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Adam T. Dodd, Clerk & Master

IN THE CHANCERY COURT FOR RUTHERFORD COUNTY, TENNESSEE
AT MURFREESBORO

R & M PLUMBING SOLUTIONS, LLC, **Plaintiff,**	)	
v	)	
JEREMY PHELPS, **Defendant.**	)	**Docket No. 25CV-2199**

OPINION AND ORDER

This cause is before the Court on Defendant's Motion to Dismiss pursuant to TRCP 12.02(6) and Petition to Dismiss the Amended Complaint pursuant to the Tennessee Public Participation Act.

In 2019 the Tennessee General Assembly enacted the Tennessee Public Participation Act, T.C.A. § 20-17-101, et. sec. The stated purpose of the Chapter was to "encourage and safeguard the constitutional rights of persons to petition, to speak freely, to associate freely, and to participate in government to the fullest extent permitted by law and, at the same time, protect the rights of persons to file meritorious lawsuits for demonstratable injury". T.C.A. § 20-17-102. Further, Section 20-17-104 provides:

> (a) If a legal action is filed in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may petition the court to dismiss the legal action.
> (b) Such a petition may be filed within sixty (60) calendar days from the date of service of the legal action or, in the court's discretion, at any later time that the court deems proper.
> (c) A response to the petition, including any opposing affidavits, may be served and filed by the opposing party no less than five (5) days before the hearing or, in the court's discretion, at any earlier time that the court deems proper.

Section 105 provides the analytical framework for a court considering a petition to dismiss and provides:

> (a) The petitioning party has the burden of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party's exercise of the right to free speech, right to petition, or right of association.

(b) If the petitioning party meets this burden, the court shall dismiss the legal action unless the responding party establishes a prima facie case for each essential element of the claim in the legal action.
(c) Notwithstanding subsection (b), the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action.

(d) The court may base its decision on supporting and opposing sworn affidavits stating admissible evidence upon which the liability or defense is based and on other admissible evidence presented by the parties.

Lastly, Section 109 provides the remedies provided for in the Tennessee Public Participation Act are in addition to remedies available under the Tennessee Rules of Civil Procedure. Accordingly, the procedure authorized under TPPA is in addition to the procedures provided for in TRCP 12.02.

Unlike a TRCP 12.02(6) motion which requires the court to take the allegations in the complaint as true, the TPPA requires the plaintiff in the underlying lawsuit to put forth admissible evidence establishing each element of the claim. As discussed by our Supreme Court in *Charles v. McQueen,* 693 S.W.3 262, 280-281 (Tenn. 2004):

> Black's Law Dictionary defines 'prima facie case' as '[a] party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor.' *Prima facie* case, Black's Law Dictionary 1441 (11th ed. 2019). Consistent with this definition, in at least some contexts, courts have equated a 'prima facie case' to the quantum of evidence that is sufficient to survive a motion for summary judgment or a motion for directed verdict. *See, e.g., Don't Look Media LLC v. Fly Victor Ltd.,* 999 F.3d 1284, 1292 (11th Cir. 2021) (holding that, to satisfy his 'burden of establishing a prima facie case of personal jurisdiction,' a plaintiff 'must present enough evidence to withstand a motion for a directed verdict'); *Am. Cent. City, Inc. v. Joint Antelope Valley Auth.,* 281 Neb. 742, 807 N.W.2d 170, 183 (Neb. 2011) (defining prima facie case as 'evidence [that] sufficiently establishes elements of a cause of action and, notwithstanding a motion for directed verdict in a jury trial or a motion to dismiss in a nonjury trial, allows submission of the case to the fact finder for disposition'); *LaGrant v. Gulf & W. Mfg. Co.,* 748 F.2d 1087, 1090 (6th Cir. 1984) (holding, in an age discrimination case, that '[a] prima facie case is one where there is sufficient evidence to withstand a motion for summary judgment or for a directed verdict'). The Tennessee Court of Appeals, for example, has explained that 'avoid[ing] a directed verdict under Tenn. R. Civ. P. 50' requires the non-moving party to present 'enough evidence to establish at least a *prima facie case.*' *Brown v. Christian Bros. Univ.,* 428 S.W.3d 38, 50 (Tenn. Ct. App. 2013)

