Reverse and Render and Opinion Filed August 18, 2026

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-25-01304-CV

ASHLEY DONARSKI, DARCY HARBOTT, RYAN RAYMOND, NATALIE RAYMOND, MICHELLE HUGHES, INDIVIDUALLY, AND FOURSITE CAPITAL, LLC D/B/A FOURSITE ENERGY AND JESS WEAVER, Appellants

V.

ECKARD LAND & ACQUISITION, L.L.C. AND ECKARD EXPLORATION & PRODUCTION, L.L.C., Appellees

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On Appeal from the 471st Judicial District Court
Collin County, Texas
Trial Court Cause No. 471-03419-2024

MEMORANDUM OPINION

Before Justices Lewis, Rossini, and Barbare
Opinion by Justice Barbare

This accelerated interlocutory appeal challenges the trial court's order denying the special appearances of seven appellants: Ashley Donarski (Donarski), Darcy Harbott (Harbott), Ryan Raymond, Natalie Raymond (referred to by their first names or collectively as the Raymonds), Michelle Hughes (Hughes), Jess Weaver (Weaver), and FourSite Capital LLC d/b/a FourSite Energy (FourSite) (collectively referred to as the appellants). Appellants raise eight issues challenging their minimum contacts with Texas to establish personal jurisdiction and whether exercising jurisdiction over them offends the traditional notions of fair play and substantial justice.

We reverse the trial court's September 12, 2025 "Order on Defendants' Motions for Special Appearance," which denied appellants' special appearances, and render judgment dismissing Eckard Land & Acquisition L.L.C.'s and Eckard Exploration & Production, L.L.C.'s claims against the appellants for want of personal jurisdiction.[1]

Background

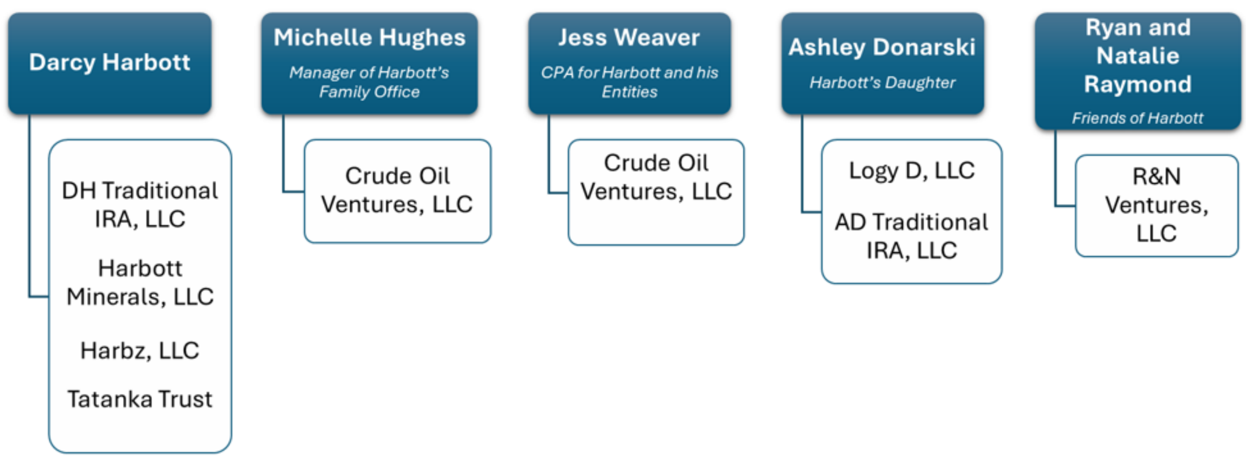
Appellees Eckerd Exploration & Production, L.L.C. and Eckerd Land & Acquisition, L.L.C. (collectively Eckard) are Texas entities. With forty years of experience in the oil and gas industry, Eckard has succeeded in identifying, analyzing, evaluating, negotiating, "and ultimately acquir[ing] desirable oil and gas assets in the form of mineral leaseholds, mineral rights, proved producing oil and gas wells, and working interest opportunities within the Anadarko Basin in Oklahoma, the Permian Basin of West Texas, and New Mexico."

