

# **Exhibit**

**18**

CAUSE NO. 90744CAUSE NO. 14-158 and Ex. 14-19

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
vs.	§	ELLIS COUNTY, TEXAS
	§	
<u>WILLIAM M. WINDSOR</u>	§	
(Defendant/Principal)	§	443 <sup>RD</sup> JUDICIAL DISTRICT

**STATE'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW, the State of Texas, and files its Response to the Motion for Summary Judgment filed by Respondent, William M. Windsor, and shows unto the Court as follows:

**I. Introduction and Background**

Plaintiff is the State of Texas. Defendant is William M. Windsor. Plaintiff filed its bail bond forfeiture pursuant to Texas Code of Criminal Procedure Article 22. Defendant entered an appearance and filed a Motion to Dismiss June 15, 2015.

**II. Summary Judgment Evidence**

To support the facts in this response, Plaintiff offers the following summary judgment evidence attached to this response and incorporates the evidence into this response by reference.

- Exhibit A: Affidavit and Bond signed on December 19, 2014
- Exhibit B: Certification of Call filed December 30, 2014
- Exhibit C: Judgment Nisi filed December 30, 2014

**III. Argument and Authorities**

- A. **Defendant did not disprove plaintiff's cause of action as a matter of law.**

A Defendant is entitled to a summary judgment on a plaintiff's cause of action if the Defendant can disprove at least one element of the cause of action as a matter of law. *Sw. Elec.*

*Power Co. v. Grant*, 73 S.W.3d 211, 215 (Tex. 2002); see *Tello v. Bank One, N.A.*, 218 S.W.3d 109, 113 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2007, no pet.). The elements in plaintiff's cause of action for a bond forfeiture are the following: (1) a valid bond executed by the surety; (2) that the defendant's name was distinctly called at the courthouse door; and (3) the defendant failed to appear within a reasonable time of that call. *Burns v. State*, 861 S.W.2d 878, 888 (Tex. Crim. App. 1993). Defendant claims he disproved a valid bond. The Court should deny defendant's motion for summary judgment on plaintiff's cause of action because defendant did not disprove that the bond was invalid as a matter of law. This defense should to be raised at the time of the execution of the bond, not at trial. *Scott v. State*, 617 S.W.2d 691 (Tex. Crim. App. 1981); *Balboa v. State*, 612 S.W.2d 553 (Tex. Crim. App. 1981); *Watson v. State*, 32 S.W.3d 335 (Tex. App. – San Antonio 2000, rehearing overruled, petition for discretionary review refused); and *Garza v. State*, 50 S.W.3d 619 (Tex. App. – Amarillo 2001).

Additionally, through his pleadings, defendant is attempting to place additional elements on the plaintiff that are not required by law. An example is failure to serve a citation for the judgment nisi on the Defendant. Defendant filed a Motion to Dismiss in 2015 prior to the issuance of citation. As such, defendant entered an appearance in this bond forfeiture proceeding and citation was not necessary. Further, defendant argues that he was not provided notice of the hearing. The bond which defendant signed had the date of the hearing as "instanter." As a matter of law, no notice was required and the Texas Rules of Civil Procedure notice provisions are not applicable in this matter. *Yarbrough v. State*, 703 S.W.2d 645 (Tex. Crim. App. 1985); *Alvarez v. State*, 861 S.W.2d 878 (Tex. Crim. App. 1993); and *Burns v. State*, 861 S.W.2d 878 (Tex. Crim. App. 1992). Additionally, although a criminal case, Art. 22.10 of the Code of

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Criminal Procedure makes it clear that the proceedings are governed by the same rules governing other civil lawsuits. Accordingly, defendant's arguments concerning being denied a speedy trial simply do not apply.

**B. Summary Judgment Evidence is Improper**

Any summary evidence provided must be admissible under the rules of evidence. Tex. R. Civ. P. 166a(f). As a general rule, pleadings are not summary judgment evidence. A party cannot rely on factual statements contained in its own petition or answer as summary judgment proof. *Laidlaw Waste Sys. v. City of Wilmer*, 904 S.W.2d 656, 660 (Tex. 1995); *Hidalgo v. Surety S&L Ass'n*, 462 S.W.2d 540, 545 (Tex. 1971). Any reliance on any document not incorporated and filed with the Amended Motion for Summary Judgment is improper under Texas law and should not be considered.

Defendant, in his amended summary judgment motion, attached an affidavit that he signed indicating some of the affidavit was "based on personal knowledge, except as to the matters herein stated to be alleged on information and belief, and that as to those matters he believes them to be true." A summary judgment affidavit must be based on personal knowledge to be competent summary judgment evidence. Further, the affidavit must state facts, cannot merely recite legal conclusions, and must not contain conclusory statement that are not supported by facts. The affidavit provided by the Defendant should be stricken and not considered for the above stated reasons.

