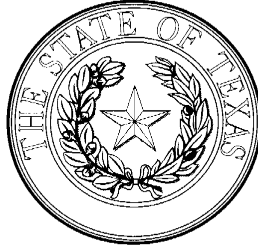
Opinion issued November 3, 2020



In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00305-CV

JETALL COMPANIES, INC., Appellant

V.

MIKE JOHANSON AND T. MICHAEL BALLASES, Appellees

On Appeal from the 333rd District Court
Harris County, Texas
Trial Court Case No. 2018-59629

MEMORANDUM OPINION

This appeal involves tort claims brought by a nonclient, appellant Jetall Companies, Inc. ("Jetall"), against two attorneys, appellees Mike Johanson and T. Michael Ballases, based on the attorneys' representation of their respective clients. On the attorneys' motions, the trial court dismissed Jetall's claims under the

Texas Citizens Participation Act ("TCPA") and entered a judgment awarding attorney's fees and sanctions against Jetall.[1] Jetall appealed, contending that (1) its legal action does not implicate the attorneys' exercise of their rights of free speech, association, or petition; (2) it presented clear and specific evidence of each essential element of its claims; (3) the attorneys failed to establish a valid defense; and (4) the trial court awarded excessive sanctions.

We affirm.

Background

In August 2018, Jetall sued attorneys Johanson and Ballases in connection with their negotiation and facilitation of the sale of Declaration Title, a title company co-owned by Todd Oakum and Renee Davy, to Rick Heil, a former employee of the title company. Jetall alleges that Johanson and Ballases conspired to and did tortiously interfere with an existing contract for the assignment of Oakum's and Davy's ownership interests in Declaration Title to Jetall.

More specifically, the sale of Declaration Title followed a 2014 lawsuit brought by Heil against Oakum and Davy (the "Heil Lawsuit"). As described by Jetall, the gist of the "litany of claims" asserted in the Heil Lawsuit was that "Oakum

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[1] *See* TEX. CIV. PRAC. & REM. CODE §§ 27.001–.011. There have been amendments to the TCPA, which became effective as of September 1, 2019. In this opinion, all citations to the TCPA refer to the pre-amendment version that was effective at the time that Jetall filed its suit.

and Davy orally promised to provide Heil with a 10% ownership in Declaration Title in exchange for his employment, but later failed to honor this oral agreement and, instead, wrongfully terminated Heil." A jury determined that Oakum and Davy were jointly and severally liable to Heil and awarded more than three million dollars in combined actual and exemplary damages. Johanson represented Heil in this litigation against Oakum and Davy, and Davy retained Ballases as her counsel during the relevant post-verdict phase of the litigation.[2]

Jetall alleges that, after the jury verdict, Oakum and Davy approached Ali Choudhri, President of Jetall, about their exposure in the Heil Lawsuit and asked Choudhri for assistance. Oakum and Davy knew Choudhri because Declaration Title was a tenant in a building owned by Jetall. Jetall further alleges that Choudhri agreed to assist Oakum and Davy by having Jetall purchase Declaration Title and take on the potential judgment in the Heil Lawsuit.

To that end, on June 25, 2016, Oakum executed a Memorandum of Understanding (the "Oakum Memorandum") in which he (1) represented that he had full authority to make an agreement on his own and Davy's behalf, (2) assigned "all rights, claims or causes of action" related to or arising out of the Heil Lawsuit and "up to 100 percent of his and [Davy's] interest in Declaration Title" to Jetall, and (3)

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[2] Initially, attorney Alan Daughtry represented both Oakum and Davy in the Heil Lawsuit. After Davy retained Ballases as her separate counsel in the post-verdict phase of litigation, Daughtry continued to represent Oakum.

agreed that "Jetall shall have complete authority to negotiate any agreements regarding the [Heil Lawsuit] . . . in its sole and absolute discretion[.]" Four days later, Ballases signed a document—simply entitled "Agreement"—on Davy's behalf (the "Davy Agreement"), purporting to grant "one hundred percent (100%) of [Davy's] ownership interest and membership interest" in Declaration Title to Jetall. Jetall characterizes the Oakum Memorandum and the Davy Agreement as binding, enforceable assignments of all ownership interests in Declaration Title.

