

REPORTER'S RECORD
VOLUME 2 OF 2 VOLUMES
TRIAL COURT CAUSE NO. D-1-GN-22-6452

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INTELEOS CORPORATION
INC., JOAN BAKER, TRICIA
TURNER
Plaintiff,

VS.

ULTRA SAFE ULTRASOUND
DIAGNOSTIC SERVICES LLC,
JOANNA HALL,
Defendant.

) IN THE DISTRICT COURT
)
)
) TRAVIS COUNTY, TEXAS
)
)
) 98TH JUDICIAL DISTRICT

MOTION TO DISMISS

On the 22nd day of February, 2023, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable David Phillips, Judge Presiding, held in Austin, Travis County, Texas:

Proceedings reported by machine shorthand.

APPEARANCES

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INDEX
VOLUME 2
MOTION TO DISMISS

FEBRUARY 22, 2023

Appearances.....	4	2
Argument by Mr. Williamson.....	7	2
Argument by Mr. Musyimi.....	22	2
Court's Ruling.....	41	2
Adjournment.....	43	2
Court Reporter's Certificate.....	44	2

P R O C E E D I N G S

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3 THE COURT: Cause No. D 1-GN--22-6452
4 styled Joan Baker and Inteleos Corporation and Tricia
5 Turner against Joanna Hall and Ultra Safe Ultrasound
6 Diagnostic Services. We are convened again this
7 afternoon to hear the second motion on today's agenda in
8 this case.

9 Mr. Solomon Musyimi appears for the
10 plaintiff. Mr. Shawn Williamson appears, again, for the
11 defendant. And we're here this afternoon on defendant's
12 Motion to Dismiss Chapter 27 of the Civil Practice and
13 Remedies Code. Yes, sir.

14 MR. WILLIAMSON: Your Honor, may I proceed?

15 THE COURT: Please.

16 MR. MUSYIMI: Before we proceed, there is a
17 little housekeeping issue I would like to raise to the
18 Court, respectfully. Your Honor, this Motion to Dismiss
19 was filed on December 20, 2022, and today the date is
20 February 22, 2023. And based on our computations that is
21 a full 64 days and under the Texas Civil Practice and
22 Remedies Code 27.004 it requires the hearing be conducted
23 within 60 days.

24 THE COURT: Or motion is considered to be
25 dismissed by operation of law. Is that what it says?

1 MR. WILLIAMSON: May I respond, Your Honor?

2 THE COURT: Yes, sir.

3 MR. WILLIAMSON: The code very clearly says
4 within 60 days or unless agreement by the parties to
5 extend that time. Mr. Musyimi he agreed to this time
6 that was four days afterwards. We set hearing. We gave
7 notice of hearings. That was a month in advance. He
8 agreed to this date. And it's very telling that we're
9 here discussing this right now instead of him discussing
10 it by motion, which is required by the local rules, in
11 writing the day of the hearing on the date of the
12 hearing.

13 He's desperate because he knows that the
14 anti-SLAPP has a lot of teeth and we're here on his
15 agreement to do it on this date that the Court could get
16 us in.

17 THE COURT: Well, let me review the
18 statute. When all else fails read something, or pretend
19 to.

20 MR. WILLIAMSON: Your Honor, would it be
21 okay if I got on my phone to follow along with the code
22 as well?

23 THE COURT: Sure. We are informed never go
24 into the courtroom without our phone because sometimes
25 things go wrong with the electronics and you can't get

1 out.

2 A hearing must be set no later than the
3 60th day after date of service. I noticed that last
4 night when I was looking at this that it seemed to be
5 awfully late. Upon showing of good cause because of
6 docket conditions or by agreement of parties, but in no
7 event, within 90 days.

8 Mr. Musyimi, did you agree to the date of
9 this hearing?

10 MR. MUSYIMI: I guess, there might be need
11 to clarify the definition of agreement. The question
12 becomes should it specifically stipulate in the agreement
13 that the parties have agreed to extend the period of time
14 beyond the 60 days or the agreement of stating that we
15 shall be in court on a specific date that in and of
16 itself creates an agreement, meeting of the minds,
17 basically nullifying the need to formally extend the 60
18 days.

19 Your Honor, that is an issue that I'm not
20 particularly clear of. Respectfully, ask for the Court
21 to clarify that.

22 THE COURT: A hearing must be set not later
23 than the 60th day after the date of service of a motion
24 unless by agreement of the parties. I mean, we are
25 required to consult with somebody else before we set a

1 motion unilaterally. I assume that was done in this
2 case. Would it be okay if we heard this on the 22nd?

3 MR. WILLIAMSON: Yes, Your Honor. I
4 believe the Court has discretion to extend it as well.

5 THE COURT: Must be for good cause and --
6 you know -- the docket condition, but I think agreeing to
7 the hearing on a certain date is agreeing to a hearing
8 more than if it's more than 60 days after then you've
9 agreed to more than 60 days after. And I so find, so
10 I'll overrule it. It wasn't really stated as an
11 objection, but a housekeeping matter. I think it's
12 appropriate to have a hearing today.

