

No. 14-18-00752-CV

**IN THE FOURTEENTH COURT OF APPEALS
HOUSTON, TEXAS**

FILED IN
FOURTEENTH COURT OF APPEALS
HOUSTON, TEXAS
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CHRISTOPHER A. PRINE
Clerk

JOSE BANDIN, MONICA BABAYAN AND 18 SHALLOWFORD PL., LLC.
Appellants,

v.

**FREE AND SOVEREIGN STATE OF VERACRUZ DE IGNACIO DE LA
LLAVE,**
Appellee.

On Appeal from the 295th District Court, Harris County, Texas
Trial Court No. 2018-06745, Hon. Caroline E. Baker, Presiding

No. 14-18-00847-CV

**IN THE FOURTEENTH COURT OF APPEALS
HOUSTON, TEXAS**

CW OPERATING COMPANY, INC, ET AL
Appellants,

v.

**FREE AND SOVEREIGN STATE OF VERACRUZ DE IGNACIO DE LA
LLAVE,**
Appellee.

On Appeal from the 295th District Court, Harris County, Texas
Trial Court No. 2018-08341, Hon. Caroline E. Baker, Presiding

**MOTION TO CONSOLIDATE APPEALS AND
FOR EXTENSION OF TIME TO FILE APPELLANTS' BRIEF**

TO THE HONORABLE COURT OF APPEALS:

These two appeals are related interlocutory appeals from denials of motions to dismiss filed under Chapter 27 of the Texas Civil Practice & Remedies Code (commonly referred to as the anti-SLAPP statute). In the first-filed appeal, the clerk's record was filed August 29, 2018, and the reporter's record was filed on September 19, 2018. Appellants' brief would be due on October 9, 2018.

In the first-filed appeal from the 334th District Court of Harris County, Texas, the appellants are Jose Bandin and his wife Monica Babayan, along with one special purpose entity they formed to own a certain property in Harris County. The appellee is the Mexican state of Veracruz.

The second-filed appeal arises from three other Harris County actions filed by Veracruz against, among other parties, Bandin and Babayan (together with several other special purpose entities owning other properties). The other three cases were filed in the 295th, 113th, and 127th District Courts of Harris County. These four cases all arise out of the same nucleus of facts. In fact, the petitions in each of the cases are virtually identical. The same counsel represents Veracruz and the Bandin parties in all four cases.

Bandin and Babayan filed anti-SLAPP motions to dismiss those other three cases, too. After the denial of the motion to dismiss in the 334th District Court,

Bandin and Babayan moved to consolidate all of the cases in the first-filed case in the 295th District Court. That motion was granted on September 25, 2018 (see Order Granting Motion to Consolidate, attached as Exhibit 1 to this motion).

The trial court that granted the consolidation of the 4 related cases also entered an order denying the pending motions to dismiss in the remaining cases. On September 27, 2018, Bandin and Babayan (and their entities in the other cases) filed a Notice of Appeal in the consolidated case, which has now been docketed in this Court as No. 14-18-00847-CV.

MOTION TO CONSOLIDATE APPEALS

Appellants in these appeals¹ hereby seek to consolidate the two appeals. The underlying motions, responses, and evidence are essentially the same. With one exception the procedural issues relating to the motions to dismiss are the same.² The substantive issues regarding the application of the anti-SLAPP statute, and the sufficiency of the evidence, will be identical in the two appeals.

The consolidation of these appeals will not cause inordinate delay. The later-filed appeal is just a few weeks behind this one. Moreover, appellants do not seek

¹ Veracruz sued additional defendants in each of these four cases besides the Bandin parties, but because these interlocutory appeals relate solely to the denials of the Bandin parties' motions to dismiss, the other defendants are not parties to these appeals.

² The sole exception relates to whether Chapter 27 permits post-hearing discovery, an issue solely in this appeal, but not in the later-filed appeal.

to file an extra-long brief—one brief within the single appeal page-limit will suffice to explain the issues to this Court.

In short, consolidation of the appeals will promote judicial efficiency and will be more efficient for the parties as well.

Appellants conferred with the appellee regarding consolidation. Appellee opposes consolidation of the appeals.

MOTION FOR EXTENSION OF TIME TO FILE BRIEF

If the appeals are consolidated, Appellants seek an extension of time to file their appellants' brief which is currently due in the first-filed appeal on October 9, 2018. The brief in the second-filed appeal will be due 20 days after the record is complete. The record has been requested in the second-filed appeal. Appellants seek an extension to file their consolidated brief 20 days after the record is complete in the consolidated appeal.

If the appeals are not consolidated, Appellants still seek an extension of time to file their brief. Appellants' counsel are involved in the following matters, among others, that have prevented counsel from being able to timely file the brief:

- No. 01-18-00760-CV, *In re Underwriters at Lloyds of London*, in the First Court of Appeals: response to petition for mandamus due (and filed) October 2, 2018.

