

SUPREME COURT OF TEXAS

Lubbock County Water Control and Improvement District and
Tommy Fisher, in His Official Capacity as President of the Board of
Directors of the Lubbock County Water Control and Improvement
District v. Church & Akin, L.L.C.

442 S.W.3d 297 (Tex. 2014) · No. 12-1039 · Decided July 3, 2014

SUMMARY

The Supreme Court of Texas held that a lease between Church & Akin, LLC and the Lubbock County Water Control and Improvement District did not constitute a written contract for providing goods or services under Chapter 271 of the Texas Local Government Code. The lease restricted the use of the premises to marina-related purposes but did not require Church & Akin to operate a marina or provide services to the Water District itself. The Court therefore held that Chapter 271 did not waive governmental immunity and dismissed Church & Akin’s breach-of-contract claims for lack of jurisdiction.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Jeffrey S. Boyd; Chief Justice Hecht; Justice Green; Justice Guzman; Justice Lehrmann; Justice Devine; Justice Brown; Justice Boyd
JURISDICTION	Texas
DECIDED	July 3, 2014
DOCKET	12-1039
DISPOSITION	reversed
PROCEDURAL POSTURE	Interlocutory appeal from the denial of a governmental entity’s plea to the jurisdiction in a breach-of-contract action.
STANDARD OF REVIEW	The court reviewed the denial of the plea to the jurisdiction and the issue of statutory waiver of governmental immunity as jurisdictional questions. Once the governmental entity established immunity, Church & Akin bore the burden to establish, or at least raise a fact issue concerning, waiver.
PRECEDENTIAL VALUE	Published Texas Supreme Court opinion; precedential.

PARTIES

Lubbock County Water Control and Improvement District, Tommy Fisher, in his official capacity as President of the Board of Directors of the Lubbock County Water Control and Improvement District v. Church & Akin, L.L.C.

TOPICS

municipal liability

breach of contract

statutory interpretation

subject matter jurisdiction

civil procedure

PRACTICE AREAS

governmental immunity

municipal law

contract law

civil procedure

QUESTIONS PRESENTED

1. Whether the lease was a written contract stating the essential terms of an agreement for providing goods or services to a local governmental entity under Texas Local Government Code section 271.151(2)(A).
2. Whether the lease's restriction on use of the premises, catering-ticket provision, or profit-based rent provision constituted an agreement by Church & Akin to provide services to the Water District sufficient to trigger the waiver of governmental immunity under section 271.152.
3. Whether the Water District's governmental immunity required dismissal of Church & Akin's breach-of-contract claims for lack of jurisdiction.

HOLDINGS

1. A contract's title does not control whether Chapter 271 waives governmental immunity. A lease may qualify if its written terms state the essential terms of an agreement to provide goods or services to the local governmental entity, even when providing goods or services is not the contract's primary purpose.
2. The lease's provision restricting use of the premises to a marina and related purposes was a covenant against noncomplying use, not a covenant requiring Church & Akin to operate a marina. Church & Akin therefore did not contractually agree to provide marina-operation services to the Water District.
3. The catering-ticket provision did not constitute an agreement to provide services to the Water District. Even if it were construed as an agreement to issue tickets, it did not state the essential terms necessary to create an enforceable agreement for ticket-issuing services.
4. Church & Akin's obligation to pay rent equal to a percentage of sales did not constitute an agreement to generate sales, operate a marina, or provide services to the Water District.
5. Chapter 271 did not waive the Water District's immunity from suit because the lease did not state the essential terms of an agreement for providing goods or services to the Water District.

KEY QUOTATIONS

“Under this language, Church & Akin was not required to operate a marina; it was merely restricted from using the premises for a different purpose without consent.”

“Unless the written contract includes the essential terms of an agreement to provide goods or services to the governmental entity, the waiver of immunity does not apply.”

“We thus cannot conclude that the lease's catering-ticket language stated, in writing, “the essential terms of [an] agreement for providing [catering-ticket] services to the [Water District].””

FACTUAL BACKGROUND

The Water District operated Buffalo Springs Lake and formerly operated a marina, restaurant, and gas station on the lake. In 2007, it leased the marina premises to Church & Akin for three years, with options to extend, restricting use of the premises to a marina, restaurant, gasoline and sundry sales, and recreational purposes. Church & Akin exercised an extension option and paid rent, but the Water District terminated the lease six months later, prompting Church & Akin's breach-of-contract suit.

PROCEDURAL HISTORY

Church & Akin sued the Water District for breach of a lease after the Water District terminated the lease during an extension period. The Water District filed a plea to the jurisdiction based on governmental immunity. The trial court denied the plea, and the Seventh Court of Appeals affirmed as to the breach-of-contract claims. The Texas Supreme Court granted review, reversed that portion of the court of appeals' judgment, and dismissed the remaining claims for lack of jurisdiction.

DISPOSITION

reversed

CASES CITED

- Kirby Lake Dev., Ltd. v. Clear Lake City Water Auth., 320 S.W.3d 829 (Tex. 2010)
- Berkman v. City of Keene, 311 S.W.3d 523 (Tex. App.—Waco 2009, no pet.)
- Coinmach Corp. v. Aspenwood Apartment Corp., 417 S.W.3d 909 (Tex. 2013)
- Tooke v. City of Mexia, 197 S.W.3d 325 (Tex. 2006)
- Wichita Falls State Hosp. v. Taylor, 106 S.W.3d 692 (Tex. 2003)
- Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Political Subdivisions Prop./Cas. Joint Self-Ins. Fund, 212 S.W.3d 320 (Tex. 2006)
- Sharyland Water Supply Corp. v. City of Alton, 354 S.W.3d 407 (Tex. 2011)
- Universal Health Servs., Inc. v. Renaissance Women's Grp., P.A., 121 S.W.3d 742 (Tex. 2003)
- Weil v. Ann Lewis Shops, Inc., 281 S.W.2d 651 (Tex. Civ. App.—San Antonio 1955, writ ref'd)
- Van Zandt v. Fort Worth Press, 359 S.W.2d 893 (Tex. 1962)
- Dickey v. Phila. Minit-Man Corp., 105 A.2d 580 (Pa. 1954)
- City of Corsicana v. Stewart, 249 S.W.3d 412 (Tex. 2008)
- Tex. Parks & Wildlife Dep't v. E.E. Lowrey Realty, Ltd., 235 S.W.3d 692 (Tex. 2007)

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