

Opinion issued September 17, 2020



In The
Court of Appeals
For The
First District of Texas

NO. 01-18-01143-CV

**LANCE CHRISTOPHER KASSAB, LANCE CHRISTOPHER KASSAB,
P.C. D/B/A THE KASSAB LAW FIRM, TINA NICHOLSON, BAKER
NICHOLSON, LLP D/B/A BAKER NICHOLSON LAW FIRM, SCOTT
FAVRE, SCOTT M. FAVRE PUBLIC ADJUSTER, LLC, AND PRECISION
MARKETING GROUP, LLP, Appellants**

V.

**MICHAEL A. POHL AND LAW OFFICE OF MICHAEL A. POHL, PLLC,
Appellees**

**On Appeal from the 189th District Court
Harris County, Texas
Trial Court Case No. 2018-58419**

OPINION

Michael A. Pohl and his law firm, Law Office of Michael A. Pohl, PLLC, sued four groups of individuals and entities for allegedly conspiring to steal Pohl's client lists and other property to pursue barratry claims against him. Three of the four groups filed motions to dismiss under the Texas Citizens Participation Act.¹ They are (1) Lance Christopher Kassab and Lance Christopher Kassab, P.C. d/b/a The Kassab Law firm; (2) Tina Nicholson and Baker Nicholson, LLP d/b/a Baker Nicholson Law Firm; and (3) Scott Favre, Scott M. Favre Public Adjuster, LLC, and Precision Marketing Group, LLP. Their three TCPA motions were overruled by operation of law. The movants brought this interlocutory appeal of the denial of their motions.

We affirm.

Background

This is the fourth wave of litigation involving these parties. We will briefly discuss the past litigation that led to this suit as it is relevant to the issues being decided now.

BP Horizon litigation

The BP Horizon litigation began shortly after the BP Deepwater Horizon oil spill in the Gulf of Mexico in 2010. Michael Pohl, who is a Texas attorney, was

¹ See TEX. CIV. PRAC. & REM. CODE §§ 27.001-.011. This suit involved the pre-September 1, 2019 version of the TCPA.

interested in representing Mississippi residents in litigation against BP Petroleum. He allegedly entered into a business relationship with three men in Mississippi, agreeing to pay them a finder's fee for clients they solicited and a percentage of attorney's fees recovered after the solicited clients' cases settled. There is evidence that the three men contacted people and businesses in Mississippi to determine if they might have a claim against BP, encouraged those people to retain Pohl as their attorney, and were paid over \$5 million in "barratry pass-through money" for their services. There are contrary assertions that the services were "marketing" in nature. The three men are Scott Walker, Steve Seymour, and Kirk Ladner. They are alleged to have performed these actions individually and as part of an entity, Precision Marketing Group, LLC (PMG).

Pohl represented hundreds of plaintiffs in suits against BP Petroleum. A list of his actual and prospective clients was maintained by PMG for its business dealings with Pohl.

The Mississippi federal litigation

The Mississippi federal litigation began in 2014. Walker, Seymour, and Ladner—individually and as PMG—sued Pohl, Pohl's law firm, and other Texas attorneys and their law firms in federal court in Mississippi. They claimed they provided "marketing services" for Pohl and brought in "millions of dollars of claims each week" to Pohl's firm. They asserted that Pohl did not pay them the agreed fee

for their services. They presented their claims as causes of action for fraud, unjust enrichment, and breach of an agreement to pay for services.

Pohl moved to dismiss the claims against him, arguing that the alleged contract was illegal and unenforceable because, under Mississippi law, it is illegal to accept money to begin or prosecute litigation. In other words, PMG engaged in illegal solicitation on Pohl's behalf so the plaintiffs cannot enforce the contract to pay for those services.

The federal court denied Pohl's dismissal motion in 2016, concluding that the PMG affiliated plaintiffs never alleged they accepted money to begin or prosecute litigation in violation of Mississippi law. They alleged, instead, that they were owed money for public relations and marketing services. After that ruling, the parties settled all their pending claims against each other, as reflected in the court's sua sponte judgment of dismissal entered in April 2017.

