AFFIRMED and Opinion Filed August 2, 2022

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-21-00518-CV

THE STATE OF TEXAS; THE TEXAS DEPARTMENT OF TRANSPORTATION; THE TEXAS TRANSPORTATION COMMISSION; J. BRUCE BUGG, JR.; AND JAMES M. BASS, Appellants
V.
LBJ/BROOKHAVEN INVESTORS, L.P., Appellee

On Appeal from the 134th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-20-01518

OPINION

Before Justices Partida-Kipness, Reichek, and Goldstein
Opinion by Justice Reichek

This appeal involves the statutory right to repurchase property acquired through eminent domain for public use, which is found in Chapter 21, Subchapter E, of the Texas Property Code. LBJ/Brookhaven Investors, L.P., sued the State of Texas, the Texas Department of Transportation, the Texas Transportation Commission, J. Bruce Bugg, Jr., and James M. Bass (collectively the State), seeking to enforce the right of repurchase as to 22.7 acres along LBJ Freeway that it contended were taken in eminent domain proceedings and were no longer necessary

to the project or public use. The State filed a plea to the jurisdiction, which the trial court denied. On appeal, the State challenges that ruling. For reasons set out below, we affirm.

Background

LBJ/Brookhaven owned 25.7 acres of land located along the north side of LBJ Freeway in Dallas (the Property). The Property, bordered by Webb Chapel Road and Josey Lane, contained 400,000 square feet of commercial office buildings and office space.

In October 2008, the State of Texas, acting by and through the Texas Transportation Commission, filed a petition for condemnation to acquire a three-acre stretch along the front portion of the Property as part of widening and reconstructing LBJ Freeway. The acreage is referred to as Parcel 29. Although the petition was amended two months later, the amount of property was not increased. As required by statute, the trial court appointed special commissioners to assess damages. *See* TEX. PROP. CODE ANN. § 21.014. Following a hearing, the commissioners made an award. LBJ/Brookhaven objected to the award, ending the administrative phase and thus invoking the trial court's jurisdiction and initiating the judicial phase. *See In re State of Texas*, 629 S.W.3d 462, 466 (Tex. App.—Austin 2020, orig. proceeding); *see also* TEX. PROP. CODE ANN. § 21.018(b) ("If a party files an objection to the findings of the special commissioners, the court shall cite the adverse party and try the case in the same manner as other civil causes.").

During the course of the litigation, the State learned that Parcel 29 had a large Atmos Energy natural gas pipeline beneath or touching upon it, which would need to be re-routed. According to LBJ/Brookhaven, the State and/or TxDOT and/or Atmos communicated that the remaining 22.7 acres LBJ/Brookhaven owned were necessary to the original three-acre strip of right of way sought in the condemnation and designated the remainder as Parcel 56. The State did not disclose or represent that it needed Parcel 56 for staging, construction, or manufacturing.

On March 11, 2011, two and a half years after the original condemnation petition was filed, the trial court signed an Agreed Judgment for the sum of $42.5 million as compensation to LBJ/Brookhaven for condemnation of the entire 25.7 acres.[1] The judgment and attached exhibits apportioned the Property into two parcels: Exhibit A was Parcel 29, the original three-acre strip fronting the freeway, and Exhibit B was Parcel 56, the 22.7 acres of property at issue in this appeal. In the judgment, the trial court made findings and determinations that, among other things, (1) all proceedings necessary to vest the Court with jurisdiction of the parties and subject matter were instituted, maintained, and complied with as required by law; (2) LBJ/Brookhaven owned the property in fee simple, and the State was "condemning and acquiring the fee simple title in and to the property described in Exhibits 'A' and 'B,'" except for the Atmos easements, "under and by virtue of these

[1] The judgment also resolved a condemnation action brought by Atmos Energy to acquire a permanent easement and right-of-way to relocate the gas pipeline on the Property.

condemnation proceedings." The judgment "ORDERED, ADJUDGED, and DECREED" that, subject to the easements, the State recover from LBJ/Brookhaven the fee simple title to the property described in Exhibits "A" and "B" and the fee simple title to the property is "decreed and vested in the State." Further, the judgment ordered the State to pay LBJ/Brookhaven the unpaid balance of the $42.5 million as "full compensation for the condemnation," and upon payment, the State was released and discharged of the "constitutional obligation to pay such compensation for the taking of the property." The judgment was approved as to both substance and form by the State and LBJ/Brookhaven.

