Opinion issued June 23, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00706-CV

BAYWATER DRILLING, LLC, Appellant

V.

BENJAMIN RATLIFF, Appellee

On Appeal from County Court at Law No. 1
Galveston County, Texas
Trial Court Case No. CV-0082265

MEMORANDUM OPINION

In this interlocutory appeal, Baywater Drilling, LLC—a Delaware company with its principle place of business in Louisiana—challenges the trial court's denial of its special appearance in a suit brought against it by its employee, Benjamin

Ratliff.[1] Ratliff sued Baywater for injuries he allegedly sustained performing his job duties aboard the inland barge rig, *Bayou Blue*, in Louisiana.

Ratliff asserts that the trial court has specific personal jurisdiction over Baywater based on a drilling contract between Baywater and Texas-based Hilcorp Energy Company, under which the *Bayou Blue* was operating in Louisiana at the time Ratliff allegedly sustained his injuries. Baywater responds that, by agreeing to perform drilling services in Louisiana, it did not purposefully avail itself of the privilege of conducting activities in Texas. Because we agree with Baywater, we reverse the trial court's order denying Baywater's special appearance and render judgment dismissing Ratliff's claims against Baywater.

Background

Ratliff filed suit against Baywater and three other defendants, including Hilcorp Energy Company,[2] alleging that "[a]t all material times" he "was a Jones Act seaman" employed by Baywater as a floorman aboard the vessel *Bayou Blue*. Ratliff asserted that "the *Bayou Blue* was deployed on navigable inland waters where [he] was contributing to and aiding such vessel to accomplish its mission."

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1 *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(7) (permitting interlocutory appeal from order granting or denying special appearance).

2 The other two defendants are Baywater Drilling Management Partners, LP and DWB Consulting, LLC. They are not parties to this interlocutory appeal and do not appear to be integral to the discussion of the issue of personal jurisdictional.

Ratliff claimed that while working aboard the *Bayou Blue*, he was seriously injured "when he was required to manually lift large objects in excess of 300 pounds." He alleged that he had been required to perform the task "without adequate crew, and without conducting necessary safety meetings."

Ratliff sued for damages under the Jones Act,[3] Texas common law, and under general maritime law. He alleged that the defendants, including Baywater, had been "negligent and grossly negligent for the following reasons":

> a. failing to properly train employees;
> b. failing to inspect, maintain, and repair equipment;
> c. fail[ing] to properly supervise their crew;
> d. failing to maintain a safe work environment;
> e. failing to provide appropriate medical attention;
> f. fail[ing] to provide an adequate crew;
> g. fail[ing] to maintain the vessel;
> h. fail[ing] to provide necessary safety equipment;
> i. [being] vicariously liable for their employees' negligence and gross negligence;
> j. violating applicable Coast Guard, OSHA, and/or MMS rules and regulations;
> k. violating their own safety rules and regulations;
> l. fail[ing] to comply with contractual obligations and duties; [and]
> m. failing to maintain safe mechanisms for work on the vessel[.]

Ratliff also alleged that, "[a]t all relevant times, the *Bayou Blue* was unseaworthy."

Baywater filed a special appearance, claiming that the trial court lacked personal jurisdiction over it and requesting dismissal of the suit. Baywater asserted that Ratliff's petition did "not contain a single operative fact that relates this

[3] 46 U.S.C. § 30104.

litigation to the State of Texas" and did not "establish[] the requisite 'substantial connection' between Baywater's contacts with Texas and [Ratliff's] alleged injuries."

Baywater supported its special appearance with the affidavit of Lisa Williams, Baywater's vice president of administration. Williams testified in her affidavit that Baywater "is a Delaware limited liability company with its principal place of business in Houma, Louisiana, in Terrebonne Parish, Louisiana." She averred that Baywater has no offices in Texas, owns no property here, "does not maintain bank accounts, assets, books or records in Texas," does not pay taxes in Texas, and "is not registered or qualified to do business" in the state.

