Affirmed and Opinion filed July 6, 2000.

In The

Fourteenth Court of Appeals

NO. 14-98-00618-CV

PRIMROSE DRILLING VENTURES, LTD., Appellant

V.

NEALWELL DRILLING, LTD.,
SUNDOWNER OFFSHORE SERVICES, INC.,
NEAL AND MASSY HOLDINGS LTD.,
WELL SERVICES LTD.,
Appellees

On Appeal from the 61st District Court
Harris County, Texas
Trial Court Cause No. 94-09977

O P I N I O N

This is an appeal from the granting of a no evidence summary judgment and two special appearances.

Appellant Primrose Drilling Ventures Ltd. (Primrose) appeals from the trial court's grant of appellee's Sundowner Offshore Services, Inc (Sundowner) motion for summary judgment. Primrose also appeals from the trial court's grant of appellees' Nealwell Drilling, Ltd. (Nealwell), Neal and Massey

Holdings, Ltd. (Neal and Massey), and Well Services Ltd. (Well Services)[1] special appearances seeking dismissal based on lack of personal jurisdiction. This appeal involves two issues: first, whether Primrose produced more than a scintilla of evidence in response to Sundowner's no evidence motion on the intentional act element of Primrose's tortious interference claim, and second, whether a Canadian corporation may obtain jurisdiction in Texas over two Trinidadian corporations. We affirm.

I.
Factual Background

This action arose from the unsuccessful attempt by Primrose, a Canadian corporation, to purchase a jack-up drilling rig from Nealwell, a Trinidadian corporation. The rig, known as the Nealwell II, was located and operated in Trinidad, and all inspections of the rig were performed in Trinidad. The relevant dates leading to this lawsuit are as follows:

1. In January 1993, Primrose and Nealwell entered into negotiations regarding the purchase of the Nealwell II.

2. In February 1993, Nealwell informed Primrose the sale price for the rig was $2,000,000.

3. During this time, Sundowner also learned of Nealwell's interest in selling the Nealwell II and learned the selling price was $2,000,000.

4. In March 1993, Primrose began inspections of the Nealwell II.

5. In April 1993, based on its inspections, Primrose told Nealwell that $2,000,000 was unacceptable, but it was still interested in purchasing the rig.

6. During this time, Sundowner contacted the inspector Primrose used to inspect the rig and asked him if they could review his inspection report.

7. In May 1993, Primrose counteroffered first $1,300,000 in cash, which was rejected by Nealwell, and then $1,800,000 with terms providing for installment payments over a two year

[1] Primrose states in its brief that it is no longer appealing the trial court's granting of Well Services' special appearance.

period. Nealwell countered with $1,800,000 in cash, thereby rejecting Primrose's second counteroffer.

8. In June 1993, Primrose rejected Nealwell's counteroffer but indicated it remained interested in purchasing the rig.

9. In early July 1993, Nealwell offered to sell the rig to Primrose "as is, where is" for $1,525,000. Rejecting this offer, Primrose countered with its previous bids of $1,300,000 in cash or $1,800,000 with substantial terms. Nealwell again rejected both of these counteroffers.

10. In mid-July 1993, Nealwell informed Primrose it was accepting Primrose's $1,300,000 cash offer "as is, where is"subject to the execution of a sales agreement.

11. In October 1993, Nealwell forwarded to Primrose a proposed purchase agreement, which Primrose revised and returned to Nealwell.

12. In early November 1993, Nealwell informed Primrose it had several revisions of its own, and that it also had questions regarding Primrose's additional proposal to pay for the rig in Trinidadian dollars as opposed to the American dollars to which the parties had previously agreed. Primrose addressed Nealwell's questions regarding the payment in a letter dated November 12, 1993. Nealwell did not immediately respond to this explanation.

13. On November 15, 1993, Nealwell reached an agreement with Sundowner regarding the sale of the Nealwell II for $2,000,000 american dollars.

