NO. 12-16-00286-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

CATHY GARTON, APPELLANT	***§***	***APPEAL FROM THE***
V.	***§***	***COUNTY COURT AT LAW***
SHILOH VILLAGE PARTNERS, LLC, APPELLEE	***§***	***SMITH COUNTY, TEXAS***

MEMORANDUM OPINION

Cathy Garton appeals the denial of her motion to dismiss a lawsuit that Shiloh Village Partners, L.L.C. (Shiloh) filed against her. In two issues, she contends the Texas Citizens Participation Act (TCPA) applies and that Shiloh failed to meet its burden to establish a prima facie case on each element of its claims. She also requests that the case be remanded for a determination of attorney's fees and costs. We reverse and remand.

BACKGROUND

Garton is a homeowner and resident of the Shiloh Village Subdivision in Tyler, Texas. She is also a member of Shiloh Village Homeowners Association, Inc. (the HOA). Shiloh is currently in control of developing the subdivision. After Shiloh began developing a new phase of the subdivision, homeowners living in Phase 1 of the subdivision claimed they began experiencing drainage and erosion issues. Garton's home was affected, which she believed was caused by Shiloh's activity within the subdivision. She also perceived that a volunteer hostess, who worked at Shiloh's model home, was attempting to undermine Garton's attempts to sell her home. She sought to present her complaints on these issues to both the HOA and Shiloh's owners to no avail. Garton's inability to obtain the desired audience led to a series of confrontations.

Brad Root and Scott Greene are the principle owners of Shiloh and board members of the HOA. In April 2016, Garton went to Shiloh's model home and approached its volunteer hostess, Debra Kersh. According to Shiloh, Garton acted aggressively towards Kersh and made verbally abusive and threatening accusations. Shiloh further contends that Garton approached Greene, while he was alone in his vehicle, at the entrance of the subdivision and asked him if he was a HOA board member. When he denied being a board member, Garton proceeded to tell him about "the problems she was having with the builder, etc." On a different occasion, Garton interrupted a private meeting between Greene and Root at Shiloh's model home seeking to confront them about her complaints. Being unable to conduct their meeting, Greene told Garton he was going to call the police if she did not leave.

Shiloh subsequently sued Garton for business disparagement and "intentional interference with prospective relations." Shiloh also sought temporary and permanent injunctive relief. Garton filed a motion to dismiss under the TCPA, alleging the Texas anti-SLAPP[1] statute applies to her actions and statements. In her motion, Garton argued that Shiloh's suit was in response to her complaints regarding the drainage and erosion issues in the subdivision and sought to prevent her from exercising rights protected by the TCPA. Following a hearing, the trial court failed to rule on the motion and it was overruled by operation of law.[2] This appeal followed.[3]

ISSUES PRESENTED

In her first issue, Garton asserts the trial court erred in not granting her motion to dismiss Shiloh's suit. In her second issue, Garton contends she is entitled to a remand for the determination of attorney's fees and costs.

[1] The TCPA is considered an anti-SLAPP statute. Anti-SLAPP stands for "strategic lawsuit against public participation." ***Jennings v. WallBuilder Presentations, Inc.***, 378 S.W.3d 519, 521 n.1 (Tex. App.—Fort Worth 2012, pet. denied).

[2] TEX. CIV. PRAC. & REM. CODE ANN. § 27.005(a) (West 2015); ***Inwood Forest Cmty. Improvement Ass'n v. Arce***, 485 S.W.3d 65, 69-70 (Tex. App.—Houston [14th Dist.] 2015, pet. denied) (if a court does not rule on the motion to dismiss under section 27.003 within the time prescribed under section 27.005, the motion is considered to have been denied by operation of law and the moving party may appeal).

[3] An interlocutory appeal of a motion to dismiss under section 27.003 is authorized by the civil practice and remedies code. TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(12) (West Supp. 2016).

TEXAS CITIZENS PARTICIPATION ACT

The purpose of the TCPA is to "encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury." TEX. CIV. PRAC. & REM. CODE ANN. § 27.002 (West 2015). Although we construe the TCPA liberally "to effectuate its purpose and intent fully," it "does not abrogate or lessen any other defense, remedy, immunity, or privilege available under other constitutional, statutory, case or common law or rule provisions." ***Id.*** § 27.011 (West 2015).

