



**In The  
Court of Appeals  
Seventh District of Texas at Amarillo**

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No. 07-23-00024-CV

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**JENNIFER MACGEORGE, APPELLANT**

**V.**

**PEDRAM LALEZARI, APPELLEE**

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On Appeal from the 261st District Court  
Travis County, Texas  
Trial Court No. D-1-GN-22-001047, Honorable Madeleine Connor, Presiding

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June 29, 2023

**MEMORANDUM OPINION**

Before QUINN, C.J., and PARKER and YARBROUGH, JJ.

This interlocutory appeal was filed by Appellant, Jennifer MacGeorge, from the denial of her motion to dismiss the claims of Appellee, Pedram Lalezari, under the Texas Citizens Participation Act (“TCPA”). She contends the trial court erred in denying her motion because Lalezari’s claims against her infringe on her right of association, right of

free speech, and right to petition. Because the claims raised by Lalezari against MacGeorge do not implicate the TCPA, we affirm the trial court's ruling.<sup>1</sup>

### **BACKGROUND**

The following facts are alleged by Lalezari in his lawsuit against MacGeorge.<sup>2</sup>

MacGeorge is an attorney who represented Lalezari in a real estate transaction involving the sale of certain properties located in Travis County, Texas. Under a handwritten agreement, Lalezari agreed to jointly purchase the properties with Ali Choudri, the plaintiff in this case, and Mansoor Chaudhry, a co-defendant.<sup>3</sup> The three men agreed they would purchase the properties in the name of an existing LLC owned by Mansoor and all three would become owners of the LLC. The properties were purchased in the name of Topoduro, LLC, a company wholly owned by Mansoor. After the purchase, Lalezari formally became a member and one-third owner of Topoduro while Mansoor owned the remaining two-thirds; Ali did not acquire any interest in Topoduro.

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<sup>1</sup> Originally appealed to the Third Court of Appeals, this appeal was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. TEX. GOV'T CODE ANN. § 73.001. Should a conflict exist between precedent of the Third Court of Appeals and this Court on any relevant issue, this appeal will be decided in accordance with the precedent of the transferor court. TEX. R. APP. P. 41.3.

<sup>2</sup> At this early stage of the litigation, because the facts are still in dispute, we do not opine as to the veracity of the claimant's facts or causes of action. Rather, we take the facts as pleaded to determine whether the claims are subject to dismissal in the context of the TCPA. TEX. CIV. PRAC. & REM. CODE ANN. § 27.006(a); *see also Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890, 897 (Tex. 2018) (“[T]he unique language of the TCPA directs courts to decide its applicability based on a holistic review of the pleadings.”).

<sup>3</sup> Lalezari incorporates the facts stated in the plaintiff's petition by reference in the first paragraph of his live third-party petition: “Lalezari hired and retained MacGeorge to be legal counsel on a *real [estate] transaction made the basis of Plaintiff Ali Choudhri's original petition.*” (Emphasis added). Accordingly, we have incorporated facts from both sets of pleadings.

Ali subsequently discovered the name of the LLC in the handwritten agreement differed by one letter from Topoduro, LLC.<sup>4</sup> Ali then consulted an attorney, who formed a new entity that mimics the name of the entity identified in the handwritten agreement: Topo Doro, LLC. Only Ali is a member of Topo Doro, LLC.

Sometime later, Ali found a buyer who agreed to pay in excess of \$3 million for the properties.<sup>5</sup> Lalezari retained the services of MacGeorge by paying her \$5,000 to personally advise him during the closing of the transaction. During the course of the transaction, a resolution was drafted for Topoduro purportedly authorizing Ali to “do any and all things necessary” to sell the properties and for Ali to “receive the proceeds of the sale on behalf of” Topoduro. The preamble to the resolution describes Ali as “being all of the Members of Topoduro, LLC” and only Ali’s signature appears on the resolution as “Manager.” According to Lalezari, however, Ali was neither member nor manager of Topoduro.<sup>6</sup>

At the closing, Ali directed that the funds from the transaction be deposited into the account of Topo Doro, LLC. Ali then emailed Mansoor and Lalezari for wiring instructions the day after the closing to send them their share of the transaction proceeds in accordance with the handwritten agreement. However, Mansoor emailed the buyer, title company, and Ali claiming that Ali had committed fraud and was not authorized to engage in the transaction, Topoduro was the owner of the properties, and Ali was not associated

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<sup>4</sup> The handwritten agreement refers to a “Topodoro, LLC” whereas the registered name is “Topoduro, LLC.”

<sup>5</sup> Ali claims he found the buyer; Lalezari does not dispute or controvert this fact in his pleadings.

<sup>6</sup> Lalezari claims the title company provided a copy of the document to him, but he does not provide any details regarding the circumstances or context under which the document was furnished.

with Topoduro. The title company unwound the transaction and refunded the money to the buyer.