13 Yes, sir, Mr. Williamson.

14 MR. WILLIAMSON: Thank you, Your Honor.
15 May I sit down while I go through my case, would that be
16 okay?

17 THE COURT: Sure.

18 MR. WILLIAMSON: Your Honor, this is our
19 TCPA Motion to Dismiss, otherwise known as the
20 anti-SLAPP. The defendants have filed the anti-SLAPP
21 asking for the case to be dismissed with prejudice and
22 for sanctions to be assessed against the plaintiff. And
23 I'll try not to get into the details of the case too much
24 at this point, Your Honor, before we go into my burden.
25 But essentially what we have here is we have a

1 multi-million dollar special interest group in charge of
2 credentialing for sonography, the No. 1 and the only one
3 in the nation, who saw a statement on LinkedIn --

4 THE COURT: This is not a state-wide
5 licensing?

6 MR. WILLIAMSON: It's nationwide.

7 THE COURT: All my people.

8 MR. WILLIAMSON: Yeah, everybody. They are
9 a special interest group and what Joanna Hall is is she's
10 somebody that worked in sonography and was -- basically
11 got an injury in terms of ergonomics. And she was also
12 interested when COVID was going around --

13 THE COURT: I'm assuming all this is in
14 evidence somewhere?

15 MR. WILLIAMSON: Correct, Your Honor. The
16 evidence is different for my party. We have to show by a
17 preponderance of the evidence and meet our burden,
18 however, it doesn't specify for us what the evidence
19 would have to be as it does specify for the plaintiff.
20 The plaintiff must use Summary Judgment standards,
21 pleadings, affidavits, and that type of evidence. Your
22 Honor, for us, the Supreme Court of Texas actually said
23 in *Lipsky* that the best evidence in terms of is it an
24 issue of free speech or association is actually the
25 pleadings itself. And so a lot of -- most of what we're

1 going to discuss is the pleadings itself.

2 Now, I could go into the evidence that
3 shows the actual articles that are -- that the plaintiffs
4 are discussing, but as I stated earlier, those are not
5 into evidence at all.

6 THE COURT: I don't see the distinction
7 between one side's evidence as opposed to the other.
8 Under proof 27.006, it says "In determining whether it
9 should be dismissed, the Court shall consider the
10 pleadings, evidence the Court could consider under
11 Summary Judgment and supporting an opposing affidavit
12 stating the facts on which the liability or offense is
13 based."

14 MR. WILLIAMSON: If I may respond, Your
15 Honor. The specificity is if it is to be dismissed if a
16 prima facie case has been met, not if the burden of the
17 preponderance of the evidence shows there's an issue of
18 free speech. I don't have a problem doing that. That's
19 the majority of what we're discussing today is the
20 pleadings that are out there.

21 THE COURT: Okay.

22 MR. WILLIAMSON: And so, Your Honor, if I
23 can bring your attention in No. 5 is our Motion to
24 Dismiss and I'm going to try to read -- I'm not going to
25 read through it, but hit some key points inside of it.

1 THE COURT: Yes, sir.

2 MR. WILLIAMSON: And just as way of
3 background very quickly. What happened here was Joanna
4 Hall, she had an injury, she looked at ergonomics and the
5 issue of injury, her moving somebody's shoulder in the
6 sonography industry. She saw it was lacking. People
7 were begging her to change this and to come up with
8 something different. So she came up with a curriculum
9 and some research. She worked very hard on this and when
10 she started putting this out there people were
11 interested. When she actually wrote her own white paper,
12 as we discussed earlier, Inteleos actually reached out to
13 her and said, hey, we're interested in what you are
14 doing; our Grand Alliance. Why don't you come join us?
15 All you have to do is give up and your work.

16 When that happened she said, well, I'm not
17 too sure, but let's talk any ways. So radio silence at
18 that point. They weren't interested at that point. So a
19 couple of months later she published her paper in January
20 of 2020 -- '21, excuse me.

21 THE COURT: The publication was an online
22 publication on a website?

23 MR. WILLIAMSON: Correct. Now, that very
24 day Inteleos calls Joanna Hall on the phone to discuss
25 her white paper and the importance of it. They stayed on

1 the phone for 3 hours discussing potential collaborations
2 and going forward.

3 Fast forward, radio silence until the
4 summer of 2021 and they publish their own article and
5 that is the article that has been brought up in the
6 LinkedIn post.

7 Now, Joanna Hall is a single person, a
8 single person entity. She has 3 kids, a disabled veteran
9 husband and she's not a multi-million dollar special
10 interest group. So what they did was they sent her in
11 the summer of 2022, a DC law firm, sent her a letter
12 basically saying, Stop. Apologize now. Say what you did
13 was wrong and we're not going to sue you. Also, if we do
14 sue you here's the brief we're going to sue you with.

15 THE COURT: It does says Washington DC law
16 firm, not the DC law firm that Dan Christianson has.

17 MR. WILLIAMSON: No, Your Honor, an actual
18 high-powered DC law firm. I have that in my objection to
19 evidence.

20 THE COURT: He's pretty high-powered.

21 MR. WILLIAMSON: I believe it.

22 So when she did not accept their offer to
23 make her apologize, they found a lawyer in Texas who
24 filed the brief that they drafted and here we are. A
25 single person versus a multi-million dollar special

1 interest group.

2 Now, I'll get to the TCPA. Obviously,
3 Judge, we have to show by preponderance of the evidence
4 we have asserted a legal action that is based on the
5 response of the defendant's exercise of free speech,
6 right to petition, right of association. Specifically,
7 we're going to look at the exercise of free speech and
8 the right of association.

9 Now, they basically literally -- liberally
10 construed the definition of this in case law because the
11 exercise of free speech broadly includes the
12 communication made a connection with the matter of public
13 concern. And the term "communication" is broadly defined
14 including making or submitting of a statement or document
15 in any form or medium, including oral, visual, written,
16 audio, visual or electric. And when it comes to
17 exercising right of association that the joining together
18 to collectively express, promote, pursue or defend a
19 common interest relating to a governmental proceeding or
20 specifically a matter of public concern, which is a
21 statement or activity regarding the matter of political,
22 social or other interest in the community.

23 And specifically, Your Honor, I have case
24 law that I've indicated in there that health care and
25 health care issues, including how health care involved

1 other people or yourself can be construed as a right for
2 a matter of public concern.

