REVERSE and REMAND Opinion Filed March 14, 2023

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-22-00057-CV

LEONEL OLIVARES, Appellant
V.
CHEVRON PHILLIPS CHEMICAL COMPANY, LP, Appellee

On Appeal from the 192nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-22-00339

MEMORANDUM OPINION

Before Chief Justice Burns, Justice Molberg, and Justice Reichek
Opinion by Chief Justice Burns

In this personal-injury suit, Leonel Olivares appeals the dismissal of his suit pursuant to Chevron Phillips Chemical Company, LP's plea to the jurisdiction. However, Chevron's arguments in support of dismissal concerned an affirmative defense, not a jurisdictional issue, and thus a plea to the jurisdiction was the wrong procedural vehicle to pursue. And though the dismissal could nonetheless be upheld if Chevron had satisfied the summary-judgment standard by conclusively proving this defense, it did not do so here. We therefore reverse and remand.

I. BACKGROUND

In October 2017, Olivares was working for Apache Global Painting, Inc. when he was injured at a jobsite owned by appellee Chevron. Olivares filed a workers' compensation claim and received benefits under Apache Global's workers' compensation policy, which was issued by Zurich. In October 2019, he sued Chevron and other entities not at issue here.

In response, Chevron asserted the exclusive-remedy defense pursuant to the Texas Worker's Compensation Act (TWCA). In February 2020, Chevron filed a motion for summary judgment based on this defense. According to Chevron, the defense applied because Chevron had provided Olivares with workers' compensation coverage through its owner-controlled insurance program policy or OCIP policy issued by the Hartford. In spring 2020, it was pointed out that Olivares's claim was instead being covered under Apache Global's policy, not Chevron's OCIP, so Chevron arranged to reimburse Zurich for its expenses on Olivares's claim.

Olivares resisted summary judgment on the exclusive-remedy defense. He noted that to qualify for the defense under the circumstances present here, the defendant must be the plaintiff's employer. It was undisputed that Olivares was employed by Apache Global, not Chevron. He conceded that there were provisions in the TWCA that would have constructively made Chevron his employer if Chevron had satisfied certain conditions, but he contended that Chevron did not satisfy these

conditions. Under these provisions, Chevron had to provide OCIP insurance pursuant to a written agreement with Olivares's employer. However, Olivares noted that there was no OCIP policy in the record, and the only purported written agreements were a contract and an application signed by Apache Global's parent company, Apache Industrial Services, Inc., not Apache Global itself.

In response, Chevron contended that these documents were actually signed by Apache Global under its assumed name, which happened to be the same name as its parent company, Apache Industrial. Chevron supplemented its summary-judgment record with an assumed-name certificate reflecting that Apache Global's assumed name was indeed Apache Industrial.

The trial court denied Chevron's motion for summary judgment. Chevron moved to permit an interlocutory appeal, which the trial court also denied.

Chevron then filed a plea to the jurisdiction. In it, Chevron restyled its prior arguments as jurisdictional ones, arguing that its evidence had the effect of triggering the exclusive jurisdiction of the Division of Worker's Compensation.

The trial court granted the plea to the jurisdiction. It severed Olivares's claim against Chevron and dismissed that claim with prejudice. This appeal followed.

II. EXCLUSIVE-REMEDY DEFENSE

In his first issue, Olivares argues that a plea to the jurisdiction was an improper way to raise the exclusive-remedy defense. We agree.

The TWCA provides that recovery of workers' compensation benefits is the exclusive remedy of an employee covered by workers' compensation insurance against the employer for a work-related injury sustained by the employee. TEX. LABOR CODE § 408.001(a); *Morales v. Liberty Mut. Ins. Co.*, 241 S.W.3d 514, 516 (Tex. 2007). "Under the TWCA, a 'general contractor and a subcontractor may enter into a written agreement under which the general contractor provides workers' compensation insurance coverage to the subcontractor and the employees of the subcontractor.'" *Maxim Crane Works, L.P. v. Zurich Am. Ins. Co.*, 642 S.W.3d 551, 558 (Tex. 2022) (quoting TEX. LABOR CODE § 406.123(a)). "Entering into such an agreement 'makes the general contractor the employer of the subcontractor and the subcontractor's employees only for purposes of the workers' compensation laws of this state.'" *Id.* (quoting TEX. LABOR CODE § 406.123(e)).

