

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-15656
Non-Argument Calendar

D.C. Docket No. 4:15-cv-00250-HLM

CHATTANOOGA-HAMILTON COUNTY HOSPITAL AUTHORITY,
d.b.a. Erlanger Health System,

Plaintiff - Appellee,

versus

WALKER COUNTY, GEORGIA,

Defendant - Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

(July 13, 2017)

Before TJOFLAT, WILSON, and WILLIAM PRYOR, Circuit Judges.

PER CURIAM:

Erlanger Health System sued Walker County for breach of contract, and the district court granted summary judgment to Erlanger on the claim. Walker County appeals that ruling. After careful consideration of the record and the parties' briefs, we affirm.¹

I

Erlanger, a public hospital authority in Tennessee, agreed to loan up to \$20 million to a hospital authority in Georgia. The Georgia hospital authority planned to use the loan to fund a medical center which provides services in three Georgia counties: Walker, Dade, and Catoosa. To facilitate the loan, the Georgia hospital authority, Walker County, Dade County, and Catoosa County entered into an intergovernmental agreement (the Agreement). The Agreement provides Erlanger security for the loan; the Agreement states, "in the event of an uncured default by the [Georgia hospital a]uthority under the [loan], Walker agrees to pay to the [a]uthority or its assigns an amount equal to one-half (1/2) of the principal of and interest then due and payable on the [loan]."

A few years later, the Georgia hospital authority defaulted on the loan and assigned to Erlanger its right under the Agreement to receive payment from

¹ As a threshold matter, our court has jurisdiction to review Walker County's appeal, and the district court properly exercised subject-matter jurisdiction over this action. Shortly after Walker County filed its appeal, our court asked the parties to submit statements on whether we have appellate jurisdiction and on whether diversity jurisdiction exists. Based on the record and the parties' statements, we answer both questions in the affirmative.

Walker County. But Walker County refused to pay, prompting Erlanger to sue Walker County in district court for breach of the Agreement.

The district court, in a 63-page order, granted summary judgment to Erlanger on its breach-of-contract claim. It concluded that the Agreement is a valid contract under Georgia law and that Walker County is liable to Erlanger under the Agreement for \$8,705,000 plus interest.

II

Walker County, in challenging the district court's grant of summary judgment to Erlanger, raises two arguments. First, it asserts that, under the Intergovernmental Contracts Clause of the Georgia Constitution, the Agreement is void. Second, Walker County claims that it is entitled to sovereign immunity. Both arguments fail.

A

Under the Georgia Constitution's Intergovernmental Contracts Clause, all parties to an intergovernmental agreement must be Georgia governmental entities. *See* Ga. Const. Art. IX, § III, Para. I(a); *State v. Blasingame*, 91 S.E.2d 341, 343–44 (Ga. 1956). According to Walker County, this requirement voids the Agreement because the Agreement affords contractual benefits to Erlanger, which is not a Georgia governmental entity. However, the Intergovernmental Contracts Clause prohibits only intergovernmental agreements that have a non-governmental

entity as a party; it does not prohibit agreements between governmental entities that confer benefits to third parties. *See Cottrell v. Atlanta Dev. Auth.*, 770 S.E.2d 616, 624–25 (Ga. 2015) (rejecting a claim that an intergovernmental agreement between two Georgia governmental entities was void because it “require[d one of the entities] to reimburse . . . a private company”). And Erlanger, as Walker County concedes, is not a party to the Agreement. Erlanger is merely a third party who, by way of an assignment clause in the Agreement, has a right to receive payments that Walker County promised to the Georgia hospital authority. The Agreement is valid under Georgia law.

B

In Georgia, “sovereign immunity is . . . waived as to any action . . . for the breach of any written contract,” Ga. Const. Art. I, § II, Para. IX(c), and this is an action for the breach of a written contract (the Agreement). Even so, Walker County asserts that it is entitled to sovereign immunity. The sovereign-immunity waiver for written contracts, Walker County contends, does not apply here because Erlanger is not a party to the Agreement. We disagree. “[B]y entering into the [Agreement], [Walker County] waived the defense of sovereign immunity for any breach of the [Agreement] for which it could be held liable,” including for breaches alleged by third parties. *See State Dep’t of Corrs. v. Developers Sur. & Indemn. Co.*, 763 S.E.2d 868, 871 (Ga. 2014); *Youngblood v. Gwinnett Rockdale*

Newton Cmty. Serv. Bd., 545 S.E.2d 875, 878 (Ga. 2001) (“To the extent [that written agreements exist] conferring a benefit upon [the plaintiff] as an intended beneficiary, the [governmental entity’s] sovereign immunity is waived.”).

III

The district court did not err in granting summary judgment to Erlanger on its breach-of-contract claim. The Agreement is valid, and Walker County is not entitled to sovereign immunity.

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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July 13, 2017

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 16-15656-FF

Case Style: Chattanooga-Hamilton County Ho v. Walker County, Georgia

District Court Docket No: 4:15-cv-00250-HLM

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Pursuant to Fed.R.App.P. 39, costs taxed against the appellant.

The Bill of Costs form is available on the internet at www.ca11.uscourts.gov

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Janet K. Mohler, FF at (404) 335-6178.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna Clark
Phone #: 404-335-6161

OPIN-1A Issuance of Opinion With Costs