

Reversed and Rendered and Memorandum Opinion filed April 25, 2017.



In The

Fourteenth Court of Appeals

NO. 14-16-00501-CV

BELEMA OIL PRODUCING LIMITED, Appellant

V.

BRITTANIA-U NIGERIA LIMITED, Appellee

**On Appeal from the 295th District Court
Harris County, Texas
Trial Court Cause No. 2014-15279**

M E M O R A N D U M O P I N I O N

This is an interlocutory appeal from an order denying Belema Oil Producing Limited's special appearance and motion to dismiss. In its sole issue on appeal, Belema Oil contends that the trial court erred in denying its special appearance and motion to dismiss because Belema Oil's contacts are legally and factually insufficient to support a Texas Court's exercise of specific or general jurisdiction over it. Because the facts and binding precedents compel the conclusion that

Belema Oil did not purposefully avail itself of the privilege of conducting activities in Texas, we issue this memorandum opinion and reverse.

I. Background

This case involves the bid and sale of Nigerian oil mining leases between Nigerian corporations. Britannia-U Nigeria Limited is a Nigerian private company whose principal place of business is in Nigeria. Belema Oil is a Nigerian company with its principal place of business in Nigeria.

In June 2013, Chevron Nigeria Limited, with its agent, BNP Paribas Securities, Corporation, opened a competitive bidding process for the sale of Chevron Nigeria's participating interest in three oil mining leases ("OMLs") in Nigeria. The bid process was conducted in two stages. In stage I, prospective buyers, upon executing a confidentiality agreement, were provided an "information memorandum" and were invited to submit "indicative offers" on the OMLs. Numerous companies participated in the bidding process, including Britannia-U and Belema Oil. On July 29, 2013, Britannia-U and Belema Oil submitted "indicative offers" to purchase Chevron Nigeria's interest in the OMLs.

In stage II, Chevron Nigeria invited a limited number of prospective buyers who submitted "indicative offers" to attend a management presentation and access to a physical data room in order to perform necessary due diligence on the proposed transaction. The management presentation and physical data room access were scheduled to be hosted by Chevron Nigeria in Houston, Texas, between August 12, 2013, and September 13, 2013. Chevron Nigeria selected Britannia-U and Belema Oil, among others, to participate in stage II of the bidding process.

At some point during the requisite one-month period, Jack-Rich Tein, Jr., chief executive officer of Belema Oil, attended the management presentation in Houston, Texas. The presentation also was attended by representatives from Chevron Nigeria and BNP Paribas. No other prospective bidders attended that management presentation. The presentation lasted a few hours. Additionally, at some point between August and September 2013, Tein accessed the physical data room. According to Tein, after the management presentation and his visit to the physical data room, he left Houston and did not return.

Under the stage II bid procedures, “binding offers” were to be submitted by September 30, 2013, by courier or personal delivery to Hermant Patel c/o Chevron Corporation in Houston, Texas. On September 30, 2013, Britannia-U contends it submitted a “binding offer” of \$1,666,666,000, which included supporting documentation from banks indicating their willingness and ability to finance the bid.

The bid procedures provide that Chevron Nigeria, “at its sole discretion, may identify a potential purchaser or potential purchasers, as the case may be with whom it wishes to enter into detailed negotiations.” Britannia-U maintains that on October 7, 2013, it was notified by Chevron Nigeria that it was the successful bidder for the OMLs. According to Britannia-U, at that time, Britannia-U and Chevron Nigeria agreed on the essential terms of the sale, subject to preparation of a formal sale and purchase agreement.

Britannia-U further alleges that during October and November 2013, officers and agents of Belema Oil and other stage II participants met with Chevron Nigeria executives and falsely represented to Chevron Nigeria that Britannia-U lacked financial resources to fund its bid for the OMLs. Britannia-U claims that as a result of these false representations concerning Britannia-U’s finances, Chevron Nigeria

began to entertain doubts as to Britannia U's bid and began to impose "unreasonably stringent terms on the commitments by Britannia-U's bankers."

