

DC-24-03556
NASA FEDERAL CREDIT UNION * In the District Court
*
v. * 191st Judicial District
*
RODRICK LEVINGSTON * Dallas County, Texas

**DEFENDANT’S RESPONSE TO
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant Rodrick Levingston in the above-entitled and numbered cause, and files this Response and Brief in Opposition to Plaintiff NASA Federal Credit Union’s [hereinafter NASA] Motion for Summary Judgment as follows:

I. SUMMARY

Movant NASA’s Motion for Summary Judgment against Rodrick Levingston is solely based on a breach of contract claim. The purported contract (NASA’s Exhibit A-1), was never signed or verified by a fact witness. Movant’s lack of approval by Defendant Rodrick Levingston is shown by his testimony. The application has typed a so-called “signature” which is an easily controverted fraud on this court as it is obviously not a signature. The uncontested testimony of Defendant Rodrick is that he did not sign an application, most obviously a typed signature. Furthermore, NASA’s objected to claim for attorney fees is legally and factually insufficient for not being supported by expert legal opinion and for being controverted by Rodrick’s attorney.

II. ARGUMENT

Defendant does not owe NASA the amount of \$22,487.57 claimed in Plaintiff’s motion. To come up with that erroneous amount, NASA solely relies upon the conclusory affidavit of its employee Klaus R. Johnson. While Affiant Klaus R. Johnson testified that he was a records custodian of NASA’s records, beginning in the first paragraph 4 of his affidavit (there are two

misnumbered paragraphs 4), on the second page of his affidavit, he exceeds his records custodian designation. Beginning in that paragraph, he fails to describe which payments were not made. Affiant Klaus R. Johnson fails to even list one payment Defendant did not pay or even one date at which a payment was due. Defendant currently owes Plaintiff nothing. Klaus fails to even be able to count to eight, or at least proofread his affidavit.

The second paragraph 4, of the Affidavit of Klaus R. Johnson states that the unpaid balance under the note is \$22,487.57, without accounting for that amount. Most likely, some overly eager, low level bill collector, without any personal knowledge of this account wrote Kalus's from affidavit without proofing it. In the unlikely event that Klaus comes to the trial in this case, he will be cross examined about who assisted him in preparing the deficient affidavit.

II. Objections to Movant's Summary Judgment Evidence

Defendant objects to the affidavit of Klaus R. Johnson attached to NASA's Motion for Summary Judgment for lack of personal knowledge of the alleged transactions and is, therefore, hearsay. Affiant Klaus R. Johnson's second paragraph 4 is untrue and the transactions described were not made on or about the date the alleged transactions occurred and is also not the best evidence or admissible business records and, therefore, are entirely hearsay. The Affiant Klaus R. Johnson has no personal knowledge of the sued-upon account, and he is not a legal fee expert or attorney. Nevertheless, he opined on the reasonableness and necessity of legal service. The affidavit was signed in the State of Maryland, over thirteen hundred miles from the claimed transactions. The attorney fees testimony is objected to for not supported by expert testimony. All of NASA's summary judgment evidence is thereby controverted.

CONCLUSION

As demonstrated above, the factual inconsistencies and lack of personal knowledge as to the amount of the sued upon account go to the heart of Plaintiff's Motion for Summary Judgment, and it is crucial that the trier of fact determine the credibility of fact witnesses as there was no executed contract. NASA has not established that there are no genuine issues of material fact in regards to its Motion for Summary Judgment, and it has not shown that it is entitled to summary judgment as a matter of law on any of the issues presented.

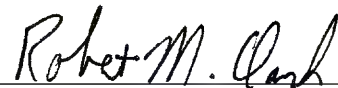
PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant requests that Plaintiff's Motion for Summary Judgment be denied; and that Defendant receive all relief to which Defendant may be entitled.

Respectfully submitted,

EDDLEMAN & CLARK
Attorneys for Defendant

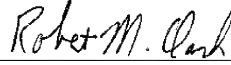
4627 North Central Expressway
Knox Central Place, Suite 2000
Dallas, Texas 75205-4022
Phone 214.528.2400
Fax 214.528.2434
Firm@EddlemanClark.com



ROBERT M. CLARK
State Bar No. 04298200
ASHLEY C. HUNTER
State Bar No. 24124215

Certificate of Service

I certify that a true copy of the above was e-served on counsel for Plaintiff, Matthew B. Fronda at Padfield & Stout, 420 Throckmorton Street, S. 1210, Ft.. Worth, TX 76102, mfronda@padfieldstout.com in accordance with Rule 21a of the *Texas Rules of Civil Procedure* on the 26th day of February, 2025.



Robert M. Clark

	DC-24-03556	
NASA FEDERAL CREDIT UNION	*	In the District Court
	*	
v.	*	191st Judicial District
	*	
RODRICK LEVINGSTON	*	Dallas County, Texas

AFFIDAVIT OF RODRICK LEVINGSTON

STATE OF TEXAS	*	
	*	<i>KNOW ALL MEN BY THESE PRESENTS:</i>
COUNTY OF DALLAS	*	

BEFORE ME, the undersigned authority, on this day personally appeared Rodrick Levingston, who being by me first duly sworn, upon oath did state:

"My name is Rodrick Levingston. I am presently over the age of eighteen (18) years and competent to make this affidavit. I have personal knowledge of all the facts stated herein and the facts are true and correct.

