In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-10-00247-CV

BUCKEYE AVIATION, L.L.C., and COATS & EVANS, P.C., Appellants

V.

BARRETT PERFORMANCE AIRCRAFT, INC., BARRETT PRECISION ENGINES, INC., and BURTON M. BARRETT, Appellees

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On Appeal from the 9th District Court
Montgomery County, Texas
Trial Cause No. 09-12-11706-CV

MEMORANDUM OPINION

Buckeye Aviation, L.L.C. and Coats & Evans, P.C. (collectively "Buckeye") sued Barrett Performance Aircraft, Inc. ("BPA"), Barrett Precision Engines, Inc. ("BPE") and Burton M. Barrett asserting causes of action for breach of contract and in tort based on BPA's and BPE's alleged failure to properly repair an aircraft engine Buckeye Aviation

purchased from defendants. Buckeye appeals the trial court's grant of defendants' special appearance. We affirm the trial court's order.

BACKGROUND

BPA and BPE are owned by Barrett. BPA was established in 1984 and engaged in the repair and overhaul of aircraft engines, including the exchange and sale of aircraft engines. In April 2005, BPE was established to engage in the same business. After BPE was established, BPA's corporate activity was limited to leasing equipment and a supplemental type certificate to BPE.

On or around April 2004, Buckeye purchased two aircraft engines from BPA. In late 2006, Buckeye shipped the engine to BPE's office in Tulsa, Oklahoma and warranty repair work was performed on the engine by BPE on behalf of BPA. The repair work was completed and the engine was shipped back to Buckeye in Texas on or around January 2007. In late 2009, the engine developed oil leaks, which were believed to be causing damage to other parts of the aircraft. After BPE and BPA refused to "financially participate" in further repairs, Buckeye filed suit against BPE, BPA, and Barrett contending that the oil leaks developed as a result of BPE's improper repair and assembly of the engine in late 2006 and early 2007.

In their original petition, Buckeye and Coats & Evans, P.C., a Montgomery County based law firm that has a pecuniary interest in the aircraft and engine, alleged causes of action for breach of contract and promissory estoppel, unjust enrichment, breach of express

and implied warranty for services, violations of the Texas Deceptive Trade Practices Act, fraud and negligent misrepresentation, negligence, negligence per se, negligent entrustment, and negligent supervision, and common law bailment. Defendants filed a special appearance arguing that the Texas court had no jurisdiction over them. Defendants' motion was supported by the affidavit of Barrett. Buckeye responded and argued that the court had both general and specific jurisdiction over defendants. Buckeye's motion was supported with affidavits and evidence. The trial court granted defendants' special appearance as to all defendants and dismissed the case. This appeal followed.

On appeal Buckeye argues that (1) the trial court erred in granting defendants' special appearance and, (2) defendants' special appearance was in effect a general appearance because it failed to comply with the Texas Rules of Civil Procedure. We overrule both issues asserted on appeal and affirm the judgment of the trial court.

PERSONAL JURISDICTION

"The plaintiff bears the initial burden of pleading sufficient allegations to invoke jurisdiction under the Texas long-arm statute." *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007); *see also Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 807 (Tex. 2002). The burden then shifts to the nonresident defendant to negate all bases of jurisdiction alleged in the plaintiff's petition. *Moki Mac*, 221 S.W.3d at 574. We review a trial court's determination of a special appearance de novo. *Id.*

"When . . . the trial court does not make findings of fact and conclusions of law in support of its ruling, we infer 'all facts necessary to support the judgment [that are] supported by the evidence[.]'" *Id.* We will reverse the judgment of the trial court only if we conclude the implied findings and resulting order are so against the overwhelming weight and preponderance of the evidence as to be manifestly wrong. *See Reiff v. Roy*, 115 S.W.3d 700, 705 (Tex. App.—Dallas 2003, pet. denied).

Texas courts may assert *in personam* jurisdiction over a nonresident if (1) the Texas long-arm statute authorizes the exercise of jurisdiction, and (2) the exercise of jurisdiction is consistent with federal and state constitutional due process guarantees. *Moki Mac*, 221 S.W.3d at 574. Under the Texas long-arm statute, a nonresident does business in Texas if it:

> (1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state;
>
> (2) commits a tort in whole or in part in this state; or
>
> (3) recruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state.