3 Then obviously, once we establish our
4 burden, the burden shifts and they have to prove a prima
5 facie case, which they clearly cannot. And I have on
6 page 4 on the second paragraph, Your Honor, it discusses
7 the case I was discussing with. It says, inside the TCPA
8 motion, the Court shall consider the pleadings, evidence
9 the Court can consider under Rule 166, the Texas Rules of
10 Civil Procedure and supporting and opposing affidavits.

11 The TCPA requires that if the Court rejects
12 conclusory claims that includes conclusory case law when
13 he's trying to decide if there's no underlying evidence
14 to support those conclusory facts, Your Honor, and that's
15 what we're trying to avoid by not putting forth the
16 evidence that should have been in in the first place.

17 So to our argument, Your Honor, on page 5
18 is where everything starts and I'll go through it as
19 quickly as I possibly can. Section 4(a) discussing what
20 our elements are. The plaintiff's original petition is a
21 legal action. Obviously, we're in a lawsuit. The
22 petition is a lawsuit, cause of action, petition,
23 complaint or filing that request legal or equitable
24 relief and that's in Texas Civil Practice and Remedy
25 Codes 270.016.

1 Now, moving onto a little more to the
2 weeds. Our issue is based on a right of free speech.
3 This is specifically based on a social media post by the
4 plaintiff -- excuse me -- by defendants, as you heard
5 earlier. The topic, as we've already discussed, is both
6 publications are safety in sonography and that's in
7 general, okay. The plaintiffs are insiders in the
8 sonography industry. They are a de facto special
9 interest group who call the shots. They continue to
10 create new steps in financial obligations and that is
11 part of the problem and why we're here today.

12 Now, none of that was discussed at all in
13 the lengthy post that you saw earlier. Defendant is an
14 advocate since 2020. She's been trying to get something
15 better and safer. Now, on page 6, Your Honor, on the
16 italicized portion I describe social media posts applying
17 to the TCPA. And Texas courts have very much said that
18 the TCPA is to protect the individual's communication in
19 online post when using what we refer to as opinionated
20 criticism, that is an actual doctrine that was set forth
21 in *Bedford versus Spassoff* the Supreme Court of Texas.
22 And basically that was a youth baseball organization and
23 essentially they were asserting business disparagement
24 claims because of what the coach said on Facebook and the
25 Supreme Court said essentially, yes, online posts do

1 apply that.

2 The legislature specifically instructs
3 Texas courts liberally to construe the TCPA to effectuate
4 its purpose. Now, regarding the fact they were made on
5 social media, the Texas courts have stated the TCPA
6 defines a communication, which we're dealing with here,
7 the making or submitting of a statement or document in
8 any form, medium, including oral, audio, visible or
9 electronic. That's *Weber versus Fernandez* out of the
10 Fort Worth Texas Appellate Courts. And it's also cited
11 in the Texas Civil Practice Remedy Code 27.001.

12 Now, something that may or may not come up
13 in this that I would like to discuss very quickly,
14 something that was not -- that has not been pleaded by
15 the plaintiffs is the fact that the defendant is a
16 limited purpose public figure. And I think that, Your
17 Honor, if Your Honor gets to this point, Your Honor may
18 need to make a decision whether she is a limited purpose
19 public figure for terms of this anti-SLAPP motion.

20 Now, if she's just a private individual,
21 well, then negligence and a negligent standard can go to
22 prove intent and damages. Now, if she's a limited
23 purpose public figure, well, then we have a little issue
24 because then we have to prove malice and intent. And
25 there's two purposes; there's all purpose and general

1 purpose. Now, all that public purpose means is that
2 she's achieved her basic fame of notoriety because they
3 became public figures for the purpose and the context in
4 which she's dealing with and this would have been
5 sonography. Earlier we saw LinkedIn posts and they are
6 complaining in their own briefs that third parties are
7 seeing. That is enough to make her a limited purpose
8 figure, even if it is for a limited range of issues
9 surrounding a particular controversy. And that's in
10 *Rodriguez versus Gonzalez* that it discusses that.

11 Now, all it has to say, according to
12 *Rodriguez versus Gonzalez*, is the controversy at issue
13 must be public in a sense that people are discussing it
14 and people other than the immediate participants in the
15 controversy are likely to feel the impact of its
16 resolution.

17 The plaintiffs had said specifically they
18 are concerned and they are being damaged to the tune of
19 half a million dollars because so many people are seeing
20 these defamatory statements. The plaintiffs must have
21 more than trivial or congenital role in the controversy
22 it's about them. And the alleged defamation must be
23 germane to the plaintiff's participation in the
24 controversy. Germane meaning that she's more than just a
25 little innocent bystander in the part of the controversy.

1 And, Your Honor, I've listed here on page 7
2 at the bottom, I've gone through these steps specifically
3 and briefed it extensively. I can go forward. I can go
4 through it. I'm going to kind of hit on very quick
5 topics and very quick subjects.

6 So the plaintiffs' original petition very
7 specifically states defendants created a LinkedIn and
8 Facebook post meant for the public at large. They have
9 admitted that. We are not arguing that, in fact, we have
10 seen a LinkedIn post today that third parties would have
11 access through the Internet and that's in the original
12 petition.

13 The next step is the plaintiff must have
14 more than a trivial or congenital role in the controversy
15 that plaintiffs themselves have stated that the posts and
16 the statements of controversy are made by the defendants
17 are against the plaintiffs and about the plaintiffs,
18 making defendants have more than just a trivial role in
19 the issue. And that's despite any reason why the
20 argument that we're involved here. The posts by
21 defendants were comparing the subject matter of
22 plaintiffs' publication to one of their own and complain
23 of no reference or credit given as we have already
24 discussed.

25 The next thing is the plaintiff -- the

1 defamation must be germane to the plaintiffs'
2 participation. It's essentially the same issues of 1 and
3 2. The plaintiffs have a direct link to the controversy,
4 all posts provided to the defendants. So it's not
5 germane with those simple facts. And the posts we're
6 comparing the subject matter of plaintiffs' publication
7 to one of their own. So there's issue of germane. So
8 then it comes to the fact of were they an issue of public
9 concern.

