Opinion issued June 21, 2022

In The

Court of Appeals

For The

First District of Texas

NO. 01-20-00183-CV

FREDERICK H. SCHRADER, Appellant

V.

ROBERT M. ROACH, Appellee

On Appeal from the 189th District Court
Harris County, Texas
Trial Court Case No. 2018-59845

MEMORANDUM OPINION

Appellee Robert M. Roach has filed a motion for rehearing and a motion for en banc reconsideration of our August 31, 2021 memorandum opinion and judgment. Appellant Frederick H. Schrader also has filed a motion for rehearing. We deny the motions for rehearing, withdraw our memorandum opinion and judgment

of August 31, 2021, and issue this memorandum opinion and judgment in their stead. We dismiss Roach's motion for en banc reconsideration as moot.[1]

Schrader, a resident of California, filed this interlocutory appeal from the trial court's denial of his special appearance.[2] In three related issues, Schrader contends the trial court lacked personal jurisdiction over him and, thus, erred by denying his special appearance.

We affirm in part and reverse in part.

Background

This case was brought by Robert M. Roach, Jr. ("Roach"), a Houston based lawyer, against Frederick H. Schrader ("Schrader"), Roach's friend and the former owner of Schrader Cellars, LLC, a California winery. Roach and Schrader's friendship began in the late 1990s when they were introduced by a mutual friend at a California restaurant and continued for nearly twenty years.

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[1] Because we issue a new opinion, the motion for en banc reconsideration is moot. *In re Wagner*, 560 S.W.3d 311, 312 (Tex. App.—Houston [1st Dist.] 2017, orig. proceeding) ("Because we issue a new opinion in connection with the denial of rehearing, the motion for en banc reconsideration is rendered moot."); *see also Poland v. Ott*, 278 S.W.3d 39, 41 (Tex. App.—Houston [1st Dist.] 2008, pet. denied) (noting that motion for en banc reconsideration rendered moot by withdrawal and reissuance of opinion and judgment); *Brookshire Bros., Inc. v. Smith*, 176 S.W.3d 30, 41 n.4 (Tex. App.—Houston [1st Dist.] 2004, pet. denied) (supp. op. on reh'g) (noting that motion for en banc reconsideration rendered moot when motion for rehearing granted and new opinion and judgment issue).

[2] *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(7) (authorizing interlocutory appeal of order denying special appearance).

It is undisputed that in the early 2000s, Roach and Schrader formed a California limited liability company named "Roach Brown Schrader, LLC" ("RBS, LLC"), whose business was described as "[w]ine production and sales." The Articles of Organization for RBS, LLC were filed with the California Secretary of State on December 31, 2002, at Roach's direction, by California law firm Farella, Braun & Martel.

The parties dispute the purpose of RBS, LLC. According to Roach, Schrader approached him in 2000 or 2001 about investing in and forming a partnership to produce a cabernet sauvignon with clone 337 grapes from the To Kalon vineyard in Napa County, California, which was later known as the Schrader RBS cabernet sauvignon ("RBS wine").[3] The partnership initially included (1) Roach, who was to provide the sole capital contribution and legal and business advice, as well as marketing for the RBS wine; (2) Schrader, who was to oversee the day-to-day operations of the winemaking business; and (3) Thomas Brown, the winemaker. Brown later decided he did not want to participate in the partnership.

Roach contends that he and Schrader agreed Roach would provide the capital funding for the project, which would consist of investments over a three-year period,

[3] Roach also alleges that, before his investment in the RBS partnership, Schrader approached him about investing in another wine project to produce and sell a pinot noir called Aston. Ultimately, Roach did not invest in this project, and he admits on appeal that "its ownership is not at issue in this case.".

up to a total of $150,000. Roach made an initial investment of $75,000 in the first year and a second investment of $60,000 the following year. These investments were paid to Schrader from Roach's bank account in Texas. Roach contends these payments, totaling $135,000, were not a loan, but rather payments made in exchange for an equity interest in an "open-ended, long term partnership project without a set timetable for repayment and set end date." Roach also contends that Schrader led him to believe that his investment in the RBS partnership "would pay for all aspects of the wine production for the RBS wine," "the specific rows of the clone 337 Cabernet grapes that were used to make the RBS wine," and the "barrels, bottling, harvest, and all other vinification expenses." To formalize their partnership agreement and his ownership in the RBS wine, Roach contends that he and Schrader agreed to create a formal corporate entity—RBS, LLC.

In contrast, Schrader contends RBS, LLC was formed as "a mechanism to gain [Roach's] personal entry into the Napa Valley Vintners ['NVV'], which is located in California." According to Schrader, Roach was interested in joining NVV because it would "increase his social status and standing in the wine community." Roach applied to the NVV in 2004, but his application was rejected on the basis that it did not appear "RBS is a separate and distinct brand from Schrader [Cellars, LLC]." While Schrader admits that Roach made payments totaling $135,000 in 2002 and 2003, he contends these payments were loans used to purchase grapes and cover

related vinification expenses for Schrader Cellars, LLC, not RBS, LLC. According to Schrader, Schrader Cellars, LLC produced and sold wines under various labels, including "Schrader RBS." These wines were all sold under the Schrader label, and all trademark rights belonged to Schrader Cellars, LLC. Schrader repaid Roach his $135,000 contribution, plus $15,000, by December 2010. He contends that, because Roach's application to NVV was rejected, RBS, LLC "never conducted any business, never recorded any revenues or profits, never declared any taxable income, never held any meetings, and never entered into any operating agreement so that it could operate."

The parties agree that, throughout their friendship, Schrader visited Texas on occasion for social events, as well as to attend various wine dinners and events hosted by Roach. Although Schrader contends these were merely social events, Roach alleges that Schrader attended these events and dinners to promote and "market RBS wine" and that Schrader actively sought customers and purchasers of the RBS wine at these events and dinners. Further, Roach alleges that, at these events and dinners, Schrader publicly called Roach "partner" and "Vintner Roach" and publicly described Roach as a "co-owner of the RBS wine to the people who attended these Texas wine dinners."

Roach also alleges that Schrader offered Roach a percentage of Schrader's ownership interest in another wine venture—Boars' View pinot noir. Roach alleges

that Schrader offered him "an unspecified, to-be-determined, in-the-future percentage share of his ownership interest in the Boars' View venture in exchange for [his] assistance in Texas to obtain Texas partners and financial investors to fund that new venture." He also contends that Schrader made this proposal to Roach while at Roach's home during one of Schrader's visits to Texas.

In November 2013, Schrader (as the registered agent listed for RBS, LLC) received two notices from the California Franchise Tax Board—one was a demand to file limited liability company tax returns and the other was a final notice before suspension and forfeiture. The notices stated that RBS, LLC had failed to file the required tax returns for the past several years, and warned that unless these returns were filed, the entity would be automatically suspended and forfeit all rights, powers, and privileges, including the right to conduct business, use the entity name, or enforce contracts. After receiving these notices, Schrader notified Roach and Brown that he intended to dissolve RBS, LLC "as it se[rve]s no purpose now." Roach did not respond to this email. Thereafter, Schrader filed a Limited Liability Company Certificate of Cancellation with the California Secretary of State, purporting to dissolve RBS, LLC.