Following the collapse of the real estate transaction, Ali sued Mansoor and Lalezari for breach of contract, fraud, statutory fraud, negligent misrepresentation, and a request for declaratory judgment. Lalezari answered Ali's lawsuit and then filed a third-party petition against MacGeorge. Lalezari alleges that MacGeorge breached her fiduciary duty and committed legal malpractice by:

1. divulging non-public information regarding the members of Topoduro, LLC;
2. assisting Ali in drafting the Topoduro resolution giving him the authority to conduct the transaction in question;
3. failing to communicate with the title company regarding the discrepancy between Topo Doro and Topoduro as the recipient of the funds at the closing;
4. failing to request an "accounting" from Ali to prove he purchased an interest in Topoduro;
5. advising Lalezari to convince a former manager of Topoduro to backdate a corporate resolution – which Lalezari did not do;
6. divulging unspecified client-attorney communications to Ali;
7. simultaneously representing Ali and Lalezari during the transaction without waiver of conflict or permission; and
8. subsequently representing Ali and his various business entities in litigation and other matters unrelated to this case.

MacGeorge, in response to the third-party petition, filed a motion to dismiss Lalezari's claims under the TCPA. § 27.01 et seq. The trial court denied the motion and MacGeorge filed this interlocutory appeal. § 51.014(a)(12).

## STANDARD OF REVIEW

“We review de novo whether the movant demonstrated that the challenged legal action is subject to the TCPA and whether the nonmovant presented clear and specific evidence establishing a prima facie case for each essential element of its challenged claims.” *Szymonek v. Guzman*, 641 S.W.3d 553, 564 (Tex. App.—Austin 2022, pet. denied) (citing *Serafine v. Blunt*, 466 S.W.3d 352, 357 (Tex. App.—Austin 2015, no pet.)). The movant has the initial burden of establishing the TCPA applies, and only after proving the TCPA applies will the nonmovant have the burden to prove its prima facie case. *Id.* “We view the pleadings in the light most favorable to the nonmovant, not blindly accepting a movant’s attempts to characterize a nonmovant’s claims as implicating protected expression but favoring the conclusion that the claims are not predicated on protected expression.” *Lugo v. Sanchez*, No. 03-21-00058-CV, 2021 Tex. App. LEXIS 9222, at \*9 (Tex. App.—Austin Nov. 12, 2021, pet. denied) (citing *Sloat v. Rathbun*, 513 S.W.3d 500, 504 (Tex. App.—Austin 2015, pet. dism’d)).

## ANALYSIS

MacGeorge argues Lalezari’s third-party petition is based on or is in response to her “right of free speech,” “right of association,” and “right to petition” under the TCPA. § 27.003(a). Both the “right to free speech” and the “right of association” under the TCPA require those rights be exercised in connection with a “matter of public concern.” § 27.001(2),(3). Under the TCPA, a “matter of public concern” must necessarily involve a bona fide concern to the public:

“To be a matter of public concern, a claim must have public relevance beyond the interests of the parties.” *Morris v. Daniel*, 615 S.W.3d 571, 576 (Tex. App.—Houston [1st Dist.] 2020, no pet.) (quoting *Creative Oil & Gas v. Lona Hills Ranch*, 591 S.W.3d 127, 136 (Tex. 2019)). “Private disputes,

whether sounding in contract or in tort, that merely affect the fortunes of the litigants are not matters of public concern.” *Id.* The TCPA’s definition of a “matter of public concern” “more strongly emphasizes the term’s public component and thereby furthers the TCPA’s stated and unchanged purpose: ‘to encourage and safeguard the constitutional rights of persons to . . . speak freely.’” *Chesser v. Aucoin*, No. 01-20-00425-CV, 2020 Tex. App. LEXIS 9978, 2020 WL 7391711, at \*4 (Tex. App.—Houston Dec. 17, 2020, no pet.) (mem. op.) (quoting TEX. CIV. PRAC. & REM. CODE ANN. § 27.002).

*Szymonek*, 641 S.W.3d at 565–66 (citations original); see also § 27.001(7).<sup>7</sup> The phrase “matter of public concern” commonly refers to matters “of political, social, or other concern to the community,” as opposed to purely private matters. *Creative Oil & Gas*, 591 S.W.3d at 135 (citing *Brady v. Klentzman*, 515 S.W.3d 878, 884 (Tex. 2017)). There can be no “matter of public concern” where the dispute cannot “reasonably be characterized as involving public concerns.” *Id.* at 136.

In this case, Lalezari complains of actions allegedly taken by MacGeorge during the course of a private real estate transaction. Although Lalezari alleges MacGeorge “fabricated” company documents during the transaction, neither Lalezari nor MacGeorge indicate those documents were filed with any other public entity or otherwise made available to the public. MacGeorge also does not articulate what part of the transaction or her alleged conduct is a subject of public concern. There is simply nothing in the record demonstrating the claims against MacGeorge involve a “matter of public concern.”

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<sup>7</sup> “Matter of public concern” means a statement or activity regarding:

- (A) a public official, public figure, or other person who has drawn substantial public attention due to the person’s official acts, fame, notoriety, or celebrity;
- (B) a matter of political, social, or other interest to the community; or
- (C) a subject of concern to the public.