Jetall further alleges that, despite its earlier acquisition of Declaration Title, Johanson and Ballases solicited, negotiated, and finalized a second transaction whereby Oakum and Davy purported to assign their interests in Declaration Title to Heil as part of the settlement of the Heil Lawsuit. In a sworn affidavit, Johanson acknowledged that he and Heil initially met in person with Choudhri to discuss a potential resolution of the Heil Lawsuit. But Johanson received conflicting information from Ballases advising that Davy had not agreed to convey her interests in Declaration Title to Jetall and instead was interested in reaching a settlement of the Heil Lawsuit. Oakum's attorney, Alan Daughtry, similarly advised Johanson that the Oakum Memorandum was "void and unenforceable." Johanson ultimately concluded that Jetall had not entered into enforceable agreements with either Davy or Oakum to acquire ownership of their respective interests in Declaration Title.

On August 2, 2016, Heil, Oakum, and Davy entered into an Assignment of Limited Liability Company Membership Interests (the "Settlement Agreement"). Another employee of Declaration Title, Julio Fernandez, also was a party to the Settlement Agreement, though he was not a party to any lawsuit. In the Settlement Agreement, Oakum and Davy agreed "to assign and transfer to [Heil and Fernandez] all of their limited liability company membership interest" in Declaration Title in exchange for Heil's promise to nonsuit the Heil Lawsuit.

After learning of the Settlement Agreement, Jetall initially sued Heil, Davy, Oakum, and Daughtry.[3] Jetall later sued Johanson and Ballases in this separate proceeding, alleging that "Johanson solicited and negotiated an agreement with Ballases for Davy to assign her interests in Declaration Title to Heil—interests that had already been assigned to Jetall." According to Jetall, Johanson's and Ballases's conduct—including "review[ing], revis[ing] and negotiat[ing]" the Settlement Agreement—constituted knowing, willful, and intentional interference with Jetall's acquisition of Declaration Title and rendered Johanson and Ballases liable to Jetall for tortious interference and civil conspiracy.

Johanson and Ballases both moved for dismissal of Jetall's claims under the TCPA, asserting that the claims were based on, related to, or were in response to the

[3] Jetall's lawsuit against Heil, Davy, Oakum, and Daughtry proceeded in Cause No. 2017-10832 in the 152nd District Court of Harris County, Texas, and is now on appeal in this Court in Case No. 01-20-00615-CV.

exercise of their rights to free speech, association, and petition. Johanson and Ballases argued that Jetall could not satisfy the TCPA's evidentiary threshold to avoid dismissal of the claims against them and, even if Jetall had such evidence, Johanson and Ballases had established more than one valid defense, including the defense of attorney immunity. The trial court granted the TCPA motions to dismiss. It also awarded Johanson $27,916.20 in attorney's fees and $55,832.40 in sanctions and Ballases $33,460.10 in attorney's fees and $66,920.20 in sanctions.

Dismissal under the TCPA

The TCPA protects citizens who [associate,] 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) (orig. proceeding). That protection comes in the form of a "special motion to dismiss . . . for any suit that appears to stifle the defendant's exercise of those rights." *Youngkin v. Hines*, 546 S.W.3d 675, 679 (Tex. 2018) (quotation omitted).