In 2017, Schrader sold Schrader Cellars, LLC to Constellation Brands, Inc. ("Constellation"). The rights to RBS wine were included in this sale.

A year later, Roach filed the underlying suit against Schrader and Constellation.[4] Schrader filed a special appearance challenging the trial court's general and specific jurisdiction over him. Roach amended his petition several times and, in his fourth amended petition, alleged causes of action against Schrader for conversion, money had and received, restitution, breach of fiduciary duty, unjust enrichment, constructive trust, equitable accounting based on fiduciary relationship, fraud, and declaratory judgment. The parties conducted jurisdictional discovery, including depositions of Schrader and Roach, and supplemented their special appearance briefing with the relevant discovery. After a non-evidentiary hearing, the trial court denied Schrader's special appearance and denied Schrader's request for findings of fact and conclusions of law. This appeal followed.

Personal Jurisdiction

In his three related issues, Schrader argues that the trial court erred in denying his special appearance because: (1) Roach has not pleaded any claim that arises from conduct that occurred in Texas; (2) Schrader's non-tortious contacts with Texas do not support jurisdiction; and (3) the exercise of jurisdiction would offend traditional notions of fair play and substantial justice. In response, Roach points to the contacts he alleges are sufficient to establish personal jurisdiction over Schrader in Texas.

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[4] Roach filed his original petition in 2018, but that petition was never served. Roach's first amended petition, filed in April 2019, was served on Schrader and Constellation. Constellation is not a party to this appeal.

A. Standard of Review

Whether a trial court has personal jurisdiction over a nonresident defendant is a question of law that we review de novo. *Old Republic Nat'l Title Ins. Co. v. Bell*, 549 S.W.3d 550, 558 (Tex. 2018) (citing *Moncrief Oil Int'l Inc. v. OAO Gazprom*, 414 S.W.3d 142, 150 (Tex. 2013)). When, as here, the trial court did not issue findings of fact and conclusions of law, all relevant facts that are necessary to support the judgment and supported by evidence are implied. *Id.* (citing *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002)).

B. Applicable Law

Texas courts may exercise 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 constitutional due-process guarantees." *Old Republic*, 549 S.W.3d at 558–59 (citing *Moncrief Oil*, 414 S.W.3d at 149); *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007). The long-arm statute is satisfied by a defendant who "commits a tort in whole or in part in this state." TEX. CIV. PRAC. & REM. CODE § 17.042(2). However, allegations that a tort was committed in Texas do not necessarily satisfy the United States Constitution. *Old Republic*, 549 S.W.3d at 559; *Moncrief Oil*, 414 S.W.3d at 149; *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 788 (Tex. 2005).

To establish personal jurisdiction over a nonresident defendant, federal due process requires that the nonresident defendant must have "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)); *accord Moki Mac River Expeditions*, 221 S.W.3d at 575. A defendant establishes minimum contacts with a state when it "purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 338 (Tex. 2009) (citations omitted). Thus, the defendant's activities "must justify a conclusion that the defendant could reasonably anticipate being called into a Texas court." *Id.* (citations omitted). We consider three factors in determining whether a defendant purposefully availed itself of the privilege of conducting activities in Texas:

> First, only the defendant's contacts with the forum are relevant, not the unilateral activity of another party or a third person. Second, the contacts relied upon must be purposeful rather than random, fortuitous, or attenuated . . . . Finally, the defendant must seek some benefit, advantage or profit by availing itself of the jurisdiction.

Moncrief Oil, 414 S.W.3d at 151 (quoting *Retamco Operating*, 278 S.W.3d at 338–39). A defendant's contacts may give rise to general or specific jurisdiction. *Id* at

150. Here, there is no dispute that general jurisdiction does not exist.[5] Only specific jurisdiction is at issue.

For specific jurisdiction to exist, the plaintiff's claims "'must arise out of or relate to the defendant's contacts' with the forum." *Ford Motor Co. v. Montana Eighth Judicial Dist. Ct.*, 141 S. Ct. 1017, 1025 (2021) (quoting *Bristol-Myers Squibb Co. v. Superior Ct. of Cal., S.F. Cty.*, 137 S. Ct. 1773, 1780 (2017)); *see Old Republic*, 549 S.W.3d at 559 ("[S]pecific jurisdiction exists when the cause of action arises from or is related to a defendant's purposeful activities in the state."); *Moncrief Oil*, 414 S.W.3d at 150 (same). Specific jurisdiction does not, however, "always require[e] proof of causation—i.e., proof that the plaintiff's claim came about because of the defendant's in-state conduct" as "some relationships will support jurisdiction without a causal showing." *Ford Motor Co.*, 141 S. Ct. at 1026. Thus, when analyzing specific jurisdiction, we focus on the relationship between the forum, the defendant, and the litigation. *Moncrief Oil*, 414 S.W.3d at 150; *see also Ford Motor Co.*, 141 S. Ct. at 1024 ("[T]he Court has long focused on the nature and extent of 'defendant's relationship to the forum State.'" (quoting *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1779)).

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[5] Roach concedes in his brief that he is not asserting the existence of general jurisdiction over Schrader.

In a challenge to personal jurisdiction, the plaintiff and the defendant bear shifting burdens of proof. *Kelly v. Gen. Interior Constr., Inc.*, 301 S.W.3d 653, 658 (Tex. 2010). The plaintiff bears the initial burden to plead sufficient allegations to bring the nonresident defendant within the reach of Texas's long-arm statute. *Id.* Once the plaintiff has done so, the burden shifts to the defendant to negate all bases of personal jurisdiction alleged by the plaintiff. *Id.* One way the defendant can meet this burden to negate jurisdiction is by showing that "even if the plaintiff's alleged facts are true, the evidence is legally insufficient to establish jurisdiction" or that "the defendant's contacts with Texas fall short of purposeful availment." *Id.* at 659.

"[S]pecific jurisdiction requires us to analyze jurisdictional contacts on a claim-by-claim basis." *Moncrief Oil*, 414 S.W.3d at 150 (citing *Kelly*, 301 S.W.3d at 660). A plaintiff bringing multiple claims that arise out of different forum contacts of the defendant must establish specific jurisdiction for each claim. *Id.* (internal quotations and citations omitted). This is due to the distinction between general jurisdiction and specific jurisdiction. *Id.* "If a defendant does not have enough contacts to justify the exercise of general jurisdiction, the Due Process Clause prohibits the exercise of jurisdiction over any claim that does not arise out of or result from the defendant's forum contacts." *Id.* (internal quotation and citation omitted). A court, however, need not address contacts on a claim-by-claim basis if all claims arise from the same forum contacts. *Id.* at 150–51.