The TCPA provides a mechanism for early dismissal of a cause of action that "is based on, relates to, or is in response to a party's exercise of the right of free speech, the right to petition, or right of association . . . ." ***Id***. § 27.003 (West 2015). The party moving for dismissal has the initial burden to establish by a preponderance of the evidence "that the legal action is based on, relates to, or is in response to the party's exercise of" the right of free speech, the right to petition, or the right of association. ***Id***. § 27.005(b) (West 2015). If the movant makes this showing, the burden shifts to the nonmovant to establish by "clear and specific evidence a prima facie case for each essential element of the claim in question." ***Id***. § 27.005(c). When determining whether to dismiss the legal action, the court must consider "the pleadings and supporting and opposing affidavits stating the facts on which the liability or defense is based." ***Id***. § 27.006(a) (West 2015).

The Texas Supreme Court has explained the meaning of the requirement that the nonmovant establish by "clear and specific evidence a prima facie case." ***In re Lipsky***, 460 S.W.3d 579, 590-91 (Tex. 2015) (orig. proceeding). "Clear" means "unambiguous, sure or free from doubt," and "specific" means "explicit or relating to a particular named thing." ***Id***. at 590. A "prima facie case" is "the minimum quantum of evidence necessary to support a rational inference that the allegation of fact is true." ***Id***. It refers to evidence sufficient as a matter of law to establish a given fact if it is not rebutted or contradicted. ***Id***. The "clear and specific evidence" requirement does not impose an elevated evidentiary standard, nor does it categorically reject circumstantial evidence. ***Id***. at 591. But it requires more than mere notice pleading. ***Id.*** at 590-91. Instead, a plaintiff must provide enough detail to show the factual basis for its claim. ***Id***. at 590.

We review questions of statutory construction de novo. ***Molinet v. Kimbrell***, 356 S.W.3d 407, 411 (Tex. 2011). We consider de novo the legal question of whether the movant has established by a preponderance of the evidence that the challenged legal action is covered by the TCPA. ***Serafine v. Blunt***, 466 S.W.3d 352, 357 (Tex. App.—Austin 2015, no pet.). We also review de novo a trial court's determination of whether a nonmovant has presented clear and specific evidence establishing a prima facie case of each essential element of the challenged claims. ***Id.*** We consider the pleadings and supporting and opposing affidavits stating the facts on which the liability or defense is based. TEX. CIV. PRAC. & REM. CODE ANN. § 27.006(a); ***Campbell v. Clark***, 471 S.W.3d 615, 623 (Tex. App.—Dallas 2015, no pet.). We view the pleadings and evidence in the light most favorable to the nonmovant. ***Cheniere Energy, Inc. v. Lotfi***, 449 S.W.3d 210, 214-15 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

APPLICABILITY OF THE TCPA

In this case, Garton contends that Shiloh's lawsuit is based on, relates to, and is in response to her complaints regarding the erosion and drainage issues in the subdivision. As a result, she argues that each of Shiloh's causes of action is based on her exercise of the right to free speech, right to petition, and right of association. Shiloh maintains that its lawsuit does not relate to the erosion and drainage issues and is, instead, in response to Garton's threatening and aggressive behavior toward its business and volunteers. In response, Garton urges that she simply attempted to voice her opinions as to Shiloh's business practices and present her claims to the HOA and Shiloh's owners.

The TCPA defines "exercise of the right of free speech" as a communication made in connection with a matter of public concern. TEX. CIV. PRAC. & REM. CODE ANN. § 27.001(4) (West 2015). A "matter of public concern" includes an issue related to health or safety; environmental, economic, or community well-being; the government; a public official or public figure; or a good, product, or service in the marketplace. ***Id.*** § 27.001(7). A "communication" is defined to include "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* TEX. GOV'T CODE ANN. § 311.005(13) (West 2013) ("Includes" and "including" generally "are terms of enlargement and not of limitation or exclusive enumeration[]"). The TCPA does not discriminate

between public and private communications as long as they are made in connection with a matter of public concern. ***Lippincott v. Whisenhunt***, 462 S.W.3d 507, 509 (Tex. 2015) (per curium).