The barratry litigation

The barratry litigation began in 2017 after Lance Kassab, a Texas attorney, was alerted to the Mississippi federal litigation by a Mississippi acquaintance. Kassab specializes in legal malpractice claims. After hearing about Pohl's client-solicitation activities in Mississippi, Kassab began researching the matter. He met with Scott Favre (who had bought PMG from Walker and Ladner) and with Tina Nicholson (Favre's and PMG's legal counsel). Favre informed Kassab that, when he

bought PMG, he acquired files related to Pohl. Favre transferred information from those PMG files to Kassab, including Pohl's client list. Kassab paid Favre. It is disputed whether the payment was for Pohl's client list or for Favre's expertise.

After getting Pohl's client list, Kassab prepared an advertisement letter. According to Kassab's affidavit, he obtained pre-approval from the State Bar of Texas for the advertisement letter before using it. After the advertisement letter was approved, he sent it to the people on the Pohl client list. The letter informed the recipients "that they may have been a victim of barratry" and may "be entitled to file civil claims against Pohl" under the Texas civil barratry statute.

Hundreds of Mississippi residents responded to Kassab's advertisement letter. More than 400 signed representation contracts with Kassab's firm to pursue barratry claims against Pohl. Kassab filed four barratry suits against Pohl in Harris County district courts, each with multiple named plaintiffs. The barratry litigation is ongoing.²

This suit

The fourth litigation in this series is this suit. Pohl sued Kassab, Favre, PMG, Nichols, and others in Harris County district court in 2018. He asserts four causes of action: (1) a conversion claim against all defendants, alleging they stole his property,

² Relying on the materials received during discovery in the barratry litigation, Kassab filed a grievance against Pohl with the State Bar of Texas. There is no indication in the record of the status of that grievance.

including his client list and contracts; (2) a theft-of-trade-secrets claim against all defendants, arguing that his client list and other stolen proprietary information are trade secrets; (3) a civil conspiracy claim against all defendants based on these same alleged acts of theft; and (4) a breach-of-contract claim against just Favre and PMG, alleging they breached the settlement agreement in the Mississippi federal litigation by assisting his former clients with their litigation against him.

Pohl's pleading alleges that Favre is the current managing member of PMG, that Pohl engaged PMG to provide "public relations services" and "to screen and liaise with Pohl's clients/prospective clients," and that, "[w]hile working for Pohl, [PMG] gained access to Pohl's confidential and proprietary information and property, includ[ing] trade secret materials, that included the identities of Pohl's clients/prospective clients as well as their detailed contact information . . . [and] actual attorney-client fee agreements . . . [and] other confidential communications between the clients/prospective clients and Pohl." Pohl contends the defendants "engaged in a scheme pursuant to which they illegally obtained, maintained, and used trade secrets and other confidential information and property belonging to Pohl." Specifically, Pohl alleges the defendants stole his client list and sold it to Kassab, who then used it to solicit clients to pursue barratry claims against Pohl.

Pohl's pleading also alleges that "Favre and Precision [PMG] executed a settlement agreement with Pohl" at the end of the Mississippi federal litigation in

which “they agreed to return to Pohl certain information in their and their counsel’s possession . . . [and] to permanently delete[] such electronically-stored information.” In the settlement agreement, according to Pohl, Favre and PMG also “warranted that they had not caused any suit or action to be filed against Pohl.”

Pohl’s suit seeks damages in excess of \$1 million.

The defendants answered. They grouped into three subsets, and each subset filed a TCPA motion to dismiss, alleging that Pohl filed his suit in retaliation for their disclosure of his alleged barratry activity. They argued that the TCPA applies because Pohl’s claims relate to their recognized statutory rights and that Pohl could not establish a prima facie case for his causes of action. Their motions sought dismissal of Pohl’s claims. The trial court held hearings on the motions to dismiss but did not rule. All three dismissal motions were overruled by operation of law. The movants have appealed.

Texas Citizens Participation Act

The movants sought dismissal of Pohl’s claims against them under the Texas Citizens Participation Act. *See* TEX. CIV. PRAC. & REM. CODE §§ 27.001–.011. The TCPA is found in Chapter 27 of the Civil Practice and Remedies Code, which is titled “Actions Involving the Exercise of Certain Constitutional Rights.” The TCPA’s purpose is to protect “citizens who petition or speak on matters of public concern from retaliatory lawsuits that seek to intimidate or silence them.” *In re*

Lipsky, 460 S.W.3d 579, 584 (Tex. 2015). It does so by creating a “set of procedural mechanisms through which a litigant may require, by motion, a threshold testing of the merits of legal proceedings or filings that are deemed to implicate the expressive interests protected by the statute, with the remedies of expedited dismissal, cost-shifting, and sanctions for any found wanting.” *Serafine v. Blunt*, 466 S.W.3d 352, 369 (Tex. App.—Austin 2015, no pet.) (Pemberton, J., concurring); *see* TEX. CIV. PRAC. & REM. CODE §§ 27.003–.005, .009.

