In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-15-00430-CV
NO. 09-15-00484-CV

SEMBCORP MARINE LTD. AND JURONG SHIPYARD PTE. LTD., Appellants

V.

DAVID CARNES, Appellee

And

NOBLE DRILLING HOLDING L.L.C., Appellant

V.

DAVID CARNES, Appellee

On Appeal from the 60th District Court
Jefferson County, Texas
Trial Cause No. B-195,180

MEMORANDUM OPINION

David Carnes sued Sembcorp Marine, Ltd. ("Sembcorp"), Jurong Shipyard Pte. Ltd. ("Jurong"), and Noble Drilling Holding, L.L.C. ("NDH") for injuries

Carnes sustained while working on the Noble Regina Allen (the "Regina Allen"), a drilling vessel.[1] The trial court denied appellants' special appearances. Sembcorp and Jurong present two appellate issues challenging the denial of their special appearances, and NDH presents one appellate issue challenging the denial of its special appearance. We vacate the trial court's order denying Sembcorp's special appearance, and reverse the trial court's orders denying Jurong's and NDH's special appearances.

Standard of Review and Applicable Law

Personal jurisdiction is a question of law that we review *de novo*. *Retamco Operating, Inc. v. Republic Drilling Co*., 278 S.W.3d 333, 337 (Tex. 2009). The exercise of personal jurisdiction must be authorized by the Texas long-arm statute. *Kelly v. Gen. Interior Constr., Inc.*, 301 S.W.3d 653, 657 (Tex. 2010). In addition to other acts that may constitute doing business, the Texas long-arm statute authorizes the exercise of jurisdiction over a nonresident defendant who:

> (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.

[1]Carnes sued other defendants who are not parties to this appeal.

Tex. Civ. Prac. & Rem. Code Ann. § 17.042 (West 2015). This list is non-exclusive. *See BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002).

The exercise of personal jurisdiction must not violate due process guarantees. *Kelly*, 301 S.W.3d at 657. "[T]he Texas long-arm statute's broad doing-business language 'allows the statute to reach as far as the federal constitutional requirements of due process will allow.'" *Retamco*, 278 S.W.3d at 337 (quoting *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 575 (Tex. 2007)). Due process authorizes the exercise of jurisdiction over a nonresident defendant when: (1) the defendant established minimum contacts with the forum state; and (2) the assertion of jurisdiction does not violate traditional notions of fair play and substantial justice. *Id*. at 338. A defendant establishes minimum contacts with a state by purposefully availing itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of that state's laws. *Id*.

A nonresident defendant's contacts may give rise to either specific or general jurisdiction. *Id*. In this case, Carnes alleges specific jurisdiction. Specific jurisdiction exists when the defendant purposefully avails itself of conducting activities in the forum state, and the cause of action arises from or is related to

those contacts or activities. *Id*. The focus is on the "relationship among the defendant, the forum[,] and the litigation." *Guardian Royal Exch. Assur., Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 228 (Tex. 1991).

"When a trial court does not issue findings of fact and conclusions of law with its special appearance ruling, all facts necessary to support the judgment and supported by the evidence are implied." *Marchand*, 83 S.W.3d at 795. "In a special appearance, the trial court is the sole judge of the witnesses' credibility and the weight to be given their testimony." *Weatherford Artifical Lift Sys. v. A&E Sys. SDN BHD*, 470 S.W.3d 604, 609 (Tex. App.—Houston [1st Dist.] 2015, no pet.). We will affirm the trial court's ruling on any legal theory that is supported by the record. *Id*.

Sembcorp

In issue one of Sembcorp's and Jurong's appeal, Sembcorp challenges the denial of its special appearance. In his appellate brief, Carnes expresses his intent to nonsuit Sembcorp and, consequently, does not discuss the denial of Sembcorp's special appearance. The record demonstrates that Carnes filed a notice of nonsuit and, on April 4, 2016, the trial court entered an order dismissing Carnes's claims against Sembcorp. "[A]n order denying a special appearance is an interlocutory order not reflecting any judgment on the merits of the case." *Le v. Kilpatrick*, 112

S.W.3d 631, 634 (Tex. App.—Tyler 2003, no pet.). Accordingly, "an order denying a special appearance is vitiated when the plaintiff takes a nonsuit." *Union Pac. R.R. Co. v. Vigil*, No. 08-15-00329-CV, 2015 Tex. App. LEXIS 12824, at *2 (Tex. App.—El Paso Dec. 18, 2015, no pet.) (mem. op.). Because Carnes's nonsuit of Sembcorp vitiates the trial court's denial of Sembcorp's special appearance, we vacate the trial court's order denying Sembcorp's special appearance and dismiss Sembcorp's appeal as moot. *See id*.; *see also Lensing v. Card*, 417 S.W.3d 152, 155 (Tex. App.—Dallas 2013, no pet.).

