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LEASES - TEXAS

EP Hotel Partners, LP v. City of El Paso

Court of Appeals of Texas, El Paso - August 4, 2017 - S.W.3d - 2017 WL 3326819

Owners and operators of existing hotels located near airport brought action seeking declaratory judgment under Uniform Declaratory Judgment Act that lease between city and entity seeking to construct and operate new hotel was void on basis that it violated city charter.

City and entity filed counterclaims seeking declaration under Act that lease was valid and enforceable. The County Court at Law granted summary judgment for city and entity on claims of owners and operators and counterclaims. Owners and operators appealed.

The Court of Appeals held that:

- Statement that city did not utilize specific criteria for determining what was reasonable fee did not prove that its lease did not include reasonable fee as required by charter;
- Evidence that city did not structure rental obligations in lease in same manner that it did in other leases did not prove that lease did not include reasonable fee; and
- City council members did not act in ultra vires manner in approving lease.

City's statement, that it did not utilize any specific criteria for determining what constituted reasonable fee for hotel leases on airport property, did not prove that city's lease with entity seeking to construct and operate new hotel did not include reasonable fee as required by city charter in declaratory judgment action by owners and operators of existing hotels alleging that lease between city and entity was void. Charter only required city to include reasonable fee in all of its leases with private parties and did not prescribe any specific criteria in determining rent to be charged in lease agreement or require city to use same criteria in every lease, and city believed it was necessary to offer rental abatements as incentive to entice entity to construct hotel on parcel of land that had remained vacant for more than ten years.

Evidence that city did not structure rental obligations in lease with entity seeking to construct and operate new hotel on airport property in same manner that it did in other leases to hotels did not prove that lease did not include reasonable fee as required by city charter in declaratory judgment action by owners and operators of existing hotels alleging that lease between city and entity was void. Evidence established that city had structured rental obligations in airport hotel leases in variety of ways over years and that it had included rental abatements in many other leases, charter did not require city to set leases in exact manner in all instances but only required assessment of reasonable fee when leasing property, and owners and operators failed to account for fact that entity's lease imposed different, more burdensome requirements on entity.

City council members did not act in ultra vires manner in approving lease between city and entity seeking to construct and operate new hotel on airport property, despite claim that lease did not contain reasonable fee as required by city charter; question of what council knew or did not know when it voted to approve lease had no bearing on validity of lease and, thus, its knowledge of rationale behind entering into lease did not render its actions in voting on lease ultra vires, and

argument that council members did not have all relevant information before them when they voted to approve lease or that they were misled on nature of lease was purely speculative, as summary form presented to council contained all of lease terms that were being offered to entity, including rental abatements in question.

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