

**IN THE DISTRICT COURT OF STEPHENS COUNTY
STATE OF OKLAHOMA**

FILED DISTRICT COURT
Stephens County, Okla.

**DUNCAN AREA ECONOMIC
DEVELOPMENT FOUNDATION,
an Oklahoma not for profit corporation,**)
)
)
Plaintiff,)

JAN 31 2025
MELODY HARPER
Court Clerk

vs.)

Case No. CV-2023-72R

**DUNCAN ECONOMIC DEVELOPMENT
TRUST AUTHORITY, a public trust; and
CITY OF DUNCAN, an Oklahoma
municipal corporation,**)
)
)
Defendants.)

ORDER OF SUMMARY JUDGMENT

CASE COMES ON this 6th day of January 2025 for hearing on the (i) plaintiff’s Motion for Partial Summary Judgment filed on December 6, 2024, (ii) plaintiff’s Motion for Partial Summary Judgment filed on December 13, 2024, (iii) plaintiff’s Motion to Strike Defendants’ Cross Motion for Partial Summary Judgment, and (iv) defendants’ Cross Motion for Partial Summary Judgment within its Response to plaintiff’s December 13th Motion for Partial Summary Judgment. The plaintiff appears by S. Smith, B. Gonzalez, and S. Stone. The defendants appear by D. Hammond and M. McMorrow-Love.

WHEREUPON the court reviewed the pleadings and motions, and received argument of counsel, and finds as follows:

1. The City of Duncan (the “City”) is an Oklahoma municipal corporation located in Stephens County, Oklahoma, and a political subdivision of the State of Oklahoma.
2. The Duncan Economic Development Trust Authority (the “Trust”) is an Oklahoma public trust and a political subdivision of the State of Oklahoma.
3. The City is the beneficiary of the Trust.

4. The City and the Trust, through the exercise of their statutory and constitutional authority to levy taxes, have collected a sales tax since 1994 creating a pool of public funds designated for appropriation and expenditure toward activities that promote economic development.

5. The City and the Trust have the statutory and constitutional authority to appropriate and spend such public funds within the limits of the levy and trust indenture.

6. The City and the Trust, as political subdivisions of the State of Oklahoma, have a duty to appropriate and spend public funds within any limits imposed by statute or the Oklahoma Constitution.

7. The Duncan Area Economic Development Foundation (“DAEDF”) is an Oklahoma not for profit corporation.

8. DAEDF is not a political subdivision of the State of Oklahoma.

9. DAEDF conducts its not-for-profit economic development business in Duncan, Stephens County, Oklahoma.

10. The Trust and DAEDF (and their predecessors in interest) entered into a series of agreements.

11. The Trust and DAEDF entered into the Contract for Services dated May 27, 2003 (the “2003 Services Contract”), with a term of May 27, 2003, to July 31, 2009.

12. The Trust and DAEDF entered into the Contract for Services dated July 27, 2009 (the “2009 Services Contract”), with a term of July 27, 2009, to July 31, 2015.

13. The Trust and DAEDF entered into the Contract for Services dated July 28, 2015, with a term of July 28, 2015, to July 31, 2019, with an Addendum to Contract for Services dated

August 9, 2016, and a Second Addendum to Contract for Services dated July 23, 2019 (collectively, the “2015 Services Contract”).

14. The Trust and DAEDF entered into the Contract for Services dated September 24, 2019 (the “2019 Services Contract”), with a term of September 24, 2019, to July 31, 2024 (together, the 2003 Services Contract, the 2009 Services Contract, the 2015 Services Contract and the 2019 Services Contract are collectively referred to herein as the “Contracts for Services”).

15. Under the Contracts for Services, the City and Trust agreed to pay DAEDF for services all parties deemed to promote economic development.

16. The City and Trust appropriated and disbursed public funds from the sales tax to DAEDF in payment for services the City and Trust determined promoted economic development.

17. The Contracts for Services provide the procedures DAEDF must follow to request funds from the Trust to be used for economic development purposes.

18. On August 20, 2008, DAEDF requested sales tax proceeds from the Trust for the purchase of the Haulmark Property, as identified in Plaintiff’s December 13, 2024, Motion for Partial Summary Judgment.

19. On August 26, 2008, the Trust approved DAEDF’s request of funds to purchase the Haulmark Property.

20. In September 2008, the Trust released two million five thousand nine hundred eighteen dollars (\$2,005,918.00) to DAEDF for the purchase of the Haulmark Property.

