

Supreme Court, U.S.
FILED
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23A942

IN THE SUPREME COURT OF THE UNITED STATES

APPEAL NO. _____

LOWER TRIBUNAL NO: CC-21-05552-D

ANGELIA SMITH AND KELVIN SMITH AND ALL OCC.
Applicant,

vs.

SNUG OWNER, LLC. d/b/a/ THE BROOKLYN'S @ 9590
Respondent.

TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT ON APPLICATION EMERGENCY MOTION TO STAY PROCEEDINGS AND RECALL THE MANDATE ENTERED ON FEBRUARY 8, 2024, BY THE COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS AT DALLAS

APPLICANTS EMERGENCY APPLICATION TO STAY PROCEEDINGS AND RECALL THE MANDATE OF THE COURT OF APPEALS FOR THE FIFTH DISTRICT COURT OF TEXAS AT DALLAS, PENDING FILING OF THE APPLICANTS PETITION FOR A WRIT OF CERTIORARI

Kelvin Smith and Angelia Smith 9588
Forest Lane No. 803
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February 14, 2024

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel and the persons having an interest in the outcome of this case are:

1. Angelia Smith, *Applicant*,
2. Kelvin Smith, *Applicant*;
3. and all Occupants named "K.I.S. ("Minor" Child)- *Applicant*;;
4. Court D. Smith, Attorney for the *Respondent*,
5. Justin Dertinger, Attorney for the *Respondent*;


/s/ Angelia Smith and Kelvin
Smith Angelia Smith and Kelvin
Smith Applicants-Pro Se'

JURISDICTION

The Texas Supreme Court entered judgment February 2, 2024. (*See Pet. App. Tab 5-6*). The Applicants timely filed this petition for a Writ of Certiorari on December 30, 2023, however the clerk returned for correction on two separate dates therefore, the Petition was returned within the time permitted by the Clerk of Court. The Petitioners sent correction to the Court date March 18, 2024, pursuant 28 U.S.C. §1254. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

TABLE CONTENTS

| | |
|--|-------|
| CERTIFICATE OF INTERESTED PARTIES..... | 1 |
| COVID 19 NOTICE OF POSSIBLE EVICTION..... | 2 |
| JURISDICTION..... | 2-A |
| TABLE OF CONTENTS..... | 3 |
| TABLE OF AUTHORITIES..... | 4 |
| ISSUES MERITING PETITION FOR REVIEW..... | 5 |
| STATEMENT OF FACTS WHY PETITION FOR REVIEW CONSIDERATION IS SOUGHT..... | 6 |
| STATEMENT OF FACTS..... | 7-11 |
| ARGUMENT AND AUTHORITIES..... | 16-19 |
| CERTIFICATE OF SERVICE..... | 20 |
| CERTIFICATE OF COMPLIANCE..... | 21 |
| APPENDIX..... | 23 |

TABLE OF AUTHORITIES

Colquitt v. Brazoria County, 324 S.W.3d 539 (Tex. 2010).....6

Cherokee Water Co. v. Ross, 698 S.W.2d 363, 365 (Tex. 1985).....6

Sargent v. Highlite Broadcasting co.,
466 S.W.2d 866 (Tex, Civ. App. 1971).....14

Interstate Northborough P 'ship v. State,
66 S.W.3d 213, 220 (Tex. 2001).....16

Downer v. Aquamarine Operators,
Inc., 701 S,W2d 238, 24142 (Tex. 1985).....16

Bridges v. City of Richardson,
354 S.W.2d 366, 368 (Tex. 1962).....17

ISSUES MERITING EMERGENCY STAY OF MANDATE

NOW COMES APPLICANTS, ANGELIA SMITH, KELVIN SMITH

AND ALL OCC., in the above-styled cause of action, respectfully move that the Supreme Court of United States grant a Stay to the Applicants, due to the Fifth Court of Appeals Mandate dated February 8, 2024. The Applicants mailed their Original Petition of Certiorari to the U.S. Supreme Court on 02/27/2024, Priority mail with delivery conformation no. 9505 5065 8096 4058 4328 97, however since the court requested corrections, the Applicants now refiled both with corrections as requested to the Emergency Motion to Stay Mandate and the Writ Of Certiorari we now await the U. S. Supreme Court decisions with the corrections to the refilling correction in their request to stay the proceedings until the final determination has been made regarding our case and for the reasons as explained in more detail in the accompanying Memorandum of Authorities, a stay is appropriate because of the following;

- (i) the Defendant's appeal will present serious legal questions,

- (ii) the Defendant has been unable to secure alternative housing due to the number of erroneous wrongful evictions the Respondents attorney Justin Dertinger in which has admitted on record that he just made a mistake on two of the evictions, and just refiled after the JP Judge Seider ruled in favor of the Defendants-Applicants due to clerical erroneous errors, and because of the power of the attorney which by law provided by the Court are allowed the abuse of power to refile as many erroneous eviction until and we quote the words of the court "Get it Right". (*Res Judicata*), *"How can you re-open a door that has already been closed"*, *"ie. final judgment, arguing the same facts, "Non Payment of Rent-Default that the landlord created in order to file an eviction in their*

refusal accept rent to pay the account current during the pandemic in violation of the Dallas City Ordinance”). Therefore here in this case we have 3 cases in which the JP Court rules and or laws not limiting and the remaining 3 erroneous wrongful evictions were also dismissed or ended in final judgment in favor of the Applicants. Texas appellate courts may review only final judgments, and there can be only one final judgment in any case. See *Colquitt v. Brazoria County*, 324 S.W.3d 539 (Tex. 2010); *Cherokee Water Co. v. Ross*, 698 S.W.2d 363, 365 (Tex. 1985). The Appellants put the “Court On Notice” due the number of erroneous wrongful evictions being filed due to ABUSE OF POWER by the Respondents Attorney of Record in the Court Record and his clients, which has caused immense irreparable harm to the Applicant's rental history, now new renters will not rent to the Applicants because of the 5 erroneous evictions (Res Judicata) in the JP Court Record,

(iii) absent a stay Defendants will suffer even more irreparable injury and, will become homeless, put out on the street due to careless erroneous by the attorney and basis subjected also by the Court.

