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Texas Court Rules Water Authority Must Pay Damages for Exceeding Contractual Rights

Service

Public Law

On March 30, 2021, the Amarillo Court of Appeals issued its opinion in *Canadian River Municipal Water Authority v. Hayhook, Ltd*, affirming the trial court's decision to award $506,496.00 plus interest in damages against Canadian River Municipal Water Authority (the "Authority"). *Canadian River Municipal Water Authority v. Hayhook, Ltd*, 07-20-00196-CV, 2021 WL 1202346, at *1 (Tex. App.—Amarillo Mar. 30, 2021), no pet. h. In this case, the Authority obtained the water rights under Hayhook's property, including easements to construct water pipelines "reasonably necessary and desirable to permit full and complete use of the water rights" under various agreements dating back to 1976. *Id.* at *2. The Authority tendered an agreement in 2008 to Hayhook which would allow the Authority to build a water pipeline on Hayhook's property to transport offsite water, but Hayhook declined to execute the agreement. *Id.* at *1. Despite Hayhook's refusal, the Authority constructed the 54-inch pipeline to transport offsite water. *Id.*

The trial court rejected an immunity argument by the Authority and granted judgment in favor of Hayhook under the theory of inverse condemnation, finding that constructing the pipeline was an intentional physical taking for a public use without adequate compensation. *Id.* at *2. On appeal, the Authority argued it did not have the requisite intent necessary to sustain an intentional taking claim because it had "misinterpreted" its agreements with Hayhook to allow the Authority to build a pipeline transporting offsite water. *Id.* The Court of Appeals rejected the Authority's argument, explaining that the Authority's "subjective belief," without more, could not shield it from liability. *Id.*

In reaching its conclusion, the Court of Appeals examined the agreements' language and determined the agreements specifically contemplated the

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Authority's power to construct a pipeline for *onsite* water use only. *Id.* at *3. The Court further reasoned that the Authority knew it did not have the right to transport offsite water as demonstrated by its efforts to amend its agreements with Hayhook. *Id.* at *4. The Court explained:

> In concluding as we do, we do not ignore the Authority suggesting that a governmental entity may still have acted under color of contractual right even if it misinterpreted the contract. But, there is a distinction between mistakenly interpreting the scope of an expressed contractual right and invoking a non-existent contractual right. Arguably, the former comes within the realm of good faith . . . In such circumstances, some contract provided the governmental entity basis to believe, though mistakenly, it had the authority it thought it had.

Id. Because the agreements did not provide any reasonable basis for the Authority to believe—in good faith—that it had the right to build a pipeline for offsite water, the Court determined the Authority was not immune from suit under the theory it was acting "under a color of right," according to its agreements with Hayhook, and affirmed the trial court's award of damages to Hayhook.

What this means to you

Hayhook demonstrates the judicial limits on a governmental entity's ability to invoke immunity based on the theory it acted according to the provisions of a contract. A governmental entity: "must see what the contract authorizes and compare it to what was done. To the extent that the former fails to authorize a private party to engage in the conduct at issue, then a governmental entity cannot raise the same contract as a shield against a takings claim; it cannot use the contract as basis for asserting it acted under color of right." *Id.* at *5. This case is a warning to public entities that the defense of acting under a "color of right" pursuant to a contract is not un unfettered right.

Contact us

If you have questions about this update or how it might affect you, contact our Texas Public Law Condemnation Team: Kate David, Robert Eckels, Mike Stafford, Anthony Franklyn, Logan Leal or Ben Stephens.

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