



**NUMBER 13-09-00533-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**RAINBOW HOSPITALITY, LLC,**

**Appellant,**

**v.**

**MONSERRATO TREVINO,**

**Appellee.**

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**On appeal from the County Court at Law  
No. 1 of Hidalgo County, Texas.**

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**MEMORANDUM OPINION**

**Before Chief Justice Valdez and Justices Rodriguez and Benavides  
Memorandum Opinion by Justice Benavides**

In this interlocutory, accelerated appeal, appellant, Rainbow Hospitality, LLC ("Rainbow"), a North Carolina company, appeals the denial of its special appearance in the underlying premises liability suit filed in Hidalgo County by appellee, Monserrato

Trevino. See TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(7) (Vernon 2008) (providing for appeals from interlocutory orders granting or denying a special appearance); TEX R. APP. P. 28.1 (setting out the rules for accelerated appeals). By one issue, Rainbow contends that the trial court erred in denying its special appearance because the trial court did not have personal jurisdiction over Rainbow. We reverse and render judgment granting the special appearance.

### I. BACKGROUND

In his first amended original petition, Trevino alleges that in June 2007, his employer, Velacorp Pharmacists, Inc. d/b/a San Juan Pharmacy, made a reservation at the Holiday Inn Express, located in Hillsborough, North Carolina, on his behalf and that during his two week stay, he suffered “a severe allergic reaction in the form of skin lesions as a result of a dangerous condition which persisted” in his room. Trevino asserted negligence and DTPA causes of action based on “insect bites” that he allegedly suffered during his stay. Trevino named the following as co-defendants: (1) his employer; and (2) Rainbow Hospitality, LLC d/b/a Holiday Inn Express. Trevino later amended his original petition to also include Rainbow Management of Hillsborough, Inc. as a co-defendant.<sup>1</sup> Rainbow Hospitality filed a special appearance challenging the personal jurisdiction of the Hidalgo County Court. In support, Rainbow filed an affidavit of Anjan Desai, Rainbow’s President, in which Desai asserted:

Rainbow Hospitality is not a resident of Texas. In this regard, Rainbow

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<sup>1</sup> Rainbow Management of Hillsborough, Inc. also filed a special appearance which was denied by the trial court and appealed in a separate cause, No. 13-10-00127-CV.

Hospitality is a North Carolina Limited Liability Company and Rainbow Hospitality's principal place of business is located in the State of North Carolina. Rainbow Hospitality does not have any offices or businesses located in the State of Texas. Rainbow Hospitality does not have any employees or agents who work for Rainbow Hospitality in the State of Texas and Rainbow Hospitality has never had any employees or agents who have worked for Rainbow Hospitality in the State of Texas. Rainbow Hospitality does not have any bank accounts in the State of Texas and Rainbow Hospitality has never had any bank accounts in the State of Texas. Rainbow Hospitality has never sent any advertising letters or advertising fliers to individuals in the State of Texas and Rainbow Hospitality has never sent any other types of advertising materials to individuals in the State of Texas. Rainbow Hospitality does not place orders to companies in the State of Texas for any of the supplies that Rainbow Hospitality uses in its business. Rainbow Hospitality does not ship any types of products to the State of Texas. The incident that [Trevino] is alleging in this lawsuit occurred in the State of North Carolina. Rainbow Hospitality did not contact Mr. Trevino about Mr. Trevino's coming to the State of North Carolina for the stay that forms the basis of Mr. Trevino's allegations.

The trial court held a hearing on Rainbow's special appearance on August 18, 2009. At the hearing, counsel for Rainbow asserted that Rainbow was "the owner of the property in North Carolina that the hotel was sitting on," but did not own or operate the hotel itself. Counsel for Trevino argued at the hearing that personal jurisdiction was based on the interactive nature of the hotel website, but presented no evidence about the website. The trial court denied the special appearance, and this appeal ensued.