In November 2013, Britannia-U maintains it gave Chevron Nigeria further assurances as to its ability to fund its bid and Chevron Nigeria accepted Britannia-U's revised offer of \$1,015,000,000. Britannia-U claims that Belema Oil and other stage II participants continued to make disparaging and fraudulent statements concerning Britannia-U's finances.

On December 9, 2013, Britannia-U asserts that Chevron Nigeria repudiated its agreement with Britannia-U. Chevron Nigeria ultimately agreed to sell its participating interests in the OMLs to three other Nigerian companies: Belema Oil, Amni International Petroleum Development Company Limited, and Seplat Petroleum Development Company Limited. The proposed assignment was subject to the consent or approval of the Minister of Petroleum Resources in Nigeria.

On December 12, 2013, Britannia-U filed suit in Nigeria against Belema Oil and other defendants.¹ On May 13, 2014, the Nigerian Federal High Court determined that it had exclusive jurisdiction to resolve the subject matter of the dispute.

In March 2014, Britannia-U sued Belema Oil and other defendants in Houston, Harris County, Texas, asserting claims for business disparagement, tortious interference, and civil conspiracy.² Britannia-U maintains that Texas has general and specific personal jurisdiction over Belema Oil. Britannia-U alleges that

¹ The Nigerian litigation was filed in the Federal High Court of Nigeria, Holden at Lagos; Suit No. FHC/L/CS/1711/2013; *Britannia-U Nigeria Ltd. v Chevron Nigeria Ltd, Chevron USA, Inc., BNP Paribas Sec. Corp., Mr. Hermant Patel, and Seplat Petroleum [sic] Dev. Co. Ltd.*

² In the Texas litigation, Britannia-U named several defendants: *Britannia-U Nigeria Ltd. v. Amni Int'l Petroleum Dev. Co. Ltd., Amni Int'l Petroleum Prod. Servs, Inc., Tunde J. Afolabi, Belema Oil Producing Ltd., Belemaoil Producing Corp., LLC, and Jack-Rich Tein.* The only party on appeal, however, is Belema Oil Producing Limited.

as a result of Chevron Nigeria’s repudiation of its contract with Britannia-U, “Brittania-U lost not only the benefit of its bargain with Chevron and the future profits that would have been earned from Britannia-U’s exploitation of the OMLs, but also lost out on other business opportunities it could have pursued had it not been consumed with the Chevron bidding process.”

Belema Oil filed a verified special appearance and motion to dismiss for lack of personal jurisdiction. Belema Oil challenged Texas’s general and specific personal jurisdiction over it, attaching evidence negating jurisdiction.³ Britannia-U responded and submitted additional evidence as exhibits.⁴

On April 22, 2016, the trial court held a hearing and, after taking the matter under advisement, denied the special appearance on June 24, 2016. The order recites that “the Court DENIED Belamoil Producing Corporation’s [sic] Special Appearance and Motion to Dismiss for Lack of Personal Jurisdiction as to specific jurisdiction.” Although findings of fact were requested, none were made, and the request is denied by operation of law.

Belema Oil timely filed this interlocutory appeal. *See* Tex. Civ. Prac. & Rem. Code § 51.014(a)(7).

³ Belema Oil attached as evidence the declaration of Tein (exhibit 1); Britannia-U’s “statement of claim” in the suit filed in Nigeria (exhibit 2); and the ruling by the Federal High Court Holden at Lagos, Nigeria (exhibit 3).

⁴ Britannia-U attached to its supplemental response the stage I bid procedures (exhibit 1); stage II bid procedures (exhibit 2); email thread from Tein on July 15, 2013, to agent of Chevron Nigeria, Moncef Attia of BNP Paribas expressing an interest in participation in the indicative offer (exhibit 3); email thread from Tein on October 2, 2013, to Moncef Attia of BNP Paribas regarding delivery of a letter of credit (exhibit 4); and confidentiality agreement dated July 20, 2013, signed by Tein and commercial manager in San Ramone, CA, Hermant Patel (exhibit 5).

