

# **Bond Case Briefs**

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## **IMMUNITY - TEXAS**

### **CHW-Lattas Creek, L.P. by GP Alice Lattas Creek, L.L.C. v. City of Alice**

**Court of Appeals of Texas, San Antonio - October 31, 2018 - 565 S.W.3d 779**

Property developer filed action against city, alleging breach of contract, declaratory relief, and fraud arising from a development agreement entered into by city and developer concerning land conveyed to city for purpose of development.

City filed a plea to the jurisdiction asserting immunity from suit. The District Court granted city's plea. Developer appealed with regard to its breach of contract and declaratory relief claims.

The Court of Appeals held that:

- City was engaged in governmental functions;
- City did not waive its sovereign immunity;
- Law relating to exercise of municipal legislative discretion did not apply;
- City was not estopped from asserting sovereign immunity;
- Affidavit of manager of developer's general partner was inadmissible; and
- Full deposition transcript of manager's testimony was inadmissible.

City was engaged in governmental functions, and therefore retained its sovereign immunity from suit, when it entered into development agreement with property developer concerning land conveyed to city for purpose of development, where stated purpose of development agreement was to promote economic and community development.

City which engaged in a governmental function when it entered into development agreement with property developer for purpose of promoting economic and community development by developing land conveyed to city for the purpose did not waive its sovereign immunity, despite developer's argument that development agreement was a contract for provision of services; city was a facilitator of the project, but development agreement did not obligate or require developer to provide any services to city and city did not agree to pay developer for any services, actions taken by developer in furtherance of development were motivated by developer's desire to develop its land and were not services provided to city, and although development agreement recited that it was a written contract for providing goods and services to city, recital could not be used to contradict operative terms of the contract.

City was not estopped from asserting sovereign immunity or denying its waiver of that immunity in action against it by developer arising from parties' execution of a property development agreement, although city officials contractually agreed to waive city's immunity; both city officials and developer engaged in negotiating development agreement and were aware of the applicable law, under which city's immunity would only be waived in agreement required developer to provide services to city, but development agreement did not require such a provision of services.