Applicants respectfully request that the Fifth Court of Appeals “Mandate is Recalled” which was issued on February 8, 2024, the mandate only issued after the applicants filed their Original Writ of Certiorari with the US Supreme Court of the Fifth Circuit dated December 30, 2023, however the Applicants Writ of Cert. shows for several reasons of the importance to the US Supreme Court that this case will not only affect the Applicants immensely and cause irreparable harm but the Applicants Request for Stay and Writ of Certiorari raise very important issues that will affect every eviction case in the U.S. the

United States as precedence due to the surrounding issues during the never before cases during COVID 19 Pandemic. Therefore with the Fifth District Court of Appeals Dallas Mandate after the applicants filing of the Original Applicants Writ of Certiorari which was originally filed stamped January 5, 2024, and returned due to the error of not listing the Texas Supreme Court case number in the appendix of the Applicants Writ of Certiorari, however it was listed in the Motion to Proceed in Forma Paupers Affidavit on the same page as listed parties. (see USPS tracking number 9505510411574002095702). Applicants Angelia Smith, Kelvin Smith and All Other Occupants and Minor Child KIS, ("The Smith Family"), also have a pending dispute and now also on appeal in the 5th Court of Appeal cause No: 05-23-01252-CV also another related case to add to all the other cases and appeals regarding the Abuse of Discretion and Abuse of Judicial Power by Judge Jones, which she signed the order on October 11, 2023 and then held two separate hearing on the same matter regarding the same order she signed in favor of the Respondents knowing that the order was already signed to release funds and did not provide the Appellants an opportunity to dispute the Amounts for rent and attorney fee and other fees to eat away all the Money deposited in the Court Registry, Appellants just want (TRUTH and CLEAN HANDS). The Appellants have suffered immense irreparable harm throughout

this case due to biases and impartiality from the Court and Respondents

Applicants Angelia Smith, Kelvin Smith and All Other Occupants and Minor Child KIS, ("The Smith Family") files this Application and **MOTION TO STAY AND RECALL THE MANDATE ENTERED ON FEBRUARY 8, 2024, BY THE COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS** to put the Respondents SNUG OWNER LLC dba Brooklyn @ 9590, located at 9590 Forest Lane, Dallas, Texas 75243 a/k/a 9588 Forest Lane, Dallas Texas 7524, "**On Notice**" through their attorney Justin Dertinger and requests the Court Grant the Applicants Application and Motion for relief to enjoin Defendant from executing any writ of possession against The Smith's and the Property (defined below) on the grounds that doing so is a Violation of the Smith's Constitutional Rights to due course of law under the Texas Constitution and Due Process under the United States Constitution. The Smith's also seeks additional relief, as described below.

Applicants Angelia Smith, Kelvin Smith and All Other Occupants and Minor Child KIS, ("The Smith Family") files this Original Petition and Emergency, Ex Parte Application for Temporary Restraining Order (the "Petition") against Defendant SNUG OWNER LLC dba Brooklyn @ 9590, located

at 9590 Forest Lane, Dallas, Texas 75243 a/k/a 9588 Forest Lane, Dallas Texas 7524, requests the Court grant injunctive and declaratory relief to enjoin Defendant from executing a writ of possession against The Smith's and the Property (defined below) on the grounds that doing so is a Violation of the Smith's Constitutional Rights to due course of law under the Texas Constitution and due process under the United States Constitution. The Smith's also seeks additional relief, as described below.

The Smith's case is now under review with the U.S. Supreme Court for the Fifth District Petition for Writ of Certiorari which was made so that Justice maybe done and the law in which the Fifth District Court of Appeals of Texas at Dallas, opinion and decision can be reviewed based on the true merits of the claim of the Smith's was during the Pandemic and five erroneous and invalid eviction filled with errors and Abuse of Power by the attorney of record for the Respondents, therefore the applicants files this Emergency Motion to Stay with this US Supreme Court that this Court may evaluate the decision and opinion made on October 3, 2023 and the on February 8, 2024 Mandate on granted motion to be recalled pending the Appellants pending review of the filing of the Petition for Certiorari. This case has been filed with the United States Supreme

Court of the Fifth Circuit to provide the Applicants an opportunity to be heard pursuant to in the matter of Justice. Sec. 13 of the Texas Constitution states that “excessive bail shall not be required, nor excessive fines imposed, **nor cruel or unusual punishment inflicted, and the Appellants have been afflicted by biases and discrimination based on race and not impartiality of TRUTH, Due Process and Due Course of LAW.** All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.” the Applicants are tenants within the Property under a written lease, which expired by its own terms, however after Complaints filed regarding the uninhabitable condition of the property we were no longer welcome on the property and have been harassed and discriminated against due to race and disability.

5. Applicant Angelia Smith has a major medical condition which she is disabled and request accommodation to stay the proceedings of the **EMERGENCY MOTION TO STAY AND RECALL THE MANDATE ENTERED ON FEBRUARY 8, 2024, BY THE COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS** due to up coming preparation for major medical procedures.

6. Applicant Kelvin Smith also has a major medical condition which he is disabled and request accommodation to stay the proceedings of the Petition for Review with the Supreme Court of Texas due to major medical health problems as well as medical procedures as well.

7. The Smith Family **MOTION TO STAY AND RECALL THE MANDATE ENTERED ON FEBRUARY 8, 2024, BY THE COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS** presents serious legal questions of law and Constitutional Rights. 6. The Smith Family has been unable to secure alternative housing due to a total of 5 erroneous Evictions filed by the attorney of Record for the Respondents, and with the number of evictions erroneously filed however dismissed or ended in final judgment in favor of the Smith's, new renters will not rent to the Applicants because of the 5 erroneous evictions (Res Judicata) in the JP Court Record. The Appellants now have 5 frivolous and erroneous evictions on the Court Record as admitted by the attorney of Record Justin Dertinger in the previous hearing on October 23, 2023 in the Smith's Emergency Motion to Stay Proceedings that he and his staff made error on just two of the erroneous eviction in the records and email that shows that he was the advising Counsel for 3 of the 5 frivolous and erroneous

evictions. However the point here to the Court is that with just one (1), frivolous and erroneous eviction on your record it makes it is next to almost impossible to secure kind of housing needless to say safe affordable housing under the conditions that the Brooklyn Management and their attorney Justin Dertinger have subjected the Smith Family to because of Harassment and Discrimination. Applicants "The Smith Family" has a cause of action against Respondents SNUG Owner L.L.C., aka Brooklyn @ 9590 for the wrongful erroneous evictions, and a probable right to the relief sought in this cation and the Respondents SNUG Owner LLC aka Brooklyn @ 9590 consistently and recklessness action of retaliation and harassment in collision with the continues to act in collision with Dynamic Towing to illegally tow our vehicle to cause financial harm in retaliation for the pending action against the parties in relation to this cause of action along with their attorney Justin Dertinger some example below as follows: *(See Exhibit E – Tow Receipts Proof, Evidence speak for itself).*

a. The wrongful, reckless harassment and retaliation is an abuse of power and highly illegal, specifically with the recent tow of Applicants vehicle the Respondents acts which towed our vehicle on Thanksgiving day and as soon as we paid for that tow our car ran hot and we parked it at the Walgreens on Abrams Road and when we went to pick up the car the following day it was towed again in less than 24 hours (8 hours and 50 minutes)

b. On 11-27-23 5:14pm DFW Tow and Unlawfully Towed again by Dynamic Towing 11-28-23 @ 2:04am – Retaliation, Harassment for pending law suites for Unlawful tow without notification)without any notification of any violation for parking and lied and said it was 24 hours without any notification of any violation for parking and lied and said it was Exxon gas station which was a lair because Dynamic Towing is not even contracted or authorized to tow from the Walgreens parking lot. (see Exhibit – F Tex. Occ. Code 2308.252 and 2308.253(b)(c.)

c) Therefore the tow at the Walgreens parking lot located at 8310 Abrams Rd, Dallas, TX 75243, which was illegal unlawful removal of our vehicle and Dynamic Towing had to follow us to the Walgreens to even know our location where we parked our car. If the Defendants acts as described, Applicants will suffer additional probable, immanent and irreparable injury, for which above damages alone would not be adequate compensation, in that the Defendant SNUG Owner LLC aka Brooklyn @ 9590 along with their attorney Justin Dertinger and Dynamic Towing Company.

