

CAUSE NO. 2018-06752

FREE AND SOVEREIGN STATE OF §
VERACRUZ DE IGNACIO DE LA LLAVE, §

IN THE DISTRICT COURT OF

Plaintiff, §

v. §

HARRIS COUNTY, TX

JAIMÉ REVERTE, JMA REVERTE §
PROPERTIES LLC, AZULGRANA §
MANAGEMENT, LLC, GIMAL REVERTE §
PROPERTIES, LLC, REVERTE FAMILY §
LIVING TRUST and JAVIER DUARTE DE §
OCHOA, §

127TH JUDICIAL DISTRICT

Defendants. §

**DEFENDANT TERRAVENTURA DEVELOPMENTS, LLC'S
MOTION TO DISMISS
PURSUANT TO THE TEXAS CITIZENS' PARTICIPATION ACT (ANTI-SLAPP)
AND FOR AWARD OF FEES, COSTS AND SANCTIONS**

Defendant Terraventura Developments, LLC ("Terraventura" or "Defendant") files this Motion to Dismiss Plaintiff's claims (or "Anti-SLAPP" Motion) pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code, commonly referred to as the Texas Citizens' Participation Act ("TCPA").¹ Terraventura further moves for an award of its fees, costs and sanctions against Plaintiff pursuant to the TCPA upon its dismissal.²

I. INTRODUCTION: "CLEAR AND SPECIFIC" BASIS REQUIRED

The TCPA was enacted in 2011 to facilitate early dismissal of meritless lawsuits arising from

¹ On July 11, 2018, Defendants and alleged *in rem* property owners Jose Antonio Bandin Ruiz (incorrectly named Jose Ruiz) and Monica Babayan Canal (incorrectly named Monica B. Canal) (collectively the "Bandin Defendants") filed an Anti-SLAPP Motion. This Motion joins and concurs in that Motion, but as to Defendant Terraventura.

² The filing of an Anti-SLAPP Motion immediately stays all discovery proceedings against the moving party, and this stay remains in effect until the Court has ruled upon the Motion. TEX. CIV. PRAC. & REM. CODE § 27.003(c). Accordingly, to the extent required, Terraventura further requests a stay of the Court's Standing Discovery Order requiring it to respond to the Requests for Disclosures provided in Texas Rule of Civil Procedure 194.2.

the exercise of constitutionally-protected rights. *ExxonMobil Pipeline Co. v. Coleman*, 512 S.W.3d 895, 898 (Tex. 2017) (quoting TEX. CIV. PRAC. & REM. CODE § 27.002). The law permits a party defending any legal action that implicates the right of free speech or association to file an early motion to dismiss claims, forcing the responding party to produce “clear and specific evidence” of each required element of its claims. *Id.* at 898-99 (citing TEX. CIV. PRAC. & REM. CODE § 27.005(b)-(c) (emphasis added)).

Plaintiff’s skeletal and poorly pled claims are precisely the type of legal action the TCPA is intended to deter. Very little is clear from the tangled web of conclusory allegations in Plaintiff’s First Amended Petition. All that is said of Terraventura is to allege it is a “local limited liability company that owns property in Harris County,” identify its registered agent, and allege it ostensibly is the “record owner” of several property units located at 25219 Kuykendahl Road, Tomball, Texas and then conclusively, that the “funds used to purchase [these] property[s] were stolen from Veracruz.” In reality, Terraventura is not even the record owner of seven of the properties attributed to it on pages 7-8 of Plaintiff’s First Amended Petition (and the eighth unit has been sold as well, but the County Appraisal records do not reflect that fact). *See* Exhibits 1-7.

As to Terraventura’s (purported) ownership of a single unit of real estate identified in the Petition, it is unmistakably clear that Plaintiff’s claims implicate Terraventura’s³ constitutionally protected communications relating to a matter of public concern and its right of association. In essence, Terraventura is being sued because of its alleged association in pursuing real estate investments that Plaintiff contends were purchased with government funds stolen by a public figure. Terraventura denies these allegations. Importantly for purposes of this Motion, because these

³ Any “person” against whom a legal action was filed – if the action is based on, related to, or in response to the person’s exercise of its right of free speech, right to petition, or right of association – can file an anti-SLAPP motion. TEX. CIV. PRAC. & REM. CODE § 27.003(a); *see also* TEX. GOV’T CODE § 311.005(2) (“person” can include legal entity).

allegations implicate a matter of public concern and the right of association, the TCPA requires Plaintiff to demonstrate a “clear and specific” basis for its allegations before its claims may proceed.

II. FACTUAL BACKGROUND

This case arises out of the alleged corruption and theft of public funds from the government of the Mexican state of Veracruz by its former Governor. Plaintiff contends that Javier Duarte De Ochoa (“Duarte”), when he was the Governor of Veracruz from 2010 to 2016, engaged in a scheme to divert money earmarked for public social programs to a network of sham companies, which in turn, purchased properties in the United States with the allegedly stolen funds. Plaintiff alleges that Terraventura owns property that was purchased (at some unidentified point) using funds stolen by Duarte. Again, Terraventura denies all of Plaintiff’s allegations of any wrongdoing vis-à-vis the State of Veracruz.

Based on the face of Plaintiff’s First Amended Petition, this legal action arises out of and relates to Terraventura’s right of free speech on a matter of public concern. The public’s interest in this lawsuit is evidenced by the parties to the lawsuit – the State of Veracruz, which is a governmental body – and the nature of Plaintiff’s claims – which allege that government/public funds intended for environment, economic, or community well-being were diverted away by a public official.

