

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
March 21, 2013

Fourth Court of Appeals to Hear Oral Argument

The Fourth Court of Appeals will hear oral arguments in two appeals on Tuesday, March 26, 2013, beginning at 9:00 a.m., before the following panel of justices: Chief Justice Catherine Stone, Justice Marialyn Barnard, and Justice Luz Elena D. Chapa.

The following cases will be presented:

The Blanco National Bank v. Michael R. Gonzalez – In six points of error, Blanco National Bank appeals the trial court's judgment in favor of Michael Gonzalez. First, the Bank argues that a breach of contract claim was never pleaded by Gonzalez, so the trial court's judgment based on breach of contract was not in conformity with the pleadings. The Bank also argues that submission of a jury question on breach of contract was likewise erroneous because it was outside of the pleadings. The Bank's second, third, and fifth points of error allege the evidence was insufficient to support a finding of breach of contract by the Bank and to support the damages awarded. In its fourth point of error, the Bank claims the trial court improperly excluded the testimony of a trustee in the case, who is also an attorney for the Bank and a law firm partner of the Bank's trial counsel. Finally, in its sixth point of error, the Bank asserts the trial court erred in awarding Gonzalez attorney's fees.

Construction Financial Services, Inc. v. Chicago Title Insurance Company – This appeal arises out of a loan transaction in which a deed was filed in the wrong county. The appeal raises challenges to the trial court's order granting summary judgment on claims for breach of fiduciary duty, negligence, violations of the Texas Deceptive Trade Practices Act, and breach of contract.

The Fourth Court of Appeals will hear oral arguments in two appeals consolidated for oral argument on Tuesday, March 26, 2013, beginning at 1:30 p.m., before the following panel of justices: Chief Justice Catherine Stone, Justice Marialyn Barnard, and Justice Luz Elena D. Chapa.

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The following cases will be presented:

In re Estate of Manuel Arizola and *In re Estate of Romen Arizola* - Pedro Arizola, Sr. appeals numerous orders in two probate proceedings relating to the appointment of the administrators and the settlement of the estates' survival causes of action. Specifically, Pedro Sr. challenges the trial court's orders: (1) appointing the administrators; (2) denying a motion to remove the administrators; (3) denying a motion to disqualify the administrators' attorney; (4) denying a motion to set aside an employment contract; (5) denying a motion for discovery; and (6) granting a motion to ratify a settlement without an evidentiary hearing or supporting evidence.

The Fourth Court of Appeals will hear oral arguments in one appeal on Thursday, March 28, 2013, beginning at 9:00 a.m., before the following panel of justices: Chief Justice Catherine Stone, Justice Sandee Bryan Marion, and Justice Rebeca C. Martinez.

The following case will be presented:

The Edwards Aquifer Authority v. Glenn and Jolynn Bragg - This is an appeal from the trial court's judgment in favor of Glenn and JoLynn Bragg on their takings claims against the appellants. On appeal, Edwards Aquifer Authority ("the Authority") and Karl Dreher in his official capacity as General Manager of the Authority assert: (1) the Braggs sued the wrong party because the State's mandate of the Authority's actions precludes a takings claim against the Authority; (2) the Braggs' claims are barred by the statute of limitations; (3) no compensation is owed for any taking of the Braggs' Home Place Orchard; (4) the trial court incorrectly determined the amount of compensation owed for any taking of the Braggs' D'Hanis Orchard; (5) the Authority's permitting decision did not cause a taking of the Home Place Orchard or the D'Hanis Orchard; and (6) if it prevails, it is entitled to attorney's fees. In their cross-appeal, the Braggs contend the trial court erred (1) in calculating the compensation owed to them on both takings claims and (2) by concluding the Authority's denial of their permit applications did not amount to per se or categorical takings.

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