

**Issues Presented in Some Civil Cases
Pending Before the Second Court of Appeals**

Updated Through September 22, 2016*
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NOTICE OF OTHER SECOND COURT REFERENCES

Please visit the “Second Court Update” page on my website, which will have: (1) links to the pages on the Second Court’s website showing cases set for submission, and opinions recently released; and (2) a compilation of summaries prepared by the Court regarding opinions it has issued. See [Second Court Update](#).

Issues Presented in Some Civil Cases

*After a little over a decade of compiling these issues, I have decided to not continue doing so after January 23, 2015. I will continue to make available on my website issues which I previously profiled, until the Court decides those cases.

In the meantime, the Court has said that it will post on its website briefs it receives in civil cases (and criminal cases, too) filed after September 24, 2014, and it appears that search function is now available. For suggestions on how to use the search function, go to the next page of this.

The following compilations and summaries concern some, but not all, civil cases pending before the Second Court of Appeals in Fort Worth, Texas, through January 23, 2015. I make no representation as to the significance of the cases in which briefs and replies profiled below were filed.

The Second Court of Appeals had no input or involvement in selecting briefs or replies profiled below or in compiling any of the information set forth below, and does not sponsor or endorse these compilations or summaries.

The following compilations and summaries are grouped by subject matter, as discerned from the issues presented, and indicate my best judgment as to the major thrust of most of the issues. I make no representations that these groupings accurately characterize the briefs or the cases in which they are filed.

If you detect any erroneous transcription or summary of information, or know of a brief not profiled below, please inform Steve Hayes at the following addresses or phone number:

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Suggestions for Using the Search Function on the Court of Appeals Website

I mentioned in the last newsletter that the Court had indicated it would make available, through its website, briefs it receives in civil and criminal cases. This availability would only exist for cases filed after September 24, 2014, or perhaps a later date the Court settled on after the last time I talked to Debra Spisak after it. It appears a search function is now available on the Second Court's website to locate briefs in civil and criminal cases filed after September 24, 2014, or thereabouts. To make use of this search tools, in terms of finding briefs which might relate to a case you have, do the following:

- Decide what term you want to search for;
- Go to the Court's website (www.txcourts.gov/2ndcoa);
- Under the heading "Case Information," click on the phrase "Document Search;"
- In the box labeled "Text String to Search," type in the search phrase you want to look for;
- Click "Search;"
- Once you get your search results, click on the word "Other" for whichever document you want to look at.

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SECTION A. ISSUES FROM BRIEFS, ETC., MOST RECENTLY FILED:

Starting January 2015, I have not compiled issues in briefs filed in the Second Court of Appeals. However, the Court has started making available, through its website, briefs it receives in civil and criminal cases. This availability would only exist for cases filed after September 24, 2014, or perhaps a later date the Court settled on after the last time I talked to Debra Spisak about it. To make use of this search engine, in terms of finding briefs which might relate to a case you have, do the following:

Decide what term you want to search for;

Go to the Court's website (www.txcourts.gov/2ndcoa);

Under the heading "Case Information," click on the phrase "Document Search;"

In the box labeled "Text String to Search," type in the search phrase you want to look for;

Click "Search;"

Once you get your search results, click on the word "Other" for whichever document you want to look at.

You might want to tinker around this a little and see how it works for you. It's a sort of a brave new world; anything you discover, I'd love to hear about it. shayes@stevhayeslaw.com

Collections and Repossession:

Appellants contend that: (1) the jury charge on Appellants' unreasonable collection efforts claim was incorrect because it was based upon an improper definition and therefore increased the burden of proof required Appellants; (2) Appellants presented sufficient evidence to support a finding that Appellee's collection efforts met the definition of "efforts which an ordinary person of ordinary prudence in the exercise of ordinary care on his or her part would not have exercised under the same or similar circumstances; (3) the Court erred in granting Appellee's Motion for Directed Verdict against Appellants on their claim for negligent misrepresentation; (4) the Court erred in granting final judgment in favor of Appellee on all of Appellants' claims since Appellants' claim for anticipatory breach of contract was not presented to the jury or dismissed via the Motion for Directed Verdict; (4) the Court erred in submitting the charge to the jury without instructions, standards, definitions and questions related to Appellants' breach of contract claim regarding waiver. No. 02-12-00013-CV, *Robert Defranceschi and Elena Riedo v. GMAC Mortgage, LLC fka GMAC Mortgage Corporation*, from the 352nd District Court of Tarrant County, by J. B. Peacock, Jr., Cynthia K. Shanklin, David M. Vereeke, Tracy M. Turner, Gagnon, Pfacock, Shanklin & Vereeke, P.C., 4245 N. Central Expressway, Suite 250, Lock Box 104, Dallas, Texas 75205, for Appellants. 4/19/12.

