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City of Houston v. Downstream Environmental, L.L.C.

Court of Appeals of Texas, Houston (1st Dist.) - April 3, 2014 - S.W.3d - 2014 WL 1327936

Downstream Environmental, L.L.C. sued the City of Houston for damages that allegedly arose when the discharge line between Downstream's liquid waste disposal facility and the City's sewer system was temporarily closed. The lawsuit also implicated rate increases and a billing dispute that occurred after the temporary closure of the discharge valve. In addition to seeking damages, Downstream sought equitable and injunctive relief pursuant to its claims under the Texas Bill of Rights.

The City filed a plea to the jurisdiction based on governmental immunity. Downstream challenged the City's assertion of immunity primarily on the basis that the City was engaged in a proprietary—not governmental—function. Downstream also alleged that the City had waived governmental immunity by its actions in several respects. The trial court denied the jurisdictional plea in its entirety, and the City timely appealed.

The appeals court reversed the trial court's order in part, holding that the City was immune from Downstream's claims for money damages arising from breach of contract, negligence, and alleged constitutional violations. The court also found no applicable waiver of the City's immunity as to Downstream's contract and negligence claims for monetary damages. It remanded the case to the trial court to allow the remaining requests for injunctive relief based on constitutional claims to proceed.

The court concluded that the City's action in closing Downstream's discharge sewer line was necessary to protect the sewer system from non-conforming waste and to allow the system to reach proper operational status. This leaves little room for doubt that the services the City provided to Downstream were sanitary sewer services – which is statutorily defined as a governmental function – to the extent that all the wastewater went through the same sanitary sewer lines to the City's publicly owned treatment works.