Reverse and Remand and Affirmed as Modified and Opinion Filed August 9, 2017

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-00868-CV

CELANESE CORPORATION AND GRUPO CELANESE, S. DE RL DE CV, Appellants
V.
JAVIER SALCEDO SAHAGUN; RAMOS & HERMOSILLO ABOGADOS, S.C.; AND DEL TORO CARAZO, ABOGADOS, Appellees

On Appeal from the 191st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-15-09284

MEMORANDUM OPINION

Before Justices Fillmore, Whitehill, and Boatright
Opinion by Justice Whitehill

This appeal from an order granting a collective special appearance arises out of a defamation and business disparagement lawsuit in which plaintiffs Celanese Corporation and Grupo Celanese, S. DE RL DE CV (Celanese) claim that appellees Javier Salcedo Sahagun (Salcedo), Ramos & Hermosillo Abogados, S.C. (Ramos), and Del Toro Carazo, Abogados (Del Toro), who are all citizens of Mexico, directed their publicist to disseminate in Texas defamatory statements about Celanese. In two issues, Celanese argues that the trial court erred in granting appellees' special appearance and, regardless, should not have done so with prejudice.

The overriding question is whether the Mexican nationals' use of a Washington, D.C. publicist to disseminate defamatory statements directed at Texas and other markets as part of a national media campaign supports the exercise of specific jurisdiction over appellees in Texas.

A subsidiary question is whether appellees, who directed the message's content and timing and had the right to approve the publicists' distribution plan, sufficiently possessed the right to control her work thereby making her their agent for purposes of imputing her Texas contacts to them.

For the reasons discussed below, we conclude the evidence establishes that (i) the publicist was Salcedo and Ramos's agent for personal jurisdiction purposes and (ii) Salcedo and Ramos's dissemination of statements in and directed toward Texas was sufficient to establish personal jurisdiction as to them, but not as to Del Toro. However, the trial court erred by dismissing Celanese's claims against Del Toro with prejudice. Accordingly, we (i) modify the trial court's order dismissing the claims against Del Toro with prejudice to a dismissal for want of personal jurisdiction, (ii) reverse the trial court's order granting Salcedo's and Ramos's special appearance, and (iii) remand the case to the trial court for further proceedings as to Ramos and Salcedo.

I. Background

The Celanese subsidiary operates a manufacturing plant in Mexico. Several years ago, Salcedo purchased fifty acres of undeveloped real property adjacent to that plant.

According to Celanese, Salcedo's objective was to develop the property so that he could sell it to Celanese at an inflated price. Since 2006, Salcedo has directed his Ramos lawyers to initiate twelve lawsuits or administrative actions related to Celanese's operations, which Celanese claims were designed to shut down or interrupt its business.

In 2013, Salcedo had Ramos arrange a meeting with Celanese at Celanese's Irving, Texas headquarters. During that meeting, Ramos attorneys told Celanese that Salcedo would continue to interfere with Celanese's Mexico operations if it did not purchase Salcedo's property for the price he demanded. Celanese refused.

Celanese claims that Salcedo then began an attack aimed at destroying Celanese's reputation. To this end, Salcedo complained to the Mexican government that Celanese was operating without required permits and polluting the water and soil on his property and in the surrounding area. Celanese maintains that all of these complaints are false.

In mid-April 2015, Salcedo and Ramos hired Velma Ruth and her Washington, D.C. public relations firm, Independent Review, to draft and circulate a nationwide press release that also targeted specific Texas markets. The press release concerned a raid on the Celanese plant by the Mexican government that had yet to occur.

In a document memorializing a conversation between Ruth, Ramos attorneys, and Salcedo, one of Salcedo's advisors wrote, "There are two press strategies—one in Mexico, on[e] in US. *The ideal objective is for Celanese to see a threat that is likely to grow, so that they decide to negotiate the solution, which at this point is the purchase of the land from . . . Salcedo . . . .*" (emphasis added).

A few weeks after Ruth was hired, Mexican officials raided the Celanese plant. The press release Ruth issued at Salcedo's and Ramos's instruction claimed the officials found that Celanese leaked mercury into a nearby river and the surrounding soil was contaminated with mercury and other harmful chemicals. Celanese's testing showed that these statements were false, and Celanese claims that the Del Toro and Ramos attorneys were the sole sources of the false information.[1] But Ruth nonetheless disseminated the press release and other negative Celanese stories to U.S. media sources, including Texas media outlets such as the *Dallas Business Journal*. Other Texas media, including the Austin, Dallas, Houston and San Antonio

[1] Ramos hoped to avoid being identified as the source. In an email to Ruth, one Ramos lawyer told her that, "Its very important that neither of us are directly linked to the story (not personally or the Firm). Is it possible that you point out as your source a correspondent here [locally in Mexico]?"

Business Journals, the *Fort Worth Star Telegram*, and thirteen local news web sites, republished the reports.

Celanese subsequently sued Ramos, Del Toro, and Salcedo in Dallas County alleging defamation per se, business disparagement, and conspiracy to defame. The defendants filed a collective special appearance that the trial court granted, which is now the subject of this appeal.