Williams also testified that "[t]he alleged accident that forms the basis of this litigation occurred in Terrebonne Parish, Louisiana." She averred that Baywater "performs all company and employee training in Louisiana." Williams stated that Baywater's "inland barge rigs, including the *Bayou Blue* only work and only have worked in the waters of Louisiana." Williams testified that "the vast majority of Baywater's work and resulting revenue stems from its inland barge rig work, which occurs exclusively in Louisiana."

After taking Williams's deposition, Ratliff filed a response to Baywater's special appearance. Citing Williams's deposition testimony, Ratliff claimed that the trial court had personal jurisdiction over Baywater. Ratliff did not specify

whether Texas courts had specific jurisdiction, general jurisdiction, or both over Baywater, but the substance of Ratliff's arguments indicated that he was claiming that Texas courts had general jurisdiction over Baywater. Ratliff asserted that, "taken as a whole, Baywater's associations and contacts with the state of Texas [were] more than sufficient to satisfy the requirements" for the trial court "to exercise personal jurisdiction over Baywater." Ratliff claimed Williams's testimony had shown, for instance, that Baywater had solicited business in Texas and had contracted with operators in the state.

Baywater replied to Ratliff's response. Baywater asserted that Ratliff had not shown that Baywater was subject to general jurisdiction in Texas. Baywater claimed that Baywater's connections to Texas cited by Ratliff were attenuated and not "so continuous and systematic as to render it essentially at home" in Texas, a necessary requirement for Baywater to be subject to general jurisdiction in the state.

Ratliff filed a surreply to Baywater's reply. Ratliff "acknowledged that [the trial court] cannot exercise general jurisdiction over Baywater." Instead, Ratliff claimed that the trial court had specific jurisdiction over Baywater.

Ratliff supported his specific-jurisdiction argument by relying on the Daywork Workover Contract ("the Workover Contract") between Baywater and Hilcorp Energy, a Texas-based company. The Workover Contract provides that

Hilcorp engaged Baywater as an independent contractor "to work over or complete . . . designated well or wells in search of oil or gas on a daywork basis." Baywater agreed to provide "workover rigs" to Hilcorp Energy, including the *Bayou Blue*, "for the purpose of working over said wells and performing related and auxiliary operations and services for [Hilcorp] at the locations to be specified by [Hilcorp]." The contract also required Baywater to provide daily drilling reports to Hilcorp about the work being performed at the wellsite and to provide incident reports to Hilcorp following accidents on the rigs.

Ratliff also relied on Williams's deposition to show specific jurisdiction. Williams had testified that Hilcorp had a company representative on the *Bayou Blue* known as "the company man," who was "the highest-ranking official at the well-site." Ratliff pointed to the following portion of Williams's testimony:

> Q. You would agree with me that in the day-to-day operations of the *Bayou Blue*, for example, in May of 2018 [when the accident occurred], Baywater had to answer to Hilcorp, right?
>
> A. Correct.
>
> Q. . . . In May of 2018, Baywater had to answer to a Texas based entity on a day-to-day basis as it relates to the operations of the *Bayou Blue,* correct?
>
> A. They would—it depended—they would go through the company man, or it could be a different circumstance where they had to communicate directly with somebody in Texas.

> Q. As far as you understand, Baywater would have to communicate with a Texas-based entity or a Texas-based entity's representative on a day-to-day basis as it relates to operations of the *Bayou Blue*, right?
>
> A. That's correct.
>
> Q. Okay. As far as Baywater understands, a Texas-based entity or that Texas-based entity's representative actually handles the work site in which my client was injured, correct?
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> . . .
>
> A. Correct.

Citing the Workover Contract and Williams's testimony, Ratliff asserted that "this litigation arises out of Baywater's contacts with Texas" because "Baywater entered into [the Workover Contract] with a Texas-based entity, key day-to-day decisions came from Texas, reports of the operations and the incident were directed to Texas and Texas-based entities, and Baywater and its employees (including [Ratliff]) were subject to Texas citizens working for Texas-based companies." Ratliff also noted that Baywater and Hilcorp had agreed that "the venue of any litigation between the parties [Baywater and Hilcorp] shall be in Harris County, Texas."