II. Analysis

A. Applicable Law

Whether a court can exercise jurisdiction over a nonresident defendant is a question of law. *Kelly v. Gen. Interior Constr., Inc.*, 301 S.W.3d 653, 657 (Tex. 2010). We thus review de novo a trial court's order granting or denying a special appearance. *M & F Worldwide Corp. v. Pepsi-Cola Metro. Bottling Co., Inc.*, No. 15-0083, ___S.W.____, 2017 WL 889938, at *5 (Tex. Mar. 3, 2017); *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007).

“Courts have personal jurisdiction over a defendant when two criteria are satisfied: (1) the Texas long arm statute must grant jurisdiction; and (2) the exercise of jurisdiction must comport with federal and state constitutional guarantees of due process.” *Searcy v. Parex Resources, Inc.*, 496 S.W.3d 58, 66 (Tex. 2016). Texas's long arm statute permits a Texas court to exercise personal jurisdiction over a nonresident who does business or commits a tort in Texas. Tex. Civ. Prac. & Rem. Code § 17.042(2). Jurisdiction under the Texas statute, however, reaches as far as due process allows. *Cornerstone Healthcare Grp. Holding, Inc. v. Nautic Mgmt. VI, L.P.*, 493 S.W.3d 65, 70 (Tex. 2016).

Whether a trial court's exercise of personal jurisdiction is consistent with due process turns on two requirements: (i) the defendant must have established minimum contacts with Texas; and (ii) the assertion of jurisdiction cannot offend traditional notions of fair play and substantial justice. *M & F Worldwide Corp.*, ___S.W.____, 2017 WL 889938, at *5 (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). In most cases, the exercise of jurisdiction over a nonresident defendant will not conflict with notions of fair play and substantial justice if the nonresident has minimum contacts with the forum. *Moncrief Oil Int'l, Inc. v. OAO Gazprom*, 414 S.W.3d 142, 154-55 (Tex. 2013).

“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) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)); accord *M & F Worldwide Corp.*, ___S.W.____, 2017 WL 889938, at *6. “The nub of the purposeful availment analysis is whether a nonresident defendant’s conduct in and connection with Texas are such that it could reasonably anticipate being haled into court here.” *Searcy*, 496 S.W.3d at 67. “Purposeful availment involves contacts that the defendant ‘purposefully directed’ into the forum state.” *Id.*

There are three features of the purposeful availment inquiry:

(1) the relevant contacts are those of the defendant, and the unilateral activity of another person or a third party is not pertinent; (2) the contacts that establish purposeful availment must be purposeful rather than random, fortuitous, isolated, or attenuated; and (3) the defendant must seek some benefit, advantage, or profit by “availing” itself of the jurisdiction.

M & F Worldwide Corp., ___S.W.____, 2017 WL 889938, at *6 (citing *Michiana Easy Livin’ Country, Inc. v. Holten*, 168 S.W.3d 777, 785 (Tex. 2005)). The “minimum-contacts analysis is focused on the quality and nature of the defendant’s contacts, rather than their number.” *Searcy*, 496 S.W.3d at 67 (citing *Retamco Operating, Inc.*, 278 S.W.3d at 339). “The defendant’s activities, whether they consist of direct acts within Texas or conduct outside Texas, must justify a conclusion that the defendant could reasonably anticipate being called into a Texas court.” *M & F Worldwide Corp.*, ___S.W.____, 2017 WL 889938, at *6 (citations omitted).

There are two types of personal jurisdiction—specific and general. General jurisdiction exists where a defendant’s “ ‘continuous . . . operations within a state

[are] thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.’ ” *Searcy*, 496 S.W.3d at 71 (quoting *Int’l Shoe Co.*, 326 U.S. at 318). Ties between the litigation itself and the forum state are irrelevant to whether general jurisdiction exists. *Id.* at 72. “[G]eneral jurisdiction relies on the defendant itself being tied up—almost entangled in a web—with the forum state.” *Id.* General jurisdiction is a high bar and continuous and systematic contacts that fail to rise to this high level are insufficient to confer general jurisdiction over a nonresident defendant. *Id.*

