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## **SOVEREIGN IMMUNITY - TEXAS**

### **Wight Realty Interests, Ltd. v. City of Friendswood**

**Court of Appeals of Texas, Houston (1st Dist.) - April 4, 2013 - S.W.3d - 2013 WL 1341216**

*Court agrees with city on the applicability of Texas law restricting land acquisition outside county but upholds developers right to seek damages for the services that it was required to render for the city pursuant to the underlying contract.*

Developer and city executed an earnest money contract providing that developer would construct and develop for the city youth recreational sports facilities on a tract of land owned by developer and two adjoining tracts, which were to be acquired by developer. Upon completion, the City was to purchase all of the land and facilities.

City terminated the contract prior to the transfer of any land or facilities from developer to the city. City refused to pay developer for the costs it incurred for constructing the recreational facilities. Developer filed suit against the city, asserting claims for breach of contract and estoppel and seeking recovery for its costs of construction and land acquisition and the contractual-termination damages.

The City asserted that it was immune from suit, arguing that a statutory provision that waives a city's immunity from suit for breach-of-contract claims involving the provision of "goods or services" did not apply because its contract with developer involved real property. In response, developer argued that because it had provided the city with acquisition, development, and construction services, the city's immunity was waived.

In a prior proceeding, this court, concluded that the contract "plainly" required developer to provide "services" and contained "the essential terms of the parties' agreements," held that the city's immunity was waived and remanded for further proceedings.

Following remand, the city filed another summary-judgment motion and plea to the jurisdiction, arguing, in part, that the contract that it drafted and entered into was illegal and void because the city did not have the authority to acquire the pertinent tracts of land for use as a park as they were situated outside of the counties in which the city is located.

The court agreed with developer that, as a home-rule municipality the city possess "broad powers" derived from the Texas Constitution, but concluded that the legislature has with "unmistakable clarity" imposed geographical limits upon a municipality's, including a home-rule municipality, acquisition of land for parks purposes.

However, these provisions do not, given the contract at issue, deprive the trial court of jurisdiction to determine developer's claim pertaining to the services that it rendered pursuant to the contract. Nor does the applicability of these provisions demonstrate that the city is entitled to judgment as a matter of law on developer's claim. This is because developer did not bring a suit for specific performance of the contract, i.e., it is not seeking an order compelling the city to acquire land in violation of the Local Government Code. Developer was seeking damages for the services that it was

required to render for the city pursuant to the contract.

The court concluded that developer was entitled to a remand on its breach-of-contract claim related to its provision of services under the contract.

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