Accordingly, Appellants seeks a temporary injunction prohibiting defendant along with the their Attorney Justin Dertinger and third party Dynamic Towing Company due to excising harassment, retaliation and reckless conduct of harassment to cease a desist from any reckless damage and retaliatory harm to the Applicants and their property. Applicants The Smith Family suffer immediate and irreparable injury, loss of property, or damage before notice can be severed on the Defendant and their attorney of record Justin Dertinger and a hearing can be held on Applicants application for a temporary

injunction, because of the reason set-forth in this petition. As described above, defendants has engaged in wrongful acts that have caused irreparable injury to the Applicants, for which Applicants has no adequate remedy at law, in that the defendants collusion with their attorney and third party and Unclean Hands and reckless wrongful acts of retaliation and harassment against the Applicants. Accordingly, on final judgment, Applicants seek a temporary to permanent injunction prohibiting defendant from any reckless, harassment, retaliation and unlawful acts of any kind and protection from harm of the Applicants property in order to inflict financial hardship to assure that the Applicants are unable to pay rent into the Court registry to secure a writ of possession by any unlawful infliction of suffering to the Applicants. This case was never about "Non-Payment of Rent", it was solely about "Retaliation" the 5 erroneous evictions in favor of the Applicants, not including this unlawful eviction), (2 erroneous writ of possession filed by the Respondent-Plaintiffs attorney Justin Dertinger) ich along with Retaliation the tenants were and is currently subjected to harassment, discrimination, biases, and much more from the landlord, the attorney of records, the third party Dynamic Towing and now the Court. This case is solely about "Retaliation and Harassment" the Smith Family have had

the 5 erroneous evictions in favor of the Applicants, Angelia Smith and Kelvin Smith ("The Smith Family"), not including this unlawful erroneous eviction, (2 erroneous writ of possession filed by the SNUG OWNER d/b/a The Brooklyn's, Respondents-Plaintiff's attorney Justin Dertinger), and their vehicle towed by Dynamic Towing 4 times including the most recent November 28, 2023 and Implied Warranty of Habitability which are "substantial" health and safety issues along with Retaliation against the tenants were and are still currently subjected to retaliation, harassment, discrimination, biases, and the continued illegal towing. Therefore the Smith Family appeals in this current case invokes an unjust decision of bias and prejudice, which is clear in the panel's decision and opinion which do not support –"TRUTH" in the law and the 21-day Notice of Possible Eviction. How can their be "TRUTH" in law when there is "UNCLEAN HANDS". The Smith Family attaches the following as exhibits to this Petition, each of which are incorporated by reference: a. Exhibit A: The Plaintiffs -Defendants Petition for Review with the Supreme Court of Texas b. Exhibit B: Affidavit of Inability to pay by Angelia Smith c. Exhibit C: Sworn Statement of Angelia Smith d. Exhibit D: Sworn Statement of Kelvin Smith e. Exhibit E: Copy of most recent towing receipt (Dynamic Towing) f. Exhibit F: Copy of Texas Occupants Code 2308.252 and 2308.253.

CAUSES OF ACTION

The Smith Family seeks Injunctive and Declaratory relief. All factual allegations set forth elsewhere in this Application are herein expressly incorporated by reference. The Smith Family further expressly incorporate by reference all exhibits to this Application. The Smith Family state in this Application that any issue of any writ of possession is in violation of our Constitutional Rights to Due Course of Law and Due Process of Law, as this case is under Review by the United Supreme Court for the Fifth District and we have not been awarded any fair trial before any Justice of the Peace, County Court Judge, Fifth Court of Appeals at Dallas and the United States Supreme Court of Texas . The Applicants have been unjustly denied a fair impartial trial, faced with Judicial bias because of race, disability discrimination and the fact that the Applicants are Pro Se' and not afforded the luxury of being awarded and attorney at the stage of appealing any case to the next level to the Fifth Court of Appeals at Dallas. As stated in the above listed cause of action that is affordable to our Rights under the Constitution of the United States and all laws within and a hearing on this Petition for Protection and Injunctive relief joining Defendants from executing any and all Writ of Possession during the

dependency of this action and declaratory relief finding that:

(1) Specifically The Smith Family seeks the right to be heard without impartiality of the Court and seek redress appointing a time and place of such hearing in the above listed cause of action for Emergency, Ex Parte Application for Temporary Restraining Order

(2) Restrain the Defendants, attorney of Record Justin Dertinger and third party Dynamic Towing and any all third parties from executing any all Writ of Possession, unlawful towing, and harassment

(3) The Smith family has been denied constitutionality required due process and due course of law. The Smith Family in this Petition that an unlawful eviction on the grounds that we are in imminent danger of harassment, irreparable harm and being set out from our home under circumstances that do not comply with the laws set forth in this Petition for Protection and that this case is pending review by the United States Supreme Court for the Fifth District and any further recourse of judicial proceeding afforded under the law. And that denial of the Plaintiffs in this Petition violates their constitutional right to due process would be predicated solely on their inability to pay money to the court in order to seek redress in which the Plaintiffs are clearly entitled to receive. (See *Texas Association of Business v. Texas Air Control Board*, 852 S.W.2d 440, n.18 (Tex. 1993) ("the guarantee of constitutional rights should not depend on the balance in one's bank account").

PRAYER FOR RELIEF For the foregoing reasons, The Smith Family prays

for the following:

a. temporary injunction enjoining the Defendant, its employees, directors, officers, agents, third parties and the Constable (or any other law enforcement officer or person of interest and or related to this case) from executing the writ of possession against The Smith Family and the Property;

b. Declaratory relief by finding that

(1) The Smith Family has a pending Petition for Review with the Supreme Court of the United States for the Fifth Circuit,

(2) any potential eviction under the Smith Family threat of a writ of possession against the Property would be an unlawful eviction, and

(3) The Smith Family has been denied constitutionally required due process and due course of law;

c. In lue of Attorney's fees, cost and expenses of litigation to the extent allowed under Texas law; and

d. All other and further relief, special and general, at law or equity, to which The Smith Family may be justly entitled under the circumstances.