A. TCPA’s dismissal provision and relevant statutory definitions

Section 27.003 of the TCPA provides that a party may move to dismiss a legal action that “is based on, relates to, or is in response to [that] party’s exercise of” one of three rights: free speech, petition, or association. *Id.* § 27.003(a). The Legislature statutorily defined the three sets of rights protected by TCPA summary-dismissal procedures. *Id.* § 27.001(2) (defining “exercise of the right of association” as “a communication between individuals who join together to collectively express, promote, pursue, or defend common interests”); § 27.001(3) (defining “exercise of the right of free speech” as “a communication made in connection with a matter of public concern”); § 27.001(4) (defining “exercise of the right to petition” as “a communication in or pertaining to” various specifically listed proceedings, including “a judicial proceeding,” as well as the more general category of “any other

communication that falls within the protection of the right to petition government under the Constitution of the United States or the constitution of this state”).

B. TCPA’s shifting burdens

When a movant seeks dismissal under the TCPA, the movant has the initial burden to show by a preponderance of the evidence that the nonmovant has asserted a “legal action” that is based on, relates to, or is in response to the movant’s exercise of one of the three rights delineated in the statute. *Id.* § 27.005(b). If the movant meets that burden, the burden shifts to the nonmovant.

The nonmovant has the burden to establish by clear and specific evidence a “prima facie case for each essential element of the claim in question.” *Id.* § 27.005(c). This generally “requires only the minimum quantum of evidence necessary to support a rational inference that the allegation of fact is true.” *In re E.I. DuPont de Nemours & Co.*, 136 S.W.3d 218, 223 (Tex. 2004) (orig. proceeding) (internal quotation marks and citation omitted). “Prima facie evidence is evidence that, until its effect is overcome by other evidence, will suffice as proof of a fact in issue.” *Rehak Creative Servs., Inc. v. Witt*, 404 S.W.3d 716, 726 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) (citation omitted) (disapproved of on other grounds, *In re Lipsky*, 460 S.W.3d at 587–88); *cf. Kerlin v. Arias*, 274 S.W.3d 666, 668 (Tex. 2008) (per curiam) (explaining that summary-judgment movant’s presentation of prima facie evidence of deed’s validity established right to summary

judgment unless nonmovants presented evidence raising fact issue related to deed's validity).

Dismissal may be required, despite the nonmovant's evidence proffered to meet his prima facie burden, if the movant establishes "by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim." *Id.* § 27.005(d).

C. Exemptions to applicability of TCPA dismissal procedures

A nonmovant plaintiff can avoid the TCPA's burden-shifting requirements by showing that one of the TCPA's several exemptions applies. *See* TEX. CIV. PRAC. & REM. CODE § 27.010. Among them is the commercial-speech exemption. *Id.* § 27.010(b).³ It provides that the TCPA does not apply to, and therefore is not a vehicle to achieve dismissal of, a legal action brought against a person "primarily engaged in the business of selling or leasing goods or services," if the statement or conduct connected to the exercise of one of the statutory rights "arises out of the sale or lease of goods, services . . . or a commercial transaction in which the intended audience is an actual or potential buyer or customer." TEX. CIV. PRAC. & REM. CODE § 27.010(b). The party asserting the commercial-speech exemption has the burden

³ Case law sometimes refers to the exemption as an exception. *See Bejarano v. Dorgan*, No. 03-19-00182-CV, 2019 WL 4458798, at *2 (Tex. App.—Austin Sept. 18, 2019, no pet.).

to prove that the exemption applies to the communications at issue. *Schmidt v. Crawford*, 584 S.W.3d 640, 652–53 (Tex. App.—Houston [1st Dist.] 2019, no pet.).

D. Standard of review

We review a trial court’s ruling on a TCPA motion to dismiss de novo. *Porter-Garcia v. Travis Law Firm, P.C.*, 564 S.W.3d 75, 83 (Tex. App.—Houston [1st Dist.] 2018, pet. denied). We consider the pleadings and evidence in the light favorable to the nonmovant. *Id.* at 84; *Dolcefino v. Cypress Creek EMS*, 540 S.W.3d 194, 199 (Tex. App.—Houston [1st Dist.] 2017, no pet.).

