NUMBER 13-19-00477-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

UTILITY TRAILER MANUFACTURING COMPANY, INC., **Appellant,**

v.

PEDRO CANTU, BENITA CANTU, INDIVIDUALLY AND AS NEXT FRIEND OF BRIANA CANTU, AND ON BEHALF OF THE ESTATE OF LUIS CANTU, THE ESTATE OF DELROY CANTU, AND THE ESTATE OF LUIS CANTU JR., AND FERNANDO MURAD, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ELIZABETH MURAD, **Appellees.**

On appeal from the 197th District Court of Willacy County, Texas.

MEMORANDUM OPINION

Before Chief Justice Contreras and Justices Benavides and Longoria

Memorandum Opinion by Chief Justice Contreras

In this suit arising out of a multiple-fatality auto accident, appellant Utility Trailer Manufacturing Company, Inc. (UTMC) argues by one issue that the trial court erred by denying its special appearance. The question is whether the claims raised against UTMC arise from or are related to UTMC's contacts with Texas so as to support specific jurisdiction. We affirm in part and reverse and render in part.

I. BACKGROUND

The accident at issue occurred on the morning of December 24, 2016, on Farm-to-Market Road 186 near Raymondville, Texas. Luis Cantu was driving eastbound with his wife Elizabeth Murad and two of their children, Delroy (age 14) and Luis Jr. (age 8). Antonio Quintero was driving westbound in a tractor-trailer. According to appellees' live petition, Quintero was operating the truck "at an unsafe speed" and attempted to brake. However, "because of a defect in the vehicle's braking," the tractor-trailer "did not brake correctly and the tractor veered into the oncoming lane" and struck Cantu's vehicle. Tragically, all four occupants of Cantu's vehicle were killed. According to the petition, Quintero was arrested and charged with criminally negligent homicide.

Appellees—representatives of the estates of the deceased and of Cantu's surviving minor daughter Briana—brought suit against Quintero, his trucking company, UTMC, and Haldex Brake Products Corporation (Haldex). In their live petition, appellees alleged that there was an electrical wiring problem in the trailer's braking system which prevented the trailer from braking when Quintero activated the tractor's brakes. Appellees argued that the trailer had previously been "subject to two recalls," including one for its tires, which they alleged also "performed defectively." They alleged that "the trailer had a

design defect, a manufacturing defect, and a marketing defect." *See* TEX. CIV. PRAC. & REM. CODE ANN. ch. 82 (Products Liability Act). They also alleged that an air tank connected to the braking system, which was sold to Quintero and installed in his trailer by Utility Trailer Sales Southeast (UTS), "caused or contributed to the braking failure that led to this incident."

According to the petition, Quintero frequently purchased parts from UTS, a UTMC-authorized repair shop and dealer in Pharr. Appellees contend that the air tank in Quintero's truck and "at least one" recalled tire were purchased at this shop. Appellees contended that UTS employees suggested that Quintero "purchase [the] air tank for the braking system," and he did so, but the air tank "was of no use in mitigating any of the issues that the trailer and its components were experiencing." Appellees alleged that, despite Quintero's "many trips" to UTS, the service and sales personnel there did not identify "the braking electrical system failure or the recalled tire or the failure of the braking system in general, to include the air tank."

Appellees brought products liability claims against UTMC, alleging that it manufactured the "defective trailer" and that it "supplied" the subject air tank to UTS, who later sold it to Quintero. Appellees also argued UTMC was negligent by failing to engage in an "engineering analysis" to ensure the trailer's safety.[1] Regarding personal jurisdiction over UTMC, appellees alleged the following:

> Defendant [UTMC] has had continuous and systematic contacts with this state. UTMC keeps a registered agent in this state. It has an active distributor network in this state that has at least eight locations. This distributor network is advertised and promoted on UTMC's website. UTMC

[1] Appellees' live petition also asserted claims for negligence against Quintero and his company, as well as a products liability claim against Haldex, the manufacturer of the allegedly defective braking system. They later non-suited their claims against Quintero and his company without prejudice. These defendants are not parties to this appeal.