Specific jurisdiction is triggered when the defendant’s activities in the forum state themselves “give rise to the liabilities sued on.” *Searcy*, 496 S.W.3d at 67 (citing *Int’l Shoe Co.*, 326 S.W.3d at 317). Specific jurisdiction exists when the plaintiff’s claims “arise out of” or are “related to” the defendant’s contact with the forum. *Id.*; *M & F Worldwide Corp.*, ___S.W.____, 2017 WL 889938, at *6. A specific-jurisdiction analysis requires review of the relationship among the defendant, the forum, and the litigation. *See Moki Mac*, 221 S.W.3d at 575–76. In other words, “there must be a substantial connection between the defendant’s contacts with Texas (considered collectively) and the operative facts of the litigation.” *Nawracaj v. Genesys Software Sys, Inc.*, No. 14-15-00602-CV, ___S.W.3d___, 2017 WL 924495, at *6 (Tex. App.—Houston [14th Dist.] Mar. 7, 2017, no pet. h.) (citations omitted).

When a defendant challenges the exercise of personal jurisdiction in a special appearance, the plaintiff and the defendant bear shifting burdens. *Kelly*, 301 S.W.3d at 658. The initial burden is on the plaintiff to plead sufficient allegations to establish jurisdiction over the defendant. *Id.* When the plaintiff’s initial burden is met, the burden then shifts to the defendant to negate all bases for personal jurisdiction the plaintiff pled. *Id.*; *see Moncrief Oil*, 414 S.S.W.3d at 149.

The defendant can negate jurisdiction on either a factual or legal basis. *Moncrief Oil*, 414 S.W.3d at 149; *Kelly*, 301 S.W.3d. at 659. To negate jurisdiction on a factual basis, the defendant can “present evidence that it has no contacts with Texas, effectively disproving the plaintiff’s allegations.” *Id.* Alternatively, the defendant can negate jurisdiction on a legal basis by showing that, “even if the plaintiff’s alleged facts are true, the evidence is legally insufficient to establish jurisdiction; the defendant’s contacts with Texas fall short of purposeful availment; for specific jurisdiction, that the claims do not arise from the contacts; or that traditional notions of fair play and substantial justice are offended by the exercise of jurisdiction.” *Id.*

In this case, Britannia-U has pled that Texas has jurisdiction under both general and specific jurisdiction.

B. Application of the Law to the Facts

In its sole issue, Belema Oil contends that its contacts with Texas are legally and factually insufficient to support a Texas court’s exercise of specific or general jurisdiction over it.

It was Britannia-U’s burden to plead sufficient facts to meet the above jurisdictional standards and Belema Oil’s burden to negate all jurisdictional bases Britannia-U alleged. *See Moki Mac*, 221 S.W.3d at 574. Because there are no fact findings, we infer all facts necessary to support the trial court’s order and that are supported by the evidence. *Id.*

1. Britannia-U’s allegations of a Texas tort are sufficient to subject Belema Oil to personal jurisdiction under the Texas long-arm statute.

The Texas long arm statute permits a Texas court to exercise personal jurisdiction over a nonresident who commits a tort in Texas. *Tex. Civ. Prac. &*

Rem. Code § 17.042(2). In its pleadings, Britannia-U alleges that Belema Oil committed torts, in whole or in part, in Texas, which is sufficient to satisfy the requirements of the Texas long-arm statute. *Moncrief Oil*, 414 S.W.3d at 149; *see Huynh v. Nguyen*, 180 S.W.3d 608, 619–20 (Tex. App.—Houston [14th Dist.] 2005, no pet.) (describing plaintiff’s initial jurisdictional burden as a “minimal pleading requirement”); *Tempest Broad. Corp. v. Imlay*, 150 S.W.3d 861, 872 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (holding jurisdictional facts alleged in pleadings sufficient to support exercise of long-arm jurisdiction without deciding merits of those allegations).

Having met its initial jurisdictional burden, the burden shifts to Belema Oil to negate all bases for personal jurisdiction that Britannia-U pled. *Moncrief Oil*, 414 S.W. 3d at 149. Belema Oil maintains that it negated all pleaded jurisdictional bases—both factual and legal. We address below whether the exercise of personal jurisdiction over Belema Oil is consistent with due process.