Dated: This the 18th day of March, 2024

Respectfully submitted,

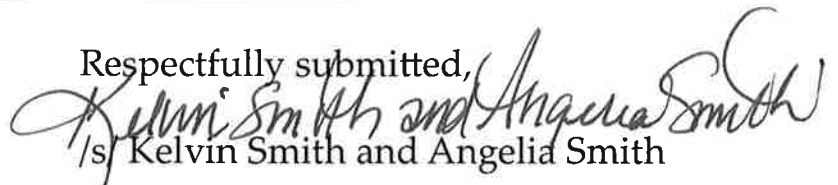

/s/ Kelvin Smith and Angelia Smith

Kelvin Smith and Angelia Smith
9588 Forest Lane No. 803
Dallas, Texas 75243
(469) 634-3196
smithmangelia50@gmail.com

CERTIFICATE OF SERVICE

This is to Certify that the Defendants have this date served a true and correct copy of the above and foregoing APPLICANTS EMERGENCY APPLICATION TO STAY PROCEEDINGS AND RECALL THE MANDATE OF THE COURT OF APPEALS FOR THE FIFTH DISTRICT COURT OF TEXAS AT DALLAS, PENDING FILING OF THE APPLICANTS PETITION FOR A WRIT OF CERTIORARI by email, to the following counsel of record for Defendants:

Dated: This the 18th day of March, 2024

Respectfully submitted,

/s/ Kelvin Smith and Angelia Smith

Kelvin Smith and Angelia Smith
9588 Forest Lane No. 803
Dallas, Texas 75243
(469) 634-3196
smithmangelia50@gmail.com

Plunk Smith, PLLC, Attorney for Defendants
Justin J, Dertinger, Attorney
2801 Network Blvd. Suite 300
Frisco, TX 75034
(972)370-3333 (Office)
justin@plunksmith.com

CERTIFICATE OF COMPLIANCE

Pursuant to TEX. R. APP. P. 9.4, I hereby certify that this APPLICANTS EMERGENCY APPLICATION TO STAY PROCEEDINGS AND RECALL THE MANDATE OF THE COURT OF APPEALS FOR THE FIFTH DISTRICT COURT OF TEXAS AT DALLAS, PENDING FILING OF THE APPLICANTS PETITION FOR A WRIT OF CERTIORARI contains 5,411 words. This is a computer-generated document created in Microsoft Word, using 14-point typeface for all text, except for footnotes which are in 12-point typeface. In making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.

Dated: This the 18th day of March, 2024

Respectfully submitted,

/s/ Kelvin Smith and Angelia Smith

Kelvin Smith and Angelia Smith

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APPENDIX

TAB

- 1 Judgment of trial court No. Four, case no: CC-21-05552-D, Judgment dated 02/14/2023
- 2 Opinion of the Fifth Court of Appeals at Dallas, case no: 05-22-00171-CV, dated 10/03/2023
- 3 Motion for Reconsideration En Banc, Fifth Court of Appeals at Dallas, case no: 05-22-00171-CV, Order entered on 11/01/2023
- 4 Undecided Appeal -Fifth Court of Appeals at Dallas on Order to Release Funds, Case No: 05-23-01252-CV, regarding CC at Law# 4, Jude Jones signed Order and question of Jurisdiction of Order.

Applicants RESPONSE TO COURT JURISDICTION OVER THIS APPEAL. File date, 12/11/2023. Case No: 05-23-01252-CV -(See case detail sheet).
- 5 Petition for Review, Supreme Court of Texas, case no: 23-0917, Order dated 12/22/2023.
- 6 Clerk of the Supreme Court of Texas, certified a true and correct copy of the orders of the Supreme Court of Texas, dated 02/02/2024.
- 7 Fifth Court of Appeals at Dallas, case no: 05-22-00171-CV, Mandate issued on the 8th day of February, 2024 to the County Court at Law No. 4, CC-21-05552-D.

TAB – 1

Judgment of trial court No. Four, case no: CC-21-05552-D,
Judgment dated 02/14/2023

SNUG OWNER LLC d/b/a
BROOKLYN@9590,

Plaintiff,

v.

ANGELIA SMITH, KELVIN SMITH and
ALL OTHER OCCUPANTS.

Defendants.

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IN THE COUNTY COURT

AT LAW NO. 4

DALLAS COUNTY, TEXAS

JUDGMENT

On the 2ND day of February 2022, no jury having been demanded, came on to be heard the above entitled and numbered cause. After careful consideration of the testimony as well as the evidence admitted on behalf of Plaintiff, Snug Owner, LLC d/b/a Brooklyn@9590 (“Plaintiff”), and Defendants, Angelia Smith, Kelvin Smith and All Other Occupants (collectively, “Defendants”).

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff is awarded possession against Defendants of the property located at 9590 Forest Lane, Apt 803, Dallas, Texas 75243 (the “Property”) and that a Writ of Possession issue to the proper officer commanding him/her to seize possession of the Property and deliver the Property to Plaintiff. The timeline to issue a Writ of Possession for the Property shall commence on Monday, February 7, 2022. All other relief sought by Plaintiff is denied. To the extent the judgment dated December 2, 2021 in Cause No. JE-21-017660-N from Justice of the Peace Court 3-2 (the “Prior Judgment”) conflicts with the relief awarded in this judgment, the Prior Judgment is vacated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all relief sought by



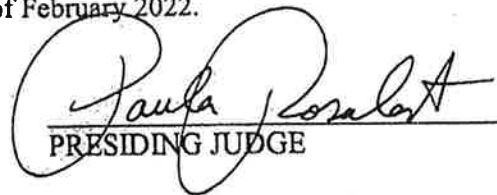
Defendants is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED in the event Defendants wish to suspend enforcement of this judgment, Defendants are required to post a supersedeas bond in the amount of \$1,720.00 within ten (10) days of February ¹⁴ 7, 2022, and continue to post a monthly supersedeas bond in the amount of \$860.00 on the first of each month during the pendency of any appeal beginning on March 1, 2022.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that (i) all costs of court are hereby taxed against the party by whom incurred, for all of which let execution issue; (ii) Plaintiff is allowed such writs and processes as may be necessary in the enforcement and collection of this judgment; and (iii) if applicable after an appeal, Plaintiff is entitled to collect from any bond posted the fair market value of the Property pursuant to Texas Property Code and Rules of Appellate Procedure, including, but not limited to, Rule 24.1(d)(3).

This is a final judgment, disposing of all claims and all parties, and is appealable.

JUDGMENT ENTERED THIS ^{14th} 2nd day of February 2022.


