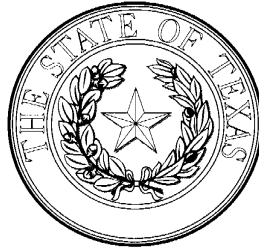


Opinion issued June 7, 2022



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-20-00685-CV

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**JUSTIN HAYNES, Appellant**

**V.**

**J.P. BRYAN AND ALICIA BRYAN, Appellees**

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**On Appeal from the 80th District Court  
Harris County, Texas  
Trial Court Case No. 2018-67225**

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**MEMORANDUM OPINION**

Justin Haynes appeals the trial court's dismissal of his claims for breach of contract, tortious interference, and civil conspiracy against J.P. and Alicia Bryan under Texas Rule of Civil Procedure 91a, and, alternatively, under the Texas

Citizens Participation Act. Justin has alleged facts that, taken as true, do not entitle him to the relief sought, so we affirm the trial court's order of dismissal.

### **BACKGROUND**

While Haynes and Alicia were married, Haynes asked J.P., Alicia's father, for a loan. J.P. loaned Haynes the money, secured by a promissory note. Haynes and Alicia later filed for divorce in Bexar County. Attorney Eric Lipper represented Alicia in the divorce proceeding. While the divorce proceeding was pending, J.P. filed a separate lawsuit against Haynes in Harris County to collect on the promissory note. Lipper also represented J.P. in the promissory-note lawsuit. J.P. and Haynes eventually agreed to a settlement in which Haynes agreed to repay the full amount, and in which J.P. and Haynes both "agree[d] to bear their respective attorneys' fees, costs and expenses" incurred in that lawsuit.

Later, in the divorce proceeding between Haynes and Alicia, Lipper submitted a request for attorney's fees relating to his representation of Alicia. During the trial, Lipper testified on the amount and reasonableness of his fees, but on cross-examination, Haynes's attorneys uncovered at least one line-item on Lipper's bill describing services he performed for J.P. in the promissory-note lawsuit. When asked whether he billed Alicia for work he performed representing J.P. on the promissory-note lawsuit, Lipper admitted, "You're right. It's three hours and 20

minutes . . . I'll give you the \$1,212 credit.” The trial court issued a final judgment and divorce decree and awarded Alicia attorney’s fees.

Haynes appealed the final judgment. The Fourth Court of Appeals modified the amount the trial court awarded Alicia in indemnity and reversed the trial court’s award of attorney’s fees; the appeals court remanded the case to the trial court “for a redetermination of the amount of reasonable and necessary attorney’s fees, if any, to be awarded to the parties.” After a trial on the issue of attorney’s fees, the trial court set aside its prior judgment and divorce decree and issued a new judgment and divorce decree, denying Haynes’s request for attorney’s fees in its entirety, but awarding Alicia \$50,000 in attorney’s fees incurred during the first trial and \$20,000 in attorney’s fees incurred during the appeal. The trial court also conditionally awarded Alicia \$15,000 in attorney’s fees if Haynes appealed and the judgment was affirmed in whole or in part.

Haynes then filed this lawsuit in Harris County. He alleged that J.P., Alicia, and their attorney Lipper conspired to charge Haynes the attorney’s fees that J.P. incurred in the promissory-note lawsuit through Alicia’s request for attorney’s fees in the divorce proceeding, in violation of the settlement agreement in the promissory-note lawsuit. Specifically, Haynes alleged that J.P. breached the settlement agreement by trying to recover his attorney’s fees from Haynes; Haynes alleged that Alicia and Lipper tortiously interfered with the settlement agreement by

helping J.P. seek impermissible attorney’s fees in the divorce proceeding, and Haynes alleged that all three defendants civilly conspired to tortiously interfere with the settlement agreement. He alleged that as a result of their wrongful behavior, he was forced to incur additional attorney’s fees by having to appeal the attorney’s fees awarded to Alicia in the first judgment in the divorce proceeding and having to retry the issue of attorney’s fees.

