

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
SAN ANGELO DIVISION

REPUBLIC WASTE SERVICES OF  
TEXAS, LTD.,

Plaintiff,

v.

TEXAS DISPOSAL SYSTEMS, INC.

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Cause No. 6:14-CV-00067-C

**DEFENDANT TEXAS DISPOSAL SYSTEMS, INC.’S  
ANSWER AND AFFIRMATIVE DEFENSES, MATTERS IN AVOIDANCE,  
AND OTHER MATTERS**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Defendant Texas Disposal Systems, Inc. (“Texas Disposal”) and files its Answer and its Affirmative Defenses, Matters in Avoidance, and Other Matters, and would show as follows:

**DEFENDANT TEXAS DISPOSAL SYSTEMS, INC.’S ANSWER**

**1. INTRODUCTION**

1.1. Texas Disposal admits that Plaintiff Republic Waste Services of Texas (“Republic”) filed suit under a claim that Republic’s contract with the City of San Angelo (“City”) gives Republic the exclusive right to collect temporary construction waste within the City. Texas Disposal admits that at the time this lawsuit was filed, it solicited and provided construction waste services to customers located within the City; Texas Disposal denies that it did so in disregard of Republic’s rights or that its activity was “unlawful,” and denies that it continues to solicit such services within the City. Texas Disposal denies that it has admitted all material facts necessary to determine the merits of this case. Texas Disposal admits that it sent

Republic a letter informing Republic that Texas Disposal believed it had the legal right to provide construction waste services to customers located within the City; Texas Disposal denies that it stated it had any intent to usurp any legitimate right of Republic. Texas Disposal denies that it committed “intentional and malicious interference with Republic’s contract” or that its conduct was unlawful. Texas Disposal denies the remainder of Republic’s allegations in Paragraph 1.1 of its Complaint.

## **2. PARTIES**

2.1. Texas Disposal admits that Republic does business in San Angelo, Texas. Texas Disposal is without sufficient knowledge or information to admit or deny the remainder of the allegations in Paragraph 2.1 of Republic’s Complaint.

2.2. Texas Disposal admits the allegations in Paragraph 2.1 of Republic’s Complaint.

## **3. JURISDICTION**

3.1. Texas Disposal denies that the amount in controversy exceeds \$75,000, exclusive of interest and costs. Texas Disposal is without sufficient knowledge or information to admit or deny the remainder of the allegations in Paragraph 3.1 of Republic’s Complaint.

3.2. Texas Disposal is without sufficient knowledge or information to admit or deny the allegations in Paragraph 3.2 of Republic’s Complaint.

3.3. Texas Disposal admits the allegations in Paragraph 3.3 of Republic’s Complaint.

## **4. VENUE**

4.1. Texas Disposal admits that a substantial part of the events giving rise to Republic’s claim have occurred within this judicial district.

## 5. FACTS

5.1. Texas Disposal admits that the contract between Republic and the City (the “Contract”) purports to grant Republic the exclusive right to provide waste collection, hauling, and disposal services within the City. Texas Disposal denies that Texas law allows such an exclusive contract without any exceptions.

5.1.1. Texas Disposal denies that Texas law allows a city to enter an exclusive waste contract without any exceptions. Texas Disposal admits the remaining allegations in Paragraph 5.1.1 of Republic’s Complaint.

5.1.2. Texas Disposal admits the allegations in Paragraph 5.1.2 of Republic’s Complaint.

5.1.3. Texas Disposal admits that Paragraph 5.1.3 of Republic’s Complaint accurately quotes a portion of the Contract.

5.1.4. Texas Disposal admits that Paragraph 5.1.4 of Republic’s Complaint accurately quotes a portion of the Contract.

5.1.5. Texas Disposal admits that the Contract purports to grant Republic the exclusive right and obligation to collect and haul construction waste within the City. While acknowledging that the U.S. Court of Appeals for the Fifth Circuit has held (in a ruling that is not precedent in any case or court other than in the instant case) that this provision of the Contract is consistent with Texas law, Texas Disposal respectfully continues to maintain that this provision is contrary to Texas law.

5.1.6. Texas Disposal denies that Republic lawfully obtained the exclusive right and obligation to collect and haul construction waste within the City, but acknowledges the ruling of

the U.S. Court of Appeals for the Fifth Circuit. Texas Disposal admits the remaining allegations in Paragraph 5.1.6 of Republic's Complaint.

5.1.7. Texas Disposal admits the allegations in the first sentence of Paragraph 5.1.7 of Republic's Complaint. Texas Disposal admits that the second sentence of Paragraph 5.1.7 accurately summarizes the City's stated rationale for the award of the Contract, but denies that such rationale was accurate. Texas Disposal admits that the remainder of Paragraph 5.1.7 accurately quotes and summarizes the City's stated rationale for the award of the Contract, but denies that such rationale was accurate.