14. On November 23, 1993, Nealwell informed Primrose it was withdrawing from negotiations, citing as its reasons Primrose's failure to execute the purchase agreement, failure to make the deposit required by the agreement, and offer to pay in Trinidadian, as opposed to American, dollars.

15. The next day, November 24, 1993, it was announced that Sundowner had purchased the Nealwell II for a $2,000,000 cash payment, the original asking price.

II.

No-Evidence Summary Judgment

In Primrose's first and second points of error, it argues the trial court erred by granting Sundowner's motion for a no-evidence summary judgment. Primrose filed suit against Sundowner, alleging Sundowner tortiously interfered with Primrose's contractual relations with Nealwell, or alternatively, Sundowner tortiously interfered with a prospective contract between Primrose and Nealwell. In its no-evidence motion, Sundowner argued that Primrose can not sustain its tortious interference claims because after four years of litigation, Primrose has failed to come forward with any evidence that Sundowner had knowledge of a contract or prospective contract between Primrose and Nealwell.

A. Standard of Review

The standard of review for a "no-evidence" motion for summary judgment under Rule 166a(i) is less settled than standard motions for summary judgment. Rule 166a(i) states:

> After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.
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> TEX. R. CIV. P. 166a(i).

A no-evidence summary judgment is equivalent to a pretrial directed verdict, and in reviewing the granting of a no-evidence summary judgment, this Court applies the same legal sufficiency standard as applied in reviewing directed verdicts. *See Moore v. Kmart Corp.*, 981 S.W.2d 266, 269 (Tex. App.—San Antonio 1998, pet. denied); *see also Judge David Hittner and Lynne Liberato, No-Evidence Summary Judgments Under the New Rule*, in STATE BAR OF TEXAS PROF. DEV. PROGRAM, 20 ADVANCED CIVIL TRIAL D, D-5 (1997). We review the evidence in the light most favorable to the respondent against whom the no-evidence summary judgment was rendered, disregarding all contrary evidence and inferences. *See Merrell Dow Pharm., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997); *see also Moore*, 981 S.W.2d at 269. The trial court may not grant a no-evidence summary judgment if the respondent brings forth more than a scintilla of probative evidence to raise a

genuine issue of material fact. *See* TEX. R. CIV. P. 166a(i); *see also Havner*, 953 S.W.2d at 711. Less than a scintilla of evidence exists when the evidence is so weak as to do no more than create a mere surmise or suspicion of a fact. *See Kindred v. Con/Chem, Inc.*, 650 S.W.2d 61, 63 (Tex.1983).

B. Analysis

Texas law protects existing and prospective contracts from interference. *See Juliette Fowler Homes, Inc.*, 793 S.W.2d 660, 665 (Tex. 1990). The principal difference between the two involves the requirement of a contract as opposed to a potential for a contract. The elements of tortious interference with a contract are: (1) the existence of a contract subject to interference; (2) a willful and intentional act of interference; (3) the act was the proximate cause of the plaintiff's damage; and (4) actual damage or loss occurred. *See Skinner v. Holloway*, 898 S.W.2d 793, 795-96 (Tex. 1995). In contrast, the elements of tortious interference with prospective contract are: (1) a reasonable probability that the parties would have entered into a contractual relationship; (2) an intentional and malicious act by the defendant that prevented the relationship from occurring; (3) the defendant lacked privilege or justification to do the act, and (4) actual harm or damage resulted from the defendant's interference. *See Texas Oil Co. v. Tenneco Inc.*, 917 S.W.2d 826, 831 (Tex. App.—Houston [14th Dist.] 1994, *rev'd on other grounds*, 958 S.W.2d 178 (Tex. 1997)); *see also Exxon Corp. v. Allsup*, 808 S.W.2d 648, 659 (Tex. App.—Corpus Christi 1991, writ denied).

The second element of both torts concerning "intent" is dependent upon a strict requirement of adequate proof to demonstrate this requirement. *See Hill v. Heritage Resources, Inc.*, 964 S.W.2d 89, 123 (Tex. App.—El Paso 1997, pet. denied). There must be some direct evidence of a willful act of interference. *See Browning-Ferris, Inc. v. Reyna*, 865 S.W.2d 925, 927 (Tex.1993). To this end, the interfering party must know of the existence of a contract between the plaintiff and a third party or have knowledge of facts that would lead a reasonable person to conclude that a contract or prospective contract existed. *See Kelly v. Galveston County*, 520 S.W.2d 507, 513 (Tex. Civ. App.—Houston [14th Dist.] 1975, no writ); *see also Armendariz v. Mora*, 553 S.W.2d 400, 406 (Tex. Civ. App.—El Paso 1977, writ ref'd n.r.e.). In its motion for summary judgment, Sundowner challenges the second element of both causes of action, arguing Primrose failed to bring forward sufficient evidence of Sundowner's

knowledge of the contractual or prospective contractual relations. Therefore, Sundowner's argument follows, Primrose failed to meet the element of *intentional* interference.

In its response to Sundowner's motion for summary judgment, Primrose offered what it characterized as "direct" evidence[2] of Sundowner's knowledge of an agreement between Primrose and Nealwell:

> 1. Sundowner's lawyer first sought Nealwell's warranty that there was no "contract, agreement or arrangement for the sale of the rig." Sundowner later reformed the contract language, at Nealwell's request, to merely warrant that there was no "contract to which Seller is bound" for the sale of the Rig.
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> 2. Prior to its purchase, a Sundowner employee allegedly stated that "Bill Hawryluk [Primrose's representative in negotiating the purchase] would be upset when he found out that we [Sundowner] got his rig."[3]
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> 3. Nealwell, in a holographic note to Sundowner's Shanklin stated that it needed its lawyers to review the situation as to whether it could sell the rig to Sundowner.

Primrose also offered the following evidence it characterized as "circumstantial" evidence of Sundowner's knowledge:

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[2] All of Primorse's evidence, direct and circumstantial, offered in response to Sundowner's motion was presented through the affidavits, and associated exhibits, of Messrs. McRory and Hawryluk, and Carol Jendrzey.

[3] Paragraph 2 of Primrose's "direct" evidence of Sundowner's knowledge is based on this hearsay statement contained in paragraph 8 of the affidavit of William Hawryluk. The trial court specifically ordered that paragraph be stricken from the record in this cause. Primrose, however, has not brought a point of error complaining of the trial court's exclusion of that evidence. Therefore, Primrose has failed to preserve any error concerning the trial court's action. *See Perry v. Brooks*, 808 S.W.2d 227, 229-30 (Tex. App. — Houston [14th Dist.] 1991, no writ). Further, because the evidence set out in paragraph 8 was excluded by the trial court, it was not presented to the trial court in support of Primrose's response to the no evidence summary judgment. We may not consider issues not expressly presented to the trial court by a response as grounds for reversal. *See* TEX. R. CIV. P. 166a(c).

1. Sundowner contacted a consultant used by Primrose for information about the condition of the rig.

2. After Sundowner purchased the rig from Nealwell, Sundowner hired the same consultant to refurbish the rig.

3. Nealwell did not inform Primrose it was refusing Primrose's offer until it had negotiated an agreement with Sundowner.[4]

4. Sundowner's representatives were in Trinidad inspecting the rig and made the offer while Primrose personnel were in Trinidad preparing the inventory of the equipment on the rig.

5. The fact that Sundowner agrees that it knew that Nealwell was negotiating with another party for the sale of the rig, but was later told that Nealwell wanted to sell the rig to Sundowner conflicts with paragraph 3 of Primrose's direct evidence.

6. Sundowner's chairman testified that he considered a deal to be struck when verbally agreed to and not when the paperwork was later completed.

