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IMMUNITY - TEXAS

Texas Southern University v. Pepper Lawson Horizon International Group, LLC

Court of Appeals of Texas, Houston (1st Dist.) - September 28, 2021 - S.W.3d - 2021 WL 4432525

Construction company brought action against state university, alleging breach of contract under Texas Civil Practice and Remedies Code Chapter 114 and violations of Texas Prompt Payment Act (PPA) related to university's alleged failure to grant company an extension and alleged failure to pay bills incurred pursuant to construction contract.

University filed plea to the jurisdiction, which the 157th District Court denied. University appealed.

The Court of Appeals held that:

- University's sovereign immunity was not waived by PPA, and
- Allegations in complaint did not constitute express violations of construction contract, as required to waive university's sovereign immunity from breach of contract action.

State university's sovereign immunity was not waived by Texas Prompt Payment Act (PPA), as required to establish trial court's jurisdiction over construction company's action, alleging university failed to pay company's final bills under construction contract; company did not identify a separate statutory source outside of PPA that allowed a waiver of sovereign immunity for its claim.

Allegations in construction company's complaint, that state university breached parties' contract by failing to extend construction schedule, did not constitute a violation of modification provisions of construction contract, which permitted parties to equitably adjust contract time for weather delays and other delays within university's reasonable control, as required to waive university's sovereign immunity from construction company's breach of contract action brought under Texas Civil Practice and Remedies Code; modification provisions set forth procedures for obtaining time extensions, but company did not allege that university failed to comply with such procedures, but rather, company merely disputed the results.

Allegations in construction company's complaint, that state university failed to grant company power and access to project site by a specific date, provided inaccurate design documents, and failed to refrain from performing other activities at project site during construction, did not constitute express violations of construction contract, as required to waive university's sovereign immunity from company's breach of contract action brought under Texas Civil Practice and Remedies Code; contract stated that university made no representation as to accuracy of design documents and that it was not responsible for company's interpretations of documents, and that university was not responsible for delay or hindrances to work caused by any act or omission of university.

Allegations in construction company's complaint, that state university breached parties' contract by failing to make payment of contract and change order balance, did not constitute a violation of bill pay provision of contract, which required company to promptly pay bills and allowed university to

audit company's bills and withhold payments in various circumstances, as required to waive university's sovereign immunity from construction company's breach of contract action brought under Texas Civil Practice and Remedies Code; contract expressly limited circumstances in which university had a duty to pay company to when university received a complete application for payment, an updated work progress schedule, and confirmation that project documentation was kept current.

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