

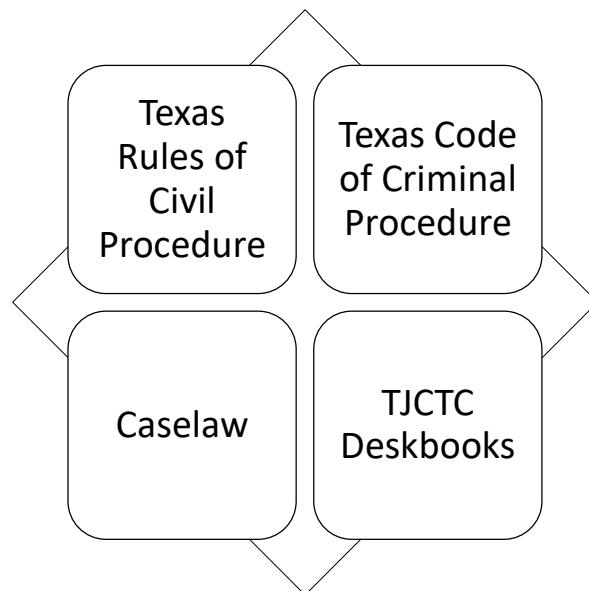
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Center

A Motion for What?!

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Resources



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What will we
learn
or discuss?

Motions with the **wrong name**

Motions for **other courts** that get filed in
Justice Court

What kind of **relief** is the party asking for?

Legitimate or frivolous?

How can we **communicate better** with
attorneys and SRLs?

How can **technology** help?

Most of the motions apply to **CIVIL CASES**, but
some will also apply to **CRIMINAL CASES**

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Example 1:

ABC Servicing, LLC

vs.

May Winter

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Example 1

ABC Servicing, LLC, Plaintiff § IN THE JUSTICE COURT
 §
 §
 v. § PRECINCT NO. 1
 §
 §
 May Winter, Defendant § CAPITAL COUNTY, TEXAS
 §

MOTION FOR JUDGMENT NIHIL DICIT

COMES NOW ABC SERVICING, LLC, Plaintiff in the above-numbered cause, by and through attorney, John Doe, and requests the court render judgment nihil dicit for the Plaintiff.

1. Parties

Movant is the Plaintiff in the above-styled suit.

This Motion is against May Winter, Defendant. Defendant has been served according to law on October 25, 2019 and entered an appearance in this suit on November 5, 2019.

2. Nature of Action

Plaintiff's cause of action is for the breach of a contract, 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 this motion.

3. Grounds

Plaintiff's Motion for Judgment Nihil Dicit embraces its entire claim against Defendant.

The Defendant's Answer, dated 11/5/2019, shows as a matter of law that Plaintiff is entitled to a judgment against Defendant in the amount of \$2,150.00, since the Plaintiff has delivered goods and services to Defendant as set forth in Exhibit A-1 to the Plaintiff's Original Petition, incorporated herein.

The Defendant admitted that she owes Plaintiff \$2150.00 for air conditioner repair services and parts provided at her residence on August 5, 2018. 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.

4. Attorney's Fees

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 John Doe, an attorney licensed with the State of Texas.

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.

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

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 upon completion of this hearing;
2. The Court grant Plaintiff's Motion for Judgment Nihil Dicit against May Winter, Defendant;
3. Plaintiff be awarded a Judgment against the Defendant for \$2150.00 on the debt owed to the Plaintiff;
4. Plaintiff be awarded attorney fees against the Defendant in the amount of \$750. Plaintiff prays in the alternative that the court set and hold a hearing on the matter of the attorney fees immediately. Plaintiff further prays the Court thereafter enter an order stating the amount of attorney fees to be awarded to Plaintiff;
5. Plaintiff be awarded post judgment interest against Defendant at the rate five percent (5%) from the date of judgment until the entire judgment is paid in full;
6. Plaintiff be awarded any other and further relief, special or general, legal or equitable, to which Plaintiff may be justly entitled.

Respectfully Submitted,



By:
 John Doe
 Texas Bar No. XXXXXXXX
 Doe & Doe LLP,
 1 Row
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 (123) 456-1111
 (123) 456-1110 (fax)
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ATTORNEY FOR THE PLAINTIFF

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What Would You Do?!