10 Now, matter can be public concern and
11 public issue because the people in public are discussing
12 it or because people other than the immediate
13 participants in the controversy are likely to feel the
14 impact of the resolution.

15 Now, I bring this up again, half a million
16 dollars where there is zero evidence, there is even zero
17 explanation of where half a million dollars came from.
18 They have to believe they have been damaged by that
19 unless they are saying nobody saw these posts, so we're
20 still damaged half a million dollars. It defies logic
21 and is nonsense.

22 And I said specifically in the middle of
23 page 9, right under the big A, says further issues that
24 relate to health, safety and community well-being all
25 included in the statutory definition of matters of public

1 concern and can be related to communications pertaining
2 to the omission of any information or action. And that
3 is *Hersh* H-E-R-S-H versus *Tatum* T-A-T-U-M out of the
4 Texas Supreme Court in 2017. And essentially all that we
5 have seen at all in the pleadings is that plaintiffs'
6 subject matter -- defendants own subject matter
7 publication was saying that plaintiffs' was similar to
8 hers. That's all that we talked about. The Guardians of
9 the Galaxy-looking compared to another movie.

10 Now, Your Honor, that's the issue with the
11 right of free speech. The next one is very short is the
12 defendants were exercising right of association. This is
13 bottom of page 9. Again, the right of association is
14 defined as a communication between individuals who join
15 together to collectively express, promote, pursue or
16 defend common interest. That's *Backes* B-A-C-K-E-S versus
17 *Misko* M-I-S-K-O.

18 And essentially one of the things that's
19 been stated in a lot of Texas courts, including *Backes*,
20 is when you have an online post, when you have something
21 that is online forum, then that almost automatically
22 makes it an issue of right of association because other
23 people are able to see it.

24 Now, plaintiffs have very specifically said
25 people can see this awful defamatory post and, therefore,

1 we're damaged to the tune of \$500,000. And I think the
2 issue there comes into, it's hard to argue that a right
3 of association if other people are able to see this post
4 and are interested in this post or disinterested in the
5 post, it doesn't have to be positive, we have a right of
6 association issue.

7 THE COURT: Well, in fact, plaintiffs'
8 petition contains a posting that has a response to it.

9 MR. WILLIAMSON: Correct.

10 THE COURT: So obviously somebody saw it,
11 whether for or against.

12 MR. WILLIAMSON: Correct. And that is in
13 their pleadings, not necessarily something they entered
14 into their injunction, Your Honor. And, Your Honor,
15 again, we ask that the burden be shifted and that they
16 prove their case in a prima facie case.

17 Now, I would like to discuss this when I
18 discuss my objections and my reply after requesting for
19 sanctions. But, again, the Court should dismiss the
20 defamation claim. They should award defendants their
21 cost fees and sanction the plaintiff. The purpose of the
22 clear and specific requirements they must satisfy
23 elevated evidentiary standard. That's with every single
24 court says, 27.005 TCPA says. That's also included in
25 the *Backes* we discussed earlier B-A-C-K-E-S.

1 Here the plaintiffs are not able to provide
2 required clear and specific evidence because they have
3 not included any evidence in their response. There are
4 no affidavits. There is no evidence authenticated and
5 under a Summary Judgment standard or a foundation laid
6 out. They could argue that, well, our pleadings should
7 stand that we should be able to discuss the pleadings;
8 however, unlike us, they didn't even reference their own
9 pleadings in their response and I don't think that their
10 response can even be heard. I'm going to discuss that
11 when we discuss my objections to their evidence.

12 But I think at this point, Your Honor, I
13 think that the burden should shift at this point.
14 There's a clear right of free speech. There's a clear
15 right of association, and we're not just assuming that
16 we've met our first burden. We've drafted extensively on
17 this issue and there are plenty in the plaintiffs' own
18 petition discussing it.

19 Now, further than that, plaintiffs'
20 response did not argue at all that we could not be heard.
21 They did not discuss that we can't meet our burden. They
22 did not discuss any controverting evidence showing that
23 we did not meet our burden. I think with that that they
24 have waived their right to even discuss or argue that we
25 haven't because it was not in their response, as a lot of

1 things weren't, Your Honor. And that's all I have for
2 you.

3 THE COURT: Thank you. I noticed a girth
4 of information in the plaintiffs' response.

5 Mr. Musyimi, your response, sir.

6 MR. MUSYIMI: Your Honor --

7 THE COURT: I do have your response open in
8 front of me here.

9 MR. MUSYIMI: Our position has been and
10 continues to be, this issue is not ripe for dismissal.
11 And the reason being that this company has not been
12 completed as of this point in time and through discovery
13 there are pieces of information that will be brought to
14 light that could easily justify the continuance of this
15 case.

16 Now, Your Honor, I respectfully refer to
17 the case of *Milkovich versus Lorain*, a Supreme Court case
18 where the U.S. Supreme Court say there's no constitution
19 of distinction between fact and opinion. And, therefore,
20 no wholesome exemption of any statement that can be
21 labeled as opinion. The issue instead is whether
22 regardless of the context in which a statement is
23 uttered, it is sufficiently partial to be susceptible to
24 be proven to be true or false. There are various
25 statements that have been made by the defendant that,

1 Your Honor, would rise up to defamation level. The only
2 problem is that we at the very under stages of this case
3 and, therefore, many of those statement have not been
4 brought to light which could easily prove the case for
5 the plaintiffs. Plaintiffs decided --

6 THE COURT: Are you saying that there are
7 statements made by the defendant about the same subject
8 that you haven't pled in your pleadings or haven't
9 produced for the Court?