PRESIDING JUDGE



TAB – 2

Opinion of the Fifth Court of Appeals at Dallas,
case no: 05-22-00171-CV, dated 10/03/2023

AFFIRM; and Opinion Filed October 3, 2023



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-22-00171-CV

**ANGELIA SMITH, KELVIN SMITH AND ALL OCCUPANTS, Appellants
V.
SNUG OWNER, LLC. D/B/A THE BROOKLYN@9590, Appellee**

**On Appeal from the County Court at Law No. 4
Dallas County, Texas
Trial Court Cause No. CC-21-05552-D**

MEMORANDUM OPINION

Before Justices Carlyle, Smith, and Kennedy
Opinion by Justice Kennedy

In this forcible-detainer case, Angelia Smith, Kelvin Smith and All Occupants of the premises at issue in this case (Tenants), appearing *pro se*, appeal the county court at law's judgment awarding possession of the premises to Snug Owner, LLC d/b/a Booklyn's@9590 (Landlord). On appeal, Tenants assert the trial court erred in awarding Landlord possession of the premises and in failing to provide Tenants sufficient time to present their case. We affirm the trial court's judgment. Because all issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P.

Tenants appealed to the county court at law, and that court conducted a trial de novo on February 2, 2022. Tenants were represented by counsel at trial. Landlord presented evidence that Tenants became delinquent in their rent payments in February 2020 and remained delinquent in their payments until Landlord received a payment from the Texas Rent Relief Program on May 28, 2021, in the amount of \$11,380,² which covered Tenants' rent payment obligations through June 2021. Between July 2021 and February 2, 2022, the date of trial, Tenants did not make any rent payments. Landlord established through testimony of its representative, and a ledger it maintained in connection with Tenants' lease of the Premises, that Tenants owed Landlord \$10,387.67 at the time of trial. Landlord also introduced into evidence the Notice of Non-Renewal and the COVID Notice of Possible Eviction that Landlord posted on the inside door of the Premises on October 13, 2021. The Notice of Non-Renewal served as 60 days' notice of non-renewal of the lease pursuant to paragraph 3 of the lease and notified Tenants that the lease would be terminated effective December 12, 2021. The COVID Notice of Possible Eviction, which was mandated at the time by a City of Dallas ordinance, provided Tenants the opportunity to pay delinquent rents incurred while there was a state of disaster because of the COVID-19 pandemic to avoid eviction. The notice indicated that Tenants should discuss the notice with Landlord as soon as possible but no later than

² Tenants made a payment of \$4,553.38 on September 4, 2020. At that time, the balance owed on their account was \$7,306 bringing the balance owed as of September 4 to \$2,752.62.

I. Preservation of Complaint for Appellate Review

The Rules of Appellate Procedure and the Rules of Evidence require a party to preserve error regarding a complaint that the party did not have an opportunity to present evidence in the trial court. *Kaur–Gardner v. Keane Landscaping, Inc.*, No. 05-17-00230-CV, 2018 WL 2191925, at *2 (Tex. App.—Dallas May 14, 2018, no pet.) (mem. op.). This generally requires the party to make its request or objection in the trial court in a timely, specific manner and obtain a ruling. TEX. R. APP. P. 33.1(a); *In re C.F.M.*, No. 05-16-00285-CV, 2018 WL 1704202, at *3 (Tex. App.—Dallas Apr. 9, 2018, pet. denied) (mem. op.). The request or objection must be asserted at the earliest opportunity or when the potential error becomes apparent. *Kaur–Gardner*, 2018 WL 2191925, at *2.; *see also Arkoma Basin Expl. Co., Inc. v. FMF Assocs. 1990–A, Ltd.*, 249 S.W.3d 380, 387 (Tex. 2008) (“[T]he cardinal rule for preserving error is that an objection must be clear enough to give the trial court an opportunity to correct it.”). Moreover, a party claiming error in the exclusion of evidence must make the substance of evidence known to the trial court by offer of proof to preserve claimed error for complaint on appeal. TEX. R. EVID. 103(a)(2).

To the extent Tenants complain about the amount of time they were given to present evidence at trial, they failed to make a request for additional time and did not object to the trial court’s allocation of time and obtain a ruling from the trial court. Moreover, Tenants failed to make an offer of proof or even identify at trial

compliance noting that it was interested in knowing whether there was potentially a retaliatory event that occurred in this case. Specifically, the court allowed Ms. Smith to discuss whether or not a complaint was filed, what the timeline of the complaint was, whether or not Landlord was asked to comply with a code or whether the complaint was dismissed or still open. Ms. Smith testified she and her husband contacted code compliance on two occasions, specifically in July and November 2021. She understood a fine was imposed against the apartment complex and indicated their complaints were not completely resolved. On cross, Ms. Smith confirmed that Tenants had not paid rent from August 2021 through January 2022. At the conclusion of Ms. Smith's testimony, the trial court asked, "Will the defendant call a second witness?" Tenants' counsel responded, "No. Your Honor. We close. Defendant closes evidence." At the conclusion of trial, the court found in favor of Landlord as to possession and denied its request for attorney's fees and back rent.

On February 14, 2022, the trial court rendered judgment in conformity with its ruling at trial and denied all relief requested by Tenants. The trial court set a supersedeas bond at \$1,720 with additional monthly supersedeas bonds to be posted on the first day of each month during the pendency of any appeal, beginning on March 1, 2022, in the amount of \$860 (the monthly rental payment amount at the

terminated. Thus, Landlord was not required to wait 60 days before proceeding with a notice to vacate as a predicate to filing its forcible-detainer suit. Landlord was required to provide the COVID Notice of Possible Eviction and to allow Tenants 21 days to respond. Landlord did so. Twenty-two days after it provided that notice, it gave Tenants notice to vacate. When, as here, the occupants are tenants under a written lease agreement, the landlord must give the tenants who default under the lease at least three days' written notice to vacate the premises before the landlord files a forcible-detainer suit *unless* the parties have contracted for a different notice period in a written lease or agreement. TEX. PROP. CODE ANN. § 24.005(a). Tenants' lease provides, in the event of a default, Landlord is to give at least a 24-hour written notice to vacate. Landlord gave Tenants 3 days' written notice to vacate. This notice was greater than that which was required by section 24.005(a), as applicable here, and greater than that which was required by the written lease. Thus, there was no deficiency in the notice Landlord provided to Tenants and Tenants' complaint regarding the notice and the timing of Landlord's forcible-detainer suit lacks merit. We resolve this complaint against Tenants.

II. Possession of the Premises

To the extent Tenants challenge the trial court's determination Landlord is entitled to possession of the Premises due to the non-payment of rent, that challenge fails.



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

ANGELIA SMITH, KELVIN
SMITH AND ALL OCC, Appellants

No. 05-22-00171-CV V.

SNUG OWNER, LLC D/B/A THE
BROOKLYN@9590, Appellee

On Appeal from the County Court at
Law No. 4, Dallas County, Texas
Trial Court Cause No. CC-21-05552-
D.