Therefore, Lalezari's claims are not "based on or in response to" MacGeorge's "right of association" or "right of free speech" under the TCPA.

MacGeorge nonetheless urges the alleged drafting of company documents is necessarily a "matter of public concern" because of the existence of a regulatory scheme governing limited liability companies. She cites several cases for this proposition, and in each case cited, the "communication" at issue was a publicly filed document accessible by the public.<sup>8</sup> None of these authorities go so far as to hold the mere existence of a regulatory scheme necessarily makes all documents drafted pursuant to a regulation subject to the TCPA.<sup>9</sup>

Finally, MacGeorge also argued at the hearing on her TCPA motion that Lalezari's claims implicate her "right to petition."<sup>10</sup> Under the TCPA, the "right to petition" includes the "making or submitting of a statement or document" in a "judicial proceeding." §§ 27.001(1), (4); see also *Hanna v. Williams*, No. 03-22-00254-CV, 2022 Tex. App. LEXIS 8948, at \*10–14 (Tex. App.—Austin Dec. 7, 2022, no pet.) (factual allegations by

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<sup>8</sup> *Quintanilla v. West*, 524 S.W.3d 34, 43-46 (Tex. App.—San Antonio 2017) reversed on other grounds *West v. Quintanilla*, 573 S.W.3d 237 (Tex. 2019) (filing of lien for debt found to be a "matter of public concern" under prior version of TCPA); *Nixon v. Warner Communications*, 435 U.S. 589, 597-598 (1978) (no public right to copy Nixon White House recordings that were offered as evidence in judicial proceedings); *Good v. Accela Capital Services, Inc.*, No. 05-20-01097-CV, 2021 Tex. App. LEXIS 6987 (Tex. App.—Dallas Aug. 24, 2021, pet. denied) (actions taken to avoid reporting under Florida Insurance not a "matter of public concern"); *American Int'l Holdings Corp. v. Holden*, No. 14-20-00413-CV, 2022 Tex. App. LEXIS 2432 (Tex. App.—Houston [14th Dist.] April 14, 2022, pet. denied) (Form 8-K filings with the SEC were not the basis of the plaintiff's breach of contract action, and therefore did not implicate the TCPA).

<sup>9</sup> Further, to adopt such a rule would make virtually every action taken in a legal proceeding subject to the TCPA. There is little in modern society not governed by statute, ordinance, or rule. We decline to adopt such a novel position.

<sup>10</sup> *Starside Custom Builders, LLC*, 547 S.W.3d at 896 (TCPA argument preserved in oral argument at hearing despite being absent from written motion); *Greene v. Farmers Ins. Exch.*, 446 S.W.3d 761, 764 n.4 (Tex. 2014) (new arguments may be raised on appeal for the first time in de novo review, not new issues); but cf. § 27.006(a) ("In determining whether a legal action is subject to or should be dismissed under this chapter, the court shall consider the pleadings, evidence a court could consider under Rule 166a, Texas Rules of Civil Procedure, and supporting and opposing affidavits stating the facts on which the liability or defense is based.").

plaintiff identified several documents that were filed in a judicial proceeding, therefore was based upon the “right to petition”). According to MacGeorge, “[o]n its face, [Lalezari’s] allegation that [MacGeorge] has represented [Ali] in unrelated matters, with no factual basis for any allegation that such representations are contrary to any duty [MacGeorge] owed to [Lalezari], implicates her right to petition.” MacGeorge cites *Youngkin v Hines*, 546 S.W.3d 675, 680-81 (Tex. 2018), as authority for her proposition. In *Youngkin*, an attorney recited a Rule 11 agreement in open court which later became the basis of a fraud claim against him by the opposing party. *Youngkin*, 546 S.W.3d at 678–79. The Texas Supreme Court in *Youngkin* found the recitation of the Rule 11 agreement was made in a “judicial proceeding” and therefore the attorney’s “right to petition” was implicated under the TCPA. *Id.* at 681.

Here, the allegation by Lalezari in his live petition is:

MacGeorge also benefitted from breaching her fiduciary duty to Lalezari as Plaintiff Ali Choudhri has retained her to be his personal legal counsel and trial counsel for various litigation involving companies/entities that Ali Choudhri owns or controls. MacGeorge’s actions enriched herself to the detriment of her client – Pedram Lalezari.

Unlike in *Youngkin*, although Lalezari alleges MacGeorge is representing Ali in “judicial proceedings,” his claims are not based on or in response to any “communication” made by MacGeorge in those proceedings. Rather, the gravamen of Lalezari’s allegation is that MacGeorge “enriched herself” by receiving subsequent business from Ali in return for the actions she allegedly took on Ali’s behalf. Therefore, Lalezari’s claims do not implicate MacGeorge’s “right to petition” under the TCPA either. MacGeorge’s sole issue is overruled.



## **CONCLUSION**

As Lalezari's third-party claims against MacGeorge are not subject to the TCPA, we affirm the judgment of the trial court.

Alex L. Yarbrough  
Justice