Furthermore, Plaintiff’s claims implicate Terraventura’s right of association, because it concerns communications relating to its right to join together collectively to express, promote, pursue, or defend common interests – namely, its common interest in acquiring and investing in real estate. For the reasons explained below, the TCPA applies, and Plaintiff’s claims must be dismissed unless Plaintiff provides clear and specific evidence of each element of its claims against Terraventura.

III. ARGUMENT

Recognizing that the legal system can be used as a hammer to threaten those who would otherwise freely exercise their constitutional rights, the Texas legislature enacted the TCPA to protect the rights to petition, speak freely, and associate freely by permitting early dismissal of unmeritorious lawsuits that impact those rights. TEX. CIV. PRAC. & REM. CODE §§ 27.001-27.011. To protect these important rights, the TCPA is to be “construed liberally to effectuate its purpose and intent fully.” *Id.* at § 27.011(b).

The TCPA provide that “[i]f 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.* at § 27.003. The filing of a motion under the TCPA initiates a two-step procedure to determine whether the lawsuit should be dismissed.

First, the movant has the initial burden of showing by a preponderance of the evidence that the TCPA applies. *ExxonMobil v. Coleman, supra*, 512 S.W.3d at 898 (quoting TEX. CIV. PRAC. & REM. CODE § 27.005(b)). If the movant meets that burden, the trial court must dismiss the claims unless the responding party points to “clear and specific evidence” that establishes a *prima facie* case for each essential element of its claims against the moving party. *In re Lipsky*, 460 S.W.3d 579, 586-87 (Tex. 2015) (quoting TEX. CIV. PRAC. & REM. CODE § 27.005(c)).

A. The TCPA Applies To This Case.

The TCPA defines “exercise of the right of free speech” as “a communication made in connection with a matter of public concern.” TEX. CIV. PRAC. & REM. CODE § 27.001(3). A “communication” includes “the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic.” *Id.* at § 27.001(1). A “matter

of public concern” includes “an issue related to: (A) health or safety; (B) environmental, economic, or community well-being; (C) the government; (D) a public official or public figure; or (E) a good, product, or service in the marketplace.” *Id.* at § 27.001(7) (emphasis added).

Plaintiff’s claims implicate four of these alternative criteria – though only one needs to be satisfied for the TCPA to apply – because they relate to: (1) health and safety; (2) environmental, economic, or community well-being; (3) the government; and (4) a public official or public figure. Indeed, Plaintiff’s First Amended Petition explicitly details how this lawsuit affects a matter of public concern by alleging that “hundreds of millions of dollars earmarked for social programs were diverted” by a public official/figure (the Governor), and the “money stolen by Duarte rightfully belongs to the people of the State of Veracruz.” Plaintiff’s First Amended Petition, pp. 1-2. Plaintiff’s allegations go directly to the heart of the TCPA.

The communications made in connection with these matters of public concern are the numerous documents filed in the public record relating to the properties at issue and the entities that own these properties, including, but not limited to, the deeds, land records taxation and appraisal information, and ownership and formation documents. *See* Exhibits 1-9. Because Plaintiff contends that the “funds used to purchase these propert[ies] were stolen from Veracruz,” these communications – i.e., the land and ownership records – relate to a matter of public concern. Plaintiff’s First Amended Petition, pp. 5-8.

Furthermore, Plaintiff’s allegations implicate Terraventura’s right of association. The TCPA defines “[e]xercise of the right of association” as “a communication between individuals who join together to collectively express, promote, pursue, or defend common interests.” TEX. CIV. PRAC. & REM. CODE § 27.001(2). Terraventura filed numerous documents in the public record for the collective purpose of furthering and developing its common interests in acquiring and investing in

real estate. Thus, Plaintiff's allegations also relate to Terraventura's right of association, and the TCPA applies.

B. Plaintiff Cannot Support Clear And Specific Evidence Of Each Element Of Each Claim Against Terraventura.

Because Terraventura has established the TCPA applies to this case, the burden shifts to Plaintiff to establish by "clear and specific evidence a *prima facie* case for each essential element of" Plaintiff's causes of action, including, (1) Conversion; (2) Theft Liability Act; (3) Constructive Trust; (4) Civil Conspiracy; (5) Joint and Several Liability; and (6) Texas Penal Code Section 31.03(e)(7). TEX. CIV. PRAC. & REM. CODE § 27.005(c). Plaintiff cannot satisfy its heavy burden.

"Prima facie evidence is evidence that, until its effect is overcome by other evidence, will suffice as proof of a fact in issue. In other words, a prima facie case is one that will entitle a party to recover if no evidence to the contrary is offered by the opposite party." *Rehak Creative Servs., Inc. v. Witt*, 404 S.W.3d 716, 725 (Tex. App.—Houston [14th Dist.] 2013, pet. denied), *disapproved on other grounds by Lipsky, supra*, 460 S.W.3d at 587. The Texas Supreme Court has defined "clear" as "free from doubt," "sure," or "unambiguous," while "specific" is understood to mean "explicit" or "relating to a particular named thing." *Lipsky*, 460 S.W.3d at 590. Plaintiff cannot satisfy this burden for any of elements of any of the causes of action alleged against Terraventura. These claims must therefore be dismissed.

C. Terraventura Is Entitled To Fees And Sanctions.

Upon dismissing Plaintiff's claims, the Court "shall award" Terraventura fees and sanctions. TEX. CIV. PRAC. & REM. CODE § 27.009(a). As set forth in the Affidavit of Terraventura's attorney, Laura F. Dumas, Terraventura has incurred attorneys' fees to date in a total amount of over \$4,100 and anticipates incurring additional fees to prepare for and attend the hearing on this Motion,

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of July 2018, a true and correct copy of the foregoing instrument was served upon the following counsel of record in accordance with the Texas Rules of Civil Procedure.

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