> distribution network is made up of authorized dealers and provides new sales, part sales, and service of existing equipment. UTMC provides promotional events in this state, and actively promotes and advertises its products here via industry conferences. All of this activity is clearly to establish channels of regular communication to UTMC customers. Defendant UTMC clearly and obviously intended to serve the Texas market—it provides and advertises for authorized dealers in Texas and provides service of the equipment in Texas. Defendant UTMC puts great effort into advertising in Texas—even going so far as to personally attend industry conferences in this state on a nearly monthly basis. Defendant UTMC put products into the stream of commerce with the intention that those products end up in Texas. Defendant UTMC demonstrated a clear desire and intention to serve the Texas market. Defendant UTMC clearly availed itself of Texas laws.

UTMC filed a special appearance. *See* TEX. R. CIV. P. 120a.1. In it, UTMC argued that: (1) it is a California corporation; (2) its principal place of business is in California; (3) the subject trailer at issue was manufactured in Virginia; and (4) UTMC sold the subject trailer to a dealership in North Carolina. It attached an affidavit by its controller attesting to these facts. The controller acknowledged that, though UTMC has dealerships in Texas, they are "independently owned" and UTMC "does not exercise control over their operations." She further stated that, though UTMC advertises and participates in promotional events nationally and internationally, those activities are "generic in character and not specifically modified to be directed to Texas citizens."

Appellees filed a response to which they attached several pieces of evidence, including the following "unsworn declaration" by Quintero:

> 1. My name is Antonio Quintero. I am of sound mind and am fully competent to make this Declaration. The statements of fact contained in this Declaration are within my personal knowledge and are true and correct.
>
> 2. I purchased a Utility Trailer manufactured trailer. I extensively used it in Texas. I had it repaired several times in Texas. The reason I purchased a Utility Trailer manufactured trailer was because of the multiple service locations available for this brand of trailer near me, including in Texas. I purchased this trailer in March or April of 2015, and used it until the time of the accident in December, 2016.

> 3. I visited the Utility Trailer Southeast Sales store multiple times to buy parts and receive advice regarding my Utility Trailer brand trailer. During these visits I would buy parts for my trailer and ask advice of the sales employees there. I asked them about various issues related to my trailer and truck. They would always provide advice and sales information. I used this in making decisions on making repairs and buying parts for my trailer. I specifically discussed the brakes of my trailer on August 4, 2016. At that time my brakes did not seem to be working correctly, and the sales people at the Utility Trailer store suggested I purchase an air tank—which I did. Unfortunately, I continued to have problems with my brakes on the trailer. I found myself having to adjust the brakes more than I had to with previous trailers I owned. I was never able to determine what the problem was.
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> 4. During the accident in question, I attempted to brake before the accident. It was as if the brakes did not respond from the trailer, although they seemed to respond from the tractor. I believe this is what caused the trailer to jack-knife and which ultimately caused me to drift into the oncoming lane, striking the other vehicle. Had the brakes on the trailer responded when I braked, I do not believe this accident would have happened.
>
> 5. I declare under penalty of perjury that the foregoing is true and correct.

The trial court denied UTMC's special appearance on September 18, 2019, and this accelerated interlocutory appeal followed. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(7).

II. DISCUSSION

A. Special Appearance

Any party named in a lawsuit may make a special appearance to challenge the trial court's personal jurisdiction over it. TEX. R. CIV. P. 120a.1. The trial court "shall determine the special appearance on the basis of the pleadings, any stipulations made by and between the parties, such affidavits and attachments as may be filed by the parties, the results of discovery processes, and any oral testimony." TEX. R. CIV. P. 120a.3. "The affidavits, if any, shall be served at least seven days before the hearing, shall be made on personal knowledge, shall set forth specific facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify." *Id.*

Whether a trial court has personal jurisdiction over a nonresident defendant is a question of law we review de novo. *Searcy v. Parex Res., Inc.*, 496 S.W.3d 58, 66 (Tex. 2016); *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007); *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002); *Garcia v. Propst*, 595 S.W.3d 912, 918 (Tex. App.—Corpus Christi–Edinburg 2020, no pet.).

