

CAUSE NO. GN1-00142

Edmund B. Heimlich, Unrepresented	§	
	§	THE DISTRICT COURT
Plaintiff / Petitioner	§	
	§	IN TRAVIS COUNTY, TEXAS
V.	§	
	§	Assigned to the
STATE OF TEXAS, by and through	§	
GREG ABBOTT, the Attorney General	§	200TH JUDICIAL DISTRICT
	§	
Defendant / Respondent	§	

PLAINTIFF'S MOTION FOR NO EVIDENCE SUMMARY JUDGMENT

I, Edmund B. Heimlich, the plaintiff herein, ("Heimlich", "I", "me", "my", "plaintiff") present myself in this, my court of Original and Exclusive Jurisdiction¹, to move for entry of this No-Evidence Summary Judgment Pursuant to Rule 166(a) of the Texas Rules of Civil Procedure ("TRCP"). This motion is to obtain a declaratory judgment on the issue of liability alone although there remains a genuine issue as to amount of damages.

TRCP 166 (a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the adverse party has appeared or answered, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to amount of damages.

The Defendant, State of Texas by and through Greg Abbott, the Attorney General, ("the State", "State of Texas") has not, and cannot, in good faith, produce any evidence that would defeat any of the essential elements that support my claim for Redress and Remedy, the compensation to which I am entitled under the Constitution and Statutes of this State, for Wrongful Imprisonment, as set forth in my Second Amended Original Petition for this Action in Law. Accordingly, I am entitled to summary judgment.

i) No-Evidence Motion. After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material

¹ Texas Constitution, Article 5, Section 8: District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies.

fact.

The Required Elements for which Defendant has no Defense

Pursuant to the Statute under which this claim is asserted there are only two elements that must be established as fact to impose upon the defendant the strict-liability required by Law. They are; 1) Imprisonment under the law of this State, and 2) Actual Innocence.

The plain language for a statutory right of entitlement pursuant to 103.001 is;

(a) A person (Heimlich) is entitled to compensation if:

(1) The person has served in whole or in part a sentence in prison under the law of this State.

It is uncontested that Heimlich was sentenced to 4 years in prison and served a part of the sentence. The sentence was, for common sense purposes of this Petition, "under the law of this state" as the charge and indictment was presented to a Grand Jury for the State by John Boone, while employed as a prosecutor for the State as Assistant District Attorney of Harris County, carried forward by Ricardo Molina, also while employed as an Assistant District Attorney of Harris County, with sentence executed by order of Werner Voigt, at that time a Court Officer, acting as a Judge, a member of the Judicial Branch of the State of Texas, employed by the State of Texas.

(2) The person (Heimlich):

(A); or (emphasis added)

(B) has been granted relief on the basis of actual innocence of the crime for which the person was sentenced.

My, Heimlich's, actual innocence cannot, in good faith, be denied by anyone under oath to uphold and defend the Texas Constitution or the Constitution of the United States, and licensed to practice law, by which they are required to have a degree of competence in the knowledge of the Law. A license to practice law, and Oath to the Constitutions and Laws, is a requirement for the holder of the Office of the Attorney General, and those under his supervision, in the employ of the government of the State of Texas, as acknowledgment of their recognition of the limited authority delegated by the Law and as recognition of their knowledge of their duties to the court.

Their license, Office, and Oath impose upon them a duty. That duty is to know the law, know the duties of their Office, and to execute the duties to "preserver, protect, and

defend the Constitution and Laws of the United States and of this State". It is the same, or very similar, Oath, and license requirement the Laws of this State impose upon any who exercise the functions of a Judge in this court.

"I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God."

The Attorney General, and those under his supervision, are in a peculiar position in this case. Pursuant to their license and Oath, evidenced by their acceptance of compensation from the people of this State by and through their government, attempts to Obstruct Justice, by a denial or attempt to hide the Facts, or by an attempt to plead ignorance of the law, will subject them, in their Individual Capacity, to civil, and possibly criminal, penalties for Obstruction of Justice and/or refusal or neglect in the performance of their duties. Pursuant to of the Texas Statutes, codified in Chapter 7 of the Texas Civil Practice and Remedies Code, Sec. 7.001, a court Officer may be subjected to liability in their Individual and/or Official Capacity imposing additional liability upon the People of the State of Texas by and through their government.

