

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

**NO. 03-10-00874-CV
NO. 03-12-00415-CV**

Bryan Berger and Lori Berger, Appellants

v.

Tony Flores, Jr., Appellee

**FROM THE COUNTY COURT AT LAW NO. 2 OF COMAL COUNTY
NOS. 2005-CV-0548 & 2010-CV-0445
HONORABLE CHARLES A. STEPHENS II, JUDGE PRESIDING**

MEMORANDUM OPINION

Bryan Berger and Lori Berger filed motions to consolidate their two appeals in the above-referenced causes. In cause number 03-10-00874-CV, the Bergers appealed from the trial court's order granting summary judgment in favor of Tony Flores, Jr. on the Bergers' claims, which were severed from Flores's counterclaim for attorney's fees so that the Bergers might perfect their appeal. In cause number 03-12-00415-CV, the Bergers appealed from the trial court's subsequent order in favor of Flores on his counterclaim.

The Court grants the Bergers' motions and consolidates their two appeals in the above-referenced causes. The issues, records, and documents filed in cause number 03-10-00874-CV are consolidated into cause number 03-12-00415-CV. The consolidated appeal shall proceed under cause number 03-12-00415-CV, and cause number 03-10-00874-CV is

dismissed. *See Livingston v. Arrington*, Nos. 03-11-00197-CV & 03-11-00266-CV, 2011 Tex. App. LEXIS 4421, at *1 (Tex. App. —Austin June 10, 2011, no pet.) (mem. op) (addressing similar consolidation and dismissal procedure). Briefing will proceed in accordance with the Texas Rules of Appellate Procedure and the October 10, 2012 extension previously granted to the Bergers. The parties are instructed to notify the Court of any further adjustment necessary to the briefing schedule.

Jeff Rose, Justice

Before Justices Puryear, Pemberton and Rose

03-10-00874-CV Dismissed

03-12-00415-CV Consolidated

Filed: September 28, 2012