B. Personal Jurisdiction

Texas's long-arm jurisdiction statute permits Texas courts to exercise personal jurisdiction over a nonresident defendant that "does business" in this State. *PHC-Minden, L.P., v. Kimberly-Clark Corp.*, 235 S.W.3d 163, 166 (Tex. 2007); *see* TEX. CIV. PRAC. & REM. CODE ANN. § 17.042. The statute's "broad language" extends Texas courts' personal jurisdiction "as far as the federal constitutional requirements of due process will permit." *PHC-Minden*, 235 S.W.3d at 166; *BMC Software Belg.*, 83 S.W.3d at 795; *U-Anchor Adver., Inc. v. Burt,* 553 S.W.2d 760, 762 (Tex. 1977). Therefore, "the requirements of the Texas long-arm statute are satisfied if the exercise of personal jurisdiction comports with federal due process limitations." *CSR Ltd. v. Link*, 925 S.W.2d 591, 594 (Tex. 1996).

The exercise of personal jurisdiction satisfies federal Constitutional due process requirements only if (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." *PHC-Minden*, 235 S.W.3d at 166 (*citing Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). When a nonresident defendant "purposefully avails" itself of the privileges and benefits of conducting business in a foreign jurisdiction, it has minimum contacts with the forum state sufficient to confer personal jurisdiction. *Moncrief Oil Int'l, Inc. v. OAO Gazprom*, 414 S.W.3d 142, 150 (Tex. 2013) (citing *Retamco*

Operating, Inc. v. Republic Drilling Co., 278 S.W.3d 333, 338 (Tex. 2009)). A showing of purposeful availment requires that a defendant seek some "benefit, advantage, or profit by 'availing' itself of the jurisdiction." *Spir Star AG v. Kimich*, 310 S.W.3d 868, 875 (Tex. 2010). Thus, sellers who reach beyond one state and create continuing relationships with residents of another state are subject to the specific jurisdiction of the latter in suits arising from those activities. *Moki Mac*, 221 S.W.3d at 575.

Only the defendant's purposeful contacts are relevant to the minimum contacts inquiry; unilateral activity of another party or third person, as well as random, isolated, or fortuitous contacts by the defendant, are insufficient to prove purposeful availment. *Cornerstone Healthcare Grp. Holding, Inc. v. Nautic Mgmt. VI, LP*, 493 S.W.3d 65, 70 (Tex. 2016) (citing *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 785 (Tex. 2005)). Moreover, a seller's awareness "that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State." *CSR*, 925 S.W.2d at 595 (quoting *Asahi Metal Indus. Co. v. Superior Ct. of Cal.*, 480 U.S. 102, 112 (1987) (plurality opinion)). Instead, there must be some "additional conduct," beyond merely placing the product in the stream of commerce, that indicates "an intent or purpose to serve the market in the forum State." *Spir Star*, 310 S.W.3d at 873 (citing *Asahi*, 480 U.S. at 112; *Moki Mac*, 221 S.W.3d at 577; *Michiana*, 168 S.W.3d at 786).

There are two types of personal jurisdiction: general and specific. *Cornerstone Healthcare*, 493 S.W.3d at 71; *see Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). General jurisdiction exists when a defendant's contacts are continuous and systematic, even if the cause of action did not arise from activities

performed in the forum state. *Spir Star*, 310 S.W.3d at 872; *CSR*, 925 S.W.2d at 595 ("General jurisdiction requires a showing that the defendant conducted substantial activities within the forum, a more demanding minimum contacts analysis than for specific jurisdiction."). Though appellees alleged in their petition that UTMC had "continuous and systematic contacts" with Texas, they did not contend in their response to the special appearance that the trial court had general jurisdiction over UTMC, nor do they make that argument on appeal. We therefore limit our discussion to the question of specific jurisdiction.

