

**AFFIRMED and Opinion Filed September 5, 2025**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-24-01492-CV**

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**WESTERN SECURITIES, LTD., Appellant  
V.  
MORRIS JAFFER, Appellee**

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**On Appeal from the 101st Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-24-15030**

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**MEMORANDUM OPINION**

Before Justices Miskel, Kennedy, and Rossini  
Opinion by Justice Miskel

This is an interlocutory appeal from the denial of a special appearance under rule 120a of the Texas Rules of Civil Procedure. This Court requires strict compliance with rule 120a and will affirm the denial of an unsworn special appearance even when the plaintiff did not object to the defect in trial court. Based on the record before us and this Court's precedent, the special appearance was not sworn or verified as required under rule 120a and, therefore, the trial court did not err in denying it. We affirm.

## **I. Background**

The underlying lawsuit arises out of a dispute related to two real-estate-development projects—the Mustang Station Project and the Terrell Project. Appellee Morris Jaffer sued several entities that he contends failed to adequately compensate him for his services on one or both of those projects based on theories of breach of contract and quantum meruit. One entity, appellant Western Securities Limited, specially appeared under Texas Rule of Civil Procedure 120a to challenge personal jurisdiction.

Western Securities is a nonresident entity based in Canada. In its special appearance, Western Securities raised three primary arguments. First, it argued that its registration with the Texas Secretary of State is not enough, by itself, to support general jurisdiction. Second, it argued that the allegations in Jaffer’s petition are legally insufficient to support personal jurisdiction. Third, it argued that it had no relation to, ownership in, or involvement with the Mustang Station Project or the Terrell Project and that Jaffer’s petition improperly attributed to it the actions of its affiliate company, Western Securities (USA) Limited, and the various project-specific entities that Western Securities (USA) created.

The special appearance pleading was not sworn or verified. But it did attach an unsworn declaration<sup>1</sup> from its Chief Operating Officer, Mike Brescia. Through

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<sup>1</sup> An unsworn declaration that includes a jurat substantially in the form required by statute “may be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by . . . a rule[.]” TEX. CIV. PRAC. & REM. CODE ANN. § 132.001(a), (d).

his declaration, Brescia attested that Western Securities is a foreign company based in Canada; it is no longer registered to conduct business in Texas and does not currently conduct business in Texas; it directs, controls, and coordinates its corporate activities from Canada; and various other general facts.

Jaffer never objected to any defects with the special appearance. Instead, he limited his response to the merits. He argued that specific jurisdiction existed because Western Securities' president, Rod O'Connor, and one of its long-time employees, Marc Footlick, had directly participated in the Mustang Station Project and the Terrell Project and entered into an oral agreement with Jaffer in those respective capacities. Jaffer attached his own unsworn declaration attesting to these facts and other details related to the dispute, including his knowledge of O'Connor's and Footlick's involvement with the two projects. Jaffer also argued that Western Securities' registration with the Texas Secretary of State was sufficient to establish general jurisdiction.

Jaffer also filed an amended petition. It largely tracked the original petition and added Western Securities (USA) as a defendant. It also identified Footlick as a principal and agent of both Western Securities and Western Securities (USA). It identified O'Connor as the president of Western Securities and a director, officer, and managing member of Western Securities (USA).

After Western Securities filed a reply, the trial court heard argument on the special appearance. The next day, having considered the special appearance, the

response, the reply, and the argument of counsel, the trial court signed an order denying the special appearance. It did not issue any findings of fact or conclusions of law. Western Securities timely appealed.

## **II. Discussion**

Western Securities raises a single issue in this appeal—whether the trial court erred in denying its special appearance. It raises several arguments in support of its contention that the trial court lacks personal jurisdiction over it. Ultimately, however, we do not reach any of those arguments based on a dispositive threshold issue—the special appearance was not “made by sworn motion.” *See* TEX. R. CIV. P. 120a(1); TEX. R. APP. P. 47.1.

