



and those stated below, Plaintiff's jury request should be denied as untimely and improper under Texas Rule of Civil Procedure 216.

#### ARGUMENTS AND AUTHORITIES

6. The decision to deny a party's request for a jury trial is within the discretion of the trial court and is reviewed, on appeal, for abuse of discretion. *Monroe v. Alternatives in Motion*, 234 S.W.3d 56, 69 (Tex. App.—Houston [1st Dist.] 2007, no pet.). Abuse of discretion will only be found when the trial court's decision is arbitrary, unreasonable, and without reference to guiding principles. *Id.* "It is within the discretion of the trial court to deny a jury trial in the absence of a timely request or payment of a jury fee." *Id.*

#### PLAINTIFF FAILED TO TIMELY PAY THE JURY FEE.

7. The Texas Rules of Civil Procedure are clear regarding timely requesting a jury trial: "No jury trial shall be had in any civil suit, unless a written request for a jury trial is filed with the clerk of the court a reasonable time before the date set for trial of the cause on the non-jury docket, **but not less than thirty days in advance.**" TEX. R. CIV. P. 216(a) (emphasis added).

8. Furthermore, as to payment of the jury fee, Texas Rule of Civil Procedure 216(b) provides that "[u]nless otherwise provided by law, a fee of ten dollars if in the district court and five dollars if in the county court **must be deposited with the clerk of the court within the time for making a written request for a jury trial.**" The clerk shall promptly enter a notation of the payment of such fee upon the court's docket sheet. TEX. R. CIV. P. 216(b) (emphasis added).

9. Plaintiff requested a jury trial when he filed this lawsuit on February 3, 2023, which would have been timely, but he never paid the jury fee within the time for making the written jury request.

10. When Plaintiff amended his lawsuit on April 10, 2023, he again requested a jury trial, 21 days before the trial setting. Plaintiff did pay the jury fee this time, on April 27, 2023, 4 days prior to the trial setting. Although a fee was paid, it and the written jury request were both made less than thirty days prior to the trial setting.


11. As such, Plaintiff failed to timely file a written jury request and to timely deposit the jury fee within the time prescribed by the Texas Rules of Civil Procedure, requiring that Plaintiff's request for jury trial be denied.

#### **PRAYER**

For the foregoing reasons, Oggero prays that this Court grant Defendant's Motion, strike Plaintiff's jury request, and award and reimburse Oggero for all costs and reasonable and necessary attorney's fees, and grant any such other relief to which Oggero may be justly entitled.


Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a true copy of this document was served on all parties of record in accordance with Rule 21a of the Texas Rules of Civil Procedure on the following on May 1, 2023.

  
\_\_\_\_\_  
George A. Oggero  
Attorney for George A. Oggero

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George Oggero on behalf of George Oggero

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Status as of 5/1/2023 9:03 AM CST

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