

IN THE SUPREME COURT OF THE UNITED STATES

NO. 20-1451

TRACY NIXON

PETITIONER

VS.

GENERAL MOTORS CORPORATION

RESPONDENT

CERTIFICATION OF COUNSEL

TRACY NIXON PETITIONER FILES THIS CERTIFICATION OF COUNSEL PRO SE SUPREME COURT RULE 44.2 THAT THIS PETITION FOR REHEARING IS RESTRICTED TO THE GROUNDS SPECIFIED AND ARE LIMITED TO THE INTERVENING CIRCUMSTANCES OF A SUBSTANTIAL OR CONTROLLING EFFECT OR TO OTHER SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED. THE PETITION FOR REHEARING IS PRESENTED IN GOOD FAITH AND NOT FOR DELAY.

RESPECTFULLY SUBMITTED,

*Tracy Nixon*  
4415 S. Ogden/Colfax BND  
Dallas Texas 75215  
469-467-1468

IN THE SUPREME COURT OF THE UNITED STATES

NO. 20-1451

TRACY NIXON

PETITIONER

V.

GENERAL MOTORS CORPORATION

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO  
UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

PETITION FOR REHEARING

TRACY NIXON PRO SE

4415 S, MALCOLM X BLVD

DALLAS TEXAS 75215

469-407-1468

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PETITION FOR REHEARING //////////////// PAGE 1

CONCLUSION ..... 7

TABLE OF AUTHORITIES

APPENDIX A .....THE STATE OF TEXAS SECRETARY OF STATE 2020-312826-1

APPENDIX E ...UNITED STATES COURT OF APPEALS FEDERALCIRCUIT ORDER

APPENDIX F .....UNITED STATES DISTRICT COURT EASTERN DISTRICT ORDER

TABLE OF AUTHORITIES

CASES

CAPITAL BRICK, INC. v. FLEMING Mfg. Co. 722 S.W.2d 399 (1996)

CHRISTIANSON V. COLT INDUS. OPERATING CORP., 486 U.S. 800, 809  
91988

JIM ARNOLD CORP. v. HYDROTECH SYS., INC., 109 f.3d 1567, 1578-79.  
fed.cir.1997

CO-OWNERS v. PARK WARWICK, L.P., 244 S.W.3d 838, 839 Tex.2008

McCabe

ACT, OF 1979, 16 Harv.J. Legis. 343, 364-79 1979

GAYLER v. WILDER 51 U.S. 3 477, 493 1850

STATUTE AND RULES

TEXAS BUSINESS ORGANIZATIONS CODE SECTION 5.251  
SUPREME COURT RULE 44.2

SUPREME COURT RULE 44.1

f.r.c.p. 4e(1) f.r.c.p.(a)(h)

TEX.CIV.PRAC. & REM.CODE.17.044(a)

TEX.BUS.CORP.ART.8,10

28 U.S.C. § 636 (b)(1)(A)

TEX.CIV.REM.CODE. § 17.044

28 U.S.C. 1295(a)(1)

28 U.S.C. § 1338

F.R.A.P. 25

PETITION FOR REHEARING

PURSUANT TO RULE 44.1 OF THIS COURT , PETITIONER TRACY NIXON,  
RESPECTFULLY PETITIONS FOR A REHEARING OF THE DENIAL OF A WRIT  
OF CERTIORARI TO REVIEW THE JUDGMENT OF THE UNITED STATES  
DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS.

THE ORIGINAL PETITION FOR WRIT OF CERTIORARI ASKED THIS COURT TO  
RESOLVE FIVE ISSUES WHETHER THE U.S. DISTRICT COURT JUDGE COMMIT  
AN ERROR IN DECISION ADOPTING THE U.S. MAGISTRATE JUDGES ORDER  
SIGNED ON JUNE 11, 2020 PETITIONER SUBMITTED APPENDIX (F) AS  
EVIDENCE., AND ASKS WHETHER APPENDIX (A) RELIED ON AS EVIDENCE  
WAS THE RESPONDENT PROPERLY SERVED ACCORDING TO FEDERAL RULES OF  
CIVIL PROCEDURE 4(a)(h)., FRCP 4(e)(1)...