2. Texas’s exercise of jurisdiction over Belema Oil does not comport with the requirements of due process.

Belema Oil argues that it lacks sufficient contacts with Texas and that exercising jurisdiction over Belema Oil will offend traditional notions of fair play and substantial justice. *See Cornerstone*, 493 S.W.3d at 70; *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002).

a. No general jurisdiction over Belema Oil

Britannia-U alleges that the trial court has general jurisdiction over Belema Oil because Belema Oil has continuous and systematic contacts in Texas. Britannia-U asserts that Belema Oil has a subsidiary incorporated in Texas and maintains permanent offices in Texas for purposes of conducting Belema Oil’s business in Texas.

Belema argues it does not have continuous and systematic contacts with Texas that would subject it to general personal jurisdiction in Texas. It is undisputed that Belema Oil is not a Texas resident; it is a Nigerian exploration and production company. As set forth by the unrebutted declaration of Tein, Belema Oil does not have any development, exploration, or production activities in Texas. Belema Oil has no subsidiaries in Texas.⁵ Additionally, Tein's declaration provides, in relevant part:

- Belema Oil has its principal place of business in Port Harcourt, Nigeria;
- Belema Oil does not conduct business in Texas;
- Belema Oil does not have a registered agent for service of process in Texas;
- Belema Oil does not maintain a permanent office in Texas;
- Belema Oil does not have any letterhead, business cards, marketing materials, or any other business stationary that shows a Texas address or phone number;
- Belema Oil does not have any employees in Texas;
- Belema Oil does not hold its Board of Directors' meetings in Texas.
- Belema Oil's business files, including its financial books and records, are not maintained in Texas;
- Belema Oil does not have any assets in Texas;
- Belema Oil does not maintain any accounts or financial institutions in Texas;
- Belema Oil does not own or lease any real property in Texas;
- Belema Oil does not pay any real or personal property taxes in Texas;
- Belema Oil has not specifically targeted Texas for advertising;

⁵ Belema Oil asserts that it has no Texas subsidiaries. In doing so, Belema Oil notes that one company, Belemaoil Producing Corporation, LLC ("Belemaoil") has the words Belema Oil in its name; however, it is not a subsidiary of Belema Oil. Belemaoil filed its Certificate of Formation with the Texas Secretary of State sometime in 2013.

- Belema Oil does not list its telephone in any telephone or business directories in Texas;
- Belema Oil has not recruited Texas residents for employment, either inside or outside of Texas;
- Belema Oil has never filed any tax returns in the United States;
- Belema Oil has never filed any lawsuits in the United States, including Texas; and
- Other than this suit, Belema Oil has not been sued in the United States.

“General jurisdiction is only present when a defendant not only has continuous and systematic contacts with the forum state, but also has these kinds of contacts to such an extent that they render it essentially at home in that state.” *Searcy*, 496 S.W.3d at 72–73 (citing *Daimier AG v. Bauman*, ___ U.S. ___, 134 S. Ct. 746, 760 (2014)). Here, aside from its participation in the stage II bidding process as required by Chevron Nigeria’s bidding procedures, Belema Oil has shown that it has not interacted with Texas. Its contacts with Texas are not even continuous and systematic, let alone sufficient to deem it essentially at home in Texas. *Id.* at 73.

We conclude there is no general personal jurisdiction over Belema Oil. The trial court does not appear to have based its order denying the special appearance on a theory of general jurisdiction,⁶ but to the extent it did so, the trial court erred.

b. No specific jurisdiction over Belema Oil

We next turn to whether there is specific jurisdiction over Belema Oil.

Brittania-U alleges that the trial court has specific jurisdiction over Belema Oil because Belema Oil “purposefully availed itself of the laws and protections of

⁶ The trial court’s order denying Belema Oil’s special appearance did not address general jurisdiction. Instead, it only denied Belema Oil’s special appearance and motion to dismiss for “lack of personal jurisdiction as to specific jurisdiction.”

Texas” by participating in stage II of the bidding process in Houston, Texas. Britannia-U argues that Belema Oil voluntarily participated in the bidding process by submitting its indicative offer and agreeing to appear in Houston, Texas for stage II of the process.

