

Reversed and Rendered and Memorandum Opinion filed August 16, 2022.



In The

Fourteenth Court of Appeals

NO. 14-20-00858-CV

AQUA TERRA U.S. HOLDINGS, LLC, Appellant

V.

PAPPAS HARRIS CAPITAL, LLC, Appellee

**On Appeal from the 295th District Court
Harris County, Texas
Trial Court Cause No. 2020-10778**

MEMORANDUM OPINION

This is the interlocutory appeal of the trial court's denial of a special appearance involving a parent company and its subsidiary. Concluding that the trial court lacks personal jurisdiction over the parent company, we reverse and render judgment dismissing the claims of Pappas Harris Capital, LLC (Pappas) against Aqua Terra U.S. Holdings, LLC (Aqua Terra U.S. Holdings).

Background

There are several entities involved in this case. The live petition was filed by Pappas against Advance Hydrocarbon Corporation (Advance) and “Aqua Terra Water Management a/k/a Aqua Terra U.S. Holdings, L.L.C.” and individuals Cory Hall and Mark Gandy.¹ Aqua Terra U.S. Holdings is a holding company and a parent of Advance. Pappas alleges that another entity, Bregal Partners, owns “the salt water trucking division of Advance and Aqua Terra, companies that provide disposal services and facilities to the oil and gas industry.” Aqua Terra U.S. Holdings asserts that Aqua Terra Water Management, L.P. (Aqua Terra Water Management) is a separate entity, although Pappas contends that Aqua Terra Water Management and Aqua Terra U.S. Holdings are one and the same.²

According to Pappas, Pappas and “Advance, Aqua Terra, and Bregal” signed a letter of intent and two amendments contemplating that Pappas would purchase “Advance from Aqua Terra.” Aqua Terra U.S. Holdings contends to the contrary that Advance, not an Aqua Terra entity, owns and was looking to sell the saltwater trucking division. After the parties had been negotiating the sale for several months, Hall sent a letter to Josh Harris, a Pappas partner, terminating the pending sale. After the sale fell through, Pappas brought breach-of-contract claims against only Advance and “Aqua Terra Water Management a/k/a Aqua Terra U.S. Holdings,” and claims against all defendants for promissory estoppel, negligent misrepresentation, fraud, and fraudulent inducement.

¹ Hall is the president and CEO of Advance, Aqua Terra Water Management, and Aqua Terra U.S. Holdings. Gandy is the CFO of Advance.

² The distinction among the various Aqua Terra entities is important to the jurisdictional issue, which we discuss in further detail below. However, Pappas correctly asserts that issues involving defects in named parties are not before this court on appeal. Likewise, issues involving whether the defendants in this lawsuit must disclose the identities of the proper parties to sue are not before us.

Aqua Terra U.S. Holdings filed its special appearance, contending that the trial court lacks general and specific jurisdiction. After a hearing, the trial court denied the special appearance.

Discussion

In two issues, Aqua Terra U.S. Holdings challenges the trial court's denial of its special appearance, contending the trial court lacks general and specific jurisdiction. Pappas asserts the trial court has both general and specific jurisdiction over Aqua Terra U.S. Holdings.

Whether a court has personal jurisdiction over a defendant is a question of law we review de novo. *Moncrief Oil Int'l Inc. v. OAO Gazprom*, 414 S.W.3d 142, 150 (Tex. 2013). When, as here, the trial court does not issue findings of fact or conclusions of law, we imply all facts necessary to support the trial court's ruling that are supported by the evidence. *Id.* If conflicting evidence raises a fact issue, we must uphold the trial court's resolution of it. *See TV Azteca v. Ruiz*, 490 S.W.3d 29, 36 (Tex. 2016) (citing *Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 337 (Tex. 2009)).

Personal jurisdiction over nonresident defendants satisfies the constitutional requirements of due process when the defendant has purposefully established minimum contacts with the forum state and the exercise of jurisdiction is consistent with traditional notions of fair play and substantial justice. *Id.* at 36; *Retamco*, 278 S.W.3d at 337. A defendant establishes minimum contacts with a forum if the defendant has purposely availed itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. *Moncrief*, 414 S.W.3d at 150; *Retamco*, 278 S.W.3d at 338. A defendant's minimum contacts may give rise to either specific jurisdiction or general jurisdiction. *Moncrief*, 414 S.W.3d at 150; *Retamco*, 278 S.W.3d at 338.