Harbott learned about Eckard during a Lifestyle Mastermind event organized by a Lifestyle Investor Group. A mastermind group "shares knowledge to make the best use" of it and "offer[s] resources and information" that may benefit the attendees. Harbott could not remember the location of the event because he attended

[1] Eckard argues that Weaver did not timely file his notice of appeal. Its contention is unfounded as the Court previously ruled that Weaver timely appealed.

multiple events in various locations throughout the United States.

Because Harbott was impressed with Eckard, he asked one of its representatives to travel to South Dakota, where he lived, to present investment opportunities. He also encouraged family and friends, including Hughes, Weaver, Donarski, and the Raymonds, all non-Texas residents, to invest in Eckard. In 2022, the individual appellants invested with Eckard through special purpose entities:



Appellants' entities each signed a "Purchase and Sale Agreement by and Between Eckard Land & Acquisition, LLC" (the Purchase Agreements), stating that each entity was a "partner" with Eckard. Each Purchase Agreement contained (1) jurisdiction and forum-selection clauses requiring disputes to be resolved in Collin County, Texas, (2) confidentiality provisions, and (3) non-solicitation and non-compete clauses stating in part that the "Interest Holder agrees that Interest Holder will not acquire or seek to acquire mineral interest in the Oklahoma Anadarko Basin while this Agreement is in place, [sic] and for a period of two years after the termination of this Agreement."

After the appellants signed the Purchase Agreements on behalf of their entities, they were given access to "buy boxes" or "areas of interest" from Eckard, which contained "marked on maps" displaying "technical analysis to prove certain reserves exist" and "certain pricing metrics and models" showing what Eckard was willing to pay on a per-acre basis for minerals in certain geographical areas. They also received exclusive invitations to Eckard's "Partner Conferences" hosted in various locations around the United States, including Texas. The conferences included "multiple classroom-type sessions as well as general session presentations." Attendees received "general investment advice or market analysis" from Eckard's experts for the Anadarko Basin.

Eckard alleged that appellants subsequently violated the terms of the Purchase Agreements by using Eckard's trade secrets to form an investment entity called BAIG Energy to compete with it in the Anadarko Basin. They "have taken active roles in financially backing BAIG Energy, raising capital for BAIG Energy, and soliciting [Eckard's] investors." It contended that BAIG Energy received "all of the knowledge it used to operate in the Anadarko Basin from [Eckard] through confidential information Defendants were provided at [Eckard's] conferences and dinners." Eckard also asserted that Harbott formed FourSite less than a month after attending one of its partner conferences, and FourSite has "acquired no fewer than twenty-eight (28) leases in the Anadarko Basin in Oklahoma . . . in direct contravention" of the contractual obligations not to compete with Eckard.

Eckard filed its original petition on May 29, 2024. Appellants filed separate verified denials, general denials, and affirmative defenses subject to their special appearances. Eckard filed a first amended petition on January 28, 2025, asserting claims for fraud in the inducement, business disparagement, tortious interference with existing business relations, trade-secret misappropriation, breach of contract, aiding and abetting fraud, conspiracy, and piercing the corporate veil/alter ego. This is the pleading relevant to the appeal.

On June 6, 2025, the trial court granted Eckard's motion to compel limited jurisdictional discovery. Subsequently, Harbott, Donarski, Ryan, Natalie, Hughes, Weaver, and FourSite filed separate special appearances in response to Eckard's first amended petition.

A hearing was held on June 30, 2025. Matthew Marchiori (Marchiori), an Eckard representative, explained the Purchase Agreements between Eckard and the appellants' business entities. He testified that the non-compete provision was included in the Purchase Agreements "to protect our business ventures and all of our proprietary information." The information shared with investors at the conferences was confidential. Marchiori believed that the appellants started competing with Eckard approximately fifteen months after they first invested. He conceded that the appellants were not competing in their individual capacities: "It's the entities, but we know who is running these entities."

The trial court denied the appellants' special appearances on September 12, 2025. This appeal followed.

Standard of Review

Whether a trial court has personal jurisdiction over a nonresident defendant is a question of law that we review de novo. *Old Republic Nat'l Title Ins. Co. v. Bell*, 549 S.W.3d 550, 558 (Tex. 2018). If, as in this case, the trial court does not issue findings of fact and conclusions of law with its special appearance ruling, we imply all findings of fact necessary to support its ruling that are supported by the evidence. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002). When jurisdictional facts are undisputed, whether those facts establish jurisdiction is a question of law. *Old Republic*, 549 S.W.3d at 558.