II. Analysis

A. Celanese's First Issue: Did the trial court err by determining that it lacked specific personal jurisdiction over appellees?

1. Standard of Review and Applicable Law

Whether a court has personal jurisdiction over a nonresident defendant is a question of law we review de novo. *Moncrief Oil Int'l, Inc. v. OAO Gazprom*, 414 S.W.3d 142, 150 (Tex. 2013) (citing *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007)). "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 order that are supported by evidence." *Id.*

Texas courts may exercise personal jurisdiction over a nonresident defendant only if (i) the Texas long-arm statute permits the exercise of jurisdiction and (ii) exercising the jurisdiction satisfies constitutional due-process guarantees. *Id*. The long-arm statute is not at issue here.

Constitutional due process permits a state to exercise jurisdiction only when a nonresident defendant has sufficient minimum contacts with the state, and the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. *M & F Worldwide Corp. v. Pepsi-Cola Metropolitan Bottling Co., Inc*., 512 S.W.3d 878, 887 (Tex. 2017).

Texas special appearance law dictates that the plaintiff and the defendant bear shifting burdens of proof in a personal jurisdiction challenge. *Id*.; *see also* TEX. R. CIV. P. 120a. The plaintiff bears the initial burden to plead sufficient allegations to invoke jurisdiction under the

Texas long-arm statute. *Moki Mac*, 221 S.W.3d at 574. If the plaintiff pleads sufficient jurisdictional allegations, a defendant who contests the trial court's exercise of personal jurisdiction bears the burden of negating all bases of jurisdiction alleged by the plaintiff. *Id.*

Personal jurisdiction may be either general or specific. *See Moncrief Oil*, 414 S.W.3d at 152. General jurisdiction arises when a defendant's "affiliations with the state are so continuous and systematic as to render it essentially at home in the forum state." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). On the other hand, courts may exercise specific jurisdiction when the defendant's forum contacts are "isolated or sporadic," but only if the plaintiff's cause of action arises from or relates to those contacts. *TV Azteca v. Ruiz*, 490 S.W.3d 29, 37 (Tex. 2016), *cert. denied*, __ U.S.__, 2017 WL 2722433 (2017).

Specific jurisdiction is at issue here. Thus, we focus on two prongs: (i) purposeful availment and (ii) relatedness. *See Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 338 (Tex. 2009).

Purposeful availment is the touchstone of jurisdictional due process. *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 784 (Tex. 2005). Thus, it is "essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

The purposeful availment prong analyzes (i) the defendant's own actions but not the unilateral activity of another party; (ii) whether the defendant's actions were purposeful rather than random, isolated, or fortuitous; and (iii) whether the defendant sought some benefit, advantage, or profit by availing itself of the privilege of doing business in Texas. *Jani–King Franchising Inc. v. Falco Franchising, S.A.*, No. 05–15–00335–CV, 2016 WL 2609314, at *3 (Tex. App.—Dallas May 5, 2016, no pet.) (mem. op.). The defendant's activities must justify a

conclusion that the defendant could reasonably anticipate being called into a Texas court. *Am. Type Culture Collection v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002) (citing *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). The "quality and nature of the defendant's contacts, rather than their number" governs the inquiry in the minimum contacts analysis. *Id.*

The "relatedness" prong analyzes the relationship among the defendant, the forum, and the litigation. *Searcy v. Parex Res., In*c., 496 S.W.3d 58, 67 (Tex. 2016).

Applying the above principles, we analyze whether a Texas court may properly exercise specific jurisdiction over appellees. But because all but one of the Texas contacts were through Ruth, we first determine whether she acted as appellees' agent such that her contacts are imputed to them.

2. Should Ruth's contacts be imputed to appellees because she served as their agent?

a. Applicable Law

Celanese argues that Ruth's contacts with Texas should be imputed to appellees because she served as their agent. Appellees contend that such imputation is not proper because Ruth was an independent contractor, but do not dispute that Ramos and Del Torro were Salcedo's agents.

The distinction between an independent contractor and an agent is important to the jurisdictional inquiry because the actions of an independent contractor by themselves are not sufficient to subject a non-resident to the forum state's jurisdiction. *Coleman v. Klockner & Co., AG*, 180 S.W.3d 577, 588 (Tex. App.—Houston [14th Dist.] 2005, no pet.). But when an agent represents her principal in Texas, the principal is doing business in Texas. *See Hotel Partners v. Craig*, 993 S.W.2d 116, 121 (Tex. App.—Dallas 1994, no writ). Thus, our inquiry turns on

whether Ruth was appellees' agent or an independent contractor. (For purposes of this analysis, we treat appellees as a group unless indicated otherwise).

Whether an agency relationship exists is generally a fact question. *Coleman*, 180 S.W.3d at 587. Here, however, the trial court did not expressly find there was no agency relationship between appellees and Ruth. Nonetheless, we imply all facts necessary to uphold the judgment that are supported by the record. *Id.* Therefore, we construe Celanese's argument that Ruth was appellees' agent as a challenge to the legal and factual sufficiency of the evidence supporting the trial court's implied finding that no agency relationship existed. *See SITQ E.U., Inc. v. Reata Rests., Inc.*, 111 S.W.3d 638, 652 (Tex. App.—Fort Worth 2003, pet. denied). We next address the applicable principles of agency law.