21. On September 4, 2008, DAEDF closed on the purchase of the Haulmark Property taking title to the Haulmark Property in DAEDF’s name.

22. The Haulmark Property, which consists of the approximately 13.49 acres listed and identified as No. 6 by Defendants on Exhibit A of their Counterclaim, and more particularly

described in the Warranty Deed filed in Book 3760 at page 45 of the records of the Stephens County Clerk's office, was conveyed to DAEDF on or about September 5, 2008, during the term of the 2003 Services Contract.

23. At the time the request was made by DAEDF and approved by the Trust, the City and the Trust were aware that DAEDF would own the Haulmark Property.

24. On February 8, 2013, DAEDF requested sales tax proceeds from the Trust for the purchase of the 48 Acres, as identified in Plaintiff's December 13, 2024, Motion for Partial Summary Judgment (the Haulmark Property and the 48 Acres are collectively referred to herein as the "Two Properties").

25. On February 25, 2023, the Trust approved DAEDF's request of funds to purchase the 48 Acres.

26. In March 2013, the Trust released two hundred forty-five thousand one hundred forty dollars (\$245,140.00) to DAEDF for the purchase of the 48 Acres.

27. On March 1, 2013, DAEDF closed on the purchase of the 48 Acres taking title to the 48 Acres in DAEDF's name.

28. The 48 Acres, which consists of the approximately 47.56 acres listed and identified as No. 1 by Defendants on Exhibit A of their Counterclaim, and more particularly described in the Warranty Deed filed in Book 4569 at page 150 of the records of the Stephens County Clerk's office was conveyed to DAEDF on or about March 1, 2013, during the term of the 2009 Services Contract.

29. At the time the request was made by DAEDF and approved by the Trust, the City and the Trust were aware that DAEDF would own the 48 Acres.

30. Absent fraud, failure of the City or the Trust to properly appropriate and spend such public funds is solely the responsibility of the City or the Trust.

31. Once public funds are appropriated and disbursed to an entity other than a political subdivision of the State of Oklahoma, they cease to be public funds.

32. Neither the City nor the Trust may, absent fraud, claim their appropriation and expenditure of public funds violates an existing statute or provision of the Oklahoma Constitution in an attempt to undo such appropriation and expenditure.

33. DAEDF purchased an additional four properties with either its internal funds or other funds available to DAEDF and not from sales tax proceeds.

34. The property consisting of approximately 3.59 acres listed and identified as No. 2 by Defendants on Exhibit A of their Counterclaim, and more particularly described in the Warranty Deed filed in Book 5936 at page 282 of the records of the Stephens County Clerk's office (the "3.59 Acres"), was conveyed to DAEDF on or about March 3, 2021, during the term of the 2019 Services Contract.

35. The property consisting of approximately 4.88 acres listed and identified as No. 3 by Defendants on Exhibit A of their Counterclaim, and more particularly described in the Warranty Deed filed in Book 5936 at page 282 of the records of the Stephens County Clerk's office (the "4.88 acres"), was conveyed to DAEDF on or about March 3, 2021, during the term of the 2019 Services Contract.

36. The property consisting of approximately 1.91 acres listed and identified as No. 4 by Defendants on Exhibit A of their Counterclaim, and more particularly described in the Warranty Deed filed in Book 6081 at page 23 of the records of the Stephens County Clerk's office (the "1.91

Acres”), was conveyed to DAEDF on or about November 29, 2021, during the term of the 2019 Services Contract.

37. The property consisting of approximately 6.7 acres listed and identified as No. 5 by Defendants on Exhibit A of their Counterclaim, and more particularly described in the Warranty Deed filed in Book 6113 at page 269 of the records of the Stephens County Clerk’s office (the “6.7 Acres”), was conveyed to DAEDF on or about February 9, 2022, during the term of the 2019 Services Contract.

38. The 3.59 Acres, 4.88 Acres, 1.91 Acres, and the 6.7 Acres are collectively referred to herein as the “Four Properties”.

39. DAEDF did not request or use sales tax proceeds from the Trust to purchase the Four Properties.

40. The Contracts for Services provided the City and the Trust with adequate safeguards to ensure the City, the Trust, and DAEDF did not misuse sales tax proceeds. The parties agree that DAEDF provided accountings, audits, written requests for funds, and obtained approval of the Trust before expending any sales tax proceeds, as set forth in the relevant Contracts for Services to purchase the Two Properties.

