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New Albany Main Street Properties v. Watco Companies, LLC

United States Court of Appeals, Sixth Circuit - July 27, 2023 - F.4th - 2023 WL 4777172

Lessee of port facility brought action against riverport authority's executive director in her official capacity, alleging state claims of tortious interference with contractual and business relationships, civil conspiracy, and defamation, and seeking damages and an injunction.

The United States District Court for the Western District of Kentucky denied director's motion to dismiss. Director filed interlocutory appeal.

The Court of Appeals held that:

- Director was not entitled to pure sovereign immunity;
- Authority performed a function integral to state government;
- Authority performed a statewide function; and
- Lessee brought action against director in her official, rather than individual, capacity.

Kentucky's rule of pure immunity does not apply to cities, which the Kentucky Supreme Court treats as municipal corporations, rather than arms of the government, and it does not apply to state or county employees sued in their individual capacities who must instead rely on the distinct doctrine of qualified immunity.

Executive director for riverport authority, a quasi-government agency, was not entitled to pure sovereign immunity under Kentucky common law, in action by lessee of port facility, alleging state-law claims against director for tortious interference with contractual and business relationships, civil conspiracy, and defamation.

The development of transportation infrastructure qualifies as a government, not a proprietary, task, for purposes of establishing that a corporate entity performs a function integral to state government for governmental sovereign immunity to apply; this transportation infrastructure includes not just the airports that planes use or the roads that cars use, but also the docks and wharves that ships use.

Riverport authority, a quasi-government agency that leased industrial property for public purpose of developing ports, performed a function integral to state government, rather than a proprietary function, as would support finding that authority's executive director was entitled to governmental sovereign immunity in lessee's action alleging state claims of tortious interference with contractual and business relationships, civil conspiracy, and defamation; authority did not act with a profit motive as it could only charge reasonable rates for use of port facility, was required to devote any surplus revenue to maintaining facility, and was eligible to rely on revenue bonds and taxpayer funds to subsidize its activities, and authority did not own the ships that hauled cargo, but rather owned transportation infrastructure of port facility that shippers used.

Riverport authority, a quasi-government agency that leased industrial property for public purpose of

alleviating a statewide concern relating to developing ports, performed a statewide function, rather than a regional function, as would support finding that authority's executive director was entitled to governmental sovereign immunity in lessee's action alleging state claims of tortious interference with contractual and business relationships, civil conspiracy, and defamation, even though authority had a limited regional jurisdiction; need to ensure that individuals living in state had adequate means to ship their cargo to the other side of the commonwealth represented a classic governmental problem that extended beyond any one region.

Port facility lessee brought action against executive director of riverport authority, a quasi-government agency, in her official, rather than individual, capacity, as would support finding that director was entitled to governmental sovereign immunity in lessee's action alleging claims including defamation, absent argument that anything in course of proceedings would have put director on notice that lessee sued her in her personal capacity; claim was ambiguous in that it merely identified director as "Executive Director of Louisville/Jefferson County Riverport Authority," and claim never alleged that it sought money damages from director in her individual capacity.

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