

AFFIRM; and Opinion Filed August 28, 2018.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-17-00696-CV

**KENNETH W. MORRISON AND STONECOAT OF TEXAS, LLC, Appellants
V.
PROCAL STONE DESIGN, LLC, Appellee**

**On Appeal from the 296th Judicial District Court
Collin County, Texas
Trial Court Cause No. 296-05415-2016**

MEMORANDUM OPINION

Before Justices Lang, Brown, and Whitehill
Opinion by Justice Brown

Appellee ProCal Stone Design, LLC sued appellants Kenneth W. Morrison and Morrison's company StoneCoat of Texas, LLC but soon nonsuited all its claims. Appellants appeal the trial court's order denying their motion seeking damages and attorney's fees and costs incurred in defending the litigation. We affirm.

ProCal and StoneCoat are competitors in the business of spray-on limestone. ProCal sued appellants for defamation, business disparagement, and deceptive trade practices. It alleged appellants were responsible for fake online reviews of ProCal. ProCal also sought a temporary restraining order and injunctive relief to prevent appellants from publishing defamatory statements about it. Thirty-three days later, ProCal filed a notice of nonsuit without prejudice in which indicated it was going to refile its claims in Dallas County. Appellants then filed a "Motion for

Damages, Costs, and Attorneys Fees.” Appellants alleged that ProCal’s claims and requests for a restraining order and injunctive relief were based upon appellants’ rights of free speech and association. They asserted that under chapter 27 of civil practice and remedies code, they were entitled to court costs, attorney’s fees incurred in defending against the lawsuit, and sanctions. In addition, appellants asserted that ProCal’s claims were groundless and brought in bad faith and that they were entitled to damages, court costs, and attorney’s fees pursuant to chapters 9 and 10 of the civil practice and remedies code and rule of civil procedure 13.

ProCal filed a written response opposing appellants’ motion. ProCal argued the trial court should deny the motion for the following reasons: (1) appellants’ motion was untimely because it was filed after ProCal’s notice of nonsuit; (2) appellants cannot invoke chapter 27 because the commercial speech exemption applies; (3) appellants cannot invoke chapter 27 because the right of free speech does not protect defamatory statements; (4) appellants’ motion contains only conclusory, unsupported assertions; (5) ProCal met its burden to establish a prima facie case of defamation, business disparagement, and deceptive trade practices; (6) because ProCal established a prima facie case, appellants’ affirmative defenses are irrelevant; and (7) appellants’ conclusory rule 13 and chapter 9 and 10 arguments are frivolous, because ProCal’s claims are not frivolous. The trial court denied appellants’ motion without specifying its reasons for doing so.

In two issues, appellants contend the trial court erred in denying their motion. Appellants’ first issue addresses its request for sanctions under rule 13 and chapters 9 and 10 of the civil practice and remedies code. They assert ProCal’s pleadings were groundless because ProCal has no evidence appellants made the allegedly defamatory statements. Appellants’ second issue addresses its request for sanctions under chapter 27. They contend ProCal failed to establish a prima facie case for defamation and that the commercial speech exemption does not apply.

Appellants' brief wholly fails to address ProCal's contention that appellants' motion was untimely because it was filed after the notice of nonsuit. ProCal's argument, if correct, would be grounds on which the trial court could have denied appellants' motion in its entirety. Generally, an appellant must attack all independent bases or grounds that fully support an adverse ruling or judgment. *The Shops at Legacy (Inland) Ltd. P'ship v. Fine Autographs & Memorabilia Retail Stores, Inc.*, No. 05-14-00889-CV, 2015 WL 2201567, at *2 (Tex. App.—Dallas May 8, 2015, pet. denied) (mem. op.). This proposition is based on the understanding that if an independent ground fully supports the complained-of ruling or judgment, but the appellant assigns no error to that independent ground, we must accept the validity of that unchallenged independent ground. *Id.* As a result, any error in the grounds challenged on appeal is harmless because the unchallenged ground fully supports the ruling or judgment. *Id.* An appellant who, as in this case, complains on appeal of the denial of its motion must challenge all grounds on which the trial court could have based its ruling. *See RSL Funding, LLC v. Pippins*, 499 S.W.3d 423, 428, 434 (Tex. 2016) (per curiam) (affirming denial of appellant's motion to stay litigation where, although supreme court agreed appellant had not waived right to arbitrate, appellant had not challenged alternative basis on which trial court could have denied motion to stay); *Petroleum Workers Union of the Republic of Mex. v. Gomez*, 503 S.W.3d 9, 24 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (overruling complaint about denial of motions for summary judgment and JNOV where appellant did not address in its brief most of grounds appellees raised for denying motions); *see also St. John Missionary Baptist Church v. Flakes*, 547 S.W.3d 311, 314 (Tex. App.—Dallas 2018, pet. filed). Because appellants have failed to raise an issue addressing the timeliness of their motion, a possible basis for the trial court's denial of the motion, we must affirm the trial court's order.¹ *See RSL Funding*, 499 S.W.3d at 434. We overrule appellants' issues.

¹ We express no opinion on the merits of the unchallenged ground.

We affirm the trial court's order.

/Ada Brown/
ADA BROWN
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

KENNETH W. MORRISON AND
STONECOAT OF TEXAS, LLC,
Appellants

No. 05-17-00696-CV V.

PROCAL STONE DESIGN, LLC,
Appellee

On Appeal from the 296th Judicial District
Court, Collin County, Texas
Trial Court Cause No. 296-05415-2016.
Opinion delivered by Justice Brown,
Justices Lang and Whitehill participating.

In accordance with this Court's opinion of this date, the trial court's May 25, 2017 order is **AFFIRMED**.

It is **ORDERED** that appellee PROCAL STONE DESIGN, LLC recover its costs of this appeal from appellants KENNETH W. MORRISON AND STONECOAT OF TEXAS, LLC.

Judgment entered this 28th day of August, 2018.