> (quoting *Richardson v. Miller,* 44 S.W.3d 1, 30 (Tenn. Ct. App. 2000)); *see also Pickard v. Berryman,* 24 Tenn. App. 263, 142 S.W.2d 764, 769 (Tenn. Ct. App. 1939) (explaining that, in the sense in which 'the phrase 'prima facie case' was used there, it meant 'merely that [the] evidence, assuming it to be true, is sufficient to prevent his suit being dismissed, as on a directed verdict, and to require the case to be submitted to the triers of fact').
>
> To establish a 'prima facie' case under the TPPA, a party must present enough evidence to allow the jury to rule in his favor on that issue. This evidence may include 'sworn affidavits stating admissible evidence' and 'other admissible evidence.' Tenn. Code Ann. § 20-17-105(d). As is the case when a court rules on a motion for summary judgment or motion for directed verdict, the court should view the evidence in the light most favorable to the party seeking to establish the prima facie case and disregard countervailing evidence. *See, e.g., Griffis v. Davidson Cnty. Metro. Gov't,* 164 S.W.3d 267, 284 (Tenn. 2005) (summary judgment); *Conatser v. Clarksville Coca-Cola Bottling Co.,* 920 S.W.2d 646, 647 (Tenn. 1995) (directed verdict).
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> *Charles,* 693 S.W.3d at 280-281 (*emphasis added*).

In response to the petition before the Court, R & M filed the Affidavits of James Hodge, Braxton Mayfield and Robert Graham. Subsequently, R & M filed a notice striking the Affidavit of James Hodge, thus leaving just the Affidavits of Mr. Graham and Mr. Mayfield for consideration by the Court.

First Amended Complaint

In its First Amended Complaint, Plaintiff, R & M, asserts it entered into a contract with Country Way Condo to provide plumbing and maintenance services for the condominium complex and that Defendant, Jeremy Phelps, was employed by Plaintiff and worked on the Country Way Condo project. Subsequently, Mr. Phelps's employment with R & M Plumbing was terminated and, Plaintiffs allege, Mr. Phelps contacted the homeowner's association for Country Way Condo and made false and disparaging allegations about the quality and workmanship of the work performed by Plaintiff. Plaintiff further claims as a result of the statements attributable to Mr. Phelps, County Way Condo was seeking to terminate their agreement with Plaintiff, resulting in damages to Plaintiff's business. In this regard Plaintiff has asserted claims for tortious interference with contract, tortious interference with business relationships and defamation.

In order to establish a cause of action for tortious interference with contract "a plaintiff must prove that there was a legal contract, of which the wrongdoer was aware, that the wrongdoer maliciously intended to induce a breach, and that as a proximate result of the wrongdoer's actions, a breach occurred that resulted in damages to the plaintiff." *Quality Auto Parts Co., Inc. v. Bluff*

City Buick Co., Inc., 876 S.W.2d 818, 822 (Tenn. 1994). In an action for tortious interference with business relationships a plaintiff must prove:

> (1) an existing business relationship with specific third parties or prospective relationship with an identifiable class of third persons;
> (2) the defendant's knowledge of that relationship and not a mere awareness of the plaintiff's business dealings with others in general;
> (3) the defendant's intent to cause the breach or termination of the business relationship;
> (4) the defendant's improper motive or improper means … and finally,
> (5) damages resulting from the tortious interference.
>
> *Trau-Med of America, Inc. v. Allstate Ins. Co.,* 71 S.W.3d 691, 701 (Tenn. 2002).

Finally, in a claim for defamation, a plaintiff must prove "(1) a party published a statement; (2) with knowledge the statement is false and defaming to the other; or (3) with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement." *Sullivan v. Baptist Memorial Hosp.,* 995 S.W.2d 569, 571 (Tenn. 1999).