Personal Jurisdiction

Texas courts may assert personal jurisdiction over a nonresident defendant if (1) the Texas long-arm statute authorizes the exercise of jurisdiction and (2) the exercise of jurisdiction is consistent with federal, and state constitutional due process guarantees. *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007). The Texas long-arm statute is satisfied when a nonresident defendant does business in Texas, which includes "contract[ing] by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state" or "commits a tort in whole or in part" in Texas. TEX. CIV. PRAC. & REM. CODE ANN. § 17.042(1), (2); *Luciano v. SprayFoamPolymers.com, LLC*, 625 S.W.3d 1, 8 (Tex.

2021); *Moki Mac*, 221 S.W.3d at 574. The exercise of personal jurisdiction over the nonresident defendant is constitutional when (1) the nonresident defendant has established minimum contacts with the forum state and (2) the exercise of jurisdiction comports with traditional notions of fair play and substantial justice. *BMC Software*, 83 S.W.3d at 795.

A nonresident defendant's contacts with the forum state can give rise to general or specific jurisdiction. *Luciano*, 625 S.W.3d at 8. Eckard concedes that general jurisdiction does not apply; therefore, we focus our analysis on specific jurisdiction.[2] Specific jurisdiction is established when the nonresident defendant's alleged liability arises from or is related to the defendant's activity conducted within the forum state. *BMC Software*, 83 S.W.3d at 796.

The plaintiff bears the initial burden to plead sufficient allegations to bring a nonresident defendant within the provisions of the Texas long-arm statute. *Kelly v. Gen. Interior Constr., Inc.*, 301 S.W.3d 653, 658 (Tex. 2010). Once the plaintiff has met the initial burden of pleading sufficient jurisdictional allegations, the defendant bears the burden of negating all bases of personal jurisdiction alleged by the plaintiff. *Id.* "Because the plaintiff defines the scope and nature of the lawsuit, the defendant's corresponding burden to negate jurisdiction is tied to the allegations in the plaintiff's pleading." *Id.* If the defendant presents evidence in its special appearance disproving

[2] In their third issue, the appellants argue general jurisdiction does not exist because they do not have continuous and systematic contacts to be "at home" in Texas. Because Eckard concedes general jurisdiction does not apply, we do not address this issue. *See* TEX. R. APP. P. 47.1.

the plaintiff's jurisdictional allegations, the burden shifts back to the plaintiff to establish the court has personal jurisdiction. *Id.* at 659. The plaintiff should amend the petition if it lacks sufficient allegations to bring the defendant under the Texas long-arm statute or if the plaintiff presents evidence that supports a different basis for jurisdiction in the special appearance response. *Id.* at 659 n.6. Raising jurisdictional allegations for the first time in a response to the special appearance is insufficient. *Steward Health Care Sys. LLC v. Saidara*, 633 S.W.3d 120, 128–29 (Tex. App.—Dallas 2021, no pet.) (en banc); *see also Kelly*, 301 S.W.3d at 658 n.4 ("additional evidence merely supports or undermines the allegations in the pleadings"); *MPI Indus. Carolinas, LLC v. CTE Networks, LLC*, No. 05-24-00560-CV, 2025 WL 777337, at *3 (Tex. App.—Dallas Mar. 11, 2025, no pet.) (mem. op.).

A. Direct-Benefits Estoppel and the Purchase Agreements' Forum Selection Clause

In their sixth issue, the appellants argue that they should not be bound by the forum-selection clauses executed solely by their respective corporate entities. Eckard encourages the Court to first address whether the theory of direct-benefits estoppel applies thereby negating the appellants' forum-selection clause argument. We begin by considering both arguments.

Forum-selection clauses allow contracting parties to "preselect the jurisdiction for dispute resolution." *Pinto Tech. Ventures, L.P. v. Sheldon*, 526 S.W.3d 428, 436 (Tex. 2017). Although once disfavored, such clauses are presumptively valid and constitute consent to jurisdiction in the agreed forum. *Rieder v. Woods*, 603 S.W.3d 86, 93 (Tex. 2020). We review the validity and enforceability of a forum-selection clause under an abuse of discretion standard. *CNOOC Se. Asia Ltd. v. Paladin Res. (SUNDA) Ltd.*, 222 S.W.3d 889, 895 (Tex. App.—Dallas 2007, pet. denied).

