COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00446-CV

ADAM HANIN — APPELLANT

V.

RHE HATCO D/B/A HATCO, INC. — APPELLEE

FROM THE 17TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 017-286995-16

MEMORANDUM OPINION[1]

Appellant Adam Hanin appeals from the trial court's denial of the special appearance he filed in the breach of contract suit brought against him by Appellee RHE Hatco d/b/a Hatco, Inc. (Hatco). Because we hold that the trial court has personal jurisdiction over Hanin, we affirm.

[1]*See* Tex. R. App. P. 47.4.

I. Background

Hanin was formerly the president and managing member of Skye Associates, LLC, a Maryland company. Hatco's principal place of business is in Texas. In 2012, Skye executed an agreement with Hatco under which Hatco agreed to ship merchandise to Skye on credit. The entire agreement consisted of three parts covering four pages: (1) a two-page application form signed by Hanin as Skye's representative; (2) a one-page guaranty signed by Hanin individually; and (3) a one-page credit agreement signed by Hanin as Skye's representative (collectively, "the Agreement").

In 2016, Hatco sued Hanin for breach of the guaranty, seeking to recover Skye's unpaid debts. It alleged that Hanin "at all times material to this action has engaged in business in Texas." It further alleged that Hanin had guaranteed Skye's obligations and that on the same day he executed the guaranty, he also signed, on Skye's behalf, the credit agreement, which declared that Texas jurisdiction would govern the agreement. As such, Hatco asserted, Hanin was subject to the jurisdiction of Texas "both through his continuous[,] substantial contacts with Texas described herein that give rise to this suit, and also through his affirmative agreement that Texas jurisdiction should control."

In response to the lawsuit, Hanin filed a special appearance maintaining that the trial court had neither general nor specific jurisdiction over him. He asserted that he does not reside in Texas and does not maintain continuous or

systematic contacts with Texas. He attached his own affidavit in support of his special appearance and swore:

- he has never been a resident of Texas;
- Skye does not have, and has never had, any place of business in Texas, or any bank accounts or offices in Texas;
- he does not pay any taxes in Texas;
- he does not maintain any bank accounts or addresses in Texas and never has;
- he does not regularly conduct business in Texas and therefore has never engaged in continuous or systematic activities in the state; and
- to the extent that he has any existing duties under the guaranty, his performance was due in Maryland.

By supplemental affidavit, Hanin also swore that he has never traveled to Texas to conduct any business with Hatco in connection with the negotiation of the guaranty or credit agreement and that he was never personally furnished any merchandise under the guaranty or credit agreement.

Hatco responded to the special appearance by presenting the affidavit of Leta French, credit manager for Hatco. French averred that after Hanin signed the Agreement, including the guaranty, he sent it to Hatco's offices in Texas. She further testified that Hanin was the sole representative from Skye with whom Hatco's representatives in Texas had contact, that Hanin made contact with Hatco's representatives at its Texas offices, that these contacts culminated in the Agreement, and that Hatco's representatives in Texas routinely had contact with

Hanin by phone and electronic means from 2012 through the time this suit was filed in 2016. She further swore that it is Hatco's policy not to extend credit to a business entity unless an owner or principal of the entity agrees to personally guaranty the entity's debts to Hatco.

The Agreement was also attached to Hatco's response to the special appearance. Neither the application form nor the guaranty had a choice of law provision or stated the place of performance; however, the credit agreement stated that the "applicant" (that is, Skye) agreed that the credit agreement "shall b[e] govern[ed] by laws and jurisdiction of Dallas County, State of Texas." Further, the guaranty Hanin signed provided that "[f]or value received, and the further consideration of [Hatco's] entering into contractual relations with the firm or individual named herein and of any credit [Hatco] may extend hereunder, (I)(We) jointly and severally guarantee payment to [Hatco] of all indebtedness which Skye Associates[,] LLC has incurred or may incur." Finally, neither the application form nor the credit agreement provided that credit would be extended only upon the execution of a guaranty by Hanin or other principal of Skye.

The court denied the special appearance after a hearing, and Hanin now appeals.