Alicia, J.P., and Lipper each filed a motion to dismiss under Texas Rule of Civil Procedure 91a and under the Texas Citizens Participation Act (TCPA). *See* TEX. R. CIV. P. 91a; TEX. CIV. PRAC. & REM. CODE §§ 27.001–.011. The trial court initially denied Lipper’s motion, but he appealed to this court, and we reversed the trial court’s order because Lipper had proved he was entitled to dismissal under the TCPA based on attorney immunity. *Lipper v. Haynes*, Nos. 01-19-00055-CV & 01-19-00345-CV, 2019 WL 3558999, at \*1 (Tex. App.—Houston [1st Dist.] Aug. 6, 2019, no pet.) (mem. op.). The trial court then granted both Alicia’s and J.P.’s motions to dismiss, finding they were entitled to dismissal under Rule 91a and, in the alternative, under the TCPA. Haynes now appeals.

### **RULE 91A STANDARD OF REVIEW**

Texas Rule of Civil Procedure 91a provides that a party “may move to dismiss a cause of action on the grounds that it has no basis in law or fact.” TEX. R. CIV. P. 91a.1. “A cause of action has no basis in law if the allegations, taken as true, together

with inferences reasonably drawn from them do not entitle the claimant to the relief sought.” *Id.* Courts have concluded that a cause of action has no basis in law under Rule 91a in at least two situations: (1) the petition alleges too few facts to demonstrate a viable, legally cognizable right to relief; or (2) the petition alleges additional facts that, if true, bar recovery. *Guillory v. Seaton, LLC*, 470 S.W.3d 237, 240 (Tex. App.—Houston [1st Dist.] 2015, pet. denied). “A cause of action has no basis in fact if no reasonable person could believe the facts pleaded.” TEX. R. CIV. P. 91a.1. In ruling on a Rule 91a motion, a court “may not consider evidence . . . and must decide the motion based solely on the pleading of the cause of action.” TEX. R. CIV. P. 91a.6. We construe the “pleadings liberally in favor of the plaintiff, look to the pleader’s intent, and accept as true the factual allegations in the pleadings to determine if the cause of action has a basis in law or fact.” *Wooley v. Schaffer*, 447 S.W.3d 71, 76 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). We review the merits of a motion to dismiss under Rule 91a de novo. *Bethel v. Quilling, Selander, Lownds, Winslett & Moser, P.C.*, 595 S.W.3d 651, 654 (Tex. 2020).

## **DISCUSSION**

In seven points of error, Haynes appeals the trial court’s order granting dismissal of his claims against J.P. and Alicia under Rule 91a and, in the alternative, under the TCPA; Haynes also challenges the court’s reliance on the affirmative defenses of attorney immunity, res judicata, and limitations. Because we conclude

that the trial court did not err in granting dismissal under Rule 91a, we do not reach the remaining issues. *See* TEX. R. APP. P. 47.1.

**A. Breach-of-contract Claim Against J.P.**

Haynes argues the trial court erred in dismissing his claim for breach of contract against J.P. because he pleaded clear and specific facts supporting each element of the claim. We disagree.

*1. Applicable law*

To establish a claim for breach of contract, a plaintiff must allege: (1) a valid contract exists; (2) the plaintiff performed or tendered performance as contractually required; (3) the defendant breached the contract by failing to perform or tender performance as contractually required; and (4) the plaintiff sustained damages due to the breach. *Pathfinder Oil & Gas, Inc. v. Great W. Drilling, Ltd.*, 574 S.W.3d 882, 890 (Tex. 2019). Where the facts are undisputed, the question of whether a party has breached a contract is a legal question for the court, not a fact question for the jury. *Grohman v. Kahlig*, 318 S.W.3d 882, 887 (Tex. 2010) (per curiam). A breach of contract occurs when a party fails or refuses to do something it has promised to do. *AKIB Constr. Inc. v. Shipwash*, 582 S.W.3d 791, 806 (Tex. App.—Houston [1st Dist.] 2019, no pet.).

