

Information & Instructions: Summary judgment

PREVIEW

1. The purpose of a Summary Judgment is to expedite the collection process and avoid the expense and delay of a trial. Summary Judgments are most commonly obtained in breach of contract and sworn account matters.

2. In order to obtain a Summary Judgment, TRCP 166A must be complied with. There must be an absence of any disputed material fact questions. Proper service must have been obtained upon defendant.

3. If the defendant does not file verified pleadings but files a general denial, Summary Judgment may generally prevail. Summary Judgment may also prevail in a suit for a promissory note or breach of contract if no defense is offered or affirmative pleadings are not properly pled and filed. The promissory note should be attached to an affidavit and incorporated into the Motion for Summary Judgment.

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4. Procedure

a. Complete the proper forms.

b. Obtain the necessary affidavits and include the documents necessary to support the Summary Judgment.

c. File the above with the court.

d. Give 21 days notice of the Summary Judgment hearing to the opposing counsel.

THIS DOCUMENT

Form: Plaintiff's motion for summary judgment

CAUSE NUMBER _____

[Name],
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.

[Name],
DEFENDANT

OF [NAME], COUNTY, TEXAS

THANK YOU

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

[Name of plaintiff], "Plaintiff," files this Motion for Summary Judgment and states to the court that this motion should be granted for the following reasons:

1. PARTIES

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1.1 Movant is the Plaintiff in the above-styled suit.

1.2 This Motion is against [name of defendant], Defendant. Defendant has been served according to law and entered an appearance in this suit by and through [his or her] attorney of record.

2. NATURE OF ACTION

2.1 Plaintiff's cause of action is for the breach of a [specify instrument, such as a contract, promissory note, or unpaid sworn account], plus interest, attorney fees, and costs of court as pleaded in Plaintiff's Original Petition which is on file in this cause. Plaintiff incorporates by reference the petition as if the same was duly recited verbatim at length in the motion.

3. GROUNDS PLEASE DO NOT COPY

3.1 Plaintiff's Motion for Summary Judgment embraces its entire claim against the Defendant.

3.2 The affidavit attached in Exhibit "B" shows as a matter of law that Plaintiff is entitled to a Judgment against Defendant in the amount of \$[Amount], since Plaintiff has delivered the goods or services to Defendant as set forth in Exhibit "A".

3.3 As supported by the Affidavit in Exhibit "B", the monies owed to the Plaintiff were agreed to by the Defendant, and these monies are the usual and customary price for similar goods or services. Furthermore, the monies have not been paid to the Plaintiff by the Defendant even though Plaintiff has made demand on the Defendant to pay the same.

THIS DOCUMENT IS FOR ATTORNEY FEES

4.1 Due to the Defendant's refusal to pay the Plaintiff the monies referred to in Exhibit "A", Plaintiff has been required to employ the services of [name of attorney], an attorney licensed with the State of Texas.

4.2 Plaintiff is entitled to recover reasonable attorney fees pursuant to Civil Practice & Remedies Code, Section 38.001, et seq., 31.004, 31.005, 105.001 et seq. because the Plaintiff presented its claim to the Defendant more than thirty (30) days before judgment will be entered in this cause.

4.3 Attached in Exhibit "C" is the Affidavit of [name of attorney] which shows as a matter of law that Plaintiff is entitled to recover \$[Amount] in reasonable attorney fees in this cause.

THANK YOU

PRAYER

Plaintiff requests that:

1. This matter be set for a hearing twenty-one (21) days after the Defendant receives notice of this Motion and appropriate completion of any hearings.

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2. The Court grant Plaintiff's Motion for Summary Judgment against [name], Defendant;

3. Plaintiff be awarded a Judgment against the Defendant for \$[Amount] on the debt owed to the Plaintiff. If the Court finds facts which are controverted, Plaintiff requests the Court grant plaintiff a Partial Summary Judgment which specifies those facts that are without substantial controversy;

4. Plaintiff be awarded attorney fees against the Defendant in the amount of \$[Amount]. Plaintiff prays in the alternative that, the court set and hold a hearing on the matter of the attorney fees immediately after the Summary Judgment hearing. Plaintiff further prays the Court thereafter enter an order stating the amount of attorney fees to be awarded to Plaintiff;

5. Plaintiff be awarded prejudgment interest against the Defendant in the amount of \$[Amount];

6. Plaintiff be awarded post judgment interest against Defendant at the rate \$[Amount] percent ([Amount] %) from the date of Judgment until the entire Judgment is paid in full;

7. Plaintiff be awarded _____ for reimbursement of costs expended in this cause by Plaintiff; and,

8. Plaintiff be awarded any other and further relief, special or general, legal or equitable, to which Plaintiff may be justly entitled.

