

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

157<sup>TH</sup> JUDICIAL DISTRICT

**ELIZABETH WILLIAMS' ORIGINAL ANSWER, SPECIAL EXCEPTIONS,  
VERIFIED PLEAS, VERIFIED PLEA IN ABATEMENT AND AFFIRMATIVE  
DEFENSES**

COMES NOW, Plaintiff/Counter-Defendant Elizabeth Williams (“Petitioner” or “Williams”), and files her Original Answer, Special Exceptions, Verified Pleas, Verified Plea in Abatement, and Affirmative Defenses to Defendant William P. Ramey’s Counterclaims (“Ramey”).

**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, 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 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*, 339<sup>th</sup> Criminal District of Harris County, Texas is currently pending in Harris County District Court.

On August 26, 2020, Williams filed this suit against Williams, individually, and R&S alleging assault, sexual assault & battery; intentional infliction of emotional distress; invasion of privacy; and negligence. On October 5, 2020, Williams, 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). Williams filed her motion to dismiss within 60 days of service of Counter-Petitioner's active pleading. *Id.* § 27.003(b). Williams' motion is currently scheduled to be heard by the Court on February 17, 2021.

To maintain a suit for defamation, the request to correct, clarify, or retract must be served on the defendant within the limitations period for bringing the action. See TEX. CIV. PRAC. & REM. CODE §73.055 (a), (b). To date, Ramey has never requested a retraction of the alleged defamatory statement(s).

## II. General Denial

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Williams generally denies each and every allegation contained in Ramey's Counterclaims and demand strict proof thereof. Williams reserves the right to file amended pleadings in accordance with the Texas Rules of Civil Procedure. In support thereof, Williams states the following:

## III. Special Exceptions

Pursuant to Rule 91 of the Texas Rules of Civil Procedure, Williams specially excepts to the Counterclaims and ask the Court to order Ramey to replead and cure his pleading defects. The Counterclaims does not follow the "fair notice" standard of pleadings in Texas, which looks at whether a party can ascertain from the pleadings the nature and basic issues of the controversy and what testimony will be relevant. *See Horizon/CYS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 896 (Tex. 2000); TEX. R. CIV. P. 45(b); TEX. R. CIV. P. 47(a). Specifically, Williams specially except to the following:

1. Without waiving the right to plead further, Williams specifically excepts to ¶¶56-59 of the Counterclaims because Ramey refers to facts that Williams "published her false accusations that Ramey attempted to sexually assault her to anyone who would listen," but does not identify any specific statements or the times, dates or means by which the alleged defamatory statements were made about which he complains. Ramey fails to provide the allegedly defamatory statements, fails to state the exact defamatory nature of any allegedly defamatory statements, fails to state what he believes the true facts to be, fails to state where and when such statements were

made and fails to state to whom the statements were made to.

2. Without waiving the right to plead further, Williams further specifically excepts to ¶¶56-59 of the Counterclaims because Ramey vaguely refers to facts that Williams “told the anyone that would listen,” without specifying which statements he complains about and to whom the statements were made. This does not satisfy the notice pleadings requirement in Texas nor the *in haec verba* requirement in defamation cases. When a petition alleges defamation, the requirement that the complained of statements be specified in the petition has long been the law in Texas. See *Runge v. Franklin*, 72 Tex. 585, 10 S.W. 721, 724 (Tex. 1889) (“The *very language relied on* as libelous must be set out in the Petition for libel and not the substance and meaning of the language.”); see also *Rio Grande Valley Gas Company v. Caskey*, 33 S.W.2d 848, 849 (Tex. Civ. App.-San Antonio 1930, no writ) (“[i]t is always necessary to set out in the Petition the portions of a writing upon which a libel is based ...”); *Newton v. Dallas Morning News*, 376 S.W.2d 396, 400 (Tex. Civ. App.-Dallas 1964, no writ). Ramey's allegations are vague, ambiguous, and fail to properly apprise Williams as to which specific statement(s) and to whom they were made any, contained in what publication(s) are allegedly false and/or libelous concerning Ramey. Ramey must plead the specific language that Ramey alleges is defamatory and false. See *Perkins v. Welch*, 57 S.W.2d 914 (Tex Civ. App. - San Antonio 1933, no writ). Because Ramey does not specifically identify the allegedly defamatory statement(s), Ramey should be required to specifically allege what

statement(s) verbatim, if any, he asserts are defamatory, and specifically to whom, and if he fails to do so, the Counterclaims should be dismissed.