Under the "Jurisdiction" section of the first amended petition, Eckard asserted that the "Defendants, through their various business entities, are subject to certain forum selection clauses contained within the various Purchase and Sales Agreements they signed." The forum-selection clauses required disputes to be resolved in Collin County, Texas.

Generally, "a forum-selection clause may be enforced only by and against a party to the agreement containing the clause." *Pinto Tech. Ventures*, 526 S.W.3d at 443. "Because forum-selection clauses are creatures of contract, the circumstances in which non-signatories can be bound to a forum-selection clause are rare." *Id.*

When a party seeks to enforce a forum-selection clause against a non-signatory to the contract containing the forum-selection clause, that party bears the burden to prove the theory upon which it relies to bind the non-signatory to the contract. *CNOOC Se. Asia Ltd*, 222 S.W.3d at 895.

It is undisputed that the appellants did not sign the Purchase Agreements in their individual capacities; rather, they each signed on behalf of their respective entities in a representative capacity. Accordingly, the appellants are not parties to the Purchase Agreements, including the forum selection clauses. Even so, Eckard asserts that the clauses apply to the appellants pursuant to the theory of direct-benefits estoppel.

Direct-benefits estoppel, which was initially developed in the context of arbitration clauses, applies when a non-signatory "knowingly exploits the agreement containing the arbitration clause." *Carlile Bancshares, Inc. v. Armstrong*, No. 02-14-00014-CV, 2014 WL 3891658, at *7 (Tex. App.—Fort Worth Aug. 7, 2014, no pet.) (mem. op.) (quoting *Bridas S.A.P.I.C. v. Gov't of Turkm.*, 345 F.3d 347, 361–62 (5th Cir. 2003)). The doctrine is invoked if "non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract." *Id.*

Direct-benefits estoppel has been applied to enforce forum-selection clauses against non-signatories seeking to sue on the contract containing the forum-selection clause. *Id.* But as the United States Court of Appeals for the Fifth Circuit has pointed out, direct-benefits estoppel is "seriously consider[ed]" only when "the non-signatory had brought suit against a signatory premised in part upon the agreement." *Id.* (quoting *Bridas*, 345 F.3d at 362).

Here, not only did Eckard not plead direct-benefits estoppel as a basis for personal jurisdiction in its first amended petition, but the appellants did not sue Eckard under the Purchase Agreements. *See, e.g.*, *Steward Health Care*, 633 S.W.3d at 131 (stating that "the allegations to meet the long-arm statute must appear in the petition"). Thus, Eckard cannot establish that the appellants "exploited" the agreements containing the Collin County forum-selection clauses to the degree required for direct-benefits estoppel to apply. *Carlile Bancshares, Inc.*, 2014 WL 3891658, at *7 "Indeed, estoppel is a defensive theory, not a theory by which a signatory plaintiff may hold a non-signatory defendant to the terms of a contract the non-signatory defendant is not seeking to enforce." *Id.* at *8 (citing *Perry Homes v. Cull*, 258 S.W.3d 580, 593 (Tex. 2008), *cert. denied*, 555 U.S. 1103 (2009)).

Accordingly, to the extent the trial court may have concluded that the forum-selection clauses in the Purchase Agreements could be enforced against the appellants as non-signatories, it abused its discretion. We sustain the appellants' sixth issue.

B. Jurisdictional Allegations Supporting Specific Jurisdiction Against the Appellants in Eckard's First Amended Petition

In their first and third issues, the appellants argue that their evidence conclusively negates all bases for specific jurisdiction in Texas. Accordingly, we continue our analysis by considering the jurisdictional facts Eckard pleaded in its first amended petition against the appellants. *See Kelly*, 301 S.W.3d at 658 (stating the plaintiff bears the initial burden to plead sufficient allegations to bring a nonresident defendant within the provisions of the Texas long-arm statute).

