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REPORTER'S RECORD
VOLUME 2 OF 3 VOLUMES
TRIAL COURT CAUSE NO. 2015-2259-3

AMANDA LOLLAR) IN COUNTY COURT AT LAW
)
vs.) NUMBER THREE
)
MARY CUMMINS) TARRANT COUNTY, TEXAS

MOTION TO DISMISS

On the 17th day of May, 2016, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Mike Hrabal, Judge Presiding, held in Fort Worth, Tarrant County, Texas.

Proceedings reported by computerized stenotype machine.

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*(Exhibits contained within Volume 3)

1 P R O C E E D I N G S

2 THE COURT: Ms. Cummins?

3 MS. CUMMINS: Good afternoon, Your Honor.
4 Defendant Cummins present.

5 THE COURT: All right. Very good. We have
6 Mr. Turner here. I will certainly advise you pursuant to
7 California Penal Code Section 632 that although this
8 proceeding is taking place in Texas, there is not consent
9 to be given to you by either the Court or Mr. Turner for a
10 recording to be made.

11 It will also be in violation of Texas Rules
12 of Civil Procedure 18(c). So please acknowledge there is
13 no independent recording of this proceeding.

14 MS. CUMMINS: I have requested the court
15 reporter to make that recording of this proceeding in
16 writing and in -- on the phone.

17 THE COURT: We have a Court Reporter
18 present. I am simply advising you that it would be a
19 violation of the Rules of Civil Procedure and the
20 California Penal Code to make an independent audio
21 recording of the proceeding. Do you understand that,
22 ma'am?

23 MS. CUMMINS: Yes.

24 THE COURT: Okay. All right. This is your
25 motion to dismiss, so we will begin.

1 MS. CUMMINS: Okay. Thank you, Your Honor.
2 Just a second. Today I am going to show you that this is
3 a meritless defamation and breach of contract case. I
4 have never defamed plaintiff Lollar --

5 THE COURT REPORTER: I'm sorry. I can't
6 hear.

7 THE COURT: The court reporter can't hear
8 you.

9 MS. CUMMINS: I am sorry, Your Honor. I
10 have never defamed the plaintiff Lollar or breached any
11 contract. The true purpose of this game is to prevent me
12 from publicly speaking about issues of grave public
13 concern --

14 THE COURT REPORTER: I'm sorry. I can't
15 understand what she is saying.

16 MS. CUMMINS: -- that under -- won't give
17 me merit to my honest support. In this case --

18 THE COURT REPORTER: I'm sorry. I can't
19 understand what she is saying.

20 THE COURT: The court reporter indicates
21 she is still having difficulty hearing you.

22 MS. CUMMINS: Oh, I am sorry.

23 THE COURT: You need to speak very clearly
24 and perhaps a little slower.

25 MS. CUMMINS: Okay. Okay. In this -- this

1 case against me is to try to hide acts made by Lollar.
2 You don't know me. You will only know what Mr. Turner has
3 probably told you about me. And I'm --

4 THE COURT REPORTER: I'm sorry. I can't
5 understand what she is saying.

6 MS. CUMMINS: -- investigate animal cruelty
7 in violation of the Animal Welfare Act. On -- On the
8 Humane Society of the United States animal rescue team, we
9 occupied a raid --

10 THE COURT REPORTER: I'm sorry. I can't
11 understand what she is saying.

12 MS. CUMMINS: I also do presentations
13 about animal cruelty -- the animal legal defense fund and
14 fish and wildlife investigations at independent agencies.
15 I'm also an officer --

16 THE COURT REPORTER: I can't understand
17 what she is saying.

18 THE COURT: Ma'am, we are here on a motion
19 to dismiss. I don't understand what the background -- I
20 mean, I appreciate your qualifications or whatever, but
21 that doesn't have any bearing under Chapter 27 of the
22 Civil Practice and Remedies Code. So --

23 MS. CUMMINS: Okay. Well, then I will get
24 straight to the argument.

25 THE COURT: Thank you.

1 MS. CUMMINS: I just wanted to state
2 briefly that they filed this -- I believe in April, 2015.
3 And in that pleading it states that I replaced all the
4 items the Court ordered me to remove in the previous court
5 order. Well, I have never done that. And --

6 THE COURT REPORTER: I can't understand
7 what she is saying.

8 MS. CUMMINS: -- the contract evidence will
9 indicate -- in the original statement. They have never
10 sent me a cease and desist order before they filed this
11 case. Since -- since I received the first claim by Ms.
12 Lollar --

13 THE COURT REPORTER: I can't understand
14 what she is saying.

15 MS. CUMMINS: -- the main purpose is to
16 limit frivolous cases such as this one. I have read the
17 Defamation Litigation Act. You must give me a letter with
18 a list of all of the alleged defamatory items before they
19 file this claim. They did not do that.