### **A. Standard of review**

Whether a court has personal jurisdiction over a nonresident defendant is a question of law we review de novo. *State v. Volkswagen Aktiengesellschaft*, 669 S.W.3d 399, 413 (Tex. 2023). We must affirm a trial court’s ruling on a special appearance “on any legal theory finding support in the evidence.” *Dukatt v. Dukatt*, 355 S.W.3d 231, 237 (Tex. App.—Dallas 2011, pet. denied).

### **B. Special appearances under rule 120a**

A court must have both subject matter jurisdiction over a case and personal jurisdiction over the parties to issue a binding judgment. *Luciano v. SprayFoamPolymers.com, LLC*, 625 S.W.3d 1, 7–8 (Tex. 2021). A party may challenge personal jurisdiction through a special appearance under Texas Rule of

Civil Procedure 120a. *See* TEX. R. CIV. P. 120a(1); *LG Chem Am., Inc. v. Morgan*, 670 S.W.3d 341, 346 (Tex. 2023). Relevant here, while allowing for amendments to cure any defects, rule 120a requires that a special appearance be made by “sworn motion.” TEX. R. CIV. P. 120a(1). “[A]n unsworn special appearance does not comply with Rule 120a(1) . . . and thus is ineffectual to challenge in personam jurisdiction.” *Dawson-Austin v. Austin*, 968 S.W.2d 319, 321–22 (Tex. 1998).<sup>2</sup>

This Court has long required strict compliance with rule 120a. *See, e.g., Smith & Nephew PLC v. Hardin*, No. 05-23-01065-CV, 2024 WL 3439823, at \*2 (Tex. App.—Dallas July 17, 2024, pet. denied) (mem. op.); *Casino Magic Corp. v. King*, 43 S.W.3d 14, 18 (Tex. App.—Dallas 2001, pet. denied). “[I]f a trial court denies a special appearance, and the record demonstrates that the special appearance was defective under rule 120a because it was not sworn, we are required to affirm that ruling on appeal.” *Dukatt*, 355 S.W.3d at 237. Simply put, “a trial court does not err in denying an unsworn special appearance.” *Siemens AG v. Houston Cas. Co.*, 127 S.W.3d 436, 439 (Tex. App.—Dallas 2004, pet. dism’d); *accord Smith & Nephew*, 2024 WL 3439823, at \*2; *Dukatt*, 355 S.W.3d at 237; *Kytel Intern. Group, Inc. v.*

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2 The Supreme Court has held that filing a special appearance with a defective verification and supporting affidavit does not necessarily constitute a general appearance or waive the special appearance, but that is not the issue presented here. *See Exito Elecs. Co., Ltd. v. Trejo*, 142 S.W.3d 302, 307 (Tex. 2004) (per curiam); *Dawson-Austin*, 968 S.W.2d at 322.

*Rent-A-Ctr., Inc.*, 132 S.W.3d 717, 719 (Tex. App.—Dallas 2004, no pet.); *Casino Magic*, 43 S.W.3d at 18.<sup>3</sup>

**C. Western Securities’ special appearance was not properly sworn.**

The record before us shows that Western Securities’ special appearance was not sworn or verified. But it did attach an unsworn declaration. Therefore, before reviewing the parties’ arguments on the merits of the special appearance, we first review whether the attached affidavit was sufficient to render the special appearance a “sworn motion” under rule 120a.

“When the affidavits attached to special appearance pleadings do not state that the facts set out in the pleadings are true and correct, and state only that the facts in the affidavits are true and correct, the affidavits do not verify the special appearance.” *Smith & Nephew*, 2024 WL 3439823, at \*2; *Casino Magic*, 43 S.W.3d at 18; *see also Prosperous Mar. Corp. v. Farwah*, 189 S.W.3d 389, 392–93 (Tex. App.—Beaumont 2006, no pet.).<sup>4</sup>

Here, Brescia’s declaration did not attest to all the facts alleged in the special appearance—only those stated in his declaration. His declaration did not say he had

