

Dismiss; Opinion Filed December 20, 2019



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

---

No. 05-19-01411-CV

---

**TABLETOP MEDIA, LLC D/B/A ZIOSK AND ZIOSK PAYROLL, LLC, Appellants**

**V.**

**E LA CARTE, INC. D/B/A PRESTO, GREG YODER, JAMES WYBORNY, AND  
NATHAN SALYER, Appellees**

---

**On Appeal from the 191st Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-19-02256**

---

**MEMORANDUM OPINION**

Before Justices Myers, Schenck, and Carlyle  
Opinion by Justice Schenck

We questioned our jurisdiction over this appeal from the trial court's order partially granting a motion to dismiss under the Texas Citizens Participation Act (TCPA) as it appeared the interlocutory order was not appealable. *See* TEX. CIV. PRAC. REM. CODE § 51.014(a)(12) (allowing interlocutory appeal of order *denying* motion to dismiss under TCPA); *Tex. A&M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 840 (Tex. 2007) (noting interlocutory orders are appealable only if allowed by statute); *Schlumberger Ltd. v. Rutherford*, 472 S.W.3d 881, 891 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (dismissing appeal from partial grant of TCPA motion to dismiss for want of jurisdiction). Although we directed appellants to file a letter brief addressing our concern and cautioned them that failure to comply by December 5, 2019 could result in dismissal of the appeal

without further notice, they have not complied. Accordingly, because the challenged order is not appealable, we dismiss the appeal and all pending motions for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a); *Schlumberger*, 472 S.W.3d at 891.

/David J. Schenck/  
DAVID J. SCHENCK  
JUSTICE

191411F.P05



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

**JUDGMENT**

TABLETOP MEDIA, LLC D/B/A ZIOSK  
AND ZIOSK PAYROLL, LLC, Appellant

No. 05-19-01411-CV      V.

E LA CARTE, INC. D/B/A PRESTO,  
GREG YODER, JAMES WYBORNY,  
AND NATHAN SALYER, Appellees

On Appeal from the 191st Judicial District  
Court, Dallas County, Texas  
Trial Court Cause No. DC-19-02256.  
Opinion delivered by Justice Schenck,  
Justices Myers and Carlyle participating.

In accordance with this Court's opinion of this date, we **DISMISS** the appeal.

We **ORDER** that appellees E La Carte, Inc. d/b/a Presto, Greg Yoder, James Wyborny, and Nathan Salyer recover their costs, if any, of this appeal from appellants Tabletop Media, LLC d/b/a Ziosk and Ziosk Payroll, LLC.

Judgment entered this 20<sup>th</sup> day of December, 2019.