

UT LAW SCHOOL 27TH LAND USE CONFERENCE

ENFORCEMENT OF DEVELOPMENT AGREEMENTS

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Breach of Contract Elements

- A valid contract exists
- The plaintiff performed or tendered performance as contractually required
- The defendant breached the contract by failing to perform or tender performance as contractually required
- The plaintiff sustained damages due to the breach

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Governmental Immunity

- Plea to the jurisdiction
- Based on the pleadings and not the merits
- Interlocutory appeal
- Timing issues
- *City of Dallas v. Trinity East*
- *City of Dallas v. Millwee-Jackson JV*

Proprietary v. Governmental

- *Trinity East v. City of Dallas* (Gas Lease)
- Discretionary function performed in the interest of the City's inhabitants
- TTCA list of 36 governmental functions
- If not included, *Wasson II* elements
 - Mandatory or discretionary
 - Benefit to general public or city residents
 - Whether acting on State's behalf
 - Sufficiently related to a governmental finding to order the act governmental

Economic Development Agreements without Developer Construction

- *CHW–Lattas Creek, LP v. City of Alice* (2018)
- Developer conveys land to the city which will construct public buildings and “facilitate the construction of a hotel”
- City’s breach after 4 years for not constructing infrastructure and public structures
- TTCA – “Community development or urban renewal activities” under Chapters 373 and 374, Tex. Loc. Govt. Code
- No § 271.172 waiver because City was a facilitator of the project but was not a recipient of goods or services

Tax Incentives/Abatements

- *City of Westworth Village v. City of White Settlement* [2018]
- Walmart and Sam’s Club built on land in both cities
- Agreement to split sales tax proceeds
- Westworth had “buyer’s remorse” and terminated agreement
- Not TTCA “community development or urban renewal pursuant” to Chapter 373 and 374
- Contract was discretionary and benefitted city residents under *Wasson II*

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First appeared as part of the conference materials for the

27th Annual Land Use Conference session

"Enforcement of Development Agreements"