The trial court conducted a hearing on Baywater's special appearance. To refute Ratliff's reliance on the Workover Contract to establish specific jurisdiction, Baywater pointed out that this was not a breach of contract suit between Baywater and Hilcorp. Baywater argued that the "operative facts" of Ratliff's personal injury

claims "have nothing to do with Texas" because, relating to Ratliff's claims, "everything was done in Louisiana."

Following the hearing, the trial court signed an order denying Baywater's special appearance. Baywater filed this interlocutory appeal, challenging the trial court's order in two issues.

Special Appearance

A. Standard of Review & Legal Principles

Whether a trial court has personal jurisdiction over a nonresident defendant is a question of law that we review de novo. *Old Republic Nat'l Title Ins. Co. v. Bell*, 549 S.W.3d 550, 558 (Tex. 2018). "When, as here, the trial court does not issue findings of fact and conclusions of law, we imply all relevant facts necessary to support the judgment that are supported by evidence." *Moncrief Oil Int'l, Inc. v. OAO Gazprom*, 414 S.W.3d 142, 150 (Tex. 2013). When jurisdictional facts are undisputed, whether those facts establish jurisdiction is a question of law. *Bell*, 549 S.W.3d at 558 (citing *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004)).

In the context of a special appearance, the parties bear shifting evidentiary burdens. The plaintiff bears the initial burden of pleading allegations that suffice to permit a court's exercise of personal jurisdiction over the nonresident defendant. *Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 337 (Tex.

2009). Once the plaintiff has met this burden, the defendant then assumes the burden of negating all potential bases for personal jurisdiction alleged by the plaintiff. *Kelly v. Gen. Interior Constr., Inc.*, 301 S.W.3d 653, 658 (Tex. 2010).

The defendant can negate jurisdiction on either a factual or legal basis. *Id.* at 659. A defendant negates the legal basis for jurisdiction by showing that "if the plaintiff's alleged facts are true, the evidence is legally insufficient to establish jurisdiction; the defendant's contacts . . . fall short of purposeful availment; . . . the claims do not arise from the contacts; or . . . traditional notions of fair play and substantial justice are offended by the exercise of jurisdiction." *Id.*

If the nonresident defendant produces evidence negating personal jurisdiction, the burden returns to the plaintiff to show that the court has personal jurisdiction over the nonresident defendant. *Predator Downhole Inc. v. Flotek Indus., Inc.*, 504 S.W.3d 394, 402 (Tex. App.—Houston [1st Dist.] 2016, no pet.). A court should dismiss a lawsuit against a nonresident defendant if the exercise of personal jurisdiction lacks an adequate factual or legal basis. *Id.*

Texas courts may exercise personal 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." *Moncrief Oil Int'l, Inc.*, 414 S.W.3d at 149; *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007). The long-arm statute

permits Texas courts to exercise jurisdiction over a nonresident defendant that "does business" in Texas, and it provides a non-exhaustive list of activities that constitute "doing business." TEX. CIV. PRAC. & REM. CODE § 17.042

Here, Ratliff asserts that Baywater engaged in conduct that satisfies the Texas long-arm statute. He points to the statute's provisions stating that "a nonresident does business in this state" if it "contracts with a Texas resident and either party is to perform the contract in whole or in part in this state" or the nonresident "recruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state." *See* TEX. CIV. PRAC. & REM. CODE § 17.042(1), (3). However, the long-arm statute extends the personal jurisdiction of Texas courts only as far as the federal constitutional requirements of due process permit. *M & F Worldwide Corp. v. Pepsi-Cola Metro. Bottling Co., Inc.*, 512 S.W.3d 878, 885 (Tex. 2017).

To comport with due process requirements, the record must show that (1) the defendant established minimum contacts with the forum state; and (2) the assertion of jurisdiction will not offend traditional notions of fair play and substantial justice. *Id.* (internal quotation omitted). "Sufficient minimum contacts exist when the nonresident defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Searcy v. Parex Res., Inc.*, 496 S.W.3d 58, 67 (quotation marks omitted).