THIS DOCUMENT Respectfully Submitted,

[Law Firm Name]

By _____

[Attorney's Name]

Attorney for [Plaintiff, Defendant or Movant]

[Attorney's Address]

[Telephone Number]

[Facsimile Number]

[Bar Card Number]

THANK YOU

Form: Affidavit for attorney fees

EXHIBIT "C"

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AFFIDAVIT FOR ATTORNEY'S FEES

The State of Texas
County of _____

PREVIEW

Before me, the undersigned authority, on this day personally appeared [name of attorney], who being by me duly sworn did state as follows:

1. My name is _____ and I have personal knowledge of the facts set out in this Affidavit. I am making this Affidavit in support of Plaintiff's Motion for Summary Judgment in Cause no. entitled [style of the case], which is currently pending in the [court designation] Court of [Name of County], Texas.

2. I am a duly licensed attorney in the State of Texas and I practice in the Courts of this county. I have appeared as attorney of record in cases similar to this one in which attorney fees have been awarded by the Court on a Motion for Summary Judgment. I am also familiar with the attorney fees customarily awarded by the Courts of this county.

3. On _____ more than thirty (30) days prior to the hearing of this suit, written demand was made upon Defendant for payment of the indebtedness forming the basis of Plaintiff's cause of action. Because of Defendant's failure to pay as demanded, Plaintiff retained the firm of [name] to file this suit and collect from Defendant the debt owing to Plaintiff. This is an action based upon a claim for monies owed to Plaintiff by Defendant for certain [specify basis, such as: goods, wares, merchandise and/or services] which were sold to defendant at the usual, customary and reasonable price and for which Defendant failed to pay, although Defendant had promised to pay Plaintiff for the same. Accordingly, Plaintiff has requested recovery of reasonable attorney fees according to Civil Practice & Remedies Code, Sections 38.001, et seq., 31.004, 31.005, 105.001 et seq. According to the requirements of these sections, Plaintiff did make a written demand on Defendant for payment of the sums on which this lawsuit is based more than thirty (30) days prior to the execution of this Affidavit.

4. I have read Civil Practice & Remedies Code, Sections 38.001, et seq., 31.004, 31.005, 105.001 et seq. which state: "any person, corporation, partnership, or other legal entity having a valid claim against a person or corporation for services rendered, labor done, material furnished, overcharges on freight or express, lost or damaged freight or express, or stock killed or injured or suits founded upon a sworn account or accounts, or suits founded on oral or written contracts, may present the same to such persons or corporation or to any duly authorized agent thereof; and if at the expiration of thirty (30) days thereafter, payment for the just amount owing has not been tendered, the claimant may, if represented by an attorney, also recover, in addition to this claim and cost, a reasonable amount of attorney's fee."

5. On _____ Plaintiff employed me to collect the claim on which this suit is based. Between then and the date of this Affidavit, I have performed _____ hours of work on this matter, including doing or causing to be done the following:

a. Review of client's file in this matter;

b. Opening a litigation file in this law office;

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PREVIEW

- c. Preparing and sending out a demand letter;
- d. [If applicable: Checking with 'doing business as' records at the County Courthouse;]
- e. [If applicable: Checking with the Secretary of State's office regarding the possibility of incorporation;]
- f. Preparing and filing the Plaintiff's Original Petition;
- g. Numerous telephone calls and other communication required in the exercise of due diligence to obtain service of process on the Defendant;

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- h. Receiving and analyzing Defendant's Original Answer;
- i. Communication with Plaintiff regarding the status of the case and possible acceptance of offers of settlement; numerous telephone calls to the parties and/or their attorneys in this matter which may have included but were not limited to proposed settlement offers and possible acceptance by Plaintiff;
- k. Preparation of Plaintiff's Motion for Summary Judgment;
- l. Preparation of a Summary Judgment Affidavit;
- m. Preparation of an Affidavit for attorney fees; and
- n. Appearance in court to argue Motion for Summary Judgment.

THIS DOCUMENT

6. Due to the amount in controversy, the nature of this case, the amount of time spent in this cause, and due to the probability that once a judgment is awarded, additional services may be required in order to secure payment, it is my opinion that reasonable attorney fees in this case total at least \$[Amount].

[Law Firm Name]

By
THANK YOU

[Attorney's Name]

[name of attorney], being by me duly sworn upon [his or her] oath states that [he or she] is the attorney for Plaintiff in the above cause, that [he or she] has personal knowledge of the facts set forth in the foregoing Affidavit and is duly authorized to make such Affidavit, and that all of the facts stated in the Affidavit are true and correct.

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State of Texas

County of [County Name]

PREVIEW

Subscribed and sworn to before me on _____ by [Name]

Signature of officer

Notary's typed or printed name

My commission expires:

[of Notary's Stamp]

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Form: Affidavit in support of plaintiff's motion for summary judgment

EXHIBIT "B"

AFFIDAVIT IN SUPPORT OF

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The State of Texas
County of _____

THIS DOCUMENT

Before me, the undersigned authority, on this day personally appeared the undersigned Affiant, who, being by me duly sworn, on oath stated:

1. My name is [Name]. I am at least eighteen years of age, of sound mind, capable of making this affidavit, and fully competent to testify to the matters stated herein, and I have personal knowledge of each of those matters stated.

