



**NUMBER 13-20-00130-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI – EDINBURG**

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**CESAR ORNELAS LAW, PLLC AND  
CESAR ORNELAS II,**

**Appellants,**

**v.**

**LORETTA CHAVEZ,**

**Appellee.**

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**On appeal from the 94th District Court  
of Nueces County, Texas.**

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**ORDER**

**Before Justices Benavides, Perkes, and Tijerina  
Order Per Curiam**

**I. BACKGROUND**

On March 4, 2020, appellants Cesar Ornelas Law, PLLC and Cesar Ornelas II (collectively, the “Ornelases”) perfected an interlocutory appeal from the denial of their motion to dismiss appellee Loretta Chavez’s lawsuit under the Texas Citizens

Participation Act (TCPA). See TEX. CIV. PRAC. & REM. CODE ANN. §§ 27.003; 51.014(a)(12). Thereafter, the parties voluntarily attended mediation but contest whether they reached a binding settlement agreement. Chavez filed a “Motion to Enforce Settlement” in the trial court and scheduled a hearing for May 8, 2020.<sup>1</sup>

The Ornelases filed an emergency motion in this Court to enforce the automatic stay under § 51.014(b) of the Texas Civil Practice and Remedies Code. They also seek sanctions against Chavez’s counsel in the form of attorney’s fees incurred by Ornelas in bringing the motion.

Chavez filed a cross-motion in this Court, asking us to lift the automatic stay because the Ornelases “waived their right to any stay.” Alternatively, Chavez asks us to consider its “Motion to Enforce Settlement” under Texas Rule of Appellate Procedure 29.3.

On May 7, 2020, we issued a temporary order continuing the stay until further order of this Court. On June 10, 2020, the Ornelases filed a supplement to their emergency motion, alleging that Chavez violated the stay and our May 7 order by serving them with written discovery. They requested that we strike the discovery and further sanction Chavez’s counsel for the additional attorney’s fees incurred by them in preparing the supplement.

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<sup>1</sup> It is undisputed that the parties agreed on a dollar amount to settle Chavez’s claim but could not agree on other terms required by the Ornelases. The Ornelases provided this Court with a verified copy of an email in which the mediator confirmed that “the mediation concluded with the parties at impasse.” Nevertheless, Chavez contends that these other terms are “immaterial, unreasonable and unethical” and seeks to have the “settlement” enforced without these additional terms.

Chavez's counsel filed a response, acknowledging they served the Ornelases with written discovery in violation of the stay and our May 7 order but claiming it was "due to inadvertence, oversight, and miscommunication." Counsel explained that they represent several different clients against the Ornelases, each in a separate case, and that previously prepared discovery in this case was mistakenly served alongside the discovery in the other cases. Counsel claims the Ornelases violated Texas Rule of Appellate Procedure 10.1(a)(5) by failing to confer with counsel before filing the supplement. As proof, counsel points out that the supplement lacks a certificate of conference. Had the parties conferred, counsel claims the issue could have been resolved without the need for court intervention because counsel would have informed the Ornelases that "any responses to the discovery may be served if and when the case continues in the trial court." Counsel asks us to strike the supplement for violating Rule 10.1(a)(5) or in the alternative, deny the supplemental request for relief because the stay is currently in effect and "the served discovery in this case may be answered after the stay is lifted."

## **II. ANALYSIS**

Section 51.014(b) of the Texas Civil Practice and Remedies Code provides:

An interlocutory appeal under Subsection (a), other than an appeal under Subsection (a)(4) or in a suit brought under the Family Code, stays the commencement of a trial in the trial court pending resolution of the appeal. An interlocutory appeal under Subsection (a)(3), (5), (8), or (12) *also stays other proceedings in the trial court pending resolution of that appeal.*

(emphasis added). Because the Ornelases' appeal of the denial of their TCPA motion is "[a]n interlocutory appeal under Subsection . . . (12)," the appeal automatically resulted in a stay of "all other proceedings in the trial court." See TEX. CIV. PRAC. & REM. CODE ANN.

§ 51.014(b). The parties do not dispute this. Instead, the dispute concerns whether and to what extent this Court may lift the statutory stay during this appeal.

As the Supreme Court of Texas recently explained, “[n]either section 51.014 nor any other statute to which we are directed authorizes a court of appeals to lift the stay, whether altogether or for a limited purpose.” *In re Geomet Recycling LLC*, 578 S.W.3d 82, 87 (Tex. 2019) (orig. proceeding). Also, “procedural rules cannot authorize courts to act contrary to a statute.” *Id.* at 88. Thus, “a court may not invoke Rule 29.3 to issue an order denying a party its statutory right under section 51.014(b) to avoid further trial court proceedings pending resolution of the appeal, even if doing so seems necessary to protect the parties’ rights.” *Id.*

### **III. CONCLUSION**

Therefore, the Ornelases’ emergency motion to enforce the automatic stay is GRANTED, and Chavez’s cross-motion to lift the stay is DENIED. Accordingly, all proceedings in the trial court shall continue to be STAYED until resolution of this appeal or further order of this Court, and we STRIKE the complained-of discovery requests.

Finally, having examined and fully considered the Ornelases’ motion for sanctions, including the supplement thereto, and Chavez and her counsels’ responses, we conclude that the motion is hereby DENIED.

IT IS SO ORDERED.

PER CURIAM

Delivered and filed the  
25th day of June, 2020.