Reviewing a TCPA motion to dismiss involves three steps. As a threshold matter, the movant must demonstrate by a preponderance of the evidence that the TCPA applies. TEX. CIV. PRAC. & REM. CODE § 27.005(b) ("court shall dismiss a legal action . . . if the moving party demonstrates that the legal action is based on, relates to, or is in response to" movant's exercise of the rights to associate, speak freely, and petition). If the movant meets its initial burden, the burden then shifts to

the nonmovant to establish by clear and specific evidence a prima facie case for each essential element of its claim. *Id.* § 27.005(c). Finally, if the nonmovant satisfies that requirement, the burden shifts back to the movant to prove each essential element of any valid defense by a preponderance of the evidence. *Id.* § 27.005(d). Whether the parties have met these respective burdens is a question of law that we review de novo. *See Dall. Morning News, Inc. v. Hall*, 579 S.W.3d 370, 373 (Tex. 2019); *Gaskamp v. WSP USA, Inc.*, 596 S.W.3d 457, 470 (Tex. App.—Houston [1st Dist.] 2020, pet. dism'd).

A. The TCPA's Applicability

Jetall argues that the TCPA does not apply in this case because the purpose of its claims was to vindicate a contractual right to an assignment of the ownership interests in Declaration Title,[4] not to chill the exercise of any protected rights by Johanson and Ballases. But according to Johanson and Ballases, a preponderance of the evidence established Jetall's legal action was based on, related to, or was in response to their exercise of their right to petition in the Heil lawsuit.[5] Applying the

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[4] There is no dispute in this case that Jetall's claims against Johanson and Ballases satisfy the TCPA's definition of a "legal action" that is subject to dismissal upon the requisite showings. *See* TEX. CIV. PRAC. & REM. CODE § 27.001(6) ("legal action" means "a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing that requests legal or equitable relief"); *see also id.* § 27.003 (authorizing motion to dismiss "a legal action").

[5] Johanson and Ballases contend that their rights of free speech and association are implicated here as well. Given our conclusion that Jetall's lawsuit is based on, relates to, or is in response to Johanson's and Ballases's exercise of their right to

rules of statutory construction, we agree with Johanson and Ballases that their exercise of the right to petition, as defined by the TCPA, is implicated here. *See Youngkin*, 546 S.W.3d at 680 (statutory language is surest guide to legislative intent); *El Paso Healthcare Sys., Ltd. v. Murphy*, 518 S.W.3d 412, 418 (Tex. 2017) (courts construe individual words and provisions in context of statute as whole); *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625–26 (Tex. 2008) (courts construe words used in statute according to their "plain and common meaning").

As defined in the TCPA, the "exercise of the right to petition" means "a communication in or pertaining to . . . a judicial proceeding." TEX. CIV. PRAC. & REM. CODE § 27.001(4)(A)(i). A "communication" also is statutorily defined and includes "the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic." *Id.* § 27.001(1); *see also Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890, 894 (Tex. 2018) (statutory definition of "communication" covers "[a]lmost every imaginable form of communication, in any medium"). We construe the phrase "pertaining to" according to its ordinary meaning as relating directly to or concerning or having to do with. *See* BLACK'S LAW DICTIONARY (11th ed. 2019) ("pertain" means "to relate directly to; to concern or have to do with"). And courts previously have determined that "the

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petition, however, we do not address those additional enumerated rights. *See* TEX. R. APP. P. 47.1.

ordinary meaning of 'a judicial proceeding'" is "an actual, pending judicial proceeding." *Levatino v. Apple Tree Café Touring, Inc.*, 486 S.W.3d 724, 728 (Tex. App.—Dallas 2016, pet. denied); *see also* BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "judicial proceeding" as "any court proceeding; any proceeding initiated to procure an order or decree, whether in law or in equity").

Both Johanson and Ballases moved for dismissal on the ground that the basis of Jetall's legal action was their facilitation of the settlement of the Heil Lawsuit. Jetall's pleadings—the best evidence of the basis of Jetall's claims—support this assertion. *See Hersh v. Tatum*, 526 S.W.3d 462, 467 (Tex. 2017) (basis of legal action is determined by plaintiff's allegations); *Schmidt v. Crawford*, 584 S.W.3d 640, 647 (Tex. App.—Houston [1st Dist.] 2019, no pet.) (when nonmovant's pleadings show claims are covered by TCPA, movant need show no more).