2. I am presently employed by [name of employer], Plaintiff, in the capacity of [specify], and I have been so employed since [date]. As part of my duties in that employment, I am custodian of the business records of Plaintiff which includes the records applicable to Defendant in this cause of action.

THANK YOU

3. Attached to this motion as Exhibit "A" is a copy of the statement of Defendant's account with Plaintiff, which copy is a true and correct duplicate of the original. The attached exhibits are incorporated into this affidavit as if set out verbatim. In the usual course of business, Plaintiff furnished to Defendant certain goods, wares, merchandise or services, as described in Exhibit "A" of this motion. Defendant accepted the goods, wares, merchandise or services.

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4. Each record was kept by Plaintiff in the regular course of business. It was the regular course of the Plaintiff's business for the Plaintiff, or an employee or representative of Plaintiff, with personal knowledge of the act, event, or condition recorded, to make the record or to transmit information to be included in that record.

5. Each record attached to this affidavit was made at or near the time of the act, event, or condition recorded or reasonably soon thereafter and each copy attached is an exact duplicate of the original record, and each copy was made under my personal supervision.

6. "Exhibit "A" to this motion describes each item delivered or the services provided, the price of each item or service, and the date each item or service was provided to Defendant.

7. The price of each item, as stated in Exhibit "A" of this motion was the usual and customary price for that item and was agreed to by Defendant.

8. Defendant has defaulted in paying this account. The balance of the account as stated in Exhibit "A" of this motion is the amount owed to the Plaintiff by the Defendant after every just and lawful offset, credit, or payment has been allowed.

9. On _____ Plaintiff demanded that Defendant pay the monies owed to Plaintiff. Defendant has not paid the monies owed to Plaintiff.

10. As a result of Defendant's failure to pay to Plaintiff the monies owed, Plaintiff has been forced to employ [name], a licensed attorney, to file suit against Defendant.

THIS DOCUMENT

Affiant's Signature

State of Texas
County of [County Name]

Affiant on oath swears that the statements are true and correct based on his or her personal knowledge and Affiant has:

Subscribed and sworn to before me on _____ by [Name]

THANK YOU

Signature of officer

Notary's typed or printed name

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My commission expires.

PREVIEW

[Notary Stamp]

Form: Notice of hearing

NOTICE OF HEARING

On _____, Plaintiff's Motion for Summary was brought before this Court to be considered; it is therefore,

ORDERED by this Court that this cause be set for hearing at _____ [time] on

_____, date at which time the Court will hear and rule on Plaintiff's Motion for Summary Judgment.

Signed on _____.

JUDGE PRESIDING

CERTIFICATE OF SERVICE

THIS DOCUMENT

I certify that a true and correct copy of the foregoing Motion for Summary Judgment, attachments, and Notice of Hearing has been served upon all attorneys of record and any parties who are not represented by an attorney on _____.

Attorney for: [Other attorney's client's name]
Attorney's name: [Other attorney's name]
Attorney's address [Other attorney's address]

Type of Service:

- ___ U.S. Mail, Certified Return Receipt Request No. _____
- ___ U.S. Mail, First Class.
- ___ Hand delivery by [name of delivery service]: _____
- ___ Facsimile transmission to _____ [fax number] before 5 p.m.

THANK YOU

[Attorney's signature]

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Form: Summary judgment order

PREVIEW
CAUSE NUMBER _____

[Name],
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.

[Name],
DEFENDANT

OF [NAME], COUNTY, TEXAS

FINAL SUMMARY JUDGMENT

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In the Court heard the Plaintiff's Motion for Summary Judgment; and the Plaintiff and Defendant respectively appeared by and through their attorneys of record.

The Court, having examined the pleadings on file and the summary judgment evidence, finds that no genuine issues of fact exist and Plaintiff is entitled, as a matter of law, to summary judgment in its favor. It is therefore,

Ordered, Adjudged and Decreed that the Plaintiff,[name], have and recover of and from the Defendant,[name], judgment as follows:

THIS DOCUMENT

1. The sum of \$[Amount];
2. Prejudgment interest in the amount of \$[Amount], at the rate of [Amount] percent per annum from [date] through [date];
3. Post judgment interest at the rate of [Amount] percent per annum from the date of judgment until paid;
4. Court costs; and **THANK YOU**
5. Attorney fees in the amount of \$[Amount];

for all of which let execution issue if not timely paid.

PREVIEW

JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE:

[Law Firm's or Attorney's Name]
Attorney for [Plaintiff or Defendant]
[Address]
[Telephone & facsimile numbers]
Texas Bar no. [Number]

APPROVED AS TO FORM AND SUBSTANCE:

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[Law Firm's or Attorney's Name]
Attorney for [Plaintiff or Defendant]
[Address]
[Telephone & facsimile numbers]
Texas Bar no. [Number]

THIS DOCUMENT

THANK YOU

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