WHETHER RESPONDENT GMC REGISTERED AS A FOREIGN CORPORATION IN  
TEXAS UPON IT FAILED TO MAINTAIN A REGISTERED AGENT ENTITLED  
PETITIONER TO DEFAULT JUDGMENT. WHETHER THE METHOD OF SERVICE ON  
RESPONDENT ACCORDING TO APPENDIX (A) WAS IN ACCORDANCE WITH SER-  
VICE ON A NONRESIDENT BY THE TEXAS.CIV.PRAC. & REM. CODE.  
17.044(a).,

2005 TEXAS BUSINESS CORPORATION ACT ARTICLE 8,10

WHETHER THE APPENDIX (A) ALLOW THE FEDERAL COURT TO EXERCISE  
PERSONAL JURISDICTION OVER RESPONDENT.

WHETHER AFTER CLERKS ENTRY OF DEFAULT JUDGMENT WAS THE COURT  
REFUSAL TO ISSUE DEFAULT JUDGMENT A UNFAIR PREJUDICE TO THE PETITIONER.  
IN THE PETITION FOR WRIT OF CERTIORARI PETITIONER ATTACHED APPEN-  
DIX(F) TO THE PETITION FOR THE UNITED STATES SUPREME COURT TO  
RELY ON APPENDIX(F) IS THE ORDER THAT THE UNITED STATES DISTRICT  
COURT FOR THE EASTERN DISTRICT OF TEXAS MARSHALL DIVISION  
MAGISTRATE JUDGE ROY S. PAYNE DESIGNED THAT DENIED ON JUNE 11,  
2020 PETITIONERS REQUEST FOR DEFAULT JUDGMENT AFTER THE UNITED  
STATES DISTRICT CLERK ENTRY OF DEFEAULT JUDGMENT THE ORDER WAS  
ADOPTED BY THE UNITED STATES DISTRICT COURT JUDGE.  
THE ORDER COMPLAINED OF IS CONTRARY TO THE STANDARDS REQUIRED FOR  
IN THE 2005 TEXAS BUSINESS CORPORATION ACT ARTICLE  
WHAT THE ORDER ESSENTIALLY SAYS IN REFERENCE IS THAT PLAINTIFF  
SEEKS A DEFAULT JUDGMENT PURSUANT TO FEDERAL RULE OF CIVIL PRO-  
DURE 55. PLAINTIFF ATTEMPTED TO SERVE GM THROUGH THE TEXAS  
SECRETARY OF STATE: HOWEVER, PLAINTIFF DID NOT SHOW SUBSTITUTED  
SERVICE WAS ALLOWED.. AND THAT RULE 4 GOVERNS SERVICE IN FEDERAL  
COURTS. A DOMESTIC CORPORATION, LIKE GM, CAN PROPERLY BE SERVED  
IN THE UNITED STATES IN ONE OF TWO WAYS.  
END QUOTE.

THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
TEXAS MARSHALL DIVISION JUDGES HAVE MISINTERPRETED GENERAL MOTORS  
CORPORATION REGISTRY WITH THE STATE SECRETARY OF TEXAS AS A  
DOMESTIC CORPORATION WHEN THE SECRETARY OF STATE OF TEXAS  
BUSINESS SECTION SHOWS IT TO BE REGISTERED AS A FOREIGN CORPORATION  
DOING BUSINESS IN THE STATE OF TEXAS.

FEDERAL RULE OF CIVIL: PROCEDURE 4(e)(1) PROVIDES FOR SERVICE IN THE UNITED STATES MAY OCCUR BY FOLLOWING STATE LAW FOR SERVING A SUMMONS IN AN ACTION BROUGHT IN COURTS OF GENERAL JURISDICTION IN THE STATE WHERE THE DISTRICT COURT IS LOCATED OR WHERE SERVICE IS MADE.

