

IN THE SUPREME COURT OF TEXAS

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No. 04-1021
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CITY OF HOUSTON, PETITIONER,

v.

BOYER, INC., RESPONDENT

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ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS
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PER CURIAM

JUSTICE WILLETT did not participate in this decision.

Boyer, Inc. sued the City of Houston for breach of a contract to excavate a tunnel downtown. The trial court overruled the City's plea to the jurisdiction based on immunity from suit, and the City took an interlocutory appeal. The court of appeals affirmed, holding that the City's immunity from suit is waived by a provision in its charter authorizing it to "sue and be sued, . . . contract and be contracted with, implead and be impleaded in all courts and places and in all matters whatever".¹ 2004 Tex. App. LEXIS 8785, 2004 WL 2186770, No. 01-04-00153-CV, at *2 (Tex. App.—Houston [1st Dist.] Sept. 30, 2004). Boyer argues that the City's immunity is also waived by section 51.075 of the Local Government Code, an issue not reached by the court of appeals. For the reasons

¹ Act approved March 18, 1905, 29th Leg., R.S., ch. 17, art. II, sec. 1, 1905 Tex. Spec. Laws 131, 131.

explained today in *Tooke v. City of Mexia*, ___ S.W.3d ___ (Tex. 2006), we disagree that the City’s charter or section 51.075 contains a clear and unambiguous waiver of immunity from suit. We do not reach the question whether a municipality *may* waive immunity from suit; we hold only that the charter text is not such a waiver.

While this case has been pending on appeal, the Legislature has enacted sections 271.151-.160 of the Local Government Code, which waive immunity from suit for certain claims against local governmental entities, including municipalities. Sections 271.152-.154 “apply to a claim that arises under a contract executed before [September 1, 2005] . . . if sovereign immunity has not been waived with respect to the claim” before that date. Act of May 23, 2005, 79th Leg., R.S., ch. 604, § 2, 2005 Tex. Gen. Laws 1548, 1549. Boyer should have the opportunity to argue in the trial court that the City’s immunity from suit is waived by these provisions.

Accordingly, we grant the City’s petition for review, and without hearing oral argument, TEX. R. APP. P. 59.1, we reverse the judgment of the court of appeals and remand the case to the trial court for further proceedings.

Opinion delivered: June 30, 2006