Applying the plain language of the TCPA, Garton's statements to Kersh during the encounter at the model home fall under the statutory definition of "communication." *See* TEX. CIV. PRAC. & REM. CODE ANN. § 27.001(1). Shiloh's contention that Garton's statements to Kersh were rude is of no consequence. The TCPA's definition of communication does not distinguish between socially acceptable and unacceptable forms of speech and we cannot analyze Garton's statements to Kersh in such a way under the plain language of the statutory text. *See* ***id***.; *see also* ***Lippincott***, 462 S.W.3d at 509 (when construing a statute, appellate courts look to the statute's plain language); *see also* ***ExxonMobil Pipeline Co. v. Coleman***, 512 S.W.3d 895, 900 (Tex. 2017) (statutory analysis of the TCPA is not dictated by First Amendment constitutional limitations).

The TCPA's definition of a "matter of public concern" is equally broad. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 27.001(7). Garton claims the drainage and erosion issues that she and other homeowners have experienced within the subdivision result from Shiloh's development of a new phase of the subdivision. Statements reflecting who and what caused drainage and erosion within the subdivision fall under the TCPA's definition of a "matter of public concern" not only as to the health and safety of the homeowners but also as to their environmental, economic, or community well-being. *See* ***id***.

Shiloh argues that any of Garton's statements regarding its recent development activities causing some homeowners to experience drainage and erosions issues did not constitute a matter of public concern because she failed to provide a report or other evidence that any drainage or erosion constituted a danger to the safety, welfare, and health of the community and subdivision. We interpret this argument as a contention that Garton's initial burden required her to validate her claims through credible evidence for the communication to qualify as a matter of public concern. However, the absence of a report or other evidence substantiating her claim is not controlling. Under the TCPA, Garton's initial burden does not require her to prove her claims as to the drainage and erosion problems she and other homeowners were experiencing. *See* ***id***. § 27.005(b). The statute only requires that the communication be "in connection with a matter of public concern." ***Id***. § 27.001(4), (7). Whether the claims are true or false pertains to the second part of the analysis, which requires Shiloh to establish by clear and specific evidence a prima

facie case for each essential element of its claims. *See* ***Elite Auto Body LLC v. Autocraft Bodywerks, Inc.***, 520 S.W.3d 191, 204-05 (Tex. App.—Austin 2017, pet. filed); ***Rauhauser v. McGibney***, 508 S.W.3d 377, 385 n.4 (Tex. App.—Fort Worth 2014, no pet.).

Shiloh also argues that Garton's statements to Kersh did not address a matter of public concern because of the type of language used. Shiloh denies seeking to prohibit Garton from expressing her opinion about Shiloh's culpability in creating the drainage and erosion issues or reaching out to third parties to seek corrective actions. Shiloh emphasizes that its petition expressly addresses Garton's verbally abusive and threatening speech towards Kersh. The argument continues that abusive speech and threatening words, religious in nature or otherwise, do not involve a matter of public concern and, therefore, are not covered under the TCPA. In essence, Shiloh's position is not that Garton has no right to voice opinions about Shiloh, but rather that Shiloh has been harmed and seeks monetary and injunctive relief because of the manner in which Garton spoke to Kersh.

Shiloh correctly notes that its petition references specific instances of alleged improper statements and conduct by Garton rather than the underlying subject matter of Garton's complaints. As referenced above, Shiloh's petition alleges that Garton went to the model home, approached Kersh and told her to not talk to anyone outside the model home, and accused Shiloh and its agents of being "unethical and liars."[4] The petition also alleges that during this encounter, Garton told Kersh that she was "evil and from the devil," that Garton was a "special child of God," and that Garton was going to "place a curse" on Kersh and Shiloh so that they could not make another home sale in the neighborhood.

Kersh's affidavit elaborates on these allegations. According to Kersh, Garton called Kersh the "spawn of Satan" and said "God will punish you." As to the liar and unethical statement, Kersh's affidavit states that this characterization was based on Garton's representation that "[Shiloh] would not do what she wants done in the association," and had lied about the HOA having a board or directors and the existence of a management company handling Shiloh's operations.

[4] Although Garton's affidavit denies calling Shiloh "unethical and liars," this does not control whether the TCPA applies. "[A] defendant moving for dismissal need show only that the plaintiff's 'legal action is based on, relates to, or is in response to the [defendant's] exercise of . . . the right of free speech'—that is, 'a communication made in connection with a matter of public concern'—not that the communication actually occurred." ***Hersh v. Tatum***, No. 16-0096, 2017 WL 2839873, at *4 (Tex. June 30, 2017).