One month later, LBJ/Brookhaven filed a special warranty deed in the county clerk's office reflecting the conveyance of the same 22.7 acres to the State. In its "whereas" clause, the deed stated (1) the acquisition of property by the State left a remainder tract, (2) the State was authorized by section 203.0521 of the Texas Transportation Code to purchase the remainder if the State and owner could agree on the terms, and (3) the State and LBJ/Brookhaven agreed on such terms. The deed then recited that LBJ/Brookhaven, in consideration of the agreed settlement of and compensation paid by the State in the earlier "eminent domain proceeding," has sold "this day" the parcel of land described by Exhibit "B," which is the 22.7 acres, to the State.

After it acquired the Property, the State demolished the improvements including the commercial office buildings. As part of the highway project, the State

relocated the frontage road onto Parcel 29 and used Parcel 56 to manufacture and store construction materials. Once the project was completed, the State listed Parcel 56 for sale as surplus property with a real estate broker. *See* TEX. TRANSP. CODE ANN. §§ 202.021–.033.[2] LBJ/Brookhaven was not notified.

When LBJ/Brookhaven learned that the 22.7 acres were being marketed for sale, it brought this lawsuit, alleging it has the right to repurchase the property pursuant to Chapter 21 of the Property Code. LBJ/Brookhaven brought claims for violation and enforcement of sections 21.101–.103 and breach of the same provisions; sought a declaratory judgment regarding its right and entitlement to repurchase the property and the amount of damages; requested an injunction to stop the marketing, listing, or the entering of any contract or agreement involving or affecting the property; and sought declaratory relief as to Bugg, chairman of the Texas Transportation Commission, and Bass, executive director of the Texas Department of Transportation, in their official capacities on ultra vires claims.

The State filed a plea to the jurisdiction, special exceptions, and general denial. LBJ/Brookhaven responded to the plea, and the State filed a reply. Both sides presented evidence, which included the petition for condemnation; the amended petition; the Agreed Judgment; the Special Warranty Deed; aerial

[2] A marketing brochure identified the property as excess TxDOT land available for sale via sealed bid process. The brochure broke the 22.7 acres into three tracts with the following minimum bid pricing: Tract 1, 10.27 acres, $11.6 million; Tract 2, 11.73 acres, $13.5 million; and Tract 3, 0.70 acres, to be determined.

photographs of the Property before, during, and after the highway construction; and an affidavit by the president of the general partner for LBJ/Brookhaven. Following a hearing, the trial court denied the State's plea to the jurisdiction. This interlocutory appeal followed. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(8).

Discussion

A. Sovereign Immunity

The State and other state agencies like TxDOT are immune from suit and liability in Texas unless the legislature expressly waives sovereign immunity. *State v. Lueck*, 290 S.W.3d 876, 880 (Tex. 2009); TEX. GOV'T CODE ANN. § 311.034 ("[A] statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language."). A statute may waive immunity from suit, immunity from liability, or both. *Lueck*, 290 S.W.3d at 880. Immunity from suit is a jurisdictional question of whether the State has expressly consented to suit. *Id*. In some statutes, immunity from suit and liability are co-extensive, whereby immunity from suit is waived to the extent of liability. *Id*. (citing TEX. CIV. PRAC. & REM. CODE ANN. § 101.025(a) and *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004) ("The Tort Claims Act creates a unique statutory scheme in which the two immunities are co-extensive . . . .")).

Sovereign immunity from suit is properly asserted when the State files a plea to the jurisdiction. *Id.* In contrast, immunity from liability is an affirmative defense that cannot be raised by a plea to the jurisdiction. *Id.* However, when the facts

underlying the merits and subject matter jurisdiction are intertwined, the State may assert sovereign immunity from suit by a plea to the jurisdiction, even when the trial court must consider evidence "necessary to resolve the jurisdictional issues raised." *Id*. A plea to the jurisdiction in these circumstances may be used only to address jurisdictional facts. *Id*.

