

544 S.W.2d 841  
(Cite as: 544 S.W.2d 841)


Court of Civil Appeals of Texas,  
Texarkana.  
Donald CARROLL, Appellant,  
v.  
Robert K. KNICKERBOCKER, and Keats and As-  
sociates, Appellees.

No. 8417.  
Dec. 14, 1976.  
Rehearing Denied Jan. 4, 1977.

Tenant brought suit for damages against land-  
lord. The County Court at Law No. 4, Dallas  
County, Robert E. Day, J., granted summary judg-  
ment for landlord and tenant appealed. The Court of  
Civil Appeals, Chadick, C.J., held that landlord  
failed to prove there was no genuine issue as to any  
material fact.

Reversed and remanded.

West Headnotes

**[1] Judgment 228**  **185(2)**

228 Judgment


228V On Motion or Summary Proceeding

228k182 Motion or Other Application

228k185 Evidence in General

228k185(2) k. Presumptions and Bur-  
den of Proof. [Most Cited Cases](#)

Burden is on movant for summary judgment to  
prove that there is no genuine issue as to any mater-  
ial fact and that movant is entitled to judgment as a  
matter of law. Rules of Civil Procedure, rule  
166–A.

**[2] Judgment 228**  **185.3(14)**

228 Judgment

228V On Motion or Summary Proceeding

228k182 Motion or Other Application

228k185.3 Evidence and Affidavits in  
Particular Cases

228k185.3(14) k. Landlord and Ten-  
ant. [Most Cited Cases](#)

Landlord sued for damages for unlawful evic-  
tion failed to sustain burden on its motion for sum-  
mary judgment to prove that there was no genuine  
issue as to any material fact. Rules of Civil Proceed-  
ure, rule 166–A.

**\*841** Michael M. Daniel, Dallas Legal Services  
Foundation, Inc., Dallas, for appellant.

Daniel J. Sheehan, Jr., Wynne & Jaffe, Dallas, for  
appellees.

CHADICK, Chief Justice.

This is an appeal from a judgment in a suit for  
damages by a tenant against his landlord. The ten-  
ant grounds his right to recovery on unlawful evic-  
tion. Summary judgment was entered that the tenant  
take nothing and he has appealed. The judgment of  
the trial court is reversed and the case is remanded  
for a new trial.

Donald Carroll, the tenant, was plaintiff below  
and is appellant here. Robert K. Knickerbocker and  
Keats and Associates, a corporation alleged to be  
wholly owned by Knickerbocker, were defendants  
below and are now appellees. Keats and Associates  
and Knickerbocker will hereafter be referred to col-  
lectively as Keats.

[1] Carroll's first point of error is that Keats'  
motion for summary judgment failed **\*842** to meet  
a movant's burden of proof in a summary judgment  
proceeding. The burden on a movant is to prove  
that there is no genuine issue as to any material fact  
and that the movant is entitled to judgment as a  
matter of law. [Adam Dante Corporation v. Sharpe](#),  
483 S.W.2d 452 (Tex.1972); Tex.R.Civ.P. 166—A;  
4 McDonald's, Texas Civil Practice, Sec. 17.26.2 .  
Keats' motion is grounded primarily upon the facts  
alleged in this paragraph, to-wit:

'There has been no eviction of Plaintiff by

544 S.W.2d 841  
(Cite as: 544 S.W.2d 841)

either Defendant, as a matter of law, since the Plaintiff occupied the premises on a month to month tenancy, and Defendant gave notice of its intention to terminate the tenancy in the required length of time prior to June 15, 1974, at which time Plaintiff vacated the premises in accordance with an agreed order.'

[2] Reasonably construed the paragraph sets out as a fact that certain notice had been given and that Carroll vacated the premises in accordance with an agreement. There is no proof in the record of either of these material facts. The motion for summary judgment is unsworn and no affidavit, deposition, admission or other extrinsic evidence supporting the facts is found in the record. Keats, as movant, offered no evidence. Carroll did not move for summary judgment or by pleadings or otherwise admit the factual allegations of Keats' motion. In the absence of proof of these material facts there is no basis for a judgment of Keats on the whole case. [Gibbs v. General Motors Corporation, 450 S.W.2d 827 \(Tex.1970\)](#); [Best Investment Company v. Francis, 453 S.W.2d 893 \(Tex.Civ.App. Eastland 1970, writ ref'd n.r.e.\)](#); 4 McDonald's Texas Civil Practice, Sec. 17 .26.2. Alternative grounds for summary judgment on the whole case stated in Keats' motion are also without merit for reasons similar to those discussed.

The record does not present a matured summary judgment case. There is no summary judgment evidence of the facts noticed nor of the factual allegations of either party's pleadings. Neither are Carroll's pleadings tested by a summary judgment motion directed solely thereto. Carroll's first point of error is sustained and the judgment of the trial court is reversed and the case remanded for new trial.

Tex.Civ.App., 1977.  
Carroll v. Knickerbocker  
544 S.W.2d 841

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