Agency is not presumed, and the party asserting the relationship has the burden of proving it. *Schultz v. Rural/Metro Corp.*, 956 S.W.2d 757, 760 (Tex. App.—Houston [14th Dist.] 1997, no writ). But an agency relationship may be found from the underlying facts or direct and circumstantial evidence showing the parties' relationship. *Id.*

Next, an agent is one who is authorized to transact business or manage some affair for a person or entity. *Townsend v. Univ. Hosp.*, 83 S.W.3d 913, 921 (Tex. App.—Texarkana 2002, pet. denied). An agent may have actual or apparent authority. *See Bottle Rock Power Corp.*, 108 S.W.3d 538, 550–51. "Actual authority is created through written or spoken words or conduct of the principal communicated to the agent." *Greenfield Energy, Inc. v. Duprey*, 252 S.W.3d 721, 734 (Tex. App.—Houston [14th Dist.] 2011, no pet.). On the other hand, apparent authority " is created by written or spoken words or conduct by the principal to a third party." *Id.* Actual authority is at issue here.

The critical element of an agency relationship is the principal's right to control both the means and details of the process by which the agent is to accomplish his task. *Id.* Absent proof

of the right to control the means and details of the work performed, only an independent contractor relationship is established. *Happy Indus. Corp. v. Am. Specialties, Inc*., 983 S.W.2d 844, 852 (Tex. App.—Corpus Christi 1998, pet. dism'd w.o.j.).

As the supreme court recently noted, a "principal's right of control presupposes that the principal retains the capacity throughout the relationship to assess the agent's performance, provide instructions to the agent, and terminate the agency relationship by revoking the agent's authority." *Exxon Mobil Corp. v. Rincones*, No. 15-240, 2017 WL 2324710, at *12 (Tex. May 26, 2017). That type of control is evident here.

From the cases cited in the preceding two paragraphs, it follows that the proper focus is on the alleged principal's right to control the agent's performance, not whether it exercised that right regarding the mission's finite details. For example, clients typically have, but do not necessarily exercise, control over the manner and means of their lawyer's performance. But that a client may defer to its lawyer's expertise in executing certain tasks does not render the lawyer any less the client's agent. *See Gracey v. West*, 422 S.W.2d 913,916 (Tex. 1968) (attorney-client relationship is also an agency relationship). Thus, the key here is whether appellees had the right to control the means and manner of Ruth's performance and not, as appellees suggest, whether they in fact exercised that right regarding the details.

b. Application of Law to Undisputed Facts

The record contains these undisputed facts:

Ruth's services were recommended by a New York acquaintance and Salcedo friend, Manfred Schweitzer. In an introductory phone call, a Ramos lawyer told Ruth that they wanted to get a press release concerning Celanese out to the U.S. and Mexican markets. Although Salcedo was "technically" Ruth's client, she also worked with "the legal team."

Ruth's agreement with Salcedo and "his attorneys" requires that she notify "financial markets and investors of the nature of corrupt practices engaged by Celanese . . . in Mexico, against the best interests of the Mexican people." In so doing, she "has a responsibility to only communicate the verbiage that is provided by the client, and is limited to engage in media relations only at the given dates, times, and content that has been provided by the client (i.e. talking points, press release, executive summary, supplemental documentation." Ruth's invoices were sent separately to both Salcedo and Ramos.

Salcedo and Ramos prepared and reviewed material for Ruth to include in the press release, reviewed her draft, and made revisions. Ruth said that the Mexican and Latin American press were more likely to publish the information with limited supporting evidence, but the US press would need as much support as possible to back the claims made about Celanese. Consequently, when Ramos sent Ruth an executive summary accompanied by back-up documents that included communications between Celanese and Mexican officials, Ruth responded, "I trust your judgment on which documents you see may be most important to present to the press as priorities." Ramos and Salcedo authorized Ruth to publish the release when they deemed it ready.

Ramos also told Ruth when the media campaign was to begin, and requested that she begin giving the U.S. press information before the Mexican warrant was to be executed. Ramos then advised, "We believe it is ready for release. We will let you know tomorrow as soon as we execute the warrant." When the warrant was executed, Ruth was instructed that "the warrant is being executed at this moment. Please proceed with the press release."

Appellees do not dispute that they controlled the content of the press release and when it would be released, but claim that they relied on Ruth to determine the manner and means by which it was distributed. *See Coleman*, 180 S.W.3d at 588 (principal must control both the

means and the process by which the agent is to accomplish a task). To this end, appellees rely on Salcedo's testimony that Ruth "on her own volition, provided the press release, in its original form, to the PR Newswire web site." This reliance is misplaced for several reasons.

One, appellees' argument misses the point. The question is whether appellees had the right to control her manner and means, not whether they chose to exercise that right regarding the final details. *See Greenfield Energy*, 252 S.W.3d at 734.

