

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

James Clifford Walker v. Frederick Lunenberg and Melody
Lunenberg

No. 01-21-00539-CV (Tex. App.—Houston [1st Dist.] Oct. 31, 2023) · No. No. 01-21-00539-CV · Decided
October 31, 2023

SUMMARY

The Texas First Court of Appeals affirmed the denial by operation of law of James Clifford Walker’s motion to dismiss under the Texas Citizens Participation Act. The court held that the Lunenbergs’ claims for declaratory relief and judicial foreclosure were based on Walker’s ownership interest in the property and the alleged breach of an amended contract, not on his filing of a warranty deed in the county property records. Because Walker failed to show that the claims were based on or in response to an exercise of his right to petition, the TCPA did not apply.

CASE DETAILS

COURT	Court of Appeals for the First District of Texas
WRITING FOR THE COURT	Per Curiam; Chief Justice Adams; Justice Hightower; Justice Countiss
JURISDICTION	Texas
DECIDED	October 31, 2023
DOCKET	No. 01-21-00539-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal from the trial court's denial by operation of law of a motion to dismiss under the Texas Citizens Participation Act.
STANDARD OF REVIEW	De novo review applies to a TCPA motion to dismiss and to the statutory-interpretation question whether the TCPA applies. The court considers the pleadings, evidence permissible under Texas Rule of Civil Procedure 166a, and supporting and opposing affidavits, viewing the pleadings and evidence in the light most favorable to the nonmovant.
PRECEDENTIAL VALUE	published
PARTIES	James Clifford Walker v. Frederick Lunenberg, Melody Lunenberg

TOPICS

motions to dismiss

interlocutory appeal

statutory interpretation

standard of review

contracts

PRACTICE AREAS

civil procedure

appellate procedure

real estate

contracts

statutory interpretation

QUESTIONS PRESENTED

1. Whether the Lunenbergs' claims for declaratory judgment and judicial foreclosure against Walker were based on or filed in response to Walker's exercise of the right to petition through recording a warranty deed, such that the TCPA applied and required dismissal.

HOLDINGS

1. The TCPA did not apply because the Lunenbergs' claims were not based on or in response to Walker's filing of the warranty deed or another exercise of the right to petition.
2. The court assumed without deciding that filing the warranty deed could qualify as a communication constituting an exercise of the right to petition, but held that this assumption did not establish TCPA coverage because the claims were not based on or in response to that filing.

KEY QUOTATIONS

"We conclude that the Lunenbergs' suit was not based on or filed in response to Walker's exercise of his right to petition but was filed because of his ownership interest in the property that was the subject of their suit."
(1)

"Thus, we conclude that the Lunenbergs' claims against Walker were not based on or in response to any communication in the warranty deed, but rather, the claims were based on or in response to Walker's ownership of the Property at the center of this dispute." (10-11)

"While the warranty deed might be a communication relevant to these claims as evidence to resolve the Lunenbergs' suit for declaratory judgment and suit for judicial foreclosure, neither the warranty deed itself nor Walker's action of filing it is part of any claim asserted against Walker by the Lunenbergs." (12-13)

FACTUAL BACKGROUND

The Lunenbergs sold property to Gilberto Jaimez and Rosvella Flores under agreements that included a wrap-around note and related instruments, later amending the agreement to preserve a \$130,000 balance. After Jaimez and Flores allegedly stopped making payments, the Lunenbergs sued and filed a lis pendens. Walker purchased the property after the suit and lis pendens were filed, and his warranty deed was recorded later; the Lunenbergs then added him as a defendant and sought declaratory relief and judicial foreclosure based on his ownership interest and the underlying contractual obligations.

PROCEDURAL HISTORY

The Lunenbergs sued third parties concerning their contractual and property rights in real estate and later amended their pleadings to add Walker after learning that he had purchased the property. Walker moved to

dismiss under the TCPA, asserting that the claims were based on or in response to his recording of a warranty deed, which he characterized as an exercise of his right to petition. The trial court denied the motion by operation of law, and Walker brought an interlocutory appeal. The court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- McLane Champions, LLC v. Houston Baseball Partners LLC, 671 S.W.3d 907, 913-14 (Tex. 2023)
- Landry's, Inc. v. Animal Legal Def. Fund, 631 S.W.3d 40, 45-46 (Tex. 2021)
- Hersh v. Tatum, 526 S.W.3d 462, 467 (Tex. 2017)
- Kassab v. Pohl, 612 S.W.3d 571, 577 (Tex. App.—Houston [1st Dist.] 2020, pet. denied)
- USA Lending Grp., Inc. v. Winstead PC, 669 S.W.3d 195, 200 (Tex. 2023)
- S&S Emergency Training Solutions, Inc. D/B/A Emergency Medical Training Services v. Sheila Elliott, S & S Emergency Training Sols., Inc. v. Elliott, 564 S.W.3d 843, 847 (Tex. 2018)
- ML Dev, LP v. Ross Dress for Less, Inc., 649 S.W.3d 623, 627-29 (Tex. App.—Houston [1st Dist.] 2022, pet. denied)
- State ex rel. Best v. Harper, 562 S.W.3d 1, 1 (Tex. 2018)
- Cweren v. Eureka Multifamily Grp., L.P., No. 01-21-00470-CV, 2023 WL 2977755, at *14 (Tex. App.—Houston [1st Dist.] Apr. 18, 2023, no pet.) (mem. op.)
- Ernst & Young, LLP v. Ryan, LLC, No. 01-21-00603-CV, 2023 WL 4239350, at *8 (Tex. App.—Houston [1st Dist.] Jun. 29, 2023, pet. filed) (mem. op.)
- Newstream Roanoke 6.125, LLC v. Shore, No. 02-22-00506-CV, 2023 WL 5615871, at *4 (Tex. App.—Fort Worth Aug. 31, 2023, no pet.) (mem. op.)
- Apache Corp. v. Apollo Expl., LLC, No. 11-21-00295-CV, 2023 WL 3511262, at *3-5 (Tex. App.—Eastland May 18, 2023, no pet.) (mem. op.)
- Hanna v. Williams, No. 03-22-00254-CV, 2023 WL 5474305, at *5 (Tex. App.—Austin Aug. 24, 2023, pet. filed)
- Clinical Pathology Labs., Inc. v. Polo, 632 S.W.3d 35, 45-46 (Tex. App.—El Paso 2020, pet. denied)
- Newstream Hotels & Resorts, LLC v. Abdou, No. 02-21-00343-CV, 2022 WL 1496537, at *2 (Tex. App.—Fort Worth May 12, 2022, pet. denied) (mem. op.)