

No. 2020-51549

ELIZABETH WILLIAMS,

Plaintiff,

v.

WILLIAM P. RAMEY and RAMEY &
SCHWALLER, LLP.

Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

157TH JUDICIAL DISTRICT

**ELIZABETH WILLIAM'S MOTION TO DISMISS UNDER THE TCPA
[TEX. CIV. PRAC. & REM. CODE § 27.001, ET SEQ.]**

COMES NOW, Plaintiff/Counter-Defendant Elizabeth Williams ("Petitioner" or "Williams"), and files this Motion to Dismiss Under the TCPA [Tex. Civ. Prac. & Rem. Code Sect. 27.001(6)], and would respectfully show the Court the following:

I. Introduction

Williams is a former employee of Ramey & Schwaller, LLP ("R&S"). For a majority of Williams' employment with R&S she reported directly to William P. Ramey (hereinafter referred to as "Defendant" or "Ramey"), R&S' managing partner. In or around September of 2017, Ramey propositioned Williams for oral sex, of which she declined. Williams reported the incident to Melissa Schwaller, the other named partner of the firm, who did nothing to stop Ramey's inappropriate behavior. On or about September 28, 2018, approximately one year after Ramey first propositioned Williams for oral sex, he again propositioned her for oral sex but this time he did not take no for an answer. After a long workday and plying Williams

with alcohol, and possibly other substances, Ramey violently sexually assaulted Williams in R&S' conference room.

As a result of the sexual assault, Williams filed a police report with law enforcement. Ramey was subsequently charged with felony attempted sexual assault. The matter 1647501, *The State of Texas v. William Ramey*, 339th Criminal District of Harris County, Texas is currently pending in Harris County District Court.

On August 26, 2020, Williams filed this suit against Ramey, individually, and R&S alleging assault, sexual assault & battery; intentional infliction of emotional distress; invasion of privacy; and negligence. On October 5, 2020, Ramey, in his individual capacity, filed his original answer, affirmative defenses and in retaliation filed various counterclaims, including defamation/libel per se, business disparagement and malicious criminal and civil prosecution. Ramey's Counterclaims are subject to dismissal under the TCPA. TEX. CIV. PRAC. & REM. CODE § 27.001(6). This motion to dismiss is filed within 60 days of service of Counter-Petitioner's active pleading. *Id.* § 27.003(b).

II. Authorities

A. The Citizens Participation Act's Broad Protections and Procedural Requirements

The Citizens Participation Act ("TCPA") encourages and safeguards the constitutional rights of a defendant to speak freely and otherwise participate in government to the extent provided by law. TEX. CIV. PRAC. & REM. CODE § 27.002. The TCPA requires the Court to determine at an early stage whether a legal action affecting such rights has merit. Courts must

construe the TCPA liberally to fully effectuate its purpose and intent to encourage and protect a defendant's constitutional rights. *See id.*, §§ 27.002, 27.011.

Petitioner Elizabeth Williams invokes the Court's determination by filing this motion. *Id.* § 27.003(a), (b). The motion suspends all discovery until the Court rules on the motion. *Id.* § 27.003(c). A hearing must be held within sixty (60) days of service on the motion, in most cases. *Id.* § 27.004(a). The Court must rule on the motion "not later than the 30th day following the date of the hearing on the motion." *Id.* § 27.005(a). In ruling on the motion, the Court "shall consider the pleadings and supporting and opposing affidavits stating facts on which liability or defense is based." *Id.* § 27.006(a). The TCPA neither contemplates nor allows an evidentiary hearing. *Id.*; *Pena v. Perel*, 417 S.W.3d 552, 556 (Tex. App.—El Paso 2013, no pet.) (trial court's decision on a TCPA motion to dismiss is not based on live testimony by the pleadings and supporting and opposing affidavits).

The TCPA statute provides that:

(b) Except as provided by Subsection (c), on the motion of a party under Section 27.003, a court shall dismiss a legal action against the moving party if the moving party shows by a preponderance of the evidence that the legal action is based on, relates to, or is in response to the party's exercise of:

- (1) *the right of free speech;*
- (2) *the right to petition;* or
- (3) the right of association.

(c) The court may not dismiss a legal action under this section if the party bringing the legal action establishes by clear and specific evidence a prima facie case for each essential element of the claim in question.

(d) Notwithstanding the provisions of Subsection (c), the court shall dismiss a legal action against the moving party if the moving party establishes by a

preponderance of the evidence each essential element of a valid defense to the nonmovant's claim.