Paragraphs one and three of Primrose's direct evidence and paragraph three of Primrose's circumstantial evidence relate to Nealwell's knowledge or actions, not those of third-party Sundowner. Indeed, as to direct evidence paragraph 3, Primrose offered no evidence that Nealwell actually sent

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[4] The November 23, 1999, letter from Nealwell withdrawing from further negotiations refers to Primrose's November 18 counteroffer of paying Nealwell in Trinadian currency as opposed to U.S. currency, as one of the grounds for Nealwell's rejection. Nealwell also notes in the withdrawal letter that Primrose had neither returned an executed agreement for sale nor tendered a deposit toward the purchase of the rig. Sundowner, however, had tendered a deposit and returned an executed agreement. Because Primrose's letter to Nealwell on November 18, 1993, materially alters the terms of its prior offer to which Nealwell had agreed, we hold Primrose's subsequent decision to pay for the rig in Triniadian currency constituted a counteroffer which Nealwell had a clear right to reject. *See Lewis v. Adams*, 979 S.W.2d 831, 834 (Tex. App.—Houston [14th Dist.] 1998, no pet.) (noting if one party to an agreement changes or qualifies the terms of an offer, there is no meeting of the minds between the parties because the modification then becomes a counteroffer).

Sundowner the holographic note regarding Nealwell's need to consult with its own lawyers regarding the sale. Further, paragraphs one and five of Primrose's circumstantial evidence demonstrate only that Sundowner knew of Nealwell's negotiations with another party. However, for a tortious interference cause of action to lie, more than mere negotiations must have taken place. *See Caller-Times Publ'g Co. v. Triad Communications, Inc.*, 855 S.W.2d 18, 24 (Tex. App.—Corpus Christi 1993, no writ). To prove tortious interference with prospective business relationships, plaintiff must prove intentional interference with a contractual relationship that the plaintiff had a reasonable probability of realizing. *See id.* at 21. Evidence of mere negotiations, which Primrose has produced, is no evidence that Primrose had a reasonable probability of consummating a contractual relationship with Nealwell. *See id.* at 24. Finally, paragraph two of Primrose's circumstantial evidence is immaterial because actions Sundowner took after the alleged interference do not demonstrate what Sundowner knew at the time of the alleged interference. *See Dudley v. Texas State Dept. of Highways and Public Transp.*, 716 S.W.2d 628, 630 (Tex. App.—Corpus Christi 1986, no writ) (citing rule that evidence of subsequent events does not show State's knowledge of the specific defects that made an intersection dangerous). Therefore, the only remaining evidence that supports Primrose's allegations of Sundowner's knowledge is in paragraphs four and six of the "circumstantial" evidence. Considering the evidence referenced in paragraphs four and six in the light most favorable to Primrose, we cannot say that it has any probative force regarding Sundowner's knowledge. Although the facts recited above create suspicion about what Sundowner knew regarding Primrose's negotiations with Nealwell, there is no evidence raising a fact issue that Sundowner knew, at the time it entered into an agreement with Nealwell, that there was a reasonable probability that Nealwell and Primrose had or would enter into a contract. Absent such evidence, Sundowner's actions with Nealwell cannot constitute intentional interference. Intentional conduct means that "'the actor desires to cause the consequences of his act, or that he believes that the consequences are substantially certain to result from it'." *See Southwestern Bell Tel. Co. v. John Carlo Texas, Inc.*, 843 S.W.2d 470, 472 (Tex.1992) (quoting RESTATEMENT (SECOND) OF TORTS § 8A (1965)). Absent any evidence of Sundowner's knowledge that there was a reasonable probability of a contract between Nealwell and Primrose, there are no fact issues whether Sundowner desired to intentionally interfere with a contractual or probable contractual relationship, or that Sundowner believed interference was substantially certain to

result from its actions. As the court stated in *Steinmetz & Associates Inc. v. Crow*, "[t]here is a difference between suspicion and knowledge. Suspicion is doubt, an absence of trust. Knowledge is a clear perception of fact, an awareness of truth." 700 S.W.2d 276, 280 (Tex. App. — San Antonio 1985, writ ref'd, n.r.e.). Here, the evidence produced by Primrose merely creates a suspicion as to the extent of Sundowner's knowledge regarding the nature of the relationship between Primrose and Nealwell. It does not rise to a level sufficient to create a fact issue as to whether Sundowner either had knowledge of an actual contract between them, or that Primrose had a reasonable probability of effecting a contractual relationship.

