

The Texas Lawbook

Free Speech, Due Process and Trial by Jury

Finally, SCOTX Settles ‘Jarndyce v. Jarndyce’

By Janet Elliott

AUSTIN — A 46-year-old dispute over which of two coastal counties should collect property taxes on a pair of commercial piers ended Friday with a Texas Supreme Court ruling that taxes are due to San Patricio County.

The court, in a 6-2 decision, ruled constitutional an unusual bill passed by the Texas Legislature last year that affected only the dispute between San Patricio and Nueces counties. The law gave the court original jurisdiction over cases filed by a property owner who was assessed taxes by both counties.

The court relied on the common law in declaring the piers owned by Occidental Chemical Corp. were connected to the San Patricio County mainland as a part of that county.

“Nueces County cannot practically render services such as fire and police protection to Oxy’s Piers, while San Patricio County can easily access the Piers from the land,” said Chief Justice Nathan Hecht. “Nueces County can do little, if anything to improve the value of Oxy’s Piers, and nothing to provide public conveniences, as San Patricio County can.”

The boundary dispute had been likened to the seemingly endless fictional case of Jarndyce v. Jarndyce in Dickens’ Bleak House. During oral arguments last month Oxy’s lawyer Dale Wainwright, a former Supreme Court justice, began by noting the dispute had gone on for longer than Hecht’s 37-year judicial career.

Nueces County argued that the bill passed by the Legislature and signed into law by the governor was unconstitutional. The county urged the court to decline jurisdiction and wait for an Oct. 24 summary judgment hearing in Refugio County district court on a 2008 lawsuit filed by San Patricio County.

Dissenting justices Jeffrey Boyd and Jimmy Blacklock said the Legislature’s “well-intentioned attempt” to give the court authority “to sit as a court of first resort” was unconstitutional.

“The record presents no ‘strong and special reason’ for this Court to interfere with the ordinary litigation process on an artificially rushed timeline to resolve a dispute the trial court is – as one might say – fixing to resolve,” said Boyd.

In the majority opinion, Hecht said the new law was necessary to provide “the only effective relief Oxy and other taxpayers along the Nueces County-San Patricio County border have, or have ever had.”

Justice Jeff Brown filed a concurring opinion, in which the two dissenting justices joined in part. Brown took issue with the strict 90-day timeline the Legislature placed on deciding Oxy’s case, saying the court needs to spend whatever time it needs on complex, high-stakes legal disputes.

Brown noted that the deadline was similar to one the Legislature gave to the court when it expanded the franchise tax in 2006 and gave the Supreme Court original jurisdiction over a constitutional challenge. He said the court’s compliance “should not be mistaken for acquiescence to either the constitutionality or advisability of a three-month window to dispose of this case or others like it.”

Justice Eva Guzman did not participate in the case.

The boundary dispute between the two counties dates to 1972 and spans two lawsuits filed by San Patricio County. The latest case was filed in 2009 in Refugio County and, on Nueces County’s motion, was transferred to Nueces County where

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it sat inactive for years while San Patricio County unsuccessfully appealed the venue issue. In 2014 the district court granted summary judgment for Nueces County, but the court of appeals reversed, concluding that the case should be heard in Refugio County after all.

Starting in 2008 both counties assessed property taxes on the piers, which extend from the mainland of San Patricio County into the waters of Corpus Christi Bay that lie in Nueces County. Oxy has paid the tax bills under protest.

After enactment of the special law, Oxy filed an original petition for a writ of mandamus at the Supreme Court on July 19. The court heard

arguments on Sept. 10, the first day of its new term.

The case was being closely watched by Corpus Christi Liquefaction, which is constructing a \$15.5 billion natural gas liquefaction and export facility on the north shore of the bay, and has received appraisal notices from both counties.

San Patricio County was represented by John J. Hightower, senior counsel at Houston's Olson & Olson, Nueces County was represented by Audrey Mullert Vicknair of Corpus Christi. Oxy's lawyer Wainwright is a shareholder at Greenberg Traurig in Austin.