Pleading Requirement

We first address whether Carnes satisfied his initial burden of pleading sufficient jurisdictional allegations. *See Kelly*, 301 S.W.3d at 658. The plaintiff must plead sufficient allegations to bring the nonresident defendant within the reach of Texas's long-arm statute. *Id*. If the plaintiff fails to do so, the defendant need only prove that it does not live in Texas to negate jurisdiction. *Id*. at 658-59. If the plaintiff pleads sufficient jurisdictional allegations, the defendant must negate all bases of personal jurisdiction alleged by the plaintiff. *Id*. at 658. When evaluating the plaintiff's allegations, we consider the pleadings and Carnes's responses to appellants' special appearances. *See Flanagan v. Royal Body Care, Inc.*, 232 S.W.3d 369, 374 (Tex. App.—Dallas 2007, pet. denied).

Jurong is a ship building business. According to the record, NDH is one of several "Noble" entities.[2] Jurong contracted to build the Regina Allen for NDH. Carnes alleged that he suffered injuries when the Regina Allen shifted while he was working on the ship as a field service technician at Jurong's shipyard in Singapore. Carnes believed the jacking system failed while being tested and that appellants' negligence caused the ship to shift. In his petition, Carnes alleged that NDH and Jurong are doing business in Texas. He alleged that appellants were negligent by: failing to properly supervise their crew and train their employees; failing to provide adequate safety equipment and a safe work environment, causing the Regina Allen to tip over; failing to follow applicable government safety regulations; violating any duties owed under 33 U.S.C. § 905(b); and committing other negligent acts.

In response to the special appearances, Carnes alleged that Jurong has many Texas customers, and its employees travel to Texas approximately every three months to meet existing and potential customers, as well as attend an annual conference in Texas. One of these trips to Texas resulted in the contract with Noble to build the Regina Allen. Carnes alleged that Jurong and Noble discussed engineering and design plans for the Regina Allen, purchased the Regina Allen's

[2]We refer to these entities collectively as "Noble" where applicable.

blueprints, and finalized the contract in Texas. Carnes alleged that the Regina Allen's design and engineering plans, which the parties discussed and purchased in Texas, were faulty, which led to his injuries.

Specific Jurisdiction

A Texas court may exercise specific jurisdiction over appellants if they purposefully availed themselves of conducting activities in Texas and Carnes's causes of action arise from or relate to appellants' activities. *See Retamco*, 278 S.W.3d at 338. The purposeful availment inquiry requires us to consider conduct beyond the particular business transaction at issue and consider additional conduct that may indicate an intent or purpose to serve the Texas market. *Moki Mac*, 221 S.W.3d at 577. Such additional conduct includes advertising and establishing channels of regular communication to customers in the forum state. *Id*. There are three parts to the purposeful availment inquiry: (1) only the defendant's contacts, not the unilateral activity of another party or a third person, are relevant; (2) the defendant's contacts must be purposeful, not random, fortuitous, or attenuated; and (3) the defendant must seek a benefit, advantage, or profit by availing itself of the forum state's jurisdiction. *Id*. at 575.

In issue one of NDH's appeal, NDH contends that the trial court erred by denying its special appearance. NDH is one of several Noble entities that Carnes

sued. Carnes has nonsuited all but NDH. According to Alan R. Hay, NDH's senior vice president, NDH (1) is a Delaware limited liability company with its sole registered agent in Delaware; (2) has no agent for service, shareholders, officers, or directors in Texas and its sole principal office is in the Cayman Islands; (3) has never maintained an office in Texas, been licensed to do business in Texas, solicited business in Texas, owned, rented, or leased property in Texas, held a shareholders' or directors' meeting in Texas, applied for or acted as a guarantor or co-signor for a loan in Texas, paid or been obligated to pay a franchise tax in Texas, filed tax returns in or advertised in Texas, recruited or trained employees in Texas, or initiated litigation in Texas; and (4) has no telephone service in Texas. Hay averred that NDH has not established minimum contacts with Texas, engaged in systematic or continuous contacts in Texas, and is not doing business in Texas.

