

COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT

Saks & Company, LLC, Jennifer Welch, Juan Dominguez, and Andrew Balogh v. Ya Xi Li

No. 14-21-00085-CV (Tex. App.—Houston [14th Dist.] Sept. 1, 2022) · No. No. 14-21-00085-CV · Decided
September 1, 2022

SUMMARY

The Fourteenth Court of Appeals of Texas reviewed an interlocutory appeal concerning the denial of appellants' motions to dismiss under the Texas Citizen's Participation Act. The court held that the malicious-prosecution claim and the original defamation claim should have been dismissed under the TCPA, concluding that the appellants established protected petitioning activity and that Li failed to present the required evidence. The court affirmed in part, reversed in part, and remanded for further proceedings; the provided text ends before the court's complete discussion of the amended defamation claim.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourteenth District
WRITING FOR THE COURT	Ken Wise; Poissant; Wilson
JURISDICTION	Texas
DECIDED	September 1, 2022
DOCKET	No. 14-21-00085-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal from the denial of appellants' motion to dismiss claims under the Texas Citizens Participation Act.
STANDARD OF REVIEW	De novo review of whether the parties met their respective TCPA burdens; pleadings and evidence are viewed in the light most favorable to the claimant.
PRECEDENTIAL VALUE	Published Texas intermediate appellate opinion; precedential under applicable Texas law.
PARTIES	Saks & Company, LLC, Jennifer Welch, Juan Dominguez, Andrew Balogh v. Ya Xi Li

TOPICS

motions to dismiss

appellate procedure

civil procedure

defamation

torts

PRACTICE AREAS

civil procedure

appellate procedure

defamation

malicious prosecution

employment law

QUESTIONS PRESENTED

1. Whether the TCPA required dismissal of Li's malicious prosecution claim because the claim was based on appellants' exercise of the right to petition and Li failed to produce clear and specific evidence of lack of probable cause.
2. Whether appellants' TCPA motion remained operative as to the original-petition defamation claim after Li amended her petition.
3. Whether the TCPA applied to Li's original-petition defamation claim based on statements to police and employees, and whether Li produced clear and specific evidence of actual malice despite a qualified privilege.
4. Whether the TCPA applied to Li's amended-petition defamation claim based on Dominguez's statement to Li's friend that Li stole \$150.

HOLDINGS

1. The malicious prosecution claim was based on or in response to appellants' exercise of the right to petition because the relevant communications were reasonably likely to encourage consideration or review by a judicial or governmental body.
2. The trial court erred by failing to dismiss Li's malicious prosecution claim because Li did not produce clear and specific evidence rebutting the presumption that appellants had probable cause to initiate criminal proceedings.
3. A TCPA motion to dismiss survives a nonsuit or amendment of the claimant's pleading and is evaluated against the claims as pleaded when the motion was filed.
4. The trial court erred by failing to dismiss the original-petition defamation claim against Saks, Dominguez, and Balogh under the TCPA.
5. The TCPA did not apply to the amended-petition defamation claim based on Dominguez's statement to Li's friend that Li stole \$150.

KEY QUOTATIONS

“First, the movant must demonstrate that the legal action is “based on or is in response to” the movant’s exercise of the right of free speech, petition, or association.” (at 2)

“The probable cause element asks “whether a reasonable person would believe that a crime had been committed given the facts as the complainant honestly and reasonably believed them to be before the criminal proceedings were instituted.”” (at 8)

“An accusation that a person has committed a crime does not, standing alone, establish that the speech was on a matter of public concern.” (at 18)

FACTUAL BACKGROUND

Li, a cosmetics salesperson at Saks, processed transactions involving customers who used other people's credit-card accounts. Saks loss-prevention employees Welch and Dominguez investigated the transactions, obtained a signed English-language statement from Li, and sought her arrest; Li was jailed for three days, and a grand jury later no-billed the case. Li alleged that appellants falsely accused her of theft to police, employees, and her friend, and contended that Saks's credit department had approved the transactions and that she did not understand or voluntarily adopt the purported confession. Dominguez also allegedly told Li's friend that Li had stolen \$150 belonging to the friend.

PROCEDURAL HISTORY

Li sued Saks, Welch, Dominguez, and Balogh for malicious prosecution and defamation, among other claims. Appellants moved to dismiss under the TCPA, and the 215th District Court of Harris County denied the motion without specifying its reasons. The court of appeals reversed the denial as to Li's malicious prosecution claim and her original-petition defamation claim, affirmed it as to the amended-petition defamation claim, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion after dismissal with prejudice of Li's malicious prosecution claim and her original-petition defamation claim; the denial of dismissal of the amended-petition defamation claim remains affirmed.