Tex. Civ. Prac. & Rem. Code Ann. § 17.042 (West 2008). In addition, the statute provides that "other acts" by the nonresident can satisfy the requirement of "doing business" in Texas. *Id.* The Texas Supreme Court has interpreted the broad statutory language to reach "'as far as the federal constitutional requirements of due process will permit.'" *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002) (quoting

U-Anchor Adver., Inc. v. Burt, 553 S.W.2d 760, 762 (Tex. 1977)); *see also Moki Mac*, 221 S.W.3d at 575. "Thus, the requirements of the Texas long-arm statute are satisfied if an assertion of jurisdiction accords with federal due-process limitations." *Moki Mac*, 221 S.W.3d at 575.

Personal jurisdiction may be exercised over a nonresident defendant when the nonresident defendant has established minimum contacts with the forum state, and the exercise of jurisdiction comports with traditional notions of fair play and substantial justice. *Id*. (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L.Ed. 95 (1945)). A nonresident defendant establishes minimum contacts with the forum 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, 78 S. Ct. 1228, 2 L.Ed.2d 1283 (1958)); *see also Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 784 (Tex. 2005). The "purposeful availment" inquiry involves consideration of the following three factors: (1) only the defendant's contacts with the forum state are relevant, not the unilateral activity of another party or third person; (2) the contacts relied upon must be purposeful rather than "random, fortuitous, or attenuated"; (3) the nonresident defendant must seek a benefit, advantage, or profit by availing itself of the jurisdiction. *Moki Mac*, 221 S.W.3d at 575; *Michiana*, 168 S.W.3d at 785.

A nonresident defendant's contacts with the forum state may give rise to two types of personal jurisdiction, specific and general. *BMC Software*, 83 S.W.3d at 795. Buckeye contends that it established a prima facie case of both general and specific jurisdiction. "Specific jurisdiction is established if the defendant's alleged liability arises from or is related to an activity conducted within the forum [state]." *Id*. at 796; *Moki Mac*, 221 S.W.3d at 576. General jurisdiction is established when a defendant's contacts with the forum state have been continuous and systematic so that the forum may exercise personal jurisdiction over the defendant even if the cause of action did not arise from or relate to activities conducted within the forum. *BMC Software*, 83 S.W.3d at 796.

Contacts with Texas

In its special appearance defendants asserted that they were engaged in business in Oklahoma, and had no purposeful contacts with the state of Texas. In the pleadings on file, Barrett explained that Buckeye initially contacted the defendants in Oklahoma, that "[a]ll of the work performed by Defendants was done in Oklahoma[,] [and] [t]he Defendants were paid in Oklahoma when the engine was shipped to Texas." Defendants supported their special appearance with Barrett's affidavit. Barrett's affidavit established that the corporate offices of BPA and BPE are in Tulsa, Oklahoma and that neither entity has ever maintained an office in Texas. Barrett resides in Cookson, Oklahoma and maintains an office there. Barrett stated that BPA has never done business in Texas "by way of soliciting or performing any kind of work or service in Texas[.]" Likewise, Barrett

stated that "BPE has never performed any work in Texas[,]" and engages in the overhaul and repair of aircraft engines in its offices in Tulsa, Oklahoma. Barrett averred that the transaction at issue "was originated by an aircraft mechanic in Texas who called BPA and inquired" about buying aircraft engines from BPA. Barrett explained that after the engines were made ready, they were shipped to Buckeye in Texas at Buckeye's request.

Buckeye submitted affidavits and evidence in support of its response. Buckeye submitted the affidavit of Joe Washburn, owner of Texas Turbine & Prop, Inc. (TT&P). Washburn was the aircraft technician responsible for maintaining the Buckeye aircraft in which the engine at issue was installed. Washburn's affidavit established that in 2003 and 2004 he acted as Buckeye's agent for the acquisition of replacement engines for the aircraft. Washburn was familiar with BPA and Barrett as potential providers of aircraft engines to Buckeye. Washburn stated that he contacted Monty Barrett and inquired as to whether he would be interested in providing the required engines and Monty said he was. According to Washburn, Monty Barrett made "multiple phone calls to [Washburn] in Texas during this time frame, and [they] discussed the engines and pricing thereof."

