

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
RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Defendant Texas Disposal Systems, Inc. (“Texas Disposal”) and files this Response in Opposition to the Motion for Summary Judgment of Plaintiff Republic Waste Services of Texas, Ltd. (“Republic”) (Doc. 11) and brief in support (Doc. 12).

Texas Disposal opposes Republic’s Motion for the following reasons:

- The Court should not even reach Republic’s summary judgment motion, because this case should be dismissed pursuant to Texas Disposal’s Motion to Dismiss (Doc. 8). The contractual provision Republic seeks to enforce is void as contrary to Texas public policy as expressed in Tex. Health & Safety Code § 364.034(h). That legal issue has been fully briefed on the Motion to Dismiss, and is before the Court for decision.
- If the Court does not dismiss the case, Republic’s summary judgment motion must be denied because the contractual provision Republic seeks to enforce is invalid under Texas law, and thus cannot be the basis for a tortious interference claim.
- Even if the contract between Republic and the City of San Angelo were valid, Republic has failed to allege that Texas Disposal has interfered with the contract in a

manner that would state a claim for tortious interference with an existing contract. The crux of Republic's claim is actually that Texas Disposal allegedly interfered with Republic's prospective contracts with San Angelo residents, and Republic has not pleaded a claim for tortious interference with prospective contract.

- Republic's motion is premature; Texas Disposal has not yet filed its answer, and thus has not been given an opportunity to plead affirmative defenses, including the defense of justification.
- Republic's lawsuit is an improper effort to enforce a municipal ordinance, by a private party, through civil litigation; Republic does not have the authority to enforce a municipality's police power in such a manner.

Pursuant to Local Rules 56.4 and 56.5, Texas Disposal is filing a Brief in support of this Response. That Brief will also include the required matters set forth in Local Rule 56.4(a).

CONCLUSION AND PRAYER

Wherefore, premises considered, Defendant Texas Disposal Systems, Inc. prays that this Court deny the Motion for Summary Judgment of 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.

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Respectfully submitted,

/s/ James A. Hemphill

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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 2nd day of January, 2015, as follows:

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