20 The disclaimer clearly states that I will
21 edit or delete anything they send me --

22 THE COURT REPORTER: I can't understand
23 what she is saying.

24 MS. CUMMINS: -- they even admit they never
25 contacted me after I left Texas in 2010. Under the

1 Defamation Litigation Act, they must -- must give me proof
2 of defamation. Now, again, they did not send me proof of
3 defamation.

4 Mr. Turner tried to argue that the Court
5 order in the last case stated what was defamatory. And
6 the actual August 27, 2012 signed by the Court order is
7 merely a order to take out certain items. And there is
8 not -- the word defamation or defamatory is not in there.
9 There is no list of statements that was declared
10 defamatory.

11 Now, finally, after they sued me, they
12 finally gave me a cease and desist letter and then they
13 finally gave me a list of their alleged defamatory items.
14 But they still have never given me any proof of what was
15 wrong. I was instantly --

16 THE COURT REPORTER: I can't understand
17 what she is saying.

18 MS. CUMMINS: -- in this case. Not only
19 did they not provide me timely or do what they needed to
20 do, I went above and beyond and I proved all the
21 statements which they finally sent me of the alleged
22 defamation are not defamatory. They are the truth. And
23 I -- I proved that I -- in all of the exhibits I proved
24 that everything was absolutely the absolute truth and not
25 defamatory.

1 On top of the -- most importantly, I never
2 sent plaintiff Lollar -- and obviously they realized this
3 because their evidence which they submitted of the alleged
4 defamation was forced -- I clearly showed that -- that
5 Ms. Lollar is the one who forced the evidence. And then
6 she made the sworn statement in an affidavit stating that
7 the evidence is the absolute truth when she downloaded it
8 from the Internet. Well, that is completely false.

9 And then after this, Mr. Turner filed it.
10 And he has known for months that the evidence is
11 completely forced. And if you look at the evidence, it's
12 genuinely obvious all the documents she forced were
13 clearly still online to be seen.

14 Now, since I was -- in 2010 Texas also
15 passed a Citizens Participation Act, and -- which again is
16 identical to this one. Now, I was sued for defamation and
17 retaliation. We are talking about issues of grave public
18 concern. Ms. Lollar wrote and posted the bat sanctuary
19 -- and with respect to the daily --

20 THE COURT REPORTER: I can't understand
21 what she is saying.

22 THE COURT: Just do the best you can.

23 MS. CUMMINS: -- rabies and rabid bats are
24 issues of public concern. I also posted about --
25 violations which is definitely an issue of public concern.

1 I -- I ended up being severely injured at Bat World
2 because of this issue.

3 Now, I reported Ms. Lollar and -- for
4 federal cruelty and they were investigated. When the
5 government agency agreed with me, the USDA stated, quote,
6 unquote, Amanda Lollar followed that same -- again. She
7 violated the Animal Welfare Act.

8 THE COURT REPORTER: I can't hear her.

9 MS. CUMMINS: -- Amanda Lollar was also
10 reprimanded by the Texas Health Department, the Texas
11 Parks and Wildlife Department.

12 MR. TURNER: Your Honor, I am going to have
13 to object to Ms. Cummins talking about what other people
14 or other agencies said. It's not true and it's hearsay.

15 THE COURT: This is not an evidentiary
16 hearing because Ms. Cummins is not under oath. So I will
17 allow her to make argument.

18 MR. TURNER: Okay.

19 MS. CUMMINS: Thank you, Your Honor. I
20 also put it into evidence, the email from the lady that --
21 from the USDA. I'm sorry. They agreed with what I said.

22 Now, in -- in this case, Mr. Turner, who
23 tries to argue that a 2011 e-mail to the main office at
24 the USDA is my defamation. So one in 2011, attached to
25 public nuisance. Two, in Colorado. Three, it was made by

1 a lady with the USDA and not my defamation.

2 I am also in this state -- after I went to
3 that one where I witnessed violations --

4 THE COURT REPORTER: I can't understand
5 what's being said.

6 MS. CUMMINS: I left early and I reported
7 them to the authorities. I then shared -- I posted the
8 privileged information to the authorities online to share
9 this grave issue of public concern.

10 I wanted -- I don't want to go into courts
11 like this when I know from that rule -- now there are fair
12 and accurate reports of privilege that are not defamation.