Belema Oil argues that its isolated contact with Texas, attending the management presentation, visiting the physical data room, and arguably delivering a final bid offer,⁷ was the result of unilateral activity by Chevron Nigeria and does not support the exercise of specific jurisdiction.

We conclude that Belema Oil’s appearance in Texas was isolated and fortuitous, made for the sole purpose of compliance with the bid procedures; and Belema Oil did not seek any benefit, advantage, or profit from the state of Texas by participating in the stage II bid procedures in Houston. *See Michiana*, 168 S.W.3d at 785. In particular, Belema Oil did not instigate a relationship with any Texas resident. Rather, Belema Oil, a Nigerian corporation, participated in a bid process for proposed oil leases in Nigeria. Belema Oil’s presence in Texas was the result of the unilateral activity of Chevron Nigeria and the requirements set forth in Chevron Nigeria’s bid procedures. As set forth in stage II bid procedures, under “Important Notice,” the procedures were prepared at the direction of Chevron Nigeria. The document further provides that Chevron Nigeria and its agent BNP Paribas maintained unilateral control over the bidding process:

[Chevron Nigeria] and BNP Paribas reserve the unilateral right, at any time, determined in their sole discretion and without prior notice to the Recipients, (i) to negotiate with one or more parties and enter into an agreement relating to the assignment of part or all of the Interests with any party, (ii) to terminate discussions with any party, and (iii)

⁷ Britannia-U attached an email thread between Tein and agent Moncef Attia of BNP Paribas dated October 2, 2013, regarding hand-delivery of a letter of credit. It implies that delivery would be made to Hermant Patel’s office in compliance with the bid procedures.

modify the rules and procedures set forth herein or any other procedures relating to the [proposed oil lease transaction].

Stage II bid procedures set forth the process and timetable, stating that the “Management Presentation and PDR [physical data room] visits will start on August 12, 2013 and will be held exclusively in Houston, Texas.” Moreover, the bid procedures dictated that prospective buyer submit their binding offer by September 30, 2013, by courier or personal delivery, to Hermant Patel, in Houston, Texas.

Furthermore, Belema Oil was not seeking some benefit, advantage, or profit from Texas when it sent Tein to attend the management presentation, to visit the physical data room, and arguably to submit a binding offer in Houston as part of the stage II bid requirements dictated by Chevron Nigeria. Rather, the oil leases were in Nigeria. In declining to exercise specific personal jurisdiction in *Searcy*, the Supreme Court observed that defendant Parex Canada “did not specifically seek out a Texas seller or Texas assets, let alone attempt[] to meddle with a contract governed by Texas law or develop a Texas business.” 496 S.W.3d at 73. The court further noted Parex Canada did not “seek to launch operations in Texas or reap the benefits of the Texas economy,” but was “on the hunt for Colombian assets.” *Id.* at 73–74. Like in *Searcy*, Belema Oil did not seek out any connection with Texas, did not execute contracts involving Texas law, did not develop a Texas business, did not launch operations in Texas or reap the benefits of Texas’s economy but, instead, sought to acquire oil mining leases in Nigeria. Belema Oil’s contacts were neither purposeful nor directed to Texas. *See id.*

Brittania-U also asserts that Belema Oil executed a confidentiality agreement in Houston, “thereby taking on continuing obligations in Texas.” The confidentiality agreement, however, imposes no obligations in Texas. Rather, it invalidates jurisdiction in Texas by providing in its terms “[t]his Agreement is

governed by and interpreted under the laws of England and Wales, without regard to its choice of law rules.” Thus, Britannia-U’s reliance on the confidentiality agreement is unavailing.

We conclude the trial court lacked specific personal jurisdiction over Belema Oil. Because minimum contacts are lacking, we need not consider whether the exercise of jurisdiction would comport with fair play and substantial justice. Accordingly, Belema Oil’s sole issue is sustained.

III. Conclusion

In sum, we reverse the trial court’s order denying Belema Oil’s special appearance and render judgment dismissing for lack of personal jurisdiction Britannia-U’s claims against Belema Oil.

/s/ John Donovan
Justice

Panel consists of Justices Busby, Donovan, and Brown.