

Reversed and Remanded and Majority Opinion filed August 19, 2021.



In The

Fourteenth Court of Appeals

NO. 14-19-00406-CV

EBUBEKIR YAHSI, Appellant

V.

**VISOR MUHENDISLIK INSAAT TURIZM GIDA VE MEKANIK
TAAHHUT TICARET LIMITED SIRKETI AND VIZOR
INTERNATIONAL, LLC, Appellees**

**On Appeal from the 269th District Court
Harris County, Texas
Trial Court Cause No. 2016-88361**

MAJORITY OPINION¹

A Turkish citizen brings this interlocutory appeal from the trial court's order denying his special appearance in a lawsuit filed against him by a Turkish company and a Texas limited liability company whose sole member is the Turkish

¹ Justice Spain concurs in the court's judgment but not in the court's opinion. Justices Jewell and Wilson determined that this opinion should be designated an opinion. *See* Tex. R. App. P. 47.2(a). Justice Spain voted to designate this opinion a memorandum opinion.

company. We reverse the trial court's order and remand with instructions to the trial court to dismiss the claims against the appellant for lack of personal jurisdiction.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant/defendant Ebubekir Yahsi is a citizen and resident of the Republic of Turkey. Appellee/plaintiff Visor Muhendislik Insaat Turizm Gida Ve Mekanik Taahhut Ticaret Limited Sirketi (hereinafter "Visor Turkey") is a Turkish limited liability entity. Appellee/plaintiff Vizer International, LLC (hereinafter "Visor U.S.") is a Texas limited liability company whose sole member is Visor Turkey. Visor Turkey and Visor U.S. (collectively, the "Visor Parties") sued Yahsi and Mehmet V. Baykal in the trial court below.

In their live petition in the trial court, the Visor Parties make the following allegations:

- The trial court may exercise personal jurisdiction over Yahsi based on both general jurisdiction and specific jurisdiction. The trial court may exercise personal jurisdiction over Yahsi based specific jurisdiction because Yahsi allegedly engaged in a tort in Texas when he defrauded the Visor Parties and misappropriated the Visor Parties' funds in Texas, related to an investment in Texas.
- Yahsi is a former shareholder of Visor Turkey.
- In 2011, Yahsi approached the management of Visor Turkey with an investment opportunity to develop a hotel in Dallas, Texas. Yahsi represented that his close friend and business associate, Mehmet Baykal, would carry out this investment on behalf of Visor Turkey. The president of Visor Turkey appointed Baykal as an attorney-in-fact for this purpose.
- Yahsi was or is a member, director, or governing person of the following Texas limited liability companies: (1) Kassanov USA, LLC, (2) BIND Enterprise, LLC, (3) East West Commerce, LLC, and (4) Global Trade & Investments, LLC (collectively the "Texas LLCs").

- Yahsi and Baykal used the Texas LLCs to carry out their fraudulent scheme disguised as the hotel investment.
- In September 2011, Baykal formed Visor U.S., whose sole member is Visor Turkey. In 2011 and 2012, Visor Turkey transferred \$2.15 million to Visor U.S. to be allocated to the hotel investment. Baykal represented to Visor Turkey that its \$2.15 million investment was used to purchase unimproved land in Dallas, Texas which would be the site of the hotel investment.
- Later in 2012, Baykal informed Visor Turkey that, due to economic factors, the hotel investment would not proceed and the land would be sold. Baykal represented that Visor Turkey would be reimbursed its investment of \$2.15 million when the land was sold.
- Baykal allegedly did not use Visor Turkey's \$2.15 million to purchase unimproved land in Dallas; rather, Baykal allegedly loaned the funds to ALH Properties No. 18, LP ("ALH-18"), which in turn purchased the land. The transaction allegedly was structured so that Visor U.S. was given a promissory note with an annual interest rate of twelve percent. Baykal never disclosed this structure to Visor Turkey. The funds from Visor Turkey allegedly were immediately transferred to ALH-18, which is owned by Vic Massad, a friend of Yahsi and Baykal.
- Upon information and belief, the Visor Parties assert that the reason Baykal and Yahsi did not disclose the loan structure to Visor Turkey was because Baykal and Yahsi intended to retain the interest paid on the loan for their benefit without Visor Turkey's knowledge.
- In January 2014, Visor Turkey became aware of the loan for the first time when its president, Gökhan Arasli, was inadvertently copied on an email between Baykal and Yahsi.
- Visor Turkey was unaware at that time that Baykal and Yahsi allegedly were unlawfully diverting funds from Visor U.S, with some of the funds allegedly going into Global Trade & Investment, LLC's accounts.
- In September 2016, Baykal abruptly resigned as manager of Visor U.S., closed the company bank account, and sent a check for the remaining account balance of less than \$15,000 to Visor Turkey.
- Around the time of Baykal's resignation, Visor Turkey gained access for the first time to the bank statements of Visor U.S. The bank statements and other records indicated the following: (1) interest received by Visor U.S. on Visor Turkey's \$2.15 million investment exceeded \$500,000.00; and (2) Baykal

transferred in excess of \$500,000 from the bank account of Visor U.S. to other accounts owned or controlled by Baykal or Yahsi.

