

UT LAW SCHOOL 27<sup>TH</sup> LAND USE CONFERENCE

## ENFORCEMENT OF DEVELOPMENT AGREEMENTS

Arthur J. Anderson  
Winstead PC  
Dallas, TX

1

### 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

2

## 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

winstead.com

WINSTEAD

5

## 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*

winstead.com

WINSTEAD

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Enforcement of Development Agreements

Also available as part of the eCourse

[2023 Land Use eConference](#)

First appeared as part of the conference materials for the  
27<sup>th</sup> Annual Land Use Conference session

"Enforcement of Development Agreements"