It is undisputed that Harbott is a resident of South Dakota; Donarski is a resident of Arizona; the Raymonds reside in Idaho; Hughes resides in Minnesota;

Weaver is a resident of South Dakota; and FourSite is a South Dakota limited liability company. Because they are all nonresident defendants, we must consider whether Eckard met its burden of pleading sufficient allegations to bring them within the provisions of the Texas long-arm statute. *Steward Health Care Sys.*, 633 S.W.3d at 129; *see also MPI Indus. Carolinas, LLC*, 2025 WL 777337, at *4.

A plaintiff's petition satisfies the Texas long-arm statute when it alleges the defendant "did business" in Texas. *Steward Health Care Sys.*, 633 S.W.3d at 129; *see also MPI Indus. Carolinas, LLC*, 2025 WL 777337, at *4. A nonresident defendant "does business" in this state if the nonresident "contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state," or a nonresident defendant "commits a tort in whole or in part in this state." TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (1), (2).

Under the "Jurisdiction" heading in its first amended petition, Eckard alleged jurisdiction is proper in Texas because:

> The Texas long-arm statute broadly permits jurisdiction over a nonresident "doing business in this state" if the nonresident "commits a tort in whole or in part in this state." TEX. CIV. PRAC. & REM. CODE §17.042(2). This Court has jurisdiction over this matter because the Defendants purposely availed themselves of the privilege of conducting business in the State of Texas, with the citizens of Texas, and their actions and/or inactions have caused damage and injury to the State of Texas.

In oral argument, Eckard asserted that its jurisdictional statement was sufficient to meet its initial burden to plead sufficient allegations to bring the appellants within the reach of the Texas long-arm statute. We cannot agree. A recent opinion from the Austin Court of Appeals illustrates the facts required for a plaintiff to meet its initial burden of bringing a nonresident defendant within the Texas long-arm statute through a jurisdictional statement. *See Davis v. Next Frontier Holdings, Inc.*, No. 03-24-00542-CV, 2025 WL 1225614, at *5 (Tex. App.—Austin Apr. 29, 2025, no pet.) (mem. op.). In *Davis*, the court concluded that the plaintiffs met their initial burden because their first amended petition stated:

> The trial court has personal jurisdiction over all defendants because they knowingly and intentionally committed a tort in whole or in part in Texas against a company located in Round Rock, Texas[,] and/or because the Defendants contracted by mail or otherwise to perform the contract in whole or in part in Round Rock, Texas.

Id. Here, such specific allegations against the appellants and any relationship they may have to Texas are missing from Eckard's jurisdictional statement. Eckerd's reference and citation to Texas Business Code section 17.042(2), without more, is not sufficient.

The shortcomings in Eckard's jurisdictional statement are not necessarily fatal. Although the preferred practice is to include specific jurisdictional facts under the "Jurisdiction" heading, we may look to other alleged facts within the first amended petition to determine if Eckard pleaded sufficient facts to satisfy the Texas long-arm statute. *See MPI Indus. Carolinas, LLC*, 2025 WL 777337, at *4; *see also Concord Energy, LLC v. VR4-Grizzly, LP*, No. 05-21-01126-CV, 2022 WL 17101034, at *4 (Tex. App.—Dallas Nov. 22, 2022, no pet.) (mem. op.) (noting an appellate court may consider allegations anywhere in the petition, including the fact section, for the basis of jurisdiction). Accordingly, we consider whether Eckard alleged facts elsewhere in its first amended petition showing that the appellants were "doing business" or committed a tort in Texas. TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (1), (2).

Eckard brought eight causes of action against the appellants: fraud in the inducement, business disparagement, tortious interference with existing business relations, trade-secret misappropriation, breach of contract, aiding and abetting fraud, conspiracy, and piercing the corporate veil/alter ego.

Typically, when a plaintiff brings multiple claims, specific jurisdiction requires courts "to analyze jurisdictional contacts on a claim-by-claim basis"; however, "a court need not assess contacts on a claim-by-claim basis if all claims arise from the same forum contacts." *Davis*, 2025 WL 1225614, at *5 (quoting *Moncrief Oil Int'l Inc. v. OAO Gazprom*, 414 S.W.3d 142, 150–51 (Tex. 2013)). Here, because Eckard's claims—which are mostly different varieties of business torts—all arise from the same actions surrounding the appellants' attendance at conferences where they allegedly received confidential information that they used to later compete against Eckard in the Anadarko Basin, we assess the appellants' forum contacts collectively, rather than on a claim-by-claim basis.[3] *Id.*

[3] The appellants did not engage in a claim-by-claim analysis in their brief, and Eckard stated in its appellee brief that it "agrees that a claim-by-claim analysis is unnecessary."