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3 However, “when a trial court *grants* a special appearance, we cannot reverse the trial court’s ruling on a ground not raised below.” *Dukatt*, 355 S.W.3d at 237 (emphasis added). “Any complaint that a special appearance is not verified must be brought to the trial court’s attention to give the moving party an opportunity to cure the defect.” *Id.*

4 *Cf. Brady v. Kane*, No. 05-18-01105-CV, 2020 WL 2029245, at \*4 (Tex. App.—Dallas Apr. 28, 2020, no pet.) (mem. op.) (concluding that a *supplemental* special appearance was sufficiently verified because it was supported by the original verified special appearance, two additional affidavits, and other evidence and the plaintiff did not identify any jurisdictional fact stated in the supplemental special appearance that was not included in the evidence).

read the special appearance. It never even mentioned the special appearance. In fact, it was dated about one month before the special appearance was filed. Moreover, based on our review of the special appearance and the declaration, it is apparent that the special appearance set out several jurisdictional allegations that Brescia did not attest to in his declaration. Two examples illustrate the point.

First, the special appearance alleges that Western Securities “has *no* relation to or ownership in the Mustang Station Project or Terrell Project,” has no ownership in any of the other entity defendants, and has no involvement in any real-estate project in Texas. But the declaration says only that Western Securities “had no involvement in the Terrell Project made basis of this Lawsuit and has no connection to the entity, WSL Terrell, Ltd.,” and—even more generically—it “does not conduct business in the State of Texas.” The declaration says nothing about Western Securities’ interest in the Mustang Station Project or its connection to the entity defendants other than WSL Terrell, Ltd.

Second, the special appearance alleges that Western Securities “did not execute any contracts (written or oral) or communicate with Jaffer in the State of Texas.” But the declaration says only that no Western Securities “employee has travelled to Texas on behalf of [Western Securities] for business-related travel or communicated to Morris Jaffer on behalf of [Western Securities]” and that, “to the extent” a Western Securities employee travels to Texas, it is “likely” in connection with or on behalf of Western Securities (USA). The declaration does not specifically

address O'Connor or Footlick and gives no indication as to whether Brescia intended to include them when he was referencing Western Securities' "employees." In some contexts, Texas law distinguishes between employees and executives. *See, e.g., Evans v. Gen. Ins. Co. of Am.*, 390 S.W.2d 818, 821 (Tex. App.—Dallas 1965, no writ) ("The mere fact that a person is an officer of a corporation does not mean that by virtue of his status as an officer he must also be regarded as an employee.").

Based on this Court's precedent, we must conclude that Brescia's declaration did not verify the special appearance and that Western Securities' special appearance was not sworn as strictly required under rule 120a. *See Smith & Nephew*, 2024 WL 3439823, at \*2, \*4. Therefore, we cannot conclude that the trial court erred in denying the special appearance. *See id.*; *Siemens*, 127 S.W.3d at 439; *Dukatt*, 355 S.W.3d at 237; *Kytel*, 132 S.W.3d at 719; *Casino Magic*, 43 S.W.3d at 18.

### **III. Conclusion**

We affirm the trial court's December 3, 2024 Order Denying Defendant Western Securities, Ltd.'s Special Appearance.

/Emily Miskel/  
EMILY MISKEL  
JUSTICE



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

WESTERN SECURITIES, LTD,  
Appellant

No. 05-24-01492-CV      V.

MORRIS JAFFER, Appellee

On Appeal from the 101st Judicial  
District Court, Dallas County, Texas  
Trial Court Cause No. DC-24-15030.  
Opinion delivered by Justice Miskel.  
Justices Kennedy and Rossini  
participating.

In accordance with this Court's opinion of this date, the trial court's December 3, 2024 Order Denying Defendant Western Securities, Ltd.'s Special Appearance is **AFFIRMED**.

It is **ORDERED** that appellee MORRIS JAFFER recover his costs of this appeal from appellant WESTERN SECURITIES, LTD.

Judgment entered this 5<sup>th</sup> day of September, 2025.