The plaintiff and the defendant bear shifting burdens of proof in a challenge to personal jurisdiction. *Kelly v. Gen. Interior Const., 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. *Kelly*, 301 S.W.3d at 658; *Retamco*, 278 S.W.3d at 337. Once the plaintiff has pleaded sufficient jurisdictional allegations, the defendant filing a special appearance bears the burden to negate all bases of personal jurisdiction alleged by the plaintiff. *Kelly*, 301 S.W.3d at 658. Because the plaintiff defines the scope and nature of the lawsuit, the defendant’s corresponding burden to negate jurisdiction is tied to the allegations in the plaintiff’s pleading. *Id.* The plaintiff can then respond with its own evidence that affirms its allegations, but it risks dismissal of its lawsuit if it cannot present the trial court with evidence establishing personal jurisdiction. *Id.* at 659.

Pappas pleaded that Aqua Terra U.S. Holdings “maintains a principal place of business in Houston.” At issue here is whether Aqua Terra U.S. Holdings negated jurisdiction by presenting evidence that it does not have sufficient contacts with Texas. *See id.*

I. No General Jurisdiction

General jurisdiction arises when a defendant’s contacts with the forum state “are so ‘continuous and systematic’ as to render [it] essentially at home in the forum State.” *M & F Worldwide Corp. v. Pepsi-Cola Metro. Bottling Co.*, 512 S.W.3d 878, 885 (Tex. 2017) (quoting *Goodyear Dunlop Tires Operations, SA v. Brown*, 564 U.S. 915, 919 (2011)); *see also Daimler AG v. Bauman*, 571 U.S. 117, 138–39 (2014). General jurisdiction concerns a court’s ability to exercise jurisdiction over a nonresident defendant as to any claim, including claims unrelated to the defendant’s contacts with the forum. *Daimler AG*, 571 U.S. at

138–39. The test for general jurisdiction requires substantial activities within the forum and is a “high bar.” *Searcy v. Parex Res., Inc.*, 496 S.W.3d 58, 72 (Tex. 2016). Even when a defendant’s contacts may be continuous and systematic, they are insufficient to confer general jurisdiction if they fail to rise to the level of rendering a defendant “essentially at home in the forum [s]tate.” *Old Republic Nat’l Title Ins. Co. v. Bell*, 549 S.W.3d 550, 565 (Tex. 2018).

Aqua Terra U.S. Holdings argues that the trial court lacks general jurisdiction because Aqua Terra U.S. Holdings is not organized under Texas law and does not have its principal place of business in Texas. *See Searcy*, 496 S.W.3d at 72 (“Courts do not have general jurisdiction over corporate defendants that are neither incorporated in the forum state nor have their principal place of business there, absent some relatively substantial contacts with the forum state.”). Pappas does not contend that Aqua Terra U.S. Holdings is organized under Texas law. Pappas contends that the trial court has general jurisdiction on the basis that Aqua Terra U.S. Holdings is registered to do business in Texas with a principal office located in Houston and conducts operations throughout Texas.

A company’s principal place of business, often referred to as a company’s “nerve center,” is the place where the company’s officers “direct, control, and coordinate” the company’s activities. *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010); *Ascentium Capital LLC v. Hi-Tech the Sch. of Cosmetology Corp.*, 558 S.W.3d 824, 829 (Tex. App.—Houston [14th Dist.] 2018, no pet.). The company’s nerve center normally is its headquarters, unless that is not the actual center of direction, control, and coordination. *Hertz*, 559 U.S. at 93; *Ascentium Capital*, 558 S.W.3d at 829. A company’s principal place of business is ordinarily only one place. *Daimler AG*, 571 U.S. at 137.

Pappas alleged that Aqua Terra U.S. Holdings is also known as “Aqua Terra

Water Management,” which “maintains a principal place of business in Houston.” Aqua Terra U.S. Holdings had the burden to negate this ground for jurisdiction and could do so on factual or legal grounds. *See Kelly*, 301 S.W.3d at 659; *Ascentium Capital*, 558 S.W.3d at 828. We turn to the evidence presented.

