

FILED

OCT 15 2021

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY Day
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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION**

**JULISSA JIMENEZ, Individually and
on behalf of Armando Jimenez, Jr.,
Deceased,
Plaintiff,**

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Civil No. DR-21-CV-0013-AM

v.

**GRAND ISLE SHIPYARD, INC.,
Defendant.**

ORDER

Before the Court is the Defendant’s Motions to Dismiss and, Subject Thereto, Answer and Defenses to Plaintiffs’[sic] Original Complaint. (ECF No. 2.) Upon review, the motion is **GRANTED.**

I. BACKGROUND

On April 6, 2021, the Plaintiff filed suit against the Defendant, a company formed in the state of Louisiana, alleging claims under the Jones Act, general maritime law, and the Longshore and Harbor Workers’ Compensation Act for apparent unlawful employment practices that led to the death of her husband, Armando Jimenez, Jr. (“Jimenez”). (ECF No. 1 at 2.)

Around January 11, 2021, Jimenez arrived at the Defendant’s shipyard in Louisiana to prep for departure for a sandblasting project. (*Id.*) He was told that all crew members would be tested for Covid-19. (*Id.*) Despite staying at that location for over two weeks, Jimenez and his crew members were never tested. (*Id.*) On January 29, 2021, Jimenez and the crew left the shipyard and flew to a “pad”—an offshore platform—for their project. (*Id.*; ECF No. 2-3 at 3.) According to the Plaintiff, while on the pad, the Defendant did not require social distancing, masks, remote quarters or bathrooms, and otherwise instituted no other precautions against Covid-19. (*Id.* at 3.)

The crew did not do take precautions on their own. (*Id.* at 3.) Around February 8, 2021, Jimenez returned to his home with severe Covid-19 symptoms. (*Id.*) He mentioned his crew mates were experiencing similar symptoms. (*Id.*) Days later, his foreman informed him that everyone on his crew had tested positive for Covid-19—the next day, February 14, 2021, he tested positive himself. (*Id.*) Five days later, on February 19, 2021, Jimenez died. (*Id.* at 4.)

The Plaintiff asserts that the Defendant was Jimenez’s employer under the Jones Act, that it acted negligently, knowingly, intentionally, recklessly, willfully, and more, leading to Jimenez’s death, and that it is thus liable. (*Id.*) After being served, the Defendant filed the instant motion, (ECF No. 2), arguing that the Plaintiff’s claims should be dismissed for lack of personal jurisdiction, improper venue, and failure to state a claim. (*Id.* at 2, 8, 11.) As of the date of this order, the Plaintiff has not responded to the Defendant’s motion.¹

II. APPLICABLE LAW

A defendant may move to dismiss a claim for lack of personal jurisdiction. FED. R. CIV. P. 12(b)(2). If a defendant so moves, a plaintiff bears the burden of establishing a court’s personal jurisdiction over a defendant; but if the court does not conduct an evidentiary hearing on the motion, a plaintiff need only need present *prima facie* evidence to meet her burden. *Herman v. Cataphora, Inc.*, 730 F.3d 460, 466 (5th Cir. 2013). When determining personal jurisdiction, the court accepts the plaintiff’s uncontroverted allegations and resolves all factual conflicts in her favor. *Revell v. Lidov*, 317 F.3d 467, 469 (5th Cir. 2002). In doing so, the court can consider the contents of the record before the court, including a variety of documents and discovery. *Id.*

¹ Under the Local Rules, the Plaintiff’s failure to respond indicates the motion is unopposed. *See* L.R. CV-7(e)(1)-(2). It is improper, however, to grant a motion to dismiss solely because it is unopposed—the district court must consider the parties’ arguments. *Webb v. Morella*, 457 Fed.Appx. 448, 452 (5th Cir. 2012).