13 THE COURT REPORTER: I can't hear.

14 MS. CUMMINS: What happened to me was
15 exactly that. Now in this case, Mr. Turner, there were
16 complaints in this case. He failed in his claims. There
17 is nothing in his complaints -- there is no evidence.
18 There is no -- or exhibits. In fact, Mr. Turner included
19 a breach of contract claim, which was identical to the one
20 that was reversed in the other court.

21 Mr. Turner intentionally filed a breach of
22 contract claim knowing that it had no merit whatsoever.
23 The purpose was to make -- because that is what was in the
24 contract, which I did not sign, which was -- that claim
25 was reversed. Now, most importantly in this situation,

1 Mr. Turner proved a whole bunch of articles written by
2 many other people in 2011 to 2013.

3 Mr. Turner could have gotten a subpoena to
4 find out who wrote those articles --

5 THE COURT REPORTER: I can't understand
6 what is being said.

7 MS. CUMMINS: He never proved that I wrote
8 them. I certainly did not. He could find out who did
9 this. Now they are blaming me for -- that I did a Public
10 Information Act request. And I received over a thousand
11 pages of complaints against Bat World over the last four
12 years.

13 I posted some of those government agency's
14 investigations and complaints online. Again, it is in the
15 public interest. It had to do with rabies and
16 vaccinations posted in 1999 in a Mineral Wells article
17 about a rabid baby bat biting a toddler on the cheek
18 directly related to the bat sanctuary --

19 THE COURT REPORTER: I can't understand
20 what is being said.

21 MS. CUMMINS: Now there is this case.
22 Texas -- I don't believe that your court has jurisdiction
23 for this case. They stated that I allegedly defamed them
24 after I left Texas when I was in California. That didn't
25 make any sense at the time --

1 THE COURT REPORTER: I can't understand.

2 MS. CUMMINS: Also I believe plaintiff
3 added a false breach of contract claim in order to make
4 the forum in Texas. Now, that was reversed on appeal.
5 Proper jurisdiction and venue should therefor be in either
6 California or Federal Court -- between the two parties.

7 Now, also in this case, the statute of
8 limitations for defamation in Texas is a year. The
9 government documents which I posted -- complaints written
10 by others, the articles written by others, the 1999
11 article, a 1994 manual written by plaintiff which she
12 claims is defamatory, they are all outside of the statute
13 of limitations.

14 The plaintiff had an opportunity to --
15 defamation for all of these items listed by all of these
16 other people, but they never did it. The plaintiff should
17 have subpoenaed all these -- the identity of the authors.
18 The time for that has now passed. All -- everything --
19 everything in their defamation case is outside the statute
20 of limitations.

21 And I believe that is also one of the
22 reasons why they forced this. If you look at the
23 exhibits, they added anonymous, by someone by the name of
24 Mary Cummins, and they make sure it is within one year of
25 the filing of this case. Now, I never made that comment.

1 They did not exist. It is not online. You can clearly
2 see it.

3 This is an Internet defamation case. You
4 have to take a look at the statements online, and you can
5 clearly see they forced that. They intentionally forced
6 that because they know they are outside of the statute of
7 limitations. And in this case, the case -- all the --
8 because Ms. Lollar is the one that forced the exhibits.
9 And then she signed a sworn affidavit saying that they
10 were true and correct copies off the Internet. That is
11 false. They committed forgery, fraud and perjury.

12 Mr. Turner knew this, but he still filed
13 this case and included those exhibits. In fact, one of
14 the most important things that Ms. Lollar forced was --
15 Ms. Lollar lost her -- I think it was canceled in March or
16 April of 2011 or 2004. Sorry. Ms. Lollar then filed a
17 statement and made comments when she clearly lost her
18 permit. Well, that was false and --

19 THE COURT REPORTER: I can't hear.

20 MS. CUMMINS: Ms. Lollar then forged three
21 separate e-mails allegedly to the head of the USDA
22 clearing her of all wrongdoing two years after she lost
23 the permit. Not only that, but Ms. Lollar is good at
24 acting. The USDA, and from their end -- and then filing
25 complaints. But I did two Public Information Act requests

1 requesting the alleged e-mails, and they all stated no
2 document exists.

3 Ms. Lollar forced the USDA -- Mr. Turner
4 knew it and she pulled files finding out the same thing,
5 that that e-mail could be -- that her email was false.

6 THE COURT REPORTER: I can't hear.

7 MS. CUMMINS: And most importantly,
8 Ms. Lollar and Mr. Turner say that they are losing money
9 and they lost money previously. Their own documents show
10 without a doubt they made more money than ever before this
11 case was ever filed.

