

IN THE SUPREME COURT OF TEXAS

=====
No. 01-0036
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TRAVIS COUNTY, TEXAS, PETITIONER

v.

PELZEL & ASSOCIATES, INC., RESPONDENT

=====
ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE THIRD DISTRICT OF TEXAS
=====

Argued on November 28, 2001

JUSTICE ENOCH filed a dissenting opinion.

I again disagree with the Court's continued support of its sovereign immunity jurisprudence.¹ Significantly here, Pelzel built the building and the County has occupied the building, but it refuses to pay the full price. The County insists, instead, on asserting its alleged rights under the contract to withhold full payment. Of course, we'll never know if the County has such rights under the contract because the Court allows the County to interpose its sovereign immunity from suit. The Court, as it has done recently in so many other cases, locks the courthouse doors.² I add another case to . . . The List.³

¹ See, e.g., *Federal Sign v. Texas S. Univ.*, 951 S.W.2d 401, 417-18 (Tex. 1997) (Enoch, J., dissenting).

² *TNRCC v. IT-Davy*, ___ S.W.3d ___, ___ (Tex. 2002) (Enoch, J., dissenting).

³ See *IT-Davy*, ___ S.W.3d at ___; *Gen. Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591 (Tex. 2001); *Texas Dep't of Transp. v. Are-Aerotron, Inc.*, 39 S.W.3d 220 (Tex. 2001); *Federal Sign*, 951 S.W.2d at 408; *Tex. Dep't of Pub. Safety v. Int'l Capital Corp.*, 40 S.W.3d 687 (Tex. App.-Austin 2001, no pet.); *Denver City Ind. Sch. Dist. v. Moses*, 51 S.W.3d 386 (Tex. App.-Amarillo 2001, no pet.); *Gendreau v. Medical Arts Hosp.*, 54 S.W.3d 877 (Tex. App.-

Today, the Court keeps the courthouse doors locked. Worse, the Court permits the County to enforce those provisions of the contract it chooses, and to which Pelzel is bound, but leaves the County unbound by any provisions Pelzel seeks to enforce. Because I would hold that the County has waived its immunity by entering into the contract, I would not reach the presentment issue. Once again, I respectfully dissent.

Opinion delivered: May 9, 2002

Craig T. Enoch
Justice

Eastland 2001, pet. filed); *City of Houston v. Northwood Mun. Util. Dist. No. 1*, __ S.W.3d __ (Tex. App.-Houston [1st Dist.] 2001, no pet.); *Tex. Dept. of Pub. Safety v. Rivera*, No. 13-01-00446-CV, 2001 Tex. App. LEXIS 7681 (Corpus Christi Nov. 15, 2001, no pet.) (not designated for publication); *Landry's Crab Shack v. Bd. of Regents*, No. 03-00-00690-CV, 2001 Tex. App. LEXIS 6948 (Austin Oct. 18, 2001, no pet.) (not designated for publication); *Ondemir v. Bexar County Clerk*, No. 04-00-00497-CV, 2001 Tex. App. LEXIS 6488 (San Antonio Sept. 26, 2001, pet. denied) (not designated for publication); *O'Dell v. Perry*, No. 03-00-00603-CV, 2001 Tex. App. LEXIS 4367 (Austin June 29, 2001, no pet.) (not designated for publication); *State DOT v. Ramirez*, No. 03-00-00594-CV, 2001 Tex. App. LEXIS 2192 (Austin Apr. 5, 2001, pet. filed) (not designated for publication); *Texas A&M Univ. Sys. v. AFEX Corp.*, No. 03-00-00222-CV, 2001 Tex. App. LEXIS 1266 (Austin Mar. 1, 2001, no pet.) (not designated for publication).