Roach contends that because all his claims "arise from the same . . . operative facts," i.e., his partnership or ownership interest in the RBS wine, it is not necessary to perform a claim-by-claim analysis. But the appropriate standard is not whether the claims arise from or relate to the same set of operative facts. Rather, it is whether they arise from the same or different *forum contacts*. *See Moncrief Oil*, 414 S.W.3d at 150–51. Although we ultimately agree that Schrader had certain minimum contacts with Texas, because we determine that not all of Roach's claims arise from or are related to these forum contacts, we analyze each claim separately. *See id.* (analyzing tortious interference claim and trade secrets claim separately because they "arise from separate jurisdictional contacts").

C. Fraud

Roach argues that Schrader purposefully availed himself of the privilege of conducting activities in Texas in a number of ways, including by: (1) soliciting wine investors and customers in Texas, (2) entering into a longstanding business relationship with Roach that required Roach to perform extensive work on Schrader's behalf in Texas, (3) making actionable representations in Texas, and (4) directing a tort into Texas, combined with other "extensive conduct." Schrader, in contrast, argues that these alleged contacts are not substantially connected to Roach's fraud claims because the underlying conduct at issue took place in California, or because the contacts cited by Roach are his own unilateral actions.

We address each one to determine whether any of these contacts attributed to Schrader was purposeful and whether Roach's fraud cause of action arises from or is related to those contacts. *See Ford Motor Co.*, 141 S. Ct. at 1025 (plaintiff's claims must arise out of or relate to the defendant's contacts with the forum); *Old Republic*, 549 S.W.3d at 559 ("[S]pecific jurisdiction exists when the cause of action arises from or is related to a defendant's purposeful activities in the state.").

1. Soliciting wine investors in Texas

Roach argues that by seeking wine investors for three wine projects—Aston pinot noir, RBS cabernet sauvignon, and Boar's View pinot noir—in Texas, Schrader purposefully availed himself of the privilege conducting activities in Texas. We disagree.

First, with respect to the Aston pinot noir, Roach has conceded that "its ownership is not at issue in this case." Roach has further conceded that he never personally invested in Aston. Schrader's solicitation of Texas investors in a wine project unrelated to the causes of action in this case does not equate to minimum contacts sufficient to confer jurisdiction here—there is simply no connection between those contacts and Roach's fraud claims. *See Ford Motor Co.*, 141 S. Ct. at 1025 (noting plaintiff's claims must arise out of or relate to defendant's contacts with forum); *Moki Mac*, 221 S.W.3d at 585 ("[F]or 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.").

Second, although Roach alleges that he or other Texas residents invested financially in the RBS and Boars' View projects, it is undisputed that both the RBS wine and the Boars' View wine do not involve Texas assets, but instead are produced in California from California grapes. As the United States Supreme Court has repeatedly emphasized, it is the connection between the defendant and the forum, not the defendant and the plaintiff, that controls. *See Walden v. Fiore*, 571 U.S. 277, 285–86 (2014) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)) ("[O]ur 'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there . . . . Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other persons affiliated with the State."). Thus, contacts that create a continuing connection or obligation with the State may be enough to establish personal jurisdiction. *See Retamco Operating*, 278 S.W.3d at 339 ("Republic, by taking assignment of Texas real property, reached out and created a continuing relationship in Texas. Under the assignment, it is liable for obligations and expenses related to the interests. This ownership also allows Republic to 'enjoy . . . the benefits and protection of [Texas laws.]' Unlike personal

property, Republic's real property will always be in Texas, which leaves no doubt of the continuing relationship that this ownership creates." (internal citations omitted)); *see also Old Republic*, 549 S.W.3d at 564 (recognizing that transfer of "Texas-based assets to an out-of-state defendant" can confer personal jurisdiction because such transfers "derive profit from Texas and create continuing connection[s] with the state").

But simply acquiring non-Texas assets (e.g., the grapes from the To Kalon vineyard in California), contracting with a Texas resident (e.g., the alleged partnership and LLC agreement with Roach), or accepting the transfer of money from a Texas bank (e.g., the $135,000 payments made by Roach to Schrader) is not enough to establish that a defendant has sufficient contacts with Texas. *See Burger King*, 471 U.S. at 478 ("If the question is whether an individual's contract with an out-of-state party alone can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot"); *Old Republic*, 549 S.W.3d at 564 ("[T]he mere act of accepting the transfer of money drawn on a Texas bank is "of negligible significance for purposes of determining whether [a foreign defendant] had sufficient contacts in Texas." (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416–17 (1984)); *Searcy v. Parex Res., Inc.*, 496 S.W.3d 58, 74 (Tex. 2016) ("Discussions [with Texas

employees] that focused on acquiring some non-Texan assets are a far cry from purposeful availment of Texas's jurisdiction[.]").

Furthermore, we disagree with Roach that Schrader's solicitation of Texas investors for wine businesses in California is analogous to a company that targets Texas customers. Roach is correct that the Texas Supreme Court has held that "[a] nonresident defendant that directs marketing efforts to Texas in the hope of soliciting sales is subject to suit here for alleged liability arising from or relating to that business." *Moki Mac*, 221 S.W.3d at 576 (citing *Michiana*, 168 S.W.3d at 785). But the court based those decisions on whether the defendant seller "intended to serve the Texas market" or "aimed to get extensive business in or from this state," *id.* at 577–78, or "place[d] [a] large number of [its products] in a 'stream of commerce' flowing to Texas." *Michiana*, 168 S.W.3d at 786. Schrader's solicitation of an investment from Roach was with respect to the alleged RBS partnership and LLC, which is an out-of-state business. Furthermore, this investment resulted in payments being made by Roach (from Texas) to Schrader (in California) totaling $135,000. Accepting payments from Texas to be used in connection with an out-of-state business is not the same as serving the Texas market by placing a product in the stream of commerce. Instead, the forum contact at issue in Roach's alleged investment (whether ultimately a capital contribution in exchange for an ownership interest in RBS as claimed by Roach or a personal loan as claimed by Schrader) is

the transfer of a fungible asset (money), which the Texas Supreme Court held creates "no continuing presence in Texas." *Old Republic*, 549 S.W.3d at 564.

Therefore, we conclude that Schrader's contacts via the solicitation of Texas investors do not establish purposeful availment of the privilege of conducting activities in Texas.

2. *Entering into longstanding business relationship with Roach*

Roach also argues that by entering a "20-year partnership," Schrader created "continuing obligations between himself and residents of the forum," thus making the exercise of personal jurisdiction proper. Roach further argues that this partnership agreement "required Roach to perform extensive work on [Schrader's] behalf in Texas." Schrader denies that any partnership agreement exists, but notes that even if it did exist, "contracting with a Texas entity is insufficient to constitute purposeful availment." Further, Schrader argues that Roach's marketing activities and legal work performed in Texas were unilateral actions that are "irrelevant to whether Schrader may be dragged to court in Texas."

At the outset, we note that the Texas Supreme Court has made clear that we may not determine the underlying merits to answer the jurisdictional question. *See Old Republic*, 549 S.W.3d at 562; *Searcy*, 496 S.W.3d at 70; *Michiana*, 168 S.W.3d at 790. "Jurisdiction cannot turn on whether a defendant denies wrongdoing—as virtually all will. Nor can it turn on whether a plaintiff merely alleges wrongdoing—

again as virtually all will." *Michiana*, 168 S.W.3d at 791. Thus, the Texas Supreme Court has cautioned that courts must not confuse "the roles of judge and jury by equating the jurisdictional inquiry with the underlying merits." *Searcy*, 496 S.W.3d at 70 (quoting *Michiana*, 168 S.W.3d at 790).