CASES CITED

- Montelongo v. Abrea, 622 S.W.3d 290, 295 (Tex. 2021)
- In re Lipsky, 460 S.W.3d 579, 590, 593 (Tex. 2015) (orig. proceeding)
- M.A. Mills, P.C. v. Kotts, 640 S.W.3d 323, 326 (Tex. App.—Houston [14th Dist.] 2022, pet. filed)
- Buzbee v. Clear Channel Outdoor, LLC, 616 S.W.3d 14, 29 (Tex. App.—Houston [14th Dist.] 2020, no pet.)
- Sanchez v. Striever, 614 S.W.3d 233, 246 (Tex. App.—Houston [14th Dist.] 2020, no pet.)
- Ford v. Bland, No. 14-15-00828-CV, 2016 WL 7323309, at *1 (Tex. App.—Houston [14th Dist.] Dec. 15, 2016, no pet.)
- Buckingham Senior Living Cmty., Inc. v. Washington, 605 S.W.3d 800, 807 (Tex. App.—Houston [1st Dist.] 2020, no pet.)
- Murphy USA, Inc. v. Rose, No. 12-15-00197-CV, 2016 WL 5800263, at *3–4 (Tex. App.—Tyler Oct. 5, 2016, no pet.)

- Kroger Tex. Ltd. P'ship v. Suberu, 216 S.W.3d 788, 792–94 (Tex. 2006)
- Richey v. Brookshire Grocery Co., 952 S.W.2d 515, 517–19 (Tex. 1997)
- Cash Am. Pawn, LP v. Alonzo, No. 01-19-00801-CV, 2021 WL 4155795, at *1–2, *7–8 (Tex. App.—Houston [1st Dist.] Sept. 14, 2021, no pet.)
- Abatecola v. 2 Savages Concrete Plumbing, LLC, No. 14-17-00678-CV, 2018 WL 3118601, at *13–14 (Tex. App.—Houston [14th Dist.] June 26, 2018, pet. denied)
- Reeves v. Harbor Am. Cent., Inc., 631 S.W.3d 299, 308 n.7 (Tex. App.—Houston [14th Dist.] 2021, pet. denied)
- Steinhaus v. Beachside Env't, LLC, 590 S.W.3d 672, 677–79 (Tex. App.—Houston [14th Dist.] 2019, pet. denied)
- Granada Biosciences, Inc. v. Forbes, Inc., 49 S.W.3d 610, 619 (Tex. App.—Houston [14th Dist.] 2001), rev'd on other grounds, Forbes, Inc. v. Granada Biosciences, Inc., 124 S.W.3d 167 (Tex. 2003)
- Cain v. Hearst Corp., 878 S.W.2d 577, 582 (Tex. 1994)
- Randall's Food Markets, Inc. v. Johnson, 891 S.W.2d 640, 646 (Tex. 1995)
- Pease v. Bemby, No. 03-02-00640-CV, 2004 WL 1574243, at *2 (Tex. App.—Austin July 15, 2004, no pet.)
- Robert B. James, DDS, Inc. v. Elkins, 553 S.W.3d 596, 610 (Tex. App.—San Antonio 2018, pet. denied)
- Bentley v. Bunton, 94 S.W.3d 561, 596 (Tex. 2002)
- Huckabee v. Time Warner Entm't Co., 19 S.W.3d 413, 427 (Tex. 2000)
- Brady v. Klentzman, 515 S.W.3d 878, 884 (Tex. 2017)
- Moore v. Reed, No. 14-20-00463-CV, 2022 WL 1180116, at *2 (Tex. App.—Houston [14th Dist.] Apr. 21, 2022, no pet.)
- Kadow v. Grauerholz, No. 02-20-00044-CV, 2021 WL 733302, at *3 (Tex. App.—Fort Worth Feb. 25, 2021, no pet.)
- Crews v. Galvan, No. 13-19-00110-CV, 2019 WL 5076516, at *2, *4–5 (Tex. App.—Corpus Christi–Edinburg Oct. 10, 2019, no pet.)
- Snead v. Redland Aggregates Ltd., 998 F.2d 1325, 1328, 1330 (5th Cir. 1993)
- Cox Broad. Corp. v. Cohn, 420 U.S. 469, 492, 494–95, 497–98 (1975)
- Miller v. Davis, 653 F. App'x 448, 460 (6th Cir. 2016)
- Quigley v. Rosenthal, 327 F.3d 1044, 1059–61 (10th Cir. 2003)
- Cox Media Grp., LLC v. Joselevitz, 524 S.W.3d 850, 865 (Tex. App.—Houston [14th Dist.] 2017, no pet.)