Unlike the exclusive-jurisdiction doctrine, exclusive remedy is an affirmative defense. *Vega v. Silva*, 223 S.W.3d 746, 748 (Tex. App.—Dallas 2007, no pet.). As an affirmative defense, exclusive remedy should not be disposed of with a motion to dismiss such as a plea to the jurisdiction; it should instead be raised through a motion for summary judgment or proven at trial. *Medrano v. Kerry Ingredients & Flavours, Inc.*, No. 02-20-00247-CV, 2021 WL 1323432, at *2 (Tex. App.—Fort Worth Apr. 8, 2021, no pet.) (mem. op.) (quoting *Tex. Underground, Inc. v. Tex. Workforce Comm'n*, 335 S.W.3d 670, 675–76 (Tex. App.—Dallas 2011, no pet.)). "Thus, pursuing the exclusive-remedy defense through a plea to the jurisdiction 'is

problematic and not to be encouraged.'" *Id.* (quoting *Robles v. Mount Franklin Food, L.L.C.*, 591 S.W.3d 158, 163 (Tex. App.—El Paso 2019, pet. denied)).

Rather, we presume that the district court had jurisdiction. A Texas district court is a court of general jurisdiction. *Dubai Petro. Co. v. Kazi*, 12 S.W.3d 71, 75 (Tex. 2000) (op. on reh'g). For courts of general jurisdiction, the presumption is that they have subject-matter jurisdiction unless a showing can be made to the contrary. *Id.* No party has made a contrary showing here, and thus the trial court had no basis to dismiss for want of jurisdiction. *Medrano*, 2021 WL 1323432, at *2.

Nonetheless, if a summary-judgment procedure is not utilized when exclusive remedy is asserted, the reviewing court may treat a dismissal as a summary judgment because dismissal with prejudice has the same effect as a take-nothing judgment. *Briggs v. Toyota Mfg. of Tex.*, 337 S.W.3d 275, 281 (Tex. App.—San Antonio 2010, no pet.). In such a case, we review the record under the summary-judgment standard to determine whether the movant satisfied the notice and proof requirements of Rule 166a. *Id.*

In his second issue, Olivares argues that if the case is to be assessed under the summary-judgment standard, then Chevron did not conclusively prove its right to final disposition. Again, we agree.

We review a summary judgment de novo. *Berry v. Berry*, 646 S.W.3d 516, 523 (Tex. 2022). A party moving for traditional summary judgment has the burden to prove that there is no genuine issue of material fact and that it is entitled to

judgment as a matter of law. TEX. R. CIV. P. 166a(c); *AEP Tex. Cent. Co. v. Arredondo*, 612 S.W.3d 289, 293 (Tex. 2020). We review summary-judgment evidence in the light most favorable to the party resisting summary judgment, crediting evidence favorable to that party if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not. *SeaBright Ins. Co. v. Lopez*, 465 S.W.3d 637, 641 (Tex. 2015). When a defendant conclusively establishes all the elements of an affirmative defense to a plaintiff's claim, the defendant is entitled to summary judgment. *KCM Fin. LLC v. Bradshaw*, 457 S.W.3d 70, 79 (Tex. 2015).

The question is whether Chevron conclusively proved that, in accordance with a written agreement with Apache Global, it provided workers' compensation coverage to Apache Global and its employees. *Briggs*, 337 S.W.3d at 282. We conclude that Chevron has not satisfied its burden.

Chevron failed to produce any written agreement with Apache Global by which Chevron was to provide OCIP coverage. Instead, Chevron produced a contract and an application form that were signed not by Olivares's actual employer Apache Global, but by its parent company Apache Industrial.

According to Chevron, Apache Global should be considered the true signatory of these documents because Apache Global did business under the trade name of its parent corporation, Apache Industrial. Chevron notes that Apache Global had executed an assumed-name certificate to that effect. Chevron reasons that because Apache Global did business under the name of its parent, and because its parent

signed OCIP-related documents for Chevron's project, these documents should effectively count as the requisite written agreement between Apache Global and Chevron. We disagree.