Washburn also stated that the defendants "first solicited a competitive bid to purchase the engines by written communications dated December 12, 2003[.]" However, the December 12 letter, submitted as evidence, does not appear to be a solicitation of business but rather an offer or proposal sent in response to Washburn's initial inquiry regarding the purchase of aircraft engines from BPA. The letter contains information

regarding the availability of the engines as well as a price quote. The letter is signed by Monty Barrett. An additional price quote for the two engines is handwritten on the letter, dated January 15, with a note that states, "Joe this is the best I can do[,] good luck." The handwritten price quote is also signed by Monty. A formal letter dated January 16, 2004, regarding the second price quote was also sent from Monty Barrett to Washburn. Both letter proposals state that the engine warranty is two years or four hundred hours from first service.

The negotiations between Washburn and Monty Barrett ultimately resulted in Buckeye's purchase of two aircraft engines. In April 2004, BPA sent invoices from Oklahoma to Buckeye in Texas. Buckeye sent payment from Texas to Oklahoma. The two engines were remanufactured on an exchange basis with Buckeye's old ones, which Buckeye removed from its aircraft and sent to BPA in Oklahoma for replacement. One of the engines Buckeye purchased from BPA developed oil leaks in 2006. Following the discovery of the oil leaks, ferrous metal was detected in the oil of the engine, requiring removal and repair of the engine. Buckeye contacted defendants regarding the problem and defendants agreed to repair the engine. TT&P agreed to discount its charges to Buckeye for removal and replacement of the engine, and defendants agreed to discount their charges to Buckeye to repair the engine.

It is undisputed that the repairs were completed by BPE in Tulsa, Oklahoma in late December 2006 and early January 2007, and once repaired, the engine was shipped back to

Texas to be reinstalled in the aircraft. Following the repairs, BPE sent an invoice to TT&P in Texas. When Buckeye experienced additional problems with the engine in November 2009, the aircraft was flown to Tulsa, Oklahoma and inspected by BPE personnel at Buckeye's request. BPE personnel determined there was an oil leak in the engine but it was not caused by BPE's prior work on the engine. After BPA and BPE informed Buckeye that they would be charged for subsequent engine repairs, Buckeye filed suit.

In addition to defendants' contacts with Texas revolving around the purchase and repair of the aircraft engine at issue, Buckeye submitted evidence that BPE maintains a website on the internet. The evidence submitted establishes that the website provides general advertising and information regarding the products offered by BPE, as well as contact information. The website has a link that allows potential customers to make a request for additional information and leave their contact information so that someone from BPE may get back with them to provide the requested information. Additionally, the website has a link entitled "GET IT!" that appears to allow potential customers to obtain information regarding the availability of a particular engine and receive a price quote by providing BPE with the necessary "engine model number."

ANALYSIS

In arguing that defendants have the requisite minimum contacts to establish jurisdiction, Buckeye asserts that BPA solicited the purchase contract from Buckeye in Texas, sent bids to Buckeye competing for business, sent invoices to Buckeye, and that

"[p]arts of the various agreements giving rise to this dispute were performed in Texas[.]" Additionally, Buckeye points to the fact that defendants' maintained an internet website.

Specific Jurisdiction

Buckeye's argument that the trial court has specific jurisdiction focuses on defendants' contacts surrounding the negotiation and performance of the purchase contract. Before deciding whether defendants' alleged liability arose from or was related to these forum contacts, we must examine the nature of these contacts to determine whether defendants purposefully availed themselves of the privilege of conducting business in Texas. *Moki Mac*, 221 S.W.3d at 576.

Merely contracting with an out-of-state party does not necessarily establish sufficient minimum contacts for personal jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478, 105 S. Ct. 2174, 85 L.Ed.2d 528 (1985); *see also Blair Commc'n, Inc. v. SES Survey Equip. Servs., Inc.*, 80 S.W.3d 723, 729 (Tex. App.—Houston [1st Dist.] 2002, no pet.). "Instead, the facts alleged must indicate that the seller intended to serve the Texas market." *Moki Mac*, 221 S.W.3d at 577. The Texas Supreme Court has found jurisdiction lacking in cases involving isolated sales solicited by customers who purchased a product for delivery and use in a state where the defendant did not otherwise do business. *See id*. (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98, 100 S. Ct. 559, 62 L.Ed.2d 490 (1980); *Michiana*, 168 S.W.3d at 787). Given a complete lack of affiliation with Texas, one purchase contract may be too attenuated to support jurisdiction.