PETITIONER RELIED ON SERVICE TO THE GENERAL MOTORS CORPORATION PURSUANT TO THE 2005 TEXAS BUSINESS CORPORATION ACT ARTICLE 8,10(A)(B) THAT WAS NOT MODIFIED BY THE TEXAS LEGISLATOR SINCE ACTS 1999, 76th Leg., ch. 1481, sec. 41, eff, sept, 1, 1999 AND THE PRIMARY METHOD OF SERVICE OF PROCESS ALLOWED BY THE TEXAS BUSINESS ORGANIZATIONS CODE SECTION 5.251. THE ART. 8,10. REQUIRES SERVICE ON FOREIGN CORPORATION BY

(A) THE PRESIDENT AND ALL VICE PRSEIDENTS OF A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE AND THE REGISTERED AGENT SO APPOINTED BY A FOREIGN CORPORATION SHALL BE AGENTS OF SUCH CORPORATION UPON WHOM ANY PROCESS, NOTICE, OR DEMAND REQUIRED OR PERMITTED BY LAW TO BE SERVED UPON THE CORPORATION MAY BE SERVED.

(B) WHEREVER A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE SHALL FAIL TOP APPOINT OR MAINTAIN A REGISTERED AGENT IN THIS STATE, OR WHENEVER ANY SUCH REGISTERED CANNOT WITH REASONABLE DILIGENCE BE FOUND AT THE REGISTERED OFFICE ,OR WHENEVER THE CERTIFICATE OF AUTHORITY OF A FOREIGN CORPORATION SHALL BE REVOKED, THEN THE SECRETARY OF STATE SHALL BE AN AGENT OF SUCH CORPORATION UPON WHOM ANY SUCH PROCESS, NOTICE, OR DEMAND MAY BE SERVED. SERVICE ON THE SECRETARY OF STATE OF ANY SUCH PROCESS, NOTICE, OR DEMAND SHALL BE MADE BY

DELIVERING TO AND LEAVING WITH HIM, OR WITH ASSISTANT SECRETARY OF STATE, OR WITH ANY CLERK HAVING CHARGE OF THE CORPORATION DEPARTMENT OFFICE, DUPLICATE COPIES OF SUCH PROCESS, NOTICE, OR DEMAND. IN THE EVENT ANY SUCH PROCESS, NOTICE OR DEMAND IS SERVED ON THE SECRETARY OF STATE, HE SHALL IMMEDIATELY CAUSE ONE OF SUCH COPIES THEREOF TO BE FORWARDED BY REGISTERED MAIL, ADDRESSED TO THE CORPORATION AT ITS PRINCIPLE OFFICE IN THE STATE OR COUNTRY UNDER THE LAWS OF WHICH IT IS INCORPORATED. ANY SERVICE SO HAD ON THE SECRETARY OF STATE SHALL BE RETURNABLE IN NOT LESS THAN THIRTY DAYS.

THE PETITIONER FURTHER ASSERTS THAT HE FOLLOWED BY THE PROPER METHOD OF SUBSTITUTED SERVICE ACCORDING TO THE TEXAS CIVIL PRACTICE AND REMEDIES CODE z§ 17.044 SUBSTITUTED SERVICE ON SECRETARY OF STATE (a) THE SECRETARY OF STATE IS AN AGENT FOR SERVICE OF PROCESS OR COMPLAINT ON A NONRESIDENT WHO:

(1) IS REQUIRED BY STATUTE TO DESIGNATE OR MAINTAIN A RESIDENT AGENT OR ENGAGES IN BUSINESS IN THIS STATE, BUT HAS NOT DESIGNATED OR MAINTAINED A RESIDENT AGENT FOR SERVICE OF PROCESS;

ATTACHED TO THE PETITION FOR WRIT OF CERTIORARI IS APPENDIX (A) A TRUE AND CORRECT COPY OF THE STATE OF TEXAS SECRETARY OF STATE 2020-312826-1 OF THE PROPER METHOD OF SERVICE THAT ENTITLED THE PETITIONER TO A DEFAULT JUDGMENT AND HEARING FOR UNLIQUIDATED DAMAGES.