- Upon information and belief, the Visor Parties allege that Baykal and Yahsi loaned Visor Turkey's \$2.15 million investment, without Visor Turkey's knowledge, at an annual interest rate of twelve percent. Baykal and Yahsi later transferred or received in excess of \$500,000 to personal accounts and returned only \$1.95 million to Visor Turkey, \$200,000 less than the amount Visor Turkey invested in 2011–12.
- The Visor Parties alleged that Baykal and Yahsi (1) intentionally misrepresented the structure of the hotel investment to induce Visor Turkey and Visor U.S. to invest and (2) did not disclose the interest paid on the loan.

The Visor Parties alleged the following claims: (1) money had and received; (2) breach of fiduciary duty, (3) fraud, (4) conversion, (5) violations of the Texas Theft Liability Act, and (6) wrongful usurpation of a corporate opportunity. The Visor Parties also alleged the following vicarious-liability theories: (1) aiding and abetting breach of fiduciary duty, and (2) civil conspiracy.²

Baykal answered without challenging the trial court's ability to exercise personal jurisdiction over him. Yahsi filed a special appearance including a declaration by Yahsi and challenging the trial court's ability to exercise personal jurisdiction over him. The Visor Parties responded in opposition, submitting various documents. The Visor Parties supplemented their response, submitting excerpts from Yahsi's deposition. The trial court signed an order denying Yahsi's special appearance. Yahsi has timely perfected this interlocutory appeal and now challenges the trial court's ruling on personal jurisdiction. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(7).

² Aiding and abetting and civil conspiracy are derivative-liability theories; they are not independent claims. *See Nettles v. GTECH Corp.*, 606 S.W.3d 726, 738 (Tex. 2020).

II. STANDARD OF REVIEW

Whether Yahsi is subject to personal jurisdiction in Texas is a question of law subject to de novo review. *See BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002). The trial court did not issue any findings of fact or conclusions of law. Therefore, all facts necessary to support the trial court's ruling and supported by the evidence are implied in favor of the trial court's decision. *Id.* at 795. Parties can challenge the legal and factual sufficiency of these implied factual findings. *Id.* In conducting a legal-sufficiency analysis, we review the evidence in the light most favorable to the challenged finding and indulge every reasonable inference that would support it. *See City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005). We must credit favorable evidence if a reasonable factfinder could and disregard contrary evidence unless a reasonable factfinder could not. *See id.* at 827. We must determine whether the evidence at trial would enable reasonable and fair-minded people to find the facts at issue. *See id.* The factfinder is the sole judge of the credibility of the witnesses and the weight of their testimony. *See id.* at 819.

III. ISSUE AND ANALYSIS

In his sole appellate issue, Yahsi asserts that the trial court erred in determining that it could exercise personal jurisdiction over him. The Texas long-arm statute allows a court to exercise personal jurisdiction as far as the federal constitutional requirements of due process will permit. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 17.041–.045 (West, Westlaw through 2021 R.S.); *BMC Software*, 83 S.W.3d at 795. The plaintiff bears the initial burden of pleading allegations sufficient to confer jurisdiction under the Texas long-arm statute. *See Moncrief Oil Int'l, Inc. v. OAO Gazprom*, 414 S.W.3d 142, 149 (Tex. 2013). The long-arm statute allows the exercise of personal jurisdiction over a nonresident defendant

who “commits a tort in whole or in part in [Texas].” Tex. Civ. Prac. & Rem. Code § 17.042(1),(2) (West, Westlaw through 2021 R.S.). Because the Visor Parties satisfied their initial burden, the burden shifted to Yahsi to negate all potential bases for personal jurisdiction the Visor Parties alleged. *See Moncrief Oil Int'l, Inc.*, 414 S.W.3d at 149; *Amec Foster Wheeler, PLC v. Enterprise Prods. Operating, LLC*, —S.W.3d—, 2020 WL 897376, at *4 (Tex. App.—Houston [14th Dist.] 2020, pet. denied).

Personal jurisdiction over a nonresident defendant is constitutional when two conditions are met: (1) the defendant has established minimum contacts with the forum state and (2) the exercise of personal jurisdiction comports with traditional notions of fair play and substantial justice. *See BMC Software*, 83 S.W.3d at 795. For a defendant to have sufficient contacts with the forum, it is essential that there be some act by which the defendant “purposefully avails” itself of the privilege of conducting activities in the forum state, thus invoking the benefits and protections of its laws. *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 784 (Tex. 2005). In analyzing personal jurisdiction, only the defendant’s purposeful contacts with the forum count; personal jurisdiction over a defendant cannot be based on the unilateral activity of another party. *Id.* at 785. A defendant should not be subject to a Texas court’s jurisdiction based on random, fortuitous, or attenuated contacts. *Id.* For there to be purposeful availment, a defendant must seek some benefit, advantage, or profit by “availing” itself of the jurisdiction. *Id.*

Although not determinative, foreseeability is an important consideration in deciding whether the nonresident defendant purposefully has established minimum contacts with Texas. *BMC Software*, 83 S.W.3d at 795. The concept of foreseeability is implicit in the requirement that there be a substantial connection between the defendant and Texas arising from the defendant’s conduct

purposefully directed toward Texas. *See Guardian Royal Exch. Assur., Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 227 (Tex. 1991).