Two, although appellees may not have specifically instructed Ruth to send the press release to the PR Newswire site, she identified PR Newswire in her original proposal submitted to appellees for their review and approval. Ruth, however, did target the Associate Press, which is tantamount to targeting the entire United States, including Texas.

Three, contrary to appellees' contentions, Ramos and Salcedo did control dissemination of the press release. At one point in the process, Ruth was told to hold the Spanish version she was distributing. Confirming that she had stopped circulating it, Ruth said, "I am not taking any action with the Spanish version or Latin America unless and until directed to do so."

Four, Ruth was also required to report her progress with distribution and constantly advised appellees about what she was doing and who she was contacting.

Five, Ruth followed Salcedo and Ramos's direction throughout the process. When one of the media sources required identification of the law firms in a caption, a Ramos attorney first instructed Ruth not to identify them, and then relented, saying, "O.K. Go ahead with the title." Then Ramos determined that additional revisions to the release were required, and instructed Ruth to send the final version for review. Ruth responded, "please confirm with 'approved.'"

Six, when Ruth first issued the press release, she included a photograph of the Mexican raid. She was later instructed, however, that she could not use the picture.

Seven, when one of the media sources she contacted asked who she represented, Ruth replied that she was "reaching out" on Ramos's behalf. Indeed, Ruth repeatedly testified that she was working for and under the authority of Salcedo and his attorneys.

Thus, the undisputed facts in the special appearance record establish that Salcedo and Ramos throughout their relationship with Ruth retained the capacity to assess her performance, provide instructions to her, and terminate their relationship with her by revoking her authority. *See Exxon Mobil*, 2017 WL 232710, at *12. Specifically, Ruth was authorized to act on Salcedo and Ramos's behalf and was subject to their control. They told her what to say, and when and how to say it. She provided detailed accounts of her progress, including the media source receiving the release, presumably to assess her performance. As the *TV Azteca* court noted, "courts may lack specific jurisdiction over a nonresident who made no independent efforts to purposefully avail itself of Texas and merely contracted with a third party who did." *TV Azteca*, 490 S.W.3d at 51. But a defendant who "intentionally targets Texas as the marketplace for its products" is subject to specific jurisdiction, and "using a distributor-intermediary for that purpose provides no haven from the jurisdiction of a Texas court." *Id.*

Thus, there is substantial evidence that Salcedo and Ramos always retained control over Ruth's manner and means of performance—regardless of whether they chose to exercise that right. And there is no contrary evidence.

Conversely, there is insufficient evidence supporting such a conclusion concerning Del Toro. The numerous communications and directives are between Ruth, Ramos, and Salcedo. Nothing shows the extent of Del Toro's involvement beyond that of a designated recipient of those communications. In one e-mail from Ruth to Ramos, she explains that "PR Newswire requires me to only publish who I am working for, so Del Toro needs to be named along with

Ramos . . . ." But even if Ruth was working for, or believed herself to be working for Del Toro, there is nothing to establish that Del Toro had the right to control her work.

Therefore, we conclude that the evidence (i) is insufficient to support the trial court's implied finding that Ruth was not Salcedo's and Ramos's agent but (ii) does support the conclusion that there was no agency relationship between Del Toro and Ruth. *See Crossroads Fin., LLC v. A.D.I.M. Global Co., Ltd*, No. 05-16-00486-CV, 2016 WL 7220970, at *8 (Tex. App.—Dallas Dec. 13, 2016, no pet.) (mem. op.). As a result, we impute Ruth's Texas contacts to only Salcedo and Ramos for our jurisdictional analysis.

3. Do Salcedo and Ramos have sufficient minimum contacts with Texas?

Having concluded that Ruth was Salcedo's and Ramos's agent, we now determine whether Salcedo and Ramos have sufficient minimum contacts with Texas to support Texas jurisdiction over them.

a. Purposeful Availment

(i.) Applicable Law

The key inquiry in a challenge to personal jurisdiction over a defamation claim is whether the defamatory statement was directed at the forum state. *See TV Azteca*, 490 S.W.3d at 43. As in *TV Azteca*, the evidence here shows that Salcedo and Ramos targeted and exploited the Texas market.

In *TV Azteca*, a Mexican recording artist residing in South Texas filed a Texas defamation action against two Mexican television broadcasters and a TV Azteca news anchor and producer. *Id*. at 35. The defendants filed special appearances, which the trial court denied. The court of appeals affirmed that denial. *Id.* at 35–36.

The Texas Supreme Court affirmed the judgment of the court of appeals and held that the defendants purposefully availed themselves of the privilege of conducting activities in Texas by

intentionally targeting Texas through the allegedly defamatory broadcasts. *Id.* at 52. In reaching this conclusion, the court rejected the plaintiff's argument that the defendants had "directed a tort" at her, stating that, "Courts cannot base specific jurisdiction merely on the fact that the defendant 'knows that the brunt of the injury will be felt by a particular resident in the forum state."' *Id*. at 43. The court further explained that, "There is a subtle yet crucial difference between directing a tort at an individual who happens to live in a particular state and directing a tort at that state." *Id.* But because the defendants "physically 'entered into' Texas to produce and promote their broadcasts, derived substantial revenue and other benefits by selling advertising to Texas businesses, and made substantial efforts to distribute their programs and increase their popularity in Texas," they "continuously and deliberately exploited the [Texas] market." *Id*. at 52 (citing *Michiana,* 168 S.W.3d at 789 and *Keeton v. Hustler Magazine, Inc*., 465 U.S. 770,771 (1984)).

