

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

2018 JAN 31 PM 4: 36

WESTERN DISTRICT OF TEXAS

BRADLEY RUDKIN, §
PLAINTIFF, §
V. §
ROGER BEASLEY IMPORTS, INC., §
DEFENDANT. §

CAUSE NO. A-17-CV-849-LY

ORDER ON REPORT AND RECOMMENDATION

Before the court are Defendant’s Motion to Dismiss, for Fees and Sanctions Pursuant to the Texas Citizen’s Participation Action filed October 12, 2017 (Doc. #8); Plaintiff’s Response to Defendant’s Motion to Dismiss, for Fees and Sanctions Pursuant to the Texas Citizen’s Participation Act filed November 9, 2017 (Doc. #12); Roger Beasley Imports, Inc.’s Reply on its Motion to Dismiss, for Fees and Sanctions Pursuant to the Texas Citizen’s Participation Act filed November 13, 2017 (Doc. #13). The motion, response, and reply were referred to the United States Magistrate Judge for report and recommendation. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72; Loc. R. W. D. Tex. Appx. C, 1(d).

The magistrate judge filed his Report and Recommendation on December 28, 2017 (Doc. #18), recommending that this court deny the motion to dismiss. Roger Beasley Imports, Inc.’s Objections to Report and Recommendation Denying Motion to Dismiss was filed January 11, 2018 (Doc. #19). In light of the objections, the court has undertaken a *de novo* review of the entire case file and finds that the Report and Recommendation should be accepted and approved for substantially the reasons stated therein.

In its objections Defendant Roger Beasley Imports, Inc. (“Roger Beasley”) asserts that Fifth Circuit precedent requires this court to conclude that the Texas anti-SLAPP statute, the Texas

Citizen's Participation Act, should apply in this case. *See Henry v. Lake Charles Am. Press, L.L.C.*, 566 F.3d 164, 168–69 (5th Cir. 2009). Roger Beasley further cites to several district court cases from the Eastern and Southern Districts of Texas in support of the application of *Henry* in this case. The court concludes, however, that the magistrate judge properly applies subsequent Fifth Circuit case law that questions the broad application of *Henry*. *See e.g. Block v. Tanenhaus*, 867 F.3d 585, 589 n. 2 (5th Cir. 2017). Therefore, the court will overrule Roger Beasley's objections.

IT IS THEREFORE ORDERED that Roger Beasley Imports, Inc.'s Objections to Report and Recommendation Denying Motion to Dismiss (Doc. #19) are **OVERRULED**.

IT IS FURTHER ORDERED that the Report and Recommendation of the United States Magistrate Judge (Doc. #18) is **APPROVED** and **ACCEPTED** as set forth herein.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss, for Fees and Sanctions Pursuant to the Texas Citizen's Participation Action filed October 12, 2017 (Doc. #8) is **DENIED**.

SIGNED this 31st day of January, 2018.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE