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C. Borunda Holdings, Inc. v. Lake Proctor Irrigation Authority of Comanche County

Supreme Court of Texas - February 23, 2018 - S.W.3d - 2018 WL 1021394 - 61 Tex. Sup. Ct. J. 432

Following pecan orchard's payment to governmental irrigation authority to remove irrigation authority's lien and lis pendens on orchard's realty, irrigation authority nonsuited its claims, and the District Court granted summary judgment in favor of irrigation authority regarding orchard's counterclaims for offset. Orchard appealed, and the Eastland Court of Appeals affirmed. Orchard petitioned for review.

As matter of first impression, the Supreme Court held that nonsuit did not negate orchard's right to pursue counterclaims.

Governmental irrigation authority's nonsuit of its claims did not negate defending pecan orchard's right to pursue offset counterclaims regarding amount irrigation authority recovered from orchard to remove lien and lis pendens; orchard paid amounts to irrigation authority without further litigation specifically to remove the lis pendens, and it would have been fundamentally unfair to preclude orchard's opportunity to seek offset damages after allowing irrigation authority to recover on its affirmative claims.