10 MR. MUSYIMI: Your Honor, yes. Various
11 statements that we have not produced and the reason is
12 because we are still in the under stages of this case.
13 We have sent discovery to the opposing party. Discovery
14 has not been responded to and their responses of those --

15 THE COURT: She's made public statements.
16 They are in public. And if she's made private
17 statements, those are absolutely protected if she's
18 whispered to herself someplace, but if she's made public
19 statements then you know about those.

20 MR. MUSYIMI: Indeed we do know about
21 public statements she's made.

22 THE COURT: You are not suing them for
23 that. You don't have any evidence of those. Curious.

24 MR. WILLIAMSON: Your Honor, I don't mean
25 to interrupt my opposing counsel, but if I may, in terms

1 of housekeeping issue with a response with the issues
2 with discovery, may I have two minutes to discuss the
3 issues with discovery because I think there is a legal
4 issue and we shouldn't even be discussing it at this
5 point.

6 THE COURT: I don't really need to hear
7 anything more.

8 MR. WILLIAMSON: Yes, Your Honor.

9 THE COURT: Thank you. Yes, sir.

10 MR. MUSYIMI: Thank you. Your Honor, the
11 plaintiffs in this case decided they are not public
12 figures and, therefore, statements made by the defendant
13 are not protected by the First Amendment of the United
14 States Constitution. Your Honor --

15 THE COURT: They are not protected by the
16 Constitution because?

17 MR. MUSYIMI: Because the plaintiffs are
18 not public figures.

19 THE COURT: Not public figures, okay.

20 MR. MUSYIMI: Your Honor, I refer the Court
21 to the New York Times.

22 THE COURT: So private people are not
23 permitted to make statements about others?

24 MR. MUSYIMI: No, Your Honor, not
25 necessarily so. But the issue of defamation of being

1 directed to a public figure this time is significantly
2 different than statements being directed to public
3 figures versus a private individual.

4 Your Honor, if I could clarify for the
5 Court. In *New York Times versus Sullivan*, a U.S. Supreme
6 Court 376 U.S. 254. Plaintiffs have -- that they are
7 private individuals whose reputations have been harmed by
8 falsehoods perpetrated by the defendant. They have a
9 legitimate interest in seeking compensation by punitive
10 damages.

11 In another case, *Gertz versus Robert Welch*,
12 the Supreme Court ruled that the First Amendment does not
13 require a private individual who is publicly libel to
14 meet the burden of proof of proving malice in order to be
15 awarded punitive damages.

16 THE COURT: I think you've got it upside
17 down. That's exactly the test. But you said something
18 about if they couldn't they are not protected because
19 they are not public figures. The burden -- the standard
20 for showing defamation of a private figure is much lower
21 than the standard for proving defamation of a public
22 figure, but I think we're all on the same team here. So
23 let's assume that this does not require malice unless you
24 are some sort of public figure and even then -- well, go
25 ahead.

1 MR. MUSYIMI: Your Honor, defamation is a
2 false statement of fact that is communicated to a third
3 party as is the case here where she published these items
4 on the social media.

5 THE COURT: But there's no evidence that it
6 was false. You presented your client's affidavit and
7 nowhere in that affidavit does she say that the
8 information was false.

9 MR. MUSYIMI: Your Honor, if I may refer to
10 the affidavit.

11 THE COURT: Uh-huh. "When making statement
12 defendant even knew that the statement was untrue or made
13 the statement with reckless disregard as to the truth or
14 falsity of the statement. I believe it was intended to
15 injure my reputation and thereby cause me harm and" --
16 but doesn't say anywhere that the information was false.
17 That's the starting point for defamation. They allege
18 she knew the statement was true or made statement with
19 reckless disregard as to truth and falsity and never said
20 that it was false, which amazed me when I was reading
21 this yesterday. But go ahead, sir, what else would you
22 like to say?

23 MR. MUSYIMI: Your Honor, just give me a
24 second as I log in. You're right. There is no express
25 statement that statements are false.

1 THE COURT: Yes, sir. What else would you
2 like to tell me today, Mr. Musyimi?

3 MR. MUSYIMI: Your Honor, if I could
4 respectfully ask the Court to give us -- to hold this
5 hearing until such time we get the responses to the
6 discovery, then at that point in time the Court would be
7 in a better position to determine whether or not this
8 case should be dismissed. We believe that there are
9 cases -- pieces of evidence or pieces of evidence that we
10 could obtain during the course of discovery that would be
11 very helpful in this case and would be -- we will be in a
12 better position to provide guidance to the Court as to
13 whether or not this matter should be dismissed.

14 THE COURT: There's a procedure for getting
15 discovery before the hearing, but it's not accomplished
16 by waiting until the hearing is three-fourths done and
17 then asking for it.

18 MR. MUSYIMI: You are absolutely right,
19 Judge, but Section 27.004 does give the Court the leeway
20 to extend the period of time for as long as the hearing
21 is conducted within less than 90 days or, I believe,
22 120 days, I can't remember exactly. But either way, Your
23 Honor, we believe that completion of the discovery and
24 the responses from the defendants would have significant
25 weight with regards to the totality of evidence that is

1 necessary for the Court to determine whether or not this
2 is a matter that needs to be dismissed.

3 MR. WILLIAMSON: May I respond to that,
4 Your Honor?

5 THE COURT: Well, what do you hope - what
6 do you anticipate that the answers to discovery will
7 provide you in the way of evidence, Mr. Musyimi?

8 MR. MUSYIMI: Your Honor, in the request
9 for production we have asked for various documents,
10 various social media postings, et cetera. We are not
11 privy to every piece of social media posting that she has
12 posted. We are not privy to every piece --

13 THE COURT: I'm sorry, why not? It's on
14 social media.

15 MR. MUSYIMI: Yes, indeed, Your Honor, but
16 we do not know every single social media pod call that
17 she posts. We do not know of every single document that
18 she has posted on social media. The sheer fact it's on
19 social media does not in and of itself mean that it's
20 accessible to everybody.

