

Court Advisory

Fourth Court of Appeals
Cadena-Reeves Justice Center
300 Dolorosa, Suite 3200
San Antonio, Texas 78205-3037



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FOR IMMEDIATE RELEASE
September 23, 2011

Fourth Court of Appeals to Hear Oral Argument

The Fourth Court of Appeals will hear oral arguments in two appeals on Tuesday, September 27, 2011, beginning at 9:00 a.m., before the following panel of justices: Chief Justice Catherine Stone, Justice Phylis J. Speedlin, and Justice Marialyn Barnard.

The following cases will be presented:

(1) *HMC Hotel Properties II Limited Partnership, et al. v. Keystone-Texas Property Holding Corporation* – This appeal arises from a proposed sales transaction involving the land underlying the Marriott Rivercenter Hotel. Keystone owned the land and was the landlord under a ground lease, while HMC was the tenant under the ground lease and operated the hotel. HMC sued Keystone for breach of the ground lease, while Keystone sued HMC for slander of title and tortious interference with an agreement Keystone had to sell the land to a third party. A jury found in favor of Keystone on its claims and against HMC on its claim.

The parties filed cross-appeals raising numerous issues, including: (1) challenges to the enforceability of a lease provision entitled “Tenant’s First Right of Negotiation;” (2) challenges to the trial court’s construction of the lease provision; (3) questions regarding whether the lease provision was ambiguous; (4) challenges to the jury charge pertaining to the breach of contract claim; (5) challenges to the sufficiency of the evidence to support the causation element of Keystone’s claims; (6) whether actions taken by HMC were protected by an absolute judicial privilege or were justified; (7) challenges to the sufficiency of the evidence to support various elements of Keystone’s slander of title claim; (8) challenges to the award of attorney’s fees; and (9) challenges to the trial court’s granting of a motion for judgment notwithstanding the verdict relating to the jury’s award of punitive damages.

(2) *The City of China Grove v. Mac S. Morris, Jr.* – The issue in this appeal is whether attorney’s fees were properly awarded under the Texas Uniform Declaratory Judgments Act.

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The Fourth Court of Appeals will hear oral arguments in one appeal on Tuesday, September 27, 2011, beginning at 2:00 p.m., before the following panel of justices: Chief Justice Catherine Stone, Justice Phylis J. Speedlin, and Justice Marialyn Barnard.

The following case will be presented:

Marin Real Estate Partners, L.P., et al. v. John E. Vogt and Nelda L. Vogt – This appeal arises out of a judgment in favor of the Vogts on claims for property encroachment, diversion of surface water, and malicious prosecution. The appeal raises challenges to the sufficiency of the evidence to support jury findings, challenges to the admission of the Vogts’ expert testimony, and an issue regarding the effect of a prior default judgment.

The Fourth Court of Appeals will hear oral arguments in one appeal on Thursday, September 29, 2011, beginning at 9:00 a.m., before the following panel of justices: Justice Phylis J. Speedlin, Justice Rebecca Simmons, and Justice Steven C. Hilbig.

The following case will be presented:

Norris J. DeVoll v. Rebecca Demonbreun and William Dowds - This appeal concerns whether an “is as” clause in a residential real estate sales contract eliminates the causation necessary for the buyers to recover under the Texas Deceptive Trade Practices Act.

The oral arguments will be held in the Fourth Court’s Courtroom, Caden-Reeves Justice Center, Third Floor, 300 Dolorosa, San Antonio, Texas.