

Motion for Rehearing Overruled; Supplemental Opinion on Rehearing filed October 19, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-00174-CV

OMAR MONTES, Appellant

V.

THE CITY OF HOUSTON, Appellee

**On Appeal from the 333rd District Court
Harris County, Texas
Trial Court Cause No. 98-05537**

SUPPLEMENTAL OPINION ON REHEARING

In his motion for rehearing, appellant, Omar Montes, complains that this court misunderstands the purpose behind his pleading, and therefore, in footnote 3, improperly concludes that “jurisdiction is defeated by his pleading.” Specifically, Montes states:

If jurisdiction is defeated by the defense of sovereign immunity, that defense is created by the facts, not by Mr. Montes' pleading. Penalizing Mr. Montes and his counsel for pleading the truth, as opposed to what the Court notes is apparently what was not done in a companion case, stands every principle of law on its head. Truth and accuracy are punished, and a failure to disclose the truth is rewarded.

It makes no sense for Omar Montes to not plead the truth, get an interlocutory ruling that sovereign immunity does not preclude the trial court from having jurisdiction, spend an

inordinate amount of time, money, and emotional trauma to try the case to victory, and then lose the case because of the City's argument that a dead-end sign creates sovereign immunity. . . . To imply in footnote 3 that Mr. Herzog [Montes' counsel] incorrectly pled Mr. Montes' claim, thereby resulting in a loss of the lawsuit, is unfair to Mr. Montes and his counsel and is unnecessary to the resolution of any issue in this case.

In a case challenging jurisdiction, the court is required to take as true all factual statements in the plaintiff's pleading. *See Continental Cas. Ins. Co. v. Functional Restoration Associates*, No. 98-0479, 2000 WL 351196 (Tex. April 6, 2000). Consequently, for jurisdictional purposes, a court views the plaintiff's pleading as the facts. Thus, the court's finding on jurisdiction is based on the facts in the pleading; it is not a comment on the drafter of the pleading but on the sufficiency of the jurisdictional facts.

/s/ Kem Thompson Frost
 Justice

Judgment rendered and Opinion filed October 19, 2000.

Panel consists of Justices Amidei, Anderson and Frost (J. Amidei dissenting).

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