Aqua Terra U.S. Holdings’ Evidence. Aqua Terra U.S. Holdings presented an affidavit from Michelle Riley, its secretary. Riley attested that Aqua Terra U.S. Holdings is a Delaware limited liability company with its principal place of business in New York. She also stated, “The day-to-day operations of Aqua Terra [U.S. Holdings] are conducted in New York, and all strategic decisions for Aqua Terra [U.S. Holdings] are made in New York.” Aqua Terra U.S. Holdings also presented an “Original Complaint” filed by Pappas in the United States District Court for the Southern District of New York in which Pappas alleged, “Aqua Terra US Holdings, LLC, is a holding company that owns Aqua Terra Water Management, L.P. and Advanced Hydrocarbon Corporation. Aqua Terra US Holding, LLC.’s principal place of business is [in] New York, NY.”

Pappas’ Evidence. Pappas presented the following evidence:

- Aqua Terra U.S. Holdings’ 2018 “Texas Franchise Tax Public Report” listing a Houston, Texas address as the “[p]rincipal office” and “[p]rincipal place of business”;
- Business card for Cory Hall, “President & CEO” of “Aqua Terra Water Management,” referencing its “Corporate Office” in Houston, Texas;
- Web page for “Aqua Terra Water Management” that includes a Houston address, expressly referencing “Aqua Terra Water Management, L.P.” and listing employees;
- Press release from “Aqua Terra Water Management” stating that it acquired Advance;

- Information Memorandum prepared by Louisiana broker Johnson Rice & Company L.L.C. (Johnson Rice) regarding the potential sale of “Salt Water Disposal Trucking Division of Advance Hydrocarbon Corporation,” stating that Advance is part of Aqua Terra Water Management;
- Proposed Asset Purchase Agreement stating that notices would be sent “To Seller: Aqua Terra U.S. Holdings” at the Houston address; and
- Letter terminating the proposed sale that was signed by Hall as the “Chief Executive Officer & President” of Aqua Terra U.S. Holdings on letterhead from “Aqua Terra Water Management” at the Houston address.

Franchise Tax Report. According to Aqua Terra U.S. Holdings, the “Texas Franchise Tax Public Report” identifying Texas as its principal office and principal place of business is insufficient to establish that Texas is the company’s principal place of business. Filing a form that merely lists an address for a company’s principal place of business is not in itself sufficient to establish a location as a company’s nerve center. *Hertz*, 559 U.S. at 97. A company’s nerve center is “the place of actual direction, control, and coordination.” *Id.*; *Ascentium Capital*, 558 S.W.3d at 831. The Franchise Tax Public Report does not provide any information regarding where Aqua Terra U.S. Holdings’ center of direction, control, and coordination is located. *See Ascentium Capital*, 558 S.W.3d at 831. Accordingly, the franchise tax form, standing alone, does not constitute evidence that Aqua Terra U.S. Holdings’ principal place of business is in Texas.

Documents Mentioning Aqua Terra Water Management. Pappas made the bare allegation in its petition that Aqua Terra Water Management is also known as Aqua Terra U.S. Holdings and relies on several documents presented in support of its special appearance mentioning “Aqua Terra Water Management” or “Aqua Terra Water Management, L.P.” to establish general jurisdiction. But these

documents contain no reference or ascertainable link to Aqua Terra U.S. Holdings and thus do not support the allegation that Aqua Terra U.S. Holdings has its principal place of business in Texas. Accordingly, none of the aforementioned documents—the Aqua Terra Water Management business card, web page including employees in Texas,³ press release, and memorandum—establish that Aqua Terra U.S. Holdings has its principal place of business in Texas.

Documents Mentioning Aqua Terra U.S. Holdings. That leaves only two other documents that were presented with the special appearance that expressly mention Aqua Terra U.S. Holdings: (1) the proposed Asset Purchase Agreement stating that notices would be sent to Aqua Terra U.S. Holdings at a Houston address, and (2) the termination letter on letterhead from Aqua Terra Water Management in Houston signed by Hall as the CEO and president of Aqua Terra U.S. Holdings. Neither of these documents includes any information indicating that Houston is “the actual center of direction, control, and coordination” for Aqua Terra U.S. Holdings. On the other hand, Aqua Terra U.S. Holdings presented evidence that its principal place of business is in New York, its “day-to-day operations” are conducted there, and its strategic decisions are made there.