41. The terms of the parties’ economic development plan, in the form of the Contracts for Services, clearly indicate that the intent of the parties was that DAEDF would use sales tax proceeds provided by the City and Trust to purchase certain real property for economic development in the City of Duncan and that DAEDF would own such real property.

42. Further, all parties were aware at the time of the transfer of sales tax proceeds and purchase of the Two Properties and the Four Properties that DAEDF owned the properties.

43. There is no dispute that all parties determined the Contracts for Services served the legitimate public purpose of economic development. The City and Trust were in the best position to determine how to advance their economic development plan and fulfill their obligations to safeguard sales tax proceeds from illegitimate use.

44. The City and Trust may not, in hindsight or after a change of office holders, attempt to invalidate the previous legitimate exercise of authority to properly disburse sales tax proceeds by claiming such actions were not legitimate in the first place; to allow such would create an untenable situation preventing anyone from being able to rely on such expenditures for fear of arbitrary reversal by the City or Trust at any time in the future

45. The Contracts for Services, which included DAEDF receiving sales tax proceeds from the City and the Trust to purchase and own real property, served the legitimate public purpose of economic development, had adequate safeguards to prevent misuse of sales tax proceeds, and did not violate Section 14 or 17 of Article 10 of the Oklahoma Constitution.

IT IS THEREFORE ORDERED that Summary Judgment is ordered for the plaintiff as follows:

1. DAEDF's Motion for Partial Summary Judgment filed on December 6, 2024, is hereby GRANTED.

2. DAEDF's Motion for Partial Summary Judgment filed on December 13, 2024, is hereby GRANTED.

3. DAEDF's Motion to Strike Defendants' Cross Motion for Partial Summary Judgment is hereby DENIED as moot.

4. Defendants' Cross Motion for Summary Judgment filed on December 30, 2024, is hereby DENIED.

5. The Contracts for Services were valid and enforceable contracts between the Trust and DAEDF.

6. Any appropriation and expenditure of public funds by the City or Trust to DAEDF for services rendered under the Contracts for Services caused those funds to cease to be public funds.

7. The proceeds derived from any public funds that have been appropriated and expended by the City or Trust to DAEDF for services rendered under the Contracts for Services are not public funds.

8. Any real estate purchased by DAEDF using funds paid to the DAEDF by the City or Trust pursuant to the terms of the relevant Contracts for Services and held in the name of DAEDF is owned by DAEDF.

9. Any real estate purchased by DAEDF using proceeds derived from funds paid to the DAEDF by the City or Trust pursuant to the terms of the relevant Contracts for Services and held in the name of DAEDF is owned by DAEDF.

10. Neither the City nor the Trust have any property interest in real estate purchased by DAEDF using funds paid to DAEDF by the City or Trust pursuant to the terms of the relevant Contracts for Services and held in the name of DAEDF.

11. Neither the City nor the Trust have any property interest in real estate purchased by DAEDF using proceeds derived from funds paid to DAEDF by the City or Trust pursuant to the terms of the relevant Contracts for Services and held in the name of DAEDF.

12. The Two Properties were purchased by DAEDF consistent with the relevant Contracts for Services.

13. The Two Properties are owned by DAEDF.

14. All other funds generated by or otherwise made available to DAEDF from sources other than public funds from the City or Trust pursuant to the Contracts for Services are not public funds within the meaning of the Contracts for Services.

15. The Four Properties were purchased by DAEDF during the term of and consistent with the 2019 Services Contract.

16. The Four Properties are owned by DAEDF.

17. All other property purchased by DAEDF during the term of and consistent with the relevant Contracts for Services is owned by DAEDF.

IT IS SO ORDERED.



Dennis L. Gay
Associate District Judge

Certificate of Delivery

This is to certify that on the 31 day of January 2020 a true and correct copy of the above was mailed/delivered to:

Bonner J. Gonzalez, 211 N. Robinson, Oklahoma City, OK 73102

Spencer F. Smith, 211 N. Robinson, Oklahoma City, OK 73102

Garrett J. Reed, 211 N. Robinson, Oklahoma City, OK 73102

Scott W. Stone, 729 W. Main Street, Duncan, OK 73533

Margaret M. Love, 228 Robert S. Kerr Ave., #540, Oklahoma City, OK 73102

David W. Hammond, 1102 W. Maple Ave., Duncan, OK 73533