Because we find no evidence raising a fact issue regarding the "intentional" element of Primrose's cause of action for tortious interference with a contract or prospective contract, the trial court correctly granted summary judgment in favor of Sundowner on this claim. Accordingly, we overrule Primrose's first and second points of error.

III.
Special Appearance

In its third point of error, Primrose challenges the trial court's grant of Nealwell and Neal and Massey's special appearance, which terminated Primrose's breach of contract action against those two corporations. Primrose asserts this was error because the State of Texas has specific personal jurisdiction over the appellants and the exercise of that jurisdiction would not violate traditional notions of fair play and substantial justice. Nealwell and Neal and Massey counter that there are no facts supporting the exercise of jurisdiction by Texas courts over Primrose's claim against two Trinidadian companies. We agree with the latter contention.

A. Standard of Review

When a defendant challenges a court's exercise of personal jurisdiction through a special appearance, he carries the burden of negating all bases of personal jurisdiction. *See Kawasaki Steel Corp. v. Middleton*, 699 S.W.2d 199, 203 (Tex. 1985). Where, as here, no findings of fact were filed

by the trial court relating to its ruling on the special appearances, it is implied that the trial court made all necessary findings of fact in support of its judgment. *See Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990). A reviewing court must affirm if the judgment can be upheld on any legal theory supported by the evidence. *See Nikolai v. Strate*, 922 S.W.2d 229, 240 (Tex. App.—Fort Worth 1996, pet. denied) (citing *Clark v. Noyes*, 871 S.W.2d 508-12 (Tex. App.—Dallas 1994, no pet.).

When a personal jurisdiction question is reviewed, an appellate court must review all of the evidence before the trial court relating to the special appearance. *See Linton v. Airbus Industrie*, 934 S.W.2d 754, 757 (Tex. App.—Houston [14th Dist.] 1996, writ denied), *cert. denied*, 119 S.Ct. 1039 (1999). But the review is not a de novo review. *See Fish v. Tandy Corp.*, 948 S.W.2d 886, 892 (Tex. App.—Fort Worth 1997, pet. denied). The proper standard for reviewing the evidence in a case involving a challenge to *in personam* jurisdiction is factual sufficiency. *See id.* After reviewing all of the evidence, we may reverse the decision of the trial court only if its ruling is so against the great weight and preponderance of the evidence as to be manifestly erroneous or unjust. *See In re King's Estate*, 244 S.W.2d 660, 661 (Tex. 1951); *Runnels v. Firestone*, 746 S.W.2d 845, 849 (Tex. App.—Houston [14th Dist.]), *writ denied per curiam*, 760 S.W.2d 240 (Tex. 1988).

The existence of personal jurisdiction is a question of law. The trial court's conclusions of law regarding a special appearance are reviewed de novo. *See Linton*, 934 S.W.2d at 757. If a special appearance is based on undisputed or established facts, an appellate court shall conduct a de novo review of the trial court's order granting a special appearance. *See Conner v. Conticarriers and Terminals, Inc.*, 944 S.W.2d 405, 411 (Tex. App.—Houston 1997, no pet.).

B. Personal Jurisdiction

A court may assert personal jurisdiction over a nonresident defendant only if the requirements of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and the Texas long-arm statute are satisfied. *See CSR Ltd. v. Link*, 925 S.W.2d 591, 594 (Tex.1996); *see also Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 413-14, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984). The Texas long-arm statute allows a court to exercise personal jurisdiction over a nonresident defendant

who does business in Texas. In addition to a short list of activities that constitute doing business in Texas,[5] the statute provides "other acts" by the nonresident can satisfy the requirement. *See* TEX. CIV. PRAC. & REM.CODE ANN. § 17.042 (Vernon 1997); *Guardian Royal Exch. Assurance, Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 226 (Tex. 1991). The Texas Supreme Court has repeatedly interpreted this broad statutory language " 'to reach as far as the federal constitutional requirements of due process will allow.' " *CSR*, 925 S.W.2d at 594 (quoting *Guardian Royal*, 815 S.W.2d at 226); *see also U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760, 762 (Tex.1977). Thus the requirements of the Texas long-arm statute are satisfied if the exercise of personal jurisdiction comports with federal due process limitations. *See CSR*, 925 S.W.2d at 594.

