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Texas Supreme Court Hears Tex-Mex Chain's Suit Against City

By **Lauren Castle**

Law360 (October 4, 2022, 8:11 PM EDT) -- A city refusing to give a Tex-Mex restaurant reimbursements for expanding into the community had the Texas Supreme Court questioning Tuesday whether the municipality could escape breach of contract claims.

The justices questioned whether League City, located southeast of Houston, had a strong enough argument to support its claim that, by entering into an incentives grant agreement with Jimmy Changas Inc., it was acting in its governmental capacity and therefore immune from allegations that it broke a contract by not paying reimbursements.

William S. Helfand of Lewis Brisbois Bisgaard & Smith LLP, counsel for League City, argued the city was acting in its governmental capacity, since the agreement reaped benefits for not only its residents but also the state.

Justices Debra Lehrmann and Jimmy Blacklock said they understood that anything a city does can benefit its residents, such as creating revenue through a golf course or providing sewage services to boost economic development, but pressed Helfand on the idea that the city's decision had implications far-reaching enough to grant it the immunity.

"How can you put that into having some general benefit to the state as a whole?" Justice Lehrmann asked during the oral argument.

Helfand said the agreement benefited the state in promoting growth by creating jobs, expanding a business in Texas and creating additional sales tax revenue. The agreement required Jimmy Changas to provide at least 80 full-time jobs, but it didn't limit the jobs to League City residents.

"This court recognized that proprietary functions are usually activities that can be and are often provided by private persons," Helfand said. "This agreement obviously does not fit that rubric."

The 2012 agreement promised Jimmy Changas reimbursement of water and wastewater capital recovery fees and development fees if it built a new location, spending at least \$5 million and providing at least 80 full-time jobs. According to Jimmy Changas, it was also promised a partial reimbursement for local sales tax based on the restaurant's annual sales.

According to court records, League City claimed it didn't break the contract because Jimmy Changas failed to meet some conditions of the agreement.

The city filed a petition with the Texas Supreme Court after a district court affirmed it wasn't immune, since it was working in a proprietary — not governmental — function when it entered into the agreement to reimburse Jimmy Changas for taxes and development fees.

The city wants the court to rule that it was acting in its governmental function and thus immune from the restaurant's claims.

Justice Evan A. Young referenced an amicus brief filed by the Texas Restaurant Association and Restaurant Law Center in which the advocacy groups contended that the city is wrong to claim incentive agreements prevent municipalities from being sued, since it is asking the court to revise state law to include language the Legislature did not adopt and ignores the benefits both restaurants

and cities can receive.

In light of that, Justice Young asked whether the city is arguing it can make any promise to a restaurant without being liable.

"Is your answer then, 'Too bad, you're dealing with the city. It's your own fault. You should know that we can make all sorts of promises and then leave you out to dry'?" Justice Young asked.

Steven J. Knight of Chamberlain Hrdlicka White Williams & Aughtry, counsel for Jimmy Chagas, argued the city is wrong to think all community development projects are considered government functions regardless of what the project is for and who benefits from it.

Knight argued League City's actions can't be seen as governmental since the agreement was to benefit the local community and the city didn't fund the development of the restaurant.

Justice Jane Bland asked whether it could be true that the agreement was to benefit only League City residents. Anyone can eat and work at the restaurant, unlike a residents-only public pool or trash service, the justice noted.

The court has previously recognized that every community project that is meant to primarily benefit the local community qualifies as a proprietary function, Knight argued.

"Virtually every project is going to have some potential benefit beyond the boundaries of the city," Knight said. "This court said the focus has to be on the city's primary objective entering into the agreement, recognizing that benefits may flow beyond that."

Representatives for the parties didn't immediately respond to requests for comment.

League City is represented by William S. Helfand of Lewis Brisbois Bisgaard & Smith LLP.

Jimmy Chagas Inc. is represented by Steven J. Knight of Chamberlain Hrdlicka White Williams & Aughtry and Alfred Flores Jr. of The Flores Law Group PLLC.

The case is City of League City, Texas v. Jimmy Chagas Inc., case number 21-0307, in the Supreme Court of Texas.

--Editing by Linda Voorhis.