

CAUSE NO. 2018-50038

HOUSTON LIVESTOCK SHOW
AND RODEO, INC.,

Plaintiff,

vs.

DOLCEFINO COMMUNICATIONS, LLC
D/B/A DOLCEFINO CONSULTING

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

113TH JUDICIAL DISTRICT

DEFENDANT'S ORIGINAL ANSWER AND COUNTERCLAIMS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **DOLCEFINO COMMUNICATIONS, LLC D/B/A DOLCEFINO CONSULTING, Defendant** in the above styled cause and files this Defendant's Original Answer and Counterclaims and would respectfully show unto this Honorable Court the following:

I. GENERAL DENIAL

1. Defendant generally denies each and every material allegation, both singular and plural, contained in Plaintiff's Original Petition as authorized by Rule 92 of the Texas Rules of Civil Procedure, and respectfully requests that the Court require the Plaintiff to prove its claims, charges and allegations by a preponderance of the evidence as required by the Constitution and laws of the State of Texas.

II. FACTUAL BACKGROUND

2. Plaintiff/Counter-Defendant (the Rodeo) has been sued for damages arising out of a rape that occurred at a Rodeo-related event. Defendant/Counter-Plaintiff (Dolcefino) sent a number of requests for inspection of financial records pursuant to Chapter 22 of the Texas Business Organizations Code related to Nonprofit Corporations that require the Rodeo to permit inspection and copying of such records. Although Texas law requires this level of transparency from nonprofit

corporations, specifically to maintain accountability for nonprofit corporations, the Rodeo has refused to abide by these and/or related laws.

3. After the Rodeo refused and failed to comply with applicable Texas laws, Dolcefino asserted a criminal complaint against the Rodeo pursuant to Section 22.354 of the Texas Business Organizations Code that makes the failure to make the financial documents of the nonprofit corporation available to the public a crime. The Rodeo's response was a purely retaliatory response, which was the institution of a lawsuit against Dolcefino for monetary damages and other relief. To take matters one step further, upon information and belief, the Rodeo has filed or assisted in the filing of a criminal complaint against Dolcefino, also a clearly retaliatory action.

4. To add insult to injury, and in an unadulterated sham, the Rodeo tried to pretend to comply with Texas law by printing boxes upon boxes of a top-level general ledger entries that provide literally no information as to the nature of any of their expenditures, their payees, and/or the reason for such expenditures. The Rodeo's Hollywood Cinema-styled "bury the individual in mountains of meaningless paper" stunt amounts to nothing other than the Rodeo's arrogant thumb-of-the-nose to Texas law, the people of Houston, the innocent rape victim and, of course, Dolcefino, the target of their retaliatory lawsuit and criminal complaint.

III. COUNTERCLAIMS

5. Pleading in the alternative, if such is necessary, Defendant asserts the following counterclaim(s).

A. DECLARATORY JUDGMENT

6. This action is brought pursuant to Texas Civil Practice & Remedies Code Chapter 37, known as the "Uniform Declaratory Judgment Act." In particular, § 37.004 provides that "[a] person . . . whose rights, status or other legal relations are affected by a statute . . . may have

determined any question or construction or validity under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder.” TEX. CIV. PRAC. & REM. CODE § 37.004(a).

7. Texas Business Organizations Code requires that “A corporation shall maintain current and accurate financial records with complete entries as to each financial transaction of the corporation, including income and expenditures, in accordance with generally accepted accounting principles.” TEX. BUS. ORG. CODE § 22.352. It further provides that “The corporation shall make the records, books, and reports available to the public for inspection and copying at the corporation's registered or principal office during regular business hours.” *Id.* at § 22.353. Further, it provides that “A corporation commits an offense if the corporation fails to maintain a financial record, prepare an annual report, or make the record or report available to the public in the manner required by Section 22.353,” which is a Class B misdemeanor. *Id.* at § 22.354.

8. As a dispute has arisen regarding the rights of the parties to this suit, Dolcefino requests a declaratory judgment as follows:

- a. The Rodeo is required to make available for inspection and copying all financial records sought by all of the written requests sent pursuant to the Nonprofit Corporations section of the Texas Business Organizations Code Chapter 22, which are attached to and made the basis of the Rodeo’s suit;
- b. The Rodeo’s obligations regarding the financial records sought by all of the written requests sent pursuant to the Nonprofit Corporations section of the Texas Business Organizations Code Chapter 22, which are attached to and made the basis of the Rodeo’s suit are not limited to a 3-year duration;
- c. That the financial records sought by all of the written requests sent pursuant to the Nonprofit Corporations section of the Texas Business Organizations Code Chapter 22, which are attached to and made the basis of the Rodeo’s suit are “financial records” within the meaning of the statute;
- d. The Rodeo has violated Section 22.354 of the Texas Business Organizations Code;
- e. The Rodeo is not entitled to “redact” the financial records sought by all of the written requests sent pursuant to the Nonprofit Corporations section of

the Texas Business Organizations Code Chapter 22, which are attached to and made the basis of the Rodeo's suit;

- f. That "confidential" information is not protected from requests made pursuant to Sections 22.352 and 22.353 of the Texas Business Organizations Code; and
- g. That the Rodeo has violated Section 36.06 of the Texas Penal Code.

B. VIOLATION OF TEXAS PENAL CODE § 36.06.

9. Pleading in the alternative if such is necessary, the Rodeo's conduct constitutes a violation of Texas Penal Code § 36.06 in that the Rodeo intentionally or knowingly harmed or threatens to harm by an unlawful act: (1) in retaliation for or on account of the service or status of another as a (A) public servant, witness, prospective witness, or informant; or (B) person who has reported or who the actor knows intends to report the occurrence of a crime; or (2) to prevent or delay the service of another as a: (A) public servant, witness, prospective witness, or informant; or (B) person who has reported or who the actor knows intends to report the occurrence of a crime.

10. Dolcefino has been, and will continue to be, harmed by this unlawful conduct, for which it seeks recovery herein to the fullest extent permitted by law or in equity.

C. NEGLIGENCE/NEGLIGENCE *PER SE*.

11. The preceding paragraphs are incorporated herein for all purposes.

12. The Rodeo's conduct complained of in this action breaches the duty of care owed to Dolcefino. These breaches of the standard of care are the proximate cause of damages suffered by Dolcefino. At times material to this lawsuit, statutory and regulatory duties imposed by the State of Texas and designed to protect a class of persons, to wit: members of the public of this State, were in full force and effect. As a member of such class, Dolcefino was entitled to protection of these laws, namely the Texas Penal Code specifically including, but not limited to Texas Penal Code § 36.06 protecting Dolcefino and others similarly situated from unlawful retaliation.

13. These laws and regulations are pled both as the basis for a separate cause of action or negligence *per se* and also as evidence of the Rodeo's duties, the standard of care, negligence and gross negligence.

14. The Rodeo's actions were the direct and proximate cause of the incident made the basis of this action and the damages suffered by Dolcefino, for which it seeks recovery herein to the fullest extent permitted by law or in equity.

D. GROSS NEGLIGENCE AND MALICE.

15. The preceding paragraphs are incorporated herein for all purposes.

16. The wrongful conduct specifically alleged hereinabove also constitutes gross negligence and malice as such terms are defined by law. By reason of such conduct, Dolcefino is entitled and therefore assert a claim for punitive or exemplary damages in an amount sufficient to punish and deter the Rodeo and others like them from such conduct in the future.

17. These acts or omissions were the acts or omissions of the Rodeo themselves, and not simply the acts or omissions of the Rodeo's lower level employees. Additionally, or in the alternative, the conduct complained of was:

- a. authorized by the Rodeo;
- b. the conduct of employees the Rodeo employed in a managerial capacity who were acting in the scope of that capacity;
- c. the conduct of unfit employees the Rodeo recklessly employed; or
- d. ratified by an employee or manager of the Rodeo.

18. Additionally, or in the alternative, the conduct complained of was by a vice-principal of the Rodeo or was conduct that breached non-delegable duties of the Rodeo.

E. MALICIOUS PROSECUTION.

19. Pleading in the alternative if such is necessary, the Rodeo's conduct constitutes

malicious prosecution in that it involves: (1) the commencement of criminal prosecution against the Dolcefino; (2) causation of the prosecution by the Rodeo; (3) termination of the prosecution in the favor of Dolcefino; (4) Dolcefino's innocence; (5) the absence of probable cause for the proceedings; (6) malice in filing the charges; and (7) damages to Dolcefino.

20. Dolcefino has been harmed by this unlawful conduct, for which it seeks recovery herein to the fullest extent permitted by law or in equity.

VI. ATTORNEY'S FEES

21. Pursuant to Texas Civil Practice & Remedies Code Chapter 37, Defendant/Counter-Plaintiff specifically requests that it be awarded such reasonable and necessary Attorney's Fees to which they may show themselves justly entitled.

V. PUNITIVE DAMAGES

22. The preceding paragraphs are incorporated herein for all purposes.

23. Defendant/Counter-Plaintiff seeks punitive damages in an amount commensurate with: the nature of the wrongs committed by Plaintiff/Counter-Defendant; the character of Plaintiff/Counter-Defendant's course of conduct; the degree of culpability of the wrongdoers herein; and the and degree to which the conduct described hereinabove offends the public sense of justice. Defendants' conduct alleged hereinabove justifies an award of exemplary damages in an amount sufficient to deter Plaintiff/Counter-Defendant from engaging in this conduct in the future.

VI. PRE-JUDGMENT AND POST-JUDGMENT INTEREST

24. Defendant/Counter-Plaintiff seeks pre-judgment and post-judgment interest at the highest rate provided by law.

VII. RESERVATION OF RIGHTS

25. Defendant/Counter-Plaintiff reserves the right to prove the amount of damages at

trial. Defendant/Counter-Plaintiff reserves the right to amend their Petition and add additional counts and/or parties as discovery continues.

VIII. CONDITIONS PRECEDENT

26. Pursuant to Rule 54 of the Texas Rules of Civil Procedure, all conditions precedent to Defendant/Counter-Plaintiff's rights to recover and the Rodeo's liability have been performed or have occurred.

IX. JURY DEMAND

27. Defendant/Counter-Plaintiff demands a trial by jury on all issues set forth herein and tenders the applicable fee.

X. REQUEST FOR DISCLOSURE

28. Pursuant to TEX. R. CIV. P. 194 of the Texas Rules of Civil Procedure, Plaintiff/Counter-Defendant is requested to disclose, within 30 days of service of this request, the information or material described in TEX. R. CIV. P. 194.2 (a) through (l).

XI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant/Counter-Plaintiff requests that it have a judgment against Plaintiff in an amount to be determined by the Court and Jury, for all damages, plus pre-judgment interest and post-judgment interest, costs of Court, and for such other and further relief, at law or in equity, both general and special, to which Defendant/Counter-Plaintiff may show themselves justly entitled. Defendant/Counter-Plaintiff also prays for actual, exemplary and punitive damages in an amount that exceeds the minimum jurisdictional limits of the Court.

Dated this 20th day of August, 2018.

Respectfully submitted,

JEFF DIAMANT, P.C.



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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the below parties in accordance with the Texas Rules of Civil Procedure on August 20, 2018.

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Jeff Diamant