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GOVERNMENTAL IMMUNITY - TEXAS

City of Canton v. Zanbaka, USA, LLC

Court of Appeals of Texas, Tyler - May 31, 201 - Not Reported in S.W.3d - 2013 WL 2407223

Duke's Travel Plaza (Duke) entered into an agreement with the Canton Economic Development Corporation (CEDC), a Texas nonprofit corporation, to fund a sewer line and lift station to its travel plaza located along Interstate 20 in Van Zandt County, Texas.

Before the CEDC would be required to fund the construction of the sewer line and lift station, certain conditions precedent were required. Following the fulfillment of these conditions, the city delayed the construction of the sewer line and lift station for several months. Duke filed suit against the City alleging that it had entered into a written contract with Duke wherein Duke agreed to provide goods and services to it. By its suit, Duke sought a declaratory judgment to determine the parties' rights and obligations under Texas Local Government Code, Section 271.152.

The City filed a plea to the jurisdiction and motion to dismiss arguing it was immune from suit because Section 271.152 did not apply given the facts of the lawsuit.

Duke alleged that the trial court had jurisdiction of this suit because the Texas Legislature waived the city's immunity from suit by enactment of Texas Local Gov't Code § 271.152, which waives immunity for contracts that provide goods and services. The city argued that it had not waived its immunity from suit because the contract between Duke and the CEDC did not involve Duke's providing it goods and services as required for its waiver of immunity under Section 271.152.

Duke contended that the "goods and services" it provided to the city under its agreement with the CEDC were the annexation of its real property, its creation of new jobs, and its installation of a fire hydrant on the annexed real property. The court of appeals concluded that the true purpose of the agreement between Duke and the CEDC was to provide funding for a sewer line and lift station to Duke's real property. That was the primary purpose of the agreement. Any benefits that would flow from that primary purpose are indirect and attenuated benefits and Section 271.152 does not apply to contracts where the governmental entity receives an indirect or attenuated benefit.

"Thus, we conclude that Duke did not contract to provide any service or good directly to the City. Therefore, we conclude that the City did not waive its immunity from suit under Section 271.152. Accordingly, the trial court erred in denying the City's plea to the jurisdiction and motion to dismiss."

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