21 THE COURT: She may be on social media that
22 you are not aware of, a different carrier, provider?

23 MR. MUSYIMI: Yes, Your Honor.

24 THE COURT: I see. Well, has your client
25 heard from other people that they saw -- I saw this

1 horrible thing that she posted about you on "truth
2 social" or "gab", one of my favorites. I check gab.com
3 every once in awhile to see how insane people can be, but
4 -- I didn't say that.

5 I just don't -- you have no case from the
6 -- your pleadings, and to think that you're going to
7 somehow gather a case in the future because maybe there's
8 something out there is somewhat speculative, to put it
9 nicely.

10 So, I will not halt in the middle of a
11 hearing to let you do discovery to try to find something
12 that might have been looked for before you filed a
13 lawsuit.

14 Anything more, Mr. Musyimi.

15 MR. MUSYIMI: Nothing further, Your Honor.

16 THE COURT: Anything for your side? Do we
17 have an affidavit on your attorney's fees?

18 MR. WILLIAMSON: We don't have an
19 affidavit, Your Honor. I did file my billing history. I
20 didn't know how you wanted to do it. I've seen it done
21 both ways in defamation cases. I've seen it done to
22 where I'll prove them up here, the ones that I have so
23 far because the complete billing for this month, for
24 instance, and there's going to be quite a bit, it's not
25 going to be complete. And it seems like -- and this is

1 -- there is some split on this. It seems like that even
2 though you have the ability to award attorney's fees now
3 and amend it later potentially, it looks like appellate
4 courts are requiring that there is a motion for the
5 attorney's fees done separately after the judgment is
6 signed, done just like a typical way and that is
7 typically how it's been done the last four cases. So I
8 could do it by affidavit.

9 THE COURT: Taking a hint from Federal
10 court.

11 MR. WILLIAMSON: Exactly. Your Honor, if I
12 could, I would like to respond just for the sake of
13 making my record. And I would like to discuss my reply
14 as well, very briefly if could you give me 5 to
15 10 minutes.

16 THE COURT: All right. What do you want
17 the record to hear, sir.

18 MR. WILLIAMSON: All right. So, Your
19 Honor, I would like to go to my objections to his
20 evidence or lack thereof, and if I could point your
21 attention to No. 14 in the binder. This is my objection
22 to the plaintiff's evidence in support of their response
23 and it's my reply, which is specifically in support of
24 sanctions in this.

25 And so I was very clearly here, Your Honor,

1 if you haven't gotten to read it, I would appreciate if
2 you would look at it because I think that I state it very
3 well in the second paragraph under the summary. I'm not
4 trying to use hyperbole here. There is little to respond
5 to a TCPA Motion to Dismiss. And not only is there no
6 burden being proven, I find that what this special
7 interest group has done here, which is clearly not look
8 at this case and be a part of this case, they sent it to
9 -- not his fault -- they sent it to Mr. Musyimi and
10 didn't even look at it and they didn't give him the
11 proper evidence and they didn't give him the proper
12 background for a defamation case in Texas. That's just
13 not how we do things here. It's highly offensive that
14 this case was filed with zero evidence. It's highly
15 offensive this response showed up with zero evidence.
16 And typically, I would put objections to evidence, which
17 on page 2 I go through what I'm going to discuss here, I
18 don't even know how to form the objections because of the
19 lack of evidence in general. There's zero evidence
20 attached. There's zero affidavits. No Summary Judgment
21 evidence standard. Again, like I said earlier, I think
22 they have waived the right to even use their petition or
23 their previous injunction affidavit because they don't
24 even reference it in their own issue.

25 Now, essentially in the response it's

1 factual conclusory statements and legal arguments that
2 kind of go against my legal arguments and my affirmative
3 defenses mostly. And those conclusory statements, those
4 legal arguments cannot be evidence under a Summary
5 Judgment standard.

6 And so because of the lack of evidence, I
7 object to any of the factual statements in their response
8 being used at all because nothing is authenticated,
9 nothing is backed up through affidavit. There is no
10 Summary Judgment standard and essentially, there is no
11 evidence whatsoever and you cannot form it through the
12 issue.

13 Now, the TCPA is made for cases like this.
14 I know you said you hated anti-SLAPP; a lot of people do.
15 The purpose of it, though, if there is a case there is a
16 purpose for, it's this case right here.

17 THE COURT: But what I hate about it is it
18 adds a cumbersome process.

19 MR. WILLIAMSON: I agree. And I do
20 plaintiffs also --

21 THE COURT: To a particular class of case.

22 MR. WILLIAMSON: Correct. And I hate -- I
23 do plaintiffs work also and I hate the way that it's laid
24 out, especially in cases that aren't specific defamation
25 cases. That drives me crazy.

1 THE COURT: Yeah.

2 MR. WILLIAMSON: But the TCPA and
3 legislature has specifically said that the issue to
4 effectuate the Act's purpose is to screen unmeritorious
5 claims that the non-movant may not rely solely on factual
6 litigations and legal argument in their pleading, but
7 they have to present evidence that's sufficient as a
8 matter of law to support the rational inference that an
9 allegation of fact is true. Why? It says exactly why,
10 because this is an issue of the Constitution and the
11 Texas Constitution. All factual statements in the
12 response should be struck as unauthenticated and without
13 foundation, and not even reference. And for that reason
14 alone, TCPA motion should fail.

15 Now, on top of this, Your Honor, I kind of
16 got the background of this case. Again, this is a
17 special interest group who has a lot of tossing power in
18 the ball game. What they did was they sent a demand
19 letter and a brief petition to my client, to Mrs. Hall,
20 to scare her. She didn't scare. Then they filed -- they
21 found a lawyer in Texas to go file a claim that there was
22 literally no evidence of.