A. Did Yahsi negate all potential bases for personal jurisdiction alleged by the Visor Parties?

In support of his special appearance, Yahsi submitted his declaration, executed in Istanbul, Turkey in both Turkish and English, in which he testified in pertinent part:

1. Yahsi is a citizen of the Republic of Turkey and a resident of Turkey. Yahsi “also resides part time” in Kazakhstan.
2. Yahsi is not, and has never been, a resident of the state of Texas.
3. Yahsi has a very limited command of the English language.
4. Yahsi has been to the state of Texas only nine times in the last seven years. Six of the Texas visits were on behalf of his employer, Almaty, a Turkish company based in Istanbul, Turkey that owns the Intercontinental Hotel in Istanbul, and also owns an interest in several United States partnerships that own three hotels in downtown Houston. One visit was for medical treatment. Of all the visits to Texas, only two were related in any way to the issues in this case. The first was in the fall of 2011 when Yahsi visited the potential Dallas hotel site on behalf of Visor Turkey. The second was in November of 2015 when Yahsi worked to close down the operations of Visor U.S., on behalf of Visor Turkey and as specifically required by Yahsi’s October 2015 written stock sale and settlement agreement with Visor Turkey and its one remaining owner, Gökhan Arasli.
5. Yahsi was a shareholder in Plaintiff Visor Turkey, a Turkish entity, until the October 2015 stock sale and settlement agreement. Yahsi was never an owner, manager, officer, director, or employee of its wholly owned US subsidiary, Visor U.S.
6. Other than his brief visit to Dallas in 2011 to survey the potential hotel property, and his visit in 2015 to comply with his stock sale and settlement obligations to Visor Turkey and its one remaining owner, Gökhan Arasli, Yahsi has taken no actions in the United States or in Texas that relate in any way to the transactions at issue in this case.
7. Other than his brief visit to Dallas in 2011, and his visit in 2015 to comply with his stock sale and settlement obligations to Visor Turkey, all actions

Yahsi took that have anything to do with Visor Turkey or Vizor U.S. (or their officers, managers, or agents) occurred while Yahsi was outside of the United States.

8. Yahsi has one bank account in Houston, Texas. Yahsi uses that account to send money to his daughter and to make investments outside of the United States. None of the monies at issue in this case were placed in or passed through this account.
9. Yahsi made no representations, promises, or contractual agreements to or with any of the Visor Parties (or their officers, managers, or agents) in Texas relating to any of the issues in this case while in the state of Texas.
10. Yahsi has not taken any action in Texas that was a breach of any legal duty to Visor Turkey. Yahsi also took no action in Texas against the interests of Vizor U.S.
11. Yahsi did not convert any property of the Visor Parties in Texas. Yahsi did not possess any of the Visor Parties' property in Texas. Yahsi did not commit civil theft of the Visor Parties' property in Texas under section 134 of the Texas Civil Practices and Remedies Code.
12. Yahsi did not usurp or otherwise take for himself or anyone else any of the Visor Parties' corporate opportunities in Texas.
13. Yahsi has never:
 - a. Owned any property in Texas;
 - b. Advertised in Texas;
 - c. Sold any products or services to any clients or customers in Texas;
 - d. Maintained any telephone listings in Texas;
 - e. Maintained any personal records in Texas; or
 - f. Initiated any lawsuits in Texas.
14. A dispute between Yahsi and Visor Turkey and its sole owner Mr. Gökhan Arasli is currently pending in the Turkish courts. This suit is styled: Case No 2016/739; *Ebubekir Yahşi v. Gökhan Arasli*; In the 3rd Commercial Court of the First Instance of Ankara, Republic of Turkey (the "Pending Turkish Suit"). The Pending Turkish Suit includes claims that Visor Turkey and its sole owner Gökhan Arasli entered into a written stock sale and settlement agreement in October 2015 that released all of the claims against Yahsi at issue in this Texas lawsuit.

15. In addition, Yahsi asserts that Gökhan Arasli is a necessary party to this action because of representations he made to Yahsi concerning the closing out of Visor Turkey's wholly owned United States subsidiary Visor U.S., and because the written October 2015 stock sale and settlement agreement entered into by Visor Turkey, Gökhan Arasli, and Yahsi releases all of the claims against Yahsi.

We conclude that Yahsi negated all potential bases for personal jurisdiction alleged by the Visor Parties. *See Schuman v. TSP Development, Ltd.*, No. 14-04-01159-CV, 2005 WL 1772262, at *3–4 (Tex. App.—Houston [14th Dist.] Jul. 26, 2005, no pet.) (mem. op.).

B. What did the Visor Parties' evidence show about Yahsi's purposeful contacts with Texas?

Because Yahsi negated all potential bases for personal jurisdiction alleged by the Visor Parties, the burden shifted to the Visor Parties to present evidence supporting the Visor Parties' personal-jurisdiction allegations. *See 360-Irvine, LLC v. Tin Star Dev., LLC*, No. 05-14-00412-CV, 2015 WL 3958509, at *3 (Tex. App.—Dallas Jun. 30, 2015, no pet.) (mem. op.). In their response in opposition to Yahsi's special appearance, the Visor Parties submitted five exhibits. The first exhibit was a copy of the Visor Parties live pleading. This pleading is not sworn and does not constitute competent evidence to be considered in ruling on Yahsi's special appearance. *See Laidlaw Waste Sys. (Dallas), Inc. v. City of Wilmer*, 904 S.W.2d 656, 660 (Tex. 1995); *Turman v. POS Partners, LLC*, 541 S.W.3d 895, 903 (Tex. App.—Houston [14th Dist.] 2018, no pet.).

