

**T.A.D.C. DEFAMATION/LIBEL/SLANDER
NEWSLETTER: SPRING 2016**

UPDATE ON TEXAS DEFAMATION CASES

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***TV Azteca v. Ruiz*, No. 14-0186, 2016 WL
766927, ___ S.W.3d ___ (Tex. Feb. 26,
2016).**

The defamation case *TV Azteca* arose out of an over-air broadcast from a Monterrey, Mexico TV station allegedly defaming Ms. Gloria de los Angeles Trevino Ruiz (known in Mexico as “Gloria Trevi”) that spilled over into Texas and was viewed by Texas residents. In *TV Azteca*, the Texas Supreme Court held that an over-air broadcast from a Monterrey, Mexico TV station is sufficient to support exercise of specific personal jurisdiction in Texas under circumstances where the Mexican broadcaster physically entered into Texas to produce and promote broadcasts, sold advertising time to Texas businesses, and *knew* their broadcasts would reach over 1.5 million viewers in South Texas.

The main issue in *TV Azteca* is whether and under what circumstances may Texas courts exercise specific personal jurisdiction in a defamation/libel action over a nonresident foreign defendant that broadcasts television signals containing allegedly defamatory statements into the United States. At the trial level, the court found that Texas had specific personal jurisdiction over defendants TV Azteca, Publimax, and related individuals and entities (collectively, “TV Azteca”).

The appeals court affirmed the trial court’s decision that Texas has specific personal jurisdiction over TV Azteca. The court

reasoned that TV Azteca had the minimum contacts required under due process analysis for exercise of specific personal jurisdiction in a defamation action. Specifically, the court was persuaded by evidence showing that TV Azteca programs can be viewed by many South Texas residents, and that TV Azteca purposefully directed broadcast of its various television programs to Texas, including the “Ventaneando” program that allegedly defamed Ms. Ruiz.

The Texas Supreme Court agreed with the appeals and trial courts, holding that the TV Azteca defendants purposefully availed themselves of the privilege of conducting activities in Texas, so as to support exercise of specific personal jurisdiction, and that exercise of specific personal jurisdiction over TV Azteca comported with traditional notions of fair play and substantial justice.

A number of different reasons supported the Court’s rationale. First, it mattered to the Court significantly that the nonresident defendants *knew* that their programs would have a substantial audience in South Texas to the tune of over 1.5 million viewers. Second, it was important that TV Azteca took advantage of its Texas audience as a means to increase their advertising revenue in Texas. Specifically, the Court observed evidence on the record that:

- “[B]etween 2006 and 2007, TV Azteca hired an advertising agent in McAllen, sent employees to meet with her, and presented advertising packages to her and to Texas businesses to solicit advertising buys on their programs;”
- “Texans saw advertisements in Texas for Texas businesses on at least one of the TV Azteca/Publimax stations;” and

- “Publimax and TV Azteca shared almost \$2 million in revenue from over a hundred contracts through which Texas businesses purchased advertising time on the TV Azteca/Publimax stations.”

Hence, while merely broadcasting programs in Mexico that coincidentally travel into Texas would be *insufficient* to support specific personal jurisdiction, the added steps of selling advertisements to Texas business and physically entering into Texas to produce and promote the Mexico-based broadcasts *are sufficient* to confer specific personal jurisdiction.

Third, the Court found that the exercise of specific personal jurisdiction comports with *International Shoe*’s “traditional notions of fair play and substantial justice” in this case because “[r]equiring nonresidents to comply with the laws of the jurisdictions in which they choose to do business is not unreasonable, burdensome, or unique.”

The Court made a clear and careful distinction: “We hold that Texas courts have jurisdiction over Petitioners not because their broadcast signals ‘strayed’ and ‘crossed national boundaries,’ but because some evidence establishes that Petitioners intentionally targeted Texas with those broadcasts and thereby purposefully availed themselves of the benefits of Texas laws.”

Moving forward, the main takeaway from *TV Azteca* is that Mexican TV and radio broadcasting stations may be exposed to defamation liability in Texas if they take affirmative acts to profit off of advertising for Texas businesses and physically enter Texas to promote their broadcasts. In other words, broadcasting defamatory statements abroad into Texas can subject the broadcasting

company to liability if it sells advertisements to Texas business and takes other acts to affirmatively promote the broadcasts in Texas.

***Sullivan v. Abraham*, No. 14–0987, 2016 WL 1513674, ___S.W.3d ___ (Tex. April 15, 2016).**

In *Sullivan v. Abraham*, the Texas Supreme Court held that that limitations of “justice and equity” do not apply to attorney’s fees under the Texas Citizens Participation Act. In other words, “reasonable and necessary” attorney’s fees may not be reduced in the interest of “justice and equity.”

Salem Abraham sued Michael Quinn Sullivan for defamation. Sullivan generally denied the claim and moved to dismiss the suit under the Texas Citizens Participation Act (TCPA). By way of background, TCPA provides an expedited procedure for the dismissal of certain legal actions directed at a party’s free speech or other First Amendment right. If the court orders dismissal, the TCPA further provides for the award of court costs, attorney’s fees, and other expenses, as well as sanctions “sufficient to deter” future “similar actions.”

