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(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

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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.

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