In his deposition, Hay testified that the family of Noble companies is headquartered in Switzerland and has a service company and an operating company in Texas. Hay testified that NDH owns nine jackup drilling rigs, none of which is located in the Gulf of Mexico. He is employed by Noble Services International Limited, a Cayman company, and NDH is owned by Noble Holding International Limited, also a Cayman company. Hay testified that he and the other two managers of NDH are not located in Texas. Other than attending an unrelated

deposition and arbitration hearing in Texas for a different Noble entity, Hay testified that he "practically never" visits Texas for business purposes, and he could not recall traveling to Texas on behalf of NDH.

Hay testified that NDH owns the Regina Allen, which is chartered to Noble Resources Limited. Hay knew about the Regina Allen project, but testified that his only involvement was receiving a draft of the contract and later signing the contract with Jurong on behalf of NDH. Hay testified that the contract was signed in the Cayman Islands. He further testified that the contract required Jurong to send any notices to NDH and, when identifying NDH's contact information, the contract listed a Cayman telephone number and a Texas fax number. Hay explained that faxes are transmitted to his email in Cayman. He testified that NDH has no employees, so documentation stating that NDH employees were present when the Regina Allen shifted is incorrect. He was unaware of NDH's participation in any other contracts regarding the Regina Allen.

Roger Neo, Sembcorp's in-house legal counsel, believed that Noble has a Texas headquarters, but he also believed that Noble is a Swiss company. He testified that Jurong has completed projects for Noble and has sent employees to Texas to meet with Noble employees, but that these projects do not always involve Noble's Texas entity. Additionally, Jurong employees had met with Noble

employees at conferences in Texas. He explained that Jurong had a contract with Noble for the Regina Allen, and that the entity located in the Cayman Islands signed the contract. He did not know which entity Sembcorp and Jurong dealt with, and he did not know for certain that they met with Noble in Texas.

David Tan, senior manager of offshore sales for Sembcorp Marine Rigs & Floaters, formerly known as Jurong Shipyard, testified that he travels to Texas to meet customers, including Noble. He also testified that Jurong built the Regina Allen for Noble, and that he met with Noble employees in Texas and Singapore to discuss the project. Tan believed that the Regina Allen project was finalized in Texas and the construction was completed in Singapore. He also exchanged emails and telephone calls with Noble's Texas employees and its Singapore site team. Tan testified that he did not know for certain which Noble entity's employees he specifically dealt with regarding the Regina Allen. NDH signed the contract; thus, Tan believed that he dealt with NDH.

The specific jurisdiction analysis requires us to consider more than the Regina Allen project alone. *See Moki Mac*, 221 S.W.3d at 575, 577. Standing alone, the fact that the contract required Jurong to transmit notices to a Texas fax number or that Jurong communicated with NDH in Texas regarding the Regina Allen project is insufficient to establish the minimum contacts necessary to support

the exercise of specific jurisdiction over NDH. *See T.R.E., Inc. v. Breaud*, No. 09-11-00427-CV, 2012 Tex. App. LEXIS 4122, at *12 (Tex. App.—Beaumont May 24, 2012, no pet.) (mem. op.). Moreover, Carnes's allegation that NDH has been sued in an unrelated case in Texas, and did not challenge jurisdiction, is irrelevant. "[P]ersonal jurisdiction is assessed on a case-by-case basis, so the existence or lack of personal jurisdiction in other litigation is not determinative." *Grupo TMM, S.A.B. v. Perez*, 327 S.W.3d 357, 365-66 (Tex. App.—Houston [14th Dist.] 2010, pet. denied).

The record suggests that Noble has service and operating companies in Texas, but does not show that NDH itself offices in Texas. The record does not indicate that NDH, as opposed to another Noble entity, has established channels of regular communication with Texas or that NDH derives a substantial amount of business from Texas.[3] *See also TV Azteca v. Ruiz*, No. 14-0186, 2016 Tex. LEXIS 180, at *54 (Tex. Feb. 26, 2016) (not yet released for publication) ("But the fact that the actionable conduct occurred in Texas is only one stage of the analysis, and it is not enough."); *see also Commonwealth Gen. Corp. v. York*, 177 S.W.3d 923, 925 (Tex. 2005) ("[S]eparate corporations are presumed to be distinct entities."). Absent additional conduct that indicates an intent or purpose to serve the Texas

[3]Carnes does not allege any alter ego theories regarding NDH.