As the Court explained in *Michiana*:

> Business contacts are generally a matter of physical fact, while tort liability (especially in misrepresentation cases) turns on what the parties thought, said, or intended. Far better that judges should limit their jurisdictional decisions to the former rather than involving themselves in trying the latter.

168 S.W.3d at 791.

For this reason, we reject Roach's argument that Schrader purposefully availed himself of the privilege of conducting activities in Texas due to the "continuing obligations" between himself and Roach. Roach's continuing-obligations argument is premised on what he characterizes as a 20-year partnership between himself and Schrader. In support of this argument, Roach cites to *Burger King*, where the United States Supreme Court held that a Florida court had jurisdiction over the nonresident defendant who "deliberately 'reach[ed] out beyond' Michigan and negotiated with a Florida corporation for the purchase of a long-term franchise and . . . entered into a carefully structured 20-year relationship that envisioned continuing and wide-reaching contacts with Burger King in Florida." *Burger King*, 471 U.S. at 479–80 (internal citation omitted). Roach contends these

"facts" are analogous: (1) Schrader negotiated three long-term wine partnerships (Aston, RBS, and Boars' View); (2) Schrader received capital contributions from Roach; (3) Schrader received substantial business and legal advice from Roach; (4) Schrader entered into a 20-year partnership with Roach, which ended due to the tortious sale to Constellation; and (5) Schrader refused to provide Roach his share of the proceeds from that sale.

One important fact distinguishes this case from *Burger King—Burger King* involved a written 20-year franchise agreement. 471 U.S. at 467 ("By signing the final agreements, Rudzewicz obligated himself personally to payments exceeding $1 million over the 20-year franchise relationship."). There was no dispute in *Burger King* over whether there was in fact a franchise relationship. In contrast, the salient dispute in this litigation is whether a partnership existed between Schrader and Roach and, if so, what were the terms of that agreement. Many, if not all, of Roach's causes of action depend on the existence of a partnership between these two parties (a matter contested by Schrader) and what obligations, promises, and statements were made in connection with that agreement. To conclude there was a "continuing obligation" between Schrader and Roach based on a 20-year partnership, one that required Roach to perform various obligations in Texas, as Roach requests, would require us to "determine the underlying merits in order to answer the jurisdictional question." *Old Republic*, 549 S.W.3d at 562 (declining to determine whether money

transfers were "no-interest loans or were in fact part of an elaborate conspiracy to defraud . . . creditors" and, instead, limiting inquiry into defendant's Texas contacts—electronic transfer of money from defendant's bank account to bank account of a Texas resident); *see also Michiana*, 168 S.W.3d at 790 & n.82 (disapproving of cases holding that specific jurisdiction turns on whether a defendant's contacts were tortious rather than the contacts themselves, including cases where trial court made merits determination as to whether there was a contract between the parties). That we cannot do. *Old Republic*, 549 S.W.3d at 562; *Searcy*, 496 S.W.3d at 70; *Michiana*, 168 S.W.3d at 790.

In addition, we have already determined that Roach's payment to Schrader, whether ultimately determined to be a capital contribution or a personal loan, is not sufficient to establish a defendant's minimum contacts with the forum state. *See Old Republic*, 549 S.W.3d at 564 ("[T]he mere act of accepting the transfer of money drawn on a Texas bank is 'of negligible significance for purposes of determining whether [a foreign defendant] had sufficient contacts in Texas.'" (quoting *Helicopteros Nacionales de Colombia*, 466 U.S. at 416–17)).

Nor is the fact that Schrader received business and legal advice from Roach sufficient. First, Roach's provision of legal services, even if those services were provided in connection with an agreement or contract with Schrader, are not purposeful contacts of Schrader, *the defendant. See Michiana*, 168 S.W.3d at 790

("[M]inimum-contacts analysis focuses solely on the actions and reasonable expectations of the defendant[.]"). Second, it is undisputed that though Roach performed legal services in Texas, the services were in connection with various other disputes unrelated to this lawsuit. *See Ford Motor Co.*, 141 S. Ct. at 1025 (noting that plaintiff's claims must arise out of or relate to the defendant's contacts with the forum); *Moki Mac*, 221 S.W.3d at 585 ("For a Texas court to exercise specific jurisdiction over a defendant, the defendant's purposeful contacts must be substantially connected to the operative facts of the litigation or form the basis of the cause of action.").

Therefore, we conclude that Schrader's "continuing obligations" with Roach, his acceptance of financial contributions from Roach, and his acceptance of legal services unrelated to this lawsuit, do not establish purposeful availment of the privilege of conducting activities in the state of Texas.

3. *Misrepresentations in Texas and other "extensive conduct"*

Roach contends that Schrader repeatedly traveled to Texas to participate in wine events to promote RBS wine and, at these wine events in Texas, made actionable representations promoting Roach's partnership and ownership interest in RBS. Specifically, Roach contends that Schrader expressly represented that Roach was a co-owner and "vintner" of RBS and that RBS was "Randy's wine." Roach thus argues that the simple fact that he alleges misrepresentations were made during

Schrader's visits to Texas, "by itself, should be dispositive." Schrader argues that the heart of Roach's fraud claim centers on the allegation that "Schrader has engaged in and continues to engage in intentional conduct not only to defraud Roach from his ownership of RBS and Schrader Cellars, but to actively conceal from Roach their legal relationship in RBS and Schrader Cellars." Because all of this conduct occurred in California, not Texas, Schrader argues this is not actionable conduct connecting him to Texas.

We do not agree with Roach that simply because the alleged misrepresentations occurred in Texas, that, standing alone, is sufficient to establish specific jurisdiction over Schrader. We conclude, however, that because these alleged misrepresentations occurred at events in Texas and in the process of Schrader's effort to get "extensive business in or from the forum state," these facts taken together are enough to establish specific jurisdiction.

The Texas Supreme Court has recognized a state's special interest in exercising jurisdiction over those who commit torts within its territory. *Old Republic*, 549 S.W.3d at 562. But although "[a]llegations that a tort was committed in Texas satisfy the Texas Long-Arm Statute, [they do] not necessarily [satisfy] the U.S. Constitution; the broad language of the former extends only as far as the latter will permit." *Michiana*, 168 S.W.3d at 788. In *Michiana*, the defendant allegedly directed a tort at a plaintiff who lived in Texas (by making misrepresentations in a

phone call), but that was the defendant's only contact *with Texas*. 168 S.W.3d at 784. The Court explained that specific jurisdiction cannot be based merely on the fact that the defendant "knows that the brunt of the injury will be felt by a particular resident in the forum state." *Id.* at 788. In concluding that was insufficient to exercise specific jurisdiction over the defendant, the Court explained that the focus should be on "the extent of the defendant's activities, not merely the residence of the victim." *Id* at 789.

