

RECENT DEVELOPMENTS

MISCELLANEOUS

STANDING AND GOVERNMENTAL IMMUNITY CANNOT BE WAIVED AND MAY BE RAISED FOR THE FIRST TIME ON APPEAL

Meyers v. JDC/Firethorne, LTD., 548 S.W.3d. 477 (Tex. 2018). <https://law.justia.com/cases/texas/supremecourt/2018/17-0105.html>

FACTS: Plaintiff-Respondent, JDC/Firethorne, LTD., submitted plat applications to develop a master-planned community in the City of Fulshear, whose progress was interfered with by Defendant-Petitioner, Andy Meyers, as the County Commissioner for Fort Bend County. JDC/Firethorne alleged their process of submitting plat applications for the land developments failed when their applications were placed on hold by Meyers in an effort to extract a concession to construct a four lane road instead of the originally agreed upon two lane road.

In 2014, following the alleged “hold” placed on the application process, JDC/Firethorne filed suit against Meyers for injunctive relief to cease and desist Meyers from instructing the Fort Bend Engineering Department to impede the plat applications. Meyers filed a plea to the jurisdiction in response. The trial court denied Meyers’ appeal, but allowed Meyers to reassert the matter after further discovery. The court of appeals affirmed, holding that JDC/Firethorne’s response to the plea raises a fact issue as to whether Meyers acted without legal authority for purposes of demonstrating the district court’s jurisdiction. Meyers appealed.

HOLDING: Reversed and dismissed with prejudice.

REASONING: Meyers argued that governmental immunity barred suit against him in his official capacity. Furthermore, Meyers contended that standing was also precluded because JDC/Firethorne had not alleged any illegal acts by him in his official capacity.

The court accepted that argument by holding that JDC/Firethorne lacks standing to sue Meyers in his official capacity. The court stated that because Meyers’ position as a County Commissioner lacks legal authority to receive, process, or present plat applications for approval, JDC/Firethorne failed to show a substantial likelihood that the injunction against Meyers would have remedied its injury. The court reasoned that governmental immunity barred a suit against Meyers, stating that governmental immunity from suit defeats a trial court’s subject matter jurisdiction. Like standing, governmental immunity determines whether a court has subject matter jurisdiction.

The failure to establish standing meant that the trial court did not have subject matter jurisdiction. Subject matter jurisdiction is essential to the court’s authority to decide a case. In addition, the court stated that when a plaintiff alleges an injury caused by unlawful government regulation, standing is substantially more difficult to establish. The court concluded that because both governmental immunity and standing are components of subject matter jurisdiction, they cannot be waived and may be raised for the first time on appeal.

A THIRD PARTY CANNOT BE DESIGNATED A RESPONSIBLE THIRD PARTY IF THAT PARTY’S ACTIONS WERE NOT “NEGLIGENT” OR OTHERWISE “VIOLAT[ED] AN APPLICABLE LEGAL STANDARD”

Stabilis Fund II, LLC v. Compass Bank, ___ F. Supp. 3d ___ (N.D. Tex. 2018).

https://scholar.google.com/scholar_case?case=6366948798922565520&q=stabilis+fund+ii,+llc+v.+compass+bank&hl=en&as_sdt=6,44&as_vis=1

FACTS: Plaintiff, Stabilis Fund II, LLC, purchased a default commercial loan from Defendant, Compass Bank. This purchase involved all the rights to a \$4,050,000 loan that Compass made to Vinod Kaura and Veena Kaura (“Kauras”). Stabilis claimed that despite conducting due diligence, they were unable to uncover a loan modification agreement (“LMA”) because Compass concealed the LMA. The LMA executed between Compass and the Kauras, allegedly, materially undermined the loan’s value prior to the purchase. Stabilis claimed that if they had known about the LMA, they would not have purchased the loan.

Stabilis filed suit against Compass claiming fraudulent inducement and fraudulent concealment based on Compass’s alleged misrepresentations and concealment of the LMA. Compass filed a Motion for Leave to Designate Responsible Third-Parties, seeking to designate the Kauras as responsible third parties with respect to Stabilis’s claims. The court reviewed Compass’s Motion.

HOLDING: Motion denied.

REASONING: Compass argued that the Kauras, as responsible third parties, were liable for the damages sought in the current case for failure to pay taxes, failure to pay the amounts due on the loan, bringing meritless claims against Compass and Stabilis, and causing repeated delays by the filing of a series of bankruptcy petitions that resulted in Stabilis’s harm. Stabilis countered that Compass could not designate the Kauras as responsible third parties for breach of their contractual duties under the loan because Chapter 33 of the Texas Civil Practice and Remedies Code applied only to jointly committed torts, not breach of contract claims.

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The court agreed with Stabilis’s argument by explaining that the Kauras were not complicit in Compass’s fraud, nor were they otherwise conducting their own concurrent fraudulent

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scheme jointly with Compass. The court further rejected Compass's argument that while the Kauras did not jointly commit the alleged fraud, their conduct contributed, at least in part, to Stabilis's alleged harm, making them partially responsible for Stabilis's recovery of damages from Compass.

Compass was required to show that the harm was caused by a negligent act, omission, other conduct, or activity that violates an applicable legal standard. The court reasoned that Compass failed to demonstrate which of Kauras's actions, that ultimately resulted in Stabilis's harm, incurred from Compass's alleged fraud. Further, the court concluded that because none of the acts alleged to be conducted by the Kauras amounted to a "negligent act or omission," "a defective or unreasonably dangerous product," or an "activity that violates an applicable legal standard" the Kauras could not be held as responsible third parties for Stabilis's claims.