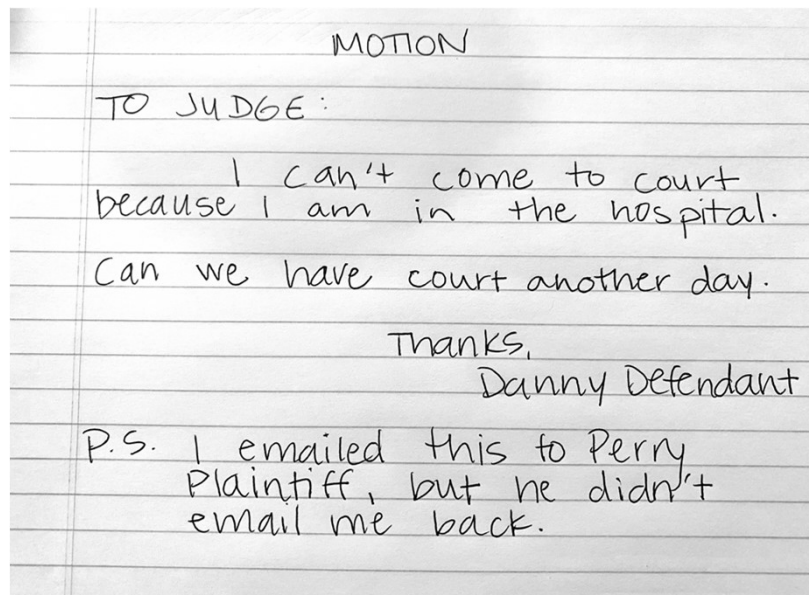
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Example 2:

Perry Plaintiff
vs.
Danny Defendant

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Example 2

A photograph of a handwritten note on lined paper. The text is written in black ink and reads: "MOTION", "TO JUDGE:", "I can't come to court because I am in the hospital.", "Can we have court another day.", "Thanks,", "Danny Defendant", and "P.S. I emailed this to Perry Plaintiff, but he didn't email me back."/>

MOTION

TO JUDGE:

I can't come to court
because I am in the hospital.

Can we have court another day.

Thanks,
Danny Defendant

P.S. I emailed this to Perry
Plaintiff, but he didn't
email me back.

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What Would You Do?!

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Judgment Nihil Dicit	Civil Cases
	Nihil dicit is Latin for “he says nothing”
	Plaintiff may ask for it if the Defendant filed an answer, but didn't raise any defenses or deny Plaintiff's allegations

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Example:

Debt claim Defendant files an answer that says, "Yes. I owe the Plaintiff the money that they are suing me for, but I lost my job and can't pay. Please dismiss this case." The Plaintiff files a motion for judgment Nihil Dicit.

What do you do?

1. Dismiss the Case

2. Set for a hearing

3. Enter a default judgment

4. Enter judgment for the Plaintiff

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While the Case is Pending...

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Dismissal with or without prejudice?

- Most dismissals should be WITHOUT PREJUDICE
 - Want of prosecution
 - Plaintiff files a non-suit
- A dismissal WITH PREJUDICE
 - The Court has decided the case on the **actual merits**
 - This might happen rarely if a case has been dismissed for want of prosecution over and over

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Summary Disposition (Summary Judgment)

Civil cases

Way to decide case without a trial

One of three situations:

- No genuinely disputed facts that would prevent a judgment in favor of the party
- No evidence of one or more essential elements of a defense which the defendant must prove to defeat the plaintiff's claim
- No evidence of one or more essential elements of the plaintiff's claim

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Summary Disposition

Who can file?

1. Plaintiff
2. Defendant
3. Both

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Summary Disposition

Motion must be on file for 14 days before court rules

Must be a hearing *unless* both parties agree

Judge can consider evidence at the hearing

Can be for all or part of a case

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The Case Settles Out of Court

Now what?!

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Motion for Agreed Judgment



**Both parties
agree**



Or do they?