Conclusion. Aqua Terra U.S. Holdings has presented evidence that its principal place of business is not in Texas, and Pappas has not responded with evidence that affirms its allegations. Accordingly, the trial court lacked general jurisdiction over Aqua Terra U.S. Holdings. We sustain Aqua Terra U.S. Holdings’ first issue and turn to its challenge to the trial court’s exercise of specific jurisdiction.

³ There is some evidence that Hall is the CEO of Aqua Terra U.S. Holdings, in addition to being the CEO of Aqua Terra Water Management and Advance. However, there is no evidence that would establish Texas as the nerve center of Aqua Terra U.S. Holdings based on that information alone.

II. No Specific Jurisdiction

When specific jurisdiction is asserted, our analysis focuses on the relationship among the defendant, Texas, and the litigation to determine whether the plaintiff's claim arises from Texas contacts. *Moncrief*, 414 S.W.3d at 150. We analyze minimum contacts for specific jurisdiction on a claim-by-claim basis, unless all the claims arise from the same forum contacts. *Id.* at 150–51. Here, Pappas' claims against Aqua Terra U.S. Holdings are all based on the same purported contacts with Texas.

To assess whether a nonresident defendant has purposely availed itself of the privilege of conducting activities in Texas, we consider three factors. *Id.* at 151; *Retamco*, 278 S.W.3d at 338. First, only the defendant's own actions are relevant, not the unilateral activities of another party or a third party. *Moncrief*, 414 S.W.3d at 151; *Retamco*, 278 S.W.3d at 339. Second, a showing of random, isolated, or fortuitous contacts is insufficient. *Moncrief*, 414 S.W.3d at 151; *Retamco*, 278 S.W.3d at 339. Third, a defendant must seek some benefit, advantage, or profit by availing itself of the jurisdiction. *Moncrief*, 414 S.W.3d at 151; *Retamco*, 278 S.W.3d at 339. We assess the quality and nature of the contacts, not the quantity. *Moncrief*, 414 S.W.3d at 151; *Retamco*, 278 S.W.3d at 339. At its core, the purposeful availment analysis seeks to determine whether a nonresident's conduct and connection to a forum are such that it could reasonably anticipate being haled into court there. *Moncrief*, 414 S.W.3d at 152.

Pappas contends the following actions were contacts with Texas that justify the trial court's exercise of jurisdiction over Aqua Terra U.S. Holdings:

- The Information Memorandum states that Advance is “part of Aqua Terra Water Management,” and the press release states that “Aqua Terra Water Management” acquired Advance;

- Hall’s business card states that he is the “President & CEO” of “Aqua Terra Water Management” with its “Corporate Office” address in Houston, Texas;
- Hall is the CEO of both Advance and Aqua Terra Water Management;
- The letter of intent was signed by Hall on behalf of Advance, Aqua Terra Water Management, and Bregal Partners, and the amendments were signed by Gandy on behalf of Advance, Aqua Terra Water Management, and Bregal Partners;
- Hall signed the termination letter as CEO and president of Aqua Terra U.S. Holdings on letterhead from Aqua Terra Water Management with an address in Houston;
- Agents of “Aqua Terra” attended and held several meetings in Texas, discussed consummating the sale with Pappas, communicated with Pappas by telephone and email, and attended site inspections in Texas; and
- Aqua Terra U.S. Holdings engaged a broker to assist “with the sale of trucking assets . . . owned and operated by Advance.”

Documents Mentioning Aqua Terra Water Management. As discussed above, documents mentioning Aqua Terra Water Management with no ascertainable link to Aqua Terra U.S. Holdings are not evidence in support of Pappas’ bare assertion that Aqua Terra Water Management and Aqua Terra U.S. Holdings are one and the same. Thus, the information memorandum, press release, and business card do not show a connection between Aqua Terra Water Management and Aqua Terra U.S. Holdings.

