

IN THE 12<sup>TH</sup> JUDICIAL DISTRICT OF TENNESSEE  
CHANCERY COURT OF MARION COUNTY

**FILED**  
CHANCERY COURT

SEP 26 2024

MARION CO., TN  
TIME 12:26 BY *DM*

THUNDER AIR, INC., )  
Plaintiff, )  
)  
)  
vs. )  
)  
JOE E. BLEVINS, JR., )  
RONNIE KENNEDY, )  
Defendants. )

NO. 8424

ORDER

This matter was heard on August 26, 2024, before this Honorable Court, upon the Defendants' response and Petitions for Dismissal pursuant to the Tennessee Public Participation Act. Upon reviewing all the applicable pleadings, exhibits, statutes, case law, and oral arguments by counsel for all parties, this Court hereby grants relief to the Defendants under the Tennessee Public Participation Act.

LAW

The applicable law for the basis of this Court's decision is the Tennessee Public Participation Act, (TPPA). The purpose of this law is 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 demonstrable injury. This chapter is consistent with and necessary to implement the rights protected by the Constitution of Tennessee, Article I, §§ 19 and 23, as well as by the First Amendment to the United States Constitution, and shall be construed broadly to effectuate its purposes and intent.

**Tenn. Code § 20-17-102.**

The statute provides the following definitions to explain the applicability of said statute. (1) "Communication" means the making or submitting of a statement or document in any form or medium, including oral, written, audiovisual, or electronic;(2) "Exercise of the right of association" means exercise of the constitutional right to join together to take collective action on a matter of public concern that falls within the protection of the United States Constitution or the Tennessee Constitution;(3) "Exercise of the right of free speech" means a communication made in connection with a matter of public concern or religious expression that falls within the protection of the United States Constitution or the Tennessee Constitution;(4) "Exercise of the right to petition" means a communication that falls within the protection of the United States Constitution or the Tennessee Constitution and:(A) Is intended to encourage consideration or review of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body; or(B) Is intended to enlist public participation in an

effort to effect consideration of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body;(5) "Legal action" means a claim, cause of action, petition, cross-claim, or counterclaim or any request for legal or equitable relief initiated against a private party;(6) "Matter of public concern" includes an issue related to:(A) Health or safety;(B) Environmental, economic, or community well-being;(C) The government;(D) A public official or public figure;(E) A good, product, or service in the marketplace;(F) A literary, musical, artistic, political, theatrical, or audiovisual work; or(G) Any other matter deemed by a court to involve a matter of public concern; and(7) "Party" does not include a governmental entity, agency, or employee. **T.C.A. § 20-17-103.**

That statute explains how the TTPA is invoked as follows: (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.(d) All discovery in the legal action is stayed upon the filing of a petition under this section. The stay of discovery remains in effect until the entry of

an order ruling on the petition. The court may allow specified and limited discovery relevant to the petition upon a showing of good cause.

**T.C.A. § 20-17-104.**

The statute explains the burden of proof and provides guidance to the Court as follows: **(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. **(e)** If the court dismisses a legal action pursuant to a petition filed under this chapter, the legal action or the challenged claim is dismissed with prejudice. **(f)** If the court determines the responding party established a likelihood of prevailing on a claim: **(1)** The fact that the court made that determination and the substance of the determination may not be admitted into evidence later in the case;

and(2) The determination does not affect the burden or standard of proof in the proceeding. T.C.A. § 20-17-105.

### FINDINGS

Upon the initiation of this litigation by the Plaintiff, Thunder Air, Inc., the Defendants responded with an Answer, and then sought protection and relief pursuant to the Tennessee Public Participation Act (TPPA). The Court finds as follows:

1. The Plaintiff was unable to establish a *prima facie* case regarding the essential elements of the Complaint. The Complaint, drafted by one of the top law firms in the state, clearly sets forth the basis of its claim, Libel of Title. The Plaintiff was unable to prove by any standard of proof that the Defendants made any public statements questioning or defaming the Plaintiff's title to the subject property, River Gorge Ranch.
2. At the hearing on August 26, 2024, counsel for the Plaintiff asked the Court to reinterpret the style and language of the Complaint and expand its interpretation to include more accurate claims of injurious falsehood and disparagement of property. Counsel for the Plaintiff, upon responding to the Court's scrutiny of the validity of the Complaint and arguments of opposing counsel regarding the claim libel of title at the August 26, 2024 hearing, filed a Motion to Amend the Complaint on

August 29, 2024. This occurred three days after the hearing regarding the TPPA claims and while the Court held this ruling under advisement.

