

CAUSE NO. 2018-06745

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

vs.

18 SHALLOWFORD PL., LLC
 JAVIER DUARTE DE OCHOA, JOSE A.
 BANDIN, and MONICA BABAYAN

Defendants.

§
 §
 §
 §
 §
 §
 §
 §
 §
 §
 §

IN THE DISTRICT COURT OF
 334TH JUDICIAL DISTRICT
 HARRIS COUNTY, TEXAS

JURY TRIAL DEMANDED

**PLAINTIFF’S REPLY TO DEFENDANTS’ RESPONSE TO PLAINTIFF’S
 EMERGENCY MOTION FOR DISCOVERY PURSUANT TO THE TCPA**

As an initial matter, Plaintiff’s request for leave to conduct discovery is not untimely. It was made along with its response which was filed before the hearing.¹ Additionally, Plaintiff requested Defendants’ depositions early in the case prior to the instant motion being filed.² So, Defendants’ argument (“...the statute does not contemplate a hearing, followed by a request for discovery...”) simply does not comport with the procedural history or facts of this case. Plaintiff’s request for leave was made prior to the hearing. Plaintiff requested deposition dates three months ago. Nevertheless, and secondly, contrary to Defendants’ argument, there is no requirement that discovery be requested either prior to or after the hearing. In fact, the plain language of the statute (which Defendants’ cling to so tightly when convenient) makes no mention of the timing of such. What the statute does make clear is that the Court can allow the Plaintiff to conduct discovery. CPRC §27.006(b). The Court can set this matter for hearing on a date more than 30 days after service of the motion. CPRC §27.004. And there is nothing in the statute to prohibit this Court from holding a re-hearing at the conclusion of the limited discovery

¹ Plaintiff’s response to Defendants’ motion to dismiss, page 13.
² Exhibit A, Request for depositions on April 20, 2018.

sought – a mechanism that is routinely provided for in both trial courts and appellate courts around this state. In other words, this Court would be well within the confines of the statute by granting Plaintiff's request for limited discovery, setting this matter for re-hearing, and then ruling within 30 days of the hearing. Defendants do not provide this Court with any case law contradicting this or supporting its own position.

The next argument Defendants make is that depositions cannot be used as evidence, and therefore should not be allowed. (Defendants make no argument regarding the request for paper discovery.) However, this argument is a red herring. Depositions obviously can provide information for experts to rely upon, and information upon which Plaintiff can amend its petition or even quote in an amended petition. Interestingly, Defendants make a judicial admission that they are in fact residing in Spain – which, again, raises the issue whether Mexican citizens residing outside the United States are entitled to the protections of the Texas *Citizens Protection Act*. (emphasis added). Laying that aside, there is time for the parties to travel to Spain (if required) and conduct short depositions as necessary. There is no reason given as to why Defendants cannot provide paper discovery substantiating the allegedly legitimate funds used to purchase the property in question.

The bottom line is that Plaintiff timely made a request for leave to conduct discovery. Plaintiff re-urges that request to the Court now. There is sufficient time for the requested depositions to occur. There is sufficient time for Defendants' to provide the requested paper discovery. This Court is well within its power to grant such a request, set this motion for re-hearing, and then make a final ruling on Defendants' motion to dismiss.

Respectfully submitted,

THE BUZBEE LAW FIRM

By: /s/ Anthony G. Buzbee

Anthony G. Buzbee

State Bar No. 24001820

Christopher J. Leavitt

State Bar No. 24053318

tbuzbee@txattorneys.com

JP Morgan Chase Tower

600 Travis, Suite 6850

Houston, Texas 77002

Telephone: (713) 223-5393

Facsimile: (713) 223-5909

ATTORNEYS FOR PLAINTIFF

Unofficial Copy Office of Chris Daniel, Clerk

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been duly served on all known counsel of record and pro se parties in accordance with the Texas Rules of Civil Procedure on July 20, 2018.

Via Facsimile: (713) 574-3224

Murray Fogler

Jas Brar

FOGLER, BRAR, FORD, O'NEIL & GRAY, LLP

909 Fannin Street, Suite 1640

2 Houston Center

Houston, TX 77010

Counsel for the Bandin Defendants

/s/ Christopher J. Leavitt

Christopher J. Leavitt

Unofficial Copy Office of Chris Daniel District Clerk