

BILL ANALYSIS

Senate Research Center
80R10861 MDR-F

S.C.R. 42
By: Wentworth
Jurisprudence
4/5/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Maria Isabel Guerrero-McDonald and Guerrero-McDonald & Associates, Inc., alleges the following:

That on March 22, 1994, subsequent to the submittal and acceptance of a bid, Pelzel & Associates entered into a contractual agreement with Travis County for the construction of the Travis County Precinct One Office Building in Austin, Texas;

That the terms for the construction of the building specified that the work should be substantially completed within 150 calendar days, on December 8, 1994, and that in the event of late completion Travis County would sustain and retain liquidated damages in the amount of \$250 for each calendar day beyond the contractually required date for substantial completion of the project;

That the final completion date for the construction of the building was December 29, 1994, twenty-one days beyond the contractually required date for substantial completion;

That Travis County retained liquidated damages in the amount of \$5,500, and Pelzel & Associates was required to prove at a significant expense that the actions of Travis County caused the delayed completion date;

That Pelzel & Associates presented its claim to the Travis County Commissioners Court, at which time Travis County admitted that no liquidated damages were justified and that Travis County was at fault for delays that had indeed damaged Pelzel & Associates, the cost of which, together with the cost of proving these facts, totals over \$100,000;

That Travis County offered to relinquish its claim for liquidated damages only, but threatened to claim sovereign immunity if Pelzel & Associates demanded additional damages;

That a final offer to resolve the matter was made by the Pelzel & Associates attorney on April 25, 1995, for approximately one-third of the total damages, but Travis County did not respond to this offer;

That on October 3, 1995, Pelzel & Associates brought suit against Travis County in the District Court of Travis County for payment due, for cost of proving its case, and for interest to date, and Travis County denied all allegations, seeking summary judgment regarding sovereign immunity from suit and the dismissal of Pelzel & Associates' cause, premised on lack of jurisdiction and based on immunity from suit rather than on the merits of the case;

That in June 1999, Pelzel & Associates changed its name to Guerrero-McDonald & Associates, Inc.;

That on November 22, 1999, the trial court signed an order denying the plea to the jurisdiction and amended motion for summary judgment;

That on December 16, 1999, Travis County filed a notice of appeal with the Third Court of Appeals for an interlocutory appeal of the trial court's decision;

That during the appeals process, the parties engaged in mediation on June 1, 2000; however, no decision was reached, and the parties agreed to a continuance allowing Guerrero-McDonald & Associates, Inc., time to provide additional documentation;

That on October 19, 2000, the Third Court of Appeals affirmed the order of the trial court, and subsequently denied a motion for rehearing requested by Travis County on November 30, 2000;

That Travis County filed a petition for review with the Supreme Court of Texas, which was granted, briefs were filed, and oral arguments were held on November 28, 2001;

That on April 30, 2002, pending the decision of the Supreme Court of Texas, both parties filed a joint motion to retain case on docket and objection to ADR with the intent that, should the supreme court render in favor of Travis County, the case would be abated until legislative consent was obtained;

And that on May 9, 2002, the Supreme Court of Texas rendered its opinion, finding in favor of Travis County and reversing the Third Court of Appeals' decision, its findings being made more on the merits of Travis County's case than on their allegation of sovereign immunity, in spite of the dissenting opinion of Justice Enoch that the Court continues to "keep the courthouse doors locked" by allowing the county to "interpose sovereign immunity from suit."

RESOLVED:

As proposed, S.C.R. 42 grants Maria Isabel Guerrero-McDonald and Guerrero-McDonald & Associates, Inc., permission to sue Travis County in the manner described for a suit against the state under Chapter 107, Civil Practice and Remedies Code; and requires the suit authorized by this resolution to be brought in Travis County; and that the total of all damages awarded in the suit authorized by this resolution, including any court costs, and any prejudgment interest awarded under law, may not exceed \$3 million plus the amount of any attorney's fees authorized to be awarded under law, and that Maria Isabel Guerrero-McDonald and Guerrero-McDonald & Associates, Inc., may not plead an amount in excess of that amount that may be recovered with respect to the contract that is the subject of this resolution in all actions brought with respect to that contract; and that the county judge of Travis County be served process.