The second exhibit contains various documents filed by or on behalf of one of the Texas LLCs in either the Office of the Secretary of State of Texas or in the Office of the Comptroller of Public Accounts of the State of Texas. The documents relating to Kassanov USA, LLC indicate that Kassanov was formed in February 2010. A certificate of termination for Kassanov, signed by Baykal was filed in

March 2015. The certificate of termination indicates that Yahsi was one of four “Governing Persons” of Kassanov when the certificate was filed. The documents also indicate that Yahsi was one of Kassanov’s members and one of Kassanov’s “directors” from 2011 through 2015.

The documents relating to BIND Enterprise, LLC indicate that BIND was formed in June 2010, with Yahsi and Baykal as the initial managers. A certificate of termination for BIND, signed by Yahsi was filed in December 2014. The certificate of termination indicates that Yahsi was one of the two “Governing Persons” of BIND when the certificate was filed. The documents also indicate that Yahsi was one of BIND’s members and one of BIND’s “directors” from 2011 through 2013.

The documents relating to East West Commerce, LLC indicate that East West Commerce was formed in September 2010, with Yahsi and Baykal as the initial managers. A certificate of termination for East West Commerce, signed by Yahsi was filed in December 2014. The certificate of termination indicates that Yahsi was the sole “Governing Person” of East West Commerce when the certificate was filed. The documents also indicate that Yahsi was East West Commerce’s sole member and sole “director” from 2011 through 2014.

The documents relating to Global Trade & Investments, LLC indicate that Global Trade was formed in 2010 or 2011, with Baykal as the initial manager. The documents also indicate that Baykal was Global Trade’s manager in 2015, 2016, and 2017, and that Yahsi was Global Trade’s sole member and sole “director” from 2011 through 2017.

The third exhibit attached to the Visor Parties’ special-appearance response contained two similar documents. The first document indicates that according to Equifax, the utilities at 12818 Kingsbridge Lane, Houston, Texas 77077 were put

in Yahsi's name in December 2015. This address is attributed to Yahsi, Baykal, Global Trade & Investments, LLC, BIND Enterprise, LLC, and Kassanov USA, LLC in some of the documents in the second exhibit. The second document indicates that according to Equifax, the utilities at 10700 Richmond Avenue, Unit 120, Houston, Texas 77042 were put in Yahsi's name in February 2013. The Visor Parties have asserted that this second address is ALH-18's address. The jurisdictional evidence³ does not address what ALH-18's address is.

The fourth exhibit attached to the Visor Parties' special-appearance response is a notice from the Internal Revenue Service ("IRS") dated September 29, 2011, in which the IRS assigned Visor U.S. an Employer Identification Number. The IRS addressed this notice to "VIZOR INTERNATIONAL LLC, EBUBEKIR YAHSI SOLE MBR, 12818 KINGSBRIDGE LANE, HOUSTON, TEXAS 77077." Though this address suggests that Yahsi is the sole member of Visor U.S., Yahsi testified that he was never an owner of Visor U.S., and the Visor Parties admit in their live pleading that Visor Turkey is the sole member of Visor U.S.

The fifth exhibit attached to the Visor Parties' special-appearance response contains two unauthenticated pages. The first page is not dated. The document indicates that ALH-18 currently owns one hundred percent of .904 acres of land in Dallas, Texas and that there was a proposal to have the "Kassanov Group" own fifty percent of the land, to have the "Bekir Yahsi Group" own thirty percent of the land, and to have the "Massad Group" own twenty percent of the land. The document indicates that the land will be used to construct an Embassy Suites Hotel and that "stock" will be issued in "the partnership to each owner; if not issued by July 1, 2011, all monies will be returned within 5 business days." The document

³ "Jurisdictional evidence," as used in this opinion, means the evidence before the trial court when the court denied Yahsi's special appearance.

does not indicate who created this document, where it was created, or what was done with it, and none of the jurisdictional evidence addressed any of these points.

The second page of the fifth exhibit is dated July 8, 2011. The document appears to show a projected investment in a proposed project and projected future “Potential Distributions.” The document shows “ALH Group” investing twenty percent, “Bekir Group” investing thirty percent, and “Kassanov Group” investing fifty percent. The document contains the following statement: “For Discussion Purposes Only – DRAFT Subject to final review and possible revision. Actual debt structure has yet to be determined.” In the bottom, right-hand corner of the document, it states without explanation: “7/9/2011, 3:05 PM.” The document does not indicate who created this document, where it was created, or what was done with it, and none of the jurisdictional evidence addressed any of these points.

The Visor Parties filed a supplemental response in opposition to Yahsi’s special appearance in which they submitted the transcript of Yahsi’s deposition testimony. Yahsi traveled to Houston and the Visor Parties took his deposition on personal-jurisdiction issues.

At his deposition, Yahsi testified to the following contacts with Texas:

- Yahsi first visited Texas for five or six days in 1996 as a tourist and to visit two friends, Baykal and “Nassar.” When Yahsi first came to Houston he lent Baykal some money. There was no written agreement because Baykal is “like a brother to [Yahsi].” The loan was not for business. Baykal needed money, so Yahsi lent him money. Baykal paid back approximately five to ten thousand dollars, and every time Yahsi came to Texas, he spent that money.
- Starting in 2009, Yahsi visited Texas once a year, usually for a one-week visit. The purpose of these visits was tourism and looking to see if Yahsi could do any business in Texas.
- Yahsi is the owner of BIND Enterprises, LLC. Yahsi signed the formation papers, and Baykal “did all the paperwork and signing.” As

BIND Enterprises's owner Yahsi gave Baykal authority over the phone to form BIND Enterprises for Yahsi. In 2015 Baykal terminated the existence of BIND Enterprises. BIND Enterprises did not have any equipment and really did not do any business. Baykal called Yahsi to say that they should terminate BIND Enterprises, and Yahsi agreed. Yahsi was not involved in negotiating any lease for office space for BIND Enterprises. Yahsi did not provide any financial guarantee for any leases for BIND Enterprises.