B. Right of Repurchase

Chapter 21 of the Texas Property Code is entitled "Eminent Domain" and governs the procedures to be used when an entity takes a landowner's property via eminent domain for public use. *See* TEX. PROP. CODE ANN. § 21.001 et seq.

In 2003, the Texas Legislature recognized that "no mechanism exist[ed] to allow a person whose property was acquired by the government through eminent domain, when the project for which the property was acquired is canceled, to get the property back, other than a bidding process." Senate Comm. on Land & Resource Mgmt., Bill Analysis, S.B. 1708, 78th Leg., R.S. (2003). Consequently, the legislature amended Chapter 21 to add Subchapter E, "Repurchase of Real Property from Governmental Entity."

The original statute, which took effect on January 1, 2004, required the governmental entity to give notice to the former owner if the public use for which the property was acquired by eminent domain was canceled. Act of June 1, 2003, 78th Leg., R.S., ch. 1307, § 2, 2003 Tex. Gen. Laws 4739, 4740 (amended 2011) (current version at TEX. PROP. CODE ANN. § 21.102). Once the landowner notified

the government that it intended to repurchase the property, the government was required to offer to sell the property for the fair market value of the property at the time the public use was canceled. *Id*. (current version at TEX. PROP. CODE ANN. § 21.103). The statute's scope was limited: (1) the public use for which the property was acquired had to be canceled within ten years of acquisition and (2) right of way under the jurisdiction of a county, a municipality, or the Texas Department of Transportation was excluded from repurchase. *Id*. (current version at TEX. PROP. CODE ANN. § 21.101).

In September 2011, six months after the Agreed Judgment was signed in this case, the scope of the statute was amended to change the conditions under which a property owner was entitled to the right of repurchase and to remove the right of way exclusion.[3]

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[3] Sec. 21.101. RIGHT OF REPURCHASE

(a) A person from whom a real property interest is acquired by an entity through eminent domain for a public purpose, or that person's heirs, successors, or assigns, is entitled to repurchase property as provided by this subchapter if:

(1) the public use for which the property was acquired through eminent domain is canceled before the property is used for that public use;

(2) no actual progress is made toward the public use for which the property was acquired between the date of acquisition and the 10th anniversary of that date; or

(3) the property becomes unnecessary for the public use for which the property was acquired, or a substantially similar public use, before the 10th anniversary of the date of acquisition.

* * *

(c) A district court may determine all issues in any suit regarding the repurchase of a real property interest acquired through eminent domain by the former property owner or the owner's heirs, successors, or assigns.

Act of May 6, 2011, 82d Leg., R.S., ch. 81, § 19, (S.B. 18) 2011 Tex. Gen. Laws 354, 361 (codified at TEX. PROP. CODE ANN. § 21.101).

These amendments applied prospectively.[4]

C. Issues on Appeal

Below and on appeal, the State argued the right of repurchase does not apply to the property in question, depriving the court of jurisdiction, because (1) the 2011 version of the repurchase statute does not apply to the property in question, and the 2004 version that does apply excludes this property from repurchase; (2) even if the later statutory version applied, the State used the property in completing its project; and (3) the right of repurchase does not apply because the property was not condemned but was voluntarily conveyed by deed. Additionally, the State asserted that there is no waiver of immunity—express or implied—in the right of repurchase statute.

LBJ/Brookhaven countered that the only proper jurisdictional ground raised in the plea is whether there is a waiver of immunity in the statute. LBJ/Brookhaven argued that the sole purpose of Subchapter E is to give former landowners the right of repurchase against a "condemning authority" and it "would make no sense" to give such a right and "then grant that entity sovereign immunity for its failure to adhere to that very same section or code." Additionally, LBJ/Brookhaven asserted that Property Code sections 21.101(c) and 21.003 can both be read to give the district

[4] The legislature specifically provided that condemnation proceedings filed before the amendments and property condemned through those proceedings remained governed by the law in effect immediately before that date, and the old law was continued in effect for that purpose. Act of June 1, 2003, 78th Leg., R.S., ch. 1307, § 24, 2003 Tex. Gen. Laws 4739, 4740. The statute was also amended in 2021, but those amendments are not at issue in this case.

court jurisdiction over this case and the parties. But, LBJ/Brookhaven argues, "what property was taken or not taken, or how and why it was taken, or whether it was used in the highway project or how, or whether it qualifies for repurchase, or what was said during the underlying litigation or negotiations, or what was intended during underlying litigation, or what version of the applicable statute applies" are "fact issues" that the trial court has not ruled on and are not appropriate for the jurisdictional inquiry.