Opinion delivered by Justice
Kennedy. Justices Carlyle and Smith
participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee SNUG OWNER, LLC D/B/A THE BROOKLYN@9590 recover its costs of this appeal from appellant ANGELIA SMITH AND KELVIN SMITH.

It is **ORDERED** that the trial court determine the amount of rent, damages, and costs accrued during the pendency of the appeal and the clerk of the district court is directed to release such amount to SNUG OWNER, LLC D/B/A/ THE BROOKLYN@9590 from the cash deposit in lieu of cost bond. After the rent, damages and all costs have been paid, the clerk of the district court is directed to release the balance, if any, of the cash deposit to ANGELIA SMITH AND KELVIN SMITH.

Judgment entered this 3rd day of October 2023.

than a scintilla of evidence to support an implied finding Tenants were delinquent in their rent and other amounts they owed. *See BMC Software*, 83 S.W.3d at 795. We further conclude the trial court's ruling with respect to possession is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. *See Tempest Broadcasting*, 150 S.W.3d at 868.

We overrule Tenants' issues.

III. Supersedes Bond

Landlord requests that this Court award it the full amount held by the trial court in the registry of the court as a supersedes bond. It appears from the record that Tenants made cash deposits in lieu of supersedeas bond. Because the judgment being superseded was for possession of real property, and because the cash deposit in lieu of supersedeas bond must "adequately protect the judgment creditor against any loss or damage occasioned by the appeal," *see Muniz v. Vasquez*, 797 S.W.2d 147, 150 (Tex. App.—Houston [14th Dist.] 1990, no pet.), Landlord is entitled to recover from the cash deposit the "value of the property's rent or revenue during the pendency of the appeal." TEX. R. APP. P. 24.1(d)(3). We therefore order the trial court to determine the amount of rent, damages, and costs accrued during the pendency of the appeal and direct the district clerk to release such amount to Landlord from the cash deposit in lieu of cost bond. After the rent, damages, and all costs have been paid, the district court is directed to release the balance, if any, of the cash deposit to Tenants.

TAB – 3

Motion for Reconsideration En Banc, Fifth Court of Appeals at Dallas,

case no: 05-22-00171-CV, Order entered on 11/01/2023

TAB – 4

Undecided Appeal -Fifth Court of Appeals at Dallas on Order to Release Funds, Case No: 05-23-01252-CV, regarding CC at Law# 4, Jude Jones signed Order and question of Jurisdiction of Order.

Applicants RESPONSE TO COURT JURISDICTION OVER THIS APPEAL.
File date, 12/11/2023. Case No: 05-23-01252-CV -(See case detail sheet).

Order entered November 1, 2023



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-22-00171-CV

ANGELIA SMITH, KELVIN SMITH AND ALL OCC, Appellants

V.

SNUG OWNER, LLC. D/B/A THE BROOKLYN@9590, Appellee

On Appeal from the County Court at Law No. 4
Dallas County, Texas
Trial Court Cause No. CC-21-05552-D

ORDER
Before the Court En Banc

Before the Court is appellants' October 23, 2023 second amended motion for reconsideration en banc. Appellants' motion is **DENIED**.

/s/ ROBERT D. BURNS, III
CHIEF JUSTICE

Order entered January 30, 2024



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-23-01252-CV

ANGELIA SMITH AND KELVIN SMITH, Appellants

V.

SNUG OWNER, LLC D/B/A THE BROOKLYN @9590, Appellee

**On Appeal from the County Court at Law No. 4
Dallas County, Texas
Trial Court Cause No. CC-21-05552-D**

ORDER

Before the Court is appellants' January 29, 2024 motion requesting the "Audio-Video" from the court reporter to verify the accuracy of the reporter's record. Audio and video recordings of trial court proceedings are not part of the reporter's record under the rules of appellate procedure. *See* TEX. R. APP. P. 34.6(a)(1). Accordingly, we **DENY** the motion.

After reviewing the clerk's record, the Court questions its jurisdiction over this appeal. Generally, this Court has jurisdiction over final judgments and certain

interlocutory orders as permitted by statute. *See Lehmann v. Har-Con Corp.*, 32 S.W.3d 191, 195 (Tex. 2001); TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a) (listing appealable interlocutory orders). In a prior appeal, this Court affirmed the final judgment of eviction. *See Smith v. Snug Owner, LLC*, No. 05-22-00171-CV, 2023 WL 6430000 (Tex. App.—Dallas Oct. 3, 2023, pet. denied). In that opinion, we ordered the trial court to determine the amount of rent, damages, and costs accrued during the pendency of the appeal and directed the district clerk to release such amount to appellee from the cash deposit in lieu of cost bond. *Id.* at *4. The trial court complied and signed an order on October 11, 2023 ordering the release of the entire amount within the court's registry to appellee. Appellants appeal from this order. There does not appear any authority allowing an appeal from such an order.

So that this Court can determine its jurisdiction over the appeal, appellants are requested to file, by **February 9, 2024**, a jurisdictional letter brief of no more than three pages explaining how this Court has jurisdiction over this appeal. Appellee may file a responsive letter brief of no more than three pages within ten days of appellant's letter brief. If any party will be relying on information not in the record before this Court, that party shall have filed a supplemental clerk's record.

We **SUSPEND** the current deadline for appellants' brief on the merits. After it has received briefs regarding the jurisdictional issue, the Court will either: (1) dismiss the appeal for want of jurisdiction; or (2) notify the parties by letter that the Court appears to have jurisdiction over the appeal and set a new deadline for the appellants' brief on the merits. We caution appellants that failure to file a jurisdictional brief by **February 9, 2024** may result in dismissal of the appeal without further notice.

/s/ **BILL PEDERSEN, III**
JUSTICE

CASE: 05-23-01252-CV

Case:
05-23-01252-CV

"Undecided" see status on next page.

Date Filed:

12/11/2023

Case Type:

Real Property

Style:

Angelia Smith and All Occ.; Kelvin Smith and All Occ.

v.:

Snug Owner, LLC d/b/a The Brooklyn @9590

Orig Proc:

No

Transfer From:

Transfer In:

Transfer Case:

Transfer To:

Transfer Out:

Pub Service:

APPELLATE BRIEFS

| Date | Event Type | Description | Document |
|------------|--------------------|-------------|---|
| 02/08/2024 | Letter brief filed | Appellant | [PDF/327 KB] Appellant Jurisdictional Brief [PDF/86 KB] Notice |

CASE EVENTS

| Date | Event Type | Disposition | Document |
|------------|-------------------------------------|-------------|----------|
| 02/18/2024 | Response due regarding jurisdiction | | |
| 02/16/2024 | Appellants brief due | | |

Court

County Court at Law No. 4

County

Dallas

Court Judge

Honorable Dianne K. Jones

Court Case

CC-21-05552-D

Reporter

Vearneas Faggett

Punishment

To view or print PDF files you must have the Adobe Acrobat® reader. This software may be obtained without charge from Adobe. Download the reader from the Adobe Web site