Likewise, in *Keeton v. Hustler Magazine, Inc.*, the plaintiff in a defamation suit did not reside in the forum state, but the United States Supreme Court held that the defendant had "continuously and deliberately exploited the New Hampshire market" by regularly distributing its magazines (more than 10,000 copies a month) there. 465 U.S. 770, 781 (1984). Thus, when the magazine ran a story that allegedly defamed the plaintiff, it directed a tort at the state of New Hampshire, not just at the plaintiff. *See id* at 774.

Finally, in *TV Azteca v. Ruiz*, the Texas Supreme Court concluded that "the mere fact that [defendants] directed defamatory statements at a plaintiff who lives in and allegedly suffered injuries in Texas, without more, does not establish specific jurisdiction over [defendants]." 490 S.W.3d 29, 43 (Tex. 2016). The Court noted the "fact that the plaintiff lives and was injured in the forum state is not irrelevant to the jurisdictional inquiry, but it is relevant only to the extent that it shows that the forum

state was 'the focus of the activities of the defendant.'" 490 S.W.3d at 43 (quoting *Keeton*, 465 U.S. at 780).

In support of his argument that the allegation that Schrader made misrepresentations while in Texas alone should be dispositive, Roach relies on *Max Protetch*, a case from our sister court in Houston. *See Max Protetch, Inc. v. Herrin*, 340 S.W.3d 878, 887 (Tex. App.—Houston [14th Dist.] 2011, no pet.). There, the court held that an art dealer crossed a purposeful-availment "bright line" when he voluntarily traveled to Texas to conduct business with a Texas resident and allegedly committed a tort in Texas by making misrepresentations at the meeting. *Id.* The Texas resident had contracted to purchase a table from the New York-based art dealer. *Id.* at 882. All negotiations leading to the contract occurred in New York, along with the sale of the table. *Id.* After the table arrived damaged, the dealer visited the buyer's Houston home while in town on other business and, during this meeting, allegedly acknowledged the table was damaged and told the buyer it would be repaired. *Id.* But after the table was shipped back to New York, the buyer was told it could not be repaired and his money was never returned. *Id.*

The court concluded that the meeting in *Max Protetch* was a purposeful contact. *Id.* at 887. During the meeting, the dealer allegedly made misrepresentations that formed "a substantial portion of the core of the litigation." *Id.* Although the dealer's Texas contacts were limited to contracting with a Texas resident, phone

calls discussing the sale of the table, and the one Texas meeting, the court concluded that "the face-to-face meeting in Houston tip[ped] the scales." *Id.*

Although Roach cites *Max Protetch* for his argument that the misrepresentations Schrader allegedly made while physically present in Texas are alone dispositive of specific jurisdiction, that court explicitly concluded that "the meeting amounted to more than just allegedly committing a tort in Texas." *Id.* Rather, the court concluded that because the defendant "voluntarily came to Texas, and while he was here he purposefully conducted business with a Texas resident," he "crossed a bright line and purposefully availed [him]self of the privilege of conducting business in Texas." *Id.*

The Texas Supreme Court has likewise found personal jurisdiction where a defendant allegedly made misrepresentations while in Texas, when combined with other evidence that the defendant was seeking to get extensive business in Texas or otherwise use Texas to make money. In *Moncrief*, the Texas Supreme Court held that Texas courts had specific jurisdiction over nonresident defendants with respect to a misappropriation-of-trade-secrets claim where the defendants "attended two Texas meetings with a Texas corporation and accepted [the plaintiff's] alleged trade secrets created in Texas regarding a potential joint venture in Texas with the Texas corporation." 414 S.W.3d at 154. The alleged misappropriation—the precise act giving rise to the tort—took place in Texas, and the court found it significant that it

occurred in the process of the defendant's effort to get "extensive business in or from the forum state" in the form of the proposed Texas joint venture with a Texas corporation. *Id.* at 153 (quoting *Michiana*, 168 S.W.3d at 789–90); *see also Searcy*, 496 S.W.3d at 78 (holding trial court had specific jurisdiction over defendant because its president, who allegedly made misrepresentations during meetings in Texas, "purposefully availed the company of the Texas jurisdiction by negotiating at relative length in Texas for sale of its shares to a Texas buyer," the sale of which was part of a "general plan . . . [to] use the Texas forum to make money").

Considering this case law, something more than mere allegations that the defendant committed a tort while physically present in Texas is required. We conclude, however, that something more is present here.

Here, it is undisputed that Schrader traveled to Texas on a handful of occasions between 2004 and 2014, and that during some of these visits, he attended events designed to promote the RBS wine, though Schrader disputes that he targeted or solicited customers or buyers or otherwise sought business for RBS at these events. For example, Roach testified by affidavit that during these trips, he and Schrader "hosted wine dinners featuring RBS and Schrader's other wines at various restaurants [including Reef, Ibiza, Pappas Bros. Steakhouse, and the Coronado Club] to introduce Schrader, RBS, and Schrader's other wines to potential Texas wine buyers[.]" Roach also testified that he "introduced Schrader to members of the Texas

wine community by, among other things, hosting wine dinners in Texas," and that "Schrader obtained Texas buyers for RBS . . . [because] of these efforts, solicitations, and introductions."

In addition, Warren Harris, a Texas attorney, "wine enthusiast," and friend of Roach, testified by affidavit that, at various wine events in Texas, Schrader "actively and persistently conduct[ed] business through the solicitation of Texas residents in Texas to purchase RBS and other Schrader wines through his mailing lists." Specifically, Harris described three events at which Schrader "actively solicited purchases of the RBS . . . wine[ ] through his mailing lists": (1) a 2004 event at the Coronado Club called "An Evening with Fred Schrader"; (2) a 2004 wine luncheon at the River Oaks Country Club; and (3) a 2004 "bottle party" at Vin de Garde.

Roach's former wife, Elizabeth Pearson, similarly testified by affidavit that Schrader "came to Houston to promote RBS [wine] . . . and to introduce the Houston wine collectors, restaurants, and enthusiasts to the RBS wine." She further testified that, in 2004, Schrader traveled to Houston to promote RBS during an "Evening with Fred Schrader" at the Coronado Club in downtown Houston.

Schrader admitted that he visited Texas five times in the last 20 years and that two of those visits included "wine dinners . . . at which [Roach and Schrader] enjoyed different wines with the social guests present." He testified at his deposition, however, that he attended these dinners because Roach wanted to "show off the

wines" so they were promoting the wines "in a sense," but he was not "seeking business at these dinners." Schrader further denied that he participated in these wine dinners to market or sell RBS or his other wines because he "had no need to market or promote wine, as the mailing list to receive Schrader Cellars wines was closed" and "all of its wine was routinely sold out and subject to a waiting list." Schrader further averred that he has no business operations, employees, or offices in Texas.

Although the evidence is disputed, we conclude that the trial court's implied finding that Schrader visited Texas and attended these wine events, at least in part, to promote the RBS wine and solicit customers or buyers of the wine is supported by the above evidence. *See Old Republic*, 549 S.W.3d at 558.