A court can exercise personal jurisdiction over a nonresident defendant if: (1) the forum state's long-arm statute confers personal jurisdiction over that defendant, and (2) exercising personal jurisdiction over the defendant comports with the Fourteenth Amendment's due process clause. *McFadin v. Gerber*, 587 F.3d 753, 759 (5th Cir. 2009). Because the Texas long-arm statute extends as far as constitutional due process permits, a federal court in Texas considering a suit with a non-resident defendant need only consider the second step. *Id.*

Exercising personal jurisdiction over a nonresident defendant is only consistent with the due process clause if the defendant has established minimum contacts with the forum state—here, Texas—and asserting such jurisdiction would be reasonable. *Int'l Shore Co. v. Washington*, 326 U.S. 310, 316 (1945). Personal jurisdiction can either be specific or general—the type determines the minimum contacts needed to establish jurisdiction. There can be no jurisdiction, specific or general, if the defendant does not have a regular place of business in the forum state, is not licensed to do business in the forum state and does not have sufficient contacts with the forum state. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 412 (1984). Only contacts the defendant purposely creates with the forum state will count—the defendant's contacts with the plaintiff or third parties, even if those parties have their own contacts to the forum state, are not considered. *Int'l Energy Ventures Mgmt., L.L.C. v. Unit. Energy Grp., Ltd.*, 818 F.3d 193, 213 (quotation omitted).

Specific personal jurisdiction primarily springs from suits that arise directly from the defendant's purposeful contacts with the forum state. *McFadin*, 587 F.3d at 759. General personal jurisdiction does not need to relate to the defendant's purposeful contacts with the forum state—it can be established by the defendant's regular, systematic, or continuous contacts with the forum state. *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 437, 444 (1952). Put simply, general personal

jurisdiction exists only if the forum state is the defendant's home. *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014). Relevantly, a company is not 'at home' in every state in which it engages in business. *Id.* It is thus quite difficult to establish general jurisdiction in a forum other than the state a defendant is incorporated in or where it has its principal place of business. *Monktown Ins. Servs. Ltd. v. Ritter*, 768 F.3d 429, 431 (5th Cir. 2014). If a court finds it lacks personal jurisdiction, it may either dismiss the action or transfer it to a district in which it could have been brought, if the court finds it in the interest of justice to do so. *Herman*, 730 F.3d at 466.

III. ANALYSIS

The Defendant moved to dismiss the Plaintiff's claims for lack of personal jurisdiction, improper venue, and failure to state a claim. (ECF No. 2 at 1.) When a motion to dismiss attacks both the court's jurisdiction and the merits of the plaintiff's complaint, courts must decide the jurisdictional challenge first. *Wolcott v. Sebelius*, 635 F.3d 757, 762 (5th Cir. 2011); *Moran v. Kingdom of Saudi Arabia*, 27 F.3d 169, 172 (5th Cir. 1994). The Court will do so here.

Since the Court did not conduct an evidentiary hearing on this motion, the Plaintiff is only required to make a *prima facie* showing of personal jurisdiction to survive the Defendant's motion. *Revell*, 317 F.3d at 469. The Plaintiff did not respond to the Defendant's motion, so the Court will have to rely on her complaint. To support its motion, the Defendant advances an affidavit and two declarations establishing the following undisputed and relevant facts: The Defendant is a Louisiana limited liability company. (ECF No. 2-1 at 2; ECF No. 1 at 1 (the Plaintiff's complaint admits Defendant is a company formed in Louisiana).) Its headquarters and principal place of business, as well as its day-to-day operations, are in Louisiana. (*Id.*) It does have offices in Texas—as well as several other states—but none of its Texas offices were involved with the events at issue in this case. (*Id.*) It employs workers like Jimenez from Texas and other states. (ECF No. 2-2 at 2.)