23 Now, did they put forth meritorious claim
24 that I'm even concerned could go on appeal? Absolutely
25 not. They didn't even file the two publications that

1 they are saying or discussing and you mentioned that
2 earlier. It baffles me why, but I can tell you exactly
3 why. In sonography in the industry, including
4 credentialing, it's largely controlled by Inteleos. They
5 have alliances with several groups. Joan Baker is the
6 head of the board of several of these groups and she's
7 one of, if not, the most important figure in there.
8 Doctors in the industry give great weight to everything
9 they do. So the group law firm who sent Joanna Hall a
10 demand letter -- by the way this is an attachment, the
11 demand letter is an attachment, I would like you to read
12 it, Your Honor -- on August 11th in a draft petition.
13 And why did they do this? Why did they file a claim and
14 not bother to help the attorney that they hired? Why
15 didn't they send him to publications? Why didn't they do
16 that? That is because it was never about winning this
17 claim, not a single time. It was about scaring
18 Mrs. Hall. It was trying to silence her and if she
19 didn't listen to them to ruin her. That is their modus
20 operandi in the industry and everything else. Somebody
21 said something they didn't like, so they threw their
22 money around and went after her to try to silence her.
23 That is what the TCPA is meant to defend.

24 She's a working-class mother.
25 Representation is not in her budget, but she had to find

1 me, pay me several thousand dollars because there is a
2 tyrant in the industry that sued a single person for half
3 a million dollars.

4 Now, I would like to talk about that. We
5 didn't even get to that. You have to prove damages in a
6 defamation case. In their petition, in their injunction,
7 in their response they never stated a single time how the
8 half a million dollars they were damaged by. It was an
9 arbitrary number thrown out to scare defendants. There's
10 no damage. There's no evidence.

11 THE COURT: Damages are usually resolved --
12 revealed by the process of special exception eventually,
13 but in the original petition you usually say loss
14 profits, pain and suffering, mental anguish, you know, it
15 adds up to 500,000. That's acceptable.

16 MR. WILLIAMSON: Well, there's another
17 issue with this case that I'm not even discussing yet
18 because I think it's appropriate for special exceptions
19 if it goes forward. Basically, a company and private
20 individuals have sued for business disparagement and not
21 called it business disparagement. A company has sued for
22 defamation and not called it business disparagement. And
23 in business disparagement, unlike defamation claims, you
24 have to prove damages.

25 Now, in a basic defamation claim, unless

1 it's pro se, which this is not, unless it's pro se you
2 have to show basically actual damage and that could be
3 based on reputation. But in a TCPA motion in a response,
4 you have to at least prove that one person saw the issue
5 and you were damaged by it somehow. Somehow they
6 responded negatively to that. That hasn't happened here,
7 and let me tell you that is cents on the dollar per
8 person.

9 Now, not only that, a business
10 disparagement claim requires actual business damages.
11 This is the wrong claim for Inteleos and they haven't
12 even bothered to do it right and that's the issue here is
13 this wasn't done right by a high-powered DC law firm and
14 a special interest group because they don't care what
15 they did to a regular person. A regular person that is
16 only trying to help, like you said, be the safety lady.
17 They are bullies. Inteleos are bullies. Joan Baker is a
18 bully. Tricia Turner is a bully.

19 MR. MUSYIMI: Your Honor, I object.

20 MR. WILLIAMSON: Excuse me. I didn't
21 interrupt you.

22 THE COURT: I'm sorry, what's your
23 objection?

24 MR. MUSYIMI: Your Honor, it's purely
25 speculative what he's alluding to.

1 THE COURT: He's entitled to speculate in
2 argument.

3 MR. WILLIAMSON: May I continue, Your
4 Honor?

5 THE COURT: Yes, sir.

6 MR. WILLIAMSON: They are tyrants of this
7 industry, Your Honor. They will do this again. They
8 have to be stopped from bringing unmeritorious claims for
9 the sake of making it hard on a regular person. If they
10 are not stopped from doing it, they will continue to
11 bring these types of attacks. And, Your Honor, I'm
12 asking you to send them a message, okay. Please, send
13 them a message that they cannot do this here in Texas.
14 They cannot go against our Constitution and the United
15 States Constitution against free speech and do this for
16 the sake of the sonography industry in general because
17 they are the person ahead. You have David and Goliath
18 here. I'm asking you to punish Goliath. The TCPA is
19 made for issues like that, Your Honor. They have asked
20 for half a million dollars from somebody who works on
21 their own and has a husband who is a disabled vet.

22 I'm asking Your Honor for you to sanction,
23 which you have the ability to do to punish people from
24 continuing doing this type of action. I'm asking you to
25 punish them for \$150,000, far, far less than they have

1 asked for, for a half a million dollars thrown out there.
2 They have sued for half a million dollars on something
3 today that we saw no evidence of.

4 And, Your Honor, if I could point your
5 attention before I go, I would like to point out some
6 case law to you. No. 15, I'll turn to it so I can make
7 sure I get everything right. I filed this case law.
8 This case law is *Kelly Manbeck versus Tiffany Key*. This
9 is a trial court ruling on a Motion to Dismiss for TCPA
10 and sanctions were awarded.

11 Now, Your Honor, specifically, and I don't
12 do this for my ego; this was my case here. This case is
13 very similar and it is in Travis County. It is very
14 similar --

15 THE COURT: Where is your --

16 MR. WILLIAMSON: Go to 15, Your Honor, I
17 have a notice of filing on the front page that
18 discusses --

19 THE COURT: Yes, sir.

20 MR. WILLIAMSON: You can see Judge Doty
21 granted the TCPA motion, but he wrote a scathing opinion
22 on a case just like this who doesn't have clear evidence
23 against a TCPA Motion to Dismiss before the case was
24 filed. They are discussing discovery. I mean, he filed
25 discovery last week. 27.003 clearly says discovery is

1 halted until a TCPA motion is done.