II. Standard and Scope of Review

Whether a trial court has personal jurisdiction over a defendant is a question of law that we review de novo. *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002). "The plaintiff bears the initial burden of

pleading sufficient facts to bring a nonresident defendant within the reach of the Texas long-arm statute." *Rubinstein v. Lucchese, Inc.*, 497 S.W.3d 615, 623 (Tex. App.—Fort Worth 2016, no pet.). "The specially appearing defendant must then negate all bases of personal jurisdiction that have been pleaded by the plaintiff." *Id.* "Alternatively, the defendant can show that even if the facts alleged by the plaintiff are true, the evidence and facts are legally insufficient to establish the propriety of jurisdiction over the defendant." *Id.*

III. Discussion

Hanin argues in his sole issue that his act of signing the guaranty did not subject him to personal jurisdiction in Texas, and therefore the trial court erred by denying his special appearance. Because "a nonresident defendant must negate all bases of personal jurisdiction to prevail in a special appearance," *CSR Ltd. v. Link*, 925 S.W.2d 591, 596 (Tex. 1996), Hanin challenges the existence of both general and specific jurisdiction and argues that the exercise of jurisdiction would offend traditional notions of fair play and substantial justice.

A. The Trial Court Has No General Jurisdiction Over Hanin.

Hanin first argues that because he is domiciled in Maryland and has not had continuous and systematic affiliations with Texas, general jurisdiction over him cannot exist in Texas.

Texas's long-arm statute extends Texas courts' personal jurisdiction "as far as the federal constitutional requirements of due process will permit." *George v. Deardorff*, 360 S.W.3d 683, 687 (Tex. App.—Fort Worth 2012, no pet.) (citation

and internal quotation marks omitted). "Personal jurisdiction meets constitutional due process requirements when two conditions are met: (1) the defendant has established minimum contacts with the forum state, and (2) the exercise of jurisdiction comports with traditional notions of fair play and substantial justice." *Id.* (citation and internal quotation marks omitted).

"A nonresident defendant's contacts with a state can give rise to either general or specific jurisdiction." *Id.* at 687. "General jurisdiction exists when a defendant's contacts are continuous and systematic." *Id.* "General jurisdiction requires a showing that the defendant conducted substantial activities within the forum." *CSR Ltd.*, 925 S.W.2d at 595.

Although Hatco stated in its amended petition that Hanin has continuous, substantial contacts with Texas, in its response to the special appearance, it argued only that the trial court had specific jurisdiction over Hanin. It is undisputed that Hanin does not live in Texas and has never travelled to Texas, and there was no evidence that he has conducted substantial activities in this state. In addition, entering into a contract with a Texas resident, without more, is not enough to support general jurisdiction. *Turner Schilling, L.L.P. v. Gaunce Mgmt., Inc.*, 247 S.W.3d 447, 456 (Tex. App.—Dallas 2008, no pet.). Accordingly, we agree with Hanin that the trial court does not have general jurisdiction over him.

B. The Trial Court Has Specific Jurisdiction over Hanin.

Hanin next argues that the trial court does not have specific jurisdiction over him because he does not have the requisite minimum contacts with Texas to establish such jurisdiction.

Specific jurisdiction is established if the defendant's alleged liability arises from or is related to an activity conducted within the forum. *George*, 360 S.W.3d at 688. To have minimum contacts for purposes of specific jurisdiction, a nonresident defendant must by some act have purposefully availed itself of the privileges of conducting activities within Texas. *Id.* Only the defendant's contacts with the state count: a defendant should not be haled into a jurisdiction solely as a result of the unilateral activity of another party or a third person. *Id.* The acts relied on to show minimum contacts must be purposeful rather than "random, isolated, or fortuitous." *Id.* (citation and internal quotation marks omitted). Further, the defendant must seek some benefit, advantage, or profit by availing itself of the jurisdiction. *Id.*

1. Hanin's Signing the Guaranty Does Not Constitute "Doing Business" in Texas.

Texas's long-arm statute permits the exercise of jurisdiction over a nonresident that "does business" in Texas. Tex. Civ. Prac. & Rem. Code Ann. § 17.042 (West 2015). The statute provides that in addition to other acts constituting doing business, "a nonresident does business in this state if [1] the nonresident . . . contracts by mail or otherwise with a Texas resident and

