

COURT OF APPEALS OF TEXAS, THIRD DISTRICT, AT AUSTIN

Martin Lara, Sr.; Martin Lara, Jr.; and Coast to Coast Insurance Services, LLC v. Streamline Insurance Services, LLC; and Streamline Insurance Services, Inc.

Lara v. Streamline · No. 03-19-00474-CV · Decided December 31, 2020

SUMMARY

On rehearing, the Texas Court of Appeals, Third District, withdrew and substituted its prior opinion concerning a Texas Citizens Participation Act motion to dismiss claims for knowing participation in breach of fiduciary duty and tortious interference with employment contracts. The court held that the commercial-speech exemption applied to certain claims against Coast to Coast Insurance Services, LLC involving communications with actual or potential insurance customers, but did not apply to claims against the individual defendants or claims concerning procurement of office space. The court also declined to consider an unpreserved argument that the Covenants Not to Compete Act preempted the TCPA.

CASE DETAILS

COURT	Court of Appeals of Texas, Third District, at Austin
WRITING FOR THE COURT	Gisela D. Triana; Chief Justice Rose; Justice Triana; Justice Smith
JURISDICTION	Texas
DECIDED	December 31, 2020
DOCKET	03-19-00474-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appellants appealed the denial of their motion to dismiss Streamline's claims under the Texas Citizens Participation Act.
STANDARD OF REVIEW	The court reviewed de novo whether each party carried its assigned burden under the TCPA.
PRECEDENTIAL VALUE	Published memorandum opinion; the source does not provide a reporter citation or additional precedential-status explanation.
PARTIES	Martin Lara, Sr., Martin Lara, Jr., Coast to Coast Insurance Services, LLC v. Streamline Insurance Services, LLC, Streamline Insurance Services, Inc.

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Streamline's claims were based on, related to, or in response to appellants' exercise of the TCPA-protected right of association.
2. Whether the TCPA's commercial-speech exemption applied to Streamline's claims against Coast to Coast and the Laras.
3. Whether Streamline preserved its argument that the Covenants Not to Compete Act preempted the TCPA.
4. Whether Streamline established by clear and specific evidence a prima facie case for knowing participation in breach of fiduciary duty.
5. Whether Streamline established by clear and specific evidence a prima facie case for tortious interference with contract.
6. Whether appellants established the affirmative defense of justification by a preponderance of the evidence.

HOLDINGS

1. Streamline's allegations that appellants communicated with Molina and Martinez while pursuing a competing insurance business implicated appellants' exercise of the TCPA-defined right of association.
2. The commercial-speech exemption applied to Streamline's claims against Coast to Coast to the extent those claims were based on communications by Molina and Coast to Coast's employee Martinez with actual or potential customers to secure Coast to Coast insurance sales.
3. The commercial-speech exemption did not apply to Coast to Coast's claim-related conduct concerning Molina's assistance in procuring New Mexico office space because that conduct did not involve communications with actual or prospective customers.
4. The commercial-speech exemption did not apply to Streamline's claims against Lara, Sr. and Lara, Jr. individually.
5. Streamline waived its argument that the Covenants Not to Compete Act preempted the TCPA because it did not present that argument to the district court with respect to appellants or their claims.
6. Streamline failed to establish by clear and specific evidence a prima facie case that the Laras knowingly participated in any alleged breach by Molina, or that Coast to Coast knowingly participated in the alleged breach involving procurement of New Mexico office space.
7. Streamline failed to establish by clear and specific evidence a prima facie case for tortious interference against the Laras individually. The claim against Coast to Coast remained exempt from TCPA dismissal.

to the extent it was based on customer-solicitation communications covered by the commercial-speech exemption.

KEY QUOTATIONS

“Reviewing a TCPA motion to dismiss requires a three-step analysis.” (at 3)

“mere notice pleading—that is, general allegations that merely recite the elements of a cause of action—will not suffice. Instead, a plaintiff must provide enough detail to show the factual basis for its claim.” (at 14)

FACTUAL BACKGROUND

Streamline employed Rafael Molina as an insurance agent and branch manager and Laura Martinez as an insurance agent. After Molina and Martinez left Streamline, Coast to Coast was formed by Martin Lara, Sr. and Martin Lara, Jr.; Streamline alleged that the defendants diverted customers, used confidential information, recruited Martinez, and interfered with employment agreements. Streamline also alleged that Molina helped Coast to Coast procure office space in New Mexico and that Coast to Coast and the Laras knowingly participated in Molina's breach of fiduciary duty.

