

SUPREME COURT OF TEXAS

Benjamin "B.J." Reynolds, Mark Mewshaw, Wes Hobbs and Terra Energy Partners, LLC v. Sanchez Oil and Gas Corporation

No. 21-0106, Supreme Court of Texas (November 19, 2021)

SUMMARY

Texas Supreme Court vacated and remanded a court of appeals decision regarding the 60-day deadline to file a motion to dismiss under the Texas Citizens Participation Act (TCPA). The court held that an amended or supplemental pleading asserts a "new legal action" triggering a new 60-day period if it adds new parties, alleges new essential facts supporting previously asserted claims, or asserts new legal claims or theories, even if not both new claims and new facts. The lower court's contrary standard—requiring both new claims and new factual allegations—conflicted with the court's recent holdings in **Montelongo v. Abrea** and **Kinder Morgan SACROC, LP v. Scurry County**.

CASE DETAILS

COURT	Supreme Court of Texas
JURISDICTION	Texas
DECIDED	November 19, 2021
DOCKET	21-0106
DISPOSITION	vacated
PROCEDURAL POSTURE	Petition for review granted; judgment of court of appeals vacated and remanded for reconsideration.
PRECEDENTIAL VALUE	Published
PARTIES	Benjamin "B.J." Reynolds, Mark Mewshaw, Wes Hobbs, and Terra Energy Partners, LLC v. Sanchez Oil and Gas Corporation, et al.

TOPICS

[civil procedure](#)[motions to dismiss](#)[appellate procedure](#)[interlocutory appeal](#)[statutory interpretation](#)

PRACTICE AREAS

[Civil Procedure](#)[Appellate Practice](#)[Litigation](#)

QUESTIONS PRESENTED

1. Whether the court of appeals correctly held that the plaintiffs' second amended petition did not assert a new legal action under the TCPA, in light of the Texas Supreme Court's decisions in *Montelongo v. Abrea and Kinder Morgan SACROC, LP v. Scurry County*.

HOLDINGS

1. The court of appeals' holding conflicts with *Montelongo*, which holds that either new claims or new factual allegations will assert a new legal action.

KEY QUOTATIONS

“Under the Texas Citizens Participation Act (TCPA), a party may move to dismiss certain “legal actions” within sixty days of being served.”

“We held last term that, to the extent an amended or supplemental pleading either (1) adds a new party or parties, (2) alleges new essential facts to support previously asserted claims, or (3) asserts new legal claims or theories involving different elements than the claims or theories previously asserted, the new pleading asserts a new legal action and triggers a new sixty-day period as to those new parties, facts, or claims.”

“an earlier petition sufficiently pleads a legal action “only if the petition gives fair notice of the claim involved.””

FACTUAL BACKGROUND

The plaintiffs filed a second amended petition in a lawsuit. The defendants moved to dismiss under the TCPA within 60 days of the amended petition. The court of appeals held that the amended petition did not assert a new legal action because it did not assert new claims based on new factual allegations. The Supreme Court found this holding conflicted with *Montelongo*, which held that either new claims or new factual allegations can trigger a new 60-day deadline.

PROCEDURAL HISTORY

The court of appeals held that the plaintiffs' second amended petition did not assert a new legal action under the TCPA, citing a standard that conflicts with the Texas Supreme Court's subsequent decision in *Montelongo*. The Supreme Court granted the petition for review, vacated the judgment, and remanded for reconsideration in light of *Montelongo* and *Kinder Morgan*.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remand the case for the court of appeals to reconsider its holding in light of *Montelongo* and *Kinder Morgan* and to reach the remaining issues as necessary to dispose of this interlocutory appeal.

CASES CITED

- Montelongo v. Abrea, 622 S.W.3d 290 (Tex. 2021)
- Kinder Morgan SACROC, LP v. Scurry County, 622 S.W.3d 835 (Tex. 2021)
- 617 S.W.3d 30 (Tex. App.—Houston [1st Dist.] 2020)

OPINION

PER CURIAM.

Supreme Court of Texas ===== No. 21-0106 ===== Benjamin “B.J.” Reynolds, Mark Mewshaw, Wes Hobbs, and Terra Energy Partners, LLC, Petitioners, v. Sanchez Oil and Gas Corporation, et al., Respondents
 ===== On Petition for Review from
 the Court of Appeals for the First District of Texas
 ===== PER CURIAM Under the Texas Citizens Participation Act (TCPA), a party may move to dismiss certain “legal actions” within sixty days of being served.

TEX. CIV. PRAC. & REM. CODE § 27.003(b). We held last term that, to the extent an amended or supplemental pleading either (1) adds a new party or parties, (2) alleges new essential facts to support previously asserted claims, or (3) asserts new legal claims or theories involving different elements than the claims or theories previously asserted, the new pleading asserts a new legal action and triggers a new sixty-day period as to those new parties, facts, or claims.

Montelongo v. Abrea, 622 S.W.3d 290, 293-94 (Tex. 2021). The same day we issued Montelongo, we also reaffirmed that an earlier petition sufficiently pleads a legal action “only if the petition gives fair notice of the claim involved.” Kinder Morgan SACROC, LP v. Scurry County, 622 S.W.3d 835, 849 (Tex. 2021).

In a decision issued before we decided Montelongo and Kinder Morgan, the court of appeals held in this case that the plaintiffs’ second amended petition did not assert a new legal action under the TCPA because amended petitions only assert new legal actions if they assert “new claims based upon new factual allegations.” 617 S.W.3d 30, 42 (Tex. App.—Houston [1st Dist.]

2020) (citations omitted). This holding conflicts with our decision in Montelongo that either new claims or new factual allegations will assert a new legal action to which a new sixty- day deadline applies. 622 S.W.3d at 293.

We believe the court of appeals should have the opportunity to reconsider this case in light of our holdings in Montelongo and Kinder Morgan. Therefore, without hearing oral argument, see TEX. R. APP. P. 59.1, we grant the petition for review, vacate the judgment below, and remand the case for the court of appeals to reconsider its holding in light of Montelongo and Kinder Morgan and to reach the remaining issues as necessary to dispose of this interlocutory appeal.

See TEX. R. APP. P. 60.2(f). OPINION DELIVERED: November 19, 2021 2

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