[2] either party is to perform the contract in whole or in part in this state." *Id.* § 17.042(1). By signing the guaranty and mailing it to a Texas business, Hanin contracted by mail with a Texas resident. The guaranty does not, however, require Hanin to make his payments in Texas. *See Nat'l Truckers Serv., Inc. v. Aero Sys., Inc.*, 480 S.W.2d 455, 458 (Tex. Civ. App.—Fort Worth 1972, writ ref'd n.r.e.) (considering as evidence of specific jurisdiction the fact that the guaranty at issue specifically provided that all payments would be made to a location in Texas). Nor does the credit agreement require Skye to make payments in Texas. *See Gubitosi v. Buddy Schoellkopf Prods., Inc.*, 545 S.W.2d 528, 534–35 (Tex. Civ. App.—Tyler 1976, no writ) (stating that "[t]he fact that the Notes [at issue] were payable in Dallas, Texas is a critical fact" because the guaranty therefore required the guarantor to pay the notes in Texas and thus the guarantor entered into a contract performable in Texas). The credit agreement requires Skye to pay Hatco's invoices in accordance with the terms of the invoices, but Hatco did not include a copy of any of Skye's invoices with its special appearance response. Nothing in the record shows that the invoices (and therefore the credit agreement) required payment in Texas, and, by implication, that the guaranty required payment in Texas.

Moreover, the guaranty did not require its performance in Texas. *See Internet Advert. Group, Inc. v. Accudata*, *Inc.*, 301 S.W.3d 383, 389 (Tex. App.—Dallas 2009, no pet.) ("When a contract requires the payment of money but does not specify where the payment is to be made, the place of payment is the

domicile of the payor. This is true regardless of where the payment is finally received.") (citation omitted). As a result, because the guaranty does not require performance in Texas, the execution of the guaranty does not meet the definition of doing business in subsection 17.042(1) of the long-arm statute. *See id.* ("[E]ven if contractually obligated to make payments to the forum state, such an agreement would not weigh heavily in the 'calculus of contacts.'") (citation omitted). Nor did Hanin do business as defined under the other subsections of the long-arm statute. *See* Tex. Civ. Prac. & Rem. Code Ann. § 17.042(2), (3) (providing that a nonresident does business in Texas if the nonresident "commits a tort in whole or in part in this state" or "recruits Texas residents . . . for employment").

2. Hanin's Signing of the Guaranty is a Minimum Contact with Texas Sufficient to Support Specific Jurisdiction.

Our review of the relevant contractual documents does not end here, however, because the long-arm statute does not limit what constitutes doing business in the state to only the acts specifically defined in the statute and does not restrict the exercise of personal jurisdiction to suits arising out of the acts defined there. *Id.* § 17.042. We therefore review the record for evidence of Hanin's contacts with Texas.

French testified in her affidavit that it was Hatco's policy not to extend credit to a business entity unless the owner or principal of the entity agrees to personally guaranty the entity's debts to Hatco. Hatco emphasizes this fact in its

brief as evidence of Hanin's contacts with Texas. But the existence of such a policy does not, without more, show Hanin's contacts with Texas. *See Internet Advert.*, 301 S.W.3d at 388 ("[O]nly the *defendant's* contacts with the forum are relevant, not the unilateral activity of another party." (emphasis added)).

Cases have long held that the existence of such a policy can show a defendant's contacts with a forum, but in those cases, the defendant was aware that the plaintiff would not enter into or continue a business relationship with the defendant without the defendant's guaranty. *See, e.g.*, *Rubinstein*, 497 S.W.3d at 631 (record showed that resident company contacted nonresident about the absence of financial documents on file for the nonresident's company, stressed the necessity of executing the personal guaranty, and emphasized that receipt of the financial documents was paramount in order to comply with resident company's policies); *Nat'l Truckers*, 480 S.W.2d at 458 (nonresident issued the guaranty for its subsidiary's debts to resident after resident had taken steps to cancel the subsidiary's credit); *Gubitosi*, 545 S.W.2d at 531–32 (guaranty was signed in order to clear up delinquent accounts). Unlike the cases cited above, nothing in the record indicates that Hanin had knowledge of Hatco's policy. That Hatco merely has such a policy does not show, by itself, that Hanin purposefully executed the guaranty to induce Hatco to enter into or continue a business relationship with Skye knowing that it would not do so without the guaranty.