Apache Global and its subsidiary Apache Industrial are separate entities, and by default, a subsidiary's employees are not also employees of the parent company. "[C]orporate affiliates are generally created to separate the businesses, liabilities, and contracts of each." *In re Merrill Lynch Tr. Co. FSB*, 235 S.W.3d 185, 191 (Tex. 2007) (orig. proceeding). "Thus, a contract with one corporation . . . is generally not a contract with any other corporate affiliates." *Id.* The same logic extends to employment contracts: "The doctrine of limited liability creates a strong presumption that a parent corporation is not the employer of its subsidiary's employees." *Lusk v. Foxmeyer Health Corp.*, 129 F.3d 773, 778 (5th Cir. 1997); *see Ross Stores, Inc. v. Miller*, 612 S.W.3d 682, 686 (Tex. App.—Houston [14th Dist.] 2020, no pet.). For instance, in one case, the San Antonio Court of Appeals denied arbitration on claims brought by an employee of the subsidiary Macy's Texas I, L.P. based an agreement that bound the employees of its parent, Macy's West, Inc., even though the two operated under the same trade name. *In re Macy's TX I, L.P.*, No. 04-08-00469-CV, 2008 WL 2828794, at *1 (Tex. App.—San Antonio July 23, 2008, orig. proceeding) (per curiam) (mem. op.), *mand. granted on other grounds In re Macy's Tex., Inc.*, 291 S.W.3d 418, 419 (Tex. 2009) (orig. proceeding); *accord Verity Sols., L.L.C. v. TASC, Inc.*, 2006 WL 488396, at *4 (W.D. Tex. Feb.6, 2006).

As the *Macy's* case suggests, the use of a trade name does not allow one entity to formally transmute itself into another. "An 'assumed name' is a word or phrase by which a person may be made known to the public, and [it] is not a legal entity." *CA Partners v. Spears*, 274 S.W.3d 51, 69 n.11 (Tex. App.—Houston [14th Dist.] 2008, pet. denied). "[A]n individual cannot sign for and bind a DBA entity. A DBA is no more than an assumed or trade name. And it is well-settled that a trade name has no legal existence." *Kahn v. Imperial Airport, L.P.*, 308 S.W.3d 432, 438 (Tex. App.—Dallas 2010, no pet.).

Our decision in *Lopez v. Rosewood Real Estate Equities* demonstrates the point. No. 05-97-00215-CV, 1999 WL 562709, at *4 (Tex. App.—Dallas Aug. 3, 1999, no pet.) (not designated for publication). There, a company called Crescent agreed to operate the Spa at the Crescent Hotel, and Crescent employed the plaintiff until it fired him for misappropriation. *Id.* at *1. The plaintiff filed suit for defamation against Crescent and its employees, as well as the Rosewood entities, who were the alleged owners of the hotel. *Id.* He noted that the Rosewood entities had filed an assumed-name certificate to operate as the Spa, and because the defaming defendants were employees of the Spa that was run by Crescent, he reasoned that the assumed name effectively made the Rosewood entities liable as the employers of the defaming defendants alongside Crescent. *Id.* at *3. We disagreed and held that the assumed-name certificate did not alter who should legally be considered the employer; "[t]he filing of an assumed name certificate does not

change the legal relationship between parties." *Id.* at *4. Similarly, here, Apache Global's filing of an assumed-name certificate in the name of Apache Industrial does not change the legal relationship of the parties—namely, who was Olivares's employer (Apache Global) and who signed the OCIP-related documents (Apache Industrial).[1]

Indeed, where one entity's trade name is also the legal name of another distinct entity, we are hesitant to "conflate[]" the two entities. *See Steer Wealth Mgmt., LLC v. Denson*, 537 S.W.3d 558, 567 (Tex. App.—Houston [1st Dist.] 2017, no pet.). When name confusion muddies the waters in this fashion, this may give rise to factual questions that are fit for resolution by juries rather than appellate jurists. *Cf. Morales v. Martin Res., Inc.*, 183 S.W.3d 469, 473 (Tex. App.—Eastland 2005, no pet.) (op. on reh'g) (holding that name discrepancies created fact issue as to who held a workers' compensation policy; Martin Resources, Inc. of Odessa asserted that it was covered, but the policy was issued to Martin Resources Management Corporation, and the only policy endorsements were for Martin Resource Management Corporation of Odessa and Martin Resources, Inc. of Kilgore).