Deceptive Trade Practices Act:

Declaratory Judgment:

Appellants contend: ISSUE ONE The Trial Court Erred When it Partially Voided the Transaction – Reagan Kept Title to the Property But All Notes and Deeds of Trust Were Canceled. (CR95; App.21) ISSUE TWO The Trial Court Erred When it Entered the Final Judgment Granting a Declaratory Judgment Because a Declaratory Judgment Is Unavailable to Contest the Validity of a Lien. (CR95, App.21) ISSUE THREE The Trial Court Erred to the Extent the Declaratory Judgment is Based Upon Facts Not Determined by the Jury. (CR95; App.21) ISSUE FOUR The Trial Court Erred When it Entered the Declaratory Judgment Because It Seeks the Same Relief as Other Causes of Action Pleaded by Reagan. (CR95; App.21) ISSUE FIVE The Trial Court Erred When it Entered the Final Judgment Finding Liability for Statutory Fraud and Entering a Declaratory Judgment Because There is No Evidence of a False Representation of a Past or Existing Material Fact, No Evidence of Reagan's Reliance Upon Anything Communicated by Mr. Ihnfeldt, and No Evidence of Damages Proximately Caused By Mr. Ihnfeldt. (CR39, App.4; CR95, App.21) ISSUE SIX The Trial Court Erred When it Entered the Final Judgment Finding Liability Because the Jury Charge Question Establishing a Violation of Chapter 12 of the Civil Practice and Remedies Code is Predicated Upon a Finding of Fraud. (CR95, App.21) ISSUE SEVEN Reagan Cannot Be Awarded Attorneys' Fees Under the Declaratory Judgment Act Because the Declaratory Judgment Duplicated Issues and Remedies Already Before the Trial Court. (CR95; App. 21) ISSUE EIGHT The Trial Court Erred When it Entered the Final Judgment Awarding Reagan's Attorneys' Fees Because No Supporting Documentation Was Submitted by Reagan's Counsel. (CR95; App. 21) ISSUE NINE The Trial Court Erred When it Entered the Final Judgment Awarding All of Reagan's Attorneys' Fees Because the Fees Are Not Segregated. (CR95; App. 21) ISSUE TEN The Trial Court Erred When it Granted Plaintiff's Motion to Strike the Original Counterclaim for Breach of the Note. (RR2 82). No. 02-14-00220-CV, *Peggy Jo Ihnfeldt, as Executrix of the Estate of William D. Ihnfeldt and Peggy Jo Ihnfeldt, Individually, v. Paula Reagan*, from the 367th District Court of Denton County,

Default Judgment:

Appellant contends that the trial court erred in refusing to award, as a part of the default judgment, an order authorizing the Association to foreclose on the subject property, when foreclosure on a lien created pursuant to the underlying covenant had been contractually agreed to by the parties as a remedy available under the claims sued upon. No. 02-14-00111-CV, *Harvest Ridge Homeowners Association, Inc., v. Travis Ryan And Elizabeth Ryan*, from the 236th District Court of Tarrant County, by Michael S. Truesdale, Law Office of Michael S. Truesdale, PLLC, 801 West Avenue, Suite 201, Austin, Texas 78701, for Appellant. 5/13/14.

Employment:

Family Law:

Guardianship:

Juvenile:

Liens:

Mental Health:

Negligence:

Oil and Gas:

Appellants contend that the trial court was asked to interpret certain conveyance language. But the court delegated interpretation to a jury, forcing the parties to try a legal question as though it were factual. The court also allowed a lawyer and a landman to give “expert” testimony about how to interpret the conveyances. Appellants then address whether the trial court erred: 1. In asking a jury to interpret the conveyances; and 2. in admitting the expert testimony. No. 02-13-00057-CV, *Lakota Energy Limited Partnership v. Merit Management Partners I, L.P.; Merit Energy Partners III, L.P.; and Merit Energy Company, LLC*, from the 271st District Court of Wise County, by Bryan D. Bruner, Gina M. Bruner, 3700 West 7th Street, Fort Worth, Texas 76107, and David M. Gunn, Erin H. Huber, Beck Redden LLP, 1221 McKinney, Suite 4500, Houston, Texas 77010, for Appellant. 2/19/14.

Cross-Appellant addresses whether the trial court: (1) erred in refusing to award attorneys’ fees to Merit under the Declaratory Judgments Act because the construction of the Conveyances implicates title to mineral interests; and (2) abused its discretion in refusing to award reasonable and necessary attorneys’ fees as are equitable and just to Merit on its claim for declaratory relief

concerning the proper construction of the Conveyances. No. 02-13-00057-CV, *Lakota Energy Limited Partnership v. Merit Management Partners I, L.P.; Merit Energy Partners III, L.P.; and Merit Energy Company, LLC*, from the 271st District Court of Wise County, by Thomas F. Loose, J. Robert Beatty, Brent A. Kirby, Locke Lord LLP, 2200 Ross Avenue, Suite 2200, Dallas, Texas 75201-6776, for Cross-Appellants. 2/19/14.

Cross-Appellee addresses whether the trial court abused its discretion in declining the request of the Merit entities to award them a total of over \$1.3 million in fees for the trial and appeal. No. 02-13-00057-CV, *Lakota Energy Limited Partnership v. Merit Management Partners I, L.P.; Merit Energy Partners III, L.P.; and Merit Energy Company, LLC*, from the 271st District Court of Wise County, by Bryan D. Bruner, Gina M. Bruner, 3700 West 7th Street, Fort Worth, Texas 76107, and David M. Gunn, Erin H. Huber, Beck Redden LLP, 1221 McKinney, Suite 4500, Houston, Texas 77010, for Cross-Appellee. 4/4/14.

