23-12-17966

BRYAN CHRIST, MATT MITCHELL, and CHARLES A. PARADA, *Plaintiffs,*	§	**IN THE DISTRICT COURT**
V.	§	
BOB BAGLEY, CALEB SMITH, LAUREN VICKERS, BILL PHILIBERT, JIM DOYLE, MARIANN SIEGERT, GWEN WITHROW, STEVEN FOSTER, SUSAN LOVE, BRIGETTA MILLEN, MARA WASAR, MARY LEWIS, SHERRY TAVEL, STEPHANIE COX, STEPHANIE SCHWANTES, LONNA HORD, JACKIE WILLIAMS, and PATRICK TEICH, *Defendants*	§	**457TH DISTRICT**
	§	**MONTGOMERY COUNTY**

DEFENDANTS' GENERAL DENIAL,
COUNTERCLAIM FOR DAMAGES FOR WRONGFUL RESTRAINT, and
TCPA MOTION TO DISMISS

COME NOW, the above-named defendants named in the caption ("Defendants"), to file their general denial and move this Court to dismiss the Plaintiffs' action in its entirety, and award damages to the individuals who were restrained by the Plaintiffs' wrongful restraint, and counterclaims for wrongful injunctive relief.

Summarizing, Plaintiffs' suit asks for two remedies. The first is injunctive relief to prevent individuals who Plaintiffs wish had not been appointed precinct chairs when Christ was failing to lead valid meetings at the December 5th meeting of the Senate District Executive Committee meetings. The second is a declaratory judgment that Defendants are not valid precinct chairs.

Defendants herein show that this Court was misled into granting a temporary restraining order, which was unsupportable from its inception. Second, Defendants' request for a declaration cannot be granted because it does not include all the parties who will be directly impacted.

Defendants seek dismissal and fees under the Texas Citizens Participation Act, as Plaintiff's suit attempts to punish Defendants for exercising their right of association. Plaintiff's suit is fatally defective, and cannot win, warranting an award of fees and sanctions under section 27.009 of the Texas Civil Practices and Remedies Code.

I. GENERAL DENIAL

1. Defendant generally denies the allegations in Plaintiffs' Original Petition in accordance with Texas Rule of Civil Procedure 92.

II. AFFIRMATIVE DEFENSES

Standard of Review: Tex. R. Civ. Pro. 91(a) Motion to Dismiss

2. "[A] party may move to dismiss a cause of action on the grounds that it has no basis in law or fact. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought. A cause of action has no basis, in fact, if no reasonable person could believe the facts pleaded." Rule 91(a).

3. A court's determination of whether a cause of action has any basis in law or fact is a legal question that must be resolved upon a review of the live petition and any attachments thereto, construing the pleadings liberally in favor of the Plaintiff, looking to the pleader's intent, and accept as true the factual allegations in the pleadings to determine if the cause of action has a basis in law or fact, and applying a fair-notice pleading standard to determine whether the petition's allegations are sufficient to allege a cause of action. *Weizhong Zheng v. Vacation Network, Inc.*, 468 S.W.3d 180, 183-84 (Tex. App. – Houston [14th Dist.] 2015, pet. denied).

4. A court should "decide the motion based solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule 59." *Edgefield Holdings, LLC v. Gilbert*, No. 02-17-00359-CV, 2018 Tex. App. LEXIS 7728, at *12 (App.—Fort Worth Sep. 20, 2018), *citing AC Interests, L.P. v. Tex. Comm'n on Envtl. Quality*, 543 S.W.3d 703, 706 (Tex. 2018).

5. Additionally, an affirmative defense constitutes sufficient grounds for Rule 91(a) dismissal. *See, e.g., Montelongo v. Abrea*, 622 S.W.3d 290, 294 (Tex. 2021); also Tex. R. Civ. P. 91a (permitting dismissal of claims having "no basis in law or fact").

A. Plaintiff's request for a declaration fails for lack of joining all those impacted.

6. As every competent Texas attorney knows, a claim for a request for a declaratory judgment requires joinder of every person or entity with an interest in the litigation to be successful. Tex. Civ. Prac. & Rem. Code § 37.006(a).

7. Plaintiffs' inadequate request does not include the members of the Montgomery County Republican Party who will be impacted, the association itself, the officers of the party who are responsible for administering its members' activities, or the Republican Party of Texas, which Christ wishes to bend to his fanciful misunderstanding of reality. By naming only the members themselves, Plaintiffs' suit simply fails in its fundamental goal.