The exercise of specific jurisdiction is appropriate only when the plaintiff's claim "arises from or relates to" the defendant's contacts with the forum state. *Cornerstone Healthcare*, 493 S.W.3d at 71 (citing *Spir Star*, 310 S.W.3d at 873). In other words, "there must be a substantial connection between those contacts and the operative facts of the litigation." *Moki Mac*, 221 S.W.3d at 585.

C. Analysis

Specific jurisdiction requires an analysis of jurisdictional contacts on a claim-by-claim basis. *Moncrief Oil*, 414 S.W.3d at 150 (citing *Kelly v. Gen. Interior Constr., Inc.*, 301 S.W.3d 653, 660 (Tex. 2010) (separately analyzing jurisdictional contacts for fraud and trust fund claims to determine specific jurisdiction)). A "plaintiff bringing multiple claims that arise out of different forum contacts of the defendant must establish specific jurisdiction for each claim." *Id.* (citing *Seiferth v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 275 (5th Cir. 2006)). With respect to each claim, appellees bore the initial burden to plead facts showing that: (1) UTMC had minimum contacts with Texas by purposefully availing itself of the privilege of conducting activities here; and (2) there is a substantial

connection between those contacts and the operative facts of the litigation. *See Moki Mac*, 221 S.W.3d at 585; *see also Cessna Aircraft Co. v. Garcia*, No. 13-17-00259-CV, 2018 WL 6627602, at *3 (Tex. App.—Corpus Christi–Edinburg Dec. 19, 2018, pet. filed) (mem. op.). If appellees met their pleading burden, then in order to have prevailed on its special appearance, UTMC must have negated appellees' allegations. *See Burger King v. Rudzewicz*, 471 U.S. 462, 472 (1985); *Helicopteros*, 466 U.S. at 414; *Guardian Royal*, 815 S.W.2d at 226; *see also Cessna*, 2018 WL 6627602, at *3.

As noted above, appellees alleged in their petition that UTMC has a network of authorized distributors in Texas, that it "promotes and advertises" its products by attending industry conferences in Texas, and that it puts its products into the stream of commerce with the intention that the products end up in Texas.

UTMC does not dispute that it manufactured and sold the trailer. And it concedes that it has a network of authorized distributors in Texas through which it markets its products, including trailers. Nevertheless, UTMC produced uncontroverted evidence establishing that the specific trailer involved in the accident was not manufactured or sold *in Texas*; rather, it was manufactured in Virginia and sold by UTMC to a dealership in North Carolina. UTMC argues that these facts are dispositive. It notes that, in *Spir Star*, the Texas Supreme Court explained that "when a nonresident's only contacts with Texas involve indirect sales through a distributor or subsidiary, specific jurisdiction is limited to claims arising out of those sales." 310 S.W.3d at 874–75 (citing *Alpine View Co. v. Atlas Copco AB,* 205 F.3d 208, 216 (5th Cir. 2000)). And UTMC points out that, although it has a network of authorized distributors in Texas, the specific trailer involved in the accident in this case was not sold from any of those distributors.

Although it is undisputed that the trailer was not manufactured or sold in Texas, appellees additionally alleged that UTMC placed the trailer in the stream of commerce with the "clear desire and intention to serve the Texas market." As noted, purposeful availment may be shown when a non-resident manufacturer places the product in the stream of commerce and undertakes "additional conduct" which indicates "an intent or purpose to serve the market in the forum State." *Id.* at 873 (citing *Asahi*, 480 U.S. at 112; *Moki Mac*, 221 S.W.3d at 577; *Michiana*, 168 S.W.3d at 786). Examples of this "additional conduct" may include: (1) designing the product for the market in the forum State, (2) advertising in the forum State, (3) establishing channels for providing regular advice to customers in the forum State, and (4) marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. *Id.* (quotations omitted). Appellees provided uncontroverted evidence that UTMC established channels for regular communication to Texas customers by promoting and advertising its products at industry conferences located in Texas; that UTMC has a registered agent in Texas; and that it marketed its products in Texas through authorized independent distributors, including UTS. Accordingly, appellees established that UTMC purposefully availed itself of the Texas market so as to establish minimum contacts for specific jurisdiction purposes.