For reasons set out below, we agree with LBJ/Brookhaven in large part. We disagree, however, that whether the property was condemned or purchased by voluntary sale is unnecessary to the jurisdictional inquiry. Chapter 21, and the repurchase statute itself, is limited to property acquired through eminent domain; thus, for the repurchase statute to apply at all, the property must have been acquired by eminent domain. Thus, we begin with that threshold inquiry.

D. Analysis

1. Conveyance of Property by Agreed Judgment or Deed

The parties disagree as to whether Parcel 56 was conveyed by the plain and unambiguous language of the Agreed Judgment or later by special warranty deed. Under the State's view, the only property it sought to condemn was Parcel 29, the three-acre tract, as evidenced by the original and amended petitions for condemnation. Relying on language in the deed, the State asserts that it negotiated

the voluntary sale of the remainder of the property, Parcel 56, and closed the transaction by deed.

In making this argument, the State acknowledges the Agreed Judgment as well as LBJ/Brookhaven's assertion that it shows the property was condemned, that the parties attached to the judgment a property description describing Parcel 56, and that LBJ/Brookhaven agreed that the State had the right to condemn the property. Nevertheless, citing *Brown v. State*, 984 S.W.2d 348, 350 (Tex. App.—Fort Worth 1999, pet. denied), the State argues that trial courts lack power to allow the condemnation of more land than what was described in the condemnor's petition. Because the condemnation petition did not include Parcel 56, the State argues that the trial court lacked jurisdiction over property not considered by the special commissioners during the administrative phase.

If a condemnor, such as the State of Texas here, wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, the condemnor may initiate a condemnation proceeding by filing a petition in the proper court. TEX. PROP. CODE ANN. § 21.012(a). The petition must (1) describe the property to be condemned, (2) state the purpose for which the entity intends to use the property, (3) state the name, if known, of the owner of the property, and (4) state that the condemnor and the property owner are unable to agree on the damages. *See id*. In 2004, the supreme court concluded that section 21.012's requirements are not jurisdictional. *Hubenak v. San Jacinto Gas Transmission Co.*,

141 S.W.3d 172, 183–84 (Tex. 2004); *see also Graves v. Lone Star NGL Pipeline LP*, No. 09-18-00173-CV, 2019 WL 962544, at *3 (Tex. App.—Beaumont Feb. 28, 2019, no pet.) (mem. op.); *City of Rosenberg v. State*, 477 S.W.3d 878, 879 (Tex. App.—Houston [14th Dist.] 2015, pet. denied); *In re Elec. Transmission Tex., LLC*, No. 13-15-00423-CV, 2015 WL 6759238, at *4 (Tex. App.—Corpus Christi–Edinburg Nov. 2, 2015, orig. proceeding) (mem. op.); *State v. PR Invs. & Specialty Retailers, Inc.*, 180 S.W.3d 654, 665 (Tex. App.—Houston [14th Dist.] 2005), *aff'd*, 251 S.W.3d 472 (Tex. 2008).

In *Hubenak*, the court considered whether the "unable to agree" requirement contained in section 21.012 implicated subject matter jurisdiction. 141 S.W.3d at 179. The court explained that earlier opinions differentiated between common law and statutory claims when considering trial court jurisdiction over a particular matter, but the court had since found that dichotomy to be "antiquated and problematic." *Id*. at 183 (citing *Dubai Petroleum v. Kazi*, 12 S.W.3d 71, 76 (Tex. 2004)). In concluding the statutory requirements in section 21.012 were mandatory but not jurisdictional, the court noted that the "modern direction of policy is to reduce the vulnerability of final judgments to attack on the ground that the tribunal lacked subject matter jurisdiction." *See id*. at 182 (quoting *Kazi*, 12 S.W.3d at 76).