The United States Constitution permits "a state court [to] take personal jurisdiction over a defendant only if it has some minimum, purposeful contacts with the state, and the exercise of jurisdiction will not offend traditional notions of fair play and substantial justice." *Dawson-Austin v. Austin*, 968 S.W.2d 319, 326 (Tex.1998); *CMMC v. Salinas*, 929 S.W.2d 435, 437 (Tex.1996). A nonresident defendant that has purposefully availed itself of the privileges and benefits of conducting business in the foreign jurisdiction has sufficient contacts with the forum to confer personal jurisdiction. *See CSR*, 925 S.W.2d at 594, citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475-76 (1985). However, a defendant should not be subject to the jurisdiction of a foreign court based upon "random," "fortuitous," or "attenuated" contacts. *CSR*, 925 S.W.2d at 595 (quoting *Burger King*, 471 U.S. at 475-76.

C. Minimum Contacts

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[5] The activities specifically identified as "doing business" in Texas include the following:

(1) contracting by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state;

(2) committing a tort in whole or in part in this state;

(3) recruiting Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state.

TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (Vernon 1997).

A defendant's contacts with a forum can give rise to either general or specific jurisdiction.[6] General jurisdiction is present when a defendant's contacts are continuous and systematic, allowing the forum to exercise personal jurisdiction over the defendant even if the cause of action did not arise from or relate to activities conducted within the forum state. *See CSR*, 925 S.W.2d at 595; *Schlobohm v. Schapiro*, 784 S.W.2d 355, 357 (Tex. 1990). General jurisdiction requires a showing the defendant conducted substantial activities within the forum, a more demanding minimum contacts analysis than for specific jurisdiction. *See CSR*, 925 S.W.2d at 595; *Guardian Royal*, 815 S.W.2d at 228. On the other hand, specific jurisdiction is established if the defendant's alleged liability arises from or is related to an activity conducted within the forum. *See CSR*, 925 S.W.2d at 595; *see also Happy Indus. Corp. v. American Specialties, Inc.*, 983 S.W.2d 844, 848 (Tex. App.—Corpus Christi 1998, pet. dism'd w.o.j.). It requires a substantial connection between the nonresident's action or conduct directed toward Texas and the cause of action in Texas. *See Memorial Hosp. Sys. v. Fisher Ins. Agency, Inc.*, 835 S.W.2d 645, 650 (Tex. App.—Houston [14th Dist.] 1992, no writ). When specific jurisdiction is asserted, the minimum contacts analysis focuses on the relationship among the defendant, the forum and the litigation. *See id.* We will affirm the trial court's ruling finding *in personam* jurisdiction if specific jurisdiction is supported by the evidence. *See Nikolai*, 922 S.W.2d at 240.

In analyzing minium contacts, it is not the number but rather the quality and nature of the nonresident's contacts with the forum state that is important. *See Memorial Hosp. Sys.*, 835 S.W.2d at 650. The exercise of personal jurisdiction is proper when the contacts proximately result from actions of the nonresident defendant which create a substantial connection with the forum state. *See Guardian Royal*, 815 S.W. 2d at 226. The substantial connection between the nonresident defendant and the forum state necessary for a finding of minimum contacts must come about by action or conduct of the nonresident purposefully directed toward the forum state. *See id.* This requirement that a defendant purposefully avail himself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws, ensures that a defendant will not be haled into a jurisdiction solely as a result of

[6] Because Primrose only argues the trial court has specific jurisdiction on appeal, our jurisdictional analysis is limited to specific jurisdiction.

random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person. *See Burger King*, 471 U.S. at 475.

