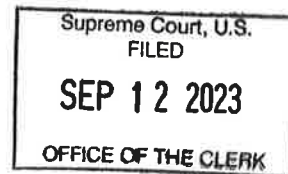


23A258
SUPREME COURT OF THE UNITED STATES



TRACY NIXON PETITIONER

MOVANT,

VS.

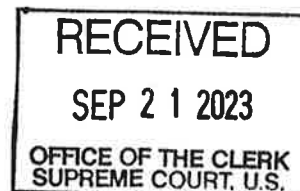
GENERAL MOTORS CORPORATION

DEFENDANT,

MOVANT REQUEST FROM THE CHIEF JUSTICE ROBERTS
TO STAY MANDATE

TRACY NIXON ASKS THE CHIEF JUSTICE ROBERTS TO STAY MANDATE
S.Ct. R. 23 PENDING THE FILING OF A PETITION FOR WRIT OF CERTIORARI.
MOVANT TRACY NIXON MADE THIS HIS REQUEST FOR STAY OF THE MANDATE
FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
ORDER ISSUED SEPTEMBER 8, 2023
SIGNED BY JENNIFER WALKER ELROD THAT DENIED MOVANT TRACY NIXON
MOTION TO STAY MANDATE PENDING PETITION FOR WRIT OF CERTIORARI
THE CERTIORARI PETITION WOULD PRESENT A SUBSTANTIAL QUESTION AND
THERE IS GOOD CAUSE FOR A STAY. Fed.R.App.P.41(d)(1).
MOVANT TRACY NIXON ASKS THAT NO.22-40696
NIXON V. GENERAL MOTORS CORPORATION USDC No. 2; 19-CV-287 ENFORCEMENT OF
JUDGMENT BE STAYED PENDING REVIEW 28 U.S.CODE § 2101

FF



THE MOVANT TRACY NIXON SEEKS THE UNITED STATE SUPREME COURT REVIEW FROM THE ORDER DENYING THE PETITION FOR REHEARING EN BANC ENTERED ON AUGUST 29, 2023 BEFORE ELROD, GRAVES, AND HO, CIRCUIT JUSTICES OF THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

MOVANT WILL PRESENT A SUBSTANTIAL QUESTION OF WHETHER MOVANT PROPERLY PROCEDURALLY BY STATUTE SERVE THE DEFENDANT COMPLAINT AND SUMMONS UPON DEFENDANT WHERE THERE IS COMPLETE DIVERSITY BETWEEN PLAINTIFF AND DEFENDANT AND WHETHER PLAINTIFF TRACY NIXON MET THE FEDERAL REQUIREMENT FOR THE U.S. DISTRICT COURT TO HAVE PERSONAL JURISDICTION OVER THE DEFENDANT ACCORDING TO THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT,

WHETHER THE U.S. DISTRICT COURT ERROR DISMISSING THE CIVIL COMPLAINT AGAINST GENERAL MOTORS CORPORATION FOR INFRINGEMENT PLAINTIFF TRACY NIXON CAR DESIGN FOR THE GRAND SPORT CHEVEROLET CORVETTE., TRACY NIXON WILL PRESENT A COPY OF THE RETURN OF PROCESS SIGNED BY THE SECRETARY OF THE STATE OF TEXAS DATE ISSUED MARCH 11, 2020. UNDER FEDERAL RULE OF CIVL PROCEDURE 4(e) FEDERAL COURT NORMALLY LOOKS EITHER TO A FEDERAL STATUTE OR TO THE LONG-ARM STATUTE OF THE STATE IN WHICH IT SITS TO DETERMINE WHETHER AN OUT-OF-STATE DEFENDANT IS AMENABLE TO SERVICE

IN ACCORDANCE WITH THE TEXAS BUSINESS ORGANIZATION CODE § 5.251(1) (B) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE CHAPTER 17.045 TRACY NIXON IS A CITIZEN IN DALLAS, TEXAS STATE OF TEXAS IS THE FORUM STATE.

DEFENDANT GENERAL MOTORS REGISTERED DOING BUSINESS IN TEXAS AS A FOREIGN CORPORATION BUT FAILED TO MAINTAIN A REGISTERED AGENT. WHEN THE ORIGINAL COMPLAINT WAS FILED.

THE DEFENDANT FAILED TO UP DATE THE ADDRESS OF REGISTERED AGENT FOR GENERAL MOTORS CORPORATION WITH THE STATE OF TEXAS SECRETARY OF STATE TEXAS BUSINESS CORPORATION ACT ARTICLE 2.11 SERVICE OF PROCESS ON CORPORATION WAS FOLLOWED BY PLAINTIFF TRACY NIXON WILL PRESENT A SUBSTANTIAL QUESTION FOR REVIEW UPON TEXAS LONG ARM STATUTE WICH SEVERAL STATUTE IN TEXAS PROVIDE.

