

Reversed and Opinion Filed August 17, 2026



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

No. 05-25-01169-CV

**J.I.G., LLC, Appellant
V.
TOBY NEUGEBAUER, Appellee**

**On Appeal from the 191st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-23-02970**

MEMORANDUM OPINION

Before Justices Smith, Miskel, and Barbare
Opinion by Justice Miskel

This interlocutory appeal arises from the denial by operation of law of a motion to dismiss under the Texas Citizens Participation Act (TCPA). Appellant J.I.G., LLC sought dismissal of appellee Toby Neugebauer’s counterclaims for defamation, business disparagement, and civil conspiracy.¹ We conclude that the TCPA applies to those counterclaims and that Neugebauer failed to establish by clear and specific evidence a prima facie case for their essential elements. We therefore

¹ In the trial court, J.I.G. styled its motion as a “Texas Anti-SLAPP Motion to Dismiss.” The TCPA is commonly described as Texas’s “anti-SLAPP” law, because it provides a means to dismiss so-called “Strategic Lawsuits Against Public Participation.” See *Beach v. Becker*, No. 05-22-00224-CV, 2023 WL 2033779, at *2 (Tex. App.—Dallas Feb. 16, 2025, no pet.) (mem. op.).

reverse the trial court's denial of J.I.G.'s TCPA motion, render judgment dismissing Neugebauer's counterclaims, and remand the case to the trial court to determine whether J.I.G. is entitled to court costs and reasonable attorney's fees incurred in defending against Neugebauer's counterclaims.

I. Background

Seven Talents, LLC, Rhythmic Capital Fund II, LLC, Pinewood 2023, LLC, and J.I.G., LLC sued Toby Neugebauer, alleging that he fraudulently induced them to invest more than \$16 million in With Purpose, Inc. d/b/a/ GloriFi, a start-up company he co-founded. They also asserted claims for negligent misrepresentation and exemplary damages.

Around two years into the litigation, Neugebauer filed counterclaims against J.I.G. for defamation, conspiracy to defame, business disparagement, and conspiracy to commit business disparagement. J.I.G. moved to dismiss those counterclaims under both Rule 91a and the TCPA. *See* TEX. R. CIV. P. 91a; TEX. CIV. PRAC. & REM. CODE § 27.003.

As relevant here, J.I.G. argued that the TCPA applies to Neugebauer's counterclaims, that Neugebauer did not establish by clear and specific evidence a prima facie case for each essential element of those claims, and that the claims were barred by limitations. *See* CIV. PRAC. & REM. § 27.005. J.I.G. also sought attorney's fees under the TCPA. *See* CIV. PRAC. & REM. § 27.009(a)(1), (c).

The hearing on J.I.G.’s motion was ultimately held on July 17, 2025. On the night before the hearing, Neugebauer filed a response² arguing that the TCPA does not apply to his counterclaims and attaching deposition excerpts that he contended constituted clear and specific evidence supporting those claims. At the hearing, Neugebauer’s counsel acknowledged that Neugebauer’s legal team had “dropped the ball” and filed his response “extremely late.” The trial judge remarked that she had not yet seen Neugebauer’s response, and that, although she would review any authorities cited in the response, she could not consider “evidence or anything else” attached to the response because it was untimely filed. *See* CIV. PRAC. & REM. § 27.003(e) (TCPA response due seven days before hearing); DALLAS CNTY. LOC. RULE 2.09 (hearing responses generally due three working days before hearing).

The trial court did not rule on the motion before the statutory deadline, and it was therefore denied by operation of law. *See* CIV. PRAC. & REM. §§ 27.005(a), 27.008(a). This interlocutory appeal followed. *See id.* § 51.014(a)(12). Appellant’s sole issue challenges the denial by operation of law of J.I.G.’s TCPA motion to dismiss.

² Although the trial court’s docket sheet does not reflect a July 16 filing, Neugebauer’s appellate brief includes a file-stamped copy of his response and an e-filing notification showing it was filed at 11:01 PM on July 16, 2025. Neugebauer later refiled the response in the trial court on November 10, and that filing appears in the appellate record.