Aqua Terra U.S. Holdings also contends that Pappas is attempting to improperly attribute Hall’s actions to Aqua Terra U.S. Holdings. We agree. First, the mere fact that Hall is the CEO of both Advance and Aqua Terra Water Management does not demonstrate any involvement by Aqua Terra U.S. Holdings. Second, Aqua Terra U.S. Holdings is not a party to the letter of intent or its

amendments, as demonstrated on the documents themselves. In the letter of intent, Advance is defined as “Seller.” The letter of intent is signed by Hall under a signature line for “Advance, Aqua Terra Water Management, and Bregal Partners,” and the amendments are signed by Gandy under a signature line for “Advance, Aqua Terra Water Management, and Bregal Partners.” Aqua Terra U.S. Holdings is not mentioned in the letter of intent or the amendments.

Third, even though the termination letter is signed by Hall as “Chief Executive Officer & President” of “Aqua Terra US Holdings, LP” on Aqua Terra Water Management letterhead, the letter expressly states, “we are terminating the proposed transaction *between Advance Hydrocarbon Corporation* and your firm [Pappas Harris Capital, LLC].” (Emphasis added.) The termination letter does not demonstrate any contacts with Texas by Aqua Terra U.S. Holdings. It in fact demonstrates that the contemplated sale would have been between Advance and Pappas, not between Aqua Terra U.S. Holdings and Pappas.

Meetings in Texas. Pappas also alleges that agents of Aqua Terra U.S. Holdings attended and held several meetings in Texas, including onsite inspections, and communicated with Pappas by telephone and email.⁴ Pappas supported this allegation with a declaration from Pappas partner Josh Harris. Harris declared only that “the parties,” which is not defined, conducted onsite visits in Texas and attended one meeting. But Harris did not discuss any link between Aqua Terra Water Management and Aqua Terra U.S. Holdings other than the bare allegation that Aqua Terra Water Management is “also known as” Aqua Terra U.S. Holdings. These are conclusory allegations that do not show any link between the

⁴ We have never held that a defendant’s telephone communications and emails with a Texas resident, standing alone, can confer jurisdiction on a Texas court. *See, e.g., Jutalia Recycling, Inc. v. CNA Metals Ltd.*, 542 S.W.3d 90, 99 n.9 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

alleged contacts and Aqua Terra U.S. Holdings.

Brokerage Agreement. The only remaining alleged contact is the brokerage agreement with Louisiana broker Johnson Rice, which was addressed to Bregal Partners and signed by Aqua Terra U.S. Holdings. The brokerage agreement states that Johnson Rice “is exclusively engaged by Aqua Terra US Holdings . . . to act as sole advisor to Aqua Terra US Holdings . . . in connection with the sale of trucking assets . . . owned and operated by Advance Hydrocarbon Corporation.” The agreement is signed by Hall on behalf of Aqua Terra U.S. Holdings. We do not agree that the brokerage agreement amounts to a contact with Texas. First, it expressly states that Aqua Terra U.S. Holdings engaged Johnson Rice to provide advice regarding the sale of *Advance’s* trucking assets, not assets of Aqua Terra U.S. Holdings. Second, the express purpose of the agreement is to “[p]rovide advisory services.” There is no information in the agreement stating where the assets would be located at the time of the sale, what company would be negotiating the sale, or where any such negotiations would take place.

Conclusion. Focusing on the quality of the alleged Texas contacts, we conclude the evidence, viewed in the light most favorable to the trial court’s ruling, does not support the trial court’s finding that Aqua Terra U.S. Holdings purposely availed itself of the privilege of conducting activities in Texas. The record does not show any connection between Texas and Aqua Terra U.S. Holdings for purposes of Pappas’ claims. *See Jutalia Recycling, Inc. v. CNA Metals Ltd.*, 542 S.W.3d 90, 99 (Tex. App.—Houston [14th Dist.] 2017, no pet.). Accordingly, the trial court cannot exercise specific jurisdiction over Aqua Terra U.S. Holdings. Concluding that Aqua Terra U.S. Holdings lacks sufficient minimum contacts with Texas to confer specific jurisdiction, we sustain its second issue.

Conclusion

Having concluded that the trial court lacks jurisdiction over Aqua Terra U.S. Holdings, we render judgment dismissing Pappas' claims against Aqua Terra U.S. Holdings for want of personal jurisdiction.

/s/ Frances Bourliot
Justice

Panel consists of Chief Justice Christopher and Justices Bourliot and Spain.