

VIRGIE ARTHUR,

Plaintiff,

vs.

HOWARD K. STERN, BONNIE STERN,
LYNDAL HARRINGTON, ART HARRIS,
NELDA TURNER, TERESA STEPHENS,
HARVEY LEVIN and TMZ
PRODUCTIONS, INC.,

Defendants.

§ IN THE DISTRICT COURT OF

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HARRIS COUNTY, TEXAS

280TH JUDICIAL DISTRICT

**DEFENDANT ART HARRIS'S ANSWER TO PLAINTIFF'S
SECOND AMENDED PETITION**

COMES NOW Defendant Art Harris ("Harris") and files this Answer to Plaintiff Virgie Arthur's ("Plaintiff") Second Amended Petition, and in support thereof, would respectfully show the Court as follows:

I.

GENERAL DENIAL

1. Harris denies each and every, all and singular, allegation made and contained in Plaintiff's Second Amended Petition, and any petition which Plaintiff may hereinafter file by way of amendment or supplement, and demands strict proof of said allegations according to law.

II.

AFFIRMATIVE DEFENSES

2. For further answer, if same be necessary, Plaintiff's Second Amended Petition fails to state a claim upon which relief could be granted.

3. For further answer, if same be necessary, Plaintiff's claims are barred in whole or in part by the applicable statutes of limitations.

4. For further answer, if same be necessary, Plaintiff's claims are barred in whole or in part by the doctrine of res judicata.

5. For further answer, if same be necessary, Plaintiff's claims are barred in whole or in part by the doctrine of collateral estoppel.

6. For further answer, if same be necessary, the statements complained of as they relate to Plaintiff were not published with Constitutional "actual malice" as that term is defined by the United States and Texas Supreme Courts as a matter of law, thus negating an essential element of Plaintiff's claims in as much as she is a public figure as that term is defined by Texas case law.

7. For further answer, if same be necessary, some of the statements complained of are protected opinion, rhetoric, or hyperbole.

8. For further answer, if same be necessary, pursuant to § 73.003 of the Texas Civil Practice & Remedies Code and Texas common law, Plaintiff failed to mitigate her damages, if any.

9. For further answer, if same be necessary, Plaintiff's own acts or omissions caused or contributed to her alleged injury, if any.

10. For further answer, if same be necessary, any award of damages in this case for the claims alleged would be unconstitutional under Article 1, § 8 of the Texas Constitution and/or the First Amendment to the United States Constitution.

11. For further answer, if same be necessary, Plaintiff is not entitled to punitive or exemplary damages under the laws of the United States and Texas because: (i) Plaintiff's causes of action are pursuant to Texas Civil Practice and Remedies Code § 73.001, and punitive damages are impermissible for the mere violation of a statute; (ii) an award of punitive or

exemplary damages would be unconstitutional under the United States and Texas Constitutions specifically, the First Amendment to the United States Constitution and Article I, § 8 of the Texas Constitution; (iii) any recovery of punitive or exemplary damages by Plaintiff in this civil lawsuit would constitute the imposition of a criminal fine or penalty without the substantive or procedural safeguards guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3, 3a, 10, 13, 15 and 19 of the Texas Constitution; (iv) any such award of punitive or exemplary damages in this case would amount to nothing less than a denial to Harris of due process and equal protection of the laws as are guaranteed under the United States and Texas Constitutions; (v) the imposition of any punitive or exemplary damages in this lawsuit would constitute an excessive fine or penalty under Article I, Sections 13 and 19 of the Texas Constitution; (vi) an award of punitive or exemplary damages on the facts of this case is unconstitutional or in violation of the common law, absent clear and convincing proof that the false, defamatory statements of defamatory fact, if any, about Plaintiff were published with “actual malice,” as that term is defined by the United States and Texas Supreme Courts, which “actual malice” Harris denies, and absent proof of common law malice, that is, ill will, spite or evil motive and further absent proof in compliance with Chapter 41 of the Texas Civil Practice and Remedies Code and absent proof of actual damages; (vii) exemplary damages awarded, if any, against Harris would be limited by Chapter 41 of the Texas Civil Practice and Remedies Code; (viii) Harris has not been given fair notice of the conduct that may subject him to punishment or exemplary damages and also of the severity of the penalty or exemplary damages that may be imposed; and (ix) punitive damages would violate the United States and Texas Constitutions and common law because such an award is based from procedures that are vague, open-ended, unbound in discretion, arbitrary and without sufficient constraints or

protection against arbitrary and excessive awards. In the alternative, the ratio between actual and punitive damages may not exceed 1:1 under the Texas and United States Constitutions and Texas common law.

12. For further answer, if same be necessary, under Texas Civil Practice & Remedies Code § 73.002 and Texas common law, the statements complained of constitute fair and impartial reports and comments on public and newsworthy proceedings and controversies of public interest and public concern and are accordingly protected by privileges including, but not limited to, the fair report privilege.

WHEREFORE, PREMISES CONSIDERED, Defendant Art Harris prays that Plaintiff Virgie Arthur take nothing by reason of her actions herein, that Defendant be awarded his costs of court, and for such further relief, both general and special, at law and in equity, as the Court deems just.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT
ART HARRIS

CERTIFICATE OF SERVICE

This is to certify that on this 27th day of April 2009, a true and correct copy of the foregoing *Defendant Art Harris's Answer to Plaintiff's Second Amended Petition* was served upon all counsel of record and *pro se* defendants as indicated below:

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s/ Amanda L. Bush

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