Supreme Court of Texas
Civil Procedure Topics

Searcy v. Parex Res., Inc.
No. 14-0293; No. 14-0295
Case Summary written by Jesus Cano, Staff Member.

JUSTICE WILLETT delivered the opinion of the Court, in which CHIEF JUSTICE HECHT,
JUSTICE GREEN, JUSTICE JOHNSON, JUSTICE LEHRMANN, and JUSTICE DEVINE joined.

Nabors Industries, Limited (Nabors) is a Bermudian company with operations in Houston. Ramshorn International, Limited (Ramshorn) is a Bermudian company that maintains gas and oil operations in Columbia. Nabors' subsidiary owned all of the Class A shares of Ramshorn. During the fall of 2011, Nabors decided to divest its shares in Ramshorn. ERG Resources, LLC (ERG) expressed an interest in the shares. Ramshorn's general manager in Columbia indicated that Ramshorn had rights to explore a certain portion of the outer continental shelf off Columbia near the "Jag-A block" allegedly acquired from a different company, Columbus Energy Limited (Columbus) and a Nabors' attorney claimed that Ramshorn had clean title to the Columbian operations. In February 2012, ERG sent Nabors a formal letter of intent to purchase the shares for $31.5 million. ERG continued to conduct due diligence on the way to the deal by reviewing documents in a virtual data room hosted by a Texas server. As the deal's progress began wavering, Nabors' head of global exploration, Jordan Smith, contacted Royal Bank of Canada (RBC), a Canadian bank, to help sell the shares and find potential buyers. An RBC employee, Bevin Wirzba, contacted Parex Resources, Inc. (Parex Canada), a Canadian energy company focused on Latin American assets and interested in expanding its Columbian portfolio, regarding the Ramshorn shares. Parex Canada drafted a letter of intent and formally engaged RBC to facilitate the deal. RBC sent the letter to Nabors on behalf of Parex Columbia, one of Parex Canada's wholly owned subsidiaries. Nabors and Parex Columbia entered into a confidentiality agreement that originally included a Texas choice of law clause but was

changed to New York instead. Nabors then began entertaining multiple bids for the shares, driving the purchase prices up.

On March 9, 2012, Nabors arranged to enter into a share purchase agreement with ERG (ERG SPA). Under the ERG SPA, ERG agreed to pay $45 million for the shares set to close at 9 a.m. on March 15. The deal failed to close on time and, after an extension, failed to close a second time. During the final due diligence phase, ERG learned that Ramshorn made false financial representations regarding its ownership of the Jag-A block leading to the second failed closing. Nabors notified Parex Canada about the failed closing and Parex Columbia renewed its previous $75 million dollar bid. Parex Canada arranged for the creation of a new Bermudian entity, Parex Bermuda, to acquire the shares in April 2012. At the same time, Parex Bermuda and Nabors executed a share purchase agreement (Parex Bermuda SPA) signed by Bermudian residents in Bermuda using funds located in Bermuda. Parex Canada acted as a guarantor for Parex Bermuda in the agreement. The Parex Bermuda SPA and guarantee both contain a New York forum selection and choice of law clause. ERG filed suit in Texas seeking specific performance of the ERG SPA, alleged tortious interference with contract against Nabors, Parex Canada, and Parex Bermuda as well as Ramshorn for fraud. Parex Canada, Parex Bermuda, and Ramshorn challenged the trial court's jurisdiction over them. ERG has since become bankrupt and the trustee of the bankruptcy estate and assignee of ERG's claims, Jason R. Searcy, is listed as the plaintiff.

Issue: Does the Texas trial court have personal jurisdiction over Parex Canada, Parex Bermuda, and Ramshorn when only Ramshorn had a substantial presence in Texas?

The Court held that Parex Canada and its Bermudian subsidiary, Parex Bermuda, did not avail themselves of Texas's jurisdiction and, thus, Texas has neither specific nor general personal jurisdiction over these entities. Parex Canada did not have continuous and systematic contacts with Texas such that Parex Canada would feel "at home" in the state. Parex Canada has only interacted with Texas in its dealings with Nabors. As such Texas has no general specific jurisdiction over Parex Canada or Parex Bermuda. Regarding specific personal jurisdiction, the Court found that Parex Canada lacked the minimum contacts to establish purposeful availment. The Court relied on its decision in *Michiana Easy Livin' Country, Inc. v. Holten* to explain the three

features of specific personal jurisdiction as follows: (1) only the defendant's contacts with the state are relevant, not the plaintiff's, (2) the contacts must be purposeful to establish purposeful availment, and (3) the defendant must seek to benefit by availing itself of the jurisdiction. The Court emphasized that the minimum contacts analysis focuses on the nature of the defendant's contacts rather than the number. Here, Parex Canada's only contacts with Texas were communications with Nabors' executives in Houston. The Court noted that jurisdiction is proper when the defendant planned to have continuous and wide-reaching contacts with the forum state. Parex Canada did not seek to establish operations in Texas and did not purposely avail itself of Texas's jurisdiction.