However, regardless of whether the guaranty was a prerequisite to Hatco's entering into the Agreement, the guaranty reflects on its face that it was part of

the bargain between Skye and Hatco. The guaranty states that it is part of the consideration provided by Skye to Hatco for their "contractual relations," which includes the credit agreement under which Hatco agreed to ship merchandise to Skye on credit. The guaranty appears on page three of the Agreement and is numbered page "3 of 4," indicating to Hanin that it is part of the Agreement. After the parties executed the Agreement, Hatco sent product from Texas to Skye on credit in accordance with the parties' bargain as expressed in the Agreement. Though the receiving of goods were acts of Skye rather than Hanin, the effect of the guaranty was to involve Hanin in the business relationship between Skye and Hatco in accordance with the terms of the credit agreement. *See Marathon Metallic Bldg. Co. v. Mountain Empire Constr. Co.*, 653 F.2d 921, 923 (5th Cir. 1981).

Further, the credit agreement provides that it is governed by the laws and jurisdiction of Texas. *See Goodman Co. v. A & H Supply, Inc.*, 396 F. Supp. 2d 766, 774 (S.D. Tex. 2005) (holding that language in a guaranty that it was a Texas contract "for all purposes" put the guarantor on notice that it might be haled into court in Texas in a cause of action arising from the guaranty). Although that language appears in the credit agreement, not the guaranty, it is part of the Agreement between Skye and Hatco under which Hatco contracted to ship goods to Skye on credit. By executing the guaranty, Hanin involved himself in each shipment of goods and extension of credit from Hatco to Skye, which was done in accordance with the terms of the credit agreement and was therefore

governed by Texas law and subject to the jurisdiction of Texas. *See Marathon*, 653 F.2d at 923 (observing that the contract between resident company and nonresident company under which credit was advanced to nonresident company stipulated that it would be governed by the laws of Texas and that the guaranty, by which nonresident company's corporate officer had guaranteed the debts of the company, had the effect of involving the guarantor in each extension of credit from resident company to nonresident company).

We hold that Hanin's "purposeful and affirmative action" constituted a minimum contact with Texas. *See Marathon*, 653 F.2d at 923. Accordingly, the trial court did not err by concluding that it had specific jurisdiction over Hanin.

C. The Exercise of Jurisdiction Over Hanin Does Not Offend Traditional Notions of Fair Play and Substantial Justice.

Finally, Hanin argues that exercising personal jurisdiction over him in Texas does not comport with traditional notions of fair play and substantial justice. Hanin contends that the guaranty limits his liability to $50,000 and that "[w]hen comparing the relatively low amount of exposure to the cost of travel to and from Texas for depositions, hearings, and trial, justice would not be done by requiring Hanin's appearance in Texas." This argument is without merit.

First, we note that the copy of the guaranty in the record does not limit Hanin's liability. Hanin asserted below that Hatco had unilaterally redacted from the copy of the guaranty in the record a portion of the agreement that limited his guaranty to $50,000. However, we do not determine the enforceability or limits of

the guaranty in reviewing the trial court's ruling on the special appearance. *See Rubenstein*, 497 S.W.3d at 624. Whether the guaranty contains such a limit is simply not relevant to our analysis.

Second, "[o]nly in rare cases . . . will the exercise of jurisdiction not comport with fair play and substantial justice when the nonresident defendant has purposefully established minimum contacts with the forum state." *Guardian Royal Exch. Assur., Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 231 (Tex. 1991). "In deciding whether it is fair and reasonable to require the nonresident to defend in this local forum, no particular factor controls. . . . [We] consider such things as the interest of the state in providing a forum for the suit, the relative conveniences and inconveniences to the parties, and basic equities." *See Marathon*, 653 F.2d at 923 (citation and internal quotation marks omitted).

Here, regardless of whether Hanin's liability is limited under the guaranty's terms, we see "no unusual balance of inconvenience" in deciding whether it is fair and reasonable to require Hanin to defend this suit in Texas. *See id.* Indeed, Texas has an interest in providing a forum for this litigation, and it is not inequitable for Hanin to respond to a suit in Texas based on a guaranty that he voluntarily signed and which was a part of the contract under which a Texas corporation agreed to extend sales on credit. *See id.* Because the exercise of personal jurisdiction over Hanin does not offend traditional notions of fair play and substantial justice, the trial court did not err by denying the special appearance.

We overrule Hanin's sole issue.

IV. Conclusion

Having held that the trial court did not err by determining that it had specific jurisdiction over Hanin, we affirm the trial court's order denying the special appearance.

/s/ Mark T. Pittman
MARK T. PITTMAN
JUSTICE

PANEL: LIVINGSTON, C.J.; WALKER and PITTMAN, JJ.

DELIVERED: June 29, 2017