Appellees assert that *TV Azteca* and *Keeton* support their contention that they did not continuously and deliberately seek to exploit the Texas market because the press release "was intended for readership in Mexico and the United States generally" and was not purposefully directed into Texas with the intent that it reach Texas readers. They further rely on *Calder v. Jones*, 465 U.S. 783 (1984) to argue there is no real connection to Texas because neither the subject of the press release nor its sources involve Texas. We are not persuaded by these arguments; instead, an analysis of *TV Azteca*, *Keeton*, and *Calder* directs the opposite conclusion.

In *Keeton*, a New York resident filed a libel suit in New Hampshire against *Hustler* magazine, a resident of Ohio and California. The magazine had no offices or employees in New Hampshire and did not particularly direct its publication at New Hampshire. There was no evidence of any marketing targeted specifically at New Hampshire residents, and the magazine's

sales in New Hampshire made up only a small part of its total sales. But the supreme court held that the magazine could be called into New Hampshire to answer the suit because it circulated 10,000 to 15,000 copies of the magazine to New Hampshire each month. *Id.* at 773–74.

The court reasoned that by regularly circulating the publication to New Hampshire residents, the magazine had "continuously and deliberately exploited the New Hampshire market." *Id*. at 781. Because the libel claim arose "out of the very activity" the magazine was conducting in the state, there was a sufficiently close relationship that it was reasonable to expect the magazine to respond to suit in that state. *Id*. at 779–80. Moreover, because the magazine produced a "national publication aimed at a nationwide audience," there was "no unfairness in calling it to answer for the contents of that publication wherever a substantial number of copies are regularly sold and distributed." *Id*. at 781. In short, *Hustler*, sought to benefit itself by purposefully directing it business at New Hampshire regardless of whether it did a greater volume of business elsewhere. Stated differently, it was *Hustler's* purposeful contacts with New Hampshire that mattered, not whether it had substantially greater more meaningful contacts elsewhere.

Likewise, *Calder* involved a California actress's suit against *National Inquirer*, a publication sold in many forums, including California where the suit was filed. Although the author and editor of the allegedly defamatory article lived in Florida and worked on the article there, the supreme court held that a California court had jurisdiction over them because the article concerned the California activities of a California resident, was drawn from California sources, and the brunt of the harm was suffered in California. *Id*. at 788–89. Moreover, because the publication sold twice as many copies in California than any other state, the author and editor "knew that the brunt of the injury would be felt" in that state. *Id.*

Thus, the sources and subject of the *Calder* article were just part of the court's jurisdictional analysis. And as the court explained in *Walden v. Fiore*, 134 S.Ct. 1115, 1124 (2014), the "crux of Calder was that the reputation-based 'effects' of the alleged libel connected the defendants to California, not just to the plaintiff." *Id*. at 1123-24. The reputational injury caused by the article "would not have occurred but for the fact that the defendants wrote an article for publication in California that was read by a large number of California citizens." *Id.* Thus the "effects" of the article—injury to the plaintiff's reputation in the estimation of the California public—connected the defendants' conduct to California, and not just to the plaintiff who lived there. *Id*.; *see also TV Azteca*, 490 S.W.3d at 42 (analysis focuses on defendant's contacts with the state itself rather than on persons who reside there); *Searcy*, 496 S.W.3d at 67–68 (that a defendant's conduct affected plaintiffs with connections to the forum not sufficient).

A common feature of *Keeton*, *Calder*, and *TV Azteca* is that the defendants intended to benefit themselves by publishing their content in purposefully reached states. That feature distinguishes those cases from *Michiana* and *World Wide Volkswagen*, for example, in which the defendants' contact with the forum was random and fortuitous. *See Keeton*, 465 U.S. at 780–81; *Calder*, 465 U.S. at 789-90; *TV Azteca*, 490 S.W.3d at 52.

Thus, critical to this case is whether Salcedo and Ramos intended to benefit from having the statements distributed in Texas, regardless of the route taken to get them there. That is, if Salcedo and Ramos's purpose was to benefit from having the challenged statements published in Texas, it matters not whether the statements were given directly to Texas media for publication or whether they gave them to a distributor to disseminate to Texas media outlets. Either way, the evidence establishes that Salcedo and Ramos intended to benefit from publishing the statements in Texas.

(ii.) Application of Law to Facts

Here, there is no dispute that the press release was covered by national media, some portion of which necessarily includes a Texas audience. In addition, Ruth provided the press release and supporting documentation to Texas-based media serving a predominantly Texas audience, including the *Fort Worth Star Telegram* and the *Dallas Business Journal* (both of which cover Celanese's home office in Irving, Texas). She then followed up with these outlets by phone and email. According to Ruth's data, the *Dallas Business Journal* web site has 389,000 visitors per day, and the *Fort Worth Star Telegram* has 11,000.