Pursuant to Tex. Civ. Prac. & Rem. Code § 27.009(a), Sullivan requested \$67,290.00 in attorney’s fees, \$4,381.01 in costs and expenses, and sanctions. After a hearing on Sullivan’s motion, the trial court issued a letter ruling, granting dismissal and announcing “that justice and equity necessitate Defendant’s recovery of reasonable attorney’s fees in the amount of \$6,500.00 and costs in the amount of \$1,500.00.” The court also denied sanctions in the letter ruling. Sullivan appealed to challenge the inadequacy of the court’s award of attorney’s fees and expenses.

The court of appeals affirmed the trial court's award of attorney's fees and expenses, but reversed and remanded for the trial court to reconsider its decision to deny sanctions. The appellate court concluded that the TCPA made an award of sanctions mandatory but tempered "the quantum or extent of the sanction . . . by what the trial court 'determines sufficient'" to deter similar actions. The appellate court further concluded the TCPA required an award of "reasonable attorney's fees" but also conferred on the trial court discretion to award a lesser amount if "justice and equity" so required.

The Texas Supreme Court disagreed with the appeals and trial courts, reversing and remanding "[b]ecause the courts below used the wrong standard in determining the attorney's fees part of the award." The Court concluded that Tex. Civ. Prac. & Rem. Code § 27.009 requires an award of "reasonable attorney's fees" to the successful movant, noting that a "reasonable" attorney's fee "is one that is not excessive or extreme, but rather moderate or fair." While the determination of a "reasonable" attorney's fee rests within the trial court's sound discretion, this discretion does not also specifically include considerations of justice and equity under the TCPA.

The lower court of appeals relied heavily on the case *Bocquet v. Herring*, 972 S.W.2d 19 (Tex. 1998) in arriving at its conclusions. *Bocquet* was a case that involved an award of attorney's fees under the Declaratory Judgments Act. The Texas Supreme Court was quick to point out that the court of appeals' reliance on *Bocquet* is misplaced because attorney's fees are determined differently under the Declaratory Judgments Act than under the TCPA. Observing that it is inappropriate to "resort to extrinsic aides, such as legislative history, to interpret a

statute that is clear and unambiguous," the Court engaged in an in-depth textual analysis of the TCPA to arrive at its conclusion.

In sum, *Sullivan v. Abraham* stands for the proposition that that limitations of "justice and equity" are not part of the "reasonableness" analysis used in determining an appropriate amount of attorney's fees under the TCPA.

***Greer v. Abraham*, No. 14–0669, 2016 WL 1514425, ___ S.W.3d ___ (Tex. April 15, 2016).**

Greer v. Abraham stands for the proposition that if an allegedly defamatory article mentions a public official, actual malice is required for a claim of defamation if the story relates to their fitness for office, even if the story does not *directly* relate to their work as a public figure. Additionally, a reference to the person's official capacity is not necessary if they are so well known in their community that they are generally associated with their position. Further, the relevant community to consider is the community in which the public official serves, not the circulation reach of the story.

In *Greer v. Abraham*, Agenda Wise, an internet blog, published a story stating that Salem Abraham was forcibly removed from a campaign event for Jim Landtroop, a candidate for state representative. At the time, Abraham was the longest serving member of the Canadian ISD board of trustees and, as such, a public figure. The Landtroop event had no connection to Abraham's work on the school board, although Landtroop's campaign had criticized Abraham's fellow school board member. Agenda Wise, and its executive director, Daniel Greer, later determined that Abraham had not been forcefully removed from the event, rather he was asked to leave

and did so voluntarily.

After Agenda Wise published two clarifications, Abraham sued Greer and the blog for defamation. Defendants Agenda Wise and Greer filed a motion to dismiss under the Texas Citizens Participation Act (“TCPA”), which, because the statements were on a matter of public concern, required Abraham to present clear and specific evidence of each of the elements of his defamation claim, including actual malice.

The trial court found that Abraham had not presented evidence of actual malice and dismissed the claim pursuant to the TCPA. But the court of appeals reversed, holding that because the article didn’t mention Abraham’s work as a school board member and didn’t relate to his conduct as a public figure or his fitness for office, a negligence standard applied, not actual malice. The appeals court further determined that because the article was published on the internet, Abraham’s status as a public figure was not implied because the blog was viewable throughout the world and there was no evidence that Abraham was known worldwide as a member of the school board.

Granting a petition for review, the Texas Supreme Court reversed, holding that Abraham was a public figure for purposes of the article in question, and the actual malice standard applied to the case. First, the Court explained that statements about a public figure relate to their official conduct not only when it relates to their performance of public duties, but also when it relates to their fitness for office, and the allegations in the article related to Abraham’s fitness for office.

Second, it is not necessary to mention a public official’s connection to public office if that connection can be implied, and it is implied if the official is so well known within

his or her community that the general public associates the official with that office. This association is tied to the community in which the public official serves, not to the audience of the publication, which may very well go beyond the immediate community of the official.

As such, in light of *Greer*, the “public figure” standard in Texas is clarified by the Court as follows: if an article mentions a public official, actual malice is required for a claim of defamation if the story relates to their fitness for office, even if the story does not relate directly to their work as a public figure. In addition, a reference to the person’s official capacity is not necessary if they are so well known in their community that they are generally associated with their position. The relevant community to consider is the community in which the public official serves, not the circulation reach of the story.