CHAPTER 7. LIABILITY OF COURT OFFICERS

SUBCHAPTER A. LIABILITY OF OFFICER

Sec. 7.001. Liability for Refusal or Neglect in Performance of Official Duties.

(a) A clerk, sheriff, or other officer who neglects or refuses to perform a duty required under Title 42, Revised Statutes, or under a provision of this code derived from that title is liable for damages in a suit brought by a person injured by the officer's neglect or refusal.

(b) The officer may be punished for contempt of court for neglect or refusal in the performance of those duties.

The Judge presiding in this District Court, and the Assistant Attorney General as Counsel for the State of Texas, is an "other officer".

THE LAW OF THE CASE

The Law of this Case is well established in the public record and incorporated herein by reference to the prior submissions to the record of this Action and by reference to two conclusive judgments from the Court of Appeals for the State of Texas. The first was *Heimlich v. State* 988 S.W.2d 382. 382 (Tex.App.—Houston [14th Dist.] 1999, pet. Ref'd) and the second is the judgment of the Court of Appeals, case no. 03-02-00151-CV, reversing the summary judgment previously granted to the Defendant in this Action.

On appeal, Heimlich argues that the district court erred by granting summary judgment against his claims because the court of appeals reversed his conviction on grounds that he did not commit a crime; he is thereby essentially claiming that he has "been granted relief on the basis of actual innocence of the crime." Receiving relief based on actual innocence is an additional basis for compensation under the amended statute. *See* Tex. Civ. Prac. & Rem. Code Ann. § 103.001(a)(2)(B) (West Supp. 2003). The amended statute applies to this case because the Legislature specified that the amendments apply to all actions "pending on that effective date and in which the trial, or any new trial or retrial following motion, appeal, or otherwise begins on or after that effective date." Act of May 26, 2001, 77th Leg., R.S., ch. 1488, § 4(a)(2), 2001 Tex. Gen. Laws 5280, 5284. There is no provision for electing to proceed under the former statute. *See id.* The statute was effective June 15, 2001. *See id.* The State filed its motion for summary judgment on November 29, 2001, and the court granted that motion on January 8, 2002. Thus, despite surplusage in Heimlich's pleadings to the contrary, the amended statute applies because trial in this case had not begun on the effective date of the amendment. *See id.* **Moreover, Heimlich's pleadings are sufficient to state a claim under the amended statute.** Accordingly, we conclude that the district court erred by granting summary judgment against his claim for recovery under section 103.001.

CONCLUSION

Having considered all of Heimlich's complaints, we reverse the summary judgment granted against Heimlich's claims for compensation under article I, section 17 of the Texas Constitution and under Texas Civil Practice and Remedies Code section 103.001. We affirm the summary judgment in all other respects. We remand the cause for further proceedings.

As additional support I, Heimlich, direct attention to the Law of the Case established by finding of the 11th District Court of Texas, in cause no. No. 2000-50426, a proceeding for the expunction of the arrest record, finding "the information charging [Heimlich] with commission of a felony was presented, it has been dismissed and the

court finds that it was dismissed because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense or because it was void. My, Heimlich, the plaintiff's, Actual Innocence is a matter of public record the defendants cannot contest or controvert.

DEFINITION OF ACTUAL INNOCENCE

In *Schlup v. Delo*, 513 U.S. 298 (1995), The United States Supreme Court held the threshold showing of "actual innocence" required by *Sawyer v. Whitley* (91-6382), 505 U.S. 333 (1992), [a case appealing an opinion of the United States Court of Appeals for the Fifth Circuit] is "by clear and convincing evidence, that but for a constitutional error, no reasonable juror would have found Heimlich guilty."