See Moki Mac, 221 S.W.3d at 577; *see also Michiana*, 168 S.W.3d at 787. "It is true that in some circumstances a single *contract* may meet the purposeful-availment standard, but not when it involves a single *contact* taking place outside the forum state." *Michiana*, 168 S.W.3d at 787. There is no evidence in the record that defendants conducted any business in Texas apart from the purchase transaction at issue here.

Buckeye contends that defendants solicited the purchase contract from Buckeye. Defendants contend that it was Washburn who initially contacted BPA and solicited a quote for purchase of the engines. We must infer all facts necessary to support the trial court's judgment that are supported by the evidence. *Moki Mac*, 221 S.W.3d at 574. The evidence supports the trial court's implied finding that the transaction at issue was initiated by Washburn, on behalf of Buckeye. Likewise, the evidence supports a finding that the letters from BPA to Buckeye were proposals sent in response to Buckeye's initial inquiry and were made during negotiations for the sale of the aircraft engines. There is also evidence that Monty Barrett made phone calls to Texas to negotiate the purchase and pricing of the aircraft engines, however, the frequency and substance of Monty's phone calls is unclear from the record.

There is no evidence that the defendants ever traveled to Texas to negotiate the contract or perform inspections or work on the engines. The aircraft engines were remanufactured in Oklahoma and then shipped to Washburn at his request. BPA sent invoices from their offices in Oklahoma to Texas and received payment in Oklahoma.

Subsequent inspection and repair work performed on the engine by BPE was performed in Oklahoma. Buckeye contends that "[p]arts of the various agreements . . . were performed in Texas[.]" Defendant's only contacts with Texas were made during what appear to have been minimal contract negotiations, and sending the invoices and engines to Texas. Defendants performed their obligations under the purchase contract in Oklahoma. We conclude the record supports the trial court's implied finding that defendants did not purposefully avail themselves of the privilege of doing business in Texas. *See Michiana,* 168 S.W.3d at 785-90 (holding purposeful availment requirement not satisfied because nonresident seller's only contact with Texas was buyer's decision to place an order from Texas.).

"[W]e must consider the claims involved in the litigation to determine the operative facts." *Retamco Operating, Inc.*, 278 S.W.3d at 340. In their breach of contract and promissory estoppel claim, Buckeye alleges that defendants breached the contract "when Defendants failed to properly perform the Repairs, and charged Plaintiffs for work that was simply not performed properly[.]" Buckeye alleges a claim for unjust enrichment on the basis that "[d]efendants . . . received payment of sums far in excess of the services performed." In support of their claims for breach of express and implied warranty for services, Buckeye alleges that defendants breached these warranties when they failed to provide goods and services that "would perform as affirmed and promised[.]" Buckeye further alleges that "[d]efects in the Repairs provided by Defendants in connection with the

Engine . . . [were] unfit for the ordinary purpose for which they were intended, [and] unfit for the particular purpose for which the Repairs provided by Defendants were required, and represents services that Defendants did not perform in a good and workmanlike manner[.]"

Buckeye further alleges that defendants made representations regarding the goods and services that violated the DTPA. Buckeye asserts claims for intentional and negligent misrepresentation alleging generally that defendants made "misrepresentations of material fact with the express purpose that Plaintiffs rely upon such misrepresentations." The pleadings indicate that Buckeye's claims involving representations made by defendants are based on BPE's alleged representation that the engine had been overhauled and repaired in accordance with applicable industry standards and the applicable overhaul manual. Buckeye further alleges that defendants committed negligence, negligence per se, negligent entrustment, and negligent supervision because defendants "agreed to perform the Repairs in a good and workmanlike manner . . . [and] failed to provide such services as a reasonably prudent provider of aircraft engine services would under the same and/or similar circumstances[.]" In addition, Buckeye contends that defendants "represented that their work would be performed in accordance with industry standards" and "failed to comply with [applicable] regulations . . . including . . . performing improper and inappropriate services." Finally, Buckeye asserts a claim for common law bailment alleging that a bailment existed for the engine because "[d]efendants expected to be

compensated for their services in connection with the Engine and its inspection and maintenance."