2 There are adequate ways to do that,
3 including pretrial discovery, which should have been done
4 if that's what he wants. But, Your Honor, this is very
5 similar and he discusses a lot of case law that he based
6 it upon. I'm not saying you should base it off what
7 Judge Doty said, but he goes into it quite extensively
8 and in this petition, which was not even close --

9 THE COURT: He is auditioning for Federal
10 Judge?

11 MR. WILLIAMSON: I believe that's what it
12 was and I believe he's not on the stand any more. He's
13 going to go for the appellate court. He was a good
14 judge. He worked very hard. This case had over 600
15 exhibits and they weren't clear and he said you cannot
16 bring unclear evidence to Texas courts and ask for this.
17 And he not only awarded attorney's fees because the TCPA
18 was upheld, he sanctioned them \$25,000.

19 This case at hand is far, far worse abuse
20 of process by Inteleos, Joan Baker and Tricia Turner.

21 Your Honor, again, I'm just asking please
22 sanction them \$150,000 so this does not happen again and
23 they know that they cannot come to Texas and do this
24 again.

25 THE COURT: All right, then. Is the case

1 submitted?

2 MR. WILLIAMSON: That ends our case, Your
3 Honor, and our response.

4 MR. MUSYIMI: Your Honor, if I may just
5 respond?

6 THE COURT: Yes, sir.

7 MR. MUSYIMI: Your Honor, it's the position
8 of the plaintiff that a sanction of \$125,000 is excessive
9 and unduly burdensome to the plaintiffs. In this
10 particular matter it's true that pieces of evidence were
11 not available at the time of filing, but it's expectation
12 of the plaintiffs to obtain that discovery during the
13 course of discovery. But nonetheless, the objective has
14 not been and never was to injure the defendant in this
15 case. The objective was for the plaintiffs not to have
16 their good name damaged or tarnished in any way by
17 statements that were being published on social media by
18 the defendant. The sheer fact that Inteleos Corporation
19 is a big corporation does not in and of itself mean that
20 every time that it files lawsuits they are attempting to
21 throw their weight on smaller, quote, unquote, "smaller
22 defendants", but rather it is their right for them to be
23 able to protect their good name and also protect the
24 names of their employees and their teammates.

25 Your Honor, we respectfully ask the Court

1 to refrain from issuing any sanctions against Inteleos
2 due to the fact that they were only trying to exercise
3 their constitutional right.

4 THE COURT: I'm satisfied that I've reached
5 a conclusion in this case and I will give you a partial
6 findings of fact now and, of course, we'll reserve the
7 right to supplement those if they are requested by either
8 party at a later time. But I do believe that this
9 lawsuit was brought to deter or prevent the exercise of
10 constitutional right. I believe it was brought for an
11 improper purpose of harassment, and I do not think that
12 the plaintiff has proven by clear and specific evidence
13 prima facie evidence of each element of the claim.

14 "There is simply no there there", as
15 Gertrude Stein originally said about Oakland. I kind of
16 like Oakland.

17 Having found that -- bottomless, topless,
18 middlest, just not there -- I must award costs and
19 attorney's fees and I will. I'll give the defendant time
20 to produce an affidavit of costs and fees. A week, will
21 that be sufficient?

22 MR. WILLIAMSON: I can probably run
23 billing. The only issue is typically our billing is
24 quite behind, usually don't have billing until about the
25 10th and February would be the only thing I'm looking at.

1 I can make it faster if you need me to. If you give me
2 30 days, I can definitely do it.

3 THE COURT: 10th of March. I'll give you
4 30 days to come up with your expression of your costs in
5 attorney's fees and I will give two weeks to, Mr.
6 Musyimi, to respond to that and to produce an affidavit
7 or evidence related to the reasonableness of costs and
8 attorney's fees and it will not be a Summary Judgment
9 sort of situation.

10 I will weigh the costs and attorney fees in
11 light of my almost 50 years experience now and make a
12 determination of what reasonable costs and attorney's
13 fees are in this case.

14 I do believe that this company that calls
15 itself a global -- what did they call themselves in the
16 petition? A global non-profit community head quartered
17 in Rockville, Maryland; governing, managing, organization
18 for the American registry. A global power. I believe
19 that sanctions sufficient to deter them from similar
20 action would be \$150,000. That sounds like less than
21 what I was considering. See what you did to yourself
22 there? And that will be assessed against all three of
23 the plaintiffs in this case, each of them responsible for
24 the whole amount.

25 And if you will give me orders, I'll sign

1 an order dismissing then I'll sign the subsequent order.

2 MR. WILLIAMSON: May I approach, Your
3 Honor?

4 THE COURT: With sanctions and attorney's
5 fees, yes, sir.

6 MR. WILLIAMSON: I'm showing opposing
7 counsel the proposed order that was filed. And, Your
8 Honor, again, I wasn't sure how you wanted to do it, so
9 there's a space for my attorney's fees. But, again, if
10 you want to cross that out we can approach by motion for
11 that.

12 THE COURT: Order, claim defamation
13 dismissed with prejudice. I'm not even sure how Inteleos
14 had a claim since they weren't mentioned in the innocent
15 little post.

16 Cost, attorney's fees and other expenses
17 and amount fees determining.

18 *(Court adjourned.)*

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REPORTER'S CERTIFICATE

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STATE OF TEXAS }
COUNTY OF TRAVIS }

I, Leah Hayes, Official Court Reporter in and for the 419th District Court of Travis County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered in evidence by the respective parties.

WITNESS MY OFFICIAL HAND this the 23rd day of March, 2023.

 /s/ Leah Hayes
Leah Hayes, Texas CSR No. 3973
Expiration Date: 07/31/2023
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