

AFFIRMED and Opinion Filed April 1, 2026



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-25-00143-CV

**ABDOLHAMID POURMOHAMMADAGHA AND
AMIR REZA ZANDEVAKILI, Appellants**

V.

**REZA STEVE POURRY, 777 GLOBAL, LLC, AND
1725 GLOBAL, LLC, Appellees**

**On Appeal from the 191st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-24-05939**

MEMORANDUM OPINION

Before Justices Garcia, Breedlove, and Rossini
Opinion by Justice Rossini

Appellants Abdolhamid Pourmohammadagha (Hamid) and Amir Reza Zandevakili (Amir) perfected this interlocutory appeal from the trial court's denial, by operation of law, of their motions to dismiss under the Texas Citizens Participation Act (TCPA). *See* Tex. Civ. Prac. & Rem. Code §§ 27.001–.011, 51.014(a)(12). Hamid and Amir both assign error in the denial of their motions, and Hamid also assigns error in the visiting judge's order vacating the trial court's previous order granting his motion to dismiss. We conclude that Hamid did not

preserve error on his complaint about the visiting judge's vacatur order and that both appellants did not carry their initial burden under section 27.005(b). Therefore, we affirm.

I. Background

Hamid and Reza Steve Poury (Steve) are brothers. Their dispute centers on whether Steve or Hamid is the rightful owner of two entities, 201 Central, LLC and HP Concept, LLC (the Central and HP entities), which Hamid formed in 2017. The Central and HP entities owned—and the parties dispute whether they still own—six commercial properties (the Properties).

In June 2017, Steve conveyed the Properties to the Central and HP entities, which were owned by Hamid at the time. Steve claims that he did so on the understanding that this was a temporary arrangement. Steve further claims that Hamid gave the Properties back to him in December 2019 by executing documents transferring ownership of the Central and HP entities to him. Steve further claims that Amir, a long-time friend of both brothers, witnessed Hamid's signing, in December 2019, of the documents transferring ownership of the Central and HP entities to him (Steve) from Hamid. Hamid and Amir dispute Steve's account: Hamid denies that he transferred the Properties to Steve or had any obligation to do so, and Hamid and Amir deny that Amir ever witnessed Hamid effectuating such a transfer.

On February 20, 2024, Steve filed paperwork with the Texas Secretary of State to create two new entities, 777 Global, LLC and 1725 Global, LLC (the Global entities). On March 29, 2024, purporting to act as the Central and HP entities' sole owner, Steve conveyed the Properties from the Central and HP entities to the Global entities. On April 17, 2024, at Hamid's request, Amir signed an affidavit denying that he had witnessed or signed the documents transferring ownership of the Central and HP entities from Hamid to Steve in December 2019. On April 23, 2024, Steve, the Global entities Steve formed, and the Central and HP entities Steve claimed ownership of (collectively, Steve) sued Hamid, later adding Amir as a defendant.

During their dispute of ownership of the Properties, both Steve and Hamid asked tenants to pay rent directly to them or entities they controlled. Both brothers separately represented to tenants that they owned, or had controlling interest in, one or more Properties.

In his third amended petition, Steve asserted (1) claims of trespass, money had and received, tortious interference with existing contract (lease contracts), tortious interference with prospective relations (prospective lease contracts), breach of contract and contort, violation of the anti-stalking statute, and entitlement to declaratory judgment against Hamid and (2) claims of actual fraud and civil conspiracy against both Hamid and Amir. Amir filed special exceptions to the fraud and civil conspiracy claims. Steve filed a fourth amended petition in which he added a claim of gross negligence against Amir and amended the claim of civil conspiracy

to allege that the object of the alleged conspiracy by Hamid and Amir was to interfere with Steve's business and contracts with tenants at the Properties.

Hamid then filed a TCPA motion attacking the claim of conspiracy to interfere with business and contract. Amir filed a TCPA motion attacking the conspiracy and gross negligence claims. Steve filed a fifth amended petition, the live petition, that added claims against both Hamid and Amir for statutory fraud. Amir then filed a second TCPA motion that incorporated his prior motion and attacked the conspiracy, gross negligence, and common-law and statutory fraud claims.

The trial court heard Hamid's and Amir's TCPA motions to dismiss on December 18, 2024. Twenty-one days later, on January 8, 2025, the trial court signed an order granting Hamid's motion and dismissing Steve's claim against Hamid of civil conspiracy to interfere with business and contract. Eight days thereafter, on January 16, 2025, a visiting judge vacated the order granting Hamid's motion. Thus, on January 18, 2025, after the passage of thirty days from the conclusion of the hearing, Hamid's TCPA motion and Amir's two TCPA motions were denied by operation of law. *See* Tex. Civ. Prac. & Rem. Code § 27.008. On January 29, 2024, Hamid filed an objection to the assignment of the visiting judge. In the objection, Hamid included a statement that he "further objects to [Visiting] Judge Molberg's Order vacating [Presiding] Judge Slaughter's January 8, 2025, order granting Defendant's Motion to Dismiss and For Sanctions Pursuant to Texas Civil Practice and Remedies Code Chapter 27 filed on August 27, 2024."

Hamid and Amir timely appealed.

II. Issues Presented

Hamid (in the first of his two issues) and Amir (in both of his two issues) contend on appeal that the trial court erred in allowing their TCPA motions to dismiss to be overruled by operation of law. Additionally, Hamid (in his second issue) contends on appeal that the trial court’s visiting judge abused his discretion in vacating the presiding judge’s earlier order granting his TCPA motion to dismiss. Hamid and Amir both bring issues associated with the TCPA’s right of free speech and right to petition—more specifically, the right to petition involving communications made in or pertaining to a judicial proceeding.¹ We paraphrase the dispositive issues of Hamid and Amir as follows:

1. Does this court have **appellate jurisdiction** to review Hamid’s second issue, regarding the visiting judge’s order vacating the presiding judge’s earlier order granting Hamid’s TCPA motion to dismiss?

¹ In the trial court, Amir also asserted issues relating to the TCPA right of association. On appeal, he argues only about his asserted TCPA rights to petition and free speech. The rules of appellate procedure require that an appellant’s brief “contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.” Tex. R. App. P. 38.1(i). A failure to provide substantive analysis of an issue or cite appropriate authority supporting a complaint waives the complaint on appeal. *Huey v. Huey*, 200 S.W.3d 851, 854 (Tex. App.—Dallas 2006, no pet.). Aside from quoting and citing the TCPA’s definition of the exercise of the right of association and including a reference to that right in a recitation of the first step of the TCPA dismissal process, Amir provides no substantive analysis or argument, or citation to legal authority, or even a bare assertion that the trial court erred in denying the dismissal motion specifically as to Amir’s right of association. Because Amir did not brief the issue in compliance with rule 38.1(i), we construe Amir’s brief as not presenting any complaint about the trial court’s denial of his motions insofar as they were based on his right of association.