* >
Case Status as of 2/19/24

| Date | Event Type | Disposition | Document |
|------------|--|--------------------|--|
| 02/09/2024 | Response due regarding jurisdiction | | |
| 02/08/2024 | Letter brief filed | | [PDF/327 KB] Appellant Jurisdictional Brief [PDF/86 KB] Notice |
| 01/30/2024 | Order entered | Otherwise Disposed | [PDF/152 KB] Order on Appellant Motion and Res [PDF/81 KB] Notice |
| 01/29/2024 | Motion filed | | [PDF/190 KB] motion filed |
| 01/25/2024 | Electronic Supplemental Reporter/Recorders Record Filed | | [PDF/90 KB] Notice |
| 01/25/2024 | Letter filed | | [PDF/121 KB] Letter to correct transcript |
| 01/25/2024 | Record Sent | | |
| 01/22/2024 | Electronic Supplemental Reporter/Recorders Record Filed | | |
| 01/17/2024 | Response filed | | [PDF/121 KB] Response to no reporter's record |
| 01/17/2024 | Electronic Reporter/Recorders Record Filed | | [PDF/90 KB] Notice |
| 01/11/2024 | Electronic Clerks Record Filed | | [PDF/89 KB] Notice |
| 01/11/2024 | Letter received | | [PDF/82 KB] PAUPERS NO FEE SHEET |
| 12/13/2023 | Docketing statement filed | | [PDF/394 KB] DS |
| 12/13/2023 | Statement of inability to afford costs filed in the court of appeals | | [PDF/79 KB] Notice |
| 12/13/2023 | No clerks record filed in civil case | | [PDF/91 KB] Notice |
| 12/13/2023 | No reporters record filed in civil case | | [PDF/93 KB] Notice |
| 12/11/2023 | Letter issued by the court | | [PDF/165 KB] Notice |
| 12/11/2023 | Docketing statement due | | [PDF/89 KB] Notice |
| 12/11/2023 | Fee requested | | [PDF/88 KB] Notice |
| 12/11/2023 | Notice of appeal filed in court of appeals | | [PDF/8.16 MB] NOA [PDF/96 KB] Notice |
| 12/10/2023 | Record due | | |
| 12/05/2023 | Notice of appeal filed in trial court | | |
| 10/11/2023 | Judgment signed by trial court judge | | |

CALENDARS

| Set Date | Calendar Type | Reason Set |
|------------|---------------|-------------------------------------|
| 02/18/2024 | Status | Response due regarding jurisdiction |

PARTIES

| Party | PartyType | Representative |
|------------------|-----------|---------------------|
| Smith, Angelia | Appellant | Angella Smith |
| Snug Owner, LLC. | Appellee | Justin J. Dertinger |
| Smith, Kelvin | Appellant | Kelvin Smith |

TRIAL COURT INFORMATION

TAB – 5

Petition for Review, Supreme Court of Texas,
case no: 23-0917, Order dated 12/22/2023.

TAB – 6

Clerk of the Supreme Court of Texas, certified a true and correct copy of the orders of the Supreme Court of Texas, dated 02/02/2024.

TAB – 7

Fifth Court of Appeals at Dallas, case no: 05-22-00171-CV, Mandate issued
on the 8th day of February, 2024,
to the County Court at Law No. 4, CC-21-05552-D.



**Court of Appeals
Fifth District of Texas at Dallas**

MANDATE

**TO THE COUNTY COURT AT LAW NO. 4 OF DALLAS COUNTY,
GREETINGS:**

Before the Court of Appeals for the Fifth District of Texas, on the 3rd day of October 2023, the cause on appeal to revise or reverse the judgment between

ANGELIA SMITH, KELVIN
SMITH AND ALL OCC, Appellants

No. 05-22-00171-CV V.

SNUG OWNER, LLC D/B/A THE
BROOKLYN@9590, Appellee

On Appeal from the County Court at
Law No. 4, Dallas County, Texas
Trial Court Cause No. CC-21-05552-
D.

Opinion delivered by Justice
Kennedy. Justices Carlyle and Smith
participating.

was determined; and this Court made its order in these words:

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee SNUG OWNER, LLC D/B/A THE BROOKLYN@9590 recover its costs of this appeal from appellant ANGELIA SMITH AND KELVIN SMITH.

It is **ORDERED** that the trial court determine the amount of rent, damages, and costs accrued during the pendency of the appeal and the clerk of the district court is directed to release such amount to SNUG OWNER, LLC D/B/A/ THE BROOKLYN@9590 from the cash deposit in lieu of cost bond. After the rent, damages and all costs have been paid, the clerk of the district court is directed to

IN THE SUPREME COURT OF TEXAS

-- -- -- --

NO. 23-0917

ANGELIA SMITH, KELVIN SMITH
AND ALL OCCUPANTS
v.
SNUG OWNER, LLC D/B/A THE
BROOKLYN@9590

§
§
§
§
§
§

Dallas County,

5th District.

December 22, 2023

Petitioners' petition for review, filed herein in the above numbered and styled case, having been duly considered, is ordered, and hereby is, denied.

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

I, BLAKE A. HAWTHORNE, Clerk of the Supreme Court of Texas, do hereby certify that the above is a true and correct copy of the orders of the Supreme Court of Texas in the case numbered and styled as above, as the same appear of record in the minutes of said Court under the date shown.

WITNESS my hand and seal of the Supreme Court of Texas, at the City of Austin, this the 2nd day of February, 2024.



Blake A. Hawthorne
Blake A. Hawthorne, Clerk
By Monica Zamarripa, Deputy Clerk

release the balance, if any, of the cash deposit to ANGELIA SMITH AND KELVIN SMITH.

WHEREFORE, WE COMMAND YOU to observe the order of the Court of Appeals for the Fifth District of Texas, in this behalf, and have it duly obeyed and executed.

WITNESS the HON ROBERT D. BURNS, III, Chief Justice of the Court of Appeals, with the Seal thereof affixed, at the City of Dallas, this 8th day of February 2024.