5.1.8. Texas Disposal admits that Paragraph 5.1.8 of Republic's Complaint accurately quotes the Contract, but denies that the City lawfully conferred authority for enforcement of Republic's exclusive waste franchise on Republic.

5.2. Texas Disposal admits that it solicited and provided construction waste collection and hauling within the City at the time the Complaint was filed, but denies that it continues to solicit customers for such services. Texas Disposal denies that it took any action that "defied" Republic's legitimate rights.

5.2.1. Texas Disposal admits that it collected construction and demolition waste at customer locations within the City, and hauled such waste within the City, at the time the Complaint was filed, but denies that it continues to solicit customers for such services. While acknowledging the ruling of the U.S. Court of Appeals for the Fifth Circuit, Texas Disposal denies that it had no right to do so. Texas Disposal admits that the Contract purports to grant Republic the exclusive right to do so.

5.2.2. Texas Disposal admits that counsel for Republic sent Texas Disposal the letter described in Paragraph 5.2.2 of Republic's Complaint. Texas Disposal denies the remainder of the allegations in that paragraph.

5.2.3. Texas Disposal admits that its counsel delivered the letter to Republic's counsel described in Paragraph 5.2.3 of Republic's Complaint, and that the paragraph accurately quotes and summarizes a portion of that letter.

5.2.4. Texas Disposal denies that it has ever intentionally interfered with any "acknowledged right" of Republic. Texas Disposal admits that, at the time the Complaint was filed, it hauled construction and demolition waste originating from within the City to the San Angelo landfill, but denies that it continues to solicit customers for such services. Texas Disposal denies the remainder of the allegations in Paragraph 5.2.4 of Republic's Complaint.

5.2.5. Texas Disposal admits that, at the time the Complaint was filed, it serviced and solicited customers in the City for the hauling of temporary construction and demolition waste, but denies that these were "customers of Republic" and denies that it continues to solicit customers for such services. Texas Disposal denies the remainder of the allegations in Paragraph 5.2.5 of Republic's Complaint.

5.2.6. Texas Disposal denies the allegations in Paragraph 5.2.6 of Republic's Complaint.

## **6. DECLARATORY JUDGMENT**

6.1. Texas Disposal incorporates the above paragraphs by reference.

6.2. Texas Disposal admits that Republic seeks the declaratory relief set forth in Paragraph 6.2 of Republic's Complaint. Texas Disposal denies that Republic is entitled to such relief.

6.3. Texas Disposal admits that Republic has retained the law firm identified in Paragraph 6.3 of Republic's Complaint in this matter. Texas Disposal denies that Republic is entitled to recover costs, attorneys' fees and expenses.

## **7. TORTIOUS INTERFERENCE WITH CONTRACT**

7.1. Texas Disposal incorporates the above paragraphs by reference.

7.2. Texas Disposal admits that the description of the Contract in Paragraph 7.2 of Republic's Complaint accurately summarizes some of the Contract's content. While acknowledging the ruling of the U.S. Court of Appeals for the Fifth Circuit, Texas Disposal denies that the provision of the Contract described in this paragraph is valid and enforceable.

7.3. Texas Disposal admits that it provided construction and demolition waste hauling and collection services within the City at the time the Complaint was filed, but denies that doing so was a willful and/or intentional violation of any legitimate right of Republic's, and denies that it continues to solicit customers for such services. Texas Disposal admits that the Contract purported to grant Republic the sole right to provide such services; while acknowledging the ruling of the U.S. Court of Appeals for the Fifth Circuit, Texas Disposal denies that the Contract's grant legitimately granted that sole right to Republic. Texas Disposal denies that its provision of such services interfered with any legitimate right of Republic's.

7.4. Texas Disposal denies the allegations in Paragraph 7.4 of Republic's Complaint.

7.5. Texas Disposal denies the allegations in Paragraph 7.5 of Republic's Complaint.

7.6. Texas Disposal denies the allegations in Paragraph 7.6 of Republic's Complaint.

## **8. DAMAGES**

8.1. Texas Disposal incorporates the above paragraphs by reference.

8.2. Texas Disposal denies the allegations in Paragraph 8.2 of Republic's Complaint.

## **9. ATTORNEYS' FEES**

- 9.1. Texas Disposal incorporates the above paragraphs by reference.
- 9.2. Texas Disposal denies that Republic is entitled to recovery of attorneys' fees.