Regarding Jimenez specifically—he applied for, received an employment offer, and was hired by the Defendant in Louisiana as a blaster/painter. (*Id.*) He was hired specifically for a project in Louisiana. (*Id.*) For the project, Jimenez and his fellow workers, wherever they were located prior to arriving in Louisiana, were personally responsible for transporting themselves to the project’s departure point in Louisiana. (*Id.*) The Covid-19 screening and testing, a main issue in this case, was supposed to occur at the departure point in Louisiana. (ECF No. 2-3 at 3.) Jimenez’s flight to and from the project originated and ended in Louisiana. (*Id.*) The platform Jimenez was hired to blast and paint was located on the Outer Continental shelf adjacent to Louisiana. (*Id.*) Jimenez was responsible for his transportation from Louisiana back home. The Defendant was not involved with any transportation back home. (*Id.*)

A. Non-Resident

As an initial matter, the Court finds that the Defendant is not a resident of Texas. The Defendant was formed, is headquartered, and conducts business in Louisiana. Based on the record before the Court, Louisiana is the Defendant’s home. To maintain its suit against non-resident Defendant, the Plaintiff must show *prima facie* evidence of either specific or general personal jurisdiction.

B. Contacts

The Court’s determination will lean on the Defendant’s purposeful contacts with Texas—the Plaintiff’s contacts with Texas or with the Defendant do not affect the analysis. *Unit Energy Grp., Ltd.*, 818 F.3d at 213. Here, the undisputed facts show that the Defendant’s contacts with Texas were not significant. It does maintain some offices in Texas, but these offices are not its headquarters and it has other, similar offices in other states as well. It is unclear what business the Defendant actually conducts in Texas or what other purposeful contacts it has here. Further, the

relevant facts in this case, which show the Defendant's day-to-day operations and where it has purposefully established contacts, all occurred in Louisiana.

C. Specific Personal Jurisdiction

It is clear, however, that the Defendant's established contacts in Texas are not connected to this case. To assert specific personal jurisdiction over the Defendant, the Plaintiff must show that this case arises directly from the Defendant's contacts with Texas. *McFadin*, 587 F.3d at 759. She does not. There is no evidence that the Defendant's purposeful contacts in Texas were involved with Jimenez or had any connection to the events at issue here. Asserting specific personal jurisdiction is improper.

D. General Personal Jurisdiction

It is also improper to assert general personal jurisdiction over the Defendant. The Court could only do so if Texas is, based on the Defendant's purposeful contacts, its home. *Daimler AG*, 571 U.S. at 122. The Defendant does have some purposeful contacts with Texas, and it can be assumed that those contacts do business in Texas, but for purposes of jurisdiction, a company is not at home in every state in which it does business. *Id.* Lacking incorporation or a principal place of business in Texas, it will be very hard to establish general jurisdiction over the Defendant here. *Monktown Ins. Servs. Ltd.*, 768 F.3d at 431. The Defendant's contacts with Texas must be significant to overcome this void, and based on the record before it, the Court finds they are not. *Perkins*, 342 U.S. at 444.

E. Dismissal or Transfer

As the Court finds it lacks personal jurisdiction over the Defendant, its analysis of the Defendant's motion ends here. The only remaining question is whether to dismiss the case or transfer it in the interest of justice. *Herman*, 730 F.3d at 466 (considering multiple factors when

deciding whether to dismiss or transfer). Based on the Plaintiff's failure to defend its complaint, the unknown location of witnesses and evidence, and the fact that dismissal will not implicate any statute of limitations, the Court does not find it in the interest of justice to transfer the case. *See id.* It will be dismissed.

IV. CONCLUSION

Accordingly, the Defendant's Motions to Dismiss and, Subject Thereto, Answer and Defenses to Plaintiffs'[sic] Original Complaint, (ECF No. 2), is **GRANTED**. The Plaintiff's claims are **DISMISSED WITHOUT PREJUDICE**.

SIGNED and ENTERED on this 15th day of October 2021.

A handwritten signature in black ink, appearing to read "Alia Moses", written over a horizontal line.

ALIA MOSES
United States District Judge