The allegations of liability stem from various oral, written, and electronic communications between Johanson and Oakum's attorney and between Johanson and Ballases in soliciting, negotiating, and finalizing Heil's acquisition of Declaration Title as part of the settlement of the Heil Lawsuit. That is, according to Jetall, through the alleged communications, Johanson sought to leverage the jury verdict in the Heil Lawsuit to obtain a transfer of Oakum's and Davy's ownership interests in Declaration Title to Heil. These communications culminated in the execution of the written Settlement Agreement, which itself is another

communication pertaining to the Heil Lawsuit and a basis of Jetall's claims. *See* TEX. CIV. PRAC. & REM. CODE § 27.001(1). And because these various communications occurred during the post-verdict phase of the Heil Lawsuit, the Heil Lawsuit was still "an actual, pending judicial proceeding." *See Levatino*, 486 S.W.3d at 728. Application of the plain language of the TCPA to the circumstances of this case compels our conclusion that Jetall's legal action is based on, related to, or was in response to Johanson's and Ballases's communications pertaining to a judicial proceeding. *See* TEX. CIV. PRAC. & REM. CODE § 27.001(1), (4)(A)(i).

Jetall nevertheless urges that its legal action falls outside the parameters of the TCPA because Johanson's and Ballases's argument rests on the exercise of their clients' right to petition. And, under Jetall's construction, the TCPA does not apply unless the movant exercises his *own* right of petition. This is similar to the argument rejected by the Texas Supreme Court in *Youngkin v. Hines*. There, attorney Youngkin represented his clients in a property dispute against Hines, which the parties settled. *Youngkin*, 546 S.W.3d at 678. But Youngkin's execution of the settlement terms, including certain property transfers, left Hines with less than he believed he was entitled to under the settlement terms. *Id.* at 678–79. Hines filed fraud claims against Youngkin, Youngkin's clients, and a third-party trustee involved in the property transfers. *Id.* at 679. The allegations against Youngkin included that Youngkin read a Rule 11 agreement into the record at trial knowing

his clients did not intend to comply with their obligations, helped his clients avoid compliance with the terms of the Rule 11 agreement, and assisted the trustee's assertion of ownership of a portion of the property at issue. *Id.*

Youngkin filed a motion to dismiss under the TCPA, arguing that his recitation of the Rule 11 agreement in open court was an exercise of the right to petition, as the TCPA defines it, and formed the basis for Hines's claims against him. *Id.* Hines countered that "an attorney speaking for a client in a courtroom is not exercising any personal First Amendment rights at all." *Id.* at 680. The Texas Supreme Court, adhering to the plain statutory definition, concluded that Youngkin had exercised the right to petition by making a statement in a judicial proceeding. *Id.* It reasoned that:

> [T]he TCPA applies to a legal action against a party that is based on, related to, or in response to the party's making or submitting of a statement or document in or pertaining to a judicial proceeding. Youngkin's alleged liability stems from his dictation of the Rule 11 agreement into the court record during trial. By any common understanding of the words, he made a statement in a judicial proceeding.

Id.

The plain, ordinary meaning of the statutory language of the TCPA requires the same conclusion in this case. We thus hold that Johanson and Ballases satisfied their initial burden to establish, by a preponderance of the evidence, that Jetall's claims were based on, related to, or in response to their exercise of the right to

petition, as defined by the TCPA. *See* TEX. CIV. PRAC. & REM. CODE § 27.005(b); *see Youngkin*, 546 S.W.3d at 680 (TCPA applies to "legal action against a party that is based on, related to, or in response to the party's making or submitting of a statement or document in or pertaining to a judicial proceeding").

B. Johanson's and Ballases's Entitlement to Dismissal

Because the TCPA applies, the burden shifted to Jetall to establish by clear and specific evidence a prima facie case for each essential element of its tortious interference and conspiracy claims. *See* TEX. CIV. PRAC. & REM. CODE § 27.005(c). If Jetall did so, Johanson and Ballases are still entitled to dismissal if they proved the essential elements of any valid defense by a preponderance of the evidence. *See id.* § 27.005(d). Assuming without deciding that Jetall met its burden, we conclude that Johanson and Ballases are entitled to dismissal under the TCPA because a preponderance of the evidence demonstrates their defense of attorney immunity.