PROCEDURAL HISTORY

Streamline sued the Laras and Coast to Coast for knowing participation in breach of fiduciary duty and tortious interference with employment contracts. The district court permitted discovery under the TCPA and denied appellants' motion to dismiss. On rehearing, the court withdrew its prior opinion and judgment, affirmed in part, reversed and rendered in part, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court remanded for further proceedings consistent with the opinion. It rendered judgment dismissing Streamline's claims against the Laras for knowing participation in breach of fiduciary duty and tortious interference, and dismissing Coast to Coast's knowing-participation claim to the extent based on procuring New Mexico office space. The denial of dismissal was affirmed as to the remaining Coast to Coast claims based on customer-solicitation communications.

CASES CITED

- Youngkin v. Hines, 546 S.W.3d 675, 679 (Tex. 2018)
- In re Lipsky, 460 S.W.3d 579, 586-87, 590-91 (Tex. 2015) (orig. proceeding)
- Morrison v. Profanchik, 578 S.W.3d 676, 680 (Tex. App.—Austin 2019, no pet.)
- State ex rel. Best v. Harper, 562 S.W.3d 1, 11 (Tex. 2018)
- Long Canyon Phase II & III Homeowners Ass'n v. Cashion, 517 S.W.3d 212, 217 (Tex. App.—Austin 2017, no pet.)

- Hersh v. Tatum, 526 S.W.3d 462, 467 (Tex. 2017)
- Elite Auto Body, LLC v. Autocraft Bodywerks, Inc., 520 S.W.3d 191, 205-06 & n.75 (Tex. App.—Austin 2017, pet. dism'd)
- Castleman v. Internet Money Ltd., 546 S.W.3d 684, 688, 690-91 (Tex. 2018)
- RigUp, Inc. v. Sierra Hamilton, LLC, No. 03-19-00399-CV, 2020 WL 4188028, at *5-6 (Tex. App.—Austin July 16, 2020, no pet. h.)
- Grant v. Pivot Tech. Sols., Ltd., 556 S.W.3d 865, 887-91 (Tex. App.—Austin 2018, pet. denied)
- Toth v. Sears Home Improvement Prods., Inc., 557 S.W.3d 142, 153 (Tex. App.—Houston [14th Dist.] 2018, no pet.)
- Serafine v. Blunt, 466 S.W.3d 352, 369 n.28 (Tex. App.—Austin 2015, no pet.) (Pemberton, J., concurring)
- Abatecola v. 2 Savages Concrete Pumping, LLC, No. 14-17-00678-CV, 2018 WL 3118601, at *9 (Tex. App.—Houston [14th Dist.] June 26, 2018, pet. denied) (mem. op.)
- Greene v. Farmers Ins. Exch., 446 S.W.3d 761, 764 n.4 (Tex. 2014)
- Entergy Gulf States, Inc. v. Public Util. Comm'n, 173 S.W.3d 199, 210 (Tex. App.—Austin 2005, pet. denied)
- Gorman v. Life Ins. Co. of N. Am., 811 S.W.2d 542, 545 (Tex. 1991)
- Kinzbach Tool Co. v. Corbett-Wallace Corp., 160 S.W.2d 509, 514 (Tex. 1942)
- Cox Tex. Newspapers, L.P. v. Wootten, 59 S.W.3d 717, 720-21 (Tex. App.—Austin 2001, pet. denied)
- Meadows v. Hartford Life Ins., 492 F.3d 634, 639 (5th Cir. 2007)
- Community Health Sys. Prof'l Servs. Corp. v. Hansen, 525 S.W.3d 671, 691 (Tex. 2017)
- Butnaru v. Ford Motor Co., 84 S.W.3d 198, 207 (Tex. 2002)
- Ferrara v. Nutt, 555 S.W.3d 227, 243 (Tex. App.—Houston [1st Dist.] 2018, no pet.)
- Greenville Automatic Gas Co. v. Automatic Propane Gas & Supply, LLC, 465 S.W.3d 778, 786-87 (Tex. App.—Dallas 2015, no pet.)