2. Did Hamid **preserve error** regarding his second issue asserting that the trial court’s visiting judge erred in vacating the presiding judge’s earlier order granting his TCPA motion to dismiss?
3. Did Hamid or Amir demonstrate that Steve’s challenged claims are based on or in response to the exercise of the TCPA **right to petition** involving communications made by Hamid or Amir in or pertaining to a **judicial proceeding**?
4. Did Hamid demonstrate that Steve’s challenged claims are based on or in response to Hamid’s exercise of the TCPA **right of free speech** by arguing the issue for the first time in his reply in support of his motion?
5. Did Amir demonstrate that Steve’s challenged claims are based on or in response to his exercise of the TCPA **right of free speech**?

III. Applicable Law

The TCPA protects citizens who petition or speak out on matters of public concern from retaliatory lawsuits intended to silence them. *Garcia v. Semler*, 663 S.W.3d 270, 279 (Tex. App.—Dallas 2022, no pet.). That protection comes in the form of a special motion to dismiss legal actions that appear to stifle the defendant’s exercise of those rights. *Id.*

Relevant here, the TCPA defines the “exercise of the right to petition” to include “communication[s] in or pertaining to a judicial proceeding.” *See* Tex. Civ. Prac. & Rem. Code § 27.001(4)(A)(i).² The statute does not define the term “judicial

² The TCPA defines the “exercise of the right to petition” as follows:

- (4) “Exercise of the right to petition” means any of the following:
 - (A) a communication in or pertaining to:
 - (i) a judicial proceeding;

proceeding.” We have previously held, however, that a “judicial proceeding” under the TCPA is an actual, pending judicial proceeding and does not “include an anticipated or potential future proceeding.” *Levatino v. Apple Tree Cafe Touring, Inc.*, 486 S.W.3d 724, 728–29 (Tex. App.—Dallas 2016, pet. denied); *accord Dyer v. Medoc Health Servs., LLC*, 573 S.W.3d 418, 429 (Tex. App.—Dallas 2019, pet.

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- (ii) an official proceeding, other than a judicial proceeding, to administer the law;
 - (iii) an executive or other proceeding before a department of the state or federal government or a subdivision of the state or federal government;
 - (iv) a legislative proceeding, including a proceeding of a legislative committee;
 - (v) a proceeding before an entity that requires by rule that public notice be given before proceedings of that entity;
 - (vi) a proceeding in or before a managing board of an educational or eleemosynary institution supported directly or indirectly from public revenue;
 - (vii) a proceeding of the governing body of any political subdivision of this state;
 - (viii) a report of or debate and statements made in a proceeding described by Subparagraph (iii), (iv), (v), (vi), or (vii); or
 - (ix) a public meeting dealing with a public purpose, including statements and discussions at the meeting or other matters of public concern occurring at the meeting;
- (B) a communication in connection with an issue under consideration or review by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding;
 - (C) a communication that is reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding;
 - (D) a communication reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding; and
 - (E) any other communication that falls within the protection of the right to petition government under the Constitution of the United States or the constitution of this state.

Tex. Civ. Prac. & Rem. Code § 27.001(4).

denied). If a TCPA movant made the same statements both before and after suit, the suit is “based on a mix of protected and unprotected activity.” *Thomas v. Wm. Charles Bundren & Assocs. L. Grp. PLLC*, No. 05-20-00632-CV, 2021 WL 3159795, at *7 (Tex. App.—Dallas July 26, 2021, no pet.) (mem. op.). A trial court does not err in denying a TCPA motion based on such a mix of activity if the movant “ha[s] provided ‘no way to parse out’ the protected communications from the unprotected ones and [the trial court] can find none.” *Id.*

The TCPA defines the “[e]xercise of the right of free speech” as “a communication made in connection with a matter of public concern.” Tex. Civ. Prac. Rem. Code § 27.001(3). The Legislature narrowed the TCPA definition of “matter of public concern” in 2019. *See Beard v. McGregor Bancshares, Inc.*, No. 05-21-00478-CV, 2022 WL 1076176, at *5 (Tex. App.—Dallas Apr. 11, 2022, pet. denied) (mem. op.). Now, the statute defines a “matter of public concern” as

a statement or activity regarding:

- (A) a public official, public figure, or other person who has drawn substantial public attention due to the person's official acts, fame, notoriety, or celebrity;
- (B) a matter of political, social, or other interest to the community; or
- (C) a subject of concern to the public.

Tex. Civ. Prac. & Rem. Code § 27.001(7)(A)–(C). Even before the 2019 amendments, the Texas Supreme Court had explained that communications “with a limited business audience concerning a private contract dispute” did not involve a

matter of public concern within the meaning of the TCPA. *Creative Oil & Gas, LLC v. Lona Hills Ranch, LLC*, 591 S.W.3d 127, 136 (Tex. 2019). Under the 2019 amendments, we have continued to hold that private disputes affecting only the litigants’ fortunes are not matters of public concern. *See, e.g., Fuller v. Hausz*, No. 05-22-000893-CV, 2023 WL 5123459, at *3 (Tex. App.—Dallas Aug. 10, 2023, no pet.) (mem. op.). “[C]ommunications that are merely ‘related somehow to one of the broad categories’ set out in the statute [before the 2019 amendments] but that otherwise have no relevance to a public audience are not ‘communications made in connection with a matter of public concern.’” *McLane Champions, LLC v. Hou. Baseball Partners LLC*, 671 S.W.3d 907, 916 (Tex. 2023) (quoting *Creative Oil & Gas, LLC*, 591 S.W.3d at 137, and citing *Goldberg v. EMR (USA Holdings) Inc.*, 594 S.W.3d 818, 828 (Tex. App.—Dallas 2020, pet. denied)).

To trigger the TCPA’s protection, the legal action must be factually predicated on alleged conduct that falls within the scope of the TCPA’s definition of the exercise of the right of free speech, petition, or association. *Dyer*, 573 S.W.3d at 428–29. As amended in 2019, before this controversy arose, the statute requires more than a tangential relationship between the alleged protected activity and the legal action. *Ostteen v. Holmes*, No. 05-23-01150-CV, 2024 WL 3897467, at *10 (Tex. App.—Dallas Aug. 22, 2024, pet. denied) (mem. op.). “The current version narrows the required nexus between the action and the protected activity by deleting the broadest connective language—‘relates to’—and authorizing a dismissal motion

only when the action is ‘based on or is in response to’ the activity.” *Walgreens v. McKenzie*, 713 S.W.3d 394, 400 (Tex. 2025). If this nexus is missing, then the statute does not apply. *Harrell v. Smith*, No. 05-22-00242-CV, 2022 WL 17335686, at *3 (Tex. App.—Dallas Nov. 30, 2022, no pet.) (mem. op.) (citing *Sloat v. Rathbun*, 513 S.W.3d 500, 504 (Tex. App.—Austin 2015, pet. dismissed), *rev’d on other grounds*, 547 S.W.3d 890 (Tex. 2018) (noting that any activities by the movant “that are not a factual predicate for [the nonmovant’s] claims are simply not pertinent to the inquiry”)). An allegation is based on the exercise of a protected activity if the protected activity is “a main ingredient” or “fundamental part” of the challenged legal action. *Ladiwalla as Tr. of ZAL Tr. v. Bhojani as Tr. Protector of ZAL Tr.*, No. 05-24-01107-CV, 2025 WL 1547744, at *4 (Tex. App.—Dallas May 30, 2025, no pet.) (mem. op.). An allegation is in response to the exercise of the right to petition or the right of free speech if the allegation is asserted in answer to or is an act in return for the protected activity. *Id.*