The finding of the Court of Appeals for the Third District, at Austin, found there was Constitutional Error in the taking of my, Heimlich's, property in violation of the Texas Constitution, Art. 1, Section 17 and that this has been established as the Law of the Case by the conclusive judgment in *Heimlich v. State* 988 S.W.2d 382. 382 (Tex.App.—Houston [14th Dist.] 1999, pet. Ref'd).

The opinion of the Court, while holding I, Heimlich, could assert only injunctive relief for all errors but for the Constitutional Error in Section 17, of Article 1, of the Texas Constitution, did not deny there were multiple Constitutional Errors. These errors are a matter of record in cause no. 674066, the underlying criminal proceeding, incorporated herein by reference, and in the record of the Texas Fourteenth Court of Appeals in reversing the conviction in cause no. 674066, on appeal as case no. 14-95-01369-CR, on grounds of legal insufficiency of the evidence. In other words; the

conviction was reversed because no crime, cognizable under the Laws of this State, had been committed. As the Judge in this Court, as one licensed to practice law in this State, is well aware it is well-established Law, in a State and Nation under the Rule of Law, that absent a violation of Black Letter, Statutory, Penal Law, Innocence is Actual regardless of any bias or prejudice others may have toward the social and/or economic status, or other distinguishing characteristics of a person and/or citizen. The Law is the great leveler.

The bias and prejudice that those employed in the Office of the Attorney General may have towards me, Heimlich, is not a relevant, legally cognizable, defense. The bias and prejudice those employed in the Office of the Attorney General may believe they can suborn from the Judge in this court, or may believe they might be able to create with a jury biased upon the difference in social/economic/political status between me and the title of Office of the Attorney General is not a relevant, legally cognizable, strategy. For the Judge of this Court to allow it would be neglect in the performance of their duty to "preserve, protect, and defend the laws of the United States and of this State".

PRIVATE LAW AS PROOF OF ACTUAL INNOCENCE

Well-established law, throughout the history of jurisprudence in this Nation and in this State, hold that civil-disputes between private individuals cannot give rise to probable cause *Wooley v. City of Baton Rouge*, 211 F.3d 913, 925-27 (5th Cir. 2000). No safety issue was at play and the actors for the State of Texas knew, throughout the seizure of my property, my prosecution, and my imprisonment, that the dispute was civil, not criminal. The exhibits, already in the Record of the Courts of the State of Texas, clearly show this the alleged complainant had no grounds, no legal basis, for a criminal

complaint. The contract between the alleged complainant and I, the plaintiff, is a matter of record and shows, to anyone with an understanding of contract law, the complainant did not have a valid, legally cognizable, complaint for breach of contract. This is evident on the face of the documents relevant to this Action and further substantiated by testimony of the complaint that is part of the record in cause no. 674066 incorporated herein by reference.

There was no fraud or duress in the contract nor can it be asserted. Both were members of the National Association of Realtors whose panel of attorneys had drafted and promulgated the contract between them. Both were licensed by the State of Texas requiring both be competent in understanding the Law of Contracts, and the Privity of Contracts. My, Heimlich's, Actual Innocence is further established by the Private Law of the Contract between the alleged complainant and me, the Plaintiff, Edmund B. Heimlich. While I, plaintiff, was a prosecution "under the laws of this State" it was a wrongful, illegal, prosecution that resulted in my Wrongful Imprisonment by the State of Texas.

DEFENDANT HAS NO RIGHT TO TRIAL BY JURY

The Defendant is not entitled to a trial by jury. Pursuant to Rule 39 of the Texas Rules of Civil Procedure the jury is without jurisdiction, or any discretionary authority granted as part of their duty as a juror, to nullify the Texas Constitution, or abridge the substantive Rights, provided to me, by the Texas Constitution. The representatives for the jurors have already spoken by and through the Texas Legislature.

Texas Rules of Civil Procedure:

Rule 39. Trial by Jury or by the Court

(a) By Jury.