THE PETITIONER FILED NOTICE OF APPEAL FROM THE UNITED STATES DISTRICT COURT MAGISTRATE JUDGES RECOMMENDATION IN THE ACCORDANCE WITH 28 U.S.C. § 636 THE UNITED STATES MAGISTRATE JUDGE WAS DESIGNATED BY THE DISTRICT COURT JUDGE TO HEAR AND DETERMINE PROCEDURAL OR DISCOVERY MOTIONS OR OTHER PRETRIAL MATTERS. PENDING IN THE CIVIL SUIT OTHER THAN THOSE SPECIFICALLY ENUMERATED AS AN EXCEPTION IN 28 U.S.C. § 636 (b) (1) (A) INCLUDING, BUT NOT LIMITED TO THE FOLLOWING



- (1) TO CONDUCT PRELIMINARY AND FINAL PRETRIAL CONFERENCES.
- (2) TO CONDUCT STATUS CALLS AND SETTLEMENT CONFERENCES.
- (3) TO MODIFY A PRE TRIAL ORDER.
- (4) TO SUPERVISE THE CIVIL CALENDAR AND HEAR AND DETERMINE MOTIONS TO POSTPONE OR EXPEDITE THE TRIAL OF A CASE.
- (5) TO DISMISS A COMPLAINT WITH LEAVE TO AMEND;
- (6) TO DENY A MOTION TO DISMISS A COMPLAINT.
- (7) TO ISSUE ORDERS REGARDING DISCOVERY MOTIONS.
- (8) TO SEVER OR TO CONSOLIDATE AN ACTION.
- (9) TO SET ASIDE DEFAULT JUDGMENTS.

ATTACHED TO THE PETITION FOR WRIT OF CERTIORARI IS APPENDIX (E) OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PER CURIAM ORDER THE FEDERAL CIRCUIT HOLDING IS THAT THE JURISDICTION EXTENDS TO CASES IN WHICH A WELL-PLEADED COMPLAINT ESTABLISHES EITHER THAT FEDERAL PATENT LAW CREATES THE CAUSE OF ACTION OR THAT THE PLAINTIFFS RIGHT TO RELIEF NECESSARILY DEPENDS ON RESOLUTION OF A SUBSTANTIAL QUESTION OF FEDERAL PATENT LAW.

CHRISTIANSON v. COLT INDUS. OPERATING CORP., 486 U.S. 800, 809 (1988); 28 U.S.C. § 1338; 28 U.S.C. § 1295(a)(1)

THE CIRCUIT COURT RELIED ITS OPINION ON THE FACT THAT IT HAS BEEN LONG HELD THAT NO SUIT CAN BE MAINTAINED BY THE INVENTOR AGAINST ANY ONE FOR USING THE INVENTION BEFORE THE PATENT IS ISSUED.

CITING GAYLER v. WILDER, 51 U.S. 477, 493 (1850)

AND THUS STATING THAT, ALTHOUGH THE COMPLAINT PURPORTS TO ALLEGE INFRINGEMENT, IT FAILS TO PRESENT A NON-FRIVOLOUS CLAIM ARISING UNDER THE PATENT LAWS AND IS HENCE OUTSIDE OF THE COURTS

LIMITED JURISDICTION. Cf. Jim ARNOLD CORP. v. HYDROTECH SYS., INC., 109 F.3d 1567, 1578-79 (Fed. Cir. 1997)

PETITIONER WILL ASSERT THAT THE COPYRIGHT PROTECT. PHOTOGRAPHIC WORKS OF THE INFRINGEMENT RESPONDENT DUPLICATED ACCORDING TO TITLE 17 OF THE UNITED STATES CODE SECTION 102 AS MERIT TO THE CLAIMS AGAINST RESPONDENT IN BODY OF THE CIVIL COMPLAINT.

THE FEDERAL CIRCUIT ORDER IS FUNDAMENTALLY INCONSISTANT WITH THE ISSUES PRESENTED TO IT ON APPEAL FROM THE UNITED STATES DISTRICT COURT ORDER AND THE PRIMARY ISSUES PETITIONER PRESENTED IN THE BRIEF ON APPEAL AND CONTRARY TO LAW. SEE, FEDERAL RULES OF APPELLATE PROCEDURES 25 (b) JURISDICTION OF APPELLATE COURT.

THE FILING OF NOTICE OF APPEAL BY ANY PARTY INVOKES THE APPELLATE COURTS JURISDICTION OVER ALL PARTIES TO THE TRIAL COURTS JURISDICTION OVER ALL PARTIES TO THE TRIAL COURTS JUDGMENT OR ORDER APPEALED FROM. ANY PARTIES FAILURE TO TAKE ANY OTHER STEP REQUIRED BY THESE RULES,, INCLUDING THE FAILURE OF ANOTHER PARTY TO PERFECT AN APPEAL UNDER (c) DOES NOT DEPRIVE THE APPELLATE COURT OF JURISDICTION BUT IS GROUND ONLY FOR APPELLATE COURT TO ACT APPROPRIATELY, INCLUDING DISMISSING THE APPEAL.