However, appellees' claims regarding the trailer in particular do not arise out of or relate to UTMC's activities in Texas. *See Burger King*, 471 U.S. at 472; *Helicopteros*, 466 U.S. at 414; *Guardian Royal*, 815 S.W.2d at 226. Appellees' live petition made two claims against UTMC with respect to the trailer: (1) strict liability for design, manufacturing, and marketing defects,[2] and (2) negligence for failing to "to perform a proper engineering

[2] The section of appellees' live petition alleging a strict products liability cause of action against

analysis and to properly test" the trailer.[3] There is no allegation or evidence that the

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UTMC states as follows, in its entirety:

> E. Product Liability/Strict Liability—[UTMC] and Haldex and [UTS]
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> Plaintiffs bring claims against Defendant [UTMC], [UTS], and Haldex under the Texas Products Liability Act (Tex. Civ. Prac. & Rem. Code § 82.001, et seq.). [UTMC], [UTS], and Haldex designed, manufactured, and/or sold and supplied the trailer and its braking components in question and it failed to operate as intended. Upon information and belief, the trailer at issue was not substantially changed after it left control of any defendant. Further, the trailer was in a defective condition, and was unreasonably dangerous to all users of the trailer, and, Defendants, as the designer, manufacturer, and/or supplier is strictly liable for the physical harm caused to Plaintiffs. Plaintiffs allege that the trailer and the braking system at issue was defective as manufactured and/or designed and these defects legally caused the trailer to brake improperly and cause the trailer to lose control, thus moving into the oncoming lane. Additionally, Defendants failed to warn the owners, operators, and/or lessees of the trailers that the trailer and its braking system in question would not work as intended.
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> Plaintiffs allege that the trailer had a design defect, a manufacturing defect, and a marketing defect. Plaintiffs allege there was a safer alternative design, that the trailer and its braking system deviated from its planned specifications, and that the product lacked an adequate warning.
>
> Plaintiffs would also show that Defendants acted willingly, wantonly, maliciously and recklessly when it breached the duties owed to Plaintiffs. Accordingly, Plaintiffs also seeks an award of punitive damages.
>
> Additionally, Plaintiffs allege that Defendants sold a product in a defective condition that was unreasonably dangerous to the end user, and that the product caused harm to Plaintiffs. Defendants were engaged in the business of selling these products. The trailers were expected to and did reach the user without substantial change in the condition from which it was sold. Plaintiffs also allege that Defendants failed to provide adequate warnings or instructions, and this lack of warnings and instructions rendered the product unreasonably dangerous. Defendants knew or should have known of the potential risk of harm presented by the product but marketed it without providing adequate warning to the user or instructions for its safe use. Defendants knew or had reason to know that the trailer and its braking system was likely to be dangerous for the use for which it is supplied, and had no reason to believe that consumer will realize the dangerous condition. Further, Defendant did not provide adequate warnings to anyone or instructions for its safe use, and Defendants failed to exercise reasonable care to make the product safe for the use for which it was supplied.

[3] The section of appellees' petition setting forth a negligence claim against UTMC states as follows, in its entirety:

> F. Negligence of Defendants – [UTMC], [UTS] and Haldex
>
> In designing a trailer and its braking system, efforts should be made by manufacturers to identify potential risks, hazards, and/or dangers that can lead to serious injury or death. Once potential risks, hazards, and/or dangers are identified, then the potential risks, hazards, or dangers should be eliminated if possible. If the potential risks, hazards, and/or dangers can't be eliminated, then they should be guarded against.
>
> If the potential risks, hazards, and/or dangers can't be eliminated or guarded against, they should at least be warned about. Trailer manufacturers have known this for decades, and they also know that they have to consider foreseeable use and misuse when they design

design, testing, manufacture, marketing, or sale of the trailer involved in the accident had a "substantial connection" to any of UTMC's Texas contacts—i.e., its promotional activities at industry conferences in Texas, its training of distributors in Texas, its maintenance of a registered agent here, or its authorization of a network of independently-owned distributors. *See Moki Mac*, 221 S.W.3d at 575.