Turning to the analysis required under T.C.A. § 20-17-105 the petitioning party, here Mr. Phelps, must make a prima facie case that the legal action against him is "based on, relates to, or is in response to that party's exercise of a right to free speech, right to petition, or right of association". T.C.A. § 20-17-105(a). Under the TTPA a "party's exercise of a right to free speech" includes communication made in connection with a matter of public concern and matters of public concern include issues related to, among other things, health or safety, environmental, economic, or community well-being. T.C.A. § 20-17-103. Here, the communication, as alleged in the First Amended Complaint, relates to plumbing work performed for the County Way Condo community which would impact the health or safety of the community, the environment of the community and the community well-being. Thus, Mr. Phelps has satisfied his initial burden required under T.C.A. § 20-17-105(a). Further, in its Reply, R & M Plumbing did not contest this issue and, as a result, the same is waived in any event. See *Kedalo Construction, LLC v. Ward,* 2024 WL4892032 (Tenn. Ct. App. 2024). Having determined Mr. Phelps met his initial burden, the burden then shifts to R & M Plumbing to establish a prima facie case for each essential element of the claims asserted.

The elements of the asserted claim are set forth hereinabove and the Court must consider the Affidavits of Mr. Graham and Mr. Mayfield to determine whether R & M has satisfied its burden of establishing a prima facie case for each essential element of their claims.

Turning first to Mr. Mayfield's Affidavit, a review of the Affidavit reveals no admissible facts establishing any element of any claim asserted by R & M Plumbing, much less "each essential element of the claim". Accordingly, the claims must rise or fall based on the Affidavit of Mr. Graham alone.

With regard to the cause of action for tortious interference the Affidavit of Mr. Graham acknowledges R & M contracted with Country Way Condos and, as a result of the work, a note was executed from Country Way in favor of R & M. However, Mr. Graham acknowledges no payments have been missed on the note due and owing to R & M but, rather, complains that R & M is no longer listed as an approved vendor. In other words, R & M has lost the potential for future contracts. Mr. Graham's Affidavit does not show that any breach of the contract pursuant to which work was performed by R & M was breached. Therefore, R & M has failed to prove an essential element of its claim relating to tortious interference with contract.

With regard to the claim for tortious interference with business relationships Mr. Graham's Affidavit fails to establish Mr. Phelps intended to cause a breach or termination of business relationship or that Mr. Phelps's motive was improper. Accordingly, that claim must fail.

Finally, as to the defamation count, Mr. Graham's Affidavit blames the homeowner's association for the breach due to his belief the homeowner's association was attempting to avoid their financial obligation to R & M. The Affidavit fails to establish motive or means, or intent, on behalf of Mr. Phelps.

Accordingly, as R & M has failed to establish a prima facie case for each essential element of their claim the Tennessee Public Participation Act petition of Mr. Phelps must be granted. Costs are assessed to R & M Plumbing Solutions, LLC, for which execution may issue, if necessary.

IT IS SO ORDERED.

Case Title: R & M PLUMBING SOLUTIONS, LLC vs JEREMY PHELPS

Case Number: 25CV-2199

Type: JUDGE PREPARED ORDER

It is so ordered.

Judge Darrell L. Scarlett

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing JUDGE PREPARED ORDER

has been delivered to:

Electronic Notification:

Bert McCarter for R & M PLUMBING SOLUTIONS, LLC
Email: Bert McCarter
bertmccarter@mcelaw.com
Address: Bert McCarter
316 W. MAIN STREET
Murfreesboro, TN 37130

Noah Connor for R & M PLUMBING SOLUTIONS, LLC
Email: Noah Connor
noahconnor@mcelaw.com
Address: Noah Connor
316 W MAIN ST
MURFREESBORO, TN 37130

DANIEL HORWITZ for JEREMY PHELPS
Email: DANIEL HORWITZ
daniel.a.horwitz@gmail.com
Address: DANIEL HORWITZ
4016 WESTLAWN DRIVE
NASHVILLE, TN 37209

LAURA CANTWELL for JEREMY PHELPS
Email: LAURA CANTWELL
laura@horwitz.law
Address: LAURA CANTWELL
4016 WESTLAWN DRIVE
NASHVILLE, TN 37209

Traditional Mail:

SARAH MARTIN for JEREMY PHELPS
Address: SARAH MARTIN
4016 WESTLAWN DRIVE
NASHVILLE, TN 37209

on 07/30/2026 .

Raechelle Wilson

Deputy Clerk and Master