Buckeye's claims stem primarily from defendants' repair of the engine. All inspections and repairs performed by defendants were performed in Oklahoma. To the extent Buckeye's claims concern defendants' sale and overhaul of the engine, the engine was originally located and remanufactured in Oklahoma. The operative facts alleged in support of Buckeye's claims all relate to conduct that allegedly took place in Oklahoma. *See generally Retamco Operating, Inc.*, 278 S.W.3d at 340; *see also Counter Intelligence, Inc. v. Calypso Waterjet Sys., Inc.*, 216 S.W.3d 512, 520 (Tex. App.—Dallas 2007, pet. denied) (holding trial court erred in concluding that Texas could exercise specific jurisdiction over defendant where the alleged breach of contract did not arise out of Counter Intelligence's conduct in Texas). Buckeye further contends that defendants purposefully availed themselves of the opportunity of conducting business in Texas by "maintaining and making available a website advertising in Texas, and making their products available to Texas residents." Defendants' alleged liability does not arise out of or relate to the defendants' internet website. Buckeye's petition does not even reference the defendants' internet website. The trial court's implied finding that the defendants' alleged liability does not arise out of or relate to defendants' contacts with Texas is supported by the record.

General Jurisdiction

Buckeye argues the defendants' contacts with Texas are sufficient to establish general jurisdiction. "General jurisdiction is established over a nonresident defendant when the nonresident's contacts in the forum are sufficiently continuous and systematic such that the forum may exercise personal jurisdiction over the nonresident even when the cause of action does not arise from or relate to its activities within the forum." *Farwah v. Prosperous Mar. Corp.*, 220 S.W.3d 585, 590 (Tex. App.—Beaumont 2007, no pet.) (citing *BMC Software*, 83 S.W.3d at 796). A general jurisdiction analysis is more demanding than a specific jurisdiction analysis. *PHC-Minden, L.P. v. Kimberly-Clark Corp.*, 235 S.W.3d 163, 168 (Tex. 2007). It requires a showing of "substantial activities in the forum state." *Guardian Royal Exch. Assurance, Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 228 (Tex. 1991). The Supreme Court in *PHC-Minden* explained, "[u]sually, 'the defendant must be engaged in longstanding business in the forum state, such as marketing or shipping products, or performing services or maintaining one or more offices there; activities that are less extensive than that will not qualify for general in personam jurisdiction.'" *PHC-Minden*, 235 S.W.3d at 168 (quoting 4 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1067.5 (2007)).

Buckeye contends that defendants' internet website is sufficient in and of itself to confer jurisdiction. Internet use is analyzed within the framework of three categories on a

sliding scale for purposes of establishing personal jurisdiction. *Reiff*, 115 S.W.3d at 705. "At one end of the scale are websites clearly used for transacting business over the Internet, such as entering into contracts and knowing and repeated transmission of files of information, which may be sufficient to establish minimum contacts with a state." *Id*. On the other end of the scale are "passive" websites used only for advertising and are not sufficient to establish minimum contacts even though they are accessible to residents of a particular state. *Id*. at 705-06. In the middle of the scale are "interactive" websites that allow for the exchange of information between a potential customer and host computer. *Id*. at 706. In cases involving interactive websites, we analyze the degree of interactivity to determine whether the website is sufficient to establish minimum contacts with the forum state. *Id*.

BPE's website was more than merely a passive website. The evidence established that the website advertises BPE's products and services and allows potential customers to inquire about the availability of a particular engine, request a price quote, or request additional information. There is no evidence that the website allows customers to enter into a contract or purchase products directly from the website. Therefore, the website falls into the middle category of websites that allow for the exchange of information between the customer and host computer. Under these circumstances, we look beyond the internet activity to the degree of interaction between the parties on the website. *Riviera Operating Corp. v. Dawson*, 29 S.W.3d 905, 911 (Tex. App.—Beaumont 2000, pet. denied)

(concluding internet contacts insufficient to establish general jurisdiction where there was no evidence that Riviera engaged in business transactions or entered into contracts over the internet with Texas residents).

