Appeals Court Harmonizes Texas' Retraction and Anti-SLAPP Statutes to Protect Free Speech Rights

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PRACTICES Litigation, Media and Entertainment Litigation

A Houston court of appeals recently sided with media defendants regarding the relationship between Texas' retraction statute (known as the Defamation Mitigation Act "DMA") and the Anti-SLAPP statute (known as the Texas Citizens Participation Act "TCPA").[1] Addressing the question as a matter of first impression, the Fourteenth Court of Appeals held last month that an abatement period under the DMA tolls the requirement under the TCPA that Anti-SLAPP motions be filed within "60 days of the date of service of the legal action."[2] This decision, which recognizes the "complementary purposes" of the DMA and TCPA, reconciles these two statutes and provides useful guidance for media companies seeking to utilize the abatement period offered under the DMA to discuss and evaluate whether a retraction is justified prior to filing an Anti-SLAPP motion. The Court concluded litigants can employ the provisions of each statute successively without running afoul of the TCPA's statutory deadlines.

The facts underlying the litigation took place in April 2016, when a man was shot during an altercation in the 3700 block of Dowling Street, near downtown Houston. A Houston Police Department lieutenant who responded to the scene noted in a police report that the victim was a member of a band scheduled to play at a nearby bar and was apparently shot during an argument with bar management about how long the band was going to play. Numerous media outlets reported on the shooting, including that the victim was shot "outside . . . the Status Lounge, 3708 Dowling." Without sending a pre-suit retraction demand, Plaintiff Status Lounge, Incorporated sued several media outlets for defamation on August 3, 2016, alleging (among other things) that the musician was shot at a nearby liquor store, not outside Status Lounge itself.

KHOU,[3] one of the media defendants that reported on the incident, submitted with its answer a verified plea in abatement under the DMA, alleging that Status Lounge did not request a retraction prior to filing suit as required by the DMA. As a result, the lawsuit was automatically abated for 60 days to give the parties an opportunity to exchange further information and evaluate if a retraction would be appropriate and hopefully resolve the dispute. An abatement pauses a proceeding in its entirety; nothing in the lawsuit goes forward and no pleadings can be filed (so no costs are incurred in the lawsuit while the parties work toward potential resolution). When Status Lounge declined to provide any further information to clarify who the victim and assailant were and the affiliation of each to Status Lounge, KHOU and the other Defendants filed Anti-SLAPP motions after the abatement period concluded.

Status Lounge objected to the Anti-SLAPP motions as untimely based on the TCPA's requirement that motions to dismiss "must be filed not later than the 60th day after the date of service of the legal action."[4] While the parties' Anti-SLAPP motions were filed more than 60 days after Defendants were served with the lawsuit, the motions were timely factoring in the abatement period (when the lawsuit was effectively stayed). The trial court sustained Status Lounge's objections to the timeliness of the motion, holding that the DMA did not stop the clock on the TCPA's 60-day deadline and, therefore, that Defendants' Anti-SLAPP motions were untimely.

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On appeal, the Fourteenth Court of Appeals reversed the trial court's ruling. The Court determined that during the pendency of a DMA abatement period, "all statutory and judicial deadlines will be stayed"—including the deadlines for filing Anti-SLAPP motions under the TCPA. Looking to the legislative intent underpinning both statutes, the Court concluded that "the plain language and the expressly stated purposes of the DMA and the TCPA show that the Legislatures intended the two statutory schemes to work in harmony and encourage the protection and promotion of the exercise of First Amendment rights, to limit the use of overburdened judicial resources, and, when possible, to facilitate the early resolution of disagreements over such speech."[5] In light of these complementary purposes, the Court reasoned that the DMA's abatement provision, which stays "[a]ll statutory and judicial deadlines under the Texas Rules of Civil Procedure," pauses the running of the TCPA's 60-day filing deadline.

This decision is a victory not only for the litigants of the case, but for media defendants throughout the state who frequently rely on the protections provided by both statutes. As the Court of Appeals correctly observed, the DMA and TCPA have complementary purposes: while the purpose of the DMA is to promote the early resolution of defamation lawsuits through the mitigation of any perceived damages, the TCPA aims to eliminate needless litigation through the expedited dismissal of meritless claims. Accordingly, media defendants often employ both statutes in tandem, allowing them to assess the merits of a plaintiff's claim and either address a legitimate complaint or move for expedited dismissal when the claims are not legitimate.

The Fourteenth Court of Appeals' recent decision provides much-needed guidance regarding how the DMA and TCPA interact, specifically with relation to procedural requirements and deadlines associated with the filing of TCPA motions to dismiss. It further emphasizes how these two statutes can work concomitantly to allow for early assessment and remediation redress of legitimate claims, while allowing quick dismissal of those that lack merit. By contrast, had the Court adopted Plaintiff's theory, it may have significantly impaired the ability of defamation defendants to take advantage of the abatement period to assess a plaintiff's claims before beginning work on an Anti-SLAPP motion. Fortunately, the Court arrived at an outcome that allows both statutory frameworks to continue to coexist and continue to protect free speech rights and promote judicial economy.

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[1] *KHOU-TV, Inc., et al. v. Status Lounge Inc.*, Case No. 14-17-00310-CV, 2017 WL 6459231 (Tex. App.—Houston [14th Dist.] Dec. 19, 2017, no pet. h.).

[2] TEX. CIV. PRAC. & REM. CODE §27.003(b).

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[4] *See id.* §27.003(b).

[5] *KHOU-TV, Inc.*, 2017 WL 6459231 at *8.

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