After receiving information from Ruth, the *Dallas Business Journal* published a story about the raid. In addition, Ruth contacted the AP business writer responsible for covering Dallas, provided a press release and executive summary, and stated that she would follow up with specific news outlets in Texas, which she did. Ruth testified that her initial focus was national, and the Dallas market was secondary. But there is no dispute that an intentional and deliberate focus on the Dallas market was part of her effort. In fact, Ruth's initial proposal specifically targeted the *Dallas Business Journal* and the *Houston Chronicle*.

Ruth's efforts, however, were not limited to the Dallas-Fort Worth metroplex—her efforts included media markets throughout the state. She also provided the press release to thirteen Texas television stations. She also sent the press release to the PR Newswire to publish on a nationally accessible web site. Afterwards, several Texas-specific news outlets republished the release on their web sites, including the *Austin Business Journal* (389,000 visitors per day), *DallasNews.com* (site traffic data unavailable), the *Houston Business Journal* (369,000 visitors per day), and the *San Antonio Business Journal* (389,000 visitors per day).

Regardless of whether Ruth's purposeful dissemination of the press release in the Texas market is characterized as primary or secondary, the fact remains that Ruth intended to

disseminate the press release in Texas knowing that it would be viewed by Texans. Thus, her contact with Texas was purposeful, not random or fortuitous.

That Salcedo and Ramos intended to benefit from these purposeful Texas contacts is evident in the record. As Ruth told Schweitzer, "A local shake up should rattle corporate, so that Texas pushes back internally to want to remove the liability before anything goes further." In another communication, Ruth argued that they should "give the corporate office in Texas an opportunity to replace local Mexican management," and that "calling on the US corporate offices responsibility in foreign practices . . . gives the executive level and shareholders an opportunity to address the situation."

Furthermore, drafts of the press release and executive summary stated that Celanese was a Texas company, headquartered in Dallas. Ruth's emails to out-of-state publications expressly referenced Celanese's Texas location. When Ruth described the success of her efforts, she specifically mentioned Dallas, stating, "the Press Release has been posted in business and financial news across the U.S. This includes . . . multiple news media in Dallas." She also noted that Texas television stations were particularly interested in the story. Ruth's focus on the Texas market was part of the overall media campaign objective—to pressure Celanese at the corporate level by inflaming public outrage. Ruth published the story in Texas and elsewhere. And, although there was but a single press release, it was published many times by several different Texas media outlets thereby giving it a substantial Texas presence.

Appellees' insistence that the press release was intended for distribution across the U.S. and elsewhere misses the point. The offending articles in *Keeton*, *Calder*, and *TV Azteca* were also distributed in states other than the forum state. And in *Keeton* and *TV Azteca*, only a relatively small portion of the overall publication occurred in in the forum. But we do not read these cases to hold that purposeful availment is necessarily limited to a single forum. Instead,

the point is that, regardless of other states with which Salcedo and Ramos may also have created minimum contacts, the campaign was purposefully directed at Texas. Thus, the potential reputational injury to Celanese in the eyes of the Texas public connects Salcedo and Ramos to the state of Texas. *See Calder*, 465 U.S. 789–90.

Accordingly, we conclude that the facts and circumstances related to the press release effort alone satisfy the purposeful availment element as to Salcedo and Ramos, but not Del Toro. Therefore, we do not address Celanese's arguments regarding the 2013 meeting as they concern the purposeful availament element.[2]

We next consider the relationship between Salcedo, Ramos and Texas and the litigation. *See Searcy*, 496 S.W.3d at 67.

b. Relatedness

The United States Supreme Court recently reaffirmed the general principle that specific jurisdiction requires "an affiliation between the forum and the underlying controversy, principally, [an] activity or occurrence that takes place in the forum State." *Bristol-Myers Squibb, Co. v. Superior Court of California*, 137 S.Ct. 1773, 1781 (2017) (quoting *Goodyear*, 564 U.S. at 919)); *see also TV Azteca*, 490 S.W.3d at 37. This analysis of whether a cause of action relates to the defendant's forum activities focuses on the defendant's activities rather than the plaintiff's residence, and requires a "substantial connection" between the defendant's contacts and the operative facts of the litigation. *TV Azteca*, 490 S.W.3d at 42; *Cornerstone Healthcare*, 493 S.W.3d at 73–74. "The operative facts are those on which the trial will focus to prove the liability of the defendant who is challenging jurisdiction." *Leonard v. Salinas Concrete, LP*, 470 S.W.3d 178, 188 (Tex. App.—Dallas 2015, no pet.).

[2] The parties disagree about whether Ramos's Dallas meeting with Celanese should also be considered among the Texas contacts. But we need not consider the meeting because the media campaign contacts were sufficient to establish purposeful availment.

This case involves Celanese's defamation, business disparagement, and conspiracy claims related to the media campaign in Texas. In other words, alleged torts committed in Texas. The operative facts for these claims are events that happened in Texas (i.e. publication of the allegedly defamatory statements). That is, the claims arise "out of the very activity" conducted in this state. *See Keeton*, 465 U.S. at 779-80.

