

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
October 22, 2010

Fourth Court of Appeals to Hear Oral Argument

The Fourth Court of Appeals will hear oral arguments in one appeal on Tuesday, October 26, 2010, at 9:00 a.m., before the following panel of justices: Chief Justice Catherine Stone, Justice Sandee Bryan Marion, and Justice Steven C. Hilbig.

The following case will be presented:

- (1) *The Cadle Company v. Mark T. Davis and Alamo Title Company* - This appeal arises from a suit filed by Mark Davis against The Cadle Company for breach of contract, wrongful garnishment, and fraud. The case went to trial, and a jury found in favor of Davis on all three claims. The Cadle Company challenges the jury's findings on liability and damages and the trial court's determination that The Cadle Company could not challenge certain factual issues because of findings in a prior case between the two parties.

The Fourth Court of Appeals will hear oral argument in one appeal on Wednesday, October 27, 2010, at 9:00 a.m., before the following panel of justices: Justice Karen Angelini, Justice Phylis Speedlin, and Justice Rebecca Simmons.

The following case will be presented:

- (1) *Prize Energy Resources, L.P., et al. v. Cliff Hoskins, Inc., Bank of America, N.A., and BP America Production Co.* - This appeal arises out of a title dispute to oil and gas producing property in McMullen County, Texas. The main appeal challenges the trial court's finding that the underlying leases and joint operating agreement terminated upon a cessation of production, affecting the parties' ownership of the mineral interests. In addition, the court's bases for calculating and awarding damages, plus pre-judgment and post-judgment interest, and for declining to award attorney's fees are challenged. The cross-appeal consists of issues involving alleged trespass by the working interest owners after termination of the leases and joint operating agreement, the proper method for calculating damages, entitlement to attorney's fees, and the assessment of sanctions against one party for a discovery abuse.

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The Fourth Court of Appeals will hear oral argument in three appeals on Thursday, October 28, 2010.

The following case will be presented at 9:00 a.m., before the following panel of justices: Justice Karen Angelini, Justice Phylis Speedlin, and Justice Rebecca Simmons:

- (1) *Jones & Gonzalez, P.C. and James K. Jones, Jr. v. Quoc Trinh* – This appeal arises from the trial court’s granting of Quoc Trinh’s bill of review, which Trinh supports on the grounds that he received insufficient notice of a trial setting and no notice of the entry of judgment. In his bill of review, Trinh, a commercial tenant, sued his landlord, the Carlos August Richter Trust, for withholding his security deposit in bad faith. The Richter Trust maintained its original suit against Trinh, asserting that he breached the lease by: (1) failing to obtain requisite insurance; and (2) subletting without consent. Trinh’s bill of review was consolidated with Trinh’s suit against his landlord’s attorneys, Jones & Gonzalez, P.C., for theft and conversion of his supersedeas bond from the first appeal. At the end of trial, the jury found in favor of Trinh on all issues in the case. The Appellants argue that the trial court erred by granting Trinh’s bill of review, and by denying their motion for judgment non obstante veredicto and motion for new trial. The parties also dispute the proper award of attorney’s fees

The following case will be presented at 10:00 a.m. before the following panel of justices: Justice Phylis Speedlin, Justice Rebecca Simmons, and Justice Steven C. Hilbig:

- (1) *Ex parte Bernadette Perusquia* - This interlocutory appeal arises from the denial of a pre-trial application for habeas corpus relief in which Bernadette Perusquia asserts her retrial for murder is barred by double jeopardy. Specifically, Perusquia argues the trial court that presided over her first trial abused its discretion by prematurely declaring a mistrial, over her objection and without manifest necessity, after the jury had deliberated for only eleven hours on one day.

The following case will be presented at 2:00 p.m. before the following panel of justices: Justice Karen Angelini, Justice Sandee Bryan Marion, and Justice Steven C. Hilbig:

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(1) *ZYZY Corporation v. Gloria Hernandez* – This is a libel case about an article that appeared in the Eagle Pass News-Guide. The issues involve whether the plaintiff, an attorney for the Kickapoo Traditional Tribe of Texas, is a limited purpose public figure, whether the paper has shown an absence of malice as a matter of law, and whether Hernandez’s lawsuit is barred by the statute of limitations.

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