough on its own to establish jurisdiction. *Fox Lake Animal Hosp. PSP v. Wound Mgmt. Techs., Inc.*, No. 02-13-00289-CV, 2014 WL 1389751, at *4 (Tex. App.—Fort Worth Apr. 10, 2014, pet. denied). Moreover, the minimum contacts analysis requires sufficient contacts by Montcalm and Barnes with the state itself, not its residents. *Walden v. Fiore*, ___ U.S. ___, ___, 134 S. Ct. 1115, 1122 (2014) (noting that when determining a nonresident's contacts with a forum, courts consider only contacts that defendant itself creates with forum State, not its residents).

Prochaska also alleges that Barnes and Montcalm marketed the investments in the partnerships to him. However, Barnes's affidavit established that the marketing materials provided to Prochaska before he invested stated that the respective partnerships were seeking opportunities anywhere in the United States and were not directed specifically at Texas. We conclude that Barnes and Moncalm's contacts with Texas are not sufficiently continuous and systematic as to

render it "essentially at home" in Texas. *See Daimler AG*, ___ U.S. at ___, 134 S. Ct. at 761.

The trial court properly granted Barnes and Montcalm's special appearance. Accordingly, we overrule Prochaska's first issue.

SLG

A. Specific Jurisdiction

Prochaska contends that SLG is subject to personal specific jurisdiction because (1) it prepared the returns on investment for the drilling partnerships which were included in the promotional materials given to Prochaska; (2) it maintained the books and records for the drilling partnerships; (3) it represented Patriot with regard to its Texas oil and gas business; (4) it directly communicated with the general partners of the drilling partnerships who were Texas residents; and (5) the IRS's Houston office audited three drilling partnerships for whom SLG prepared returns.

1. Returns on Investment (ROIs)

With regard to Prochaska's contention that he relied on the audited ROIs for the drilling partnerships prepared by SLG, SLG presented the affidavit of Howard Schain in which he stated that the partnerships' management periodically selected from three to seven partnerships and engaged SLG to audit a single item from their balance sheets: cash distributions to investors. The independent accountant's report which accompanied each audited statement of average annual ROI expressly states

the report is intended solely for the exclusive use of management. Prochaska does not allege that he received these documents from SLG nor does he provide the basis for his allegation that SLG knew or should have known that they would be provided to him by the partnerships' management.

Moreover, Schain's affidavit established that Prochaska invested in three of the oil and gas partnerships before SLG issued the ROIs pertaining to those partnerships. Thus, Prochaska cannot have relied on the ROIs prepared by SLG in deciding to invest in these partnerships. Further, Schain's affidavit established that SLG never issued ROIs pertaining to the two remaining partnerships in which Prochaska invested. Although not binding on this Court, we note that a Nevada federal district court dismissed an analogous claim brought by Prochaska against SLG for lack of personal jurisdiction based in part on a similar failure to demonstrate reliance. *See Millenium Drilling Co., Inc. v. Beverly House-Meyers Revocable Trust*, No. 2:12–CV–00462–MMD–CWH, 2014 WL 775059, at *5 (D. Nev. Feb. 25, 2014) (noting that timing of plaintiffs' investment in relation to date audited returns were prepared appeared to preclude audited return from being used to induce investment in majority of partnerships).[6]

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[6] We note that, unlike here, the plaintiffs in the Nevada case resided in the jurisdiction in which they sought to bring their claims. *See Millenium Drilling Co., Inc. v. Beverly House-Meyers Revocable Trust*, No. 2:12–CV–00462–MMD–CWH, 2014 WL 775059, at *5 (D. Nev. Feb. 25, 2014).

2. Records and Correspondence

Prochaska also asserts that SLG maintained all records and received all correspondence for the drilling partnerships and the defendants. However, other than a citation to his own amended petition, Prochaska provides no evidentiary support for this allegation. *See Laidlaw Waste Sys. (Dall.), Inc. v. City of Wilmer*, 904 S.W.2d 656, 660 (Tex. 1995) (stating that, generally, pleadings are not competent evidence, even if sworn or verified). Schain testified that SLG does not receive any correspondence on behalf of the partnerships or any defendant. Schain testified that although SLG briefly permitted Montcalm to list SLG's address as its own when Barnes was without a business address, SLG never received any correspondence on behalf of Montcalm or any of the partnerships it managed.

3. Representation of Patriot

Prochaska also contends that SLG represents Patriot, a Texas-based entity, with regard to its oil and gas operations in Texas. It is undisputed that Patriot is organized under the law of Alaska. Feldman's affidavit established that he is the sole member of Patriot, he is a Connecticut citizen, and Patriot's principal place of business is in Connecticut. Moreover, SLG's communications with Patriot were virtually all with its management in Connecticut, no SLG partner ever

communicated with any employee of Patriot's Houston office, and no SLG employee ever directed any communications to any Patriot employee in Texas.[7]

4. Communication with General Partners

Prochaska also contends that SLG directly communicated with the general partners of the drilling partnerships who were Texas residents, and that these contacts included sending Texas residents general information about their investment, such as Schedules K-1, for purposes of providing the investors with information needed for their tax returns. Prochaska argues that this continuing management and control over information pertaining to Texas residents' tax return supports a finding of personal jurisdiction.