Minimum contacts are especially important when dealing with a nonresident defendant from a foreign country. *See CSR*, 925 S.W.2d at 595. Given the facts of the present case, Nealwell[7] is not subject to specific jurisdiction in Texas because Primrose's cause of action did not arise out of Nealwell's contacts with Texas. Although Primrose argues that Nealwell negotiated and eventually agreed to a contract with Sundowner, who has its principle place of business in Texas, this subsequent contract is not the cause of action for which Primrose is suing Nealwell. No specific jurisdiction exists because the injury complained of, Nealwell's breach, occurred either in Trinidad or Canada. Although Nealwell subsequently entered into a contract with Sundowner for the purchase of the rig, this contract is the basis of Primrose's suit against Sundowner, not Nealwell. Because Primrose's injury, and cause of action, did not arise out of Nealwell's contacts with Texas, the trial court correctly granted Nealwell's special appearance. *See Van Pelt v. Best Workover*, Inc.,798 S.W.2d 14, 16 (Tex. App.—El Paso 1990, no writ) (holding cause of action resulted from subsequent injuries sustained by the alleged negligence of those performing certain tasks, not the employment of crew members at an earlier date).

Similarly, Neal & Massey[8] is also not subject to specific jurisdiction. To hold a foreign parent corporation subject to personal jurisdiction on the basis of the activity of one of its subsidiaries, there must be a showing of control by the parent which is greater than normal or that it acted as the "alter ego" of the corporation. *See Conner*, 944 S.W.2d at 418-19. In this case, although it argued "alter ego" in the trial court, Primrose has apparently abandoned that theory on appeal. Instead, Primrose now argues that Neal & Massey is subject to personal jurisdiction in Texas because it guaranteed the contract for sale to Sundowner. This contention was not presented to the trial court. An appellant is limited to the theories on which a case was presented at trial, and may not appeal the case on new or different theories. *See Chubb Lloyds Ins. Co. of Texas v. Kizer*, 943 S.W.2d 946, 953 (Tex. App.—Fort Worth 1997, writ

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[7] Nealwell is a corporation organized and existing under the laws of Trinidad and Tobago.

[8] Neal & Massey owns 50% of the shares of Nealwell.

denied). We will not, therefore, address Primrose's new theory. The trial court correctly granted Neal & Massey's special appearance.

D. Fair Play and Substantial Justice

Even if Nealwell and Neal &Massey had minimum contacts with Texas sufficient to establish jurisdiction, fair play and substantial justice would require the court to grant their special appearances. The primary goal of the due process clause as it relates to personal jurisdiction is fairness to foreign defendants. *See Schlobohm*, 784 S.W.2d at 357. Requiring Trinadadian corporations to have to defend this suit in Texas when their contacts with the forum were slight and not related to Primrose's causes of action does not comport with traditional notions of fair play and substantial justice. *See Prejean v. Sonatrach, Inc.*, 652 F.2d 1260, 1265 n.4 (5th Cir.1981). Primrose is a Canadian corporation, whose injuries, if any, occurred in Trinidad or Canada. It would not be fair and just to hold appellees Nealwell and Neal & Massey accountable in Texas under these circumstances. *See Garner v. Furmanite Australia Pty., Ltd.*, 966 S.W.2d 798, 803 (Tex. App.—Houston [1st Dist.] 1998, pet. denied). Because the trial court lacked *in personam* jurisdiction over Nealwell and Neal & Massey, the trial court correctly granted Nealwell and Neal & Massey's special appearance. Therefore, we overrule Primrose's third point of error.

We affirm the judgment of the trial court.

/s/ John S. Anderson
Justice

Judgment rendered and Opinion filed July 6, 2000.

Panel consists of Justices Amidei, Anderson and Wittig.

Do Not Publish — TEX. R. APP. P. 47.3(b).