There is no evidence that Buckeye interacted with BPE through the website. There is no evidence that BPE obtained a price quote or further information regarding the purchased engines from the website. Based on the record, it appears that Buckeye dealt directly with BPE representatives by letter or telephone. Additionally, there is no evidence regarding how long the website had been operational and, significantly, no evidence that BPE entered into contracts or did business with other Texas residents through the website. The trial court's implied finding that BPE's internet contacts with Texas are insufficient to give rise to general jurisdiction is supported by the record. *See id.*

In determining whether defendants' non-internet contacts are sufficient to establish general jurisdiction, we consider all of defendants' contacts with Texas. *Am. Type Culture Collection*, 83 S.W.3d at 809-10. Defendants' only offices are located in Oklahoma. Apart from its website, there is no evidence that defendants advertise in Texas. Defendants have never done business or performed any work in Texas. There is no evidence in the record that defendants have had any other customers in Texas. Defendants' contacts with Texas are limited to their contacts with Buckeye in relation to the purchase contract at issue. As set forth above, we have determined those contacts do not rise to the level of purposeful availment, nor can they be characterized as continuous or

systematic. We find the trial court's implied finding that defendants' contacts with Texas are insufficient to establish general jurisdiction is supported by the record. Therefore, we overrule issue one.

GENERAL APPEARANCE

In their second issue, Buckeye argues that the trial court erred in granting defendants' special appearance because the special appearance was in effect a general appearance. Specifically, Buckeye argues that defendants' special appearance failed to comply with the Texas Rules of Civil Procedure, which require that a special appearance be verified. *See* Tex. R. Civ. P. 120a. Buckeye contends that defendants failed to affix the required notary seal to the "verification" of their special appearance, and did not otherwise verify the instrument.

Defendants argue that their special appearance was not defective and that it was verified and filed electronically in accordance with Montgomery County local rules. Defendants explain that while the electronic version of their verification did not contain the signature of the notary, the hardcopy, maintained at counsel's office in accordance with the local rules, did contain the notary's signature. Defendants attached the signed verification to their reply to Buckeye's Response to Defendants' Special Appearance. Therefore, the signed verification was made part of the record and before the trial court when it ruled on defendants' special appearance.

Buckeye argues that although a lack of verification can be cured by amendment to restore the special appearance, such amendment must be made before there is a general appearance. *See Dawson-Austin v. Austin,* 968 S.W.2d 319, 322 (Tex. 1998). Buckeye contends that defendants' cure was untimely because they filed their reply brief containing the verification with the notary's signature after their general appearance was entered. Buckeye's argument is unpersuasive. While an unsworn special appearance is ineffective to challenge personal jurisdiction, the special appearance filed by defendants was not unsworn. Though the signed verification was not made part of the record until defendants filed their reply brief, the verification establishes that it was sworn to on February 1, 2010, when it was signed by the defendants' attorney, and was filed in accordance with Montgomery County local rules. Therefore, the special appearance was not defective. *See* Tex. R. Civ. P. 120a.

Montgomery County has adopted local rules regarding electronic filing of pleadings in the district courts and county courts at law. Montgomery County (Tex.) Loc. R. Electronic Filing and Service of Pleadings. Specifically the Montgomery County local rules provide, "[u]nless specifically ordered by the Court, original signature pages on affidavits, verifications or other documents in cases assigned to EFILE shall not be filed in paper form, but shall be maintained and made available, upon reasonable notice and during business hours, to other counsel and to the Court." Montgomery County (Tex.) Loc. R. Electronic Filing of Affidavits and Other Sworn Documents. The record establishes that

defendants complied with this rule. Defendants promptly provided the signed original to the court when Buckeye challenged the form of their special appearance. We overrule issue two.

Because we overrule both issues raised on appeal, we affirm the judgment of the trial court.

AFFIRMED.

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CHARLES KREGER
Justice

Submitted on March 30, 2011
Opinion Delivered June 16, 2011

Before McKeithen, C.J., Gaultney and Kreger, JJ.