When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation

filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury **or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States.**

The Organic Law for this State can be found in Turtle Bayou Resolution, the Declaration of Rights that initiated the establishment of the present government of and for the State of Texas. This resolution is codified in our Texas Constitution under Article 1, titled the Bill of Rights, and, pursuant to Section 29, these Rights, that I possess as a citizen of the State of Texas, are exempt from the powers of government and forever to remain inviolate. This Declaration has been incorporated into the Record of this Case in my Declaratory Judgment Suus Judex.

Any and all who might serve on a jury panel in this court of Original and Exclusive Jurisdiction will be acting as an Officer of the Court and become, for their period of service as a Juror, a part of government of this State. The Constitution and Laws of this State do not provide any Juror, or collection of Jurors, jurisdiction and/or discretionary authority to nullify and/or abridge the Rights I possess as a Citizen of Texas, or as a Citizen of the United States, or as a Human Person recognized, in International Law, as possessing inherent (unalienable) Rights to the Protection of the Law and the Remedy, Redress, and Compensation this Protection requires.

A jury in this case is completely unwarranted, unjustified, and contrary to the Organic Law, the Constitution, and the Laws of this State, on the issue of liability. The only possible purpose for the Defendant to ask for a Jury, on the issue of liability, is to either delay justice; or, hope the Defendant's counsel may be able to Obfuscate the facts and law from the jury in a denial and deprivation of my unalienable, fundamental, Rights,

including the Right to Equal Protection of the Law and Due Process of Law, in refusal and/or neglect of the Official Duties of an Officer of the Court.

"MOTION" IS NOT A GRANT OF UNLIMITED DISCRETION

This submission to the Record of the Court for this case is labeled as a "motion" as a matter of decorum. It is labeled a "motion" as a show of respect for the court. The label is not intended as, and must not be construed as, a grant of unlimited discretionary authority to the judicial Officer, the Judge, in this proceeding or a waiver of any Rights, Privileges, and Immunities possessed by me, the plaintiff, Edmund B. Heimlich, as a Human Person, Texas Citizen, and/or Citizen of the United States. The plain language of the law at issue cannot, in good faith, be questioned. The facts that apply to the law, creating defendants liability, are so well documented and of record they leave no dispute that can be submitted to judgment. There is nothing left for the Judge to do but the performance of the duty of entry of judgment as a Matter of Law on the issue of liability pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 103.001(a)(2)(B) (West Supp. 2003).

WHEREFORE, PREMISES CONSIDERED, I, the Plaintiff / Petitioner, Edmund B. Heimlich, incorporating by reference all supporting affidavits including but not limited to, my Amendment and Supplement filed on September 27, 2002, and my Declaratory Judgment Suus Judex filed on May 20, 2003, respectfully request the Judge of this Court perform their duties as an Officer of the Court and enter Judgment on the issue of liability, for Edmund B. Heimlich, on the claim for Compensation for Wrongful Imprisonment, in this Action, under cause No. GN1-00142, against the State of Texas.

Respectfully submitted,

Edmund Heimlich
6410 Rancho Blanco Court
Houston, TX 77083
Telephone: 281-561-7211
Facsimile: 281-561-8122 or,
1-801-720-4343
email: ed@informed.org

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing was served upon the state of Texas by placing same in the United States mail addressed to the address of record for the Attorney General, Greg Abbot, and his designated Attorney-in-Charge, Seth Byron Dennis, on this the 23th day of June, 2003 and by facsimile to his attention at their fax number of 512-495-9139. The service of this pleading has been delivered with Notice of Hearing Scheduled for July 17th, 2003, at 2 P.M. for entry of this judgment.

Edmund B. Heimlich

NOTICE OF HEARING

TO: Greg Abbott, Attorney General, C/O Seth Byron Dennis, Asst. A. G.

Notice is hereby given of hearing to be held on July 17, 2003, at 2 P.M., for entry of this no evidence summary judgment on the issue of liability

Edmund B. Heimlich