3. Without waiving the right to plead further, Williams specially excepts to ¶¶ 58-59 and Section IX of the Counterclaims to the extent it describes actions allegedly taken by Williams that were published with “in an attempt to extort money from Ramey with actual malice” and “are false, salacious and only aimed at embarrassing and destroying Ramey” to the extent Ramey is using this claim as a basis for exemplary damages against Williams. Because Ramey failed to comply with the Defamation Mitigation Act, he is precluded from recovering exemplary damages from Williams. TEX. CIV. PRAC. & REM. CODE §73.059. The Defamation Mitigation Act anticipates a pre-suit notification, among other things, specific allegedly defamatory statements identified, so that the parties can discuss whether a retraction is warranted. Ramey did not timely request a retraction prior to filing suit or within 90 days of the publication. As detailed below, in accordance with Texas Civil Practice & Remedies Code §73.057 of the Act, Williams attaches and incorporates fully herein as Exhibit A the verification of Elizabeth Williams proving that she did not receive a written request for a correction, clarification, or retraction prior to the filing of this suit as required by §73.055.
4. Without waiving the right to plead further, Williams specially excepts to the Counterclaims, Section IX, of the “Prayer” stating that Ramey is entitled to exemplary damages. Ramey is not entitled to such damages because he did not

comply with the requirements of the Defamation Mitigation Act.

5. Without waiving the right to plead further, Williams specially excepts to Sections V, and VI of the Counterclaims because Ramey does not allege any specific statements that Williams has made that are defamatory as to Ramey or “of and concerning” Ramey.
6. Without waiving the right to plead further, Williams specially excepts to Sections V, and VI of the Counterclaims because he does not allege any specific individuals that Williams has made any alleged defamatory statements as to Ramey or “of and concerning” Ramey.

#### **IV. General Verified Plea in Abatement**

7. Pursuant to Rules 54 and 93(16) of the Texas Rules of Civil Procedure, Williams denies that all conditions precedent have been performed or have occurred. Specifically, Williams denies that Ramey has complied with the requirements of the Defamation Mitigation Act, Texas Civil Practices & Remedies Code §73.055 and 73.056 in that Williams was not served with a "timely and sufficient" request for a retraction as defined by §73.055 prior to the lawsuit being filed, and still has not been served with a timely and sufficient retraction request pursuant to the Act.

#### **V. Verified Plea in Abatement**

8. Pursuant to Rules 54 and 93(16) of the Texas Rules of Civil Procedure and Texas Civil Practice & Remedies Code §73.062, Williams files this Verified Plea in Abatement. The Defamation Mitigation Act, TEX. CIV. PRAC. & REM. CODE

§73.051 *et seq.* (the “Act”) anticipates pre-suit notification of one's request for a retraction so that the parties can properly consider whether a statement was incorrect and needs to be corrected without unnecessarily using judicial resources while such discussions are occurring. Further, the purpose of defamation cases inherently is supposed to be about correcting harm to one's reputation and, therefore, a swift retraction for a stated error would be best way to absolve one of reputational harm. Still, however, Ramey has chosen to file suit without providing Williams with the required pre-suit notice. If one does not comply with the requirement to serve a request for retraction prior to filing suit, a self-effectuating 60-day abatement is imposed. Pursuant to Texas Civil Practice & Remedies Code § 73.0062:

(a) A person against whom a suit is pending who does not receive a written request for a correction, clarification, or retraction, as required by Section 73.055, may file a plea in abatement ... (b) suit is automatically abated, in its entirety, without order of the Court, beginning on the 11th day after the date a plea in abatement is filed ... (c) abatement ... continues until the 60th day after the date the written request is served.

The purpose of the abatement is to provide an opportunity to explore whether an error occurred and whether such error can be addressed and limit any harm to reputation without unnecessarily burdening the court system.

9. Under the Defamation Mitigation Act, “A person may maintain an action for defamation *only if the person has made a timely and sufficient request for a correction, clarification, or retraction from the defendant.*” TEX. CIV. PRAC. & REM CODE §

73.055(a)(1). Ramey is required to make a “timely and sufficient” request for a correction, clarification, or retraction from Williams, but Ramey failed to do so ever.

10. Thus, in accordance with §73.062 of the Act, Williams files her Plea in Abatement within the time period mandated by the statute. Also, in accordance with § 73.062 of the Act, Williams attaches and incorporates fully herein her sworn verification supporting the Plea in Abatement. Under the terms of the statute, the suit is automatically abated, in its entirety, *without the order of the Court*, beginning on the 11<sup>th</sup> day after the date a plea in abatement is filed (which would be February 16, 2021). According to the statute, the abatement period continues for 60 days (until April 17, 2021), unless the parties agree otherwise. TEX. CIV. PRAC. & REM CODE § 73.062(c). Pursuant to section 73.062, all statutory and judicial deadlines under the Texas Rules of Civil Procedure relating to the suit are stayed during the pendency of the abatement period. *Id* at §73.062(d).