## **II. STANDARD OF REVIEW AND APPLICABLE LAW**

Whether a court has personal jurisdiction over a nonresident defendant is a question of law. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002); *Exitto Elecs. Co. v. Trejo*, 166 S.W.3d 839, 849 (Tex. App.—Corpus Christi 2005, no pet.). If an order on a special appearance is based on undisputed or otherwise

established facts, we review the exercise of personal jurisdiction de novo. *Exito*, 166 S.W.3d at 849 (citing *Happy Indus. Corp. v. Am. Specialties, Inc.*, 983 S.W.2d 844, 848 (Tex. App.–Corpus Christi 1998, pet. dism'd w.o.j.)).

“Texas courts may assert personal jurisdiction over a nonresident defendant only if such jurisdiction is authorized by the Texas long-arm statute, and is consistent with federal and state standards of due process.” *Exito*, 166 S.W.3d at 850.

Jurisdiction is proper [under due process standards] if a nonresident defendant has established “minimum contacts” with Texas and maintenance of the suit will not offend “traditional notions of fair play and substantial justice.” The purpose of minimum-contacts analysis is to protect the defendant from being haled into court when its relationship with Texas is too attenuated to support jurisdiction. Focus is therefore upon the defendant's activities and expectations. This analysis requires that the defendant “purposefully avail” itself of the privilege of conducting activities in Texas, thus invoking the benefits and protections of Texas laws such that the defendant could reasonably anticipate being called into a Texas court. Jurisdiction will not attach if contacts are random, fortuitous, or attenuated. The quality and nature of the contacts, rather than their number, are the focus of this analysis.

*Id.* (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980); *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1940); *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002); *Guardian Royal Exch. Assurance, Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 226, 230 n.11 (Tex. 1991); *Schlobohm v. Schapiro*, 784 S.W.2d 355, 357 (Tex. 1990)).

A nonresident defendant's minimum contacts with Texas may confer either general or specific jurisdiction. *BMC*, 83 S.W.3d at 795. Specific jurisdiction is

established where activities of the defendant in the forum are isolated or disjointed, but where the cause of action in issue arises from a particular activity in the forum state. *Id.* at 796. “Even a single act or event, if it creates or gives rise to the plaintiff's cause of action, may constitute sufficient minimum contact to support the exercise of specific jurisdiction.” *Exito*, 166 S.W.3d at 850-51. “This requirement for a ‘substantial connection’ between the plaintiff's cause of action and the defendant's contacts means that those contacts, both with the litigation and the forum, must be meaningful, not ‘random, fortuitous, or attenuated.’” *Id.* at 851 (quoting *Ahadi v. Ahadi*, 61 S.W.3d 714, 719 (Tex App.–Corpus Christi 2001, pet. denied)). The substantial connection between the nonresident defendant and the forum state necessary for a finding of minimum contacts must come about by action or conduct of the nonresident defendant purposefully directed toward the forum state. *Guardian Royal*, 815 S.W.2d at 226.

General jurisdiction is established where the defendant's activities in the forum are continuing and systematic. *BMC*, 83 S.W.3d at 796; *Guardian Royal*, 815 S.W.2d at 228; *Schlobohm*, 784 S.W.2d at 357. “General jurisdiction requires a showing that the defendant conducted substantial activities within the forum, a more demanding minimum contacts analysis than for specific jurisdiction.” *BMC*, 83 S.W.3d at 797.

“While a plaintiff bears the initial burden of pleading allegations sufficient to bring a nonresident defendant within the provisions of the long-arm statute, upon the filing of a special appearance the nonresident defendant assumes the burden to negate all bases of personal jurisdiction alleged by the plaintiff.” *Exito*, 166 S.W.3d at 851 (citing

*Coleman*, 83 S.W.3d at 807; *Kawasaki Steel Corp. v. Middleton*, 699 S.W.2d 199, 203 (Tex. 1985) (per curiam)). “Once the defendant has produced credible evidence negating all bases of jurisdiction, the plaintiff bears the ultimate burden to establish that the Texas court has personal jurisdiction over the defendant as a matter of law.” *M.G.M. Grand Hotel, Inc. v. Castro*, 8 S.W.3d 403, 408 n.2 (Tex. App.—Corpus Christi 1999, no pet.).