- No. 13-18-00316-CV, *Lynnann Grumbles v. Ineos USA, LLC, et al*, in the Thirteenth Court of Appeals: appellees' brief due October 8, 2018 (request for extension pending).
- No. 2016-06434, *In the Matter of the Marriage of Sherry Menger and Marek Menger*, in the 310th District Court of Harris County, Texas: notice of appeal filed on September 19, 2018 by opposing counsel, with record due to be filed soon.
- Civil Action No. 3:12-cv-04641-L, *Ralph S. Janvey v. Greenberg Traurig, et al*, in the United States District Court for the Northern District of Texas, Dallas Division: complex legal malpractice claim brought by the Stanford Receiver requiring numerous depositions, motion practice, and ongoing document review.

Appellants attempted to confer with appellee's counsel regarding an extension, but no response was received. Appellants seek an extension of 30 additional days, until November 8, 2018, if the consolidation order is not granted.

PRAYER FOR RELIEF

The two appeals should be consolidated for all purposes. In addition, appellants seek an extension of time to file their brief, until November 8, 2018, or 20 days after the record is complete in No. 14-18-00847-CV, whichever is later.

Respectfully Submitted,

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

/s/ Murray Fogler

Murray Fogler

State Bar No. 07207300

mfogler@fbfog.com

Jas Brar

State Bar No. 24059483

jbrar@fbfog.com

909 Fannin Street, Suite 1640

2 Houston Center

Houston, Texas 77010

Tel: 713.481-1010

Fax: 713.574-3224

**COUNSEL FOR THE BANDIN
DEFENDANTS**

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2018, a true and correct copy of the forgoing document has been served on all counsel of record, by the Electronic Service Provider, if registered, otherwise by email and/or fax.

Anthony G. Buzbee (tbuzbee@txattorneys.com)

Christopher J. Leavitt (cleavitt@txattorneys.com)

Jessica Salto (jsalto@txattorneys.com)

THE BUZBEE LAW FIRM

JP Morgan Chase Tower

600 Travis, Suite 6850

Houston, Texas 77002

Bret L. Strong (bstrong@thefirm.com)

Laura F. Dumas (ldumas@thefirm.com)

Kristin Bates (kbates@thefirm.com)

April Walter (awalter@thestrongfirm.com)
THE STRONG FIRM, P.C.
1790 Highes Landing Blvd., Suite 200
The Woodland, Texas 77380

James H. Stilwell (james@meslawfirm.com)
MARTIN, EARL & STILWELL, LLP
1400 Woodloch Forrest Drive, Suite 590
The Woodlands, Texas 77380

Charles B. Hampton (champton@mcguirewoods.com)
Sioghan K. Ray (sray@mcguirewoods.com)
MCGUIRE WOODS LLP
600 Travis Street, 75th Floor
Houston, Texas 77010

Stephen Edmundson (sedmundson@gtlaw.com)
GREENBERG TRAUER LLP
1000 Louisiana Street, Suite 1700
Houston, Texas 77002

William P. Huttenbach (phuttenbach@hirschwest.com)
Kristina L. Cunningham (kcunningham@hirschwest.com)
HIRSCH & WESTHEIMER, P.C.
1415 Louisiana, 36th Floor
Houston, Texas 77002

/s/ Murray Fogler

MURRAY FOGLER

EXHIBIT 1

CWVX

CAUSE NO. 2018-06480

FREE AND SOVEREIGN STATE OF VERACRUZ DE IGNACIO DE LA LLAVE

Plaintiff,

v.

83 WEST JAGGED RIDGE, LLC, *ET AL.*

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

295th JUDICIAL DISTRICT

Time: _____
By: _____
Chris Daniel
District Clerk
SEP 25 2018
Deputy
Harris County, Texas

ORDER GRANTING MOTION TO CONSOLIDATE

The Court grants the Bandin Defendants' Motion to Consolidate. It is therefore **ORDERED** that the following cases will be consolidated into this case:

1. No. 2018-06745, *Free and Sovereign State of Veracruz v. Javier Duarte, et al.*, in the 334th District Court of Harris County, Texas.
2. No. 2018-06752, *Free and Sovereign State of Veracruz v. Jaime Reverte, et al.*, in the 127th District Court of Harris County, Texas.
3. No. 2018-08341, *Free and Sovereign State of Veracruz v. CW Operating Company, Inc., et al.*, in the 113th District Court of Harris County, Texas.

The District Clerk is further **ORDERED** to move all the pleadings in the cases set forth above to reflect the consolidated under this cause number

Signed on this 25th day of September, 2018.

Caroline Baker

HON. JUDGE BAKER
District Judge, 295th Judicial District