Purposeful availment involves contacts that the defendant purposefully directed into the forum state. *Id.* (citing *Guardian Royal Exch. Assurance, Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 228 (Tex. 1991)).

The Supreme Court of Texas has identified three distinct aspects of the "purposeful availment" requirement. First, only the defendant's contacts with the forum are relevant, as a nonresident should not be called to court in a jurisdiction solely as a result of the unilateral activity of another party. *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 785 (Tex. 2005). Second, the defendant's acts must be purposeful, as opposed to random, isolated, or fortuitous. *Id.* Third, the defendant must seek some benefit, advantage, or profit by availing itself of the jurisdiction. *Id.*

"A defendant's contacts with the forum may give rise to either general or specific jurisdiction." *M & F Worldwide Corp.*, 512 S.W.3d at 885. In this case, Ratliff contends that Baywater's alleged minimum contacts give rise to specific jurisdiction in Texas. Specific jurisdiction requires that the claims at issue arise from or relate to the defendant's purposeful contacts with Texas. *Searcy*, 496 S.W.3d at 67. "[T]he defendant's suit-related conduct must create a substantial connection with the forum State." *Walden v. Fiore*, 571 U.S. 277, 284 (2014). This connection "must arise out of contacts that the defendant *himself* creates with the forum State," and it must be based on "the defendant's contacts with the forum

State itself, not the defendant's contacts with persons who reside there." *Id.* at 284–85 (emphasis in original) (internal citations and quotation marks omitted) "The 'minimum-contacts analysis is focused on the quality and nature of the defendant's contacts, rather than their number.'" *Searcy*, 496 S.W.3d at 67 (quoting *Retamco*, 278 S.W.3d at 339). The defendant's activities, whether they consist of direct acts within Texas or conduct outside Texas, must justify a conclusion that the defendant could reasonably anticipate being called into a Texas court. *Retamco Operating*, 278 S.W.3d at 338.

B. Analysis

In its second issue, Baywater contends that, based on the allegations in Ratliff's petition and the evidence in the record, the trial court erred when it denied its special appearance.[4] Among its arguments, Baywater asserts that it does not have the required minimum contacts with Texas to be subject to specific personal jurisdiction because it did not purposefully avail itself of the privilege of conducting activities in Texas related to Ratliff's negligence and unseaworthiness

[4] In its first issue, Baywater contends that Ratliff did not sufficiently plead jurisdictional allegations in his petition. We need not address this argument because, as discussed *infra*, we agree with the Baywater that, considering all the allegations and evidence in the record, Texas courts lack specific personal jurisdiction over Baywater. *See M & F Worldwide Corp. v. Pepsi-Cola Metro. Bottling Co., Inc.*, 512 S.W.3d 878, 886 n.10 (Tex. 2017) (stating that court need not reach appellants' alternate argument that plaintiff had not sufficiently pleaded jurisdictional facts because, after considering all record evidence, Texas courts did not have jurisdiction over appellants).

causes of action.[5] Ratliff counters that the trial court has specific personal jurisdiction over Baywater based on conduct related to the Workover Contract between Baywater and Texas-based Hilcorp Energy, under which the *Bayou Blue* was operating in Louisiana when Ratliff was injured.

It is well-established that merely contracting with a Texas resident does not satisfy the minimum contacts requirement. *Jay Zabel & Assocs., Ltd. v. Compass Bank*, 527 S.W.3d 545, 554 (Tex. App.—Houston [1st Dist.] 2017, no pet.); *see Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985) ("If the question is whether an individual's contract with an out-of-state party *alone* can automatically establish sufficient minimum contacts in the other party's home forum, we believe

