

RECENT DEVELOPMENTS

MISCELLANEOUS

THE TEXAS RESIDENTIAL CONSTRUCTION LIABILITY ACT (“TRCLA”) DOES NOT CREATE A CAUSE OF ACTION OR DERIVATIVE LIABILITY OR EXTEND A LIMITATIONS PERIOD

THE TRCLA PROVIDES FOR ABATEMENT OF A LAW-SUIT WHEN THE CLAIMANT FAILS TO PROVIDE PRESUIT NOTICE

THE TRCLA DOES PROVIDE DEFENSES AND LIMITS TO RECOVERABLE DAMAGES

THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO ACKNOWLEDGE THAT, PURSUANT TO THE TRCLA, THE REAL PARTIES’ LAWSUIT WAS AUTOMATICALLY ABATED WHEN THE RELATORS FILED THEIR VERIFIED MOTION TO ABATE AND THE REAL PARTIES FAILED TO FILE A CONTROVERTING AFFIDAVIT

In re Barraza, 2025 Tex. App. LEXIS 7664 (Tex. App.—Corpus Christi 2025).

<https://law.justia.com/cases/texas/thirteenth-court-of-appeals/2025/13-25-00440-cv.html>

FACTS: David Flores and Terry Alaniz (“real parties”) hired David and Yvonne Barraza (“relators”) for construction of a residential home. Real parties then sued realtors for breach of contract, common law fraud, fraud in a real estate transaction, and deceptive trade practices. Real parties alleged that realtors failed to complete the construction, collected payment for their work in excess of that work, and failed to pay subcontractors and material providers. Relators filed a verified motion to abate the case, claiming that the real parties did not provide pre-suit notice of their claims under the Texas Residential Construction Liability

Act (“TRCLA”).

The trial court denied the motion. The relators petitioned for a writ of mandamus, asserting the trial court abused its discretion.

HOLDING: Granted.

REASONING: Relators argued the trial court abused its discretion by denying their verified motion to abate because the real parties did not provide pre-suit notice of their claims as required by the TRCLA.

The court agreed, reasoning that the TRCLA applied to (1) any action to recover damages or other relief arising from a construction defect and (2) any subsequent purchaser of a residence who files a claim against a contractor. The TRCLA provides that a claimant must give written notice to a contractor before filing suit. After receiving notice, the contractor must be given an opportunity to inspect the property and may make a written offer of settlement to the claimant. If the claimant considers the offer unreasonable, the claimant must advise the contractor in writing and explain why the offer is unreasonable. The TRCLA provided the abatement of a lawsuit when the claimant failed to provide pre-suit notice.

The court found that relators filed a verified motion to abate, and real parties failed to file a controverting affidavit. Therefore, the abatement was automatic pursuant to the language of the statute, and the trial court abused its discretion by concluding otherwise.

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