### III. ANALYSIS

By its only issue, Rainbow contends that the trial court did not have personal jurisdiction over it—neither specific or general—and therefore, the court erred in denying its special appearance. We apply all facts to the law de novo. See *Exito*, 166 S.W.3d at 849. It is undisputed that Rainbow is a non-resident company. Therefore, our analysis must determine: (1) what grounds for jurisdiction were alleged by Trevino; (2) if Rainbow sufficiently negated all such alleged grounds; and (3) if Rainbow did negate all such grounds, whether Trevino met his burden of showing that personal jurisdiction existed as a matter of law.

In his petition, Trevino alleged that: (1) Rainbow had “continuous and systematic” contacts with the State of Texas (general jurisdiction); and (2) Rainbow “engaged in activities constituting business in the state of Texas as provided by Section 17.042 of the Texas Civil Practice and Remedies Code, in that [Rainbow] contracted with a Texas resident and performance of the agreement in whole or in part thereof was to occur in Texas” (specific jurisdiction). Because these grounds for jurisdiction were

alleged in the petition, we now turn to the question of whether Rainbow sufficiently negated each ground. See *id.* at 851.

First, in response to Trevino's allegation that general jurisdiction existed because Rainbow had "continuous and systematic" contacts with Texas, Desai's affidavit states that Rainbow had none of the contacts with Texas that normally justify general jurisdiction. Specifically, he avers that Rainbow did not ship to or order supplies from Texas, did not purposefully advertise in Texas, and did not have offices, employees, or bank accounts in Texas. We conclude this is a sufficient negation of the alleged continuous and systematic contacts necessary to establish general jurisdiction over Rainbow. See *Reiff v. Roy*, 115 S.W.3d 700, 706-07 (Tex. App.—Dallas 2003, pet. denied) (affirming a Colorado hotel's special appearance under nearly identical facts); *BMC*, 83 S.W.3d at 797 (noting that general jurisdiction requires "a more demanding minimum contacts analysis than [that] for specific jurisdiction"). Where the defendant negates by sufficient evidence the alleged ground for personal jurisdiction, the plaintiff ultimately has the burden of establishing jurisdiction. *M.G.M. Grand*, 8 S.W.3d at 408 n.2. In this case, Trevino presented no evidence to the trial court concerning any of the continuous and systematic contacts that Rainbow allegedly had within the State of Texas. Therefore, Trevino failed to meet his burden, and we conclude that the trial court did not have general jurisdiction over Rainbow.

Second, Trevino alleges that personal jurisdiction existed because Rainbow entered into a contract with Trevino in which performance of the contract, in part, was to occur within the State of Texas. At the special appearance hearing, counsel for Trevino indicated that this partial performance was the payment of the room rental fee over an internet site accessed in Texas. Desai stated in his affidavit that, “[t]he incident that [Trevino] is alleging in this lawsuit occurred in the State of North Carolina. Rainbow Hospitality did not contact Mr. Trevino about Mr. Trevino’s coming to the State of North Carolina for the stay that forms the basis of Mr. Trevino’s allegations.” This was a sufficient statement to negate the allegation that partial performance of a contract between Trevino and Rainbow was to occur in Texas, and therefore the burden rested on Trevino to ultimately prove that: (1) such a contract existed; (2) partial performance was to take place within the State of Texas; and (3) exercising jurisdiction would not violate traditional notions of fair play and substantial justice. See TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (Vernon 2008). However, again, Trevino provided no affidavits, contracts, internet web pages, or any evidence whatsoever to establish the truth of his allegations. Because the burden had shifted to Trevino, we conclude that he did not establish specific jurisdiction due to in-state performance of a contract through the hotel website as a matter of law.

Based on the foregoing, we sustain Rainbow’s issue on appeal. See *Guardian Royal*, 815 S.W.2d at 226; *Reiff*, 115 S.W.3d at 706-07.



#### **IV. CONCLUSION**

We reverse and render judgment granting the special appearance, and we dismiss Trevino's claims against Rainbow for want of personal jurisdiction.

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GINA M. BENAVIDES,  
Justice

Delivered and filed the  
28th day of April, 2011.