IV. Standard and Scope of Review

A TCPA motion to dismiss triggers a multi-step analysis. *See* Tex. Civ. Prac. & Rem. Code § 27.005(b)–(d). At step one, the movant bears the initial burden to demonstrate that the nonmovant’s legal action is based on or in response to (1) the movant’s exercise of the right of free speech, the right to petition, or the right of association, or (2) conduct by the movant fitting the descriptions found in section 27.010(b). *See id.* § 27.005(b). If the movant carries its step-one burden as to a claim,

the burden shifts to the nonmovant to establish by clear and specific evidence a prima facie case for each essential element of that claim. *See id.* § 27.005(c). If the nonmovant does not carry its burden, the claim must be dismissed. *See id.* § 27.005(b)–(c). And even if the nonmovant carries its step-two burden, the movant can still win dismissal at step three by establishing an affirmative defense or other ground on which the movant is entitled to judgment as a matter of law. *See id.* § 27.005(d).

The TCPA provides the same framework for review of a motion to dismiss as the summary-judgment framework found in civil procedure rule 166a. *Garcia*, 663 S.W.3d at 276–77 (Tex. App.—Dallas 2022, no pet.). In determining whether a legal action is subject to or should be dismissed under the TCPA, a court shall consider the pleadings, evidence the court could consider under the summary-judgment rule, and supporting and opposing affidavits stating the facts on which the liability or defense is based. Tex. Civ. Prac. & Rem. Code § 27.006(a). We review de novo the trial court’s determinations that the parties met or failed to meet their respective burdens under section 27.005, *Garcia*, 663 S.W.3d at 279, considering these materials in the light most favorable to the nonmovant. *Eichner*, 719 S.W.3d at 403; *Dyer*, 573 S.W.3d at 424.

In this case, to support their motions, both Hamid and Amir relied on the allegations in Steve’s petition and affidavits attached to their motions. Amir also relied on discovery materials attached to his motion. Although the parties hotly

dispute whether a transfer of the Central and HP entities occurred, we find no disputed facts relating to whether Steve's legal action is based on or in response to Hamid and Amir's exercise of rights protected by the TCPA.

In support of his conspiracy claim, Steve alleges:

Defendant Hamid and Defendant [Amir] Zandvakili were a combination of two people. Defendants' objective was to accomplish an unlawful purpose, that is, interfering with Plaintiffs' business and contracts by making *misrepresentations* and omissions *that HP Concept, LLC and 201 Central, LLC were not transferred to Plaintiff, and that Plaintiffs' tenants were to pay Defendant Hamid their rent.* Defendants Hamid and Zandvakili knew of the contract between Plaintiffs and their tenants. Defendants Hamid and Zandvakili had a meeting of minds on the objective of the conspiracy in order to interfere with Plaintiffs' business and existing contracts. Defendants Hamid and Zandvakili committed an unlawful, overt act to further the conspiracy by Hamid and Zandvakili *representing to Plaintiffs that HP Concept, LLC and 201 Central, LLC were never transferred to the Plaintiff, by Hamid and Zandvakili representing to Plaintiffs that Zandvakili did not witness the transfer, and by Hamid representing to Plaintiffs' tenants that they were to pay Hamid, not the Plaintiffs prior to any affidavits being made.* The Plaintiff suffered injuries including, but not limited to, loss of income from rental payments, loss of equity in the commercial real estate, as a proximate result of the wrongful acts committed by the Defendants. Defendants Hamid and Zandvakili intended to interfere with Plaintiffs' contracts with their tenants and induced Plaintiffs' tenants to breach their contracts with Plaintiffs' *by representing to the ten[an]ts that their rent payments should be made to Defendant Hamid* and Defendant Hamid accepting those payments. Furthermore, Defendant Zandvakili was grossly negligent. Defendant Zandvakili's actions constituted an extreme risk, and Defendant Zandvakili knew of this risk at the time of his actions. Knowing he had witnessed the transfer of I-[P Concept, LLC and 201 Central, LLC from Defendant Hamid to Plaintiff, Defendant Zandvakili nevertheless *represented to Defendant Hamid and Plaintiff that he did not witness such transfer* as part of the conspiracy with Defendant Hamid in order to gain control over Plaintiffs' businesses. Defendant Zandvakili conspired with Hamid and others to defraud the transfer of commercial property and membership

interest to Plaintiff. Defendant knew *making these representations* was an extreme risk and would cause disastrous harm on Plaintiffs' income and businesses. In these circumstances, a reasonable person would have realized that such conduct created an extreme degree of risk to Plaintiffs. Defendant Zandvakili proceeded in *representing he did not witness the transfer of the LLCs* with the knowledge that harm to Plaintiffs was a highly probable consequence and with conscious indifference to that extreme risk. Defendant Zandvakili may have received monetary and non-monetary compensation to recant his previous written statements.

(Emphasis added.)

In support of his fraud and gross negligence claims Steve alleges:

Defendants made material *representations* that were false, including but not limited to conversations and omissions that converted Plaintiffs' money. When Defendants made the representations, they knew the representations were false or they made the representations recklessly without any knowledge of the truth and as a positive assertion. *The representations that were made were* (1) Defendant Hamid representing to the tenants that Defendant Hamid was the owner of the properties and owed the funds, (2) Defendant Hamid representing to Frost Bank that Defendant Hamid was the owner of the properties and the Frost Bank accounts, (3) Defendant Hamid representing that Defendant Hamid was the owners of the commercial properties to multiple parties, (4) Defendant Hamid representing to Plaintiff that Plaintiff now owned the properties, (5) Defendant Hamid representing that Defendant Hamid had authority to amend the documents of HP Concept, LLC and 201 Central, LLC and (6) *Defendant Zandvakili representing that Defendant Zandvakili did not witness the transfer of HP Concept, LLC and 201 Central, LLC, from Defendant Hamid to Plaintiff*. The representations were made with the intent that Plaintiff and Plaintiff's tenants should act upon them. Plaintiff and Plaintiff's [sic] acted in reliance of the representations. As a proximate result of such fraud, Plaintiff suffered damages.

....

Defendant Zandvakili's actions constituted an extreme risk, and Defendant Zandvakili knew of this risk at the time of his actions. Knowing he had witnessed the transfer of HP Concept, LLC and 201

Central, LLC from Defendant Hamid to Plaintiff, Defendant Zandvakili nevertheless *represented to Defendant Hamid and Plaintiff that he did not witness such transfer*. Defendant knew making *these representations* was an extreme risk and would cause disastrous harm on Plaintiffs' income and businesses. In these circumstances, a reasonable person would have realized that such conduct created an extreme degree of risk to Plaintiffs. Defendant Zandvakili proceeded in *representing he did not witness the transfer of the LLCs* with the knowledge that harm to Plaintiffs was a highly probable consequence and with conscious indifference to that extreme risk.

