

IN THE COURT OF APPEALS
THIRTEENTH DISTRICT OF TEXAS

FILED IN
13th COURT OF APPEALS
CORPUS CHRISTI/EDINBURG, TEXAS

2/5/2024 3:59:31 PM

KATHY S. MILLS
Clerk

HECTOR GARCIA, JR.

Appellant,

V.

SPACE EXPLORATION
TECHNOLOGIES CORP D/B/A
SPACEX; LAUREN ELIZABETH;
KRUEGER

Appellees

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CAUSE NO. 13-23-00422-CV

APPELLANT'S OPPOSED MOTION TO STAY APPEAL

TO THE HONORABLE JUSTICES OF THIS COURT:

Now comes HECTOR GARCIA, JR., Appellant in the above cause, and submits this opposed motion to stay appeal pending decision of Appellees-Relators' Petition for Writ of Mandamus in this Court.

On December 13, 2023, the trial court granted Plaintiff-Appellant's motion for new trial. On January 11, 2024, Relator-Appellee filed a Petition for Writ of Mandamus challenging that decision. On January 12, 2024, this Court requested a

response from Plaintiff-Appellant to the mandamus petition within 10 days of the trial court's order, making the response due January 22, 2024. Plaintiff-Appellant requested and received a 30-day extension to file his response. In the meantime, his appeal is underway; the Clerk's Record was received in this Court on November 6, 2023, and the Reporter's Record is due on February 5, 2024.

A denial of Relators-Appellees' mandamus petition would render this particular appeal moot because a new trial would ensue at that point, and dismissal of the present appeal would be proper. Conversely, should this Court grant Relators-Appellees' mandamus petition, the trial court judgment from which Plaintiff-Appellant originally appealed would be reinstated, and that subsequent judgment would control, rendering premature, but effective, Appellant's originally filed notice of appeal. *See* Tex. R. App. P. 27.1(a), 27.2.

Thus, staying Appellant's current appeal during the pendency of Relator's mandamus petition is arguably permitted by the Rules of Appellate Procedure and would save judicial time and resources. *See Verburgt v. Dorner*, 959 S.W.2d 615, 616 (Tex. 1997).

For the reasons above, Appellant respectfully requests that the Court grant his motion to stay until the outcome of Relators-Appellees' Petition for Writ of Mandamus is known.

Respectfully Submitted,

BLIZZARD & ZIMMERMAN, P.L.L.C.
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By: /s/ Sarah Durham
Sarah Durham
State Bar No. 24116309

CERTIFICATE OF CONFERENCE

I certify that on February 2, 2024, my assistant, via email, contacted opposing counsels: Michelle Pector; Jared Wilkerson; William Peterson; David Oliveira, and Dan Erwin, Jr., asking if any opposed Appellant's Motion to Stay. Mr. Peterson replied, not exactly opposing, but stating that a Motion to Dismiss is appropriate here. No other counsels responded.

By: /s/ Sarah Durham
Sarah Durham

CERTIFICATE OF SERVICE

I hereby certify that I have reviewed the above Motion to Stay, and it was served in accordance with Rule 9.5 of the Texas Rules of Appellate Procedure on William Peterson, Michelle Pector, Jared Wilkerson, and David Oliveira, attorneys for Space Exploration Technologies Corp. d/b/a SpaceX, at: William.peterson@morganlewis.com, michelle.pector@morganlewis.com, jared.wilkerson@morganlewis.com, and doliveira@roflp.com, respectively, in addition to D. Alan Erwin, attorney for Lauren Elizabeth Krueger.

By: */s/ Sarah Durham*

Sarah Durham

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Jacob Blizzard on behalf of Sarah Durham
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Envelope ID: 84161366
Filing Code Description: Motion
Filing Description: Appellant's Opposed Motion to Stay Appeal
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Associated Case Party: Hector Garcia

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Associated Case Party: Space Exploration Technologies Corp. d/b/a SpaceX, Lauren Elizabeth Krueger , Lauren Elizabeth Krueger

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Case Contacts

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