**Read the
motion!!!**

*Save yourself (and your
clerk) a Nunc!*

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Motion for Nonsuit

- A voluntary request for a case to be dismissed by the plaintiff
- Usually the result of a settlement or the defendant paying the claim
- Only civil cases
- Without prejudice

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What if the Plaintiff files a “Motion to Dismiss” and attaches a written Settlement Agreement?

01

Consider it a “Motion for Non-Suit,” and dismiss the case.

02

Ignore it.

03

Put it in the file until the next court date.

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Post-Judgment Motions

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Nunc Pro Tunc

Means "Now for Then"

To make the judgment match what was ruled in court

To correct CLERICAL ERRORS not judicial errors

- **Usually a typo**
- "a discrepancy between the entry of a judgment in the record and the judgment that was actually rendered by the court and does not arise from judicial reasoning or determination." *In re A.M.C.*, 491 S.W.3d 62, 67 (Tex. App.—Houston [14th Dist.] 2016, no pet); see *Cohen v. Midtown Mgmt. Dist.*, 490 S.W.3d 624, 627 (Tex. App.—Houston [1st Dist.] 2016, no pet.)
- A court can only alter a judgment to conform with the judgment rendered actually was, NOT to correct what should or might have been.

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Does the Nunc Pro Tunc Change the date of the judgment?

- NO! The original judgment date stays in place.

Is a Nunc Pro Tunc a new order or judgment?

- Best Practice: Create a new judgment or order nunc pro tunc rather than notating the change on the original.

Nunc Pro Tunc

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Scenario: Nunc Pro Tunc

A Plaintiff's attorney files a proposed judgment along with his request for a default in a Debt Claim case. The Judge believes that the Plaintiff is entitled to a default, announces the default in court including the standard post-judgment interest, and signs the judgment. The judgment states post-judgment interest of 0.0% rather than the current rate of 5.5%.

1. Can/should this be corrected with a Nunc Pro Tunc?
2. What if this was an agreed judgment proposed by both parties? Does that change your answer?

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Scenario: Nunc Pro Tunc

During a civil docket, the Judge hears a case and renders and announces a judgment in favor of the **Defendant** in Cause Number 1234.

The clerk types up all the judgments from the docket day, and the judge signs the judgments without realizing that the judgment for Cause Number 1234 states that the judge rendered judgment for the **Plaintiff**.

Is this a Nunc Pro Tunc situation?

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Modified Judgment

To fix judicial error rather than clerical error

The judgment states what was ruled in court, but the ruling was wrong.

Examples:

A mistake in an award of prejudgment interest

Stating that the defendant failed to appear and answer when they actually had answered

A dismissal with prejudice instead of without prejudice






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How long is the justice court's plenary power in a civil case?

- a. 30 days
- b. 14 days
- c. 21 days
- d. 7 days

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Motion to Set Aside Judgment

-  Civil cases
-  Rule 505.3(b) → 14 days after default to file
-  Trial court can set aside if "good cause shown"
-  Hearing optional
-  Motion automatically denied if not ruled on 21st day from judgment or dismissal signed

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Motion to Vacate

- No specific rule for this in Justice Court
- Sometimes filed instead of a Motion to Set Aside
- Hearing optional
- Motion automatically denied if not ruled on 21st day from judgment or dismissal signed
- Usually filed because of judicial error or issue with service

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How Do You Figure Out What They Mean?

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1. Read the Whole Motion

Often, the person who wrote the motion just forgot to change the title.

After a few sentences, you will probably know what the party is asking for.

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2. When in Doubt, Google!

This will likely lead you toward the correct answer.

Many times it will give you the statute that you need to look at.

Often you will find a CLE or other article that will help.

Some lawyers (and even SRLs) might just be using fancy or antiquate words (or words incorrectly).

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3. The Rules & Statutes

<https://www.txcourts.gov/rules-forms/rules-standards/>

<https://statutes.capitol.texas.gov/>

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4. TJCTC Resources

Deskbooks

Legal Question Board

Legal Calls

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5. Set it for a Hearing

- Let the parties explain what they are asking for
- You can ask them for any authority or law that they are relying on

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How to Communicate Better

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BE PATIENT.	AVOID LEGALES E.	LISTEN & READ!

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<p>Questions??</p>

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Do you have any
good motions for
this class?



Send them to:
A_M1814@txstate.edu