CERTIFICATE OF SERVICE

I CERTIFY THAT A TRUE AND CORRECT COPY WILL BE SENT TO DEFENDANT ON SEPTEMBER 12, 2023 BY REGULAR MAIL THROUGH THE U.S. POSTAL SERVICE AT DGENERAL MOTORS CORPORATION GLOBAL HEADOUARTERS 300 RENAISSANCE Ctr DETROIT,MI 48243



RESPECTFULLY SUBMITTED
TRACY NIXON PRO SE

4415 S, MALCOLM X BLVD
DALLAS TEXAS 75215
214-283-1739

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

NEV.

September 08, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 22-40696 Nixon v. General Motors
 USDC No. 2:19-CV-287

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Rebecca L. Leto

By: _____
Rebecca L. Leto, Deputy Clerk
504-310-7703

Mr. Tracy Nixon
Mr. David O'Toole

UNITED STATES DISTRICT COURT

for the
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

TRACY NIXON

Plaintiff(s)

v.

GENERAL MOTORS CORPORATION

Defendant(s)

Civil Action No. 2:19-cv-00287-JRG

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

GENERAL MOTORS CORPORATION
GLOBAL HEADQUARTERS
300 RENAISSANCE Ctr
DETROIT, MI 48243

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

TRACY NIXON
4415 SOUTH MALCOLM X BLVD
DALLAS TEXAS 75215

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 12/11/19



CLERK OF COURT

David A. O'Poole

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:



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

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

Tracy Nixon,

Plaintiff,

v.

General Motors Corporation,

Defendant.

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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.¹ 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

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

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

Tracy Nixon,

Plaintiff,

v.

General Motors Corporation,

Defendant.

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

ORDER

Before the Court is Plaintiff Tracy Nixon's Motion to Add a Party and Amend the Complaint (Dkt. No. 27). Under Local Rule CV-7(k), "Motions for leave to file a document should be filed separately and immediately before the document for which leave is sought." Plaintiff has not filed the amended complaint for which he seeks leave. Accordingly, the motion is **DENIED** without prejudice to the right to file a motion for leave followed by the proposed amended complaint.

SIGNED this 4th day of February, 2022.


ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

September 08, 2023

Mr. David O'Toole
Eastern District of Texas, Marshall
United States District Court
100 E. Houston Street
Room 125
Marshall, TX 75670-0000

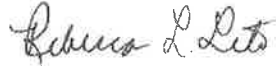
No. 22-40696 Nixon v. General Motors
USDC No. 2:19-CV-287

Dear Mr. O'Toole,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Rebecca L. Leto, Deputy Clerk
504-310-7703

cc: (letter only)
Mr. Tracy Nixon

United States Court of Appeals
for the Fifth Circuit

No. 22-40696

TRACY NIXON,

Plaintiff—Appellant,

versus

GENERAL MOTORS CORPORATION,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 2:19-CV-287

ORDER:

IT IS ORDERED that the Appellant's motion to stay the issuance of the mandate pending petition for writ of certiorari is DENIED.


JENNIFER WALKER ELROD
United States Circuit Judge

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

May 23, 2023

Lyle W. Cayce
Clerk

No. 22-40696
Summary Calendar

TRACY NIXON,

Plaintiff—Appellant,

versus

GENERAL MOTORS CORPORATION,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 2:19-CV-287

Before ELROD, GRAVES, and HO, *Circuit Judges.*

PER CURIAM: *

Tracy Nixon, proceeding pro se, seeks leave to proceed in forma pauperis (IFP) to appeal the district court's dismissal without prejudice of his private civil action alleging patent interference and copyright infringement. The district court dismissed the proceeding because Nixon failed to show that he had properly served the defendant. By moving in this

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

court to proceed IFP, Nixon is challenging the district court's certification that any appeal would not be taken in good faith because he had not shown that he will present a nonfrivolous appellate issue. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997); *Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982).

Before this court, Nixon argues that he properly served General Motors through the Texas Secretary of State pursuant to the Texas long-arm statute. *See* TEX. CIV. PRAC. & REM. CODE § 17.044(a). He did not show that he met the conditions necessary for service pursuant to the Texas statute. *See* FED. R. CIV. P. 4(e)(1), (h)(1); § 17.044(a); *Whitney v. L & L Realty Corp.*, 500 S.W.3d 94, 95 (Tex. 1973). Although Nixon maintains that the district court should have granted his request to allow substituted service under the long-arm statute, he cites no authority for the proposition that a court may permit such service unless the statutory conditions are met. He has not presented a nonfrivolous issue with respect to the dismissal without prejudice for failure to serve the General Motors. *See Baugh*, 117 F.3d at 202; *Lindsey v. United States R.R. Ret. Bd.*, 101 F.3d 444, 445 (5th Cir. 1996).

In addition, Nixon alleges that the district court should have recused itself from the proceedings because the judge owned stock in a company that entered a business agreement with General Motors. He has arguably failed to brief this issue before this court. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993). Even if the issue is sufficiently briefed, Nixon has not shown that he will present a nonfrivolous issue regarding the district court's denial of the motion for recusal. *See Sensley v. Albritton*, 385 F.3d 591, 598 (5th Cir. 2004); *Baugh*, 117 F.3d at 202; 28 U.S.C. § 455(b)(4), (d)(4).

The appeal is without arguable merit and is thus frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, Nixon's motion to

proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See*
Baugh, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.