The Court held, however, that the trial court had specific personal jurisdiction over Ramshorn. Ramshorn is a Bermuda corporation solely owned by Nabors, another Bermuda company that operates Ramshorn from Houston. The Court concluded that Nabors executive, Jordan Smith, was an agent with actual and apparent authority to sell the Ramshorn shares. Smith actively negotiated the shares' sales from Texas. The Court held that Smith purposefully availed the company of Texas jurisdiction by negotiating extensively in Texas to a Texas buyer. Further, ERG's claims directly arise out of this contact with the Texas forum as they allege that Ramshorn made various false representations during these dealings.

The Court held that Texas does not have general personal jurisdiction over Ramshorn as it does not have continuous and systematic contacts with Texas. The Court also held that Texas has no personal jurisdiction over Parex Bermuda for the same reasons explained in its jurisdiction analysis for Parex Canada.

JUSTICE GUZMAN, joined by JUSTICE BOYD, concurring in part and dissenting in part.

Justices Guzman and Boyd dissent from the majority regarding what constitutes minimum contacts. Justice Guzman's definition of minimum contacts focuses on the relationship between the defendant, forum state, and litigation, rather than just the defendant and forum state. Justice Guzman further states that purposeful availment of a forum's jurisdiction centers around the defendant's intentional contacts with the forum state. Although electronically, Parex Canada

intentionally entered into bidding and negotiations with a Texas-based corporation, Nabors, with the intent to enter into ongoing and long-term business with their affiliates. Additionally, the tortious interference alleged by ERG occurred in electronic negotiations in Texas hosted by a Texas server. These two facts satisfy the sufficient minimum contacts requirement for specific personal jurisdiction in Texas. The majority's jurisdictional analysis is flawed in that it focuses on Parex Canada's presumed intent rather than its purposeful conduct by distinguishing between electronic and in-person communication. A defendant can conduct business and engage in communications in a forum without ever physically entering a forum.

Justices Guzman and Boyd concur with the majority's holding regarding Parex Bermuda. Arguments regarding Texas's personal jurisdiction over Parex Bermuda are irrelevant if the Court decides Texas has no personal jurisdiction over Parex Canada. However, as the dissent reaches a conclusion allowing Texas personal jurisdiction over Parex Canada, Justice Guzman's opinion reaches a ratification argument that was immaterial in the majority's opinion. A principal can subject himself to the jurisdiction of a foreign forum if he ratifies the actions of an agent. An agency is not necessary to effect ratification. A later-incorporated entity may also ratify pre-incorporation activities and attribute them to the principal. However, not all of a non-agent's actions are imputed upon ratification. Only specific transactions that are ratified by the principal are attributed to the principal. ERG provided no evidence that Parex Bermuda ratified Parex Canada's allegedly tortious communications with Nabors. As such, Texas has no specific personal jurisdiction over Parex Bermuda.

In Re Oceanografia, S.A. de C.V.
No. 14-0963
Case Summary written by Kate Foley, Staff Member.

PER CURIAM.

The merchant vessel, *Seba'an*, caught fire and sank off the coast of Mexico, killing one worker. All other crewmembers were rescued. Oceanografia, S.A. de C.V., a Mexican entity that operated the vessel and employed its crew, chartered the ship for its owner, Candies

Mexican Investments, S.de R.L. de C.V (CMI), another Mexican entity. CMI was controlled by its affiliate, Otto Candies LLC, a Louisiana entity. The "repairs, accident, and rescue occurred in Mexican waters, aboard a ship controlled and operated by a Mexican company, and crewed by its Mexican employees." In 2008, 91 of the surviving workers and the beneficiaries of the deceased worker sued Oceanografia, CMI, Otto Candies, and OSA International, LLC, a Texas entity who was Oceanografia's marketing affiliate, in a district court in Cameron County, Texas.

In 2011, the district court denied Oceanografia, CMI, and Otto Candies's motion to dismiss on *forum non conveniens*, as well as Oceanografia's special appearance, and the court of appeals affirmed Oceanografia's appeal. The appeal stayed commencement of the trial, but the parties engaged in discovery, and later in 2013 the defendants moved for summary judgment. All defendants jointly moved for reconsideration of the motion to dismiss in 2014, but the court denied reconsideration. A couple months later, the defendants requested mandamus relief from the court of appeals.