Although these specific statements may be viewed as inappropriate and outside the boundary of common courtesy, the applicable analysis requires us to determine (1) the factual basis for Shiloh's claims, based on the pleadings and evidence viewed in the light most favorable to Shiloh, and (2) the extent to which these factual bases, as a matter of law, are protected expressions within the TCPA's definitions. In doing so, we do not blindly accept Garton's attempts to characterize Shiloh's claims as implicating protected expression. ***Sloat v. Rathburn,*** 513 S.W.3d 500, 504 (Tex. App.—Austin 2015, pet. dism'd). Nor are we limited to accepting only that which Shiloh asks this Court to consider without reviewing other facts surrounding the encounters at issue. Even reviewing the evidence in the light most favorable to Shiloh, the factual basis on which Shiloh's claims are based is much broader than the alleged verbally abusive statements.

Irrespective of how narrowly Shiloh crafted the allegations in its petition, we also look to the supporting and opposing affidavits to determine whether Shiloh's overall claims are predicated factually on conduct that falls within the protections of the TCPA. *See* TEX. CIV. PRAC. & REM. CODE ANN. §27.006(a); *see also* ***Long Canyon Phase II & III Homeowners Ass'n, Inc. v. Cashion***, 517 S.W.3d 212, 219 (Tex. App.—Austin 2017, no pet.). The affidavits before us present Garton's actions towards Kersh and Shiloh's owners in the context of, and as a component of, trying to reach out to the directors of the HOA and Shiloh's owners to discuss and seek answers for herself and other homeowner's concerning the drainage and erosion problems within the subdivision and Kersh's perceived interception of prospective purchasers of Garton's home.

Kersh's affidavit acknowledges that Garton had been to the model home on numerous occasions and that Kersh personally discussed Garton's complaints with the builders. As to the encounter at the model home, Kersh's affidavit describes that Garton's behavior became more animated when, after demanding to speak to Shiloh's owners, she was told they were not present.

Garton's affidavit states she is trying to sell the home that she owns in the Shiloh Village subdivision. Garton references seeing Kersh on two occasions come to her home and intercept potential buyers who were looking at Garton's home. After the second occasion, Garton went to the model home and confronted Kersh as to her perception that Kersh was intercepting potential buyers. Garton further avers to (1) discussing the erosion issues with Kersh, and (2) wanting to contact the board about these problems. Garton's affidavit characterizes her contact with Kersh

at the model home, and with Shiloh's owners on other occasions, as efforts to present her complaints to the HOA directors and Shiloh's owners.

Accordingly, the evidence shows that Garton's underlying reason for going to the model home and confronting Kersh was to voice her opinions and complaints and seek an audience with the HOA directors and Shiloh's owners in hopes of reaching a solution to the drainage and erosion problems that she and other homeowners were experiencing and to stop Kersh from allegedly interfering with her efforts to sell her home. Garton's frustration in being unable to obtain the desired audience may have led to inappropriate statements and conduct, but such does not undermine the central theme that Garton's actions and statements were dictated and motivated by a desire to communicate her opinions and complaints to those in charge. The underlying basis which prompted her actions was a matter of public concern and her statements to Kersh an expression of her right to free speech protected under the TCPA. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 27.001(4), (7). Shiloh cannot narrowly tailor its pleadings in such a way to avoid TCPA implications.

The same analysis applies to the confrontations between Garton and Shiloh's owners. Shiloh alleges in its petition that, prior to Garton's encounter with Kersh, she approached one of its owners at the entrance to the neighborhood and "attempted to defame such company" and later, disrupted a meeting at which the owners were present and no business could be conducted. Greene's affidavit elaborated on these two events. He states that Garton approached his vehicle and, after asking if Greene was part of the HOA, proceeded to describe problems she was having with the builder. As to Garton's disruption of a private business meeting, Greene describes the event as a business meeting with his partner at the model home with no one else present. During the meeting, Garton entered the model home unannounced and uninvited. The only reference to Garton's statements is that she "again began making comments about our ethics."