(Emphasis added.)

Hamid attached to his motion an affidavit by Amir dated April 17, 2024, stating that he did not witness Hamid's transfer of the Central and HP entities to Steve, and copies of two documents, both dated December 4, 2019, appearing to transfer ownership of the Central and HP entities from Hamid to Steve. Amir attached to his first motion the same affidavit and transfer documents and also included two additional affidavits by Amir dated May 3 and August 20, 2024; an affidavit by Amir's attorney; and copies of discovery disclosures by Steve, the Global entities, and the Central and HP entities.

V. Analysis

A. **We lack jurisdiction to address the visiting judge's interlocutory order setting aside the presiding judge's previous order granting Hamid's TCPA motion to dismiss.**

In his second issue, Hamid argues the trial court's visiting judge erred when he vacated the presiding judge's previous order granting Hamid's TCPA motion to dismiss. Hamid notes that the visiting judge acted on his own motion, without hearing or notice, when he vacated the presiding judge's previous order granting

Hamid’s motion. He also notes that the visiting judge had not been present at the hearing on the TCPA dismissal motion and that the reporter’s record for the hearing had not yet been created, so the visiting judge could not have analyzed the arguments made at the original hearing when deciding to vacate the grant order.³ Hamid contends that (1) a movant seeking protection under the TCPA is required to obtain a hearing on a TCPA motion to dismiss and (2) arguments made at the hearing are preserved for appellate review, so the visiting judge abused his discretion in vacating the previous order without knowledge of the arguments made at the hearing and without analyzing all pertinent issues before the trial court.

Steve responds that this court lacks interlocutory appellate jurisdiction to review the vacatur order. He notes that the visiting judge’s vacatur order is neither a final judgment nor an appealable interlocutory order. Hamid does not address Steve’s appellate jurisdiction argument in his appellant’s reply brief. We agree with Steve.

Generally, appellate courts only have jurisdiction over final judgments. *See, e.g., CMH Homes v. Perez*, 340 S.W.3d 444, 447 (Tex. 2011); *Lehmann v. Har-Con*

³ Hamid does not point to any new argument made at the hearing that was not included in his motion or reply, and we have found none from our review of the record. Also, no new evidence was presented at the hearing. “[T]he TCPA, as amended in 2019, . . . does not permit the consideration of live testimony on the merits of a TCPA motion to dismiss.” *Garcia v. Semler*, 663 S.W.3d 270, 277 (Tex. App.—Dallas 2022, no pet.); *see* Tex. Civ. Prac. & Rem. Code § 27.006(a) (“In determining whether a legal action is subject to or should be dismissed under this chapter, the court shall consider the pleadings, *evidence a court could consider under Rule 166a, Texas Rules of Civil Procedure*, and supporting and opposing affidavits stating the facts on which the liability or defense is based.”) (emphasis added).

Corp., 39 S.W.3d 191, 195 (Tex. 2001); *Jack B. Anglin Co. v. Tipps*, 842 S.W.2d 266, 272 (Tex. 1992). Appellate courts strictly apply statutes granting interlocutory appeals because they are a narrow exception to the general rule that interlocutory orders are not immediately appealable. *See, e.g., CMH Homes*, 340 S.W.3d at 447; *Tex. A & M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 841 (Tex. 2007); *see also* Tex. Civ. Prac. & Rem. Code § 51.014(a) (statutory list of appealable interlocutory orders).

In this case, the vacatur order that the visiting judge signed before the deadline to rule on the motion to dismiss was the action of the trial court that caused the motion to be denied by operation of law. The Legislature has given this court jurisdiction to review an interlocutory denial of a TCPA motion to dismiss. Tex. Civ. Prac. & Rem. Code § 51.014(a)(12). In response to Hamid’s first issue, we do just that: in parts V.B.1 and V.B.2.a, below, we review the denial of Hamid’s TCPA motion by operation of law. However, we lack jurisdiction to consider Hamid’s first issue on appeal, complaining that the visiting judge abused his discretion by entering the vacatur order without first reviewing the transcript of the earlier hearing on Hamid’s motion.⁴

⁴ We also note that Hamid failed to preserve any such complaint in the trial court. *See* Tex. R. App. P. 33.1; *Hollingsworth v. Walaal Corp. d/b/a Ambassador Cab*, No. 05-16-00534-CV, 2019 WL 2863870, at *4 (Tex. App.—Dallas July 2, 2019, no pet.) (mem. op.) (if an issue has not been presented to the trial court to preserve it for appeal, we should not address it because nothing is presented for our review). Although Hamid objected to the assignment of the visiting judge, and in connection with his assignment objection Hamid also objected to the vacatur order, Hamid did

We overrule Hamid’s second issue.

B. The Denial by Operation of Law of the TCPA Motions to Dismiss

Moving now to a review Hamid’s and Amir’s other issues, regarding the denials by operation of law of Hamid’s and Amir’s TCPA dismissal motions, we start with step one, whether Hamid and Amir carried their burden to demonstrate that the challenged claims were based on their exercise of a right protected by the TCPA. *McLane Champions, LLC v. Houston Baseball Partners LLC*, 671 S.W.3d 907, 914 (Tex. 2023); *Law Offices of Welsh & Kampas PLLC v. DiSanti*, No. 05-24-01243-CV, 2025 WL 2495044, at *2 (Tex. App.—Dallas Aug. 29, 2025, no pet.) (mem. op.); *see* Tex. Civ. Prac. & Rem. Code § 27.005(b).

We conclude that Hamid and Amir both failed to make this step-one showing.

Hamid’s TCPA grounds: Hamid moved to dismiss Steve’s civil conspiracy claim against him on the grounds that it is predicated on the following statements that are protected under the TCPA as the exercise of the right to petition: (1) that Hamid did not transfer the Properties to Steve and (2) that the Properties’ tenants should pay their rent to Hamid instead of Steve. Hamid argued in reply to Steve’s response that these statements also constituted the exercise of the right of freedom of speech as protected under the TCPA.

not object in the trial court on the basis that he visiting judge abused his discretion by vacating the presiding judge’s earlier order granting the TCPA motion to dismiss. On appeal, Hamid does not complain about the assignment of the visiting judge.

Amir’s TCPA grounds: Amir moved to dismiss all claims Steve brought against him (civil conspiracy, gross negligence, and common-law and statutory fraud) on the grounds that they are predicated on Amir’s statements that Amir did not witness the Properties’ transfer, arguing that these statements are protected under the TCPA as the exercise of the right to petition and the right of free speech.