- Yahsi was a member of Kassanov USA, LLC, which Baykal formed because "they wanted to do some business in Texas." Kassanov did not do any business. Yahsi's role in Kassanov USA was to give his friend Baykal "consulting, you know, some ideas . . . [a]s just a friend." Yahsi did not invest any money in Kassanov USA.
- Yahsi asked Baykal to form East West Commerce, LLC for Yahsi. East West was formed "because in Turkmenistan there was a hotel project." A company was created in Texas for a business in Turkmenistan because "[t]he friends wanted it like that." East West never did any business for companies or individuals in Texas.
- Global Trade & Investments, LLC did general consulting in Texas. Yahsi is the owner of Global Trade & Investments, and Baykal is an employee of the company. Global is not doing anything right now and does not have any equipment. Global leased office space at 12818 Kingsbridge Lane, where a house is located rather than an office building. Baykal signed the lease on behalf of Global for that space. Yahsi did not provide any financial guarantee for Global's lease. Yahsi did not know if Global had an office at the time of his deposition. A year before the deposition was the last time Yahsi went to Global's office and it was located in Baykal's house at 12818 Kingsbridge Lane. Global has done consulting work for a company located in Texas. Global enters into written consulting contracts when it does work for a company.
- Baykal resides in Houston, Texas. Baykal was an employee of East West Commerce, Kassanov USA, and BIND Enterprises. Yahsi called Baykal on the phone while Baykal was in Houston and asked him to form each of the Texas LLCs. As the owner of the Texas LLCs, Yahsi would rely on Baykal. The Texas LLCs were not intertwined in some way.

- Yahsi visited Texas the year before his deposition, and he went shopping and ate at restaurants. Yahsi visits Texas once a year to visit an accountant so he may sign documents. Yahsi thinks the documents have something to do with taxes. Yahsi does not remember how many times he has visited an accountant while on a trip to Texas; Yahsi said he “might go once or two times.”
- When asked how many bank accounts he had opened in Texas, Yahsi answered both “[o]ne or two,” and “I don’t know.” Yahsi does not remember when he opened any Texas bank account. The purpose of his personal bank accounts in Texas is to transfer some money every month to his daughter, who lives in Washington, D.C. Yahsi does not “remember what [he was] thinking when [he] opened the bank account.” Yahsi indicated that his bank accounts were still open at the time of Yahsi’ deposition.
- Yahsi is not sure whether he uses his bank account for any purpose other than sending money to his daughter because Baykal is also authorized to use his bank account as a manager of Global. The money that is being transferred from Global to Yahsi’s bank account and then to Yahsi’s daughter is coming from the consulting that Global did. Yahsi does not remember whether he transferred money from Turkey to Texas and then to Washington, D.C., nor does Yahsi remember the last time he transferred money from a Texas bank account to his daughter. Yahsi has not talked to Baykal about whether the money that Global has to transfer to Yahsi’s daughter is going to run out. Yahsi is sure that money is being transferred to his daughter, but he does not know how much is being transferred.
- Yahsi does not know the last time he transferred money into a Texas bank account. The reason Yahsi does not know this is that Baykal does all the transfers. Baykal is the director of Global, so Baykal does the money transfers.
- Yahsi does not know any of the following: (1) whether funds are transferred from Global to Yahsi’s personal bank account, (2) where the money going into Yahsi’s account would come from if it did not come from Yahsi or Global, (3) whether Yahsi still sends his daughter money each month, (4) whether Global has its own bank account, (5) what the last project that Global worked on was, (6) when Global worked on its last project, (7) if there is money in Global right now, (8) when Yahsi last put money into Global, (9) whether BIND

Enterprises, Kassanov USA, or East West Commerce had a bank account in Texas, (10) the names of the companies located in Texas for whom Global has done consulting work, or (11) whether BIND Enterprises, Kassanov USA, or East West Commerce did any work for companies in Texas.

- Yahsi came to Houston one time to have medically necessary nose surgery and also to do sightseeing. Yahsi does not remember entering into contracts with the doctor and the hospital. Yahsi did not sign anything agreeing to pay the doctor and hospital for their services. Yahsi paid the doctor and hospital for their services.
- Yahsi has not loaned Nick Massad any money. Yahsi indicated that “Visor” loaned Massad money. Yahsi did not authorize “Visor” to loan money to Massad.
- Yahsi comes to Texas once a year. When Yahsi is not in Texas, he talks to Baykal, who is in Texas, on the phone and Yahsi authorizes Baykal to do whatever Baykal needs to do. With regard to the hotel project, if Baykal had any questions about what he was to do, Baykal and Yahsi would talk on the phone; Baykal would tell Yahsi that this bill needs to be paid and then he would pay it “from the Visor.”
- When Yahsi comes to Texas he looks at any business for research purposes but not to invest in. Yahsi came to Texas twice related to the hotel project in Dallas. The last time Yahsi came to Texas before the trip for his deposition was the year before his deposition, when Yahsi came did some shopping and visited the accountant.