II. Applicable Law and Standard of Review

The TCPA provides a mechanism for the early dismissal of certain claims that are based on, or brought in response to, a party's exercise of the rights of free speech, petition, or association. *See* CIV. PRAC. & REM. §§ 27.001–.011; *Youngkin v. Hines*, 546 S.W.3d 675, 679 (Tex. 2018). The statute protects citizens who petition or speak on matters of public concern from retaliatory lawsuits that seek to intimidate or silence them. *In re Lipsky*, 460 S.W.3d 579, 584 (Tex. 2015) (orig. proceeding). We construe the TCPA liberally to effectuate its purpose and intent fully. CIV. PRAC. & REM. § 27.011(b).

The TCPA establishes a three-step burden-shifting framework. *See Weldon v. Lilith Fund for Reprod. Equity*, 735 S.W.3d 702, 706–07 (Tex. 2026). First, the movant must demonstrate that the challenged legal action is based on or in response to the movant's exercise of the right of free speech, the right to petition, or the right of association. CIV. PRAC. & REM. § 27.005(b). If the movant makes that showing, the burden shifts to the nonmovant to establish by clear and specific evidence a prima facie case for each essential element of the challenged claim. *Id.* § 27.005(c). If the nonmovant satisfies that burden, the court must nevertheless dismiss the claim if the movant establishes an affirmative defense or other ground entitling it to judgment as a matter of law. *Id.* § 27.005(d).

We review de novo whether the parties satisfied their respective burdens under the TCPA. *See Landry's, Inc. v. Animal Legal Def. Fund*, 631 S.W.3d 40, 45–

46 (Tex. 2021); *Williams v. Stevens*, No. 05-22-00440-CV, 2023 WL 5621835, at *3 (Tex. App.—Dallas Aug. 31, 2023, no pet.) (mem. op.).

III. The TCPA Applies to Neugebauer’s Counterclaims (Step One)

The parties dispute each step of the TCPA framework. We begin with whether J.I.G. demonstrated that the TCPA applies to Neugebauer’s counterclaims. The parties’ principal dispute at step one is whether Neugebauer’s counterclaims are based on or in response to J.I.G.’s exercise of the right of free speech. *See* CIV. PRAC. & REM. §§ 27.003(a), 27.005(b). The TCPA defines the “[e]xercise of the right of free speech” as “a communication made in connection with a matter of public concern.” *Id.* § 27.001(3).

Because this lawsuit was filed in 2023, the current version of the TCPA governs.³ Under that version, a “[m]atter of public concern” means 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.” *Id.* § 27.001(7); *cf. Lee v. Dynamic SLR, Inc.*, No. 05-23-00297-CV, 2024 WL 1250760, at *2 (Tex. App.—Dallas Mar. 25, 2024, no pet.) (communications in a private business dispute lacking relevance to a public audience do not involve matters of public concern).

³ *See* Act of May 17, 2019, 86th Leg., R.S., ch. 378, § 1, §§ 11–12, 2019 Tex. Sess. Law Serv. 684, 684–85, 687.

Neugebauer argues that J.I.G. cannot rely on a broader “public concern” theory because its motion to dismiss focused on statutory language that was superseded in 2019.⁴ We disagree. The Texas Supreme Court has instructed courts to determine TCPA applicability through a “holistic review of the pleadings.” *Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890, 897 (Tex. 2018).⁵ The inquiry is not confined to the precise statutory subsection or legal theory a movant emphasized below. *See id.* at 896–97. Rather, the question is whether the pleadings establish, as a matter of law, that the challenged claims fall within the TCPA. *See id.* at 897.

Neugebauer’s own counterclaims supply the answer. In the background section of those pleadings, he alleges that J.I.G. and others “defamed and disparaged” him to “auditors, merger partners, corporate counsel, investment bankers, potential investors, reporters, and others.” He further alleges that those communications damaged both his personal reputation and his ability to conduct business. The counterclaims repeatedly assert that the alleged statements reflected adversely on his fitness to conduct business and impaired his ability to raise

⁴ Prior to September 1, 2019, a “[m]atter of public concern” included several specified categories of issues, including those related to “a good, product, or service in the marketplace.” *See* Act of May 18, 2011, 82nd Leg., R.S., ch. 341, § 2, 2011 Tex. Gen. Laws 961, 962.

⁵ Although *Adams* interpreted the former version of the TCPA, we conclude that the 2019 amendments did not alter the supreme court’s analysis concerning a court’s duty to determine TCPA applicability from the pleadings and record. *See also, e.g., Young Republicans of Texas v. Texas Young Republican Federation*, No. 05-25-00022-CV, 2026 WL 2021436, at *6 (Tex. App.—Dallas July 13, 2026, no pet. h.) (citing *Adams* for this premise).

investment capital. Indeed, Neugebauer alleges that he previously raised “hundreds of millions of dollars” and that the challenged communications deprived him of the ability to continue doing so.

As pleaded, this is not a dispute confined to a private conversation between private parties. *Cf. Lee*, 2024 WL 1250760, at *2. The alleged communications concerned Neugebauer’s honesty, business practices, reputation, and fitness to participate in substantial investment-related activities. They were directed to auditors, merger partners, investment bankers, potential investors, reporters, and others whose decisions could affect the flow of investment capital and the operation of business enterprises. The communications therefore concern matters of “interest to the community” and “subject[s] of concern to the public.” CIV. PRAC. & REM. § 27.001(7)(B), (C); *see also Whitelock v. Stewart*, 661 S.W.3d 583, 597 (Tex. App.—El Paso 2023, pet. denied) (accusations of fraudulent conduct may be considered matters of public concern); *Hadimani v. Hiremath*, No. 14-22-00002-CV, 2023 WL 3596248, at *6 (Tex. App.—Houston [14th Dis.] May 23, 2023, no pet.) (mem. op.) (communications concerning organizational management and alleged criminal conduct constituted matters of public concern).

We therefore conclude that J.I.G. demonstrated that Neugebauer’s counterclaims are based on or in response to communications made in connection with a matter of public concern. The TCPA applies, and we proceed to step two.

IV. Neugebauer Did Not Establish, by Clear and Specific Evidence, Each Essential Element of His Counterclaims (Step Two)

If the TCPA applies, the burden shifts to the nonmovant to establish by clear and specific evidence a prima facie case for each essential element of the challenged claims. CIV. PRAC. & REM. § 27.005(c). In making that determination, courts consider the pleadings, evidence that may be considered under Rule 166a of the Texas Rules of Civil Procedure, and any supporting and opposing affidavits. *See id.* § 27.006(a). Clear and specific evidence requires more than bare allegations and conclusory statements; the plaintiff must provide enough detail to show the factual basis for the claim. *Lipsky*, 460 S.W.3d at 591-93; *Bedford v. Spasoff*, 520 S.W.3d 901, 904 (Tex. 2017).⁶

Neugebauer principally relies on deposition excerpts attached to his response to J.I.G.'s motion to dismiss. But that response was filed the night before the TCPA hearing, well after the deadline. *See* CIV. PRAC. & REM. § 27.003(e); *see also* DALLAS CNTY. LOC. RULE 2.09. At the hearing, Neugebauer's counsel acknowledged the response was untimely, and the trial court stated that it could not consider evidence attached to the response. Nothing in the record indicates that the trial court granted leave or ultimately considered that evidence.

⁶ Although *Lipsky* and *Bedford* predate the 2019 TCPA amendments, our Court has continued to cite them for this premise. *See, e.g., DeWispelare v. DeWispelare*, No. 05-24-00176-CV, 2024 WL 4262403, at *3 (Tex. App.—Dallas Sept. 23, 2024, pet. denied); *Francis v. Phoenix Capital Group Holdings, LLC*, No. 05-22-01260-CV, 2023 WL 5542622, at *6 (Tex. App.—Dallas Aug. 29, 2023, pet. denied).

Without the late-filed evidence, Neugebauer’s pleading is the remaining material before the court. The TCPA requires courts to consider the pleadings in determining whether the nonmovant established a prima facie case. *See* CIV. PRAC. & REM. § 27.006(a); *Anderson v. Goodwin*, No. 05-23-00343-CV, 2024 WL 725669, at *5 (Tex. App.—Dallas Feb. 22, 2024, no pet.) (mem. op.).⁷ We therefore consider whether Neugebauer’s pleading provides clear and specific evidence of a prima facie case for each essential element of his counterclaims. It does not.

The elements of a defamation claim include: (1) the defendant published a false statement; (2) that defamed the plaintiff; (3) with the requisite degree of fault regarding the truth of the statement (negligence if the plaintiff is a private individual); and (4) damages (unless the statement constitutes defamation per se). *D Magazine Partners, L.P. v. Rosenthal*, 529 S.W.3d 429, 434 (Tex. 2017). Neugebauer’s pleading lacks the factual detail necessary to satisfy his TCPA burden because it never identifies the allegedly defamatory or disparaging statement. The pleading does not identify who made the statement, when it was made, or to whom it was published. Instead, Neugebauer alleges only that J.I.G., directly or through an unnamed agent, made “at least one” false statement about him. The TCPA requires more. In a defamation case, clear and specific evidence ordinarily includes facts

⁷ Some of our sister courts have held that a non-movant cannot rely *solely* on the pleadings at step two. *See, e.g., Buzbee v. Clear Channel Outdoor, LLC*, 616 S.W.3d 14, 19 (Tex. App.—Houston [14th Dist.] 2020, no pet.). We need not decide this question given our determination that the facts alleged in Neugebauer’s pleading, even if we consider them, fail to meet his step two burden.

showing when, where, and what was said, why the statement was defamatory, and how the plaintiff was damaged. *See Bedford*, 520 S.W.3d at 904; *Lipsky*, 460 S.W.3d at 591. Neugebauer’s pleading provides none of those facts. Without identifying an allegedly defamatory statement, the pleading does not provide the factual detail required to establish by clear and specific evidence a prima facie case for defamation.

The same deficiency defeats the business-disparagement claim. To prevail on a business disparagement claim, a plaintiff must establish that (1) the defendant published false and disparaging information about it, (2) with malice, (3) without privilege, (4) that resulted in special damages to the plaintiff. *Lipsky*, 460 S.W.3d at 592. Although Neugebauer alleges that the challenged communications damaged his ability to raise capital and reduced his earning capacity by more than \$10 million, the pleading contains no specific facts illustrating how any particular statement caused those losses. *See Lipsky*, 460 S.W.3d at 593.

Finally, Neugebauer’s conspiracy claims rise or fall with the underlying torts. Civil conspiracy is a derivative tort, meaning that a defendant’s liability for conspiracy depends on participation in an underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable. *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996); *Hill v. Keliher*, No. 05-20-00644-CV, 2022 WL 213978, at *10 (Tex. App.—Dallas Jan. 25, 2022, pet. denied). If the underlying tort fails, there cannot be a conspiracy related to that failed tort. *Hill*, 2022 WL 213978,

at *10. Because Neugebauer failed to establish a prima facie case for defamation or business disparagement, he likewise failed to establish a prima facie case for conspiracy to commit those torts.

Accordingly, Neugebauer failed to establish by clear and specific evidence a prima facie case for any of his counterclaims. Having reached that conclusion, we need not consider whether J.I.G. established its limitations defense as a matter of law under step three of the TCPA framework.

V. Conclusion

We reverse the trial court's denial of J.I.G.'s TCPA motion and render judgment dismissing Neugebauer's counterclaims. We remand the case to the trial court to determine whether J.I.G. is entitled to court costs and reasonable attorney's fees incurred in defending Neugebauer's counterclaims. *See* CIV. PRAC. & REM. § 27.009(a)(1), (c).

/Emily Miskel/

EMILY MISKEL
JUSTICE