THE FEDERAL CIRCUIT COURT OF APPEALS ERRED IN NOT ADDRESSING THE MERITS OF THE APPEAL AND INVOKING THE APPELLATE COURTS JURISDICTION SEE, WARWICK TOWERS COUNCIL OF CO-OWNERS v. PARK WARWICK, L.P., 244 S.W.3d 838, 839 (TEX.2008)

THE ORDER PETITIONER APPEALED FROM WAS PROCEDURAL FROM THE OBJECTION TO THE UNITED STATES MAGISTRATE JUDGES RECOMMENDATION THAT WAS ADOPTED BY THE UNITED STATES DISTRICT COURT JUDGE THE PETITIONER FILED APPEAL IN ACCORDANCE WITH 28 U.S.C.S 636 (c)(3) AN APPEAL FROM A JUDGMENT ENTERED AT A MAGISTRATE JUDGES DIRECTION MAY BE TAKEN TO THE COURT OF APPEALS AS WOULD ANY OTHER APPEAL FROM A DISTRICT-COURT JUDGMENT. SEE, McCabe, THE FEDERAL MAGISTRATE ACT, OF 1979, 16 HARV. J. Legis. 343,364-79 (1979) IN ORDER TO EXERCISE THIS JURISDICTION A MAGISTRATE MUST BE SPECIFICALLY DESIGNATED UNDER 28 U.S.C.S 636 (c)(1) BY THE DISTRICT COURT HE SERVES.

CONCLUSION

FOR THESE REASONS SET FORTH IN THIS PETITION, TRACY NIXON RESPECTFULLY REQUESTS THIS HONORABLE COURT GRANT REHEARING AND HIS PETITION FOR WRIT OF CERTIORARI.

RESPECTFULLY SUBMITTED,



TRACY NIXON PRO SE

4415 S, MALCOLM X BLVD DAL

DALLAS TEXAS 75215

469-407-1468

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE COPY WAS SERVED ON RESPONDENT AT RESPONDENT LAST KNOWN ADDRESS BY U.S. POSTAL SERVICE ON 9/3 / 2021.



Appendix A

The State of Texas  
Secretary of State

2020-312826-1

I, the undersigned, as Secretary of State of the State of Texas, DO HEREBY CERTIFY that according to the records of this office, a copy of the Summons in a Civil Action and General Complaint in the cause styled:

Tracy Nixon vs General Motors Corporation  
United States District Court, Eastern District of Texas, Marshall Division  
Cause No: 219CV00287JRG

was received by this office on December 23, 2019, and that a copy was forwarded on January 6, 2020, by CERTIFIED MAIL, return receipt requested to:

General Motors Corporation  
Global Headquarters  
300 Renaissance Ctr  
Detroit, MI 48243

As of this date, no response has been received in this office.

Date issued: March 11, 2020



A handwritten signature in black ink, appearing to read "Ruth R. Hughs".

Ruth R. Hughs  
Secretary of State  
GF/mr

Appendix E

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

---

**TRACY NIXON,**  
*Plaintiff-Appellant*

v.

**GENERAL MOTORS CORPORATION,**  
*Defendant-Appellee*

---

2021-1120

---

Appeal from the United States District Court for the  
Eastern District of Texas in No. 2:19-cv-00287-JRG-RSP,  
Chief Judge J. Rodney Gilstrap.

---

**ON MOTION**

---

PER CURIAM.

**ORDER**

Tracy Nixon responds to the court's order to show cause  
and moves to "reinstate appeal."

Mr. Nixon's underlying complaint alleges that General  
Motors Corporation ("GM") infringed his design "before the  
plaintiff could patent the invention for sale to the public."  
Compl. at 4, *Nixon v. Gen. Motors Corp.*, No. 19-cv-00287

(E.D. Tex. Aug. 26, 2019), ECF No. 1. Mr. Nixon moved the district court to enter a default judgment against GM, which the court denied on the basis that GM was not properly served. Mr. Nixon filed objections to the order, which the district court overruled in an order dated August 14, 2020. Mr. Nixon subsequently moved the district court to certify the August 14th order for interlocutory appeal pursuant to 28 U.S.C. § 1292(b).