I deny that I an unpaid balance under the sued upon note of \$22,487.57 from NASA Federal Credit Union. My payments have not been credited and Klaus R. Johnson's computation of interest is not broken down. Affiant Klaus R. Johnson does not know what he is talking about in this case. Affiant is just signing a misnumbered and erroneous affidavit put in front of him by someone in the State of Maryland who is obviously operating outside their expertise and not paying attention to detail. Each and every account is incorrect. The Affidavit of Klaus R. Johnson has no records attached supporting the testimony in the redundantly numbered paragraphs 4. The Klaus Johnson affidavit is so poorly prepared as to not properly number or count to eight. This makes it difficult to cite its paragraphs. I do not owe the claimed \$22,487.57 principal, interest and costs demanded. Furthermore, I doubt that Klaus R. Johnson will come to court to testify, but if Affiant does his confusion will be demonstrated. He will be asked who actually prepared the faulty affidavit he signed and why he does not proofread his own affidavit.

It does not adequately support NASA's motion for summary judgment.

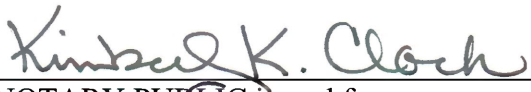
Klauser R. Johnson is not designated as an expert on attorney fees and, therefore, the unreasonable attorney fees alleged in the attorney fees request is not legally or factually supported and is objected to."

Further, Affiant sayeth nought.

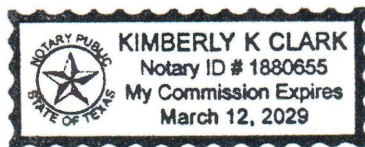


Rodrick Levingston

SUBSCRIBED and SWORN to before me, the undersigned authority, on this the 24th day of February, 2025, to certify which witness my hand and seal of office.



NOTARY PUBLIC in and for
the State of Texas



	DC-24-03556	
NASA FEDERAL CREDIT UNION	*	In the District Court
	*	
v.	*	191st Judicial District
	*	
RODRICK LEVINGSTON	*	Dallas County, Texas
STATE OF TEXAS	*	
	*	<u>AFFIDAVIT OF ROBERT M. CLARK</u>
COUNTY OF DALLAS	*	

BEFORE ME, the undersigned authority, on this day personally appeared Robert M. Clark, known to me to be the person whose signature is set forth herein, and who being by me duly sworn, on oath states:

“My name is Robert M. Clark. I am presently over the age of eighteen (18) years and am competent to make this affidavit. I have personal knowledge of all of the facts stated herein and the facts are true and correct. I am an attorney licensed to practice law in the State of Texas, and have been so licensed since 1982. In 1988, I became a member of the bar of the United States Supreme Court. I have been Board Certified since 1989 in Civil Trial Law by the Texas Board of Legal Specialization and in Civil Trial Advocacy since 1990 and in Civil Pretrial since 2012 by the National Board of Trial Advocacy. In 1990, I was elected a member of the American Board of Trial Advocates. A significant portion of my practice is devoted to commercial and business litigation.

I am the attorney of record for Defendant in this lawsuit and am familiar with the small amount of work that has been done in this case. I am also familiar with attorneys’ fees customarily charged by attorneys on cases of this type and attorneys’ fees charged by attorneys with experience similar to mine. The work of the Plaintiff includes filing a petition and the deficient motion for summary judgment.

In my professional opinion, a reasonable and necessary attorneys' fee for handling the Plaintiff's case in this lawsuit based upon the quality of the work done by the Plaintiff's attorney through the summary judgment hearing is a good deal less than \$6,029.50 and the amounts of attorney fees for \$30,000 for the trial work and the amount claimed for an appeal \$20,000 for a writ to the Supreme Court of Texas. This is because (1) there was little if any time, novelty or difficulty involved or skill necessary in this case; (2) there is no evidence that the acceptance of this representation did not preclude Plaintiff's counsel from accepting other legal employment; (3) the fee charged is not customarily charged in Dallas County; (4) based upon the work done, little time was involved; (5) there were few time limitations imposed in this case; (6) the long term relation between Plaintiff and its counsel lowers the claimed attorney's fees; (7) much of the work was done by paralegals; (8) Plaintiffs have failed to reveal the exact financial relationship of Plaintiff and its counsel which should lower the fees; and (9) the background and experience of the unnamed associate is not given and the rate is excessive.

In my opinion, a reasonable and necessary attorneys' fee for handling the Plaintiff's case in this lawsuit based upon the quality of the work done by the Plaintiff's attorney through the summary judgment hearing is a good deal less than \$6,029.50, or the court of appeals fees of \$30,000 or the Supreme Court fees of \$20,000. Furthermore, no attorney fees are called for due to the failure to segregate the tasks to show the time required, and to be supported by legal expert testimony, so Plaintiff is entitled to nothing. I object to the part of his affidavit describing time spent. Therefore, I controvert the affidavit of Klause Johnson or of any of NASA's attorneys."

Further, Affiant sayeth not.

Robert M. Clark
Robert M. Clark

SUBSCRIBED and SWORN to before me, the undersigned authority, on this the 24th day of February, 2025, to certify which witness my hand and seal of office.



Betty Kerss Groezinger
NOTARY PUBLIC in and for
the State of Texas

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Robert Clark on behalf of Robert Clark

Bar No. 4298200

Firm@EddlemanClark.com

Envelope ID: 97822489

Filing Code Description: Response

Filing Description: DEF RESPONSE/PLTF SUMMARY JUDGMENT

Status as of 2/27/2025 2:45 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Matthew Fronda		mfronda@padfieldstout.com	2/26/2025 1:20:19 PM	SENT
Sara Verrett		sverrett@padfieldstout.com	2/26/2025 1:20:19 PM	SENT

Associated Case Party: NASA Federal Credit Union

Name	BarNumber	Email	TimestampSubmitted	Status
Jessica Alt		jalt@padfieldstout.com	2/26/2025 1:20:19 PM	SENT