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[5] Ratliff asserts that Baywater waived its jurisdictional challenge to his unseaworthiness claim because Baywater did not specifically mention that claim in its special-appearance filings. We disagree. In its special appearance, Baywater asserted that it is not subject to specific jurisdiction for Ratliff's "claims." Baywater indicated that Ratliff asserted claims under general maritime law, which, here, include an unseaworthiness claim. *See Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890, 896 (Tex. 2018) (recognizing that "[r]ules of error preservation should not be applied so strictly as to unduly restrain appellate courts from reaching the merits of a case"). We note that "specific jurisdiction requires us to analyze jurisdictional contacts on a claim-by-claim basis." *Moncrief Oil Int'l, Inc. v. OAO Gazprom*, 414 S.W.3d 142, 150 (Tex. 2013). But "a court need not assess contacts on a claim-by-claim basis if all claims arise from the same forum contacts." *Id.* at 150–51. "A claim of negligence under the Jones Act and a claim of unseaworthiness under general maritime law are two separate and distinct claims." *Offshore Pipelines, Inc. v. Schooley*, 984 S.W.2d 654, 658 (Tex. App.—Houston [1st Dist.] 1998, no pet.). However, here, Ratliff did not indicate that his negligence and unseaworthiness claims arose from different forum contacts, therefore, we need not analyze them separately. *See Moncrief Oil Int'l, Inc.*, 414 S.W.3d at 150–51.

the answer clearly is that it cannot."). "To evaluate purposeful availment with respect to contracting with a Texas resident, courts have considered such factors as prior negotiations, contemplated future consequences, terms of the contract, and the parties' actual course of dealing to determine whether the defendant purposefully established minimum contacts with the forum." *Jay Zabel & Assocs., Ltd.*, 527 S.W.3d at 555.

Ratliff points to Williams's deposition testimony in which she acknowledged that Baywater traveled to Houston "from time to time" to procure new business or to foster "existing business relationship with Texas entities" in order to maintain a "stream of revenue." When asked whether that "include[d] customers or operators like Hilcorp Energy Company," Williams answered affirmatively. However, neither the cited testimony nor any other evidence provides information about prior communications, negotiations, course of dealing, or other information regarding the parties' conduct in developing and executing the Workover Contract, which is the relevant inquiry for a specific-jurisdiction analysis. *See Walden*, 571 U.S. at 284 (stating that in specific-jurisdiction analysis, "the defendant's *suit-related conduct* must create a substantial connection with the forum State" (emphasis added)).

We are mindful that "[e]ven a sustained contractual relationship with a Texas resident does not support the exercise of jurisdiction if the contract is

centered around the nonresident's 'operations outside Texas.'" *Univ. of Ala. v. Suder Found.*, No. 05-16-00691-CV, 2017 WL 655948, at *6 (Tex. App.—Dallas Feb. 17, 2017, no pet.) (quoting *McFadin v. Gerber*, 587 F.3d 753,760 (5th Cir. 2009)). Here, the record shows that the hub of the Workover Contract was centered on Baywater's drilling services, which the evidence showed were provided in Louisiana.

The Workover Contract states that Hilcorp engaged Baywater "to work over or complete . . . designated well or wells in search of oil or gas on a daywork basis." Baywater agreed to provide personnel and three inland barge rigs, including the *Bayou Blue*, to Hilcorp "for the purpose of working over said wells and performing related and auxiliary operations and services for [Hilcorp] at the locations to be specified by [Hilcorp]." The location specified by Hilcorp for the *Bayou Blue* to perform its drilling operations was Hilcorp's wellsite in Terrebonne Parish, Louisiana. Williams stated in her affidavit that Baywater's "inland barge rigs, including the *Bayou Blue*[,] only work and only have worked in the waters of Louisiana."

Ratliff asserts that "Hilcorp was to provide part performance [under the Workover Contract] in Texas, including identifying well locations, providing notices of work suspensions, identifying well depths, providing payments, and preparing [the work] locations[.]" However, these decisions and activities by

Hilcorp in Texas facilitated and defined the performance of the Workover Contract by Baywater in Louisiana, not in Texas. And performance by Hilcorp of its contractual duties in Texas does not constitute purposeful contacts by Baywater in Texas. *See Turner Schilling, L.L.P. v. Gaunce Mgmt., Inc.*, 247 S.W.3d 447, 456 (Tex. App.—Dallas 2008, no pet.) (concluding that other party's performance of contractual duties in Texas does not constitute purposeful contact by defendant in Texas); *see also Moncrief Oil Int'l, Inc. v. OAO Gazprom*, 481 F.3d 309, 312 (5th Cir. 2007) (determining that contracting with resident of forum state, combined with contract performance by resident party in forum state, did not establish minimum contacts when non-resident defendant did not perform any of its own contractual obligations in forum state, contract did not require performance there, and purpose or "hub" of contract was centered in Russia).