Appellees argue that the jurisdictional facts in this case are indistinguishable from those considered in *Cessna*, but we disagree. In *Cessna*, the plaintiffs alleged that a plane crash was caused by a defective airplane crankshaft manufactured by the defendant. 2018 WL 6627602, at *2. Relying on a stream-of-commerce theory to support specific jurisdiction, the plaintiffs produced evidence that Cessna "engaged in additional conduct that indicates its purpose to serve the Texas market by advertising in Texas, establishing Cessna maintenance and repair centers in Texas, and selling its airplanes and parts in

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> trailers.
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> Furthermore, engineers have to hold paramount the health, safety, and welfare of the public and consumers, and they must be knowledgeable about the exposure of the types of accidents and injuries that are occurring with their trailers out in the real world.
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> A company that does not conduct a proper engineering analysis that would help it to identify potential risk, hazards, and/or dangers that could seriously injure someone is negligent.
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> Furthermore, it is important to test trailers properly before they are sold to the public. Not doing so constitutes negligence. Defendants' engineers should have used one of the main available techniques to analyze the safety of the subject trailer.
>
> So far, there is no evidence which has been presented which shows that any engineering analysis was conducted by Defendants. This omission is important because this is the primary role and responsibility of an engineer. The lack of engineering analysis and poor decisions about the braking system led to a defective trailer being introduced into the stream of commerce. Defendants were aware of the danger of having a defective braking system, however they were negligent in their decision making for performance testing for this.
>
> Defendants were negligent for not conducting proper engineering analysis, target setting, and testing.
>
> Defendants owed a duty to Plaintiffs to perform a proper engineering analysis and to properly test its trailer. Defendants breached said duty.
>
> The foregoing acts and/or omissions of Defendants were a producing, direct, and/or proximate cause of Plaintiffs' injuries.

Texas through Cessna dealers." *Id.* at *4. Significantly, the plaintiffs also alleged that the crankshaft involved in the accident was purchased from and installed by a Cessna-authorized dealer in Texas, and Cessna did not negate those allegations. *Id.* We held that there was a "substantial connection between Cessna's contacts and the operative facts of the litigation" because "Cessna's activities of selling its parts in Texas are related to the [plaintiffs'] claim that the defective crankshaft caused the accident[.]" *Id.* In other words, Cessna's "additional conduct"—beyond merely placing the crankshaft in the stream of commerce—included the sale of parts such as the crankshaft in Texas, and the specific crankshaft at issue in the case was sold in Texas; therefore, the claim arose out of that "additional conduct." *See id.* In contrast, the specific trailer alleged to be defective in this case was not designed, manufactured, or sold in Texas, and it is not connected to any of UTMC's activities in the forum. The only reason the trailer was in Texas is that Quintero unilaterally brought it here.

Still, appellees urge us to conclude that their allegations regarding the air tank are sufficient to establish a "substantial connection" with UTMC's contacts in Texas. UTMC concedes that it manufactured the air tank and supplied it to UTS, which later sold and installed it in Quintero's trailer. Thus, a claim based on the air tank is akin to the one regarding the crankshaft considered in *Cessna*. *See id.*; *see also Spir Star*, 310 S.W.3d at 873 (noting that, when an out-of-state manufacturer specifically targets Texas as a market for its products, that manufacturer is subject to a products liability suit in Texas, even if the sales are conducted through a Texas distributor or affiliate). Nevertheless, UTMC argues that appellees did not raise a cause of action arising out of related to the air tank. It contends that, though appellees alleged that the air tank caused or contributed

to the accident, they never explicitly alleged that it was *defective*. Appellees argue in response that their live petition "obviously" raises a "cause of action based on the air tank," or "at the absolute least, such causes of action can be reasonably inferred."