Since *Hubenak*, the court has determined that TxDOT's change in a road's lane pattern after a special commissioner's hearing did not deprive the trial court of jurisdiction over the trial de novo regarding compensation damages under the

revised plan. *See PR Invs. & Specialty Retailers, Inc. v. State*, 251 S.W.3d 472, 477 (Tex. 2008). There, the court explained that, although a trial court's function in a condemnation proceeding is "appellate," that term was not meant "in the sense that evidence is fixed in the record of proceedings below and the court is confined to that paper record, as ordinarily occurs when an appellate court reviews a case." *Id*. at 476. Rather, the condemnation proceeding is a "trial de novo," conducted "in the same manner as other civil cases," and "is not confined to the same evidence that was presented at the administrative phase." *Id.* Further, under a trial conducted "in the same manner as other civil cases," the plaintiff is allowed to amend its petition. *Id*. As the court explained:

> In [*State v. Nelson*, 334 S.W.2d 788, 790 (Tex. 1960)], we stated that the statutory requirement that the condemning authority describe the property to be condemned is the step by which "jurisdiction over the subject matter involved is acquired." We held that even as to this statutorily required, jurisdictional step, the State may in the course of the trial before the county court amend the description of the property to include additional land it intends to acquire, when done by stipulation of the parties and "without material prejudice to the landowner."

Id. at 477.

Here, there is no dispute that the State filed a condemnation petition that included a description of property. Although the petition was not amended to include the 22.7 acres at issue here, the condemnation proceedings concluded in an Agreed Judgment that included the acreage and specifically stated the State was "condemning and acquiring" the property and "should have and recover" the property. Thus, we perceive the end result here as being no different than any other

civil case in which the issues were tried by consent and formal amendment of the pleadings was not necessary. *See* TEX. R. CIV. P. 67.

For the reasoning set out above, we conclude that the trial court was not limited to the property considered by the special commissioners and was not deprived of jurisdiction to render an Agreed Judgment in the original condemnation case for failure of the State to formally amend its condemnation petition to specifically reference the 22.7 acres at issue. As evidenced by the Agreed Judgment, both sides were not only aware of the specific property that was being condemned, they reached an agreement as to that property. Given these circumstances, it would seem "perverse to treat a judgment as perpetually void merely because the court or the parties made a good-faith mistake in interpreting the law." *See Kazi*, 12 S.W.3d at 76. We conclude the judgment is not void as to that property and therefore is not subject to collateral attack. *See Simon v. Biaza*, 879 S.W.2d 349, 354 (Tex. App.—Houston [14th Dist.] 1994, writ denied) (agreed judgments are subject to collateral attack only if rendering court did not have jurisdiction to render judgment), *abrogated on other grounds by In re Luster*, 77 S.W.3d 331, 335 (Tex. App.—Houston [14th Dist.] 2002, orig. proceeding).

The wording in the judgment is clear and unambiguous: the State was "condemning and acquiring" the property described in Exhibits A and B, which included Parcel 56. Moreover the judgment ordered, adjudged, and decreed that the State recover the fee simple title to the property and decreed and vested title in the

State; ordered the State to pay LBJ/Brookhaven the unpaid balance "as full compensation for the condemnation," and, upon payment, released and discharged the State of the "constitutional obligation to pay such compensation for the taking of the property."

Under the parol evidence rule, extrinsic evidence is not admissible to add to, vary, or contradict the terms of an unambiguous judgment. *J.D. Edwards World Sols. Co. v. Estes, Inc.*, 91 S.W.3d 836, 841 (Tex. App.—Fort Worth 2002, pet. denied); *see also Gulf Ins. Co. v. Burns Motors, Inc.*, 22 S.W.3d 417, 422 (Tex. 2000) (refusing to consider testimony to explain meaning of unambiguous agreed judgment). As the supreme court said in *Gulf Insurance*, an agreed judgment has the same effect as any other court judgment. 22 S.W.3d at 422. When a judgment is rendered by consent, it has neither less nor greater force or effect than if it would have had had it been rendered after litigation, except to the extent that the consent excuses error and operates to end all controversy between the parties. *Id.* Thus, in short, an unambiguous judgment must be enforced without considering extrinsic evidence—including the record—to determine its meaning. *Walter v. Marathon Oil Corp.*, 422 S.W.3d 848, 857 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding).