C. Did the trial court err in determining that it could properly exercise personal jurisdiction over Yahsi based on general jurisdiction?

A court may exercise general jurisdiction over a nonresident corporation whose contacts with the forum state are so continuous and systematic as to render the corporation “essentially at home” in the forum state. *See Daimler AG v. Bauman*, 571 U.S. 117, 127, 139 (2014); *Old Republic Nat’l Title Ins. Co. v. Bell*, 549 S.W.3d 550, 565 (Tex. 2018). As to an individual defendant, such as Yahsi, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile. *Bauman*, 571 U.S. at 137; *see Domicile*, Black’s Law Dictionary (11th

ed. 2019) (defining domicile as “The place at which a person has been physically present and that the person regards as home; a person’s true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere”). An individual may have multiple residences but only one domicile. *See Chow v. Rodriguez San Pedro*, No. 14-18-00429-CV, 2019 WL 4021908, at *6 (Tex. App.—Houston [14th Dist.] Aug. 27, 2019, pet. denied) (mem. op.). We presume, without deciding, that in an exceptional case, an individual defendant’s contacts with a forum state other than the state of the individual’s domicile may be so substantial and of such a nature as to make the individual “essentially at home” in that forum state. *See Bauman*, 571 U.S. at 139 n. 19 (allowing for such an exceptional case for a corporate defendant); *but see Cambria Cty. Employees’ Retirement Sys. v. Venator Materials PLC*, No. 4:19-CV-03464, 2021 WL 1226630, at *6–7 (S.D. Tex. 2021) (concluding that the exceptional case mentioned in *Bauman* does not apply to individual defendants).

General jurisdiction may be established whether or not the nonresident defendant’s alleged liability arises from those contacts. *See Old Republic Nat’l Title Ins. Co.*, 549 S.W.3d at 565. A general-jurisdiction inquiry is very different from a specific-jurisdiction inquiry and involves a more demanding minimum-contacts analysis, with a substantially higher threshold. *Id.* Even if Yahsi’s contacts with Texas were continuous and systematic, they still would be insufficient to confer general jurisdiction if the contacts fail to rise to the level of making Yahsi “essentially at home” in Texas. *See id.*

In support of their argument that the trial court properly exercised personal jurisdiction over Yahsi based on general jurisdiction, the Visor Parties point to Yahsi’s contacts with Texas arising from his involvement with the Texas LLCs. We presume for the sake of argument that as to each of the Texas LLCs, Yahsi was

the sole member for the entirety of each company's existence and that Yahsi had the other Texas contacts in connection with the Texas LLCs that are mentioned in the previous section of this opinion. We also presume that Yahsi has two personal bank accounts in Texas, resulting in the Texas contacts mentioned in the previous section. Though there is no evidence as to how or why utilities at two Houston addresses were put in Yahsi's name, we presume that in February 2013, the utilities for 10700 Richmond Avenue, Suite 120 were put in Yahsi's name and that in December 2015, the utilities for 12818 Kingsbridge Ln. were put in Yahsi's name. Nonetheless, having the utilities in Yahsi's name does not mean that Yahsi owned the real property served by the utilities, and there is no evidence that Yahsi has ever owned real property in Texas or that Yahsi owned or rented a house or apartment in Texas. The record shows that the IRS sent the notice of Employer Identification Number for Visor U.S. to "VIZOR INTERNATIONAL LLC, EBUBEKIR YAHSI SOLE MBR, 12818 KINGSBRIDGE LANE, HOUSTON, TEXAS 77077." Nonetheless, the IRS's addressing the notice in this way does not necessarily mean that Yahsi is the sole member of Visor International. No other evidence indicates that Yahsi is a member in Visor U.S. The Visor Parties—one of whom is Visor U.S.—judicially admitted that Visor Turkey is the sole member of Visor U.S. Nonetheless, we presume for the sake of argument that Yahsi filed the application asking the IRS to assign an Employer Identification Number for Visor U.S. The Visor Parties also assert that a proposal related to the hotel project, which the Visor Parties admit was not put into effect, anticipated that Yahsi or one of the Texas LLCs would obtain a majority interest in the hotel project. We presume that this is so. Even under all of the foregoing presumptions, under the applicable standard of review, we conclude that the evidence is legally insufficient to support an implied finding that (1) Texas is Yahsi's domicile, or (2) Yahsi's contacts with Texas are so continuous and systematic as to render Yahsi "essentially at home" in

Texas. *See Reich v. Lopez*, 858 F.3d 55, 63 (2d Cir 2017); *Old Republic Nat'l Title Ins. Co.*, 549 S.W.3d at 565.; *Chow*, 2019 WL 4021908, at *5–7; *Huynh v. Nguyen*, No. 01-17-00935-CV, 2018 WL 4131896, at *6 (Tex. App.—Houston [1st Dist.] Aug. 30, 2018, no pet.) (mem. op.).