To the extent resolution of this appeal turns on construction of the TCPA, we review that de novo as well. *Lippincott v. Whisenhunt*, 462 S.W.3d 507, 509 (Tex. 2015). When construing the TCPA, as with any other statute, our objective is to give effect to the legislative intent, looking first to the statute’s plain language. *Id.* If that language is unambiguous, “we interpret the statute according to its plain meaning.” *Id.* Additionally, we construe the TCPA “liberally to effectuate its purpose and intent fully.” TEX. CIV. PRAC. & REM. CODE § 27.011(b); *see State ex rel. Best v. Harper*, 562 S.W.3d 1, 11 (Tex. 2018).

The Commercial-Speech Exemption Applies

The commercial-speech exemption provides that the TCPA does not apply to a suit against a defendant who is “primarily engaged in the business of selling or leasing goods or services, if the statement or conduct arises out of the sale or lease

of goods, services . . . or a commercial transaction in which the intended audience is an actual or potential buyer or customer.” TEX. CIV. PRAC. & REM. CODE § 27.010(b). The Texas Supreme Court has identified four elements to this exemption:

- (1) the defendant (TCPA movant) was primarily engaged in the business of selling or leasing goods or services;
- (2) the defendant made the statement or engaged in the conduct on which the plaintiff’s claim is based in its capacity as a seller or lessor of those goods and services;
- (3) the statement or conduct at issue arose out of a commercial transaction involving the kind of goods or services that the defendant provides; and
- (4) the intended audience of the statement or conduct were actual or potential customers of the defendant for the kind of goods or services the defendant provides.

Castleman v. Internet Money Ltd., 546 S.W.3d 684, 688 (Tex. 2018) (per curiam).

Pohl sued the three sets of movants for their role in the alleged theft and sale of his client information to Kassab that enabled Kassab to contact those clients to provide legal services in pursuit of barratry claims against Pohl. In our view, all four *Castleman* factors are met for each set of defendant-appellants. We begin with the Kassab defendants.

A. The Kassab defendants

Pohl’s petition alleges that Kassab bought Pohl’s client list from PMG so that Kassab could send advertisements to Pohl’s former clients and solicit them to become Kassab’s clients in barratry suits against Pohl.

Kassab and his firm are in the business of selling legal services. Other cases have recognized that attorney efforts to engage prospective clients and provide them with paid legal services meet the first element of the *Castleman* test. *See Miller Weisbrod, L.L.P. v. Llamas-Soforo*, 511 S.W.3d 181, 189 (Tex. App.—El Paso 2014, no pet.) (stating that “case law appears settled [that] lawyer advertising is commercial speech”) (internal quotation marks omitted); *see also NCDR, L.L.C. v. Mauze & Bagby, P.L.L.C.*, 745 F.3d 742, 754–55 (5th Cir. 2014) (applying Texas law).

According to Pohl’s allegations, the Kassab defendants arranged with the PMG defendants, with the help of the Nicholson attorney defendants, to obtain, maintain, and use Pohl’s client list and his other proprietary information for their profit. Kassab allegedly entered into a business transaction to purchase the client list and then sent advertisements to those on the list to offer his legal services to the potential clients. Thus, the claims against the Kassab defendants are based on their alleged statements and conduct in their capacity as sellers of legal services. *See Miller Weisbrod*, 511 S.W.3d at 191 (concluding that attorney advertisement to people who might have a medical malpractice claim against a specific physician identified in the advertisement was created “primarily to attract clients allegedly injured by [the identified physician]”); *NCDR*, 745 F.3d at 745–53 (applying Texas law, holding that attorneys who advertised about a national chain of dental clinics

being under government investigation and possibly engaging in unnecessary and harmful dental work on children were “primarily engaged in selling legal services to clients and that the ads offered those services to potential customers”).

Further, the alleged purchase of Pohl client list for those clients’ contact information, followed by the mailing of attorney advertisements to those individuals about specific types of claims they might be able to pursue against a specifically identified attorney, qualifies as statements or conduct that arose out of a commercial transaction involving the type of legal services Kassab provides. *See Miller Weisbrod*, 511 S.W.3d at 191 (concluding that attorneys’ speech “arose from the sale of their legal services to potential customers” reached through their attorney advertisements).