"The [attorney immunity] defense exists to promote 'loyal, faithful, and aggressive representation' by attorneys, which it achieves, essentially, by removing the fear of personal liability [to nonclients]." *Youngkin*, 546 S.W.3d at 682 (quoting *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015)). Alleged misconduct by an attorney in the representation of his client may be actionable by his client in a malpractice claim or sanctionable as an ethics violation. *See id.* at 681. But "as a general rule, attorneys are immune from civil liability to non-clients for

actions taken in connection with representing a client in litigation." *Cantey Hanger*, 467 S.W.3d at 481 (quotations omitted). The immunity inquiry "focuses on the *kind* of conduct at issue rather than the *alleged wrongfulness* of said conduct." *Youngkin*, 546 S.W.3d at 681 (emphasis in original).

Attorney immunity is broad but not boundless. *Bethel v. Quilling, Selander, Lownds, Winslett & Moser, P.C.*, 595 S.W.3d 651, 657 (Tex. 2020). "An attorney is not immune from suit for participating in criminal or 'independently fraudulent activities' that fall outside the scope of the attorney's representation of a client." *Id.* (quoting *Cantey Hanger*, 467 S.W.3d at 483). For example, immunity does not apply when an attorney participates with his client in a fraudulent business scheme or knowingly aides a fraudulent transfer to help his client avoid paying a judgment. *Id.* "Immunity also does not apply when an attorney's actions do not involve 'the provision of legal services,'" such as when an attorney assaults opposing counsel. *Id.* at 658 (quoting *Cantey Hanger*, 467 S.W.3d at 482).

The Texas Supreme Court's opinions in *Cantey Hanger* and *Youngkin* usefully illustrate the scope-of-representation standard for attorney immunity. In *Cantey Hanger*, a party in a divorce proceeding sued the opposing law firm for its role in executing a bill of sale on behalf of its client. 467 S.W.3d at 479. The divorce decree awarded the firm's client ownership of an airplane and stipulated that the client would pay certain taxes on the airplane, but the law firm executed a bill of sale

that allegedly shifted the tax burden to the other spouse. *See id.* Despite the allegation that the firm assisted its client in violating the terms of the decree, the Court held that the firm was not liable to the other spouse. *Id.* at 485–86. The other spouse's characterization of the firm's conduct as fraudulent or otherwise wrongful was immaterial. *Id.* The firm was shielded from liability because the preparation of documents ancillary to the divorce decree, even in a manner that allegedly violated the decree, was within the scope of representation and was not foreign to the duties of a lawyer. *See id.*

Attorney immunity also applied in *Youngkin*. 546 S.W.3d at 682–83. Relying on *Cantey Hanger*, the Texas Supreme Court reiterated that "an attorney may be liable to nonclients only for conduct outside the scope of his representation of his client or for conduct foreign to the duties of a lawyer." *Id.* at 681. And there, despite the allegations that attorney Youngkin's conduct in the "negotiation and entry of a Rule 11 agreement, preparation of a land deed to facilitate a property transfer between his clients, and institution of a lawsuit regarding property ownership" was fraudulent, it was conduct undertaken on behalf of his clients and thus "directly within the scope of his representation of his clients[.]" *Id.* at 682.

The existence of an attorney-client relationship between Johanson and Heil and between Ballases and Davy is undisputed in this case. That Johanson and Ballases undertook the conduct that forms the basis of Jetall's claims on behalf of

their respective clients also is undisputed. The dispute concerns the type of conduct. *See Youngkin*, 546 S.W.3d at 683 ("The only facts required to support an attorney-immunity defense are the type of conduct at issue and the existence of attorney-client relationship at the time.").

