

# 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 19, 2014

## Fourth Court of Appeals to Hear Oral Argument

The Fourth Court of Appeals will hear oral arguments in two appeals on Tuesday, April 10, 2014, at the Uvalde County Courthouse beginning at 1:30 p.m. The first case, 04-13-00529-CV *Schuhardt Consulting Profit Sharing Plan v Double Knobs Mountain Ranch, Inc.*, will be heard before the panel of Justice Karen Angelini, Justice Patricia Alvarez and Justice Luz Elena D. Chapa. The second case, 04-12-00827-CV *Daven Corporation, Zalman Resources, Inc., and Sport Resources, Inc. v TARH E&P Holdings, L.P., Alexander Energy, and James W. Alexander, trustee of the James W. Alexander Living Trust*, will begin at 2:30 p.m. and be heard by the panel of Chief Justice Catherine Stone, Justice Sandee Bryan Marion, and Justice Rebeca C. Martinez.

The following cases will be presented:

*Schuhardt Consulting Profit Sharing Plan v Double Knobs Mountain Ranch, Inc.* – This case stems from a 2010 real estate lien note, deed of trust, and warranty deed between Double Knobs Mountain Ranch and Susan Chacon for approximately 820 acres of substantially unimproved real property located in Uvalde County, Texas. In 2012, Schuhardt purchased the note and deed from Chacon. Schuhardt alleges that after Double Knobs failed to make timely payment for two consecutive months, Schuhardt advised Double Knobs the note was accelerated and the outstanding balance was due and payable. After Schuhardt refused to accept late payment, Double Knobs filed suit contending Schuhardt failed to provide Double Knobs with notice of default prior to acceleration and a reasonable opportunity to cure any alleged default. Double Knobs obtained a temporary restraining order halting Schuhardt's foreclosure. The parties filed competing partial summary judgment motions.

The trial court (1) granted Double Knobs motion alleging breach of contract, equitable estoppel, declaratory relief nullifying Schuhardt's acceleration of the note, and a permanent injunction; (2) denied Schuhardt's traditional summary judgment motion as to its affirmative defenses and alleged breach of contract against Double Knobs; (3) granted Schuhardt's no-evidence summary judgment

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motion dismissing Double Knobs claims of duress, actual fraud, and constructive fraud; and (4) awarded Double Knobs attorney's fees and costs.

On appeal, Schuhardt contends the trial court erred in granting Double Knobs summary judgment on its contract and equity claims, declaratory relief, and permanent injunction. Schuhardt also argues the trial court erred in denying Schuhardt's motion for summary judgment on its contractual claims and request for attorney's fees against Double Knobs.

*Daven Corporation, Zalman Resources, Inc., and Sport Resources, Inc. v TARH E&P Holdings, L.P., Alexander Energy, and James W. Alexander, trustee of the James W. Alexander Living Trust* - The underlying lawsuit involves competing interests in oil and gas mineral leases. The partition suit was tried to a jury, who found that the property was susceptible to fair and equitable partition in kind. The issues on appeal concern whether the trial court erred in refusing to submit a limiting instruction and whether the jury's finding that the mineral leases were subject to partition in kind is against the great weight and preponderance of the evidence.

The oral arguments will be held in the Uvalde County Courthouse, District Courtroom, 2<sup>nd</sup> Floor, 100 North Getty Street, Uvalde, Texas, 78801.