However, appellees argue that the alleged pollution and non-compliance with Mexican environmental standards are the operative facts of the case. We disagree, because it is the publishing of defamatory statements in the forum that matters, not where the events underlying the story occurred.

Although facts about what happened in Mexico will be relevant to the case, the case arises from, and thus relates to, allegedly defamatory statements published in Texas. In this regard, this case is like *Keeton*, *Calder*, and *TV Azteca.* If Salcedo and Ramos were correct in this regard, then *Keeton* and *TV Azteca* would be wrongly decided because the acts that were the subject of the defamatory stories did not occur in New Hampshire or Texas. Therefore, we conclude that there is a substantial connection between Salcedo's and Ramos's Texas contacts and the case's operative facts.

Thus, the record does not support the trial court's implied findings in support of its conclusion that Salcedo and Ramos lacked sufficient Texas contacts to support personal jurisdiction over them. *See Hoagland v. Butcher*, 474 S.W.3d 802, 815 (Tex. App.—Houston [14th Dist.] 2014, pet. denied).

c. Fair Play and Substantial Justice

(i.) Applicable Law

Having concluded that Salcedo and Ramos purposefully availed themselves of the privilege of conducting activities in Texas and there is a substantial connection between their

contacts with Texas and the litigation, we next consider whether "the exercise of jurisdiction comports with 'traditional notions of fair play and substantial justice.'" *TV Azteca*, 490 S.W.3d at 36 (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Although this analytical prong is required notwithstanding whether the first two elements of specific jurisdiction have been established, "rarely will the exercise of jurisdiction over the nonresident not comport with traditional notions of fair play and substantial justice [if minimum contacts have been established]." *Moncrief Oil*, 414 S.W.3d at 155. "To defeat jurisdiction, [the defendant] must present 'a compelling case that the presence of some consideration would render jurisdiction unreasonable'" *Spir Star AG v. Kimich*, 310 S.W.3d 868, 878–89 (Tex. 2010).

Courts consider seven factors to evaluate the fairness and justness of exercising jurisdiction over a nonresident defendant: (1) the burden on the defendant; (2) the interests of the forum in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the international judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several nations in furthering fundamental substantive social policies. *Moncrief Oil*, 414 S.W.3d at 155. When the defendant is a citizen of a foreign country, and not just another state, we also consider: (6) "the unique burdens placed upon the defendant who must defend itself in a foreign legal system;" (7) the state's regulatory interests; and (8) "the procedural and substantive policies of other nations whose interests are affected as well as the federal government's interest in its foreign relations policies." *TV Azteca*, 490 S.W.3d at 55. But appellees raise only four factors, so we limit our analysis accordingly.

As discussed next, we conclude that appellees have not presented a compelling case that a Texas court would violate fair play and substantial justice by exercising jurisdiction over Salcedo and Ramos.

(ii.) Application of Law to Undisputed Facts

Appellees argued in the trial court that litigating this matter in Texas would impose a significant burden on them because (i) they live and have their businesses in Mexico; (ii) they did not anticipate being hailed into a Texas court because they did not avail themselves of the benefits and protections of Texas laws; (iii) litigating in Texas would impose a significant financial burden on them because the nature and extent of routine travel between Mexico and Dallas will significantly disrupt their business; and (iv) Texas's interest in adjudicating this dispute does not support exercising jurisdiction over them because they do not conduct any type of business in Texas, the allegations in the petition relate to events that occurred solely and exclusively in Mexico, the case requires application of Mexican laws and environmental standards, and relevant witnesses are located in Mexico and not Texas.

Celanese responds that these arguments did not establish a compelling reason to conclude that maintaining the suit in Texas would offend traditional notions of fair play and substantial justice. We agree with Celanese for several reasons.

To begin, as to whether Salcedo and Ramos reasonably should have anticipated being hailed in to a Texas court to address Celanese's claims, we have already concluded that the quality, nature, and extent of their contacts justifies the conclusion that they purposefully availed themselves of the privileges and protections of Texas law and jurisdiction. Having done so, they cannot now complain that they reasonably did not expect they could be sued here.

Next, nothing in the record demonstrates that litigation in a Texas court would be excessively burdensome or inconvenient for Salcedo or Ramos. *See El Puerto De Liverpool, S.A. De C.V. v. Servi Mundo Llantero S.A. De C.V.*, 82 S.W.3d 622 (Tex. App—Corpus Christi 2002, pet. dism'd w.o.j.) (El Puerto failed to discharge burden because nothing in record showed litigation would be burdensome). Rather, they have demonstrated a willingness to travel to

Texas in the past. *See Lombardo v. Bhattacharyya*, 437 S.W.3d 658, 683 (Tex. App.—Dallas 2014, pet. denied); *Crithfield v. Boothe*, 343 S.W.3d 274, 288 (Tex. App.—Dallas 2011, no pet.). Specifically, Salcedo admitted that he has travelled to Texas for vacation and on multiple occasions for business. Likewise, Ramos lawyers Jose Castillo and Carlos Hermosillo travelled to Irving, Texas for the 2013 meeting at Celanese headquarters.