Appellee addresses the following issues: 1. Lakota: (i) asked the trial court to submit the contract interpretation issue to the jury; (ii) did not object to submission of that issue to the jury; and (iii) did not ask the trial court to construe the Conveyances as a matter of law until after the jury returned a verdict adverse to it. As a consequence, the jury was unable to perform its fact-finding role with regard to other issues that were conditioned on the contract interpretation question. Has Lakota waived its claim that the trial court should have construed the Conveyances as a matter of law? 2. Did the trial court correctly conclude that the Conveyances were ambiguous? 3. If this Court concludes that the Conveyances are not ambiguous, then are the terms of the agreements properly construed to convey only overriding royalty interests in the Exhibit B wells in light of the surrounding circumstances, the parties' business objectives, and the parties' conduct for the decade that followed the transaction? 4. If this Court concludes that the Conveyances are ambiguous, should it affirm the trial court's judgment because the jury's finding on the meaning of the Conveyances is supported by sufficient evidence? 5. If this Court concludes that Lakota's interpretation of the Conveyances is reasonable, may it render judgment as Lakota has requested where xvi (i) the property interests claimed by Lakota remain undefined, (ii) as interpreted by Lakota the Conveyances are not enforceable under the Statute of Frauds, and (iii) a new trial would be necessary to adjudicate Merit's remaining claims and defenses? 6. If the Conveyances, as interpreted by Lakota, are not enforceable under the Statute of Frauds, may the Court uphold the trial court's judgment on this independent basis? 7. Young's and Cummings' expert testimony: (i) concerned the interpretation of an ambiguous contract (as Lakota frames the issue), and therefore concerned issues of fact, not law; (ii) concerned industry custom and usage regarding a mineral conveyance beyond the realm of lay knowledge or experience; and (iii) was relevant to claims and defenses other than contract interpretation. Did the trial court abuse its discretion in admitting their testimony? 8. Lakota failed to make specific objections to any of Craig Young's testimony, and made only three specific objections to Allan Cummings' testimony. Further, Lakota did not object to the admission of, and itself elicited, voluminous evidence of a similar character concerning the parties' intent and interpretation of the Conveyances. Has Lakota preserved error regarding its claim that the trial court erred and abused its discretion in admitting expert testimony by Young and Cummings? xvii 9. Voluminous other evidence of a similar character concerning the parties' intent and the proper interpretation of the Conveyances was admitted without objection (much of which elicited by Lakota). Even if the trial court abused its discretion in admitting Young's and Cummings' testimony, was Lakota harmed? No. 02-13-00057-CV, *Lakota Energy Limited Partnership v. Merit Management Partners I, L.P.; Merit Energy Partners III, L.P.; and Merit Energy Company, LLC*, from the 271st District Court of Wise County, by Thomas F. Loose, J. Robert Beatty, Brent A. Kirby, Locke Lord LLP, 2200 Ross Avenue, Suite 2200, Dallas, Texas 75201-6776, for Appellee. 4/4/14.

Ordinances:

Parent Child Relationship:

Pre-Judgment Interest:

Public Official:

Receivership:

Appellant replies that TUFTA does not allow a receiver to operate an alleged transferee's business, that Perry and Trans Global have not waived their rights to address Chem Source's spurious TUFTA argument, that TUFTA does not authorize a receiver to run a transferee's business, that Chem Source's argument that TUFTA supports the receiver order belies Chem Source's motions before the trial court, and that Chem Source cannot obtain by equity what is prohibited by law. No. NO. 2-11-00156-CV, *Trans Global Resources, LLC and Charles W. Perry v. Chem Source, LLC, n/k/a Frac Tech Chemical Company, LLC*, from the 236 Judicial District Court of Tarrant County, Robert A. Bragalone, B. Ryan Fellman, Gordon & Rees, LLP, 2100 Ross Avenue Suite 2800 Dallas, Texas, for Appellant. 7/11/11.

Appellants contend that the trial court erred when it: (1) denied Appellants' motion to set aside execution sale, because the levy and sale was prohibited by law and fatally flawed; (2) granted plaintiff's application for turnover order and appointment of receiver because Texas law prohibits the turnover of managerial and voting rights of judgment debtors who own partnership/membership interests in partnerships and/or limited liability companies; and (3) appointed a receiver to receive and administer assets of non-debtor third parties, because the Texas Turnover Statute is an inappropriate vehicle through which to adjudicate the substantive rights of non-debtor third parties. 02-09-00291-CV, *David Huetten and Peggy Huetten v. San Diego National Bank*, from the 153rd District Court of Tarrant County, by Darrell W. Cook, Kelly E. Bryan, Darrell W. Cook & Associates, P.C., One Meadows Building, 5005 Greenville Ave., Ste. 200, Dallas, Texas 75206, for Appellants. 11/12/09.

Rescission:

Slander:

Summary Judgment:

Texas Debt Collection Act:

Unjust Enrichment: