



## Alerts

### Attorney Immunity Doctrine Defeats Claim by Non-Client

May 3, 2018

*Lawyers for the Profession®*

*Youngkin v Hines*, No. 16–0935 (Tx, 2018)

#### Brief Summary

The Texas Supreme Court considered whether the Texas Citizens Participation Act ("TCPA" or the "Act") entitled an attorney to the dismissal of claims brought by a non-client based in part on statements the attorney made in open court on behalf of his clients. The Court of Appeals held that the Act applied to the claims but denied the attorney's motion to dismiss. The Supreme Court agreed that the Act applied, but held that the attorney was entitled to dismissal based on the affirmative defense of attorney immunity and reversed the judgment of the Court of Appeals.

#### Complete Summary

This case involved tort claims brought by a nonclient against an attorney, based in part on statements the attorney made in open court on behalf of his clients.

This suit stems from a legal dispute over title to 45 acres of a 285-acre tract of land (the Property Suit). Bill Youngkin's clients, the Scotts, filed a Property Suit seeking a declaratory judgment that they were the rightful owners of the property because they had paid all taxes on it. Billy Hines, a defendant in the Property Suit, asserted that he had an ownership interest in it. Both the Scotts and Hines claim to be descendants of Alex Scott, a prior owner of the disputed property. The Scotts sought a declaration of ownership to the exclusion of the hundreds of other living Alex Scott heirs. Hines resisted their attempt.

During trial, at which the Scotts were not present, Youngkin negotiated a settlement agreement with Hines's attorney and recited the terms of the agreement into the record. Hines agreed to convey to the Scotts his undivided interest in the surface estate of the 285 acres but retain his mineral interests. In return, the Scotts would convey to Hines the undivided one-half interest in the 45-acre subsection they would obtain through this agreement so that the Alex Scott heirs would have 100 percent ownership in that 45-acre subsection. Hines's attorney later formalized the agreement in a letter, which Hines, Hines's attorney, and Youngkin all signed, but the Scotts did not.

Hines conveyed his surface interest in the 285-acre tract to the Scotts, who recorded the deed. Hines alleges that the Scotts, with Youngkin's assistance, then deeded their interest in the 45-acre subsection to Curtis Capps, also a

#### Attorneys

Terrence P. McAvoy

Caroline A. Mondschean

#### Service Areas

Lawyers for the Profession®



client of Youngkin, as "trustee." Capps then conveyed to Hines a partial interest in the 45-acre subsection—less than the full ownership interest that Hines apparently expected to receive pursuant to the agreement. Hines also claims that Capps, represented by Youngkin, sought a declaratory judgment that Capps personally owned the portion of the 45-acre subsection that he had not transferred to Hines.

Hines sued the Scotts and Capps for common-law fraud and statutory fraud, alleging they had conspired to make misrepresentations and inducements to fraudulently deprive him of real property and asserted a claim against the Scotts for materially breaching the settlement agreement. Hines later added Youngkin as a defendant, claiming that he knowingly participated in the fraudulent scheme to deprive Hines of his property by entering into the agreement on the Scotts' behalf knowing they had no intention to comply; helping the Scotts avoid compliance with the agreement by preparing the deed used to transfer their property interest to Capps; and aiding Capps in his efforts to wrongfully assert ownership over a portion of the property by filing the relevant lawsuit.

Youngkin moved to dismiss the claims against him under the TCPA, arguing that his reciting the agreement into the court record constituted the exercise of the right to petition, as defined in the Act, and served as a factual basis for Hines's fraud and conspiracy claims against him. Youngkin also raised the affirmative defense of attorney immunity (often referred to as the "litigation privilege"), arguing it shielded him from liability to a nonclient for actions taken in the course of representing a client. The trial court denied the motion to dismiss, and Youngkin filed an interlocutory appeal. The court of appeals affirmed, holding that the TCPA applied to the claims against Youngkin, Hines made a prima facie case for each element of his claims, and Youngkin failed to prove his attorney-immunity defense. The Supreme Court granted Youngkin's petition for review.

The Court held that the TCPA applies to Hines's claims against Youngkin. Although the Court stated that it assumed, without deciding, that Hines met his burden of presenting prima facie evidence of each element of his claim, the Court held that Youngkin was entitled to dismissal because he established the affirmative defense of attorney immunity, under which an attorney is immune from liability to nonclients for conduct within the scope of his representation of his clients, and that an attorney may be liable to nonclients only for conduct outside the scope of his representation of his client or for conduct foreign to the duties of a lawyer.

In finding that Youngkin's conduct fell within the attorney immunity defense, the Court stated that the appropriate inquiry is to focus on the "kind of" conduct at issue rather than the "alleged wrongfulness" of the conduct. In other words, the Court looked beyond the characterizations of the attorney's activity as fraudulent and conspiratorial, focused on the conduct at issue, and found that Youngkin's conduct was directly within the scope of his representation of his clients.

The Court noted that the policy behind the attorney-immunity doctrine exists to promote "loyal, faithful, and aggressive representation" by attorneys, which it achieves by removing the fear of personal liability. It further noted that it "would strain the very existence of settlement agreements if a party could hold an opposing attorney liable for subsequently taking an action or position at odds with that party's understanding of the agreement. Even more concerning is that such a practice could impute a guarantee of the client's performance onto the attorney merely because he played a role in negotiating his client's agreement."

The Court stressed that the application of the attorney immunity defense applied to claims made by non-clients, not clients. The Court acknowledged that participation in a fraudulent business scheme with a client, knowingly helping a client with a fraudulent transfer to avoid paying a judgment, theft of goods or services on a client's behalf, and assaulting opposing counsel during trial is conduct that may fall outside the reach of the attorney-immunity defense.

The Court concluded that Youngkin was entitled to dismissal of the TCPA and other claims under the doctrine of attorney immunity because the conduct alleged—negotiating and entering a settlement agreement, preparing transfer documents, and filing a lawsuit—falls within the scope of Youngkin's representation of his clients. The Court reversed the court of appeals' judgment and remanded the case to the trial court.

## **Significance of Case**



This decision is significant because it applied a broad attorney immunity doctrine to shield attorneys from claims by a non-client based on conduct arising from the attorneys' representation of clients. This decision could help prevent or defeat non-client claims alleging, for example, aiding and abetting, fraud and conspiracy by an opposing counsel.

For more information, please contact [Caroline Mondschean](#) or [Terry McAvoy](#).

---

*This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.*