In light of the grounds on which Hamid and Amir move for TCPA dismissal, we turn to the allegations in Steve’s live petition. *See* Tex. Civ. Prac. & Rem. Code § 27.006(a); *Hersh v. Tatum*, 526 S.W.3d 462, 467 (Tex. 2017) (“[I]t would be impossible to determine the basis of a legal action, and thus the applicability of the Act, without considering the plaintiff’s petition.”). In his fifth amended petition, Steve alleges that Hamid and Amir committed the following overt acts in pursuit of the conspiracy to interfere with business and contract: (1) Hamid and Amir represented to Steve that (a) Hamid never transferred the Central and HP entities to Steve and (b) Amir did not witness the transfer and (2) Hamid represented to the Properties’ tenants that they were to pay rents to Hamid, not Steve. For his common-law fraud and gross negligence claims, Steve alleges that Amir represented that he did not witness the transfer of the Central and HP entities from Hamid to Steve.

Steve argues that Hamid and Amir did not demonstrate that their statements—specifically, the statements pleaded by Steve as the basis of his claims against them—are protected under the TCPA. For the following reasons, we agree with Steve and conclude that Hamid and Amir did not meet their step-one burden to

demonstrate that Steve’s challenged claims were based on or in response to TCPA-protected statements.

1. The TCPA Right to Petition: Did Hamid and Amir demonstrate that Steve’s challenged claims were based on or in response to Hamid and Amir’s exercise of the right to petition?

Hamid and Amir both moved under the TCPA to dismiss Steve’s civil conspiracy claim on the ground that the claim is based on or in response to their exercise of the right to petition, and Amir also moved to dismiss Steve’s gross negligence and common-law and statutory fraud claims on the same ground.⁵ Both Hamid and Amir allege that Steve’s claims were predicated on their right to petition because they were based on or in response to communications made in or pertaining to a judicial proceeding, triggering TCPA protection under section 27.003.⁶

⁵ Hamid raises this right-to-petition argument in issue number one on appeal, and Amir raises this argument in both of his issues.

⁶ In the trial court, Amir also asserted his right to petition under the definition “a communication that is reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding.” Tex. Civ. Prac. & Rem. Code § 27.001(4)(C). On appeal, although he quotes this definition, as well as the definition “a communication in or pertaining to . . . a judicial proceeding,” *id.* § 27.001(4)(A)(i), in the “Applicable Law” section of his appellant’s brief, he argues in the rest of his brief only about his asserted right to petition under the latter definition:

When Amir signed the Second and Third Affidavits, he did so during the course of the lawsuit, and such was an exercise of his right to petition. A party who provides an affidavit or personal statement in a judicial proceeding is exercising his right to petition. Amir’s affidavits made after the suit was filed, as well as Amir’s statements made to Steve in early May, 2024 (also after Appellees had filed suit), are protected by the right to petition. . . .

(Citation omitted.) Amir provides no substantive analysis or argument, or citation to legal authority, or even a bare assertion that the trial court erred in denying the dismissal motion specifically as to Amir’s right to petition under the definition in section 27.001(4)(C). *See* Tex. R. App. P. 38.1(i); *Huey*, 200 S.W.3d at 854. Because Amir did not brief the issue in compliance with

For the following reasons, we conclude that Hamid and Amir failed to meet their step-one burden as to the TCPA-protected right to petition.

Critical in this case is the TCPA’s requirement that a “judicial proceeding” under the statute is an actual, pending judicial proceeding and does not “include an anticipated or potential future proceeding.” *Levatino*, 486 S.W.3d at 728–29. As we explained in *Levatino*, undefined terms in a statute, such as “judicial proceeding” in the TCPA, are typically given their ordinary meaning, and the ordinary meaning of a “judicial proceeding” is “an actual, pending judicial proceeding.” 486 S.W.3d at 728. In support of that ordinary meaning, we cited state and federal civil procedure rules stating that a civil suit or action is commenced by filing a “petition” or “complaint.” *Id.* The *Black’s Law Dictionary* definition of “judicial proceeding” confirms this ordinary meaning of the term, defining “judicial proceeding” as “any proceeding initiated to procure an order or decree, whether in law or in equity.” *Proceeding*, *Black’s Law Dictionary* (12th ed. 2024). Thus, to establish the applicability of the TCPA based on “a communication in or pertaining to . . . a judicial proceeding,” Tex. Civ. Prac. & Rem. Code § 27.001(4)(A)(i), the movant must present evidence that a *pending* judicial proceeding existed at the time of the communication and that the communication was made in connection with that pending proceeding. *Dyer*, 573 S.W.3d at 429.

rule 38.1(i), we construe Amir’s brief as not presenting any complaint about the trial court’s denial of his motions insofar as they were based on his right to petition under that definition.

Under our precedent, therefore, statements a party makes before a lawsuit is filed—even if a lawsuit is threatened or reasonably anticipated—are not made “in or pertaining to” that judicial proceeding under the TCPA and do not trigger TCPA protection. *Levatino*, 486 S.W.3d at 729 (“We do not agree that the phrase ‘pertaining to’ expands the ordinary meaning of “‘a judicial proceeding’ to include anticipated or potential future judicial proceedings.”).⁷

Consequently, a communication made *before* a lawsuit is filed does not trigger TCPA protection as an exercise of the right to petition through statements made in or pertaining to a judicial proceeding. A communication made *after* a lawsuit is filed also does not establish the applicability of the TCPA’s protection unless the movant demonstrates that the legal action is “based on or is in response to” the other party’s exercise of the right to petition. Tex. Civ. Prac. & Rem. Code § 27.003(a). That is, the communication in the judicial proceeding must be “a main ingredient” or “fundamental part” of the challenged legal action, or the challenged legal action

⁷ Sister courts agree. See *DiSanti*, 2025 WL 2495044, at *6 (“Under our precedent, Welsh’s pre-suit demand letter is not a communication in or pertaining to a judicial proceeding.”) (citing *Levatino*, 486 S.W.3d at 728–29); *Constellation Brands, Inc. v. Roach*, No. 01-21-00155-CV, 2022 WL 17981666, at *18 (Tex. App.—Houston [1st Dist.] Dec. 29, 2022, pet. denied) (mem. op.) (applying *Levatino* to conclude that “[b]ecause no judicial proceeding had been filed in California at the time Roach filed the Fifth Amended Petition, the threatened California Lawsuit does not fit within the meaning of judicial proceeding as used in the TCPA.”); *QTAT BPO Sols., Inc. v. Lee & Murphy Law Firm, G.P.*, 524 S.W.3d 770, 778 (Tex. App.—Houston [14th Dist.] 2017, pet. denied) (applying *Levatino* to conclude that a defendant’s presuit communication with its attorney was not made in or pertaining to a judicial proceeding); *Long Canyon Phase II & III Homeowners Ass’n, Inc. v. Cashion*, 517 S.W.3d 212, 220 (Tex. App.—Austin 2017, no pet.) (applying *Levatino* to conclude that a presuit demand letter “did not pertain to ‘a judicial proceeding’ so as to be the ‘exercise of the right to petition’ under the TCPA definition”).

must have been asserted in answer to or in return for the protected activity. *Ladiwalla*, 2025 WL 1547744, at *4. If this nexus is missing, then the statute does not apply. *Riggs & Ray, P.C. v. State Fair of Tex.*, No. 05-17-00973-CV, 2019 WL 4200009, at *4 (Tex. App.—Dallas Sept. 5, 2019, pet. denied) (mem. op.).