While that motion was pending, Mr. Nixon filed a request for permission to appeal at the United States Court of Appeals for the Fifth Circuit and a separate request which was docketed at this court as the above-captioned matter. On November 4, 2020, the Fifth Circuit denied his request because “[t]he district court’s order denying the motion for default judgment is not a final order . . . [and] the order has not been certified for immediate appeal under 28 U.S.C. § 1292(b) by the district court.” *Nixon v. Gen. Motors Corp.*, No. 20-90032 (5th Cir. Nov. 4, 2020). On December 1, 2020, the district court denied Mr. Nixon’s motion to certify the order for interlocutory appeal.

Our jurisdiction extends to cases in which a well-pleaded complaint establishes either that federal patent law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal patent law. *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 809 (1988); 28 U.S.C. § 1338; 28 U.S.C. § 1295(a)(1). It has long been held that “no suit can be maintained by the inventor against any one for using [the invention] before the patent is issued.” *Gayler v. Wilder*, 51 U.S. 477, 493 (1850). Thus, although the complaint purports to allege infringement, it fails to present a non-frivolous claim arising under the patent laws and is hence outside of our limited jurisdiction. *Cf. Jim Arnold Corp. v. Hydrotech Sys., Inc.*, 109 F.3d 1567, 1578-79 (Fed. Cir. 1997).

Appendix F

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

Tracy Nixon,

*Plaintiff,*

v.

General Motors Corporation,

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

APPELLANT EXHIBIT 2

Case No. 2:19-CV-00287-JRG-RSP

ORDER

Before the Court is Plaintiff Tracy Nixon’s Motion for Default Judgment, Dkt. No. 12, and Motion for Hearing on Motion for Default Judgment, Dkt. No. 13. Plaintiff has not shown that General Motors Corporation was properly served. Therefore, and after consideration, the Court denies Plaintiff’s Motion for Default Judgment and Motion for Hearing.

Plaintiff seeks a default judgment pursuant to Federal Rule of Civil Procedure 55. Plaintiff attempted to serve GM through the Texas Secretary of State; however, Plaintiff did not show substituted service was allowed. Rule 4 governs service in federal courts. A domestic corporation, like GM, can properly be served in the United States in one of two ways:

- (A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or
- (B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and--if the agent is one authorized by statute and the statute so requires--by also mailing a copy of each to the defendant.

FED. R. CIV. P. 4(h). Plaintiff has not shown that a copy of the summons and complaint were delivered to an officer, a managing or general agent, or any other authorized agent of GM.

Rule 4(e)(1) provides that service in the United States may occur by “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made . . . .”

Texas law generally requires that a nonresident business entity have a registered agent who may be served in place of the nonresident.<sup>1</sup> See Tex. Bus. Orgs. Code Ann. § 5.201; Tex. Civ. Prac. & Rem. Code Ann. § 17.043. However, substituted service of a complaint, where the Secretary of State acts as an agent and may be served instead, is allowed if the nonresident:

- (1) is required by statute to designate or maintain a resident agent or engages in business in this state, but has not designated or maintained a resident agent for service of process;
- (2) has one or more resident agents for service of process, but two unsuccessful attempts have been made on different business days to serve each agent; or
- (3) is not required to designate an agent for service in this state, but becomes a nonresident after a cause of action arises in this state but before the cause is matured by suit in a court of competent jurisdiction.

Tex. Civ. Prac. & Rem. Code Ann. § 17.044(a); see also Tex. Bus. Orgs. Code Ann. § 5.251.

Plaintiff did not show that substituted service through the Texas Secretary of State was proper through the three methods described above. Therefore, Plaintiff has not shown that GM was properly served. For these reasons, Plaintiff is not entitled to default judgment and accordingly Plaintiff's Motion for Default Judgment and Motion for Hearing are **DENIED**.

**SIGNED this 11th day of June, 2020.**

  
ROY S. PAYNE  
UNITED STATES MAGISTRATE JUDGE

---

<sup>1</sup> GM is considered a "nonresident" for this subsection. See Tex. Civ. Prac. & Rem. Code Ann. § 17.041.