In sum, Jetall takes issue with Johanson's and Ballases's conduct in pursuit of their clients' legal interests in resolving the Heil Lawsuit—specifically, Heil's interest in being compensated on his claims in the Heil Lawsuit and Davy's interest in avoiding a judgment on the jury's verdict in favor of Heil on his claims. That is, Jetall alleges that despite having knowledge of the assignments of the ownership interests in Declaration Title to Jetall, Johanson and Ballases solicited, negotiated, reviewed, and revised an agreement in derogation of those assignments to transfer the ownership interests in Declaration to Heil instead. Looking beyond the artful labeling of this conduct as tortious and conspiratorial, we conclude it is the type of conduct an attorney would undertake in the representation of his or her client. *See Youngkin*, 546 S.W.3d at 682 (looking beyond alleged wrongfulness of conduct in evaluating attorney immunity). Indeed, negotiation and facilitation of settlement agreements is a paradigmatic function of an attorney representing a client in litigation. And "acts taken and communications made to facilitate the rendition of legal services to [the client]" are protected conduct under the attorney immunity defense. *Youngkin*, 546 S.W.3d at 681–82 (quotation omitted; alteration in original).

We note that although its briefing on appeal recites the law on exceptions to attorney immunity, Jetall has not made any specific argument that the alleged conduct of Johanson and Ballases falls within one of the narrow exceptions. *See* TEX. R. APP. P. 38.1(i) (appellant's brief "must contain a clear and concise argument for the contentions made"). Even had Jetall done so, the allegations in its petition do not include conduct that would fall within any of the exceptions, such as "participation in a fraudulent business scheme with a client, knowingly helping a client with a fraudulent transfer to avoid paying a judgment, theft of goods or services on a client's behalf, and assaulting opposing counsel during trial." *Youngkin*, 546 S.W.3d at 682–83; *see also Cantey Hanger*, 467 S.W.3d at 482 (noting potential exceptions to attorney immunity defense); *Chu v. Hong*, 249 S.W.3d 441, 446 (Tex. 2008) (same).

Accordingly, because the complained-of acts were undertaken within the scope of the representation of their respective clients, we hold that Johanson and Ballases are immune from civil liability to Jetall and that Jetall's claims were properly dismissed under the TCPA. *See* TEX. CIV. PRAC. & REM. CODE § 27.005(d).

C. Sanctions

Finally, Jetall contends the trial court's assessment of sanctions, that are double the amounts awarded for attorney's fees—$55,832.40 in sanctions to Johanson and $66,920.20 in sanctions to Ballases—is excessive and should be

remitted to an amount equal to the attorney's fees awards. Applying the abuse-of-discretion standard of review, which considers whether the sanctions are greater than necessary to promote compliance, we disagree. *See Am. Flood Research, Inc. v. Jones*, 192 S.W.3d 581, 583 (Tex. 2006) (per curiam) (trial court's imposition of sanctions reviewed for abuse of discretion); *ABD Interest, LLC v. Wallace*, 606 S.W.3d 413, 443 (Tex. App.—Houston [1st Dist.] 2020, pet. filed) (explaining abuse-of-discretion standard for sanctions awards in TCPA cases).

A successful TCPA movant is entitled to sanctions "sufficient to deter the party who brought the legal action from bringing similar actions" in the future. TEX. CIV. PRAC. & REM. CODE § 27.009(a)(2). Although it must award some amount as sanctions, the trial court has broad discretion to determine the amount that is sufficient to achieve the statutory goal of deterrence. *ABD Interest*, 606 S.W.3d at 443; *see Rich v. Range Res. Corp.*, 535 S.W.3d 610, 613 (Tex. App.—Fort Worth 2017, pet. denied) (trial court has discretion to determine sanction amount that will deter similar actions in future and, thus, accomplish statutory purpose); *Am. Heritage Capital, LP v. Gonzalez*, 436 S.W.3d 865, 881 (Tex. App.—Dallas 2014, no pet.) (same), *disapproved on other grounds by Hersh*, 526 S.W.3d at 466–67.

