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DISTRICT JUDGE

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June 1st, 2010

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Re: 2009-550,359 Mike Leach v. Texas Tech et al

Counsel,

On May 14th, 2010, this Court heard arguments on Texas Tech's (Tech) Plea to the Jurisdiction and Tech's, Kent Hances's (Hance), Guy Bailey's (Bailey), Gerald Myers's (Myers) and Charlotte Bingham's (Bingham) Motion to Dismiss.

The Court, after considering the live pleadings, the motions with attached exhibits and oral/written arguments of counsel, makes the following rulings.

CLAIMS AGAINST TEXAS TECH

The Court grants the Plea to the Jurisdiction with regard to the Texas Whistleblower Act cause of action filed by Mike Leach (Leach) against Tech.

The Court finds that Tech *did not expressly waive sovereign immunity* as to any common law claims alleged by Leach against Tech. However, the Court does find that Tech, *through and by it's conduct, waived sovereign immunity*, but only as to the breach of contract claim filed by Leach.

The Court finds no basis, legal or factual, for finding the waiver by conduct applies to any claim other than the breach of contract claim. Therefore, the Court grants the Plea to the Jurisdiction as to Leach's claims labeled and titled in his Seventh Amended Petition, as follows: D. Fraud in the Inducement and E. Negligent Misrepresentation.

Regarding the remaining claims against Tech, the Court Grants the Plea to the Jurisdiction with regard to Leach's alleged causes of action for violation of the Takings Clause of the Texas Constitution and for not affording Leach due course of law.

CLAIMS AGAINST TECH EMPLOYEES (OFFICIAL AND INDIVIDUAL CAPACITY)

The Court will initially note that none of the specific causes of action alleged by Leach names Bingham as a defendant from whom relief is being requested.

The Court grants the Motion to Dismiss as to Hance, Bailey, Myers (and Bingham, if necessary) regarding the following causes of action: Fraud in the Inducement, Negligent Misrepresentation, Defamation, Tortious Interference and the Conspiracy allegation.

Although Leach alleges the "Defendants" (without listing any specific individuals) in his cause of action for violation of the Takings Clause of the Texas Constitution and Denial of Due Course of Law, the Court finds that individuals are not proper defendants to such causes of action and hereby orders that they be dismissed, if in fact, individuals were intended to be included in this cause of action.

REQUESTS FOR DECLARATORY JUDGMENTS

The Court finds that the Requests for Declaratory Judgments are essentially one in the same as the specific causes of action alleged by Leach and the Court's rulings as set out above apply to the same extent to the Requests for Declaratory Judgment.

Mr. Perkins, please prepare an appropriate order reflecting my rulings and circulate it among all counsel before submitting it to me for entry.

Will Sowder

Hon. William C. (Bill) Sowder
99th District Court