For example, in *Serafine v. Blunt*, the Third Court of Appeals addressed counterclaims filed in response to the movant’s filing of a lawsuit and a lis pendens notice. *See* 466 S.W.3d 352, 359–64 (Tex. App.—Austin 2015, no pet.) The court concluded that the lawsuit and lis pendens filings constituted an exercise of the right to petition under the TCPA because they were communications made in or pertaining to a judicial proceeding. *Id.* at 360. The court then concluded that the counterclaims were “based on, relate[d] to, or [were] in response to” these filings for the following reasons:

The Blunts asserted in their tortious-interference counterclaim that “Serafine willfully and intentionally interfered with that contract [with the drainage and foundation company] through threats and *the filing of this lawsuit.*” (Emphasis added.) They asserted in their fraudulent-lien counterclaim that Serafine knew that the lis pendens she had filed “in relation to this case” was not supported by any valid interest in the Blunts’ property. All that the Act requires is that the challenged legal action be “based on, relate[] to, or is in response to” the movant’s exercise of the right to petition. Tex. Civ. Prac. & Rem. Code § 27.003(a).

Id. (quoting language from the version of the TCPA before the 2019 amendments).

The court dismissed the counterclaims to the extent they were predicated on the movant’s filing of the lawsuit and lis pendens, as the nonmovant failed to meet its

step-two burden to establish by clear and specific evidence a prima facie case for each essential element of the challenged claim. *Id.* at 364.

Here, the three statements on which Hamid and Amir rely to show that the challenged claims were based on their right to petition—namely, (1) that there was no transfer of the Central and HP entities, (2) that Amir did not witness a transfer, and (3) that the tenants should pay Hamid and not Steve—were made both *before and after April 23, 2024*, the date Steve first filed suit. Steve alleges in the fifth amended petition that Hamid had told the commercial tenants to pay him their rent at least as early as *April 3, 2024*. Additionally, Steve alleges that Hamid had made representations that he owned the Central and HP entities before this lawsuit was filed: in *2023*, Hamid allegedly had Frost Bank remove Steve’s name from the Central and HP entities’ bank accounts; and on *April 8 and 18, 2024*, Hamid allegedly filed certificates of formation with the Texas Secretary of State removing Steve as a member of the Central and HP entities and representing himself to be the owner and registered agent of those entities. Similarly, the record shows that, before Steve filed this lawsuit, Amir made statements to the effect that he did not witness Hamid’s transfer of his interests in the Central and HP entities to Steve: Amir signed an affidavit dated *April 17, 2024*, stating that he did not witness Hamid’s transfer of the Central and HP entities to Steve.

As discussed above, under our precedent, statements made *before* Steve filed the challenged lawsuit, on April 23, 2024, do not constitute communications in or

pertaining to a judicial proceeding. *See Dyer*, 573 S.W.3d at 429; *Levatino*, 486 S.W.3d at 729. Therefore, TCPA’s protection of the exercise of the right to petition does not apply to those statements.

Consequently, our inquiry turns toward statements Hamid or Amir made after suit was first filed: We must determine whether Steve’s relevant claims are based on or in response to any such postsuit statements. *See* Tex. Civ. Prac. & Rem. Code § 27.005(b)(1)(B). Germane to this inquiry, Hamid and Amir argue—and Steve does not dispute—that they repeated, after suit was filed, the same three categories of presuit statements discussed above. Hamid and Amir do not, however, demonstrate how Steve’s claims are based on or in response to any of these postsuit statements. Amir also points to two affidavits that he submitted after Steve filed this lawsuit, but Amir does not articulate (and nothing in the record suggests) that Steve’s claims are based on or in response to these postsuit affidavits or Amir’s statements contained therein. In fact, Steve had already filed his claims against Amir before Amir filed the affidavits. Logically, Steve’s claims could not have been based on or in response to communications made or repeated after Steve filed the claims.

Because Hamid and Amir repeated the same statements after Steve sued them and those statements were thus made in or pertaining to a judicial proceeding, Steve’s claims against them are “based on a mix of protected and unprotected [that is, presuit and postsuit] activity.” *White Nile Software, Inc. v. Carrington, Coleman, Sloman & Blumenthal, LLP*, No. 05-19-00780-CV, 2020 WL 5104966, at *5 (Tex.

App.—Dallas Aug. 31, 2020, pet. denied) (mem. op.)), *quoted in Thomas*, 2021 WL 3159795, at *7. “[W]hen the pleadings, evidence, and parties’ arguments are based on a mix of protected and unprotected activity, and they do not distinguish between the two, a defendant-movant’s motion to dismiss under the TCPA should be denied.” *Id.* (citing *Weller v. MonoCoque Diversified Interests, LLC*, No. 03-19-00127-CV, 2020 WL 3582885, at *4 (Tex. App.—Austin July 1, 2020, no pet.) (mem. op.); *Beving v. Beadles*, 563 S.W.3d 399, 409 (Tex. App.—Fort Worth 2018, pet. denied)).

In *Thomas*, this court analyzed an assertion of a TCPA right to petition based on allegations in a third-party petition that an attorney committed legal malpractice in the advice he gave during a lawsuit. *Id.* at *6–7. The petition contained a mix of allegations about the attorney, including that he had committed legal malpractice both before and during the lawsuit. *Id.* at *7. We concluded that the trial court did not err in denying the TCPA motion to dismiss as to the attorney. The petition asserted that any damages the defendant sought in its counterclaim were caused by the attorney’s conduct both before and during the lawsuit, and we stated that the attorney “ha[s] provided ‘no way to parse out’ the protected communications from the unprotected ones and we can find none.” *Id.* This court affirmed the trial court’s denial of the TCPA motion to dismiss.

Here, similarly, the fifth amended petition asserts that any damages Steve seeks to recover were caused by “the actions and/or omissions of Defendants

described hereinabove,” without distinguishing between statements originally made *before* Steve filed the lawsuit and statements repeated *after* he filed the lawsuit. Nothing in any of Steve’s petitions suggests his suit was based on or in response to Hamid’s and Amir’s repetitions of the same statements after the lawsuit was filed. Thus, Hamid and Amir have not distinguished between the unprotected presuit statements and protected postsuit statements. And, because Hamid and Amir have not provided a way to distinguish TCPA-protected from TCPA-unprotected statements, they did not carry their burden to show the challenged claims were based on or in response to their protected statements. *See id.*

Accordingly, viewing the petition in the light most favorable to Steve, *see Dyer*, 573 S.W.3d at 428, we conclude Hamid and Amir failed to establish that the challenged claims are based on or in response to Hamid or Amir’s exercise of the right to petition defined as communications they made in or pertaining to a judicial proceeding.

2. The TCPA Right of Free Speech: Did Hamid and Amir demonstrate that Steve’s challenged claims were based on or in response to Hamid and Amir’s exercise of free speech?