Furthermore, the underlying claims are Texas causes of action based upon Texas law, and involve the publication of allegedly defamatory statements to Texas citizens concerning the business ethics of a Texas resident. Thus, Texas has a significant interest in litigating the dispute. *See Keeton*, 465 U.S. at 776 (state has fundamental interest in exercising jurisdiction over those who commit torts in its territory); *Moncrief Oil*, 414 S.W.3d at 155 (same).

Moreover, even if some application of Mexican environmental standards is required, nothing precludes a Texas court from doing so or demonstrates that it is ill-equipped for the task. *See, generally, Long Distance Intern., Inc. v. Telefonos de Mexico, S.A. de C.V.*, 49 S.W.3d 347, 351 (Tex. 2001) (stating Texas courts may apply Mexican law).

Additionally, Celanese's interest in obtaining convenient and effective relief weighs in favor of Texas jurisdiction. *See Laproba El Aguila SA de CV v. River City Roofing & Remodeling, Inc.*, No. 04-16-00637-CV, 2017 WL 1902046, at *6 (Tex. App.—San Antonio May 10, 2017, no pet.) (mem op.).

Likewise, because the claims arise under Texas law and involve a Texas dispute with a Texas citizen, the interstate judicial system's interest in the most efficient resolution of controversies favors Texas.

On this record, appellees failed to demonstrate that this is one of those rare cases where minimum contacts exist, but the exercise of jurisdiction would offend traditional notions of fair play and substantial justice.

4. Does Del Toro have sufficient minimum contacts with Texas?

Although we have concluded that Salcedo and Ramos have sufficient contacts with Texas, the record does not support the same conclusion regarding Del Toro. We have already concluded that Ruth did not act as Del Toro's agent. And there is nothing to establish that Del Toro availed itself of the privilege of conducting business in Texas of its own accord. *See, generally, Retamco*, 278 S.W.3d at 338. Therefore, the trial court did not err by granting Del Toro's special appearance. We thus sustain Celanese's first issue as to Ramos and Salcedo, but not as to Del Toro.

B. Appellant's Second Issue: Did the trial court err by dismissing the case with prejudice?

Because we have concluded that the trial court erred by granting Salcedo's and Ramos's special appearance, this issue now pertains only to Del Toro.

The trial court's order dismisses Celanese's claims with prejudice. This functions as a judgment on the merits. *See Att'y Gen. of Tex v. Sailer*, 871 S.W.2d 257, 258 (Tex. App.—Houston [14th Dist.] 1994, writ denied). But a trial court's special appearance ruling should not render a judgment on the merits. *See Geo Chevron Ortiz Ranch # 2 v. Woodworth*, No. 04-06-00412-CV, 2007 WL 671340, at *4 (Tex. App.—San Antonio Mar. 7, 2007, pet. denied) (mem. op.). Thus, the trial court erred by dismissing Celanese's claims against Del Toro with prejudice.

When an error like this occurs, the proper remedy is to reform the order so that it reflects that the trial court merely sustained the special appearance and dismissed the claims for lack of personal jurisdiction. *Fretz v. Reynolds*, No. 04-0300854-CV, 2004 WL 2803201, at *2 (Tex. App.—San Antonio Dec. 8, 2004, pet. denied). Moreover, appellees do not dispute that the order should be reformed. Accordingly, we sustain Celanese's second issue and modify the applicable portion of the trial court's order to read that "Del Toro's special appearance is GRANTED and Plaintiffs' claims are dismissed for want of personal jurisdiction as to that party."

III. Conclusion

We (i) reverse the trial court's order dismissing Celanese's claims against Salcedo and Ramos and remand to the trial court for further proceedings as to those parties, (ii) modify the order to read that "Del Toro's special appearance is GRANTED and Plaintiffs' claims are dismissed for want of personal jurisdiction as to that party," and (iii) affirm the order as to Del Toro as modified.

/Bill Whitehill/
BILL WHITEHILL
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

CELANESE CORPORATION AND GRUPO CELANESE, S. DE RL DE CV, Appellants

No. 05-16-00868-CV V.

JAVIER SALCEDO SAHAGUN; RAMOS & HERMOSILLO ABOGADOS, S.C.; AND DEL TORO CARAZO, ABOGADOS, Appellees

On Appeal from the 191st Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-15-09284.
Opinion delivered by Justice Whitehill.
Justices Fillmore and Boatright participating.

In accordance with this Court's opinion of this date, the trial court's order is **REVERSED as to Javier Salcedo Sahagun and Ramos & Hermosillo Abagados, S.C., MODIFIED** to read that Del Toro Carazo, Abagados S.C.'s special appearance is GRANTED and Plaintiffs' claims are dismissed for want of jurisdiction as to that party," and as modified, **AFFIRMED** as to Del Toro Carazo, Abagados.

It is **ORDERED** that appellants CELANESE CORPORATION AND GRUPO CELANESE, S. DE RL DE CV recover their costs of this appeal from appellee JAVIER SALCEDO SAHAGUN and RAMOS & HERMOSILLO ABOGADOS, S.C.

Judgment entered August 9, 2017.