12 And in the previous case Mr. Turner said
13 there was legally no actual damages. And in the same
14 trial, I asked Ms. Lollar, she said they had no physical
15 evidence of any damage -- financial damage to Bat World or
16 to her, and they had no physical evidence of any causation
17 or any actions -- of any actions by me committing damage
18 to them. And Ms. Lollar, again, says she was cleared of
19 all wrongdoing by all the agencies, and that is false.
20 There were Animal Welfare Act violations and health code
21 violations and other violations.

22 Anyway, in summary, I never defamed Amanda
23 Lollar or Bat World Sanctuary ever. I only filed
24 100 percent honest reports, facts backed by physical,
25 concrete evidence, photos, videos, statements, statements

1 made by plaintiff herself. Ms. Lollar stated that her own
2 manual she wrote in 1994 defamed her. It was -- in fact,
3 it -- supposedly my defamation is because I posted it and
4 it was not copyrighted.

5 Now, another thing. Ms. Lollar did not
6 abide by the Defamation Mitigation Act of Texas. And
7 they -- I am bringing this motion to dismiss under the
8 Citizen Participation Act in Texas. They are just trying
9 to inherent my freedom of speech on issues of a grave
10 public concern. I am media. Ms. Lollar explained that
11 she is an expert. She is a public figure because magazine
12 articles and books have been written about her.

13 And I have published articles for the last
14 20 years on all of these issues and I use cut and paste.
15 And I also believe, due to the forged and perjured
16 evidence submitted by Mr. Lollar and Mr. Turner, that they
17 should be prosecuted for forgery, fraud and perjury. And
18 I would ask the Court grant them -- well, and -- but to
19 dismiss this case with prejudice.

20 THE COURT: Mr. Turner?

21 MR. TURNER: May I approach so she can hear
22 what I am saying?

23 THE COURT: Please.

24 MR. TURNER: Ms. Cummins spent a great deal
25 of time talking about the previous lawsuit that was tried

1 in the 352nd District Court and affirmed on appeal by
2 the Second Court of Appeals, and the petition was -- for
3 review was denied by the Supreme Court. So I am not going
4 to respond to her statements about the last lawsuit.

5 Since this is not an evidentiary hearing, I
6 will simply ask the Court -- I have nothing to add to the
7 plaintiff's response to motion to dismiss which is on file
8 with the Court with Exhibits A through F. We -- I think
9 we have clearly met our burden.

10 THE COURT: When was that filed?

11 MR. TURNER: I would have to -- I don't
12 have that with me. I don't have a file-marked copy with
13 me, judge.

14 THE COURT: All right. That is the one
15 with the 29 or so exhibits attached to it?

16 MR. TURNER: Yes, sir. It's -- it's called
17 plaintiff's response to motion to dismiss. And then it's
18 got -- the response itself is ten pages long, but then
19 it's got Exhibits A through F attached to it.

20 THE COURT: All right.

21 MR. TURNER: Which I think is -- they are
22 pretty long and they lay out a prima facie case of
23 defamation. And I have nothing to add to that.

24 THE COURT: Is there an affidavit attached
25 to you're --

1 MR. TURNER: Those -- those were all --
2 yeah, those were all -- Exhibit A is the affidavit of
3 Ms. Lollar.

4 (Pause in Proceedings)

5 THE COURT: All right.

6 MR. TURNER: Did you find it?

7 THE COURT: I did.

8 MR. TURNER: So I have nothing to add to
9 that. I think if the Court will review that response and
10 the affidavit, it clearly meets the requirements that the
11 plaintiff is required to show in response to a motion to
12 dismiss.

13 As far as the -- as far as the claim that
14 there was no request for retraction, there actually was a
15 request for retraction. I believe that's been filed with
16 the Court. It was sent to Ms. Cummins. And if it wasn't
17 filed with the Court, I have Plaintiff's Exhibit 1A
18 that -- that is a request for retraction that was sent to
19 Ms. Cummins under the Defamation Mitigation Act. It's
20 timely if it's filed within the period of limitations. It
21 clearly was. It's within a year of the defamatory
22 statements that are listed in that exhibit.

23 THE COURT: All right.

24 MR. TURNER: So I would like to tell the
25 Court that -- responding to the -- well, I think the

1 response to the motion to dismiss clearly shows that it
2 was frivolous and brought in bad faith.

3 And my response says that we spent 35 hours
4 responding to the motion, and the reasonable attorney's
5 fees for that would be \$12,250. So we are asking that
6 that be awarded. And that is all I have.