Garton's affidavit stated that when she saw Root's and Greene's vehicles at the sales office, she wanted to confront them with information confirming that both were HOA board members and to discuss the drainage issues. The sales office was open when she arrived. Upon entering, she saw and proceeded to speak to Greene and Root about their sales hostess, Kersh. When Greene demanded that she leave or they would call the police, she asked if she could bring "our complaints to them since they were board members." Upon being given thirty minutes to retrieve her list and documents to present these complaints, Garton left the building.

Although Garton's method and manner in approaching Greene's vehicle and speaking with him could be viewed as inappropriate, the fact remains that she was voicing her opinions about the builder. The same could be said of Garton entering Shiloh's model home, presumably after hours and uninvited, to confront both owners during a private meeting. However, this does not obviate the fact that, on both occasions, Garton's statements were made in the course of communicating a matter of public concern, which falls under the protection of the TCPA. *See* ***id.*** Though Shiloh argues that it seeks injunctive relief solely to prohibit Garton from repeating her allegedly verbally abusive and disruptive behavior, the terms of the temporary restraining order requested and issued, as well as the requested terms for permanent injunctive relief, are much broader.

Specifically, Shiloh's requested injunction does not merely enjoin Garton from contacting or communicating with Kersh, Root, or Greene, or going to Shiloh's model home. Rather, the requested relief also prohibits her from "disseminating, via spoken word, electronic or written form, any statement expressly stating or implying that [Shiloh] has committed fraud, deceptive practice or lied about their services." Accordingly, the requested injunction is not as limited in scope as Shiloh contends, both as to the content of what Garton may say or with whom she may communicate. Even assuming Shiloh's sole motivation in filing suit was to protect its volunteer hostess from being subjected to bizarre and unsettling confrontations and to prevent uninvited intrusions into private meetings, the TCPA stands in the way of achieving this simplistic goal under the facts presented in this case and the causes of action asserted.[5]

Shiloh asserted two causes of action against Garton: business disparagement and interference with prospective relations. For all of the reasons discussed above, each cause of action, as pleaded, is in direct response to Garton's complaints regarding Shiloh's business practices and the erosion and drainage issues in the subdivision. Therefore, we conclude that Shiloh's claims are based on, relate to, or are in response to Garton's exercise of her right to free speech. *See* ***id.*** § 27.005(b), (c).[6]

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[5] Shiloh did not plead a cause of action for trespass nor is Kersh a party asserting any individual claims against Garton.

[6] Because Garton meets her initial burden as to the "exercise of the right of free speech," we need not address whether her conduct qualified as the "exercise of the right to petition" or "right of association." *See* TEX. CIV. PRAC. & REM. CODE ANN. § 27.005(b); *see also* TEX. R. APP. P. 47.1.

PRIMA FACIE CASE

Because Garton met her burden to show the TCPA applies, we now determine whether Shiloh established by clear and specific evidence a prima facie case for each essential element of its claims. *See* ***id.***

Business Disparagement

Shiloh first argues that Garton is liable for business disparagement. To prevail on a business disparagement claim, a plaintiff must establish (1) the defendant published false and disparaging information about it, (2) with malice, (3) without privilege, (4) that resulted in special damages to the plaintiff. ***In re Lipsky***, 460 S.W.3d at 592. Regardless of whether Shiloh produced sufficient evidence of the other elements, an issue we need not address, it did not meet the last element of special damages. As to damages, Shiloh only generally pled that Garton's actions caused it to suffer damage to the goodwill of the company and its reputation. The only reference to specific damages sustained by Shiloh is contained within Greene's affidavit, which states as follows: "These actions are intended to harass and threaten my company, and the reputation that I have established in the past is in danger if she continues to make statements of my [sic] business ethics."

However, this statement is conclusory and therefore insufficient to satisfy the TCPA's requirement of "clear and specific evidence" as to the required element of special damages. *See* ***Better Bus. Bureau of Metro. Houston, Inc. v. John Moore Servs., Inc.***, 441 S.W.3d 345, 355 (Tex. App.—Houston [1st Dist.] 2013, pet. denied) (conclusory statements insufficient to establish prima facie case). Bare, baseless opinions do not create fact questions and are not a sufficient substitute for the clear and specific evidence required to establish a prima facie case under the TCPA. *See* ***id***. Opinions must be based on demonstrable facts and a reasoned basis. ***Id***. Greene's affidavit does not aver that Shiloh has suffered any direct pecuniary and economic losses. He merely states that there could be a threat to the company if Garton continues making statements about the company's ethics. His affidavit contains no specific facts showing any reduction of business traffic or lost sales directly attributable to the complained of conduct and statements.