We conclude the Agreed Judgment unambiguously reflects that the State acquired the 22.7 acres by eminent domain, and the later filed special warranty deed

cannot contradict the terms of the judgment. Accordingly, we reject the State's argument that the property was acquired by voluntary sale.

2**. Waiver of Immunity**

Next, we address the State's argument that no particular provision of Chapter 21 expressly waives immunity from suit; rather, it argues Subchapter E provides an "exclusive remedy" when the State fails to determine property is eligible for repurchase. In particular, it argues a landowner's sole recourse is section 21.1021, which allows the former property owner or the owner's heirs, successors, or assigns "to request that a condemning entity make a determination about whether the property is eligible for repurchase."

We agree that the statute here does not contain the "magic words" of "clear waiver" found in other statutes cited by the State. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 101.025(a) ("Sovereign immunity to suit is waived and abolished to the extent of liability created by this chapter."); TEX. GOV'T CODE ANN. § 554.0035 ("A public employee who alleges a violation of this chapter may sue the employing state or local governmental entity for the relief provided by this chapter."); TEX. PROP. CODE ANN. § 74.506(c) ("The state's immunity from suit without consent is abolished with respect to suits brought under this section."). But not all statutes are so explicit, and "[t]he rule requiring a waiver of governmental immunity to be clear and unambiguous cannot be applied so rigidly that the almost certain intent of the Legislature is disregarded." *Oncor Elec. Delivery Co. LLC v. Dallas Area Rapid*

Transit, 369 S.W.3d 845, 850 (Tex. 2012). In applying the clear-and-unambiguous standard, "we must look at whether a statute makes any sense if immunity is not waived." *Id*. In this case, we conclude it would not.

We begin by noting that Chapter 21 contemplates suits *against* the State that involve a claim for property. Section 21.003, entitled "Jurisdiction," provides:

> DISTRICT COURT AUTHORITY. A district court may determine all issues, including the authority to condemn property and the assessment of damages, in any suit:
>
> (1) in which this state, a political subdivision of this state, a person, an association of persons, or a corporation is a party; and
>
> (2) that involves a claim for property or for damages to property occupied by the party under the party's eminent domain authority or for any injunction to prevent the party from entering or using the property under the party's eminent domain authority.

Although the State argues that enforcing a statutory right of repurchase does not fall within subsection (2), we disagree. By seeking to enforce the statutory right of repurchase, LBJ/Brookhaven is making a claim to property. To conclude otherwise is to merely parse words. And by referring to the State as "a party," the legislature did not limit its status to that of a plaintiff. Thus, as we read this provision, it allows the State to be sued in cases involving a claim for property acquired by eminent domain and gives the district court authority over "all issues," not just condemnation and damages.[5] These issues include those involving theright

[5] We note that section 21.001 already vests concurrent jurisdiction in eminent domain cases in district and county courts at law. TEX. PROP. CODE ANN. § 21.001. And section 21.001 requires the transfer of cases from county court at law to the district court if, in an eminent domain case, the court determines the case involves an issue of title or any other matter that cannot be fully adjudicated in that court. *Id*. § 21.002.

of repurchase statute, which itself provides that a district court may determine all issues in any suit regarding the repurchase of a real property interest acquired through eminent domain by the former property owner or the owner's heirs, successors, or assigns. *See* TEX. PROP. CODE ANN. § 21.101(c).

Equally important to our analysis, the legislature enacted the right of repurchase statute to fill an unjust gap that existed in the law by allowing a landowner to reclaim property acquired by eminent domain under certain conditions. At the same time, as part of the eminent domain process, the legislature required an entity to disclose in writing to the property owner, at the time of acquisition of the property through eminent domain, that it may be entitled to repurchase the property under Subchapter E. *Id*. § 21.023.

The purpose of the statute is clear, and it is the only purpose. While different versions of the statute provide different conditions needed to trigger the right, the underlying purpose remains the same. It would make little sense to give landowners the right to repurchase property previously taken by eminent domain yet deny them the ability to exercise the right. For us to conclude, as the State urges, that a landowner's sole recourse is to request the government to determine if the property is eligible—while shielding the government if it fails to make a determination or errs in its determination—does not give effect to the legislature's intent. "If a statute leaves no reasonable doubt of its purpose, we will not require perfect clarity, even

in determining whether governmental immunity has been waived." *Oncor Elec.*, 369 S.W.3d at 850.