Ratliff also cites provisions in the Workover Contract requiring Baywater to comply with specified safety procedures, practices, and protocols in conjunction with providing the drilling services under the Workover Contract. He asserts that, based on the factual allegations in his petition, Baywater's failure to comply with the contractual safety requirements provides a basis for his negligence and unseaworthiness claims.

Ratliff does not contend that any of Baywater's alleged acts or omissions violating the contractual safety requirements occurred in Texas. It is not in dispute

that Baywater's alleged tortious conduct resulting in Ratliff's injuries occurred in Louisiana at the wellsite where Baywater was providing drilling services to Hilcorp. Instead, to forge a connection with Texas, Ratliff points to a provision in the Workover Contract requiring Baywater's representatives to meet with Hilcorp at its Houston, Texas office following the occurrence of an "OSHA recordable incident" to perform a review of the incident. Ratliff also cites a provision requiring Baywater to send daily work reports to Hilcorp. And Ratliff points to Williams's deposition testimony in which she agreed that, in May of 2018, "Baywater had to answer to [Hilcorp,] a Texas based entity[,] on a day-to-day basis as it relates to the operations of the *Bayou Blu*e." Regarding the day-to-day operations, she stated that Baywater would either communicate with Hilcorp's "company man" assigned to the *Bayou Blue*, or Baywater would communicate directly with Hilcorp in Texas. None of the evidence, however, demonstrates contacts with Texas resulting from Baywater's "efforts to avail itself of the forum." *Moki Mac*, 221 S.W.3d at 576. Rather, the evidence shows communications by Baywater directed to Hilcorp, not the State of Texas, to address matters related to Baywater's performance of the contract in Louisiana.

To establish specific jurisdiction, a Texas resident cannot be the only link between a defendant and Texas. *See Walden*, 571 U.S. at 284–85. Rather, a defendant's conduct must form the necessary connection with Texas. *Id.* at 285.

Our minimum-contacts analysis must focus on Baywater's actions and choices to enter Texas and conduct business here, as opposed to Baywater's contacts with Hilcorp. *See 11500 Space Ctr., L.L.C. v. Private Capital Grp., Inc*., 577 S.W.3d 322, 331 (Tex. App.—Houston [1st Dist.] 2019, no pet.) (citing *Old Republic*, 549 S.W.3d at 561). Because the only link Baywater has with Texas is Hilcorp, not its own conduct directed at the state, the communications required by the Workover Contract and cited by Ratliff do not provide the minimum contacts necessary to establish personal jurisdiction in Texas. *See Walden*, 571 U.S. at 284–85; *Old Republic*, 549 S.W.3d at 561; *see also Peredo v. M. Holland Co.*, 310 S.W.3d 468, 474–75 (Tex. App.—Houston [14th Dist.] 2010, no pet.) ("[A] nonresident does not establish minimum contacts simply by contracting with a Texas entity and engaging in numerous communications, by telephone or otherwise, with people in Texas concerning the contract.").

As an additional contact with Texas, Ratliff also cites Williams's deposition testimony in which she acknowledged that Baywater hires Texas residents. Williams testified, "[A]ll of our hiring is done out of our Houma, Louisiana, facility. They can reside in Texas, but they are hired and processed through Houma, Louisiana. They would have to travel to us to be hired." The record contains no evidence or allegation that Ratliff is a Texas resident or that Baywater hired Ratliff in Texas. Because only a defendant's suit-related conduct is relevant

to our specific-jurisdiction analysis, Baywater's general hiring practices do not establish the required minimum contacts. *See Walden*, 571 U.S. at 284–85; *see also Chery v. Bowman*, 901 F.2d 1053, 1056–57 (11th Cir. 1990) (holding Florida court had no personal jurisdiction over Virginia resident when Florida resident went to Virginia to find work and was hired by Virginia defendant).