**IV. Prayer**

WHEREFORE, PREMISES CONSIDERED, the State of Texas respectfully prays that the court strike the affidavit attached to Defendant's Amended Motion for Summary Judgment

and not consider any evidence not attached to the pleadings as required by law. Further, the State of Texas prays that Defendant's Amended Motion for Summary Judgment be denied and further prays for such other and further relief, both general and special, to which it may be justly entitled.

Respectfully submitted,

PATRICK M. WILSON  
County and District Attorney

By: M Ann Montgomery-Moran  
M. Ann Montgomery-Moran  
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[ann.montgomery@co.ellis.tx.us](mailto:ann.montgomery@co.ellis.tx.us)

**CERTIFICATE OF SERVICE**

This certifies the foregoing State of Texas' Response to Defendant's Motion for Summary Judgment was served on defendant by certified mail, return receipt requested, on the 7th day of April, 2016.

M Ann Montgomery-Moran  
M. ANN MONTGOMERY  
Assistant County & District Attorney

CAUSE NO. 90744

CAUSE NO. 14-158 and Ex. 14-19

THE STATE OF TEXAS

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IN THE DISTRICT COURT

vs.

ELLIS COUNTY, TEXAS

WILLIAM M. WINDSOR  
(Defendant/Principal)

443<sup>RD</sup> JUDICIAL DISTRICT

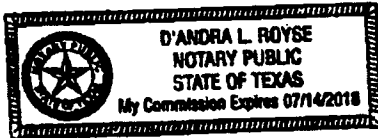
**AFFIDAVIT**

Before me, the undersigned authority, personally appeared **Tabitha Smith**, who, being by me duly sworn, testified as follows:

“My name is **Tabitha Smith**, I am over 18 years of age, of sound mind, and capable of making this affidavit, and personally acquainted with the facts herein stated. I am employed with the Ellis County and District Attorney’s Office as the bail bond forfeiture clerk. As part of my duties and responsibilities, I maintain the files for all bail bond forfeitures cases both in county and district courts. Attached to this affidavit is a true and correct copy of the original bond signed by William M. Windsor on December 19, 2014. The original bond is part of the bond forfeiture file that was assigned Cause No. 90744.”

Tabitha Smith  
Affiant

SWORN TO AND SUBSCRIBED before me on the 14<sup>th</sup> day of March, 2016.



D'Andra L. Royse  
Notary Public, State of Texas



STATE OF TEXAS

EXTRADITION APPEARANCE BOND

COUNTY OF ELLIS

Know All Men by These Presents:

That we, William M. WINDSON as PRINCIPAL, and other subscribers hereto as Surety, are held and firmly bound unto the State of Texas in the penal sum of \$ 100,000.00 ~~PR~~ Dollars, and in addition, we are bound for the payment of all necessary and reasonable fees and expenses incurred by any and all Sheriffs and other Peace Officers in re-arresting the Principal in the event the conditions of the bond are violated. For the payment of which sum or sums, well and truly to be made, each of us do bind ourselves, our heirs, executors, and administrators, jointly and severally by these present.

The conditions of the above obligation is such that whereas the above named principal stands charged with OUT OF STATE FELONY AND MISDEMEANOR OFFENSES FROM THE STATE OF MONTANA, duly presented in the DISTRICT Court of ELLIS COUNTY, Texas, to wit: EXTRADITION HEARING FOR STATE OF MONTANA. Additional terms of release are attached to the bond.

Now if the above named principal shall well and truly make his appearance before said court INSTANTER, or upon notice of the court and further shall well and truly make his personal appearance before any Court or Magistrate to which said charge may be transferred or before whom this cause may hereafter be pending at any time when, and any place where his presence may be required under the Code of Criminal Procedure of the State of Texas or by any Court or Magistrate, and for all subsequent proceedings had relative to said charge and there remain from day to day and term to term until discharged by due course of law, then and there to answer the said accusations against him, then this obligation shall become null and void; otherwise to remain in full force and effect.

CASH BOND: Following the disposition of this case, any monies not held by the court will be paid to the person in the name of whom a receipt was issued, or to the defendant, if no other person is able to produce a receipt for the funds.  PR Bond in the amount of one hundred thousand dollars -

Signed and dated on this 19 day of December, 2014.

<u>William M. Windson</u> Principal's Signature or Mark	_____ Surety's Signature
<u>William M. WINDSON</u> Principal's Printed Name	_____ Printed Name of Surety/Licensed Surety Company
<u>1000 S. SHERMAN</u> Principal's Permanent Address	_____ Surety's Mailing Address
<u>RICHARDSON TX 75081</u> City State Zip	_____ City State Zip
<u>774 578-1094</u> Principal's Telephone Number	<u>( )</u> Surety's Telephone Number
Taken and approved this <u>19</u> day of <u>Dec</u> <u>Johnny Brown</u> , 20 <u>14</u> Sheriff of Ellis County, Texas.	Defendant/Principal's Information: Race: <u>W</u> Sex: <u>M</u> DOB: <u>10-2-1948</u>
By <u>[Signature]</u> #213 Deputy	Place of Birth: <u>COLUMBUS, GEORGIA</u>
<u>Cheri Lujan</u> Bond Received By	Date of Arrest: <u>10-28-2014</u>
<u>James Cook</u> Principal's Signature Witnessed By	Arresting/Detaining Agency: <u>ELLIS COUNTY SHERIFF'S DEPT.</u>
<u>Cheri Lujan</u> Principal Released from Custody By	Warrant # _____
	CASH <input type="checkbox"/> BOND NUMBER SURETY NAMED HEREIN HAS COLLATERAL IN THE AMOUNT INDICATED AND, IF SUBMITTED FOR APPROVAL, I WOULD ACCEPT SAME.
	JOHNNY BROWN, SHERIFF ELLIS COUNTY TEXAS
	By <u>Cheri Lujan</u>