It is undisputed that the investments at issue are in the Anadarko Basin in Oklahoma, not in Texas. It is also undisputed that the individual appellants do not live, own property, maintain offices, have bank accounts, or conduct business in Texas. Similarly, FourSite is a South Dakota limited liability company, not a Texas entity.

Despite the appellants' lack of contacts with Texas, Eckard asserts (through its various causes of action) that they (1) made misrepresentations; (2) made disparaging remarks; (3) interfered with existing and prospective contracts and business relationships; (4) acquired, used, or disclosed trade secrets; (5) breached contracts by misusing confidential information; (6) aided and abetted fraud; (7) engaged in a conspiracy; and (8) created "unfair devices" to perpetuate fraud and misappropriate trade secrets. However, Eckard did not allege that any of these actions or activities occurred in Texas. Although it repeatedly stated that the appellants obtained access to "a wealth of exclusive, strategic, and unique industry information, which of course was confidential and proprietary," Eckard's first amended petition did not specifically state that the appellants received and used any of this information in Texas. Instead, the petition merely stated that "this access came in the form of private gatherings at Defendants' homes,[4] annual conferences,

[4] This allegation is of no consequence to the jurisdictional analysis because the appellants do not live in Texas.

educational breakout sessions, online Zoom meetings, and other training and education."

Simply put, Eckard's live pleading contained no allegations that appellants received any confidential information in Texas and that any of their alleged wrongdoings occurred in Texas. It did not allege any facts that the appellants engaged in any act purposely directed at Texas, which invoked the benefit or protection of Texas law, and that there was a substantial connection between those contacts and the operative facts of the litigation. *See Moki Mac*, 221 S.W.3d at 575.

We recognize that several of the appellants indicated in their affidavits attached to their special appearances that they attended a conference in Texas that Eckard hosted. Harbott attended one in San Antonio from May 4-7, 2023, for "networking, relaxation, and education, not for conducting business related to the claims" at issue.

Donarski attended one conference hosted by Eckard from May 4-7, 2023,[5] "where she attended one presentation and had incidental discussions with conference attendees and family members." She did not conduct business or form business relationships at the conference. Donarski mostly spent time with her family. She denied obtaining any information about Eckard's oil and gas operations or business during the conference.

[5] Donarski did not provide the location of the conference.

Ryan attended a single conference in San Antonio for networking and denied conducting business or forming business relations during it. Natalie has never attended an event in Texas hosted by Eckard; however, she attended an Eckard conference in the Bahamas in May 2024.

Hughes never attended any conference hosted by Eckard in Texas.

Weaver attended a single conference in San Antonio from May 4-7, 2023, for "networking and relaxation after tax season." He did not conduct any business or form business relationships beyond general discussions with Eckard about oil investments. He and his wife had dinners and went on some excursions.

Similarly, FourSite is not a resident or domiciled in Texas; rather, it is a South Dakota limited liability company. It does not own any property, bank accounts, or conduct any business operations in Texas.

Eckard did not plead these facts or any other facts in its first amended petition regarding the appellants' attendance at Eckard conferences in Texas. Thus, its first amended petition failed to plead facts within the reach of the Texas long-arm statute because it did not allege any facts giving rise to liability or related to the appellants' activity within the forum state. *Kelly*, 301 S.W.3d at 600; *see, e.g.*, *Moncrief Oil Int'l, Inc.*, 414 S.W.3d at 157 (concluding nonresident defendant was not subject to jurisdiction for tortious interference claim when alleged acts of interference occurred outside of Texas). Because Eckard failed to plead such jurisdictional facts, it did not meet its initial burden; therefore, the appellants needed only to prove that they did not reside in Texas to negate jurisdiction. *See Steward Health Care Sys.*, 633 S.W.3d at 126. The appellants negated all bases of jurisdiction on Eckard's causes of action for fraud in the inducement, business disparagement, tortious interference with existing business relations, trade-secret misappropriation, breach of contract, aiding and abetting fraud, and conspiracy by proving that they never resided in Texas. *Kelly*, 301 S.W.3d at 660; *MPI Indus. Carolinas, LLC*, 2025 WL 777337, at *5.

We sustain appellants' first and third issues.

C. Alter Ego/Veil Piercing

Appellants assert in their fifth issue that jurisdiction cannot be imputed to them individually through alter ego or veil piercing. Eckard, as the party seeking to pierce the corporate veil for jurisdictional purposes, had the burden to present evidence demonstrating an alter ego relationship. *PHC-Minden, L.P. v. Kimberly-Clark Corp.*, 235 S.W.3d 163, 175 (Tex. 2007).

Under Texas law, a corporation is presumed to be a separate entity from its officers and shareholders. *Watamar Holding S.A. v. SFM Holdings, S.A.*, 583 S.W.3d 318, 332 (Tex. App.—Houston [14th Dist.] 2019, no pet.). The alter ego doctrine is one basis upon which a court may pierce the corporate veil and bring a shareholder within its jurisdiction. *Id.* The doctrine applies "when there is such a unity between the corporation and an individual that the separateness of the two has ceased and asserting jurisdiction over only one would result in injustice." *Wilmington Tr., Nat'l*

Ass'n v. Hsin-Chi-Su, 573 S.W.3d 845, 855 (Tex. App.—Houston [14th Dist.] 2018, no pet.).

To determine whether an alter ego relationship exists for jurisdictional purposes, "courts look to the total dealings of the corporation and the individual, including the degree to which corporate and individual property have been kept separate, the amount of financial interest, ownership, and control the individual maintains over the corporation, and whether the corporation has been used for personal purposes." *Watamar Holding S.A.*, 583 S.W.3d at 332. Courts also consider the following as evidence of alter ego status: payment of alleged corporate debt with personal checks or other commingling of funds, representations that the individual will back the corporation financially, the diversion of corporate profits for personal use, and inadequate capitalization. *Id.* An individual's status as an officer, director, or shareholder of an entity, standing alone, is not enough to support an alter ego finding. *Id.*

Eckard pleaded that the appellants created their business entities "as unfair devices by which the fiction of separate corporate personalities was actually used to achieve an inequitable result." And, the entities were organized to perpetuate a fraud and misappropriate trade secrets for their own direct and personal benefit. "While the form of the corporate enterprise was observed, the entities were used as devices to injure [Eckard] and to [the appellants'] benefit."

Eckard did not plead or offer any evidence establishing how the appellants used the corporate entities to perpetuate a fraud or how the corporate form was a sham or fiction. *Wolf v. Summers-Wood, L.P.*, 214 S.W.3d 783, 790 (Tex. App.—Dallas 2007, no pet.). Because it did not meet its burden, the burden did not shift to the appellants to bring forth evidence; nevertheless, each individual appellant filed an affidavit along with their brief in support of the special appearances.

Harbott stated that he is not an officer, director, or employee of any entity involved in the lawsuit; rather, his role in the Harbott entities is advisory and he does not have direct control over them. Any investments made with Eckard were through entities and not by him personally and those investments were in Oklahoma, not Texas.

Donarski stated that her affiliate, Logy D, L.L.C., invested approximately $150,000 in an Oklahoma project and the investment "was not directed toward Texas." Logy D., L.L.C. maintains separate books and records, does not commingle funds with any other businesses, and operates as a distinct legal entity. Donarski stated, "I have not used these entities to perpetuate fraud or for the personal benefit beyond my membership or beneficiary roles."

The Raymonds similarly testified that R&N Ventures, L.L.C. maintains separate books and records, does not commingle funds with any of their other businesses, and operates as a distinct legal entity. They denied using R&N Ventures, L.L.C. to perpetuate a fraud or for personal benefit beyond an ownership role.

Hughes stated that each of the entities in which she acts as a representative or has administrative responsibilities, which includes Tatanka Trust and Harbott Minerals, L.L.C., maintains separate books and records, does not commingle funds among themselves or with her personal accounts, and each operates as a distinct legal entity. She stated, "I have not in any manner used these entities to perpetuate fraud or for personal benefit beyond my role as trustee or manager."

Weaver testified: "Crude Oil Ventures, L.L.C. maintains separate books and records, does not commingle funds with my other business . . . , and operates as a distinct legal entity. I have not used Crude Oil Ventures to perpetuate fraud or for personal benefit (beyond my ownership role)."