Shiloh asserts in its brief that loss of goodwill is an economic injury for which exemplary damages are recoverable. However, as to any economic effect, it states that additional discovery is necessary. Shiloh further correctly states that it is precluded from submitting evidence of

economic damages as part of this interlocutory appeal. This presumably represents an admission that Shiloh has no evidence of direct pecuniary or economic loss resulting from Garton's statements and actions. The TCPA provides no relief to Shiloh's inability to timely present clear and specific evidence of special damages under the statute's two part analysis. Because Shiloh did not present any evidence of special damages, it did not provide clear and specific evidence to establish a prima facie case for each essential element of business disparagement. *See* ***Lipsky***, 460 S.W.3d at 590-91; *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 27.005(c).

Intentional Interference with Prospective Relations

Shiloh also alleged that Garton's actions constitute an "intentional interference with prospective relations." The elements for this stated cause of action are not set out in Shiloh's petition; thus, we interpret Shiloh's pleading to represent a cause of action for tortious interference. To prevail on a claim for tortious interference with prospective business relations, a plaintiff must establish that (1) there was a reasonable probability that the plaintiff would have entered into a business relationship with a third party, (2) the defendant either acted with a conscious desire to prevent the relationship from occurring or knew the interference was certain or substantially certain to occur as a result of the conduct, (3) the defendant's conduct was independently tortious or unlawful, (4) the interference proximately caused the plaintiff injury, and (5) the plaintiff suffered actual damage or loss as a result. ***Coinmach Corp. v. Aspenwood Apartment Corp.***, 417 S.W.3d 909, 923 (Tex. 2013).

Neither in its petition nor its affidavits does Shiloh provide facts in support of all essential elements of this cause of action. Shiloh represents in its brief that it will be required to propound future discovery to establish one or more of the elements for interference with prospective relations. This again presumably represents an admission that Shiloh was unable to provide clear and specific evidence as to all the essential elements of tortious interference with prospective business relations at the time of filing suit or the submission of its opposing affidavits. Consequently, Shiloh did not present a prima facie case by clear and specific evidence as to all essential elements of the causes of action for tortious interference with prospective business relations. *See* ***Lipsky***, 460 S.W.3d at 590-91; *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 27.005(c).

Holding

Because Shiloh has failed to establish a prima facie case for either of its causes of action, it failed to carry its burden under the TCPA. Therefore, the trial court erred in failing to grant Garton's motion to dismiss. We sustain Garton's first issue and need not address her second issue. *See* TEX. R. APP. P. 47.1.

DISPOSITION

Having sustained Garton's first issue, we ***reverse*** the denial, by operation of law, of Garton's motion to dismiss, ***render*** judgment dismissing Shiloh's claims against her, and ***remand*** for a determination of attorney's fees and costs. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 27.009 (West 2015) (award of attorney's fees and costs mandatory when an action is dismissed under TCPA).

GREG NEELEY
Justice

Opinion delivered August 23, 2017.
Panel consisted of Hoyle, J., and Neeley, J.,
Worthen, C.J., not participating.

(PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

AUGUST 23, 2017

NO. 12-16-00286-CV

CATHY GARTON,
Appellant
V.
SHILOH VILLAGE PARTNERS, LLC,
Appellee

Appeal from the County Court at Law
of Smith County, Texas (Tr.Ct.No. 65,474-B)

THIS CAUSE came to be heard on the appellate record and the briefs filed herein, and the same being considered, because it is the opinion of this court that there was error in the judgment of the court below, it is ORDERED, ADJUDGED and DECREED by this court that the judgment be **reversed** and the cause **remanded** to the trial court **for further proceedings** and that all costs of this appeal are hereby adjudged against the Appellee, **SHILOH VILLAGE PARTNERS, LLC,** in accordance with the opinion of this court; and that this decision be certified to the court below for observance.

Greg Neeley, Justice.
Panel consisted of Hoyle, J., and Neeley, J.,
Worthen, C.J., not participating.