

IN THE DISTRICT COURT OF EL PASO COUNTY
34TH JUDICIAL DISTRICT

LISA ELIZONDO,

Plaintiff

vs.

JOHN COOK,

Defendant.

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Cause No. 2007-2617

ORIGINAL ANSWER OF DEFENDANT JOHN COOK

TO THE HONORABLE COURT:

Comes now Defendant JOHN COOK, also referred to as Mayor Cook, and files this his Original Answer to Plaintiff's Original Petition in the captioned proceedings and would respectfully show the Court as follows:

SPECIAL EXCEPTIONS

I.

Defendant specially excepts to paragraph 1 of the Plaintiff's Original Petition because it alleges only a legal conclusion of actionable slander but fails to plead any supporting facts.

II.

Defendant specially excepts to paragraphs 4-8 of the Plaintiff's Original Petition because the Plaintiff fails to enumerate how the Plaintiff alleges to have been affected by the statements made this basis of the action.

III.

Defendant specially excepts to the Plaintiff's Original Petition in its entirety, because it fails

to enumerate any amount of damage to which Plaintiff claims she is entitled. Defendant requests that the Court order Plaintiff to amend her pleadings, setting forth the amount of damages to which she claims she is entitled.

IV.

Defendant specially excepts to the allegation in Paragraph 13 of the Petition where Plaintiff claims to have been damaged “in an amount within the jurisdictional limits of the Court” because this allegation fails to enumerate any amount of damage to which Plaintiff claims she is entitled. TEX. R. CIV. P. 47, 56. Defendant requests that the Court order Plaintiff to amend her pleadings, setting forth the amount of damages to which she claims she is entitled.

V.

Defendant specially excepts to Paragraph 13 of the Petition where Plaintiff alleges that she is entitled to exemplary damages, because exemplary damages are arbitrary, excessive, unreasonable, and in violation of Defendant’s rights to due process of the law and equal protection of the law under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and art. I, secs. 3, 13, and 19 of the Texas Constitution. Defendant requests that the Court strike Plaintiff’s claim for exemplary damages.

GENERAL DENIAL

VI.

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Mayor Cook enters a General Denial Answer to the allegations as alleged and worded in Plaintiff’s Original Petition and places the matters in issue.

VII.

Pursuant to TEX. R. CIV. P. 63, 69, and 98, Mayor Cook reserves the right to further amend and/or supplement this Original Answer at a later time in these proceedings.

AFFIRMATIVE DEFENSES

VIII.

Mayor Cook would show that the statements alleged by Plaintiff are simply not true. Further, Plaintiff's claims are barred because all assertions of opinion are protected by the First Amendment of the United States Constitution and Article 1, §8 of the Texas Constitution.

IX.

For further answer, Plaintiff's claims are barred by absolute privilege. Even though such statements are denied, Mayor Cook would be absolutely privileged to make such statements because at the time the comments were allegedly made, the plaintiff was the City Attorney and as such, qualifies as a public official.

X.

Plaintiff's claims are further barred by qualified privilege. Mayor Cook's communications were made in good faith on subject matter in which Mayor Cook has a common interest with the other people identified in the Plaintiff's cause of action and with reference to which he has a duty to communicate to the individuals identified in the Plaintiff's cause of action. Mayor Cook did not act with actual malice.

XI.

Mayor Cook is entitled to an award of his attorneys' fees and expenses, because Plaintiff has acted in bad faith in filing this lawsuit. Defendant would show that said lawsuit is frivolous,


unreasonable, and without foundation. In the alternative, Defendants will show that, during the course of this proceeding, Plaintiff has acted in bad faith by continuing to maintain this lawsuit and that continued maintenance of said lawsuit has become frivolous, unreasonable, and without foundation.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff take nothing by virtue of her suit, that Defendant recovers his costs, and for such other and further relief to which Defendant may show himself justly entitled.

Respectfully submitted,

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Date: July 23, 2007

By: 
JEFF RAY
State Bar No. 16604400

Attorney for Mayor John Cook

CERTIFICATE OF SERVICE

I hereby certify that on the above date a true and correct copy of the foregoing pleading was delivered to Attorney for Plaintiff, Steve James, 521 Texas Avenue, El Paso, Texas 79901


Jeff Ray