## **10. REPUBLIC'S REQUEST FOR EXPEDITED SCHEDULING**

10.1. Texas Disposal denies that there is a need for expedited summary judgment proceedings at this stage. Texas Disposal acknowledges that the U.S. Court of Appeals for the Fifth Circuit has ruled (in an opinion that is not binding precedent on any court or case other than the instant case) that the provision of the Contract granting Republic exclusive rights over construction and demolition waste within the City is not contrary to Texas law. Pursuant to that ruling, Texas Disposal has ceased soliciting construction and demolition customers within the City, and has informed its existing customers that they must transfer the services to Republic. No expedited proceedings are thus necessary. To the extent necessary, Texas Disposal denies the remaining allegations in Paragraph 10.1 of Republic's Complaint.

## **11. REPUBLIC'S PRAYER FOR RELIEF**

Texas Disposal denies that Republic is entitled to the relief for which it prays.

## **DEFENDANT TEXAS DISPOSAL SYSTEMS, INC.'S AFFIRMATIVE DEFENSES MATTERS IN AVOIDANCE, AND ADDITIONAL MATTERS**

Pursuant to Rule 8(c), Federal Rules of Civil Procedure, Defendant Texas Disposal Systems, Inc. pleads the following affirmative defenses, matters in avoidance, and/or additional matters:

1. Texas Disposal's conduct about which Republic complains was made in exercise of a good-faith claim by Texas Disposal to a colorable legal right, and thus was justified; such justification is a complete defense to Republic's tortious interference claim. Texas Disposal

operated under a good-faith belief that the exclusive construction waste provision of Republic's Contract with the City was barred by a Texas statute, Tex. Health & Safety Code § 364.034(h). In fact, this Court agreed with Texas Disposal's interpretation of the statute in granting Texas Disposal's Motion to Dismiss, brought under Fed. R. Civ. P. 12(b)(6). Although the dismissal has been reversed by the U.S. Court of Appeals for the Fifth Circuit, Texas Disposal's conduct was justified even if its good-faith interpretation of the statute was erroneous.

2. The provision of the Contract purporting to grant Republic the right to enforce the City's grant of an exclusive franchise is an improper delegation of the City's police powers; thus, Republic lacks standing to enforce the City's grant of exclusivity. Additionally or in the alternative as necessary, Republic cannot impose civil tort liability on Texas Disposal for Texas Disposal's entry of contracts with City residents. Republic is seeking to enforce a City ordinance, not protect its contract rights or recover for tortious actions, because Republic had no contracts with those residents who chose Texas Disposal to provide construction waste services, and because the only purported authority requiring the residents to receive such services from Republic is the City ordinance, not the Contract between the City and Republic (to which the residents are not parties).

3. Republic has no claim against Texas Disposal for tortious interference with contract because Republic had no contractual relationship with the City residents who chose Texas Disposal to provide construction waste services.

### **CONCLUSION AND PRAYER**

Wherefore, premises considered, Defendant Texas Disposal Systems, Inc. prays that the Court deny all relief sought by Plaintiff Republic Waste Services of Texas, Ltd.; grant judgment in favor of Texas Disposal; tax all costs against Republic; and further grant to Texas Disposal all



other relief to which it may show itself justly entitled.

Respectfully submitted,

/s/ James A. Hemphill

James A. Hemphill

State Bar No. 00787674

(512) 480-5762 direct phone

(512) 536-9907 direct fax

jhemphill@gdhm.com

David A. King

State Bar No. 24083310

dking@gdhm.com

GRAVES, DOUGHERTY, HEARON & MOODY, PC

401 Congress Ave., Suite 2200

Austin, Texas 78701

(512) 480-5600 phone

Paul Stipanovic

State Bar No. 00795669

(325) 653-3291 phone

(325) 655 6838 fax

info@ghtxlaw.com

GOSSETT, HARRISON, MILLICAN, & STIPANOVIC, PC

2 South Koenigheim

P.O. Drawer 911

San Angelo, Texas 76902

COUNSEL FOR DEFENDANT

TEXAS DISPOSAL SYSTEMS, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that this document was served on counsel of record for Plaintiff via CM/ECF, with courtesy copies transmitted via email, on this 20th day of January, 2017 as follows:

Don W. Griffis  
Jackson Walker L.L.P.  
301 West Beauregard Ave., Suite 200  
San Angelo, Texas 76903  
[dgriffis@jw.com](mailto:dgriffis@jw.com)

Charles L. Babcock  
Patrick R. Cowlshaw  
John K. Edwards  
Edwin Buffmire  
Jackson Walker L.L.P.  
901 Main Street, Suite 6000  
Dallas, Texas 75202  
[cbabcock@jw.com](mailto:cbabcock@jw.com)  
[pcowlshaw@jw.com](mailto:pcowlshaw@jw.com)  
[jedwards@jw.com](mailto:jedwards@jw.com)  
[ebuffmire@jw.com](mailto:ebuffmire@jw.com)

*/s/ James A. Hemphill*

\_\_\_\_\_  
James A. Hemphill