We conclude that a full reading of Chapter 21, including the purpose of Subchapter E, waives the State's immunity for suits brought under the right of repurchase. Having so concluded, we next consider the State's argument that we must determine, for jurisdictional purposes, (1) which version of the statute applies, 2004 or 2011, and (2) even if the 2011 version applies, whether LBJ/Brookhaven's property qualifies for repurchase.

The State argues these are facts that must be proven for the court to have jurisdiction, relying on employment cases under the Texas Whistleblower Act and the Texas Commission on Human Rights Act. *See Lueck*, 290 S.W.3d 876; *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629 (Tex. 2012).

In *Lueck*, the immunity provision of the Whistleblower Act stated:

> A public employee who alleges a violation of this chapter may sue the employing state or local governmental entity for the relief provided by this chapter.

290 S.W.3d at 881 (citing TEX. GOV'T CODE ANN. § 554.0035). The standard for a "violation of this chapter" was found in section 554.002(a). *Id*. Thus, the supreme court reasoned that the language of the statute required Lueck to "actually allege a violation of the Act for there to be a waiver from suit" and therefore the elements under section 554.002 must be considered to ascertain what constitutes a violation and whether that violation has actually been alleged. *Id*.

The court applied the reasoning in *Lueck* in *Mission Consolidated*, where Chapter 21 of the Labor Code waived immunity from suit only when the plaintiff actually stated a claim for conduct that would violate the TCHRA. *See Mission Consol.*, 372 S.W.3d at 637. Specifically, section 21.254, the section waiving immunity from suit, provided that after satisfying certain administrative requirements, "the complainant may bring a civil action." *Id*. A complainant was defined in the TCHRA as "an individual who brings an action *under this chapter*." *Id*. Thus, the court reasoned, "as in *Lueck*, it necessarily follows that a plaintiff must actually 'bring[] an action or proceeding under this chapter' in order to have the right to sue otherwise immune governmental employers." *Id*. (footnote omitted).

Nothing in the wording of either version of section 21.101 conditions the *bringing of suit* on the elements of the claim. The 2011 version of section 21.101 provides that a person from whom a property interest is acquired by eminent domain "is entitled *to repurchase* the property as provided by this subchapter" if certain conditions are met. *See* TEX. PROP. CODE ANN. § 21.101 (emphasis added). The 2004 version of section 21.101 merely sets out the applicability of the subchapter and the exclusions, neither of which is linked to the filing of the lawsuit. *See* Act of June 1, 2003, 78th Leg., R.S., ch. 1307, § 2, 2003 Tex. Gen. Laws 4739, 4740. Accordingly, we need not decide, for jurisdictional purposes, which version of the statute applies or whether conditions under those statutes have been met.

Based on the foregoing, we conclude sovereign immunity does not bar LBJ/Brookhaven's claims under Subchapter E of the Property Code and thus need not address issues related to the declaratory judgment and ultra vires claims seeking the same relief.

We affirm the trial court's order.

/Amanda L. Reichek/
AMANDA L. REICHEK
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

THE STATE OF TEXAS; THE TEXAS DEPARTMENT OF TRANSPORTATION; THE TEXAS TRANSPORTATION COMMISSION; J. BRUCE BUGG, JR.; AND JAMES M. BASS, Appellants

On Appeal from the 134th Judicial District Court, Dallas County, Texas Trial Court Cause No. DC-20-01518. Opinion delivered by Justice Reichek; Justices Partida-Kipness and Goldstein participating.

No. 05-21-00518-CV V.

LBJ/BROOKHAVEN INVESTORS, L.P., Appellee

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee LBJ/BROOKHAVEN INVESTORS, L.P. recover its costs of this appeal from appellants THE STATE OF TEXAS; THE TEXAS DEPARTMENT OF TRANSPORTATION; THE TEXAS TRANSPORTATION COMMISSION; J. BRUCE BUGG, JR.; AND JAMES M. BASS.

Judgment entered this 29th day of July 2022.