[1]Briefly, Chevron also directs our attention to affidavit testimony stating the conclusion that Apache Global was a party to the contract and the application through its assumed name. A conclusory statement is one that does not provide the underlying facts to support the conclusion. *Saronikos, Inc. v. City of Dallas*, 285 S.W.3d 512, 516 (Tex. App.—Dallas 2009, no pet.). Conclusory statements in affidavits are not competent evidence to support summary judgment because they are not susceptible to being readily controverted. *Eberstein v. Hunter*, 260 S.W.3d 626, 630 (Tex. App.—Dallas 2008, no pet.). Because this testimony is not competent summary-judgment evidence, it does not establish that Apache Global was a party to the contract and application.

We therefore decline Chevron's request to ignore the corporate forms of the entities with which it chose to contract. This sort of bid to selectively enforce corporate structuring has prompted some courts to erect barriers that prevent parents and subsidiaries from borrowing the defenses available under each other's workers' compensation policies. "An injured employee of a subsidiary corporation, who is estopped under an exclusive remedy provision in his state's workers' compensation act from suing his employer, may nonetheless bring a third-party claim against the subsidiary's parent or sibling corporation." *Sims v. W. Waste Indus.*, 918 S.W.2d 682, 684 (Tex. App.—Beaumont 1996, writ denied) (cleaned up). "We are not persuaded that the legislature ever intended parent corporations, who deliberately chose to establish a subsidiary corporation, to be allowed to assert immunity under the Texas Workers' Compensation Act by reverse piercing of the corporate veil they themselves established." *Id.* at 686. "A corporation cannot be used when it benefits and be disregarded when it is to the advantage of the organizers to do so." *Id.* at 685 (cleaned up). Other courts have endorsed this reasoning. *See Lenoir v. U.T. Physicians*, 491 S.W.3d 68, 88 (Tex. App.—Houston [1st Dist.] 2016, pet. denied) (op. on reh'g); *Ingalls v. Standard Gypsum, L.L.C.*, 70 S.W.3d 252, 260–61 (Tex. App.—San Antonio 2001, pet. denied) (op. on reh'g). "One cannot demand differentiation in one context yet benefit from blurred lines in another." *Lenoir*, 491 S.W.3d at 88. The rationale for this rule speaks less powerfully here because Chevron is not attempting to bypass the boundaries of its own business, but still the

underlying rule stands: in the hard light of corporate separateness, Chevron must live with the agreements it made and not the ones it wishes it had made.

In summary, we conclude as follows. First, a plea to the jurisdiction was not a proper procedural vehicle to decide this case. Second, despite the use of an overlapping trade name, Apache Global is not Apache Industrial. Chevron has not conclusively proved the existence of a written agreement with Olivares's employer, and thus Chevron has not established that it is Olivares's deemed employer under the summary-judgment standard. The dismissal based on the exclusive-remedy defense therefore cannot stand.

We sustain Olivares's first and second issues. This renders it unnecessary to consider his remaining issue, which concerns evidentiary objections that could afford him no greater relief.

III. CONCLUSION

We reverse the trial court's judgment and remand the case for further proceedings consistent with this opinion.

/Robert D. Burns, III/
ROBERT D. BURNS, III
CHIEF JUSTICE

220057F.P05

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

LEONEL OLIVARES, Appellant	On Appeal from the 192nd Judicial District Court, Dallas County, Texas
No. 05-22-00057-CV V.	Trial Court Cause No. DC-22-00339. Opinion delivered by Chief Justice Burns. Justices Molberg and Reichek participating.
CHEVRON PHILLIPS CHEMICAL COMPANY, LP, Appellee	

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and this cause is **REMANDED** to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that appellant LEONEL OLIVARES recover his costs of this appeal from appellee CHEVRON PHILLIPS CHEMICAL COMPANY, LP.

Judgment entered this 14th day of March 2023.