/s/Ruben Morin
Ruben Morin, Clerk

Exhibit -A

Legal Standard for Temporary Restraining Order

LEGAL STANDARD FOR A TEMPORARY RESTRAINING ORDER AND

TEMPORARY INJUNCTION 22. Injunctive relief, including the issuance of a temporary restraining order, serves the general purpose of preserving the status quo until the current Petition of Review or the next stage if any relief of procedural stage of the case can be heard. *Butnaru v. Ford Motor Co.*, 84 S.W. 3d 198, 204 (Tex. 2002). The standard of issuing a TRO is the same as the standard for issuing a temporary injunction. Pursuant to Tex. Civ. Prac. & Rem. Code §65.011 a writ of injunction may be granted if: 1) the applicant is entitled to relief demanded and all or part of the relief requires the restraint of some act prejudicial to the applicant, 2) a party performs or is about to perform or is procuring or allowing the performance of an act relating to the subject of pending litigation, in violation of the rights of the applicant, and the act would tend to render the judgment in that litigation ineffectual, 3) the applicant is entitled to a writ of injunction under the principals of equity and the statutes relating to injunctions, 4) a cloud would be placed on the title of real property subject to execution at the time of sale, irrespective of any remedy at law, or 5) irreparable injury to real or personal property is threatened, irrespective of any remedy of law. Tex. Civ. Prac. Rem. Code § 65.011. 23. The only question before the trial court at the hearing for temporary injunction is whether the applicant is entitled to the preservation of the status quo pending trial on the merits. *City of Arlington v. City of Fort Worth*, 873 S.W. 2D. 765, 767 (Tex. App. -Forth Worth 1994, orig. Proc.) The applicant must plead a cause of action, prove a probable injury will be sustained during the pendency of the proceeding if the temporary injunction is not issued. *Id.* 24. In balancing equities for an injunction, a court may consider whether the party opposing the injunction would suffer slight or significant injury if the injunction is issued. *NMTC Corp. v. Conroe*, 99 S.W. 3d. 865, 869 (Tex. App. - Beaumont 2003, no pet.

ARGUMENTS AND AUTHORITIES FOR INJUNCTIVE RELIEF 25. The basis of allowing a writ of injunction to be granted pursuant to Tex. Civ. Prac. Rem. Code §§ 65.001 (4) is not relevant here, but the Court may Grant an Injunction in this case under Tex. Civ. Prac. Rem Code §§ 65.001 (1), §§ 65.001 (2), §§ 65.001 (3), or §§ 65.001 (5). 26. The first bases for allowing writ of injunction to be granted pursuant to Tex. Civ. Prac. Rem. Code § 65.001(1) is that the applicant is entitled to the relief demanded and all or part of the relief requires the restraint of some act prejudicial to the applicant. The Smith Family has a pending Petition for Review with the Supreme Court of Texas and that if given the opportunity to timely be heard through the appeal process as awarded by the Constitution and laws set forth in this petition Accordingly, the execution of the Writ of

Possession would be prejudicial to the Smith Family. 27. The second basis for allowing writ of injunction to be granted pursuant to Tex. Civ. Prac. Rem. Code 65.001(2) is that party performs or is about to perform or is procuring or allowing the performance of an act relating to the subject of pending litigation, in Violation of the rights of the applicant, and the act would tend to render the judgment in that litigation ineffectual. Because if the Smith Family were to be set out from their home, they will lose any existing claim to possessory interest. *Marshall v. Hous. Auth. Of the City of San Antonio*, 198 S.W.3d 782, 787 (Tex. 2006) (when defendant in forcible detainer action is no longer in possession of the premises, then an appeal from forcible detainer action is moot unless the defendant asserts “a potentially meritorious claim of right to current, actual possession of the [premises].”). 28. The third basis for allowing writ of injunction to be granted pursuant to 11 Tex. Civ. Prac. Rem. Code 65.001(3) is that the Applicant is entitled to writ of injunction under the principles of equity and the statutes of this state relating to injunctions. It should go without saying that any action in Violation of one’s constitutional rights is per se inequitable. Accordingly, the Court could issue an injunction in this case on the basis of equity. 29. Finally, the fifth basis for allowing writ of injunction to be granted pursuant to Tex. Civ. Prac. Rem. Code 65 001(5) is that irreparable injury to real or personal property is threatened, irrespective of any remedy at law. The Smith Family has been informed that they are in imminent danger of being set out from their home. This action would leave The Smith Family personal property at risk of being damaged or stolen, which is regular occurrence in evictions. Accordingly, the Court could issue an injunction to stop irreparable harm to The Smith Family personal property. 30. In addition to the statutory basis for injunctive relief, in balancing equities for an injunction, court may consider whether the party opposing the injunction would suffer slight or significant injury if the injunction is issued. *NMT Corp. v. Conarro*, 99 S.W.3d 865, 869 (Tex. App. Beaumont 2003, no pet). In the case at hand, The Smith Family’s removal from the property would fundamentally strip them of the full legal benefits and remedies provided by the provision of constitutionally sufficient due process (i.e., hearing for which The Smith Family’s was given notice and an opportunity to be heard) and cause irreparable damage to their property and rights of possession. 12 These repercussions are significant and would leave The Smith Family without an adequate remedy at law and thus would result in significant injury to them. If the temporary injunction requested hereunder is granted, the landlord would not be able to benefit from immediate possession of the property but would continue to accrue contractual right to

by landlord in granting the temporary injunction, and thus would result in only slight injury to landlord rent for the period in which The Smith Family's continues to possess the unit. The contractual claim for rent provides an adequate remedy at law for potential harm suffered as compared to potentially life-altering catastrophe for The Smith Family and their minor child.

ARGUMENTS AND AUTHORITIES FOR DECLARATORY RELIEF

31. If the Smith family is denied due process, which would be an attempt to strip The Smith Family and their minor child from their home. It wasn't that The Smith family failed to be afforded due process because of simple mistake. The Smith Family has been denied an opportunity to be heard through the fabrication of documents, harassment, retaliation and unlawful towing court system. Surely constitutionally sufficient due process isn't satisfied when litigant is denied an opportunity to be heard through fraud perpetrated by the very court instituted to protect the rights of all litigants throughout the judicial proceedings, appeals and Supreme Court Review seeking Justice in the Judicial System without biases.

REQUEST FOR HEARING

32. Plaintiffs (The Smith Family with minor child) requests that the Court set this application for temporary restraining order and temporary injunction for an emergency hearing, and after the application, issue a temporary restraining order and temporary injunction against the Defendants and all other related third parties enjoining them from the acts described herein.

BOND

33. Plaintiffs (The Smith Family with minor child) request that bond associated with temporary injunction be set at \$0.00, because the Plaintiffs currently are paying a cash bond into the Court registry with no late payments or delay in payment to the cash bond account. Therefore the Plaintiffs has filed an affidavit of inability to pay with the Court, and cannot afford to pay any additional amount of bond that the Court in their legal rights may be able to set. Plaintiffs is on a fixed income and due to the irreparable harm of the illegal towing out of retaliation and harassment that is currently subjected to the Plaintiffs to deplete their finances to default on the cash bond in order to secure a writ of possession and other unfair illegal reckless harassment tactics of the Defendants listed in this petition. The requirement of bond in any amount would deny Plaintiffs relief to which they are legally entitled. And that denial of the Plaintiffs in this Petition violates their constitutional right to due process would be predicated solely on their inability to pay money to the court in order to seek redress in which the Plaintiffs are clearly entitled to receive. See *Texas Association of Business v. Texas Air Control Board*, 852 S.W.2d 440, n.18 (Tex. 1993) ("the guarantee of constitutional rights should not depend on the balance in one's bank account").