Further, at these wine events, multiple witnesses testified that Schrader referred to RBS as "Randy's wine" and to Roach as an "owner" of RBS, his "partner," or as "Vintner Roach."

- In his affidavit, Harris testified: "Every time I was with . . . Schrader in Texas, RBS and Schrader wines were discussed, and he actively sought purchasers of these wines. At every meeting in Texas, . . . Schrader routinely and consistently referred to . . . Roach as an 'owner' of RBS, his 'partner' in RBS, and referred to . . . Roach as 'Vintner Roach.'
- In her affidavit, Pearson testified: "During his speech to the invited guests [at the Coronado Club], [Schrader] introduced [Roach] as his partner in the RBS wine, referred to RBS as 'Randy's wine', publicly called him Vintner Roach, and spoke of their close relationship and trust for the other."
- In his affidavit, Roach testified: "At all relevant times during these trips to Texas, and particularly at these wine dinners and sporting events,

> Schrader expressly represented and led the attendees to believe that I was a co-owner of RBS and a 'vintner' of RBS. For example, at these Texas events, Schrader called me his 'partner' and 'Vintner Roach,' and publicly described me as a co-owner of the RBS wine to the people who attended these Texas wine dinners, just as he had also said many times privately. In these Texas events, he repeatedly publicly referred to RBS as 'Randy's wine' or, if talking directly to me, as 'your wine.'"

In his fraud claims, Roach explicitly alleges that, to conceal his fraud, Schrader:

- "held Roach out to the public as an owner of RBS,"
- "used Roach to build up the RBS and Schrader Cellars brand and sales in Houston and Texas, publicly referring to Roach as Vintner Roach and as his partner,"
- "held out Roach to the public as an equal owner in the RBS venture," and
- "actively marketed RBS with Roach, including at wine events in Houston, Texas, holding Roach out as a partner in owning RBS."

Thus, the alleged misrepresentations—that Roach was an owner or partner in RBS—are the precise acts giving rise to Roach's fraud claims. Not only did these actions allegedly take place in Texas but, more significantly, they took place during wine events at which Schrader was actively promoting RBS wine and seeking business in the form of sales of RBS wine from Texas customers. Under these circumstances, we hold that Schrader purposefully availed himself of the privilege of conducting business in Texas. And because the alleged misrepresentations occurred during these visits to Texas, we hold that Schrader's visits to Texas and participation in these wine events are substantially connected to the operative facts

of Roach's fraud claim. *See Moncrief*, 414 S.W.3d at 153–54; *Searcy*, 496 S.W.3d at 78.

4. *Fair Play and Substantial Justice*

In addition to minimum contacts, due process requires the exercise of personal jurisdiction to comply with traditional notions of fair play and substantial justice. *Retamco*, 278 S.W.3d at 338. If a nonresident defendant has minimum contacts with the forum, rarely will the exercise of jurisdiction over the nonresident defendant not comport with traditional notions of fair play and substantial justice. *Id.* at 341. We undertake this evaluation considering the following factors, when 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 international judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several nations in furthering fundamental substantive social policies. *Spir Star AG v. Kimich*, 310 S.W.3d 868, 878 (Tex. 2010); *see also Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 113 (1987).

Asserting personal jurisdiction over Schrader as to Roach's fraud claim would not offend traditional notions of fair play and substantial justice. Subjecting Schrader to suit in Texas certainly imposes a burden on him, but the same can be said of all nonresident defendants, and distance alone cannot ordinarily defeat jurisdiction. *Spir*

Star, 310 S.W.3d at 879 ("Nor is distance alone ordinarily sufficient to defeat jurisdiction: modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity." (internal quotation omitted)). Although Schrader may be burdened by having to participate in litigation in Texas, that burden would occur regardless of where Roach sued Schrader (even in California), especially considering the evidence that Schrader spends much of his time abroad.[6] *See PetroSaudi Oil Servs. Ltd. v. Hartley*, 617 S.W.3d 116, 142 (Tex. App.—Houston [1st Dist.] 2020, no pet.) (noting burden on defendant of litigating in Texas would exist no matter where plaintiff sued). Given Schrader's meetings with Roach in Texas, the burden of litigating in Texas is not so severe as to defeat jurisdiction. *See Moncrief*, 414 S.W.3d at 155 (holding jurisdiction was appropriate where defendants traveled to Texas for meetings with plaintiff and established Texas-based subsidiary); *PetroSaudi Oil*, 617 S.W.3d at 142 (concluding burden on defendant of litigating in Texas was not unreasonable, in part, because there was evidence in record that defendant had traveled to Texas on business before). This burden is somewhat mitigated by the convenience to Roach, a Texas resident, of litigating in the forum where the alleged misrepresentations occurred. *See Moncrief*, 414 S.W.3d

[6] Schrader testified at his deposition that although his permanent residence is in California, he spends only about 20 percent of his time there and the rest abroad, including in Saint Lucia and Cuba.

at 155 (concluding burden to defendant was mitigated by convenience to plaintiff to litigating where alleged misappropriation of trade secrets were appropriated and then used). Moreover, the allegations that Schrader committed a tort in Texas against a Texas resident implicate a serious state interest in adjudicating the dispute. *Id.* The fact that the alleged misrepresentations occurred in Texas means there will likely be potential witnesses located in Texas. *See Cagle v. Clark*, 401 S.W.3d 379, 395 (Tex. App.—Texarkana 2013, no pet.). Finally, and in addition, because these claims will be litigated against Constellation in a Texas court, it promotes judicial economy to litigate the claims as to all parties in one court. *Spir Star*, 310 S.W.3d at 879 ("[B]ecause the claims against [the resident defendant] will be heard in Texas, it would be more efficient to adjudicate the entire case in the same place."). On balance, the burden on Schrader of litigating in a foreign jurisdiction is minimal and outweighed by Texas's interests in adjudicating the dispute. *Id.* at 879–80.

Accordingly, we hold that the trial court did not err in denying Schrader's special appearance as to Roach's fraud claims.

D. Conversion, Money Had and Received, Restitution, and Unjust Enrichment

Roach also brought claims against Schrader for conversion, money had and received, restitution, and unjust enrichment. Schrader argues that because none of his alleged acts in relation to these claims occurred in Texas, there is not a substantial connection between the liability alleged in these claims and Schrader's contacts with

Texas. Roach argues that the same contacts discussed above in reference to his fraud claim are substantially connected to these additional claims because all of his claims revolve around his partnership and ownership in the RBS wine.

Here, Roach alleges that as a member of RBS, LLC and the RBS partnership with Schrader, he had an interest in the "specific rows of clone 337 grapes [from] the To Kalon vineyard in Napa, California" and the "wine produced from those grapes," which he contends Schrader represented would be assets of RBS, LLC and RBS partnership. Roach alleges, however, that Schrader did not "use the LLC to hold the RBS partnership assets," and instead "used Roach's capital investment, Roach's services on behalf of RBS and Schrader, and money made from RBS to grow and build Schrader Cellars." Thus, "by producing, marketing, and selling wine from assets owned by Roach and by selling Roach's property to Constellation," Roach alleges Schrader wrongfully converted Roach's property for his own benefit.

