

**Elizabeth L'Esperance**

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**Sent:** Thursday, August 16, 2018 3:04 PM  
**To:** Elizabeth L'Esperance  
**Subject:** Filing Submitted for Case: 2018531689; VISTA BANK vs. FIRST BANCSHARES OF TEXAS, INC; Envelope Number: 26819063

## Filing Submitted

Envelope Number: 26819063  
Case Number: 2018531689  
Case Style: VISTA BANK vs. FIRST  
BANCSHARES OF TEXAS, INC



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<b>Date/Time Submitted</b>	8/16/2018 3:02 PM CST
<b>Filing Type</b>	Answer/Response
<b>Filing Description</b>	Original Answer
<b>Type of Filing</b>	EFileAndServe
<b>Filed By</b>	Liz L'Esperance
<b>Filing Attorney</b>	Joel Hogue

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Joel Hogue

**From:** No-Reply@eFileTexas.gov  
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**To:** Joel Hogue  
**Subject:** Notification of Service for Case: 2018531689, VISTA BANK vs. FIRST BANCSHARES OF TEXAS, INC for filing Answer/Response, Envelope Number: 26819063

## Notification of Service

Case Number: 2018531689  
Case Style: VISTA BANK vs. FIRST  
BANCSHARES OF TEXAS, INC  
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Filing Details	
Case Number	2018531689
Case Style	VISTA BANK vs. FIRST BANCSHARES OF TEXAS, INC
Date/Time Submitted	8/16/2018 3:02 PM CST
Filing Type	Answer/Response
Filing Description	Original Answer
Filed By	Liz L'Esperance
Service Contacts	Other Service Contacts not associated with a party on the case:  Fernando Bustos ( <a href="mailto:fbustos@bustoslawfirm.com">fbustos@bustoslawfirm.com</a> )  Jan Bufkin ( <a href="mailto:jbufkin@bustoslawfirm.com">jbufkin@bustoslawfirm.com</a> )  Amy Dobberstein ( <a href="mailto:adobberstein@bustoslawfirm.com">adobberstein@bustoslawfirm.com</a> )  Matthew Zimmerman ( <a href="mailto:mzimmerman@bustoslawfirm.com">mzimmerman@bustoslawfirm.com</a> )  Rhonda Rogers ( <a href="mailto:rrogers@bustoslawfirm.com">rrogers@bustoslawfirm.com</a> )  John Massouh ( <a href="mailto:john.massouh@sprouselaw.com">john.massouh@sprouselaw.com</a> )  Joel Hogue ( <a href="mailto:joel.hogue@sprouselaw.com">joel.hogue@sprouselaw.com</a> )  Liz L'Esperance ( <a href="mailto:liz.lesperance@sprouselaw.com">liz.lesperance@sprouselaw.com</a> )  Sherida Stone ( <a href="mailto:sherida.stone@sprouselaw.com">sherida.stone@sprouselaw.com</a> )  Chase Hales ( <a href="mailto:chase.hales@sprouselaw.com">chase.hales@sprouselaw.com</a> )

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untethered to the law that applies to these facts. In the process, Vista Bank impugns the reputation of FirstCapital and two of its officers and directors.

3. Here are the facts.

4. After regular business hours on Tuesday, July 31, 2018, FirstCapital received an unsolicited phone call and visit from Rick Dykes and his attorney, David Langston. Dykes was a principal in various Reagor Dykes entities and a non-voting FirstCapital advisory board member. Dykes and his attorney told FirstCapital that Ford Motor Credit Corporation (“FMC”) advised Dykes and Langston that FMC had discovered issues surrounding Reagor Dykes’ floor plan financing and that Ford maintained it was owed in the neighborhood of \$39 million by the Reagor-Dykes entities. In the late evening meeting, there were also discussions that Reagor Dykes’ chief financial officer might be “kiting” Reagor Dykes checks. During the course of Dykes’ and Langston’s late evening conversation with FirstCapital, FMC publicly filed a federal court lawsuit by electronic means in Lubbock seeking over \$116,000,000 in total Reagor Dykes debt with \$41 million currently due and owing. Among other things, FMC alleged that Reagor Dykes breached agreements, sold vehicles “out of trust”, and submitted false or inaccurate information to FMC in order to delay paying amounts due to FMC.

5. After learning of FMC’s claims against Reagor-Dykes, FirstCapital management, acting consistent with their fiduciary obligations to FirstCapital, began investigating FirstCapital’s exposure to Reagor Dykes late in the evening on July 31<sup>st</sup>. FirstCapital determined that it had given provisional credit for a number of checks presented for payment to FirstCapital on July 30<sup>th</sup> for checks drawn on Reagor Dykes accounts at Vista Bank.

6. On August 1, 2018, at around 9:00 am, FirstCapital reviewed a copy of FMC’s lawsuit alleging in excess of \$116,000,000 in claims against various Reagor Dykes entities.

Also, on that morning, between 9:52 a.m. and 10:14 a.m., six Reagor Dykes entities publicly filed for bankruptcy relief. The allegations of the FMC lawsuit and the filing of the Reagor-Dykes bankruptcies were matters of great concern to FirstCapital.

7. So, before noon on August 1<sup>st</sup>, FMC had sued Reagor Dykes, and several Reagor Dykes entities had filed for bankruptcy relief. Soon thereafter, the *Lubbock Avalanche Journal* reported the filing of the FMC lawsuit in its online edition, and the Reagor Dykes situation became generally known throughout Lubbock. On that same date, like other banks in town, and as applicable banking rules allow them to do, FirstCapital began the process of dishonoring and returning checks. At or around that time, Vista Bank also began dishonoring checks to protect its interests.

8. After learning of the court filings by FMC and the Reagor-Dykes bankruptcies, as FirstCapital was entitled to do and consistent with sound banking practices and principles, at approximately noontime on August 1<sup>st</sup>, FirstCapital began the process of returning checks to the Federal Reserve. This included a number of checks that were Vista Bank checks presented to FirstCapital for payment on July 30<sup>th</sup> that totaled \$2,724,112.78. As it pertains to those checks, there is a process for Vista Bank to follow with the Federal Reserve to assure that Vista Bank receives credit for those checks if they were untimely presented to the Federal Reserve. For reasons unknown to FirstCapital, Vista Bank apparently has not pursued that process, as various other banks have done.

9. In addition to the Vista Bank checks presented to FirstCapital on July 30<sup>th</sup>, FirstCapital also received checks that were presented for payment by Vista Bank on July 31<sup>st</sup> totaling \$2,811,998.85. As it was entitled to do, and consistent with sound banking principles and practices, FirstCapital dishonored these checks and returned them to the Federal Reserve on

the afternoon of August 1, 2018. Again, if Vista Bank believes there is an issue with the timeliness of the rejection of these checks, Vista Bank may pursue the process available through the Federal Reserve.

10. On August 2<sup>nd</sup>, as it was entitled to do, and consistent with sound banking principles and practices, FirstCapital processed the dishonor and return of Vista Bank checks presented on August 1<sup>st</sup> and drawn on Reagor Dykes accounts totaling \$3,465,809.56. Again, if Vista Bank believes there is an issue with the timeliness of the rejection of these checks, Vista Bank may pursue the process available through the Federal Reserve.

11. Thus, the total of checks presented to FirstCapital for payment by Vista Bank on Reagor Dykes checks on July 31<sup>st</sup> and August 1<sup>st</sup> equaled \$6,277,808.41.

12. Vista Bank seeks damages in excess of \$6,000,000, so it is apparently the checks presented for payment on July 31<sup>st</sup> and August 1<sup>st</sup> and dishonored by FirstCapital that Vista Bank seeks to recover in this lawsuit, even though those checks were properly and timely dishonored at a point in time after Ford Motor Credit filed suit, after six Reagor Dykes entities filed for bankruptcy, and the general public started becoming aware of the Reagor Dykes situation. Far from acting on insider, non-public information - - which has no legal application in this setting anyway - - FirstCapital followed regular banking procedures to dishonor and return the checks presented for payment on July 31<sup>st</sup> and August 1<sup>st</sup>.

## II. GENERAL DENIAL

13. First Capital generally denies each and every allegation of Vista Bank's Original Petition and demands strict proof thereof by a preponderance of the credible evidence.



### III. AFFIRMATIVE DEFENSES

14. **No Fiduciary Duty.** FirstCapital has no fiduciary duty imposed by law in commercial transactions to advise Vista Bank of anything surrounding Vista Bank's claims.

15. **No Common Law or Other Duty.** FirstCapital has no common law or other legal duty to Vista Bank as it relates Vista Bank's claims, except to follow the check clearing procedures in the Texas version of the Uniform Commercial Code and federal regulations. Further, FirstCapital denies any knowledge that Reagor Dykes was engaged in a check kiting scheme until it was brought to FirstCapital's attention on July 31st, but even if it were aware it had no duty to inform Vista Bank. In fact, the correct course of action upon discovering a check kite is to do exactly as FirstCapital did - - freeze accounts and return checks.

16. **Legal Justification.** FirstCapital is legally justified in looking out for its best interests, even if it is to the detriment of Vista Bank.

17. **Conspiracy to Commit a Lawful Act.** FirstCapital's actions were taken legally and there is no cause of action for conspiracy to commit a lawful act.

18. **Imputation of Knowledge.** The knowledge and actions of Rick Dykes are not imputable to FirstCapital.

### IV. REQUESTS FOR DISCLOSURE

19. FirstCapital requests that Vista Bank disclose within thirty (30) days after service of this request, the information or material described in Texas Rule of Civil Procedure 194.2.

WHEREFORE, the Defendant First Bancshares of Texas, Inc. dba FirstCapital Bank of Texas, prays that Plaintiff recover nothing on its Original Petition, that all costs be taxed against Plaintiff, and for such other and further relief, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

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*/s/ Joel R. Hogue*

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Joel R. Hogue  
**ATTORNEYS FOR DEFENDANT, FIRST  
BANCSHARES OF TEXAS, INC., DBA  
FIRSTCAPITAL BANK OF TEXAS, N.A.**

**CERTIFICATE OF SERVICE**

I hereby certify that on August 16, 2018, I electronically filed the foregoing document with the clerk of court using the electronic filing system. The electronic filing system will send a "Notice of Electronic Filing" to the following attorney(s) of record who have consented in writing to accept this Notice as service of this document by electronic means:

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*/s/ Joel R. Hogue*

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