3. Even if the Court did permit the amendment, it would not alter the Court's ruling. The factual allegations in the proposed Amended Complaint are the same as the original Complaint. It only alleges more proper torts to proceed under, injurious falsehood and disparagement of property. These torts should have been alleged in the original Complaint.
4. The Plaintiff can not prove a *prima facie* case that the Defendants acted with malice or ill will with a purpose to cause damage to the Plaintiff. There was some proof of animosity between the parties, but these statements did not rise to the level causing damages by malice.
5. The Plaintiff's Complaint alleges damages but doesn't provide a monetary number, only speculative damages that cannot be correlated directly with the Defendants' statements. It appears that all of the alleged lost sales cited in Mr. Dane Bradshaw's affidavit contributed any concerns about past mining activity on the property were derived from media articles, not personal Facebook posts of the Defendants.
6. The Defendants' statements are protected speech relating to a matter of public concern. A major real estate development is a matter of public concern and interest. The existence of past mining activities is a matter

of environmental and safety concerns. The Defendants' statements were not false, there is evidence that there are abandoned mines, both above ground and strip mines on the property.

7. Some of the statements were made to a government body, the Marion County Commission.
8. The Defendants are private citizens and not member of the media. Their statements, on their personal Facebook pages, with only a small and local reach, are protected speech.
9. The Defendants are permitted to state their unscientific opinions that the property is unsafe.
10. The Court finds that there is no evidence that the property, River Gorge Ranch, is dangerous or unsafe. There is no evidence of soil collapses, fires, or dangerous water. The Plaintiff's own geological survey identified past mining activity, but also found that because of the existence of at least 120 feet of Newton Sandstone, the homesites are safe. The report did caution against blasting and grading in some locations.
11. The Court notes that most of Sequatchie Valley and its adjacent mountains have been subjected to past mining activities. Most of these aforementioned mountains are also home to vast cave systems. Yet,

these mountains have sustained roads, neighborhoods, homes, septic systems, etc. for well over one hundred years without catastrophe.

12. The Court is confident that the Plaintiff, mainly Thunder Thorton, will be able to build a safe and beautiful community on Aetna Mountain.

### CONCLUSION

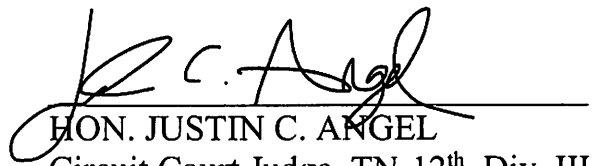
The Plaintiff has failed to prove a *prima facie* case regarding the essential elements of its Complaint. The Defendants have proven a *prima facie* case that their statements, which are the subject of this litigation, are protected free speech relating to a matter of public interest or concern and are not false.

1. The Defendants' TPPA Petitions are granted.
2. The Plaintiff's Complaint is hereby dismissed with prejudice.
3. The Plaintiff's Motion to Amend the Complaint is denied. This Motion was made after the TPPA hearing and while the Court held this ruling under advisement. If the Motion to Amend had been made in a timely manner before the hearing, the Court would have freely granted said Motion. Also, since the factual allegations are the same in the proposed Amended Complaint, it would not have altered this ruling if granted. It would have only caused further delay.



4. The Defendants are awarded their reasonable attorney's fees and associated costs pursuant to the statute. This award is mandatory according to the TPPA.
5. Court costs are taxed against the Plaintiff pursuant to the TPPA.
6. Motion for Sanctions against the Plaintiff is denied. Mr. Thunder Thorton is a well respected and renowned real estate developer and businessman in our state. He has a legitimate and financial interest in protecting the value and reputation of his properties and investments. He initiated this litigation in an attempt to effectuate his aforementioned interests. The Court finds no proof this litigation was sought for any improper or malicious purpose.

Respectfully entered, this 26<sup>th</sup> day of September, 2024

  
HON. JUSTIN C. ANGEL  
Circuit Court Judge, TN-12<sup>th</sup>, Div. III.  
Sitting by interchange as Chancellor

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have served a copy of the foregoing pleading upon:

Harold L. North, Jr., Esquire  
Frederick L. Hitchcock, Esquire  
Nathan L. Kindard, Esquire  
605 Chestnut Street, Suite 1700  
Chattanooga, Tennessee 37450

William J. Harbison, II, Esquire  
1201 Demonbreun Street, Suite 1000  
Nashville, Tennessee 37203

Daniel A. Horwitz, Esquire  
Melissa K. Dix  
4016 Westlawn Drive  
Nashville, Tennessee 37209

via hand-delivering, facsimile, or by placing a copy of the same in the United States Mail, properly addressed with first class postage for the same to reach its destination.

This the 26 day of September, 2024.

By: Paige Mashburn  
Paige Mashburn  
Clerk & Master