Similarly, Roach alleges that by retaining the proceeds of the sale of Schrader Cellars to Constellation, which included "the right to produce, market, and sell wine from the clone 337 To Kalon Cabernet grapes," Schrader "holds money and assets that rightly, and in equity and good conscience, belong to Roach." He also alleges that Schrader has been unjustly enriched "(1) by converting to his own use Roach's interest in the RBS wine and assets; (2) using Roach's investment in RBS for his

own personal and business use; and (3) by retaining and profiting off of the financial interest in Boars' View that he promised to Roach."

Roach asserts that these claims all arise from the same operative facts related to his partnership and ownership interests and, therefore, Schrader's visits to Texas during which he allegedly misrepresented Roach's ownership status and solicited business and customers for the RBS wine are substantially connected to these claims as well.[7] We disagree. Although Roach is correct that these claims would require a consideration of questions related to the formation and terms of the partnership agreement and Roach's ownership interest, if any, the claims for conversion, money had and received, restitution, and unjust enrichment principally concern Schrader's actions of forming the RBS partnership and LLC, using Roach's investment for Schrader Cellars, dissolving RBS, LLC, and ultimately selling Schrader Cellars to Constellation, all of which occurred in California. Stated simply, "the transactions giving rise to these torts simply did not occur in Texas." *M & F Worldwide Corp. v. Pepsi-Cola Metro. Bottling Co., Inc.*, 512 S.W.3d 878, 888 (Tex. 2017).

Furthermore, none of these actions in California can form the basis for specific jurisdiction over Schrader in Texas. As the Texas Supreme Court held in *Michiana,*

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[7] We note that Roach has alleged the same forum contacts by Schrader for all causes of action. We determined above, however, that Schrader's only contacts with Texas that are sufficient to confer personal jurisdiction over him consist of his visits to Texas to attend wine dinners and events, at which he promoted the RBS wine and sought customers and buyers for the RBS wine.

a nonresident directing a tort at Texas from afar is insufficient to confer specific jurisdiction. 168 S.W.3d at 790–92. The focus is properly on the extent of the defendant's activities in the forum, not the residence of the plaintiff. *Id.* at 789. Thus, Schrader's alleged tortious conduct in California against Roach, a Texas resident, is insufficient to confer specific jurisdiction over Schrader as to Roach's conversion, money had and received, restitution, and unjust enrichment claims. *See Moncrief*, 414 S.W.3d at 157 (concluding Texas courts lacked jurisdiction over defendants with respect to tortious interference claim because claim arose out of discussions that took place in California, and holding that defendants' "alleged tortious conduct in California against a Texas resident [was] insufficient to confer specific jurisdiction"); *see also M & F Worldwide*, 512 S.W.3d at 887–88 (holding Texas courts did not have personal jurisdiction over defendants with respect to fraudulent transfer and tortious interference claims because those torts "hinge[d] on the effect of the parties' execution of the New York settlement agreement and related conduct that occurred outside of Texas").

We hold that Schrader's Texas contacts (visits to Texas to attend wine dinners and events, at which he promoted the RBS wine and sought customers and buyers for the RBS wine) are not substantially connected to the operative facts of Roach's conversion, money had and received, restitution, and unjust enrichment claims, nor are these contacts related to the above causes of action. *See Ford Motor Co.*, 141 S.

Ct. at 1025; *Old Republic*, 549 S.W.3d at 559; *Moki Mac*, 221 S.W.3d at 585. Therefore, the trial court did not have personal jurisdiction over Schrader as to these claims.

E. Breach of Fiduciary Duty and Declaratory Judgment

For this same reason, we conclude that Schrader's visits to Texas are not substantially connected to the operative facts of Roach's breach of fiduciary duty and declaratory judgment claims and are not related to these causes of action. *See Ford Motor Co.*, 141 S. Ct. at 1025; *Old Republic*, 549 S.W.3d at 559; *Moki Mac*, 221 S.W.3d at 585.

Here, Roach alleges that Schrader breached his fiduciary duty to Roach in a number of ways, including by:

- appropriating for his own personal use, Roach's capital investment in the RBS wine and partnership and his use of Roach's capital investment to build and expand the Schrader Cellars;
- treating and operating the LLC as a sham;
- attempting to dissolve and cancel the LLC without allowing Roach to vote on the cancellation, and without legal or contractual authority to dissolve and cancel the LLC;
- affirmatively and materially misrepresenting to the California Secretary of State Roach's position and alleged vote regarding the purported cancellation;
- representing to the public, both orally and in print, that Roach was his partner in RBS, though he never intended to honor Roach's ownership interest;

- taking control of and appropriating for his own use Roach's ownership interest in the assets of the RBS wine;
- concealing his actions, including his negotiations with Constellation from Roach, his business partner and a co-manager and member of RBS, LLC;
- selling off and depleting Roach's ownership interest in the assets and the RBS wine in the sale of Schrader Cellars to Constellation;
- concealing his intentional and wrongful conduct from Roach, his co-manager and fellow member;
- using money from Roach designated for the creation, production, and marketing of RBS to fund Schrader's other wine ventures;
- commingling money received from Roach and from the sale of their RBS wine project with money invested in and received from his other wine ventures, including wines owned by Schrader Cellars, and using money received from the sale of RBS wines for other business ventures and personal use; and
- comingling and mixing the partnership assets intended for RBS, LLC with Schrader Cellars.

Roach also seeks a declaratory judgment as to his percentage ownership interest in the partnership and RBS, LLC both at the time of cancelation of RBS, LLC and at the time of the sale to Constellation. Roach also seeks a declaratory judgment as to his "percentage ownership of Schrader Cellars at the time of the sale of Schrader Cellars as a result of the Schrader's comingling and blending of the assets of RBS, LLC with Schrader Cellars."

Unlike his fraud claim, nearly all of the operative facts giving rise to Roach's breach of fiduciary duty and declaratory judgment claims occurred in California.

The events related to the parties' formation of the alleged partnership agreement and LLC in 2002, the purpose behind the partnership and the terms as agreed to in 2002, Schrader's alleged use of Roach's capital investment, the commingling of those funds with Schrader Cellars, the purported dissolution of RBS, LLC, and the sale of the RBS wine (via Schrader Cellars) to Constellation will be "the focus of the trial" on Roach's breach of fiduciary and declaratory judgment claims, not Schrader's visits to Texas and attendance at wine events. *See Moki Mac*, 221 S.W.3d at 585 ("The events on the trail and the guides' supervision of the hike will be the focus of the trial, will consume most if not all of the litigation's attention, and the overwhelming majority of the evidence will be directed to that question. Only after thoroughly considering the manner in which the hike was conducted will the jury be able to assess the [plaintiffs'] misrepresentation claim."); *see also Gonzalez v. AAG Las Vegas, L.L.C.*, 317 S.W.3d 278, 284–85 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) (noting plaintiffs' focus on Texas meeting in which defendant's compensation package was discussed was "overly narrow," because "the operative facts of [plaintiffs'] breach of loyalty, usurpation claims and declaratory judgment action [seeking declaration of parties' ownership interest in dealership] all concern [the defendant's] acts while general manager in Las Vegas. These are the facts that are relevant for a specific personal-jurisdiction analysis, and the allegations and the evidence show that these acts happened in Nevada.").