Amir argues in his motion, and Hamid argues in the reply in support of his motion, that the TCPA protection of the right of free speech applies to the following statements because they were made in connection with a matter of public concern: (1) that Hamid did not transfer the Properties to Steve, (2) that Amir did not witness the transfer, and (3) that the Properties’ tenants should pay their rent to Hamid

instead of Steve.⁸ *See* Tex. Civ. Prac. & Rem. Code § 27.001(3), (7)(A)–(C) (defining “exercise of the right of free speech” and “matter of public concern”).

As stated above, Steve alleges in his live petition that Hamid’s and Amir’s overt acts in pursuit of the conspiracy to interfere with business and contract consisted of (1) Hamid’s and Amir’s representations to Steve that (a) Hamid never transferred the Central and HP entities to Steve and (b) Amir did not witness the transfer and (2) Hamid’s representation to the Properties’ tenants that they were to pay rents to Hamid, not Steve. For his common-law fraud and gross negligence claims, Steve alleges in his live petition that Amir represented that he did not witness the transfer of the Central and HP entities from Hamid to Steve.

For the following reasons, we conclude that Hamid and Amir did not meet their step-one burden under the TCPA because (1) Hamid failed to raise this issue in his motion and (2) Amir did not demonstrate his claimed TCPA right of free speech because his communications were not made in connection with a matter of public concern.

a. Hamid’s attempt to meet his step-one burden for the first time in his reply brief is not timely.

As we noted above, at step one of the TCPA dismissal analysis, the movant bears the burden to demonstrate that the nonmovant’s legal action is based on or in

⁸ Hamid raises this free-speech argument in issue number one on appeal, and Amir raises this argument in both of his issues.

response to (1) the movant's exercise of the right of free speech, the right to petition, or the right of association, or (2) conduct by the movant fitting the descriptions found in section 27.010(b). *See* Tex. Civ. Prac. & Rem. Code § 27.005(b).

Hamid asserted in his motion for TCPA dismissal that Steve's claim of conspiracy to interfere with business and contract is based on Hamid's exercise of his right of free speech and right to petition. However, the motion contains arguments only about the applicability of TCPA's protection of the right to petition, not the right of free speech. Further, a communication cannot be made in connection with a TCPA-protected matter of public concern unless it had relevance to a public audience at the time it was made. *See McLane Champions, LLC*, 671 S.W.3d at 917. Hamid's TCPA dismissal motion does not show how the alleged misrepresentations at issue had any relevance to a public audience, and the alleged misrepresentations themselves do not suggest any relevance to a public audience.

It was not until Hamid filed his reply brief in support of his motion that he presented any argument regarding the applicability of the TCPA's protection of the right of free speech.⁹ Steve argues on appeal that Hamid cannot meet his step-one

⁹ In his reply, Hamid tied a public-concern argument to his asserted free-speech ground as follows:

Even if Defendant Hamid's alleged statements did not invoke his right to petition, all of the complained of statements are protected by Defendant Hamid's right to free speech as made in connection with a public concern. Defendant Hamid's statements boil down to stating that Plaintiffs were not the true owners of the properties, and that he did not sign the forged 201 and HP resolutions purportedly transferring the properties to Plaintiffs. One such public concern is whether Defendant Hamid's signature was improperly affixed to the resolutions

burden based on arguments raised for the first time in Hamid’s reply brief in support of his dismissal motion. We agree.

In *Sylvester v. Michael*, No. 05-24-00360-CV, 2024 WL 4784400 (Tex. App.—Dallas Nov. 14, 2024, no pet.) (mem. op.), this court rejected a similar argument. Sylvester filed a TCPA motion to dismiss, and Michael filed a response. *Id.* at *1–2. Sylvester then filed a reply brief and proffered with it an email that she cited only in support of a new argument that any defamation claim based on it was barred by limitations. *Id.* at *5. This court rejected Sylvester’s argument that the trial court erred in not considering matters raised for the first time in her reply brief, holding that “the scope of the TCPA motion is defined by the matters raised in the original motion itself, and cannot be expanded by including new issues for the first time in the reply brief.” *Id.* (citing *Edry-TX-II, GP v. CCND-Main ST Shopping Ctr., LP*, 683 S.W.3d 450, 458–59 (Tex. App.—Houston [14th Dist.] 2023, pet. denied); *Bookout v. Shelley*, No. 02-22-00055-CV, 2022 WL 17173526, at *12 (Tex. App.—

without his authority. This implicates criminal forgery on the part of Plaintiffs. Likewise, the reporting of false and/or fabricated documents dealing with banks and bank accounts implicates federal banking transactions and federal banking laws and avoiding the perpetuation of fraud on a bank and the commercial tenants, which are matters of public concern. When statements are made in litigation or anticipation of litigation, such is a public concern. The dispute regarding ownership of the two businesses is a matter of public concern as the dispute has led to conflicting public filings with the Texas Secretary of State. The ownership dispute has also resulted in the filing of conflicting deeds as to who owns the properties of the disputed businesses and has led to confusion among the commercial tenants as to who owns the leased properties and where rents are to be paid. Simply, any statements made to deny the falsity of documents evidencing a transfer of business interests when one did not sign the transfer, the legal effect of which, having business and legal consequences is a statement relating to a public concern.

Fort Worth Nov. 23, 2022, no pet.) (mem. op.)). Because Hamid’s motion lacks any argument or factual showing of how the TCPA right of free speech applies, his motion fails to satisfy the initial burden under the TCPA as to his claimed free-speech right. Following *Sylvester*, we conclude that the trial court did not err in not considering the free-speech basis for dismissal that Hamid presented for the first time in his reply brief in support of his motion. *See id.*; *see also Hayes v. Cavin*, No. 03-17-00501-CV, 2018 WL 4939010, at *2 n.3 (Tex. App.—Austin Oct. 12, 2018, pet. denied) (mem. op.) (questioning whether a similarly conclusory motion for TCPA dismissal met the step-one burden).

Hamid cites *Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890, 896 & n.2 (Tex. 2018), in support of his contention that he was permitted to raise arguments addressing TCPA-protected free-speech rights for the first time in his reply brief. We find *Adams* to be distinguishable. In that case, Starside was suing Adams for defamation regarding Adams’s allegations in his internet blog about “unpaid creditors,” “commingled funds,” “contract fraud/felony investigation,” and an “undisclosed felony conviction.” *Adams v. Starside Custom Builders, LLC*, 545 S.W.3d 572, 574–75 (Tex. App.—Dallas 2016), *rev’d*, 547 S.W.3d 890. Adams had argued in his TCPA motion that he was exercising his TCPA right of free speech (as defined before the 2019 amendments) because he had a constitutional right to speak about Starside’s services and to interact with law enforcement, and Adams argued at the motion hearing that

the definition under 27.001 includes environmental, economic, or community wellbeing. It also includes a good[,] product or service in the marketplace. And it appears that the cases consistent with the statute says [sic] that this is to be construed literally [sic], and the cases seem to say that if—if you saw something in the marketplace, your goods or services, that is a public concern.