Kassab argues that Pohl’s claims do not arise out of his conduct because the alleged theft of the client list would have preceded the advertisements to Pohl’s former clients, who were Kassab’s potential clients. We do not agree that the alleged tortious acts can be divided in such a way to avoid the commercial-speech exemption. Kassab was sued for buying an allegedly stolen client list that identified people solicited by another attorney in the past and then targeting those same people to sue the other attorney. Pohl alleges a conspiracy to undertake this scheme.

The commercial-speech exemption applies to statements and conduct. Kassab’s conduct that is alleged to be tortious involved the alleged conspiracy to

steal, sell/buy, and use the client list for later client solicitation. We conclude Kassab's statements or conduct arose out of a commercial transaction involving the kind of goods or services Kassab provides. *See Robert B. James, DDS, Inc. v. Elkins*, 553 S.W.3d 596, 605 (Tex. App.—San Antonio 2018, pet. denied) (stating that courts of appeals have construed phrase “arising out of” in TCPA’s commercial-speech exemption broadly to include statements and conduct that are “ancillary to” a commercial transaction).

Finally, the intended audience of the Kassab defendants’ statement or conduct were individuals with potential legal claims who Kassab sought to represent in barratry suits against Pohl. These were Kassab’s potential clients to whom he offered the kind of legal services he provides. *See id.*

Thus, the commercial-speech exemption applies as to the claims against the Kassab defendants, leaving the TCPA summary-dismissal procedures unavailable to that subset of defendant/movants. *See Castleman*, 546 S.W.3d at 691 (under different facts, concluding that nonmovant’s statements did not arise out of his sale of goods or services because he was “not pursuing business for himself” when he made the statements).

B. The Nicholson defendants

Pohl’s petition alleges that Tina Nicholson and her law firm assisted PMG, as its counsel, in selling his client list to Kassab and then entered into a business

relationship with Kassab to assist in providing legal services to the identified clients for a shared fee.

Nicholson and her firm are in the business of selling legal services. Attorney efforts to engage prospective clients and provide them with paid legal services meet the first element of the *Castleman* test. *See Miller Weisbrod*, 511 S.W.3d at 189 (stating that “case law appears settled [that] lawyer advertising is commercial speech”) (internal quotation marks omitted).

According to Pohl’s allegations, the Nicholson defendants arranged with the PMG defendants to obtain, maintain, and use Pohl’s client list and his other proprietary information for their profit. Nicholson allegedly facilitated the sale to Kassab and became his co-counsel in pursuing legal claims against Pohl on behalf of Pohl’s former clients, for a legal fee. Thus, the claims against the Nicholson defendants are based on their alleged statements and conduct in their capacity as sellers of legal services. *See Miller Weisbrod*, 511 S.W.3d at 191; *NCDR*, 745 F.3d at 745–53; *cf. Toth v. Sears Home Improvement Prods., Inc.*, 557 S.W.3d 142, 154 (Tex. App.—Houston [14th Dist.] 2018, no pet.) (concluding that speech did not fall within commercial-speech exemption because nonmovant had not “proposed a commercial transaction” and did not make statements to secure business for himself).

The alleged facilitation of the sale of Pohl’s client list to Kassab as PMG’s counsel, followed by the creation of a business relationship with Kassab to become Kassab’s co-counsel and share in the representation of the identified potential clients for a shared fee, qualify as statements or conduct that arose out of a commercial transaction involving the type of legal services Nicholson provided. *See Miller Weisbrod*, 511 S.W.3d at 191.

Finally, the intended audience of the Nicholson defendants’ statement or conduct were, first, Kassab, and then Pohl’s former clients. Nicholson’s alleged involvement in selling the client list to Kassab and then using the client list to solicit shared clients meets this fourth requirement. The intended audience were actual or potential customers of Nicholson for the legal services she provides. *See id.*

Nicholson argues that Pohl’s allegations are not true and that Nicholson never became an “attorney of record” in the barratry suits Kassab brought against Pohl. Nicholson does not point to any record evidence in support of this position. And we view the pleadings and evidence in the light most favorable to the non-movant. *Dolcefino*, 540 S.W.3d at 199 (citing *Cheniere Energy, Inc. v. Lotfi*, 449 S.W.3d 210, 214 (Tex. App.—Houston [1st Dist.] 2014, no pet.)); *MediaOne, L.L.C. v. Henderson*, 592 S.W.3d 933, 939 (Tex. App.—Tyler 2019, pet. denied).

