



When the Texas Citizens Participation Act Goes Wrong

By James Holmes, Holmes PLLC

My first encounter with the Texas Citizens Participation Act (TCPA)—also known as the anti-SLAPP statute—began in 2023, when I purchased a large lot near downtown Dallas for future residential development. Dallas code enforcement officers advised me on how best to clean up the lot and keep it safe. Following this advice, I hired workers to remove trash, mow down grass and weeds, install a chain link fence, and remove scruffy hackberry trees that were providing shade to trespassers who often used drugs.

As this work commenced, my crews told me that onlookers would often gather, make negative comments, take photographs and videos, and generally make the workers feel threatened and unwelcome. One particularly troublesome woman would walk onto the lot, videotape the work and accost the crews.

The work on the property continued until Sept. 6, 2023, when this woman trespassed onto my lot, obstructed, videoed and harassed my workers, and called the Dallas Police Department.

My research later revealed that she was a tenant at a next-door property who frequently video records herself trespassing on East Dallas construction sites, rails against the work being done, and encourages her social media followers to steal materials from or vandalize sites.

On my property alone, she photographed herself nude, holding a human skull. She also wrote a manifesto calling me a “rapist.” On Facebook, she encouraged others to bring guns to my property and to use violence against developers like me.

By September 7, my lawyers had sued this woman for trespass, private nuisance and business disparagement—not for her complaints about work on the lot or for her attacks against me. They quickly prepared a summary judgment motion seeking damages and injunctive relief, and initiated discovery to learn more about her tortious conduct.

In response, the woman’s attorney filed a bare-bones statement asserting that she had a TCPA-based right to complain and take action against the work on my property, and that my lawsuit should be dismissed. The motion contained no reference to the TCPA, no

case law and no substantial arguments. But it immediately stopped all discovery, pursuant to the statute’s Section 27.003(c), and threatened to force me to pay her attorney’s fees.

The Dallas County District Court—being fully aware of her tortious, aggressive pre-lawsuit conduct—denied the motion to dismiss and ordered her to pay me more than \$17,000 in attorney’s fees.

Shortly thereafter—and just one day before a hearing on my summary judgment motion—the woman sought an interlocutory appeal pursuant to the TCPA’s Section 27.008.

Now, a new attorney has transformed the woman’s bare-bones TCPA dismissal motion into a 66-page appellant’s brief containing arguments and authorities not previously presented to the district court. The case is now pending before the Dallas Court of Appeals.

Unfortunately, cases highlighting the realities of TCPA litigation and the need to rein in its suspension of discovery, attorney’s fees threat and interlocutory appeal have become the rule, not the exception.

According to attorney Mark Walker of El Paso, TCPA dismissal motions have created millions of dollars in unnecessary costs, because, as written, the TCPA can be applied to almost any commercial or business dispute.

Walker’s analysis finds that, despite its well intentioned beginnings, a decade into the TCPA’s existence, only five true SLAPP lawsuits have been dismissed, out of nearly 1,000 reported appellate TCPA cases. In the other lawsuits, the TCPA was used to seek dismissal of non-SLAPP cases.

An Austin Court of Appeals decision noted that the TCPA had been applied “*in cases for fraud and barratry, a suit for contamination of a water well, a dispute between neighbors over a fence, defamation claims arising from an employment dispute, a snarl of competing claims arising from discussions among horse breeders on social media, and a host of other types of claims.*”

Walker goes on to suggest that the surest way to deal with true SLAPP cases while avoiding unnecessary costs is to amend the TCPA to require a movant to prove the legal action was brought for an improper purpose or to silence or punish an opponent.

Until then, the abuse will continue. ■