The issue before the Court was whether they should grant the defendant's request for mandamus relief, considering whether the defendants' delay in seeking dismissal for *forum non conveniens* was unreasonable.

The Court considered whether the defendant's delay in asserting their rights precluded mandamus relief by looking at the case's circumstances and concluded that Oceanografia couldn't be faulted for their "delay in seeking mandamus relief from the denial of its motion to dismiss for *forum non conveniens* when to press ahead might have compromised its appeal of the denial of its special appearance," and that it was reasonable for CMI and Otto Candies to wait to seek mandamus relief until after a decision was rendered from Oceanografia's jurisdiction appeal. The plaintiffs argued that they were prejudiced by the delay, but the Court found that they had not sufficiently demonstrated this.

After the Court held the defendant's delay in seeking dismissal for *forum non conveniens*, and delay in requesting mandamus relief, was not unreasonable, and that the delay did not prejudice the plaintiffs, the Court looked at the six factors mandated under Section 71.051(b) of the Texas Civil Practice and Remedies Code that the court is required

to consider when determining whether the court should grant a motion for *forum non conveniens* and dismiss the claim. The Court reasoned that an alternate forum was adequate and that the plaintiffs could try their claims in Mexico, where all but one of the claimants resided, and where the defendants had agreed to jurisdiction. They found that these factors clearly established a favor of dismissal for *forum non conveniens,* with the case having almost no connection to Texas. The Court conditionally granted mandamus relief and directed the trial court to vacate their order denying the defendants' motion to reconsider, directed them to issue an order dismissing the case for *forum non conveniens*, and to facilitate the litigation's transfer to Mexico.

In Re Red Dot Building System, Inc.
No. 15-1007
Case Summary written by Alexandra Brak, Staff Member.

PER CURIAM.

Rigney Construction & Development, LLC was retained to build a school in Brooks County. Rigney, whose principal place of business is in Hidalgo County, contracted with Red Dot to help construct the school. Red Dot's principal place of business is in Henderson County. The parties negotiated the contract, with the final contract consisting of "a purchase order and scope sheet signed by both parties" for a contract price of $355,001.

The main dispute between the parties arose with the scope of work that Red Dot was to perform under the contract. Rigney did not pay the invoice sent by Red Dot, and Red Dot sued Rigney in Henderson County for the unpaid balance on January 5, 2015. Rigney responded by suing Red Dot in Hidalgo County on February 6, 2015. Both suits dealt with the same contract, each asserting claims for breach of contract, deceptive trade practices, and accord and satisfaction.

The issue is which county has dominant jurisdiction over the breach of contract dispute between Red Dot and Rigney. Red Dot filed a motion to transfer venue to Henderson County and an answer and motion to abate the Hidalgo County suit. The Hidalgo County court denied the motions to transfer on July 27, 2015. Rigney filed a motion to transfer venue to Hidalgo County. The Henderson court denied the motion to transfer and advised by letter that "venue in Henderson

County was proper" and that Henderson County had dominant jurisdiction. Rigney filed an application for anti-suit injunction in the Hidalgo County case. The court granted a temporary injunction against Red Dot prosecuting the Henderson County suit.

Red Dot requested mandamus relief, which was denied by the court of appeals. The Supreme Court of Texas stayed the proceedings in both trials to review the mandamus petition by Red Dot. The court decided that Red Dot was not entitled to mandamus relief to transfer the case to Henderson County. Red Dot did not argue that venue was improper in Hidalgo County, and a trial court should transfer a case only if venue is not proper in that court. However, the Court agreed with Red Dot that the Hidalgo County court should have abated the suit, and that "mandamus relief is available to secure this result." The court stated the rule that where inherently interrelated suits are pending in two counties, and venue is proper in either county, the court in which suit was first filed acquires dominant jurisdiction. Therefore, the court without dominant jurisdiction must abate the suit.

The Court next addressed whether venue was proper in both counties. The Court stated that venue is proper in the county where "all or a substantial part of the events" occurred that give rise to the claim. In determining venue, courts will look at where the contract was made, performed, and/or breached. The Court analyzed these factors applied to the present case. Rigney alleged that venue was proper in Hidalgo County because Red Dot sought out Rigney's business there, the contract was formed there, and Red Dot has received payment there. Red Dot argued that the contract was "performable" in Henderson County and that Red Dot's performance of the contract occurred there. Thus, both counties were arguably counties of proper venue.

The Court concluded that Henderson County acquired dominant jurisdiction, and that Rigney was not able to show that an exception to the general rule of dominant jurisdiction applied. The Court granted mandamus relief, ordering the Hidalgo County trial court to vacate the anti-suit injunction and grant Red Dot's plea in abatement. The Court stated that it would issue a writ if the Hidalgo County Court does not comply.