14-158  
CAUSE NO. EX14-19

FILED FOR RECORD  
2014 DEC 30 PM 2:52

STATE OF TEXAS

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IN THE DISTRICT COURT  
40<sup>TH</sup> JUDICIAL DISTRICT  
443<sup>RD</sup> JUDICIAL DISTRICT  
ELLIS COUNTY, TEXAS

vs.

William Windsor

ELLIS COUNTY, TEXAS

**CERTIFICATION OF CALL**

On this the 30 day of December, 20 14, pursuant to the order of this Court and as the assigned Bailiff of the Court on said date, I did proceed to call three times, loudly and distinctly, the name of the defendant in the above entitled and numbered cause outside the doors of the Courtroom. A reasonable time was given after such call was made in which to appear, but the defendant did not answer or appear.

Ralph A. Golden  
Signature

Ralph A. Golden  
Printed Name

Deputy/Bailiff  
Title

01:55 AM/PM  
Time

Rev 11/2014



CERTIFIED A TRUE COPY  
MELANIE REED  
District Clerk, Ellis County, Texas  
ATTEST: 1-14-16 pgs. 1  
Melanie Reed Deputy



CIVIL CAUSE NO. 90744

and EX 14-19

THE STATE OF TEXAS

Criminal Cause No. 14-158

VS.

FILED FOR RECORD

IN THE DISTRICT COURT

William M. Windsor  
(Defendant/Principal) Surety

2014 DEC 30 PM 2:52

ELLIS COUNTY, TEXAS

and

MELANIE REED  
DISTRICT CLERK  
ELLIS COUNTY, TX

\_\_\_\_\_

443<sup>RD</sup> JUDICIAL DISTRICT

(Surety)

**JUDGMENT NISI**

On December 30, 2014, the Court called for hearing the foregoing cause wherein William M. Windsor, Defendant stands charged by indictment with the felony offense of extradition hearing for State of Montana, as more fully set out and alleged in said instrument. The State of Texas appeared by its County and District Attorney. But the defendant, although duly bonded as directed by law, to appear and be present herein, came not, but failed and defaulted to appear and answer the foregoing charge, when this case was called for consideration. Whereupon, under direction of the Court, said defendant was distinctly called at the Courthouse door, and a reasonable time allowed for said defendant to respond to said call.

It appears to the Court, premises considered, that said defendant, as principal and Surety, d/t/a December 19, 2014, duly sign a written bond, on file in this cause, binding themselves by the terms thereof, for the personal appearance of said defendant to answer the above offense in this Court, at the above time and place. That said bond, conditioned according to the provisions therein contained, was made payable to the State of Texas, in the penal sum of \$ 100,000.00 and expressly provided that said defendant personally appear before this Court, at the Courthouse thereof, in Waxahachie, Texas, at the particular time set out in said bond, namely instanter, and there remain, and appear before this Court, and any other Court and Magistrate.

Said bond further provided that the foregoing principal and surety, agreed to pay all necessary and reasonable expenses incurred by any and all Sheriffs and other Peace officers in re-arresting said defendant, if required.

That said bond appears to be regular on its face, and sufficiently obligated the defendant to be present at the aforesaid time and place, but said defendant has failed and defaulted to appear and answer said charge herein, when required to do so when this cause was called for hearing; and that said bond should be forfeited against said defendant and surety as directed by law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that said bond be forfeited against said principal and surety, and that the State of Texas do have and recover judgment against said principal and surety, jointly and severally, for all necessary and reasonable expenses that may be incurred and occasioned by all Sheriffs and other Peace Officers in re-arresting said defendant.

IT IS HEREIN FURTHER ORDERED AND DECREED by the Court that this judgment be made final against said principal and surety at a hearing set by the Court for said purpose after said principal and surety have been duly cited, as directed by law, to appear and answer herein, and to present legal defense, if any, they may be able to offer, sufficient to exonerate the foregoing principal and surety from being liable for the forfeiture of said bond.

~~IT IS FURTHER ORDERED that an alias capias be issued for the re-arrest of the defendant. No bond is to be set on this case.~~

SIGNED this 30 day of December, 2014.

*[Signature]*  
JUDGE PRESIDING

(Revised 11/2014)

CERTIFIED A TRUE COPY

Dist. 14 1 pgs 1  
Melanie Reed Deputy