III. TCPA MOTION TO DISMISS

Standard of Review: Texas Citizens Participation Act

8. The TCPA permits summary dismissal of claims implicating certain CRPC §§ 27.003. Such motions to dismiss involve two steps. *In re Lipsky*, 460 S.W.3d 579, 586 (Tex. 2015).

9. In "Step One" of a TCPA motion to dismiss, a defendant must show by a preponderance of the evidence that the plaintiff's challenged claim is based on, relates to, or is in response to his exercise of her right to free speech, right to petition or right of association. CPRC § 27.005(b).

10. To show that a challenged claim is related to one of the named rights, a defendant may rely solely on a plaintiff's allegations and claims. *Watson v. Hardman*, 497 S.W.3d 601, 607–08 (Tex. App.—Dallas 2016, no pet.).

11. After a defendant prevails on Step One, the burden shifts to the plaintiff to thwart dismissal by producing "clear and specific evidence [of] a prima facie case for each essential element" of each claim. CPRC § 27.005(c). If a plaintiff cannot overcome "Step Two," the legislature has mandated that a defendant recover its attorneys' fees, litigation expenses, and a financial penalty from the plaintiff. Id. § 27.009.

TCPA - STEP ONE

A. Plaintiffs' Claim for a declaratory judgment are related to Defendant's TCPA-defined "right of association."

12. According to Plaintiff, Defendants are claiming to be precinct chairs of the Montgomery County Republican Party, but are not.

13. Though Plaintiffs have not sought an injunction to stop Defendants from claiming to be precinct chairs, and instead asked only that they be prevented from participating in a senate district executive committee meeting that was held on December 5, 2023, the Court's temporary restraining order was granted ex parte and more than a dozen of the named defendants were disallowed from participation, doing actual constitutional damage to those individuals.

14. Plaintiffs therefore damaged Defendants' exercise of the right of free speech, right to petition, and participate in a government proceeding, regarding a matter of public concern. Tex. Civ. Prac. Rem. Code § 27.001. The Texas Civil Practice and Remedies Code at § 27.001(4)(B, C, D, and E) defines "exercise of the right to petition" to include a communication "(B) in connection with an issue under consideration or review by a … governmental body or in … a governmental or official proceeding; (C) a communication that is reasonably likely to encourage consideration or review of an issue by a … governmental body … or official proceeding; (D) a communication reasonably likely to enlist public participation in an effort to effect consideration of an issue by … [a] governmental body…; (E) any other communication that falls within the protection of the right to petition government under the Constitution of the United States or the Constitution of this state."

15. Defendants' actions certainly relate to the right of association, which includes communications between those who "collectively express, promote, pursue, or defend common interests." CPRC § 27.001(3).

16. Because the TCPA covers any claim that is "based on, related to, or in response to" such communications, even "garden-variety" claims often qualify for TCPA dismissal. *Cavin v. Abbott,* 545 S.W.3d 47, 66 (Tex. App.-Austin 20217, no pet.) (applying TCPA to tortious interference, abuse of process, conversion, invasion of privacy, and IIED claims). A "remote" or "tenuous" connection between a claim and a protected statement is enough to trigger the statute's dismissal procedure, moving the inquiry to "Step Two." *ExxonMobil Pipeline Co. v. Coleman*, 512 S.W.3d 895, 901–02 (Tex. 2017) ("The TCPA does not require that the statements specifically 'mention' health, safety, environmental, or economic concerns, nor does it require more than a 'tangential relationship' to the same."). Because it "casts a wide net," the TCPA covers "[a]lmost every imaginable form of communication, in any medium," which easily encompasses Plaintiffs' claims related to alleged statements made in connection with Amber's comments to her class at a public school. *See Adams v. Starside Custom Builders*, LLC, 547 S.W.3d 890, 894 (Tex. 2018).

TCPA - STEP TWO

17. To avoid dismissal once a defendant has passed Step One by showing a claim is related to a relevant right, a plaintiff must offer "clear and specific" evidence of a *prima facie* case for all elements of the challenged claims. CPRC § 27.005(c). "The words 'clear' and 'specific' in the context of this statute have been interpreted respectively to mean, for the former, 'unambiguous,' 'sure,' or 'free from doubt' and, for the latter, 'explicit' or 'relating to a particular named thing.'" *Lipsky*, 460 S.W.3d at 590. Plaintiffs have no such evidence sufficient to prevent dismissal.

A. Plaintiffs cannot prevail on their declaratory judgment claims because they did not join all necessary parties, and their claim for a TRO was deficient from the start.

18. To avoid dismissal, a plaintiff must offer "clear and specific" evidence of a prima facie case for all elements of the challenged claims. Tex. Civ. Prac. Rem. Code § 27.005(c).

i. Plaintiffs' Declaration is insufficiently pleaded, and cannot survive review.

19. As described above, and well-known to every competent attorney in Texas, a declaration must name all those whose interests will be impacted. Without naming all officers and the Republican Party of Texas, the declaration sought would impact the state party, without naming it as a party. As evidence of this reality, the Court can note that the Plaintiffs included the call of the meeting with his Original Petition…written by RPT Chair Matt Rinaldi.

ii. Plaintiffs' request for a TRO was wrong in its inception.

20. Defendants are including a counterclaim for wrongful injunctive relief under the common law, as described at in *Jannise v. Enter. Prods. Operating LLC*, No. 14-18-00516-CV, 2019 Tex. App. LEXIS 6468, at *1 (Tex. App.—Houston [14th Dist.] July 30, 2019, no pet.). Based on that analysis *infra*, and the facts of the pleadings in the Petition for Mandamus filed in Case 23-0127, before the Supreme Court, incorporated by reference, and referenced also in the Plaintiffs' Original Petition, located at https://search.txcourts.gov/Case.aspx?cn=23-0127&coa=cossup, Plaintiffs could never win at a likelihood of success had the Court been given all the facts.

21. Additionally, the public interest was never on the side of Brian Christ, who did not appear at the December 5th meetings at all, and struggles to lead the Montgomery County Executive Party because he is literally outnumbered about 2:1 by his critics. Plaintiff Parada appeared and participated, voting for the same winner of the election that would have occurred had no TRO been issued. In fact, the results of the elections to which the TRO was targeted were exactly the same as they would have had if the TRO had not been issued. The only impact of the TRO was to deny the participation of 14 of the named Defendants of the Senate Executive District Committee.

22. Additionally, a better analysis of the facts of the TRO indicates that even the applications for precinct chairs included in the Plaintiffs' Original Petition betray Plaintiffs' allegations.

Plaintiffs allege that the Defendants "have filed sworn ballot applications with Chair Christ to run for party office where they stated they are not incumbents." See Orig. Pet., para. 12.

23. As the Court can see by actually reading the applications, the applications filed with Christ *do not include a statement that are not incumbents*. They swore no such thing. What they did not do is not check a box to claim that they were incumbents, which every competent attorney would recognize as not the same thing as swearing that they are not incumbents. All these individuals were aware that Christ would not accept their applications had they checked the box, which is not part of the Election Code, but merely provided by the Secretary of State to assist party chairs.

24. Additionally, the Original Petition seems to assert that the Secretary of State's list of chairs is somehow authoritative or blesses the actions of Bryan Christ. The Secretary of State accepts the list of a county party chair and provides that list to those who ask. The Secretary does not bless it, affirm it, or take any other action to ensure that it is correct. Plaintiffs' attempt to bootstrap its own list as its authority must be recognized for its circular logic and disregarded.

25. For all the reasons above and as explained in excruciating detail in the incorporated mandamus proceedings, Plaintiffs' Original Petition was deficient from the start, and includes no claim that could win on the merits.

IV. MANDATORY ATTORNEYS' FEES

A. Texas Rule of Civil Procedure 91(a) (7) fees

26. Texas Rule of Civil Procedure 91(a)(7) provides that "the court may award the prevailing party on the motion all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court." Tex. R. Civ. P. 91a.7.

27. Because Plaintiffs' claims are subject to dismissal under Rule 91, Defendants request the recovery of his attorneys' fees and costs in connection with this Motion. Tex. R. Civ. P. 91a.7.

28. Defendants further requests an opportunity to present evidence of their necessary and reasonable costs and fees incurred in connection with this Motion for determination of such award, handled by a submission process.

B. TCPA Fees

29. If the Court dismisses Plaintiffs' claims, then it "shall" award Defendants their "court costs, reasonable attorney's fees, and other expenses incurred in defending against the legal action as justice and equity may require." Tex. Civ. Prac. Rem. code § 27.009(a)(1). In other words, the TCPA mandates the award of fees and costs if Defendants prevail on their motion. *Sullivan v. Abraham*, 488 S.W.3d 294, 299 (Tex. 2016) ("Based on the statute's language and punctuation, we conclude that the TCPA requires an award of 'reasonable attorney's fees' to the successful movant."). At or before the hearing on this motion, Defendants will supply evidence of the fees and expenses incurred in responding to the claims at issue.