## 2. *Analysis*

Haynes has alleged that: (1) the settlement agreement was a valid contract; (2) he tendered performance by fully paying the amount due; (3) J.P. breached the settlement agreement by trying to recover his own attorney's fees; and (4) the damages Haynes sustained were the additional attorney's fees he incurred in challenging the initial award of attorney's fees in the divorce proceeding.

Taking Haynes's allegations as true, he has not stated a claim for breach of contract. He has failed to allege facts that show the third element, that J.P. breached the settlement agreement. The settlement agreement stated that both Haynes and J.P. "agree[d] to bear their respective attorneys' fees, costs and expenses." Haynes has not alleged that J.P. failed or refused to bear his own attorney's fees. *See AKIB Constr.*, 582 S.W.3d at 806. Nor has Haynes alleged that he in fact paid J.P.'s attorney's fees. Thus, Haynes has not alleged that J.P. breached the settlement agreement.

The crux of Haynes's breach-of-contract claim is that J.P. *tried* to breach the settlement agreement by underhandedly making Haynes pay J.P.'s attorney's fees in the divorce proceeding. Haynes claims he incurred substantial attorney's fees of his own challenging the trial court's award of attorney's fees in the divorce proceeding so that he would not be required to pay J.P.'s attorney's fees, but Haynes acknowledges that his efforts were successful. He claims that J.P. and Alicia had

“finally abandoned” their attempts to recover impermissible attorney’s fees before the second trial on attorney’s fees, and so he did not appeal the final judgment because the impermissible attorney’s fees were not part of the final award. Haynes thus admits he did not pay J.P.’s attorney’s fees.

Haynes argues there is no requirement that a breach of contract be “successful or lucrative” to be actionable, but breach is a necessary element of a breach of contract claim, *see Pathfinder Oil & Gas*, 574 S.W.3d at 890, and an unsuccessful breach of contract is not a breach.

Taking Haynes’s allegations as true, he has not alleged facts that entitle him to the relief sought. *See* TEX. R. CIV. P. 91a.1. Because Haynes’s claim has no legal basis, the trial court did not err in dismissing Haynes’s breach-of-contract claim against J.P. under Rule 91a.

We note that Haynes has stated a claim of a very serious nature—two attorneys may have conspired with a litigant to falsify evidence they presented in court. By affirming the trial court’s dismissal, we do not condone that alleged behavior; we simply agree with the trial court that Haynes has not stated a claim for breach of contract. Other remedies were available to Haynes to sanction the parties’ misconduct if ultimately proven to be true. *See Tana Oil & Gas Corp. v. McCall*, 104 S.W.3d 80, 82–83 (Tex. 2003) (explaining sanctions under Rule 13 of Texas Rules of Civil Procedure or under Chapter 10 of Texas Civil Practice and Remedies



Code are available to punish litigant’s “purely tactical” conduct in filing lawsuit “without merit”); *see also Bethel*, 595 S.W.3d at 658 (explaining “other remedies—such as sanctions, spoliation instructions, contempt, and disciplinary proceedings” may be available when attorney’s misconduct is not actionable).

## **B. Tortious-interference Claim Against Alicia**

Haynes argues the trial court erred in dismissing his claim for tortious interference against Alicia because he pleaded clear and specific facts supporting each element of the claim. We disagree.

### ***1. Applicable law***

To state a claim for tortious interference with a contract, a plaintiff must allege: (1) the existence of a valid contract subject to interference; (2) that the defendant willfully and intentionally interfered with the contract; (3) that the interference proximately caused the plaintiff’s injury; and (4) that the plaintiff incurred actual damage or loss. *Cnty. Health Sys. Prof’l Servs. Corp. v. Hansen*, 525 S.W.3d 671, 689 (Tex. 2017). The claim may be brought “against any third person . . . who wrongly induces another contracting party to breach the contract.” *Holloway v. Skinner*, 898 S.W.2d 793, 795 (Tex. 1995). To satisfy the second element, a defendant must be more than a willing participant; she must knowingly induce one of the contracting parties to breach its obligations. *See Browning–Ferris, Inc. v. Reyna*, 865 S.W.2d 925, 927 (Tex. 1993).