Finally, Ratliff asserts that the following choice-of-law and venue-selection provision in the Workover Contract demonstrates that Baywater purposefully availed itself of the privilege of conducting activities within Texas:

> This agreement shall be construed and enforced in accordance with the general maritime law of the United States whenever any performance is contemplated in, on, or above navigable waters, whether onshore or offshore. In all other instances, the internal laws of the State of Texas shall apply, without considering any conflict of law principles. The venue of any litigation between the parties shall be in Harris County, Texas.[6]

The provision's express language states that the venue clause applies to "any litigation between the parties." Reasonably interpreted, the clause applies only to litigation between the parties to the Workover Contract, which are Baywater and Hilcorp. From this, it follows that Baywater would not have reasonably anticipated

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[6] Ratliff filed the instant suit in county court in Galveston County. He asserted that venue was proper in Galveston County "because the events giving rise to the claim [occurred] on inland waters outside the State of Texas, and [Ratliff] did not reside in Harris County at the time of the accident." *See* TEX. CIV. PRAC. & REM. CODE § 15.0181(e)(3) (providing that, when filing Jones Act suit in Texas state court, suit shall be brought "in Galveston County unless the plaintiff resided in Harris County at the time the cause of action accrued" when "all or a substantial part of the events or omissions giving rise to the claim occurred on inland waters outside [Texas]").

litigating disputes with third parties in Texas, particularly when the litigation involves a tort claim based on an incident in Terrebonne Parish, Louisiana. *See Freudensprung v. Offshore Tech. Servs., Inc.*, 379 F.3d 327, 345 (5th Cir. 2007) ("[E]ven if [the defendant] may have expected to arbitrate disputes between itself and [Offshore] in Texas, it does not concomitantly follow that [the defendant] reasonably anticipated being haled into Texas court to defend a lawsuit brought by Freudensprung or any other non-party to the contract."). Therefore, because the claims here are outside the scope of the venue-selection clause, Baywater "did not impliedly consent to being subject to the jurisdiction of the Texas courts for the adjudication of this particular dispute, and the [venue-selection] provision at issue does not impact our jurisdictional analysis." *Id.*

The choice-of-law clause provides that general maritime law applies "whenever any performance is contemplated in, on, or above navigable waters, whether onshore or offshore." Texas law applies "[i]n all other instances."

The Workover Contract provides that Baywater will supply three inland barge rigs, including the *Bayou Blue*, to Hilcorp. The record indicates that Ratliff's alleged injuries occurred while the *Bayou Blue* was operating under the Workover Contract. Ratliff's petition asserts that while he was assigned to the *Bayou Blue*, he was a Jones Act seaman. He alleges that, "[a]t all material times, the *Bayou Blue* was deployed on navigable inland waters[.]"

Based on the limited jurisdictional record, it appears that performance of the contract—at least as it relates to Baywater's supplying of the *Bayou Blue* and its crew when Ratliff was allegedly injured—was "contemplated in, on, or above navigable waters." For purposes of our analysis here, Baywater would not have reasonably anticipated that Texas law applied. The choice-of-law provision does not weigh in favor of finding specific jurisdiction in this case. *See Burger King Corp.*, 471 U.S. at 482 (stating that choice-of law clauses are relevant, but "such a provision standing alone would be insufficient to confer jurisdiction" over contractual dispute).

Based on the record, we conclude that Baywater did not purposefully avail itself of the privilege of conducting activities in Texas. Thus, Baywater does not have the requisite minimum contacts with Texas to be subject to specific personal jurisdiction in this forum. We hold that the trial court erred when it denied Baywater's special appearance.

We sustain Baywater's second issue.

Conclusion

We reverse the trial court's order denying Baywater's special appearance and render judgment dismissing Ratliff's claims against Baywater for lack of personal jurisdiction.

Richard Hightower
Justice

Panel consists of Justices Keyes, Lloyd, and Hightower.