



By Stephen Gibson¹

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Texas Citizens Participation Act: Alleged Defamatory Statements in E-Mail and Post About Housing Developer’s Business Practices Were Protected Matters of Public Concern.

Error Preservation: If the Issue Is Raised, It May Be Disposed of for Any Legally Correct Reason Regardless of Whether That Reason Was Argued Below.

Newly invested Justice Jimmy Blacklock issued his maiden opinion in [Adams v. Starside Custom Builders LLC](#), to address whether the Texas Citizen’s Participation Act applied to alleged defamatory statements in a blog post and an email. The TCPA provides a dismissal procedure to weed out dubious defamation suits based on communications “made in connection with a matter of public concern” which includes issue[s] related to . . . environmental, economic, or community well-being; . . . the government; . . . or . . . a good, product, or service in the marketplace.” [Tex. Civ. Prac. & Rem. Code §§ 27.001, 27.003](#). The allegedly defamatory statements were made by a disgruntled home owner and member of a homeowner’s association that was being operated by the developer.

In the blog post, the defendant, without naming the plaintiff company, stated that the owners of the defendant and defendant’s predecessor company were under “felony investigation” for “contract fraud, had “commingled funds,” and had “unpaid creditors.” Under the previous company’s logo, the blog post contained the statement “How a west Plano Developer took a prime Plano location[,] a group of high end home builders[,] several hardworking subcontractors[,] a few families eager to build new homes[, and] made life miserable for all involved.”

The e-mail stated that the developer’s principals totally controlled the HOA and had “clear cut” common areas over his objection and in violation of city ordinances. According to the email, the defendant claimed that he had an agreement with the developer to buy the common areas from which the trees had been cut down.

In a unanimous opinion for the court, Justice Blacklock ruled that the TCPA applied even though the alleged defamatory statements did not mention the company that had taken over for the original developer. The opinion pointed out that there was no dispute that the individuals mentioned in the alleged defamatory statements were principals in both the original and successor entities and that the successor entity had admitted that former entity had “morphed into” the latter and that there was “no practical difference between the two.”

Statements About the Developer’s Business Practices Concerned Quality of Services to the Community; Statements About the Environment and Well-Being of the Community. Both Were About Matters of Public Concern.

With respect to the substance of the statements, the court reasoned that the plaintiff’s statements about the developer’s business practices qualified as matters of public concern because the HOA exercises quasi-governmental authority over the community’s residents. The opinion considered them “relate[d] directly to [developer]’s provision of homebuilding and neighborhood developing services, as does the accusation that [the developer] made life miserable for contractors and home buyers.” Thus, these statements were protected matters of public concern. The court also ruled that plaintiff’s complaints about the removal of the trees in an alleged

¹ The opinions expressed are solely those of the author. They do not necessarily represent the views of Munsch, Hardt Kopf & Harr, P.C. or its clients.

violation of city ordinances related to environmental matters as well as the well-being of the development as a whole. Thus, they qualified as being about matters of public concern.

If the Issue Is Preserved for Review, the Grounds on Which the Courts May Decide That Issue Are Not Limited to Those Argued Before the Trial Court.

The court of appeals had ruled that the defendant had waived the argument that environmental and community well-being sufficed to make the statements ones about public concern because it did not raise them in the trial court. The opinion noted that in the argument to the trial court counsel for the plaintiff generally referred to these statutory bases without arguing specifics of why they applied. The opinion disapproved the lower court's too restrictive view of the requirements of error preservation.

Having determined that the plaintiff's allegedly defamatory statements were entitled to protection, the court remanded the case to the trial court for application of the procedural protections of the TCPA and further proceedings on the merits if permitted after application of the TCPA.