## 2. *Analysis*

Haynes has alleged: (1) that the settlement agreement was a valid contract; (2) that Alicia willfully and intentionally interfered with the settlement agreement by seeking recovery of J.P.'s attorney's fees as part of her own claim for attorney's fees in her divorce proceeding; (3) Alicia proximately caused injury by forcing Haynes to incur additional attorney's fees in trying to ensure Alicia did not recover her father's fees; and (4) that he incurred actual damages in the form of those additional attorney's fees.

Taking Haynes's allegations as true, he has not stated a claim for tortious interference with a contract. He has failed to allege facts that show the second element, that Alicia interfered with the settlement agreement by inducing J.P. to breach the agreement, because he has not alleged facts that show J.P. breached the settlement agreement, as discussed above.

Haynes alleged that Alicia willfully and intentionally interfered with the settlement agreement by helping her father try to recover his attorney's fees as part of her own claim for attorney's fees in the divorce proceeding. While Haynes claimed that Alicia was a knowing participant in the scheme, he acknowledges that the scheme did not succeed and that he did not pay J.P.'s attorney's fees.

Taking Haynes's allegations as true, he has not alleged facts that entitle him to the relief sought. *See* TEX. R. CIV. P. 91a.1. Because Haynes's claim has no legal

basis, the trial court did not err in dismissing Haynes's tortious-interference claim against Alicia under Rule 91a.

Again, we do not condone the conduct Haynes has alleged, but other remedies were available to Haynes to sanction Alicia's alleged misconduct. *See Tana Oil & Gas*, 104 S.W.3d at 82–83; *Bethel*, 595 S.W.3d at 658.

### **C. Civil-conspiracy Claims Against J.P. and Alicia**

Haynes next argues the trial court erred in dismissing his claims for civil conspiracy against J.P. and Alicia because he pleaded clear and specific facts supporting each element of the claim. Again, we disagree.

To state a claim for civil conspiracy, a plaintiff must allege the following elements: (1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as a proximate result. *Tri v. J.T.T.*, 162 S.W.3d 552, 556 (Tex. 2005). There is no independent liability for civil conspiracy, and a plaintiff has no viable conspiracy claim without an underlying tort. *See Spencer & Assocs., P.C. v. Harper*, 612 S.W.3d 338, 354 (Tex. App.—Houston [1st Dist.] 2019, no pet.). Having concluded that Haynes has not demonstrated a legal basis for an underlying tort—Alicia's tortious interference with the settlement agreement—we conclude that the trial court did not err in dismissing his civil-conspiracy claims against J.P. and Alicia. *See* TEX. R. CIV. P. 91a.1.

We overrule Haynes’s point of error regarding the trial court’s dismissal of his civil-conspiracy claims against J.P. and Alicia under Rule 91a.

**D. Remaining Issues**

In his remaining points of error, Haynes challenges the trial court’s dismissal of his claims under the TCPA, as well as the other grounds on which the trial court may have granted the motions to dismiss: attorney immunity, res judicata, and limitations. Because we conclude the trial court did not err in dismissing his claims under Rule 91a, we do not reach the merits of these remaining issues. *See* TEX. R. APP. P. 47.1; *Jones v. Sherry*, No. 03-18-00279-CV, 2019 WL 2707968, at \*4 n.5 (Tex. App.—Austin June 28, 2019, no pet.) (mem. op.) (declining to consider trial court’s dismissal under TCPA after concluding dismissal under Rule 91a was proper).

**CONCLUSION**

We affirm the trial court’s judgment.

Gordon Goodman  
Justice

Panel consists of Justices Kelly, Goodman, and Guerra.