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AGI Associates, LLC v. City of Hickory, N.C.

United States Court of Appeals, Fourth Circuit - December 11, 2014 - F.3d - 2014 WL 6981327

Lender brought diversity action against borrower and city, who had contracted with borrower for aviation services, alleging judicial foreclosure, accounting, disgorgement of rents, and unjust enrichment claims. City moved to dismiss for failure to state a claim and for lack of subject matter jurisdiction. The City's motion was based upon the argument that it was entitled to governmental immunity. The District Court held that by acting in a proprietary, as opposed to governmental, capacity in operating the airport, city waived its governmental immunity and therefore denied the motion to dismiss for lack of subject matter jurisdiction.

The Court of Appeals held that under North Carolina law, as predicted by Court of Appeals, governmental immunity from equitable claims is waived when a county or municipality acts in a proprietary, rather than governmental, capacity.