The Visor Parties also assert that Yahsi has purposefully sought the advantages of Texas business organizations law. The Visor Parties cite two cases in support of this proposition. *See Gonzalez v. Lehtinen*, No. 13-06-441-CV, 2008 WL 668600, at *8 (Tex. App.—Corpus Christi Mar. 13, 2008, pet. denied) (mem. op.); *TexVa, Inc. v. Boone*, 300 S.W.3d 879, 889 (Tex. App.—Dallas 2009, pet. denied) (mem. op.). Though Yahsi's presumed ownership of the Texas LLCs does indicate that Yahsi has purposefully sought the advantages of owning Texas limited liability companies, owning Texas limited liability companies is not the same as having one's domicile in Texas. *See Reich*, 858 F.3d at 63 (concluding that trial court in New York did not err in determining it could not exercise personal jurisdiction based on general jurisdiction even though the individual defendant domiciled outside of New York had business relationships in New York, owned an apartment in New York, and spent small percentage of nights in New York). In *Gonzalez*, the court of appeals concluded that the trial court properly exercised personal jurisdiction over a Mexican citizen and resident because that individual was the alter ego of a Texas limited liability company; the *Gonzalez* court did not conclude that the Mexican citizen's contacts with Texas, absent application of the alter-ego theory, would rise to the level necessary to support general jurisdiction. *See* 2008 WL 668600, at *4–7. In the part of the *Gonzalez* opinion on which the Visor Parties rely, the court addressed whether the exercise of personal jurisdiction comported with traditional notions of fair play and substantial justice, not whether general jurisdiction was satisfied. *See id.* at *8. The *Gonzalez* case is not on point.

In the part of the *TexVa* opinion on which the Visor Parties rely, the court of appeals was conducting a specific-jurisdiction analysis, and the *TexVa* court reversed the trial court's ruling based on specific jurisdiction, not general jurisdiction. *See* 300 S.W.3d at 889–91. The *TexVa* case is not on point.

To the extent the trial court concluded it could properly exercise personal jurisdiction over Yahsi based on general jurisdiction, the trial court erred. *See Reich*, 858 F.3d at 63; *Old Republic Nat'l Title Ins. Co.*, 549 S.W.3d at 565.; *Chow*, 2019 WL 4021908, at *5–7; *Huynh*, 2019 WL 4131896, at *6.

D. Did the trial court err in determining that it could properly exercise personal jurisdiction over Yahsi based on specific jurisdiction?

Specific jurisdiction exists when the claims in question arise from or relate to the defendant's purposeful contacts with Texas. *Am. Type Culture Collection Inc. v. Coleman*, 83 S.W.3d 801, 807 (Tex. 2002). In conducting a specific-jurisdiction analysis, we focus on the relationship among the defendant, Texas, and the litigation. *See Guardian Royal*, 815 S.W.2d at 228. For a nonresident defendant's contacts with Texas to support an exercise of specific jurisdiction, there must be a substantial connection between the defendant's purposeful contacts with Texas and the operative facts of the litigation. *See Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 585 (Tex. 2007).

In determining whether the Visor Parties presented evidence showing a substantial connection between Yahsi's purposeful contacts with Texas and the operative facts of the litigation, we review the claims in question and the evidence regarding the jurisdictional facts, but we do not determine the merits of the claims. *See TV Azteca, S.A.B. De C.V. v. Ruiz*, 490 S.W.3d 29, 35 n.1 (Tex. 2016); *Dresser-Rand Group v. Centauro Capital, S.L.U.*, 448 S.W.3d 577, 584 (Tex. App.—Houston [14th Dist.] 2014, no pet.). Ultimate liability in tort is not a

jurisdictional fact, and the merits of the Visor Parties' claims are not at issue in determining whether the trial court erred in ruling on Yahsi's special appearance. *See id.* Thus, though we describe the substance of the Visor Parties' claims for the purposes of our personal-jurisdiction analysis, we do not adjudicate these claims or weigh their merit. *See id.* at 586, n.4. In resolving the personal-jurisdiction issues in this appeal, we are to focus on the relationship among Yahsi, Texas, and the litigation and determine whether a substantial connection exists between Yahsi's purposeful contacts with Texas and the operative facts of the litigation. *See Moki Mac River Expeditions*, 221 S.W.3d at 585; *Guardian Royal*, 815 S.W.2d at 228.

In his declaration, Yahsi testified that he made no representations, promises, or agreements to or with any of the Visor Parties (or their officers, managers, or agents) in Texas relating to any of the issues in this case while in the state of Texas. Yahsi also testified that he did not possess any of the Visor Parties' property in Texas.

The Visor Parties assert that the trial court may exercise personal jurisdiction over Yahsi based on specific jurisdiction because Yahsi allegedly engaged in a tort in Texas by allegedly defrauding the Visor Parties in Texas. The Visor Parties contend that in 2011, Yahsi approached the management of Visor Turkey with an investment opportunity to develop a hotel in Dallas, Texas. The Visor Parties allege that Yahsi intentionally misrepresented the structure of the hotel investment to induce the Visor Parties to invest and that Yahsi did not disclose a loan to ALH-18 or the interest paid on this loan. The merits of these claims are not at issue in this appeal; nonetheless the Visor Parties had the burden of submitting evidence in support of their allegation that Yahsi defrauded the Visor Parties in Texas. *See 360-Irvine, LLC*, 2015 WL 3958509, at *3. According to Yahsi's declaration,

the discussions in which Yahsi allegedly engaged in the fraudulent conduct did not take place in Texas. The Visor Parties did not submit any testimony from an agent or representative of Visor Turkey or Visor U.S. There was no evidence before the trial court that these discussions occurred in Texas. On this record, the evidence is legally insufficient to support a finding that Yahsi's alleged fraud occurred in Texas. *See Davis Investments, VI, LP v. Holtgraves*, No. 14-08-00222-CV, 2009 WL 975961, at *9 (Tex. App.—Houston [14th Dist.] Feb. 26, 2009, pet. denied) (mem. op.).