Accordingly, we hold that Schrader's contacts with Texas are not substantially related to the operative facts of Roach's breach of fiduciary duty and declaratory judgment claims and specific jurisdiction over Schrader as to these claims is not justified. The trial court, therefore, erred in denying Schrader's special appearance as to these claims.

F. Constructive Trust

In his fourth amended petition, Roach seeks the imposition of a constructive trust over the proceeds from the sale of RBS wine and Schrader Cellars, on the underlying assets that were sold to Constellation, and on the assets of Schrader Cellars. Although pleaded as a separate cause of action, Roach sought to impose the constructive trust on these assets and proceeds based on Schrader's "(i) conversion[;] (ii) holding of money and assets that in equity and good conscience belong to Roach[;] (iii) fraudulent, intentional, and calculated breaches of his fiduciary duties to Roach[;] (iv) breaches of his partnership obligations to Roach[;] (v) fraud, fraud in the inducement, fraud by a fiduciary, fraud by omission, and continuing concealment[;] and (vi) unjust enrichment at Roach's expense."

"[A] constructive trust is not a separate cause of action but instead is an equitable remedy." *City of Houston v. Hotels.com, L.P.*, 357 S.W.3d 706, 718 (Tex. App.—Houston [14th Dist.] 2011, pet. denied); *see also KCM Fin. LLC v. Bradshaw*, 457 S.W.3d 70, 87 (Tex. 2015) ("A constructive trust is an equitable,

court-created remedy designed to prevent unjust enrichment."); *Meadows v. Bierschwale*, 516 S.W.2d 125, 128, 131 (Tex. 1974) (describing constructive trust as "being remedial in character" and holding that "[a]ctual fraud, as well as breach of a confidential relationship, justifies the imposition of a constructive trust"); *Sherer v. Sherer*, 393 S.W.3d 480, 491 (Tex. App.—Texarkana 2013, pet. denied) ("A constructive trust is a remedy—not a cause of action. An underlying cause of action such as a breach of fiduciary duty, conversion, or unjust enrichment is required. The constructive trust is merely the remedy used to grant relief on the underlying cause of action." (internal citations omitted)).

In conducting our specific-jurisdiction analysis, we consider jurisdictional contacts on a claim-by-claim basis. *Moncrief Oil*, 414 S.W.3d at 150. But because a constructive trust is not a separate claim or cause of action—and instead is a remedy used to grant relief on an underlying cause of action—we do not consider Roach's allegations that he was entitled to a constructive trust as a separate or independent basis for establishing personal jurisdiction over Schrader. *See Sherer*, 393 S.W.3d at 491; *see also Woodard v. AFI, S.A.*, No. 05-94-01498-CV, 1995 WL 464252, at *12 (Tex. App.—Dallas July 31, 1995, no writ) (not designated for publication) (holding that because constructive trust is remedy, not separate cause of action, plaintiffs' allegation that they were entitled to constructive trust was not independent basis for establishing personal jurisdiction over defendant). We consider only whether the

jurisdictional contacts detailed above establish personal jurisdiction over the underlying claims themselves, i.e., conversion, money had and received, breach of fiduciary duty, fraud, and unjust enrichment. The question of whether Roach is ultimately entitled to seek and be awarded a constructive trust based on his fraud claim is not before us today and is not relevant to our jurisdictional analysis.

G. Boars' View

Roach also seeks a declaration of "the rights and legal relations between Roach and Schrader with respect to Roach's percentage ownership of Boars' View." He admits in his briefing that these claims arise out of different facts from his claims related to the RBS partnership and wine, and that his only claims related to his interest in Boars' View are declaratory judgment claims.

In his fourth amended petition, Roach alleges that Schrader offered "Roach an unspecified, to-be-determined percentage share of his own ownership interest in the Boars' View partnership in exchange for Roach's assistance in obtaining financial investors and partners to fund the venture." Roach alleges that he introduced Schrader to "one of the original four financial investor partners, . . . who is now the only other investor/partner in Boars' View." Roach contends that Schrader made these representations related to Roach's partnership percentage in Boars' View while at Roach's home in Houston, Roach acted as Schrader's lawyer

with respect to legal issues related to Boars' View, and Roach promoted Boars' View among his "wine collector friends and other wine contacts in Texas."

As Roach admits, he has not brought a fraud, misrepresentation, or other tort claim with respect to Boars' View. He merely seeks a declaration of his ownership interest in that partnership and wine. And, even if he had made specific allegations of misrepresentations with respect to Boars' View, unlike Roach's fraud claim related to the RBS wine, Roach has not alleged that Schrader made any misrepresentation at a wine or other event at which Schrader was also promoting the Boars' View wine or soliciting customers or buyers for the Boars' View wine. That the alleged misrepresentations with respect to the RBS wine occurred at events at which Schrader was seeking "extensive business" or using the Texas forum to make money is why we concluded above that those contacts were sufficient to justify the trial court's exercise of personal jurisdiction over Schrader with respect to the fraud claims. Those same facts are not present here.[8]

Accordingly, we conclude that Schrader's visit to Texas to discuss investment in Boars' View does not establish purposeful availment of the state of Texas and the trial court erred in denying Schrader's special appearance with respect to Roach's declaratory judgment claim related to Boars' View.

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[8] In addition, we have already concluded that the solicitation of Texas investors in an out-of-state business is not enough to justify the exercise of specific jurisdiction.

Conclusion

Schrader attended a handful of wine events in Texas with Roach, at which he allegedly made misrepresentations related to Roach's ownership interest in RBS wine. He also actively solicited customers and buyers of the RBS wine and otherwise promoted the RBS wine at these events. Because Schrader actively sought to gain business from Texas at these events where the alleged misrepresentations were made, we conclude the trial court has specific personal jurisdiction over Roach's fraud claims. We therefore hold that the trial court did not err in denying Schrader's special appearance as to the fraud claims.

But we do not agree that the trial court has specific jurisdiction over Schrader with respect to Roach's remaining claims for conversion, money had and received, restitution, unjust enrichment, declaratory judgment, and breach of fiduciary duty. We therefore hold that the trial court erred in denying Schrader's special appearance as to these claims.

Accordingly, we (1) affirm that part of the trial court's order denying Schrader's special appearance as to Roach's fraud claims, (2) reverse that part of the trial court's order denying Schrader's special appearance as to Roach's claims for conversion, money had and received, restitution, unjust enrichment, declaratory judgment, and breach of fiduciary duty and render judgment granting the special

appearance as to these claims, and (3) remand to the trial court for further proceedings consistent with this opinion.

Amparo Guerra
Justice

Panel consists of Justices Kelly, Guerra, and Farris.