V. MANDATORY TCPA SANCTIONS

30. The TCPA goes beyond compensation and has a mandatory punitive element, which underscores the purpose of the Act to deter improper claims. *Landry's, Inc. & Hous. Aquarium, Inc. v. Animal Legal Def. Fund*, 566 S.W.3d 41, 72 (Tex. App. 2018).

31. Upon dismissal, the Court is required to award the movant "sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in the Act." Tex. Civ. Prac. Rem. § 27.009(a)(2). As the TCPA uses "shall," sanctions are mandatory. *Cox Media Group, LLC v. Joselevitz*, 524 S.W.3d 850, 864 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

32. In this matter, a substantial sanction is necessary because Plaintiffs' claims are objectively frivolous. Plaintiff attempts to bring injunctive claims only to attack a political rival, including Gwen Withrow, who is challenging Plaintiff for chair, as though the judicial system exists to make

for cheap political points in a third-world banana republic. This Court cannot condone such behavior or let it be used in this way. (Defendants note that Plaintiffs seek $250,000 in this suit.)

33. In *Landry's*, for example, the Court of Appeals approved sanctions of $174,486, relying heavily on "evidence of frivolousness in that some of Landry's claims lacked any legal or factual basis," such as "Landry's preemptively assert[ing] an abuse-of-process claim . . . before any process had issued—a frivolous claim." *Landry* 566 S.W.3d, at *20.

34. The same is true here. Even cursory pre-filing diligence would have uncovered the reality that a) Plaintiffs needed to include all parties in the declaration claim, and b) Plaintiffs overstated their chances of success, to the point that his petition itself contains falsehoods and referencing evidence that shows that the falsehoods are false.

35. Next, the "the risk of chilling the specific type of litigation involved" is another factor that weighs in favor of material sanctions here. *Landry* 566 S.W.3d, at *20. The chilling of Defendants' actions is not only socially undesirable; it directly Texas public policy by preventing citizens form participating in public life.

36. Finally, the "offender's ability to pay a monetary sanction"—one of the factors approved in Landry's—is great. See 2018 WL 5075116, at *20. Defendant is unaware of Plaintiffs' assets and net wealth but suspects that they have sufficient means to pay the penalty for their actions. For these reasons, Defendants ask the Court to impose sanctions of at least $1,000 against Plaintiff for each Defendant, or $18,000, while dismissing the case completely, as Plaintiff's approach to litigation and attacking anyone with the temerity to disagree with his claims to power.

VI. COUNTERCLAIM FOR WRONGFUL INJUNCTIVE RELIEF

37. An injunction is wrongful if its issuance was wrongful at its inception or if it was continued in effect due to some wrong on the part of the proponent. *Jannise v. Enter. Prods. Operating LLC*,

No. 14-18-00516-CV, 2019 Tex. App. LEXIS 6468, at *17 (Tex. App.—Houston [14th Dist.] July 30, 2019, no pet.)

38. Defendants expect that, having done its damage, Plaintiffs will dismiss this suit because it is unsupportable. However, a "nonsuit does not defeat the right of a restrained party who is damaged by the temporary restraining order to sue for wrongful injunction." *Energy Transfer Fuel, L.P. v. Black*, No. 12-09-00060-CV, 2010 Tex. App. LEXIS 7097, at *1 (Tex. App.—Tyler Aug. 31, 2010, no pet.).

39. The Defendants who were present at the December 5, 2023 Senate District Executive Meeting and who were prevented by the TRO from participation seek damages against Christ for the unlawful restraint, including, at the least, Bob Bagley, Lauren Vickers, Jim Doyle, Mariann Siegert, Gwen Withrow, Steven Foster, Susan Love, Mara Wasar, Sherry Tavel, Stephanie Cox, Stephanie Schwantes, Lonna Hord, Jackie Williams, Bill Philibert, and Patrick Teich, and maybe others. Each should be awarded damages of $5,000.

VII. PRAYER

For the reasons above, Plaintiffs' claims should be dismissed with prejudice. Additionally, the Court should award Defendants their attorneys' fees, expenses, court costs, and sanctions against Plaintiff in accordance with the TCPA and Texas Rule of Civil Procedure 91(a), and then set this matter for trial on the wrongful injunction claims by the aforenamed Defendants who were prevented from participating in the December 5th meeting.

/s/ Warren V. Norred
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on December 13, 2023, in compliance with Texas Rule of Civil Procedure 21a on Plaintiff's counsel. */s/*Warren V. Norred