According to the Visor Parties, Yahsi unlawfully diverted funds from Visor U.S., with some of the funds going into Global Trade & Investment, LLC's accounts. Though the merits of this claim is not at issue in this appeal, the Visor Parties had the burden of submitting evidence in support of their allegation that Yahsi misappropriated the Visor Parties' funds in Texas. *See 360-Irvine, LLC*, 2015 WL 3958509, at *3. But, no evidence before the trial court showed the state in which these funds of Visor U.S. were located or the state in which Global's accounts were located. According to the Visor Parties' live pleading, Visor Turkey gained access to bank statements of Visor U.S., which, along with other records indicate the following: (1) interest received by Visor U.S. on Visor Turkey's \$2.15 million investment exceeded \$500,000.00; and (2) Baykal transferred in excess of \$500,000 from the bank account of Visor U.S. to other accounts owned or controlled by Baykal or Yahsi. Nonetheless, neither of the Visor Parties submitted any of these bank statements and records or any evidence as to what these statements and records show. No party submitted to the trial court any evidence of these transfers or the location of the accounts involved in the transfers. There was also no evidence that Visor U.S., Baykal, or Yahsi loaned any funds to ALH-18 or that ALH-18 executed a promissory note in favor of Visor U.S. Nor was there any

evidence that Visor U.S. received any interest on Visor Turkey's \$2.15 million. No evidence before the trial court showed that Yahsi appropriated or transferred any funds of Visor U.S. or of Visor Turkey that were located in Texas. On this record, the evidence is legally insufficient to support a finding that Yahsi's alleged misappropriation of the Visor Parties' funds occurred in Texas. *See Davis Investments, VI, LP*, 2009 WL 975961, at *9.

The Visor Parties assert that Yahsi participated in a civil conspiracy with Texas resident Baykal. Yahsi's alleged participation in a conspiracy with a Texas resident does not give Texas courts the ability to exercise personal jurisdiction over Yahsi, and this alleged conspiracy does not allow Texas courts to attribute Baykal's Texas contacts to Yahsi in determining whether Texas courts may exercise personal jurisdiction over Yahsi in this case. *See M&F Worldwide Corp. v. Pepsi-Cola Metropolitan Bottling Co., Inc.*, 512 S.W.3d 878, 887 (Tex. 2017); *Alenia Spazio, S.p.A. v. Reid*, 130 S.W.3d 201, 214–15 (Tex. App.—Houston [14th Dist.] 2003, pet denied).

The Visor Parties assert that Baykal acted as Yahsi's agent and employee with regard to the hotel project. No evidence supports such a finding. Yahsi was asked at his deposition whether Baykal was Yahsi's employee. Yahsi answered that Baykal is not Yahsi's employee; instead, Baykal is the company's employee. Yahsi testified that Baykal is an employee of Global Trade & Investments, LLC, and that Baykal was an employee of Kassanov USA, LLC, BIND Enterprise, LLC, and East West Commerce, LLC. There is no evidence that Baykal was or is Yahsi's employee. As stated above, we presume that Yahsi owned each of the Texas LLCs, and the evidence also shows that Yahsi was a manager, "Governing Person," and "director" of BIND Enterprise and East West Commerce and that Yahsi is a director of Global Trade & Investments. None of the jurisdictional

evidence shows that Baykal is Yahsi's agent.

The Visor Parties also note that Yahsi visited Texas twice in regard to the hotel project. Yahsi provided the only evidence as to these two visits. Yahsi testified that the first visit was in the Fall of 2011 when Yahsi visited the potential Dallas hotel site on behalf of Visor Turkey. The second was in November of 2015 when Yahsi, on behalf of Visor Turkey, worked to close down the operations of Visor U.S., as specifically required by Yahsi's October 2015 written stock sale and settlement agreement with Visor Turkey and its one remaining owner, Gökhan Arasli. There is no evidence that during either trip Yahsi engaged in discussions with representatives of either of the Visor Parties, made any representations, or transferred any funds.

The Visor Parties argue that, because Yahsi cannot identify the source of the funds transferred from Global and sent to Yahsi's daughter, the Visor Parties believe that these funds were "the ill-gotten gains from the defrauding of [the Visor Parties]." But Yahsi testified at his deposition that the source of these funds was consulting work that Global had done in the past.

The Visor Parties also contend that Yahsi took "an interest in Texas real property." None of the jurisdictional evidence showed that Yahsi ever owned any interest in any Texas real property.

Under the applicable standard of review, we conclude that the evidence is legally insufficient to support an implied finding that a substantial connection exists between Yahsi's purposeful contacts with Texas and the operative facts of the litigation. *See Schuman*, 2005 WL 1772262, at *3. To the extent the trial court concluded it could properly exercise personal jurisdiction over Yahsi based on specific jurisdiction, the trial court erred. *See id.*

III. CONCLUSION

The trial court erred in impliedly determining that it could properly exercise personal jurisdiction over Yahsi based on specific and general jurisdiction. Because the trial court erred in denying Yahsi's special appearance, we sustain Yahsi's sole issue, reverse the trial court's order, and remand with instructions to the trial court to dismiss the claims against Yahsi for lack of personal jurisdiction.

/s/ Randy Wilson
Justice

Panel consists of Justices Jewell, Spain, and Wilson (Spain, J., concurring in the court's judgment but not in the court's opinion).