Nicholson seeks to segregate its alleged activities to argue that it did not make statements about its own legal services to potential buyers of those services when it

allegedly assisted PMG with the sale of the client list to Kassab. We do not agree that the alleged conspiracy scheme can be severed to avoid the commercial-speech exemption. Under Pohl's allegations, these parties conspired to place his client list in Kassab's hands so that Kassab could pursue barratry claims against Pohl. The Nicholson defendants' alleged conduct in the conspiracy touched on all aspects of the transfer and use of Pohl's client list to obtain legal clients for Kassab, including Nicholson's alleged role as Kassab's co-counsel in the barratry suits. *See Elkins*, 553 S.W.3d at 605 (noting broad reading of commercial-speech exemption phrase "arising out of" by courts of appeals).

Thus, the commercial-speech exemption applies as to the claims against the Nicholson defendants, leaving the TCPA summary-dismissal procedures unavailable to that subset of defendant/movants.

C. The PMG defendants

Pohl's petition alleges that PMG, now owned by Favre, stole his client list and sold it for a profit to Kassab.

According to Favre's affidavit, PMG's marketing lists contain the names of thousands of people who had been Pohl's clients or from whom Pohl solicited business. Favre averred that these lists have monetary value and constitute "one of Precision's most valuable assets." According to Favre, PMG likely would have the opportunity to sell the same client list to another buyer. This evidence meets the

requirement that PMG be primarily engaged in the business of selling goods—here, client lists.

According to Pohl’s allegations, the PMG defendants obtained, maintained, and used Pohl’s client list for their profit. PMG allegedly sold Pohl’s client list to Kassab for Kassab to generate potential clients. Thus, the claims against the PMG defendants are based on their alleged statements and conduct in their capacity as sellers of the identified goods. *See ETX Successor Tyler v. Pridgeon*, 570 S.W.3d 392, 398 (Tex. App.—Tyler 2019, no pet.).

The alleged sale of Pohl’s client list for a profit qualifies as conduct that arose out of a commercial transaction involving the type of goods PMG provides as a marketing entity. *See Woodhull Ventures 2015, L.P. v. Megatel Homes III, LLC*, No. 03-18-00504-CV, 2019 WL 3310509, at *3 (Tex. App.—Austin July 24, 2019, no pet.). Additionally, the intended audience of the PMG defendants’ statements or conduct was Kassab, who became a customer of PMG’s when Kassab allegedly bought the client list for his own use. The goods or services allegedly bought were the type of goods or services PMG provides.

The PMG defendants argue that, even if the commercial-speech exception applies to PMG, Pohl has identified no speech or conduct by Defendant Scott M. Favre P.A., L.L.C. or Defendant Scott Favre, individually—separate from the speech or conduct of PMG—that proposed a business transaction involving the sale of

goods or services to intended customers. In other words, the PMG defendants argue that Pohl failed to show why an exemption to the TCPA applies to each and every defendant/movant within the PMG group of defendants. But, in the same vein, the PMG defendants failed to argue why the TCPA would apply to each of them separately from the other two. At all times, when arguing for application of the TCPA, the PMG defendants assert that they, collectively, exercised their protected rights, thereby invoking the TCPA. Having chosen to rely on their collective activity to invoke the TCPA, they seek to burden Pohl with the added requirement of showing application of the exemption to each separately. The PMG defendants have provided no legal authority to support aggregate analysis for coming within the TCPA but segregation for purposes of applying the TCPA's listed exemptions. *See* TEX. R. APP. P. 38.1(i).

The commercial-speech exemption applies to the claims against the PMG defendants, leaving the TCPA summary-dismissal procedures unavailable to that subset of defendant/movants as well.

Conclusion

Because the commercial-speech exemption applies to all three groups of defendant-movants, we conclude there was no error in the denial of all three TCPA motions to dismiss. We have not analyzed and offer no view on the underlying claims in this suit. We hold merely that the TCPA summary-dismissal procedures

are not available to these defendant-movants based on the claims asserted against them.

We affirm the denial of the motions to dismiss and remand the suit to the trial court for additional proceedings.

Sarah Beth Landau
Justice

Panel consists of Chief Justice Radack and Justices Landau and Hightower.