

Bond Case Briefs

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Dallas/Fort Worth International Airport Board v. Vizant Technologies, LLC

Supreme Court of Texas - May 17, 2019 - S.W.3d - 2019 WL 2147262

Consultant for analyzing airport board's credit-card processing costs filed suit against board for breach of contract, fraudulent inducement, fraud in the performance, promissory estoppel, and attorney fees after board denied request to seek authorization for higher fee.

The District Court denied board's plea to the jurisdiction. Board filed interlocutory appeal. The Dallas Court of Appeals affirmed in part and reversed and rendered in part. Board's petition for review was granted.

The Supreme Court held that:

- Board was acting in governmental, rather than proprietary, capacity when it entered into contract, and, thus, governmental immunity applied;
- Agreement was not subject to subchapter on waiver of sovereign immunity since contract did not state essential terms of a legally enforceable agreement; and
- Any recovery would be "consequential damages," other than delay damages, for which immunity was not waived.

Airport board was acting in governmental, rather than proprietary, capacity when it entered into contract with consultant to analyze and reduce airport expenses for payment processing, and, thus, governmental immunity applied to consultant's claim for breach of contract by failing to seek authorization to increase payment to consultant; contract was for analyzing and reducing airport's expenses.

Airport board consultant's failure to file cross-petition seeking Supreme Court review did not result in waiver of challenge to Court of Appeals' holding on immunity that board was acting in governmental, rather than proprietary, capacity in connection with contract, where consultant did not challenge Court of Appeals' decision to reverse trial court judgment for consultant on fraud and estoppel claims, Court of Appeals affirmed trial court's refusal to dismiss contract claim, and consultant did not seek to alter affirmance, but raised proprietary-function argument as alternative basis to support judgment.

Consultant's contract requiring airport board to make good faith effort to authorize higher payment than \$50,000 did not state essential terms of a legally enforceable agreement, and, thus, the agreement was not subject to subchapter on waiver of sovereign immunity for breach of contract claims.

Any amounts that consultant could recover from airport board for breach of agreement to make good faith effort to authorize higher payment above \$50,000 were "consequential damages" other than delay damages, and, thus, board's sovereign immunity was not waived on consultant's claim for breach of contract by failing to make good faith effort to authorize higher payment under contract

with formula tied to board's savings in payment processing expenses; board could have refused to approve failure to pay any or all of amount based on formula for any number of reasons, and its failure to pay higher amount was not a necessary or usual result of its alleged failure to make good faith effort.