Id. at 578 n.4; *see* Act of May 21, 2011, 82nd Leg., R.S., ch. 341, § 2, sec. 27.001(7), 2011 Tex. Gen. Laws 961, 962 (“‘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; or (E) a good, product, or service in the marketplace.”). This court “found that Adams failed to preserve arguments based on community or environmental well-being by failing to raise them in the trial court.” 547 S.W.3d at 894, 896 (citing 545 S.W.3d at 578 n.4 (“Adams did not argue in either his motion, supplemental motion, or during the hearing that the complained-of statements fell within the TCPA because they related to the community well-being of the other homeowners in Normandy Estates.”)). The Texas Supreme Court reversed, holding that Adams did not fail to preserve for appellate review his arguments based on community or environmental well-being because (1) Adams expressly mentioned environmental and community well-being concerns at the hearing and (2) Adams was not required to rely in the trial court on “precisely the same case law or statutory subparts” found persuasive by the appellate court. *Id.* at 896.

The *Adams* holding does not apply here. Hamid’s motion only presented a basis for the applicability of the *right to petition*, and in the reply, Hamid presented

for the first time a basis for the applicability of the *right of free speech*. That is, Hamid only asserted in his motion the *conclusion* that the TCPA's free-speech protection applied to his alleged communications; neither the argument presented in his motion nor Steve's pleading nor the communications themselves suggested that the TCPA protection of free speech applied. Before filing his reply, Hamid had not presented any argument or pointed to Steve's pleading or the evidence concerning how the TCPA's protection applies to any communication that Hamid made in connection with a matter of public concern. *See* Tex. Civ. Prac. Rem. Code § 27.001(3). Unlike *Adams*, Hamid thus did not merely cite in reply new case law or a new statutory subpart in support of a TCPA free-speech right that he had already articulated in his motion. Because Hamid did not articulate any basis whatsoever in support of the conclusion that his right of free speech was implicated until he attempted to do so in his reply, he cannot rely on that right on appeal. *See Sylvester*, 2024 WL 4784400, at *5.

For these reasons, we conclude that, for purposes of the TCPA, Hamid's free-speech basis for dismissal was never properly before the trial court and that we cannot consider it on appeal either.

b. Amir did not demonstrate his statements were communications in connection with a matter of public concern.

Amir, on the other hand, did timely raise his statutory right of free speech in his TCPA motions. Amir argued that Steve's conspiracy, gross negligence, and fraud

claims were predicated on Amir’s statements that he did not sign or witness Hamid’s signing of the transfer documents and that those statements were made in connection with a matter of public concern. Amir also argued in his motions and on appeal that his statements were made in connection with a matter of public concern because they were statements regarding a matter of political, social, or other interest to the community or a subject of concern to the public. *See* Tex. Civ. Prac. & Rem. Code § 27.001(7)(B)-(C). Furthermore, Amir argued in the trial court and in this court that the matters of public concern include that his allegedly forged signatures on the transfer documents involve (1) violations of state criminal law, (2) federal banking transactions that violate federal banking laws and constitute bank fraud, (3) conflicting filings with the Texas Secretary of State, (4) conflicting filings of deeds for the Properties in the deed records, and (5) confusion among the tenants of the Properties as to where and to whom rents are to be paid.

Steve responds that Amir’s communications were made in connection with a private dispute that is not a matter of public concern under the TCPA. We agree with Steve.¹⁰

¹⁰ Steve also argues that his common-law fraud claim against Amir is exempt from the TCPA. Section 27.010(a) exempts several kinds of legal actions and claims from the application of the TCPA. *See id.* § 27.010(a)(1)–(13). One of those exemptions is for “a legal action based on a common law fraud claim.” *Id.* § 27.010(a)(12). If an exemption applies, the TCPA does not apply. *Temple v. Cortez L. Firm, PLLC*, 657 S.W.3d 337, 348 (Tex. App.—Dallas 2022, no pet.). Because we decide against Amir on his issues regarding his asserted right of free speech by concluding he did not meet his initial burden to demonstrate that his communications were made in connection with a matter of public concern, it is unnecessary for us to consider Steve’s argument about whether the fraud exemption applies. *See* Tex. R. App. P. 47.1 (“The court of appeals must hand

Amir has failed to establish that his statements constituted communications in connection with a matter of political, social, or other interest to the community or a subject of concern to the public. *See id.* Although Amir’s communications relating to the disputed transfer of Properties were of interest to the litigants and the tenants of the Properties, the record is devoid of allegations or evidence that those communications had any relevance to the broader marketplace or otherwise could reasonably be characterized as involving public concerns. Communications with a limited business audience concerning a private contract dispute do not relate to a matter of public concern under the TCPA. *See Creative Oil & Gas, LLC v. Lona Hills Ranch, LLC*, 591 S.W.3d 127, 137 (Tex. 2019) (“A private contract dispute affecting only the fortunes of the private parties involved is simply not a ‘matter of public concern’ under any tenable understanding of those words.”); *Wells v. Crowell*, No. 05-20-01042-CV, 2021 WL 5998002, at *7 (Tex. App.—Dallas Dec. 20, 2021, no pet.) (mem. op.) (“This is a private dispute regarding the sale of a house and affects only the fortunes of the private parties involved. We conclude that [the defendant’s] alleged statement accusing the [plaintiffs] of insurance fraud and ‘pulling a stunt’ was not made in connection with a matter of public concern.”). The alleged communications at issue concerned an issue of private ownership of six commercial Properties that were not shown to be of public interest. Amir’s simple

down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal.”).

denials that he witnessed a transfer of the Central and HP entities do not, by their terms, accuse anyone of criminal or fraudulent acts. *Cf. D Magazine Partners, L.P. v. Rosenthal*, 529 S.W.3d 429, 441 (Tex. 2017) (treating communications accusing the plaintiff of welfare fraud as constituting a matter of public concern for purposes of the TCPA); *AOL, Inc. v. Malouf*, Nos. 05-13-01637-CV, 05-14-00568-CV, 2015 WL 1535669, at *2 (Tex. App.—Dallas Apr. 2, 2015, no pet.) (mem. op.) (concluding an article that communicated that a dentist had been charged with “defrauding state taxpayers of tens of millions of dollars in a Medicaid scam” related to a matter of public concern). Rather, Amir’s denials have a limited business audience and concern a private contract dispute. Thus, they do not relate to a matter of public concern under the TCPA.

Accordingly, viewing the petition in the light most favorable to Steve, *see Dyer*, 573 S.W.3d at 428, we conclude that Amir failed to establish that his statements were made in connection with a matter of public concern as required to fall within the TCPA-protected right of free speech.

VI. Conclusion

We lack jurisdiction to address Hamid’s second-issue complaint that the visiting judge abused his discretion in vacating the presiding judge’s order granting Hamid’s TCPA motion to dismiss. Hamid and Amir failed to meet their threshold burden to demonstrate that the TCPA applies. We therefore need not consider the second and third steps of the TCPA analytical framework. Because the TCPA does

not apply, the trial court did not err in denying, by operation of law, Hamid's and Amir's TCPA dismissal motions. Consequently, we overrule Hamid's first issue and both of Amir's two issues.

We affirm the trial court's denial, by operation of law, of Hamid's and Amir's TCPA motions to dismiss.

/Gino J. Rossini/

GINO J. ROSSINI
JUSTICE