Id. § 27.005 [emphasis added].

Even if the party bringing the legal action meets his evidentiary burden in response to a TCPA motion to, the Court must still dismiss plaintiff's legal action if the movant "establishes by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim." TCPA § 27.005(d). *Johnson-Todd v. Morgan*, 480 S.W.3d 605, 610 (Tex. App.—Beaumont 2015, pet. denied).

B. The TCPA Requires the Court to Dismiss Ramey's Counterclaims

Ramey's Counterclaims are designed to chill Plaintiff Williams' constitutional rights to free speech and right to petition. Specifically, the TCPA clearly states:

- (a) If a legal action is based on, relates to, or is in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may file a motion to dismiss the legal action.

Id., § 27.003. Ramey wants to shut down Petitioner Williams' free speech and right to petition. Williams reported the sexual assault to law enforcement and in this current lawsuit, Williams is pursuing her claims against Ramey, specifically relating to Ramey who violently sexually assaulted her. Ramey's Counterclaims seeks redress against Williams because she allegedly:

56. Williams published her false accusations that Ramey attempted to sexually assault her to anyone who would listen, including the on-line publication Texas Lawyer, several Ramey & Schwaller clients, the Houston Police Department, several identified friends of Ramey, other employees at Ramey & Schwaller LLP, other paralegals known to Ramey, and many more.

See, Ramey’s Counterclaims, ¶¶ 56, 60 (Oct. 5, 2020).

64. Williams initiated and procured the criminal prosecution of Ramey by publishing her false accusations that Ramey attempted to sexually assault her to the Houston Police Department. The false report resulted in charges being filed against Ramey. Then on or about August 26, 2020, Williams filed a civil action against Ramey and R&S based on the same false and salacious allegations.

See, Ramey’s Counterclaims, ¶ 64 (Oct. 5, 2020).

This case is precisely why the TCPA was enacted and designed to punish and deter. The Texas Legislature chose to enact this precise statute:

If a legal action is based on, relates to, or is in response to a party’s exercise of the right of free speech, to petition, or right of association, that party may file a motion to dismiss the legal action.

TCPA § 27.003(a). *See Johnson-Todd*, 480 S.W.3d at 610; *Rehak*, 404 S.W.3d at 733, citing §§ 27.001(6), 27.005(b)(1). Further, the Legislature bolstered this extremely broad language with a specific instruction that courts construe it “liberally.” *Id.* § 27.011(b).

For these reasons, courts of appeals have repeatedly applied the TCPA’s broad “related-to” language to dismiss a variety of associated torts and other “legal actions” that, on their face, might not appear to be within the TCPA’s domain. To date, these have included declaratory judgment actions, claims for injunctive relieve, invasion of privacy, defamation, negligence, malicious prosecution claim, abuse of process, misappropriation, conversion, breach of fiduciary duty and conspiracy.

Ramey’s motives are to squelch William’s efforts to investigate and pursue her claims for sexual assault and intimidate her by filing these counterclaims lawsuit against her. This is

precisely what the TCPA is intended to prohibit. Further, this is exactly the type of claim that can and should be dismissed under the TCPA.

C. Petitioner is Entitled to Recover Attorney's Fees and Mandatory Sanctions

If the Court grants this motion to dismiss, the Court must award court costs, attorneys' fees, and other expenses incurred in defending against the action. *Id.* § 27.009(a)(1). In addition, the Court's award of sanctions is mandatory. *Id.* § 27.009(a)(2); *Sullivan v. Abraham*, 488 S.W.3d 294, 296 (Tex. 2016); *see also* TCPA § 27.007(a). The sanctions must be "sufficient to deter the party who brought the legal action from bringing similar actions." *Id.*

III. Conclusion

Because Ramey's alleged case is based on or related to Williams' exercise of the rights to free speech, the Court must dismiss his claims unless Ramey produces "clear and specific evidence" establishing a prima facie case for each element of his would-be suit. Further, the filing of this motion stays all discovery until a ruling on this motion.

For these reasons, Williams prays that the Court grant her motion, dismiss Ramey's Counterclaims, award Williams her court costs, reasonable attorney fees, and other expenses incurred in handling this matter, and impose yet further sanctions that the Court determines are sufficient to deter Williams from bringing similar actions in the future.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have served this document on all other parties or their counsel of record—who are listed below—on October 22, 2020 as follows:

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