In his deposition, Schain testified that SLG prepares Schedules K-1 as a component of its engagement by the various partnerships to prepare their federal forms 1065 for filing with the IRS, SLG then mails the K-1s to the individual partners, who are not its clients, as an accommodation to its client, i.e., the partnership that engaged it. Schain further testified that SLG's mailings are not focused on Texas or any other geographical area but are instead mailed to every state

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[7] On only one occasion, an SLG employee emailed an inquiry to Feldman regarding the sale of certain properties; Feldman responded, copying an employee of Patriot's Houston office and asking the Patriot employee to confirm his response; the Patriot employee then sent an email to Feldman and the SLG employee confirming the response. On several other occasions, the same SLG employee was copied on communications that included a Patriot employee located in the Houston office.

in which partners reside, and that very few of those partners reside in Texas. In his affidavit, Schain averred that SLG has provided services to a total of thirty-four drilling partnerships related to Barnes and/or Feldman with a collective membership of 311 individuals, and that, of those, only four have resided in Texas at any time during SLG's engagements. Further, we note that the court in *Millenium Drilling* similarly concluded that preparing and mailing K-1s to eight individual investors was insufficient to confer personal jurisdiction over SLG in a similar action. *See Millenium Drilling Co., Inc.*, 2014 WL 775059, at *6.

5. IRS Audits

Prochaska also argues that the IRS conducted audits of certain partnerships out of its Houston office because of the substantial connection the drilling partnerships have with Texas. This argument is unavailing. In order to confer personal jurisdiction, a plaintiff must identify "purposeful conduct" by SLG and cannot rely on the unilateral activity of the plaintiff or another, such as the IRS. *See Michiana*, 168 S.W.3d at 784–85. Moreover, Prochaska's claims against SLG that he was induced to invest in the drilling partnerships based, in part, on SLG's work product do not arise from audits conducted after he invested.

Taken together, these contacts do not demonstrate that SLG purposefully directed its activities at Texas. Thus, the trial court properly found that it lacked specific jurisdiction over SLG.

B. General Jurisdiction

Prochaska asserts that the trial court has general jurisdiction over SLG based on its continuous and systematic contacts with Texas. Specifically, he argues that, in addition to Patriot, SLG has represented and filed returns on behalf seven other Texas individuals or entities.

At the outset, we note that SLG does not maintain assets, offices, agents or employees in Texas, its sole office is in New York, it is not licensed to do business in Texas, and no SLG partner is, or has been, a resident of Texas or traveled there for professional purposes. *See Curocom Energy LLC*, 416 S.W.3d at 897 (noting that when general jurisdiction exists, defendant is usually engaged in longstanding business in forum state).

With regard to the individual and entities to which Prochaska refers, the record demonstrates that two are individual former SLG clients for whom SLG prepared tax returns during a two or three-year period in which the clients resided in Texas, and three are New York or London-based clients on whose behalf SLG prepared tax returns during specified years for filing with the State of Texas based on the entities' provision of good or services in the Texas market during the specified period.

The other two remaining clients serviced by SLG are Patriot and Palace Exploration Company, both of whom have a Texas office. As previously noted, Patriot is organized under Alaska law, has its principal place of business in

Connecticut, and received all of its direction from Patriot's management in New York and Connecticut. Palace is organized under the laws of Oklahoma, has a principal place of business in New York, and is managed exclusively from the New York office. Further, all of SLG's communications have been with the New York office. In the case of both entities, SLG's engagement predated the opening of a Houston office. SLG's representation of these clients does not provide a basis for concluding that SLG has engaged in continuous and systematic contacts with Texas sufficient to satisfy the more demanding standard required to establish general jurisdiction. *See Guardian Royal*, 815 S.W.2d at 228.

The trial court properly granted SLG's special appearance. Accordingly, we overrule Prochaska's second issue.[8]

Conclusion

We affirm the trial court's orders granting appellees' special appearances.

[8] In light of our conclusion that Prochaska did not show sufficient minimum contacts with Texas by appellees to justify a finding of either specific or general jurisdiction, we need not consider whether the exercise of jurisdiction comports with traditional notions of fair play and substantial justice. *See Foley v. Trinity Indus. Leasing Co.*, 314 S.W.3d 593, 602 (Tex. App.—Dallas 2010, no pet.) (noting that only if minimum contacts are established does court consider second prong of constitutional due process analysis).

Russell Lloyd
Justice

Panel consists of Chief Justice Radack and Justices Jennings and Lloyd.