market, there can be no purposeful availment. *See Ruiz*, 2016 Tex. LEXIS 180, at *54; *see also Moki Mac*, 221 S.W.3d at 577; *see also see Assurances. Generales Banque Nationale v. Dhalla*, 282 S.W.3d 688, 700 (Tex. App.—Dallas 2009, no pet.) (Texas cannot exercise specific jurisdiction over a defendant based solely on random, isolated, or fortuitous contacts; the plaintiff's alleged facts must indicate that the defendant intended to serve the Texas market.). Accordingly, NDH has not purposefully availed itself of the privilege of conducting activities in Texas, thereby invoking the benefits and protections of Texas laws. *See Retamco*, 278 S.W.3d at 338. We sustain NDH's sole appellate issue.

In issue two of Jurong's appeal, Jurong challenges the denial of its special appearance. According to Yah Sze Tan, Jurong's director and Sembcorp's senior vice president, Jurong: (1) is a Singapore company; (2) has a registered agent in Singapore; (3) has no agent for service, officers, or directors in Texas; (4) has no telephone service in Texas; and (5) has never maintained an office in Texas, been licensed to do business in Texas, owned, rented, or leased property in Texas, held a shareholders' or directors' meeting in Texas, applied for or acted as a guarantor or consignor for a bank loan in Texas, paid or been obligated to pay a franchise tax in Texas, filed tax returns in Texas, recruited or trained employees in Texas, or initiated litigation in Texas. The affidavit further states that Jurong has not

established minimum contacts with Texas, engaged in systematic or continuous contacts in Texas, and is not doing business in Texas.

Tan testified that he travels to Texas to meet with not only Noble, but also other Texas customers and entities to discuss existing and potential business, such as the Regina Allen project. Tan also met with the Regina Allen's designer in Texas and exchanged emails and telephone calls with Noble's Texas employees and its Singapore site team. Tan testified that he purchased the blueprints for the Regina Allen from the designer in Texas. He testified that he had worked with this designer in Texas on other projects as well. Tan agreed that his frequent conversations with these Texas entities surrounded design and project specifications. He testified that the actual ship building occurred in Singapore.

Neo testified that his superior travels to Texas maybe once or twice a year. For several years, Jurong has sent five to ten employees to a conference in Texas. Neo believed that meeting with customers constituted the main purpose for the conferences. He testified that Jurong also sent employees to meet with Texas customers around four times a year. During trips to Texas, employees would meet with existing customers, complete negotiations, show engineering designs to customers, and make presentations. Jurong traveled to its customers for an initial sales pitch. Neo testified that Jurong also deals with the American Bureau of

Shipping, which he supposed was based in Texas, but he believed it unlikely that Jurong travelled to Texas to meet with ABS regarding the Regina Allen. He was not aware of Jurong sending employees to the Texas shipyard to offer training or advice.

The evidence indicates that Jurong serves Texas customers, attends conferences in Texas with the intent of promoting its existing business relationships and soliciting new business, and obtained the Regina Allen's blueprints from a Texas designer, with whom Jurong has also worked on other projects. Accordingly, Jurong's contacts with Texas are not limited to the Regina Allen project, but include actions that have established channels of regular communication with Texas. *See Ruiz*, 2016 Tex. LEXIS 180, at **55-57; *see also Moki Mac*, 221 S.W.3d at 577. Although these contacts, along with Jurong's other activities, might be relevant to a general jurisdiction inquiry, they do not meet the requirements to sustain a finding of specific jurisdiction. *See George v. Deardorff*, 360 S.W.3d 683, 688 (Tex. App.—Fort Worth 2012, no pet.) (noting that plaintiff's response to the defendants' special appearances did not allege general jurisdiction applied). The only connection to Texas relevant to the jurisdictional inquiry that Carnes has established for Jurong is that the design plans for the Regina Allen were created by a company that is not a party to the suit in Texas.

None of Carnes's pleadings connect his injuries with these plans, such that specific jurisdiction would attach. We sustain Jurong's issue two. We reverse the trial court's order denying NDH's and Jurong's special appearances, and we instruct the trial court to dismiss NDH and Jurong from the lawsuit for lack of personal jurisdiction. We vacate the trial court's order denying Sembcorp's special appearance.

VACATED IN PART; REVERSED IN PART; REMANDED IN PART.

STEVE McKEITHEN
Chief Justice

Submitted on April 6, 2016
Opinion Delivered May 26, 2016

Before McKeithen, C.J., Horton and Johnson, JJ.