

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
SAN ANGELO DIVISION

REPUBLIC WASTE SERVICES OF  
TEXAS, LTD.,

Plaintiff,

v.

TEXAS DISPOSAL SYSTEMS, INC.

Defendant.

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

**DEFENDANT TEXAS DISPOSAL SYSTEMS, INC.’S  
MOTION TO DISMISS PURSUANT TO  
RULE 12(b)(6), FEDERAL RULES OF CIVIL PROCEDURE**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Defendant Texas Disposal Systems, Inc. (“Texas Disposal”) and files this Motion to Dismiss, pursuant to Fed. R. Civ. P. 12(b)(6). Even if all factual allegations in the Complaint of Plaintiff Republic Waste Services of Texas, Ltd. (“Republic”) are taken as true, Republic has failed to state a claim upon which relief can be granted. Republic is attempting to enforce a contractual provision that is prohibited by Texas statute. Republic is therefore not entitled to a declaration enforcing the invalid provision, and has no claim against Texas Disposal for interference with the invalid provision.

**ARGUMENT AND AUTHORITIES**

**I. Texas Statutory Law Prohibits Governmental Bodies from Entering into Exclusive Waste Contracts for Collection of Construction Waste.**

Republic and the City of San Angelo (the “City”) have entered into a long-term contract that purports to give Republic the exclusive right to collect and haul waste within the City. Republic Complaint (Doc. 1) at 3 ¶¶ 5.1.1-5.1.2 & Ex. B. Among the services included in the

contract is “the exclusive right to collect residential and Non-Residential Acceptable Waste and temporary Construction & Demolition Waste.” Complaint at 4 ¶ 5.1.2 & Ex. B Definitions.<sup>1</sup>

Texas law explicitly grants municipalities the authority to enter into exclusive contracts for waste hauling and disposal. Section 364.034 of the Texas Health & Safety Code establishes the authority of “public agencies” (which includes municipalities such as the City, Tex. Health & Safety Code § 364.003(3)) to enter into solid waste disposal contracts, and sets limits on that authority. Subsection 364.034(a) authorizes municipalities to “offer solid waste disposal service to persons in its territory,” and to “require the use of the service by those persons.”

However, Section 364.034’s grant of authority is not absolute. In addition to other exceptions, the statute “does not apply to a private entity that contracts to provide temporary solid waste disposal services to a construction project.” Tex. Health & Safety Code § 364.034(h). Because a municipality’s power to offer solid waste service to persons in its territory, and to require those persons to use the service, does not apply when a private entity (such as Texas Disposal) contracts to provide waste services to a construction project, private entities are free to compete for construction waste services – even if other waste services in the municipality are subject to an exclusive contract authorized by Section 364.034(a).

Under the plain language of the Texas Health & Safety Code, exclusive contracts for the collection of construction site waste are unauthorized and thus unenforceable. Republic knows this: Texas Disposal informed Republic of the Section 364.034(h) exception in correspondence, which is attached as Exhibit C to Republic’s Complaint (Doc. 1 at 86-87). Republic, however,

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<sup>1</sup> In considering a motion to dismiss under Rule 12(b)(6), a court may consider all attachments and exhibits to a complaint, as well as the allegations in the complaint itself. *See, e.g., Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000).

proceeded to file suit against Texas Disposal, without even describing Section 364.034(h) in its Complaint (and mentioning it only in passing, with no explanation as to the statute's contents).<sup>2</sup>

Because the provision in the contract between Republic and the City purporting to grant Republic exclusive rights to collect, haul, and dispose construction waste is prohibited by Texas law, Republic has no claim for declaratory judgment upon which relief can be granted. Texas Disposal is entitled to dismissal of the declaratory judgment claim, pursuant to Fed. R. Civ. P. 12(b)(6).

Republic has purported to plead a cause of action for declaratory judgment under Texas law, and has pleaded for recovery of attorneys' fees under this Texas procedural statute. Complaint at 6 ¶¶ 6.2, 6.3 (citing Chapter 37 of the Texas Civil Practice & Remedies Code). Even if Republic had a valid declaratory judgment claim (which it does not), it would not be entitled to attorneys' fees on such a claim. A declaratory judgment action in federal court is brought under the federal declaratory judgment statute, 28 U.S.C. § 2201; Texas procedural law is inapplicable in this Court. Because the federal declaratory judgment statute does not provide for fee-shifting, Republic has not stated a claim for attorneys' fees upon which relief can be granted, and such claim should be dismissed pursuant to Rule 12(b)(6). *Camacho v. Texas Workforce Comm'n*, 445 F.3d 407 (5th Cir. 2006); *Utica Lloyd's of Texas v. Mitchell*, 138 F.3d 208 (5th Cir. 1998).

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<sup>2</sup> Republic asserts that Texas Disposal admits "that no controlling Texas authority has adopted [Texas Disposal's] interpretation" of Section 364.034(h). Complaint at 7 ¶ 7.5. Contrary to Republic's implication, however, there is "no controlling Texas authority" adopting a *contrary* interpretation, either – there simply has been no judicial interpretation of the statute. However, its plain language is clear: the provision of Section 364.034 allowing exclusive waste contracts "*does not apply*" to construction waste contracts.

**II. Because the Contractual Provision Republic Seeks to Enforce is Unenforceable on Public Policy Grounds, Republic Has Failed To State a Claim for Tortious Interference.**

Under Texas law, a party has no cause of action for tortious interference with contract if the contractual provision sought to be enforced is actually unenforceable because it violates the state's public policy, as expressed in its constitution, statutes, or judicial decisions. *Washington Square Financial, LLC v. RSL Funding, LLC*, 418 S.W.3d 761, 770-71 (Tex. App. – Houston [14th Dist.] 2013, pet. denied). *See also Trammell Crow Co. No. 60 v. Harkinson*, 944 S.W.2d 631, 635 (Tex. 1997) (holding that public policy as expressed in a statute precluded a tortious-interference claim based on an unenforceable contract); *Juliette Fowler Homes, Inc. v. Welch Assocs., Inc.*, 793 S.W.2d 660, 664 (Tex. 1990) (holding that a contractual provision that violated Texas' public policy could not form the basis for a tortious interference claim).

Here, Republic is attempting to allege a cause of action for tortious interference with a contractual provision that is prohibited by a Texas statute. Accordingly, the provision is unenforceable as contrary to Texas public policy, and such a provision cannot form the basis for a tortious interference claim. Therefore, Republic has not stated a claim for tortious interference upon which relief can be granted. The tortious interference claim should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

**CONCLUSION AND PRAYER**

Wherefore, premises considered, Defendant Texas Disposal Systems, Inc. prays that this Court grant its Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6); dismiss the claims brought against Texas Disposal by Plaintiff Republic Waste Services of Texas, Ltd.; tax all costs against Republic; and further grant to Texas Disposal all other relief to which it may show itself justly entitled.

Respectfully submitted,

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**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 November as follows:

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