In support of its request for a remittitur, Jetall relies on the opinion of our sister court in *Landry's, Inc. v. Animal Legal Defense Fund*, holding that an award of TCPA sanctions was excessive and should be remitted to an amount equal to the

movants' attorney's fees. 566 S.W.3d 41, 71–74 (Tex. App.—Houston [14th Dist.] 2018, pet. denied). Essentially, Jetall argues that *Landry's* establishes a permissible 1:1 ratio of sanctions to attorney's fees when there is no evidence that the party who brought the legal action previously filed "a similar action . . . to discourage the exercise of constitutionally protected rights." But applying that ratio in this case would require us to ignore that *Landry's* rests on distinguishable facts.

More specifically, the *Landry's* plaintiffs, a hospitality group and an aquarium, asserted various claims against the defendants in connection with the publication of a notice of intent to sue under the Endangered Species Act for the plaintiffs' alleged inadequate care of four white tigers. 566 S.W.3d at 49. The trial court dismissed the case under the TCPA and assessed $450,000 in sanctions, which was more than double the defendants' attorneys' fees. *Id.* at 50.

On appeal, the *Landry's* court affirmed the TCPA dismissal but concluded the sanctions awarded to each defendant were excessive to the extent they exceeded "the amount of that party's trial attorneys' fees." *Id.* at 74. The court determined that although a number of considerations could have influenced the trial court to award substantial sanctions, "[t]he trial court's discretion . . . must terminate at some figure, beyond which the sanctions become excessive." *Id.* at 73. In determining whether the sanctions exceeded that number, the court in *Landry's* relied on two case-specific, objectively quantifiable guideposts: (1) the amount of the defendants'

reasonable attorney's fees, costs, and expenses, which were evidence of the economic impact of the litigation; and (2) the fact that the number of similar actions filed by the plaintiffs was zero. *Id.* And the court reasoned that given that the plaintiffs had not previously filed similar litigation, there was no evidence sanctions in the amount of the defendants' attorneys' fees would be insufficient to deter the plaintiffs from filing a similar action in the future. *Id.*

In contrast, the evidence in this case established that Jetall has filed similar actions in the past. This is Jetall's second lawsuit alleging harm from Heil's acquisition of Declaration Title—its first lawsuit was against Heil, Davy, Oakum *and* Oakum's attorney. And the record indicates that Jetall previously sued another attorney who represented the opposing party in unrelated litigation. As Ballases testified at the sanctions hearing, Jetall's history of litigation is at least some evidence of a "penchant" for suing opposing counsel in an effort to chill their zealous representation of clients and petitioning activity.

In light of the evidence of Jetall's history of litigation against opposing counsel and the broad discretion provided to the trial court by section 27.009 of the TCPA, we reject Jetall's argument that the sanctions awarded in this case could not reasonably exceed the amount of attorney's fees incurred by Johanson and Ballases.[6]

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[6] The evidence Johanson and Ballases submitted to the trial court also included various pleadings and documents from lawsuits involving Jetall's President, Choudhri, individually. Johanson and Ballases assert the evidence of Choudhri's

We hold instead that the trial court did not abuse its discretion by determining that sanctions in excess of attorney's fees were necessary to deter further actions by Jetall. *See* TEX. CIV. PRAC. & REM. CODE § 27.009(a)(2); *see also ABD Interest*, 606 S.W.3d at 443; *Kinney v. BCG Attorney Search, Inc.*, No. 03-12-00579-CV, 2014 WL 1432012, at *11–12 (Tex. App.—Austin Apr. 11, 2014, pet. denied) (mem. op.).

Conclusion

We affirm the judgment of the trial court.

Terry Adams
Justice

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

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litigation history supports the sanctions awarded against Jetall, even though Choudhri is neither a party in the underlying lawsuit nor the subject of the trial court's sanctions award. We need not decide whether the trial court properly could consider Choudhri's litigation history in assessing the amount of sanctions in this case because doing so is unnecessary given the evidence of Jetall's own litigation history. *See* TEX. R. APP. P. 47.1.