## VI. Affirmative Defenses

Pleading further, if such be necessary, Williams affirmatively assert the following:

11. Ramey's claims are barred because the statement(s) alleged to be made were true or substantially true and, as such, are protected by Texas Civil Practice & Remedies Code § 73.002, Texas common law, article I, section 8 of the Texas Constitution and the 1<sup>st</sup> Amendment to the United States Constitution.
12. Ramey's has the burden of showing that the statements at issue are materially false



as they relate to Ramey's. In the alternative and without waiving the foregoing, Williams pleads substantial truth as an affirmative defense under the common law and under Texas Civil Practice & Remedies Code §73.005(a).

13. The statements at issue are privileged as a fair, true and impartial account of an official proceeding by law enforcement pursuant to the common law and Texas Civil Practice & Remedies Code §73.002(b)(1). To overcome the privilege, Plaintiff must establish, by clear and convincing evidence that Broadcast Defendants acted with actual malice. Plaintiff has not plead facts demonstrating actual malice, nor can it prove actual malice.
14. Broadcast Williams did not publish the statements believed to be the subject matter of Ramey's suit with actual malice or common law malice, and Ramey has not pled facts demonstrating actual malice, nor can he prove actual malice.
15. The statements at issue concern a matter of legitimate public concern. To impose liability upon Williams for allegedly false implications that might be drawn from the true facts reported would violate Article I, Section 8 of the Constitution of Texas, the First and Fourteenth Amendments to the Constitution of the United States, Texas common law, and the Texas Citizens Participation Act, codified at Texas Civil Practice & Remedies Code, Chapter 27.
16. Ramey's own acts or omissions caused or contributed to Ramey's business disparagement.
17. Ramey's claims are barred because the alleged injuries to Ramey and damages, if

any, are due solely to other causes and matters that are not related to Williams' statements, actions, operations, or conduct.

18. Ramey's damages, if any, were caused by his own actions, through the intentional criminal act of Ramey.
19. Pursuant to Chapter 73 of the Texas Civil Practice & Remedies Code, Williams asserts and specially plead the affirmative defense of mitigation of damages. Specifically, Williams pleads and will offer evidence at trial of the following matters: 1) Ramey's prior reputation; 2) the facts and circumstances under which the allegedly libelous publication was made; and 3) evidence of Williams' intent when the allegedly libelous publication was made.
20. Ramey's claims are barred, in whole or in part, by Ramey's own contributory negligence, and Ramey's actions, through the intentional criminal act of Ramey, himself.
21. Ramey has failed to mitigate its damages, if any.
22. Ramey's claims are barred, in whole or in part, by the statute of limitations.
23. Williams pleads the defense of good faith.
24. On information and belief, one or more third parties are responsible for the damages, if any, caused to Ramey.
25. Broadcast Williams is not liable for the damages, if any, caused to Ramey by other persons.
26. Ramey's claims are barred and subject to dismissal, with an award of attorneys' fees

and sanctions in favor of Williams, by the Texas Citizens Participation Act, codified at Texas Civil Practice & Remedies Code, Chapter 27. The purpose of the Texas Citizens Participation Act is to encourage and safeguard the constitutional rights of persons to speak freely to the maximum extent permitted by law.

27. In determining whether a legal action was brought to deter or prevent the Williams from exercising her constitutional rights, one must consider the impact on future speech. As the Texas Supreme Court has long held, "[e]very defamation action that the law permits necessarily inhibits free speech." *Diamond Shamrock Refining and Marketing Co. v. Mendez*, 844 S.W.2d 198 (Tex. 1992), citing *New York Times v. Sullivan*, 376 U.S. 254, 272, 84 S. Ct 710, 721 (1964) ("whatever is added to the field of libel is taken from the field of free debate.").
28. Ramey has failed to timely and sufficient request a retraction pursuant to Texas Civil Practices & Remedies Code §73.051, *et seq.* and therefore may not recover exemplary damages. *See* TEX. CIV. PRAC. & REM. CODE 73.055(c).

## VII. Prayer

Elizabeth Williams requests that the Court dismiss the suit or render judgment that Ramey takes nothing, grant Williams' Special Exceptions and require Ramey to remedy his pleading defects, and if Ramey does not cure his defects, strike the defective portions of his Counterclaims, assess costs against Ramey, and award Williams all other legal or equitable relief to which they may be entitled.

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 February 5, 2021 as follows:

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