The evidence before us does not demonstrate that the appellants exert such domination and control over their business entities that they do not in reality constitute separate and distinct entities but are the same legal person for jurisdictional purposes. *See PHC-Minden, L.P.*, 235 S.W.3d at 173. Instead, the evidence shows that "there is nothing more than typical corporate parental involvement consistent with its investor status." *Watamar Holdings S.A.*, 583 S.W.3d at 335.

In reaching this conclusion, we reject Eckard's argument that the appellants' statements that they did not perpetuate a fraud or commit torts in Texas are conclusory. As previously explained, Eckard did not plead sufficient facts to shift the burden to the appellants to present evidence to the contrary. Further, Eckard's contention is without merit. While special appearance affidavits must be "direct, unmistakable, and unequivocal as to the facts sworn to," *Phillips Dev. & Realty, LLC v. LJA Eng'g, Inc.*, 499 S.W.3d 78, 89 (Tex. App.—Houston [14th Dist.] 2016, pet. denied), "the supreme court has observed, proving a negative is inherently difficult and this fact should be taken into account in evaluating the quantum of proof necessary to do so." *Harris Cent. Appraisal Dist. v. Houston Pipe Line Co LP*, 706 S.W.3d 568, 578 (Tex. App.—Houston [1st Dist.] 2024, no pet.) (citing *State Farm Mut. Auto. Ins. Co. v. Matlock*, 462 S.W.2d 277, 278 (Tex. 1970)); *see also Evans Res., L.P. v. Petroplex Energy, Inc.*, 732 S.W.3d 620, 633 (Tex. App.—Eastland 2026, pet. filed). Thus, under the facts here, the appellants' statements that they did not commit a fraud or any tort in Texas are not conclusory. [6]

To the extent the trial court may have denied the appellants' special appearances based on the theory of alter ego and piercing the corporate veil, the trial court erred. We sustain the appellants' fifth issue.

Because of our disposition of this issue, we do not address the appellants' fourth issue in which they argue that the fiduciary shield doctrine applies. TEX. R. APP. P. 47.1.

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[6] We also reject Eckard's argument that the appellants' affidavits were untimely and could not be considered by the trial court. *See* TEX. R. CIV. P. 120a(3) (stating affidavits "shall be filed at least seven days before the hearing"). Eckard did not object in the trial court that the affidavits were untimely. *See Phillips Dev. & Realty, LLC*, 499 S.W.3d at 88 (stating that a trial court has discretion under rule 120a(3) to consider late-filed affidavits, and it is "incumbent" on the opposing party to "to obtain a prompt ruling or preserve a refusal to rule on its objections"). Eckard objected that the affidavits "are hearsay and clearly inadmissible." It has not raised a hearsay argument on appeal.

D. Summary

Because Eckard failed to plead sufficient facts in its first amended petition to establish specific jurisdiction, the appellants had only to prove that they did not live in Texas to negate personal jurisdiction. *Kelly*, 301 S.W.3d at 658–59; *MPI Indus. Carolinas, LLC*, 2025 WL 777337, at *10. Appellants met their burdens. Based on our conclusion that Eckard failed to establish personal jurisdiction, we need not consider appellants' seventh issue in which they allege that exercising jurisdiction would not comport with traditional notions of fair play and substantial justice. TEX. R. APP. P. 47.1; *see also Anchia v. DaimlerChrysler AG*, 230 S.W.3d 493, 503 (Tex. App.—Dallas 2007, pet. denied). Accordingly, the trial court erred by denying their special appearances.

Conclusion

We reverse the trial court's September 12, 2025 "Order on Defendants' Motions for Special Appearance" denying appellants' special appearances and render judgment dismissing Eckard's claims against appellants for want of personal jurisdiction.[7]

/Cynthia Barbare/
CYNTHIA BARBARE
JUSTICE

[7] In their final issue, appellants encourage the Court to "follow its own precedent in *Sevenly Outfitters, LLC v. Monkedia, LLC*, No. 05-22-00096-CV, 2023 WL 3000575, at *6 (Tex. App.—Dallas Apr. 19, 2023, no pet.) [mem. op.]" and reverse the trial court's order and render judgment dismissing all claims against them individually and against FourSite. We sustain their eighth issue.