We agree with appellees that their factual pleadings are sufficient to raise a cause of action related to the air tank. Under our "relatively liberal" fair notice standard, "a petition is sufficient if it gives fair and adequate notice of the facts upon which the pleader bases his claim." *In re Odebrecht Constr., Inc.*, 548 S.W.3d 739, 746 (Tex. App.—Corpus Christi–Edinburg 2018, orig. proceeding) (citing *Kopplow Dev., Inc. v. City of San Antonio*, 399 S.W.3d 532, 536 (Tex. 2013); *Roark v. Allen*, 633 S.W.2d 804, 810 (Tex. 1982)); *see* TEX. R. CIV. P. 47 (requiring pleadings to contain "a short statement of the cause of action sufficient to give fair notice of the claim involved")). The test for determining whether a petition provides fair notice is whether the opposing party can ascertain from the pleading the nature and basic issues presented by the controversy and what evidence might be relevant. *Id.* (citing *First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 224–25 (Tex. 2017); *Low*, 221 S.W.3d at 612; *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 896 (Tex. 2000)). The question is "whether the pleadings have provided the opposing party sufficient information to enable that party to prepare a defense or a response." *Id.* (citing *First United Pentecostal Church*, 514 S.W.3d at 224; *Kopplow Dev.*, 399 S.W.3d at 536; *Roark*, 633 S.W.2d at 810).

Under the fair notice pleading standard, we look to the pleader's intent, and a pleading will be found sufficient "even if some element of a cause of action has not been specifically alleged" because "[e]very fact will be supplied that can be reasonably inferred from what is specifically stated." *Id.* (citing *Roark*, 633 S.W.3d at 809; *In re Lipsky*, 460

S.W.3d 579, 590 (Tex. 2015) (orig. proceeding); *Boyles v. Kerr*, 855 S.W.2d 593, 601 (Tex. 1993) (op. on reh'g)); *see Aldous v. Bruss*, 405 S.W.3d 847, 857 (Tex. App.—Houston [14th Dist.] 2013, no pet.) ("It is not a valid objection to generally complain that the pleading does not set out enough factual details if fair notice of the claim is given."). "In the absence of special exceptions, the petition should be construed liberally in favor of the pleader." *Roark*, 633 S.W.2d at 809.

In their live petition, appellees explicitly alleged that UTMC manufactured the air tank and supplied it to UTS, that the air tank "caused or contributed to the braking failure that led to this incident," and that the air tank was part of the braking system. In the section of their petition alleging a products liability claim, appellees specifically alleged that "the trailer *and* the braking system at issue [were] defective as manufactured and/or designed" (emphasis added) and that these defects caused the accident.

We conclude that these allegations are sufficient to give UTMC fair notice of a claim regarding the air tank. Though appellees did not explicitly set forth all the elements of a products liability claim as to the air tank, UTMC did not file special exceptions,[4] and the pleading gave enough factual details so as to allow UTMC to prepare a defense and determine what evidence might be relevant. Regardless of whether the air tank is actually proven defective, the claim made by appellees against UTMC regarding the air tank "arises out of or relates" to one of UTMC's undisputed contacts with Texas—i.e., its sale of the air tank to UTS. UTMC did not produce evidence negating any of the products liability elements as it pertains to the air tank, nor did it produce evidence negating any of

[4] A party may file special exceptions without waiving its special appearance. *See, e.g.*, *Windsor v. Round*, 591 S.W.3d 654, 661 (Tex. App.—Waco 2019, no pet.).

the elements of a negligence cause of action with respect to the air tank. Therefore, the trial court has specific jurisdiction over UTMC with respect to any claim relating to the air tank sold by UTS to Quintero. *See Moki Mac*, 221 S.W.3d at 585.

III. Conclusion

The trial court jurisdiction has over UTMC only with respect to appellees' claims relating to the air tank. Therefore, we affirm the judgment as to those claims only. We reverse the trial court's judgment as it pertains to all other claims, and we render judgment dismissing those other claims for lack of jurisdiction.

DORI CONTRERAS
Chief Justice

Delivered and filed the
4th day of June, 2020.