7 THE COURT: All right. Any reply?

8 MS. CUMMINS: Yes, Your Honor. First,
9 Mr. Turner did not send that to me --

10 THE COURT REPORTER: I'm sorry. I can't
11 hear.

12 THE COURT: We can't hear you.

13 MS. CUMMINS: I am sorry. Mr. Turner did
14 not send a cease and desist letter before he filed the
15 case. He also did not file it timely. And I also, under
16 the Defamation Mitigation Act, I can ask for proof of
17 defamation. I sent him the same requests as one of the
18 exhibits asking for proof of defamation.

19 Mr. Turner sent back and said the appeals
20 court -- the district court said it was defamation in
21 2010. Well, that is not proof, because they never showed
22 what -- I was never told. So I received no proof of any
23 defamation. Then Mr. Turner just now says that this -- he
24 is saying that it took him 45 hours to type ten pages. I
25 don't believe -- I mean, I don't believe that I -- 35

1 hours -- I don't believe it took that long for him to do
2 these documents. 99 percent of the filing of these
3 exhibits --

4 THE COURT REPORTER: I can't hear.

5 MS. CUMMINS: -- and I have Mr. Turner's
6 original complaint he made in the 352nd District Court --

7 THE COURT REPORTER: I can't hear.

8 MS. CUMMINS: And, again, I have never
9 defamed Ms. Lollar. I actually lowered -- and deleted it.
10 Thank you, Your Honor.

11 MR. TURNER: Well, yes, Your Honor, the
12 proof of defamation is in the affidavits attached to the
13 response to motion to dismiss. Ms. Lollar -- we lay out
14 all of the statements Ms. Cummins made. Ms. Lollar's
15 affidavit said the statements were false.

16 Secondly, when the -- when the original
17 defamation case was upheld by the Texas Supreme Court,
18 Ms. Cummins proceeded to start posting the exact same
19 statements on the Internet that we are complaining about
20 in this lawsuit. And so part of our proof is that it's
21 already been adjudicated and it's collateral estoppel.
22 That applies to a lot of the statements.

23 Secondly, the motion to dismiss -- the
24 request for retraction is timely if it's submitted during
25 the limitations period, which this was. That is all I

1 have.

2 THE COURT: All right. Well, based upon
3 the evidence before me under Chapter 27.006 of the Civil
4 Practice and Remedies Code, it appears that there are --
5 sufficient evidence in the affidavits provided by the
6 plaintiff stating the facts on which the liability is
7 based. So I will deny the motion to dismiss under the
8 Anti-Slap Statute.

9 I also believe that the collateral estoppel
10 argument is sound and that these appear to be repetitions
11 of statements which were previously declared both by the
12 trial court and the Court of Appeals, as well as through
13 the denial of a petition for review by the Supreme Court,
14 to have been found that they are defamatory. And
15 similarly, I am admitting Exhibit 1A regarding the
16 retraction request, which was -- I find timely filed -- or
17 served on Ms. Cummins. And so we will deny the Chapter 73
18 request to dismiss.

19 MR. TURNER: Thank you, Your Honor.

20 THE COURT: All right. Anything else
21 Ms. Cummins? Hello? Ms. Cummins?

22 MS. CUMMINS: I am here, Your Honor.

23 THE COURT: Okay. Do you have anything
24 else?

25 MS. CUMMINS: Yes, I want a copy of the

1 Court Reporter's minutes so I can file an appeal.

2 THE COURT: Well, you certainly are
3 entitled to do that, ma'am. All right. At this time we
4 are adjourned.

5 MS. CUMMINS: Thank you.

6 THE COURT: Thank you.

7 MR. TURNER: Thank you, Your Honor.

8 (Recess.)

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1 STATE OF TEXAS

2 COUNTY OF TARRANT

3 I, Shari J. Steen, Official Court Reporter in and for
4 County Court at Law No. 3 of Tarrant County, State of
5 Texas, do hereby certify that the above and foregoing
6 contains a true and correct transcription of all portions
7 of evidence and other proceedings requested in writing by
8 counsel for the parties to be included in this volume of
9 the Reporter's Record in the above-styled and numbered
10 cause, all of which occurred in open court or in chambers
11 and were reported by me.

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

15 I further certify that the total cost for the
16 preparation of this Reporter's Record is \$205.75 and will
17 not be paid because the defendant was declared indigent by
18 the 2nd Court of Appeals.

19 WITNESS MY OFFICIAL HAND, on this the 11th day
20 of August, 2016.

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/s/Shari J. Steen
Shari J. Steen, CSR, RMR
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